

Worksite Enforcement: Audits Are Not Enough

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The unemployment rate last month was 9.4 percent, meaning that 14.5 million Americans were looking for work.¹ The U6 unemployment rate, which includes underemployed and discouraged workers, stood at a whopping 16.7 percent (representing nearly 26 million Americans), with even higher rates for young workers and minorities.²

And yet immigration policymaking takes no note of these facts. Over the past decade, 13.1 million immigrants (legal and illegal) arrived in the United States, but there was a net *decline* of one million jobs over the same period.³ The disconnect between immigration and employment was even more stark over the past two years; according to a report last week from Northeastern University's Center for Labor Market Studies, U.S. household employment declined by 6.26 million, but 1.1 million new immigrants nonetheless got jobs.⁴

The author of that Northeastern University report estimated that about one-third of the new immigrant job-holders were illegal aliens. That means, of course, that most of the immigration/employment disconnect is caused by *legal* immigration. But changing the levels and selection criteria for legal immigration is a long and complicated matter, one which I'd be happy to talk about at length, for sure, but outside the scope of this hearing and not a matter this or any administration can address on its own.

But the one-third of new immigrant workers who are *illegal* immigrants are a different matter altogether. Here the problem is not a badly designed immigration program but rather lack of enforcement of existing laws by the executive branch. As part of the current administration's April 2009 Worksite Enforcement Strategy⁵, real worksite enforcement has declined significantly, with administrative arrests down by more than half compared with 2008, criminal arrests down by more than half, likewise with indictments and convictions. What *has* increased in this area is audits of employee I-9 forms and the number and total dollar amount of fines against employers. Such audits and fines are by no means a bad thing, as far as they go. But they don't go very far.

By limiting worksite enforcement to the personnel office, the current strategy foregoes the benefits of full-spectrum enforcement that includes both audits and raids, both fines and arrests, focused on both

the employers and the employees. A colleague observed to me yesterday that the current ICE focus on audits is as effective as the FBI doing gang suppression by just giving talks at high schools, without actually arresting any gang members.

The benefits of full-spectrum enforcement are clear from recent experience. To begin with, it opens up jobs for Americans. The Smithfield pork plant in Tar Heel, N.C., was raided in January 2007, and later in the year more arrests were made at the homes of illegal workers.⁶ As a result of the departure of more than 1,500 illegal workers, mostly Hispanics, local black Americans were able to find jobs at the plant again, as they had when it opened in 1992 before they were slowly but steadily replaced with illegal workers from Latin America. The black American share of workforce climbed from just 20 percent before the raids to 60 percent afterwards.⁷

Pulitzer Prize winning journalist Jerry Kammer observed the following in the wake of the raids:

A visit to the Smithfield plant showed that the raids also made a big difference in the job prospects for the African Americans who, along with a few whites, filled the company's employment office. Carolyn Elliot, who had lost her job due to a business slowdown at a Fayetteville cafeteria, was finishing her paperwork before beginning work at the plant. David Thompson, a 20-year-old who had been laid off from an \$8.50-an-hour job at the Red Lobster in Fayetteville, said he was looking forward to making \$4 an hour more at Smithfield. "That's pretty good money around here," he said.⁸

Another benefit of comprehensive worksite enforcement, instead of today's selective, almost tentative approach, is that it raises wages for blue-collar American workers. At the Smithfield plant in Tar Heel, only after the raid took place were attempts to unionize in order to bargain for better wages successful; the Charlotte *Observer* reported that the raids "may have finally sealed the union's victory," while the Fayetteville *Observer* reported observations that "the new black majority proved to be the difference."

And we have direct evidence of increased compensation that resulted from a series of other raids. In December 2006, 1,300 illegal workers were arrested at six meatpacking plants owned by Swift & Co. in the largest-ever worksite enforcement action (and more arrests of illegal workers in one day than the current administration arrested in all of FY 2010).⁹ All the plants resumed production the same day, and all were back to full production within five months, despite the fact that nearly one-quarter of the total workforce had been illegal aliens. Most importantly, at the four facilities where information was available, wages and bonuses rose on average *8 percent* after the departure of the illegal workers – that's an 8 percent raise virtually overnight due to vigorous worksite enforcement.

