

Erecting Its Own Tombstone

Arizona's Mandatory Basic Pilot/E-Verify Law

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Some of the greatest success stories in our history are those that came out of the American Southwest and the work opportunities seized in prospecting for silver and gold. Those headed to Arizona were often warned that they would find tombstones before they found riches. Prospectors did find wealth in the mines of Arizona and saw prosperous times, but many of their great boomtowns eventually turned to ghost towns. Over a century later, Arizona seems doomed to repeat this history.

On July 2, 2007, Arizona became the first state to require every employer to enroll and participate in the U.S. Department of Homeland Security's (DHS's) flawed, Internet-based Basic Pilot/E-Verify program to verify the employment eligibility of all newly hired workers. Dubbed "The Legal Arizona Workers Act," the poorly crafted law (which took effect January 1, 2008) also created state penalties for employers who "knowingly" or "intentionally" employ undocumented workers, including the possible suspension or revocation of business licenses, and additional reporting and compliance requirements.¹

Shortly thereafter, several national and local groups filed suits in federal district court asking that implementation of the law be delayed because it conflicted with federal law, violated constitutional due process rights, increased discrimination against foreign-born workers, and would cause severe economic hardship to the state.² These lawsuits were consolidated, and on February 8, 2008, the court denied the requests to delay implementation of the new law.³ Although an appeal of the court's decision has been filed with the federal Court of Appeals for the Ninth Circuit, the new law remains in place for the time being.⁴

■ Why did Arizona enact a law requiring employers to use Basic Pilot/E-Verify?

The Arizona law was driven by unfounded, nativist fears that the state's identity and prosperity were being threatened by a growing population of immigrants, and that the state was falling into disorder and chaos.⁵

Lawmakers believed mandatory use of Basic Pilot/E-Verify would be a good idea because it would eliminate undocumented workers from the economy, force them to leave the state, and increase the state's prosperity. Arizona, however, was not headed toward economic disaster, and undocumented workers have not left the state.⁶ The underground economy that existed before the law took effect still exists.⁷ Arizona allowed fear to undercut its prosperity by rushing to make Basic Pilot/E-Verify mandatory even though its problems and negative effects were already well-documented by the federal government and other respected independent analysts.

■ Why is the mandatory Basic Pilot/E-Verify law bad for Arizona workers?

The law requires employers to use Basic Pilot/E-Verify for every newly hired worker, regardless of whether the worker is foreign-born or native-born. Independent evaluations of the program commissioned by DHS have found that the federal government databases upon which Basic Pilot/E-Verify relies incorrectly identify eligible workers as not authorized for employment.⁸ When this happens, workers are given only eight federal working days to resolve the error, or they will be fired. If they cannot resolve the error, the next time they apply for a job they will continue to be misidentified. The fact that this program is now mandatory in Arizona means that federal government database errors will essentially deny many workers their livelihood.

The database errors have the greatest impact on naturalized U.S. citizens, with almost 10 percent initially being told that they are not authorized to work. According to the Census Bureau, there are at least 273,700 naturalized citizens in Arizona,⁹ which means potentially 27,370 of those U.S. citizens will be initially flagged as not authorized to work. Many Arizona workers may find that they are unable to correct their records within the mandatory time frame.



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Abel Pacheco, a naturalized U.S. citizen for eight years, went to look for a new job in Arizona when he lost his job as a truck driver because of the worsening economy. He applied with eight different companies, but couldn't figure out why no one called him back with a job offer. When he finally found work, his new employer notified him that it had received a tentative nonconfirmation of employment eligibility notice for him, which turned out to be due to an error in the Social Security Administration's (SSA's) database. By the time Pacheco cleared up the problem by presenting his citizenship certificate at his local SSA office, the few weeks without an income had forced his family into financial trouble. "I have to come home and see my wife in the face and my babies in the face and tell them, you know, that we're not in the same position we used to be, and it's really hurtful, it's very anguishing because that's the last thing a father wants to say to his family," Pacheco told a reporter.¹⁰

The challenges in correcting federal database errors are significant. All workers, regardless of citizenship, who need to prove that they are eligible to work will have to correct their records with either SSA, DHS, or both. There are 16 SSA offices throughout Arizona; however, they are open only between 9 a.m. and 4 p.m. and are closed on weekends, so visiting an SSA office often means missing work. In order to correct errors with SSA, workers have to present original documents, e.g., birth certificates,¹¹ marriage licenses, green cards, or naturalization certificates. Some workers who lack those original documents will have to obtain replacement documents in order to prove their citizenship or immigration status. So in addition to missing work and the time spent traveling to SSA offices, workers will also have to spend time obtaining replacement documents from state or federal agencies, for which they will have to pay often costly fees.¹²

