



Statement for the Record
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Submitted to House Committee on the Judiciary
Markup of
“H.R. 3711 – The Legal Workforce Act”
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The Legal Workforce Act (LWA) would impose one of the most extensive regulatory schemes in the history of the United States, affecting every single employer and each participant in the U.S workforce.¹ LWA would mandate the use of the federal government’s E-Verify national identification system with violations subject to civil and criminal penalties.² E-Verify’s harms are demonstrable and definite, while its supposed benefits are nonexistent.

LWA intends to “turn off the job magnet” for illegal immigration.³ Yet E-Verify fails to stop illegal employment, while imposing concrete harms on legal workers and their employers.⁴ Database errors will delay or eliminate jobs for hundreds of thousands of legal workers.⁵ Businesses will have to spend many hours learning and implementing the new system,⁶ and their inevitable mistakes will result in significant fines.⁷ Since illegal workers easily evade the system, E-Verify audits—costly in and of themselves—often require mass layoffs.⁸ For these reasons, very few employers use the system voluntarily.⁹

LWA would exacerbate all of these harms. Because LWA allows employers to run checks before the date of hire and wait until final approval, database errors that cause delays for legal workers would cost them up to two weeks worth of wages. Incredibly, LWA would require employers to toss an application of a legal worker whose database error took longer than that to confirm.¹⁰ LWA also creates new paperwork and reporting mandates, which increase the risk of civil fines.¹¹ These problems will raise the cost of hiring and reduce jobs and wages for U.S. workers at the margin.¹²

As a national ID system, E-Verify is a privacy concern for all Americans. Any person or entity could use the system to verify information of any particular person for any reason, and once the system fully integrates biometrics, it would have the ability to confirm identity.¹³ Nothing in the logic behind LWA nor any provision of the bill limits E-Verify to employment verification.¹⁴ State and federal laws restrict immigrant access to government benefits, housing, occupational and drivers licenses, and guns.¹⁵ Once mandated, the argument against imposing it to surveil or monitor these activities as well as bank accounts, home loans, or even motorists weakens, and a comprehensive federal monitoring system could be created. LWA starts this mission creep by providing for the use of E-Verify at federal buildings.¹⁶

E-Verify has no benefits to offset these harms and risks. E-Verify state laws do not reduce unemployment for U.S. workers,¹⁷ and economic research has shown that low-skilled immigration raises wages for most U.S. workers, including many low-skilled Americans.¹⁸ The least expensive option proven to eliminate illegal immigration is a more expansive work visa system.¹⁹ Immigrants would cover the costs of administering such a system,²⁰ and studies prove that they pay more in taxes than they receive in benefits.²¹ This committee is already pursuing this option, making E-Verify unnecessary.²²

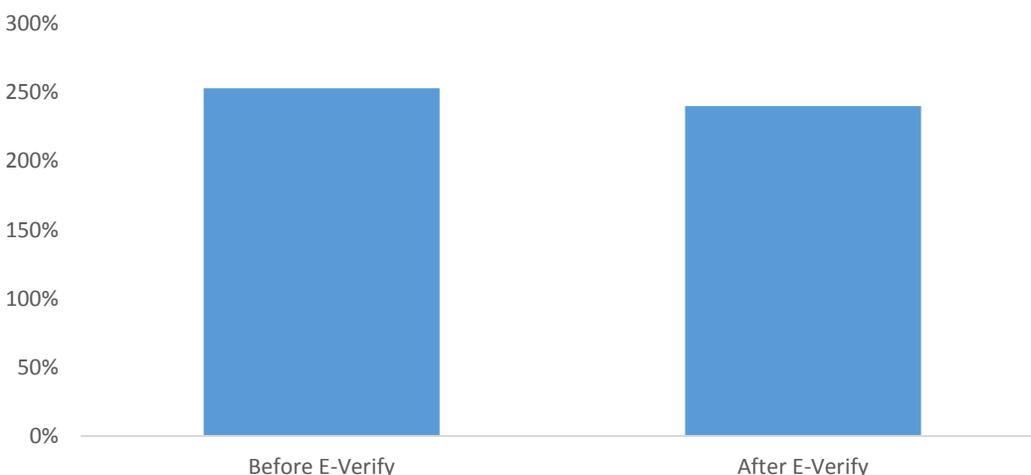
¹ The Cato Institute is a libertarian 501(c)(3) nonprofit think tank founded in 1977 and located in Washington D.C.