A third benefit of full-spectrum enforcement, including arrests of illegal employees, is that it's necessary to gather evidence against crooked *employers*. Despite the current Worksite Enforcement Strategy's claimed focus¹⁰ on targeting bad-actor employers, the number of criminal arrests of employers actually *dropped* from FY 2008 to 2009, and last year's number was only slightly higher than two years before. One reason for this is that if agents can't arrest or even speak to illegal workers, it's very difficult to

gather evidence on their employers' illegal activities. The AgriProcessors kosher meatpacking plant in Postville, Iowa, for instance, had been the target of investigations by state officials for health and safety violations even before the May 2008 raid which resulted in the arrest of nearly 400 illegal aliens for identity theft and related charges. But only after the arrests was the curtain torn away and the squalor and mass illegality exposed and management personnel arrested for criminal child labor and immigration violations. What's more, the raid also exposed financial crimes committed by the plant's chief executive. Merely auditing the plant's personnel records, while scrupulously avoiding any arrests of illegal workers, could well have meant that AgriProcessors would still be abusing underage workers today.

Finally, full-spectrum worksite enforcement is necessary to successfully turn off the magnet of jobs that attracts illegal immigrants to the United States in the first place and enables those already here to remain. While the goal of worksite enforcement is not to try to actually arrest and deport every illegal worker, every illegal worker *does* need to know that he could be arrested at any time. Likewise, the goal is not to fine or arrest every employer of illegal aliens, but rather to ensure that employers are aware that there's a realistic chance of that happening to them. Only in this way can you create the environment within which illegal aliens are unable to find work and self-deport – a policy called attrition through enforcement. In the absence of across-the-board enforcement, neither illegal workers nor their employers have much to fear from law enforcement; on the contrary, they get the hint that what they're doing isn't *really* all that illegal after all. Under such conditions, the decline we saw in the illegal population as a result of enhanced enforcement (*before* the recession began¹¹) will not take place. In fact, if and when the job market significantly improves, today's constrained and limited approach to worksite enforcement virtually ensures that the illegal population will start growing again.

Let me end with another example from Jerry Kammer's reporting on the Smithfield pork plant:

Meanwhile, two Mexican maintenance workers for a company that contracted to tend the grounds outside the plant, said they would prefer to leave that \$6.50 hourly wage for a job at Smithfield. But they couldn't, they said, because the company was insisting on proper documentation. One was from Chiapas and the other from Veracruz, two states in Southern Mexico where emigration boomed in the 1990s. The two men said they expected to be moving on soon, looking for better pay elsewhere.¹²

Illegal immigrants are people like any others, and they respond to the signals they are sent. When we signal through real worksite enforcement that illegal employment is not tolerated, they move on. When, as today, we send the opposite signal, they make different choices.

¹ See <http://www.bls.gov/bls/unemployment.htm>.

² See "From Bad to Worse: Unemployment and Underemployment Among Less-Educated U.S.-Born Workers, 2007 to 2010," Steven Camarota, Center for Immigration Studies, August 2010, <http://cis.org/bad-to-worse>.

³ "Immigration and Economic Stagnation: An Examination of Trends 2000 to 2010," Steven Camarota, Center for Immigration Studies, November 2010, <http://cis.org/highest-decade>.

⁴ "Exclusive: Over a million immigrants land U.S. jobs in 2008-10," Ed Stoddard, Reuters, January 20, 2011, <http://www.reuters.com/article/idUSTRE70J37P20110120>.

⁵ See <http://www.ice.gov/doclib/news/library/factsheets/pdf/worksite-strategy.pdf>.

⁶ "Immigration Raids at Smithfield: How an ICE Enforcement Action Boosted Union Organizing and the Employment of American Workers," Jerry Kammer, Center for Immigration Studies, July 2009, <http://cis.org/SmithfieldImmigrationRaid-Unionization>.

⁷ "After 15 Years, North Carolina Plant Unionizes," Steven Greenhouse, *The New York Times*, December 12, 2008, <http://www.nytimes.com/2008/12/13/us/13smithfield.html>.

⁸ "Immigration Raids at Smithfield", <http://cis.org/SmithfieldImmigrationRaid-Unionization>.

⁹ "The 2006 Swift Raids: Assessing the Impact of Immigration Enforcement Actions at Six Facilities", Jerry Kammer, Center for Immigration Studies, March 2009, <http://cis.org/2006SwiftRaids>.

¹⁰ A forthcoming CIS review of ICE audit records reveals that in fact two-thirds of the audits completed had turned up no suspected illegal workers at all.

¹¹ See "A Shifting Tide: Recent Trends in the Illegal Immigrant Population, Steven A. Camarota and Karen Jensenius, Center for Immigration Studies, July 2009, <http://cis.org/IllegalImmigration-ShiftingTide>.

¹² "Immigration Raids at Smithfield", <http://cis.org/SmithfieldImmigrationRaid-Unionization>.