Arizona workers who need to obtain replacement documents such as green cards or naturalization certificates will be forced to wait months for these documents due to processing backlogs within U.S. Citizenship and Immigration Services (USCIS). The USCIS California Service Center, which processes applications for Arizona residents, is just now processing applications for replacement green cards that were filed in August 2006. These lawful workers could be forced to go months without being able to earn a living, provide for their families, and pay their bills. Given the current economic recession, Arizona should be protecting all its workers from further economic hardship, not punishing them for federal government inaccuracy

and inefficiency.

■ How has the Basic Pilot/E-Verify law affected Arizona's economy?

The latest projections for Arizona's economic future are grim. In addition to the money the state has already spent in enacting the law and engaging in litigation, it now faces the reality that some of its largest industries are going to begin suffering overwhelming economic losses. In the construction industry, for example, 10 percent of jobs have vanished over the last year.¹³ Other businesses have decided not to operate in Arizona. For example, a national restaurant chain owner decided after the law's passage that even though he had already spent \$100,000 planning for a restaurant in Phoenix, it wasn't worth spending \$4 million to open his business when Arizona's draconian law could result in it being shut down for even a small mistake.¹⁴ The president of a company that owns 68 fast-food restaurants and convenience stores throughout Arizona suspended any new projects in the state because of the law.¹⁵ There is additional evidence that many more companies will avoid doing business in Arizona simply because of the requirement that they use Basic Pilot/E-Verify, or that they will stop doing certain kinds of business there, such as farmers deciding not to plant certain types of crops because at harvest time there won't be enough workers to pick them.¹⁶

■ Why is the mandatory Basic Pilot/E-Verify law bad for Arizona businesses?

As of April 2008, only 15 percent (or 25,000) of Arizona's 145,000 employers had registered for the program;¹⁷ however, it is unknown how many of those employers actually have used it to verify new workers' employment eligibility. Experts speculate that slow enrollment rates in the program may be due to several factors, such as that litigation over the new law is still pending or that employers have not needed to hire new workers, or because of confusion over how to register or lack of the proper resources required to sign up, such as a high-speed Internet connection.¹⁸ Businesses that *have* used the system have been critical of it. For example, Ken Nagel, a restaurant owner in Phoenix, expressed scorn regarding Basic Pilot/E-Verify after he recently hired one of his daughters, a native-born U.S. citizen, and, upon feeding her information into the system, received a nonconfirmation of her eligibility to be employed in the U.S.¹⁹

Small businesses, already struggling in the current economy, face unique burdens and unanticipated problems due to the requirements of the new law.²⁰ Some typical examples include:

Lack of human resource personnel. Small business employers are spending significant work time trying to navigate a program that is not user-friendly, can take hours to successfully enroll in, and contains excessive amounts of information that they must wade through before being approved as registered.

Costly upgrades. Small businesses count every penny, and many are spending more money than before on subscribing to high-speed Internet and buying or upgrading computer systems to be compatible with the program.

Lost profits. Many feel that the time spent trying to comply with the overly burdensome requirements means lost time doing business and earning a living.

Operating expenses. New companies are targeting small business owners with promises to take over the verification process as “designated agents” and charging significant fees for doing so.²¹ Some owners feel compelled to outsource because of the difficulties with the program, thus adding one more cost to their bottom line.

Patchwork laws. Employers that operate in multiple states are faced with a labyrinth of conflicting laws and regulations, and even just a small mistake could put a small employer out of business.

Frustrating results. Some owners have reported getting incorrect results for workers they know are U.S. citizens. They feel that, ultimately, the time and

money they've invested in the program isn't paying off.

■ What are other consequences of the new law?

Arizona's law, although framed as a purely employment-driven enforcement mechanism, has carried over into virtually every other aspect of daily life for Arizona citizens. State media outlets have reported increased racial profiling and discrimination against lawfully present immigrants and naturalized citizens and, for businesses in Arizona, significant decreases in business and sales, to name a few of the problems.²² In fact, discriminatory practices against immigrants or those who look “foreign” have increased to the point that Mayor Phil Gordon of Phoenix has formally asked U.S. Attorney General Michael Mukasey to investigate Maricopa County Sheriff Joe Arpaio for civil rights violations.²³

■ Conclusion

Arizona's decision to legislate on immigration through enacting a mandatory Basic Pilot/E-Verify law has not yielded positive results for the state, businesses, or workers. As other states contemplate legislating on this issue, Arizona's example serves as a warning of the consequences all state residents will face, U.S. citizens and noncitizens alike.