H.R. 3711 won't turn off the jobs magnet

The Legal Workforce Act (LWA) will not significantly deter illegal immigration. After Arizona mandated E-Verify for all employers in 2008, wages fell 8 percent for unauthorized immigrant men and 1.2 percent for women.²³ For prospective border crossers in Mexico, Arizona's E-Verify law reduced the expected wage gain from a 2.5-fold increase to a 2.4-fold increase (Figure 1).²⁴ As importantly, it had no statistically significant effect on employment for men and increased employment for women as women attempted to make up for the decrease in their spouse's wages. In other words, E-Verify had very little impact on the incentive to cross illegally from Mexico.

Figure 1

Wage Gain for Mexican Unauthorized Immigrant to the United States



Source: Alex Nowrasteh and Jim Harper, "Checking E-Verify," *Cato Institute Policy Analysis no.775*, July 7, 2015

This should come as little surprise. E-Verify lacks pictures for many workers and so simply compares names and Social Security numbers (SSNs) to the Social Security Administration's database. As long as the information matches a record, E-Verify clears the person. A study funded by U.S. Citizenship and Immigration Services (USCIS) found that E-Verify approved a majority (54 percent) of all unauthorized immigrants, mostly due to the use of borrowed identification.²⁵ The Social Security Administration (SSA) rarely scrubs its database, which allows the use of numbers of the deceased or immigrants and citizens who have left the country. In March 2015, the SSA Inspector General found that there were more than 6.5 million SSNs linked to people who were 112 or older.²⁶

Figure 2

Number of E-Verify Queries as a Share of New Hires in States with Private Sector Mandates

	Alabama	Arizona	Mississippi	South Carolina
2008	3.64%	33.57%	11.66%	7.65%
2009	6.99%	43.49%	41.29%	23.73%
2010	13.53%	59.03%	40.41%	57.95%
2011	13.56%	57.06%	40.74%	73.12%
2012	38.69%	54.88%	44.22%	58.46%
2013	48.22%	60.92%	47.54%	69.87%
2014	45.77%	62.63%	41.44%	68.87%
2015	46.44%	73.58%	41.66%	68.64%

Sources: Census's Longitudinal Employer-Household Dynamics and DHS's answer to a Cato FOIA request

Employers can evade some E-Verify requirements by hiring people as contractors rather than employees, and states that have E-Verify mandates have seen increases in contract hires.²⁷ Moreover, state-level mandates have simply failed to obtain a significant level of compliance among employers. Even in Arizona where a business can have its license revoked if they do not comply, businesses check less than three quarters of their new hires through the system (Figure 2).²⁸ The new hire check rate for E-Verify is even worse in the states of Alabama, Mississippi, and South Carolina that mandated E-Verify for all new hires on April 1, 2012, July 1, 2011, and July 1, 2010, respectively.²⁹

H.R. 3711 harms American employers

In addition to its ineffectiveness, the LWA is not “business friendly,” as proponents claim.³⁰ Certain employer associations have endorsed LWA, leading to the impression that employers like E-Verify.³¹ This is misleading. All employers in the United States may already use E-Verify on a voluntary basis.³² Yet in 2017, 94 percent of them chose not to use it in states lacking a mandate.³³ If employers actually liked E-Verify, more businesses would use it on their own without the threat of penalties. Indeed, that is the whole reason that \$25,000 penalties and 18-month prison terms are necessary under LWA.³⁴

Even government entities struggle with E-Verify mandates. After Georgia mandated E-Verify use for local municipalities and other government agencies, nearly half of them failed to file reports on time,³⁵ and their own Department of Agriculture did not use the system for over four years after the mandate was passed.³⁶ Even the SSA which administers the program missed checks on 1,767 new hires in 2008 and 2009.³⁷ E-Verify is so difficult that even its administrators failed to use it properly.

E-Verify comes with a 17-page memorandum of understanding and 139-page E-Verify User Manual that employers must understand.³⁸ When comprehensive immigration reform (CIR) came up in 2013, National Law Journal’s top 250 largest law firms in the country started frantically searching for employment law attorneys “since the primary opportunity they see in CIR is E-Verify.”³⁹ In other words, E-Verify compliance will create and expand the industry of immigration employment law. When employment opportunities for lawyers increase, *overall* job growth and employment suffers.

Despite the sponsor’s assertions that LWA simplifies the current I-9 employment verification process, it actually adds significant complexity.⁴⁰ It fails to abolish the record-keeping or retention mandates, and while it allows for electronic recording and retention, this is already allowed under the I-9 process.⁴¹ Instead, it adds multiple new record components and additional steps to verify eligibility.

Human resource staff or small business owners will need to record and maintain not only the basic employee information—names, addresses, Social Security or alien identification numbers, and immigration status—they will have to submit these correctly to the Social Security Administration (SSA) or Department of Homeland Security (DHS).⁴² Then they must record the response—confirmation, tentative nonconfirmation (TNC), or final nonconfirmation (FNC)—and inform the employee.⁴³ According to a 2011 Bloomberg Government report, a national E-Verify mandate would cost small businesses \$2.7 billion to implement, an average of \$127 per new employee.⁴⁴

DHS predicts that the normal E-Verify process would impose a cumulative regulatory burden of nearly 14 million man-hours annually.⁴⁵ Each violation of the record-keeping requirements again are subject to civil monetary fines. TNCs require the employer to work with the employee or prospective hire to resolve the issue over the course of a couple of weeks.⁴⁶ If the employer has already hired the person and they receive an FNC, the employer must terminate their employment immediately and seek a new employee, creating unnecessary turnover for the business that would not exist apart from LWA. The turnover costs under an E-Verify mandate would equal about \$3.9 billion.⁴⁷ LWA would exacerbate the turnover problem by requiring the termination of *legal* workers who cannot resolve a database error in less than two weeks.⁴⁸

E-Verify actually increases the threat of penalties by imposing new regulations that can lead to penalties. In 2012, for example, Diversified Maintenance Systems, a Florida janitorial and maintenance service, paid \$8,800 for “discrimination” based on misuse of the system.⁴⁹ E-Verify sent the employer a TNC.

Employees may challenge a TNC at an SSA office. The employee went, but without the proper paperwork that the business should have provided. This delay caused the system to issue a false FNC. After the employee called to confirm her eligibility with SSA, the business withheld reinstatement, believing the FNC to be authoritative, and was fined. In another instance in 2012, ComForcare In-Home Care & Senior Services received a \$1,210 fine for asking for additional documentation after E-Verify issued a TNC.⁵⁰ Many other comparable cases have happened as E-Verify use has expanded.⁵¹

To the extent that employers say that they support E-Verify, they support a system that simply does not exist. In particular, many employers believe that E-Verify would provide a safe harbor against costly I-9 form audits.⁵² Audits are a major expense to employers. Chipotle's 2010 audit cost the company more than \$1 million in attorney fees alone.⁵³ The company catalogued and shipped over 300,000 employment-related documents to investigators.⁵⁴ They also had to fire hundreds of workers, imposing significant turnover costs.⁵⁵

Yet LWA would not provide a safe harbor for employers. An agent from Immigration and Customs Enforcement physically needs to inspect employment records, which employers must maintain for three years under LWA, to verify the identity and status of those hires, and LWA still explicitly mentions audits and investigations of employers.⁵⁶ USCIS already states, "Participation in E-Verify does not provide a safe harbor from worksite enforcement."⁵⁷

An ICE audit, for example, forced Arizona's Pro's Ranch Market to fire 300 workers in 2010, despite using E-Verify.⁵⁸ In another case, Tyson Foods voluntarily used E-Verify since 1996, but that did not prevent a six-year investigation and prosecution, which ended in a 2003 acquittal.⁵⁹ In 2006, when the Bush administration raided Swift & Company, a Colorado based meatpacker, it was the largest worksite enforcement operations in U.S. history, apprehending 1,282 unauthorized workers.⁶⁰ It deprived Swift of 10 percent of its workforce, even though Swift had used E-Verify since 1998.⁶¹ In 2011, Pei Wei, a Chinese restaurant chain owned by P.F. Chang's China Bistro Inc., used E-Verify, but was still forced to close eight Arizona stores after immigration raids discovered unauthorized employees. The closings cost the business \$1.8 million in revenue.⁶²

Under LWA, the federal government would fine employers for missed *checks*, not actually hiring unauthorized immigrants. In other words, if an H.R. manager failed to submit information in the allotted period (within three days of hire), the government would fine the business regardless of whether the person was illegally present. South Carolina routinely fines businesses under its E-Verify law, but it never issues fines for hiring unauthorized immigrants, just failure to check.⁶³

H.R. 3711 would harm American workers

Increasing the costs of hiring, as LWA would do, ultimately reduces jobs and wages for U.S. employees. Just as employers pass on the costs of the employer-portion of FICA taxes to employees through lower pay, they pass along other costs of hiring new workers. In 2015, economist and now-Director of the Congressional Budget Office Keith Hall concluded, "the accumulated effects of thousands of regulations can impact job and wage growth, as well as raise long-term unemployment rates."⁶⁴ E-Verify is not an exception to this rule.