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Notes

¹ For a more detailed description of the law, see “New Arizona Law Requires Employers to Use Flawed Employment Eligibility Verification Basic Pilot,” IMMIGRANTS' RIGHTS UPDATE, July 20, 2007, www.nilc.org/immseplymnt/ircaempverif/eev011.htm.

² Arizona Contractors Association v. Napolitano (D. Ariz., filed July, 2007). For more information, see “Lawsuit Challenges Arizona's Employer Sanctions Law as Being in Conflict with Federal Law,” IMMIGRANTS' RIGHTS UPDATE, Oct. 5, 2007, www.nilc.org/immseplymnt/state_local/essl002.htm, and “Civil Rights Coalition to Argue in Court That Arizona Employer Sanctions Law is Illegal,” Nov. 14, 2007 (NILC news release), www.nilc.org/immseplymnt/state_local/essl004.htm.

³ The original lawsuit was filed Sept. 4, 2007, on behalf of Chicanos Por La Causa and Somos America. On Jan. 1, 2008, plaintiffs filed a motion for preliminary injunction to bar the law from taking effect, and defendants filed a motion to dismiss. A hearing was held, and on Dec. 7, 2007, the court issued a decision dismissing the case based on alleged procedural defects. Plaintiffs appealed the ruling to the U.S. Court of Appeals for the Ninth Circuit and requested injunctive relief pending the appeal. Plaintiffs also filed new complaints, which corrected the alleged procedural defect. On Dec. 21, 2007, the district court denied the plaintiffs' request for a temporary restraining order in the second set of cases.

⁴ The Ninth Circuit is scheduled to hear oral argument in these consolidated appeals in San Francisco on June 12, 2008. See Plaintiffs'/Appellants' Consolidated Opening Brief to the 9th Circuit Court of Appeals, filed April 1, 2008 (a copy is available at www.nilc.org/immseplymnt/state_local/az_plaintiffs-

[appellants-opening-brief.pdf](#)). Copies of *amicus* briefs filed in the case are also available at www.nilc.org/immsemplymnt/state_local/index.htm.

⁵ Research has shown that in the years preceding the law, Arizona residents believed that 40 percent of workers in the private sector were undocumented, even though, according to the largest estimates of undocumented workers in the U.S., less than 5 percent of the population is undocumented. See "Immigration Debate Coverage Leads Arizonans to Exaggerate the Proportion of Illegal Aliens in the Workforce; Ignites Hostile Feelings toward Businesses Who Hire Them" (Behavior Research Center, Oct. 2005), www.brcpolls.com/05/RMP-2005-III-11.pdf.

⁶ Arizona's nonfarm employment rates for the last 12 months have remained largely consistent; the only significant decrease in employment rates was in the construction industry. Establishment State Employment Seasonally Adjusted, Bureau of Labor Statistics, Feb. 2007-Feb. 2008, www.bls.gov/sae/eetables/b070208.pdf.

⁷ Andrew Johnson, "Laws Can't Abolish Day-Labor Market," THE ARIZONA REPUBLIC, July 1, 2007, www.azcentral.com/arizonarepublic/news/articles/0701biz-workers0701.html; Lawrence Downes, "Immigration, Off the Books," NEW YORK TIMES (editorial), Apr. 17, 2008, www.nytimes.com/2008/04/17/opinion/17thu1.html.

⁸ See BASIC PILOT/E-VERIFY: NOT A MAGIC BULLET (NILC, Jan. 4, 2008), www.nilc.org/immsemplymnt/ircaempverif/e-verify_nomagicbullet_2008-01-04.pdf.

⁹ U.S. Census Bureau, "Arizona: Selected Social Characteristics in the United States: 2006," http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=04000US04&-context=adp&-ds_name=ACS_2006_EST_G00_&-tree_id=306&-lang=en&-caller=geoselect&-format=.

¹⁰ Christina Boomer, "Some Valley Workers Having Trouble with E-Verify," KPNX-TV, Phoenix, Mar. 24, 2008, www.abc15.com/news/local/story.aspx?content_id=07e5d455-d95b-4fbb-be43-2d1ee7318972.

¹¹ Certified copies of Arizona birth certificates for births occurring before 1989 are not available on the same day they are requested, even if the request is in-person. Although requests may be made in-person, through mail, or the Internet, all birth certificates for births occurring before 1990 are not available for in-person pick-up and can only be received through the mail. Requests for birth certificates take approximately 15-20 days for processing. Expedited processing (3-5 business days) is available only through the Internet. See www.azdhs.gov/vitalrcd/birth_index.htm, a webpage of the Arizona Dept. of Health Services, Division of Public Health Services.

¹² Current applications to USCIS for replacement green cards or naturalization certificates require a \$370 filing fee.

¹³ Nicholas Riccardi, "Arizona Is at Forefront of Illegal Immigration Crackdown," LOS ANGELES TIMES, Apr. 6, 2008.

¹⁴ "U.S. Pays the Price for Absence of National Immigration Law," Inquirer.net, Apr. 10, 2008,

<http://globalnation.inquirer.net/news/news/view/20080410-129490/US-Pays-the-Price-for-Absence-of-National-Immigration-Law>.

¹⁵ Lee Hockstader, "Arizona's Immigration Two-Step," THE WASHINGTON POST, Apr. 21, 2008, www.washingtonpost.com/wp-dyn/content/article/2008/04/20/AR2008042001755.html.

¹⁶ Terry Greene Sterling, "Crossing the Line: The Economic Price of Arizona's Crackdown on Illegal Immigration," NEWSWEEK, Apr. 15, 2008, www.newsweek.com/id/132231; see also "Arizona Farm Employers Await Judge's Ruling in Sanctions Law Challenge," WESTERN FARM PRESS, Dec. 5, 2007, <http://westernfarmpress.com/news/120507-sanctions-law/>.

¹⁷ Becky Pallat, "Arizona's Employers Slow to Get with Program," ARIZONA DAILY STAR, Mar. 30, 2008, www.azstarnet.com/business/231848.

¹⁸ Suzanne Manneh, "Immigration Laws Hit Business Hardest," NEW AMERICA MEDIA, Apr. 17, 2008, http://news.ncmonline.com/news/view_article.html?article_id=7194bb75c4ba443895404378af87d028.

¹⁹ Ronald J. Hansen, "Economy Serves Up Unhappy Meal: Worst Lull in 2 Decades is Hurting Valley Restaurateurs," ARIZONA REPUBLIC, Mar. 3, 2008, www.azcentral.com/business/articles/0303biz-econ-restaurants0303.html.

²⁰ Becky Pallat, "Small Businesses Bump into E-Verify Obstacles," AzStarBiz, Apr. 8, 2008, <http://regulus2.azstarnet.com/blogs/clockingin/8616/small-businesses-bump-into-e-verify-obstacles>; see also Peter A. Creticos, Ph.D., ASSESSING THE ECONOMIC EFFECTS OF STATE LAWS ADDRESSING THE EMPLOYMENT OF FOREIGN-BORN UNAUTHORIZED WORKERS, Dec. 2007, www.stateimmigrationlaws.com/NR/rdonlyres/ezlhnhx5f64a5l4rqdymlrlyo6xg7qnmzfd4ur2zqtivy5lrdui4cglp2p4a3wi64b7sekr23ib37prytng4rbg73b5b/ImmigrationReport12.11.pdf; "Arizona Immigration Law Challenged," American Public Media's "Marketplace," Apr. 2008, http://marketplace.publicradio.org/display/web/2008/04/02/arizona_immigration_employers/.

²¹ "Digital Age Immigration," QSRMagazine.com, Jan. 2008, www.qsrmagazine.com/articles/tools/111/immigration-1.phtml; Michelle V. Rafter, "A Business Sparked by the Online I-9," Workforce Management Online, April 2008, www.workforce.com/section/10/feature/25/48/46/index.html; "Contractors & Builders Takes the Hassle Out of E-Verify Legislation," PRWeb, Apr. 8, 2008, www.prweb.com/releases/2008/04/prweb840024.htm.

²² Lee Hockstader, "Arizona Ousts Immigrants but Needs Them," THE MODESTO BEE, Apr. 22, 2008.

²³ "Phoenix Mayor Gordon Calls for FBI Investigation of Arpaio," THE ARIZONA REPUBLIC, Apr. 13, 2008, www.azcentral.com/news/articles/2008/04/13/20080413gordonarpaio0413.html; Lindsey Collom, "ACLU Urges Traffic-Stop Reforms," ARIZONA REPUBLIC, Apr. 22, 2008, www.azcentral.com/news/articles/2008/04/22/20080422aclu0422.html.