E-Verify has other costs for employees. Under employers' voluntary use of the program, more than a half a million legal workers and U.S. citizens have had their jobs delayed or eliminated due to database errors in the program from 2006 to 2016.⁶⁵ These workers received TNCs and had to seek to rectify the mistake at the SSA or DHS offices. The federal government refuses to give detailed information on how long it can take, but we know that 12 percent of legal workers who receive a TNC took more than 8 days to resolve it.⁶⁶ If LWA becomes law, the number of errors would balloon to more than 1.7 million over a decade.⁶⁷

Employees, however, can only challenge nonconfirmations that their employers tell them about. Many employers choose to ignore the rules of the program and trash any application for people who receive

TNCs. Since 2006, about 130,000 legal workers and U.S. citizens have lost their jobs in this way.⁶⁸ It is cold comfort to note that this is a small percentage of the total. One downside of regulations of this scope is that the absolute numbers can be huge, even if the shares are small.

LWA makes these problems much worse for employees than they would be under current E-Verify rules. Because LWA allows employers to prescreen employees through E-Verify before they hire them—a practice current rules prohibit—each day that these workers have to wait will cost them wages.⁶⁹ Even more incredible, the legislation imposes a 10-day time limit on resolving a TNC error.⁷⁰ If it took more than 10 days (with the possibility of at most one 10-day extension at the discretion of DHS), the employer must fire the worker, sending even legal workers to the unemployment line without any opportunity to appeal. Because 12 percent of legal workers take more than 8 days to resolve it, it is likely that this provision will result in tens of thousands of more wrongful terminations.⁷¹

E-Verify proponents assert that LWA would “protect” U.S. workers from foreign competition and result in more jobs and better wages for them.⁷² Yet academic economists dispute the idea that low-skilled immigrants reduce wages for most U.S. workers.⁷³ In fact, even the most pessimistic economist on this point Harvard’s George Borjas who claims that wages for U.S.-born high school *dropouts* fell somewhat in response to low-skilled immigration agrees that wages overall rise, including for the majority of U.S.-born workers with a high school degree or less.⁷⁴ Borjas and most other economists reject the notion that immigration increases unemployment.⁷⁵

A recent paper reviewing the effects of ending the Bracero guest worker program and cutting off agricultural work visas in 1965 highlights how immigration restrictions can fail to raise wages.⁷⁶ Ending the Bracero program reduced farm labor supply by more than a third in some states. The study compared agricultural wages in areas that had received many Braceros to areas that had received few. If Braceros depressed wages, wages should rise more in areas where they had previously come than in other areas. But the authors found just the opposite, “wages grew more in the states untouched by the removal of Mexican workers.”⁷⁷ The authors attributed the failure to mechanization and reductions in farm productivity, both of which reduced demand for labor-intensive jobs.

In 2013, the U.S. Department of Agriculture economic team estimated that the removal of 5.8 million unauthorized immigrants would actually lower wages for U.S.-born workers overall by 1 percent.⁷⁸ Fortunately, E-Verify is too ineffective for this outcome to happen, but it shows that even in theory, E-Verify has no economic value for the United States.

LWA harms American privacy

E-Verify is a form of government surveillance, and it purports to act as a national identification system, confirming the identity of workers in the United States.⁷⁹ For unauthorized workers, the system is fairly inaccurate, but for legal workers who enter their information correctly and have a correct SSA record, the system creates and retains a record of their employment maintained for 10 years.⁸⁰ Over time, these records would start to create a digital history of every worker, allowing for ongoing monitoring of their activities. LWA’s provision requiring the Social Security Administration to “lock” someone’s SSN for employees who work multiple jobs (in order to require them to prove *again* that they are not an illegal immigrant) demonstrates that it expects this monitoring to occur.⁸¹

But E-Verify’s threat to privacy is much greater than this because the theory behind the program—that the federal government should surveil the workforce to screen out illegal workers—would just as easily apply to any other activity. Federal law already prohibits the sale of a firearm to an unauthorized immigrant.⁸² It would only be logical to extend the use of the program to verify identity at the point of sale. Records from such checks would constitute a *de facto* registry of gun owners. Some cities have already attempted to prohibit renting apartments without proving legal status.⁸³ LWA itself provides that DHS can require the use of E-Verify to access federal buildings.⁸⁴

The logic could be applied to bank accounts, health care, and the Internet. There is no inherent reason why LWA's E-Verify system could not be used by local police to check the identity of motorists during traffic stops. Proponents have yet to enunciate a limiting principle. Indeed, last Congress, the committee rejected an amendment to prohibit the use of the program for any other purpose other than employment verification.⁸⁵ The committee chairman stated that the bill allows for the use of E-Verify records to prosecute "any illegal act."⁸⁶ This is a worrying sign that E-Verify could quickly become a nationwide monitoring system of many of Americans' activities.

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¹⁷ Alex Nowrasteh, "E-Verify Does Not Lower Unemployment," Cato Institute, July 18, 2017, <https://www.cato.org/blog/e-verify-does-not-lower-unemployment>.

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