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Immigration-Related Worksite Enforcement: Performance Measures

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Summary

Over the past few years, the media have been filled with reports about worksite enforcement operations, commonly referred to as immigration raids. These operations represent the public face of efforts by the Department of Homeland Security (DHS) to curtail the employment of unauthorized immigrants (illegal aliens). According to 2006 estimates, there are some 7.8 million unauthorized workers in the U.S. civilian workforce.

DHS's U.S. Immigration and Customs Enforcement (ICE) is responsible for immigration-related worksite enforcement, or enforcement of the prohibitions on unauthorized employment in Section 274A of the Immigration and Nationality Act (INA). The INA §274A provisions, sometimes referred to as employer sanctions, make it unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. Today, ICE's worksite enforcement program is focused primarily on cases that involve critical infrastructure facilities and cases involving employers who commit "egregious violations" of criminal statutes and engage in worker exploitation.

Employers who violate INA prohibitions on the unlawful employment of aliens may be subject to civil monetary penalties and/or criminal penalties. Criminal investigations may result in defendants being charged with crimes beyond unlawful employment and being subject to the relevant penalties for those violations.

Various measures are available to examine the performance of ICE's worksite enforcement program. They include Final Orders for civil monetary penalties, administrative fines, administrative arrests, criminal arrests, criminal indictments and convictions, and criminal fines and forfeitures. In recent years, ICE has generally focused less on administrative fines and more on administrative and criminal arrests, criminal prosecutions, and criminal fines and forfeitures. The data presented here show increases in these latter measures in recent years. At the same time, however, when considered in terms of the estimated size of the unauthorized workforce or the potential number of employers employing these workers in violation of the law, ICE's worksite enforcement program can seem quite small.

Enforcement activity by the Department of Labor (DOL) is also relevant to a discussion of federal efforts to curtail unauthorized employment. DOL, which is responsible for enforcing minimum wage, overtime pay, and related requirements, focuses a significant percentage of its enforcement resources on a group of low-wage industries that employ large numbers of immigrant—and presumably large numbers of unauthorized—workers.

Related background information can be found in CRS Report RL33973, *Unauthorized Employment in the United States: Issues and Options*, and a discussion of related legislation can be found in CRS Report RL34204, *Immigration Legislation and Issues in the 110th Congress*. This report will be updated when new data become available.

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Introduction

"Feds Step Up Enforcement at Work Sites." "Raids Turn Focus to the Workplace." "Raid Reflects Feds' New Tack: Target Workers." As these newspaper headlines illustrate, the media have been filled with reports over the past few years about worksite enforcement operations, commonly referred to as immigration raids. These operations—which have been conducted at workplaces across the country—represent the public face of efforts by the Department of Homeland Security (DHS) to curtail the employment of unauthorized (illegal) aliens. According to 2006 estimates, there are some 7.8 million unauthorized workers in the U.S. civilian workforce.[1]

Questions arise as to how rigorous and effective DHS's worksite enforcement efforts have been overall. The department maintains data on several measures that can be used to examine the performance of its worksite enforcement program. Enforcement activity by the Department of Labor (DOL) is also relevant to a discussion of federal efforts to address unauthorized employment. DOL, which is responsible for enforcing minimum wage, overtime pay, and related requirements, focuses a significant percentage of its enforcement resources on a group of low-wage industries that employ large numbers of immigrant—and presumably large numbers of unauthorized—workers.

Unauthorized Workers

According to the most recent estimates by DHS, some 11.8 million unauthorized immigrants were living in the United States in January 2007.[2] The Pew Hispanic Center's (the Center) unauthorized alien population estimate for March 2007 was a somewhat higher 12.4 million, and its estimate for March 2008 was 11.9 million.[3] While this one-year change is not statistically significant and thus no conclusions can be drawn about whether the unauthorized alien population is in fact shrinking, many do believe that the unauthorized alien population has started decreasing. For example, a report by the Center for Immigration Studies (CIS) states, based on an analysis of data through May 2008, that "the illegal immigrant population may have declined by over one million in the last year."[4] If such a decline has in fact occurred, contributing factors may include enforcement activity as well as the current economic downturn. Regardless of whether or not the unauthorized alien population is decreasing, this population remains sizeable.

It is widely believed that most unauthorized aliens enter and remain in the United States in order to work. While the most recent DHS and Pew Hispanic Center estimates did not include estimates of the unauthorized alien workforce, the Center has provided such worker estimates in the past. According to the Center, there were an estimated 7.2 million unauthorized workers in the U.S.

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[1] Jeffrey S. Passel, *Unauthorized Immigrants: Trends, Characteristics & Surprises*, Conference on "The Role of Local Police," Sponsored by the Police Foundation, Washington, DC, August 21, 2008 (hereafter cited as Passel, *Unauthorized Immigrants*, 2008).

[2] U.S. Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2007*, by Michael Hoefer, Nancy Rytina, and Bryan C. Baker, September 2008.

[3] Jeffrey S. Passel and D'Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*, Pew Hispanic Center, October 2008.

[4] Steven A. Camarota and Karen Jensenius, *Homeward Bound: Recent Immigration Enforcement and the Decline in the Illegal Alien Population*, Backgrounder, Center for Immigration Studies, July 2008.

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civilian labor force in March 2005 and an estimated 7.8 million in March 2006, representing about two-thirds of the estimated unauthorized population each year. In both 2005 and 2006, these unauthorized workers accounted for about 5% of the labor force.[5]

As part of its 2005 unauthorized immigrant estimates, the Pew Hispanic Center analyzed the unauthorized workforce. It found that in some occupations and industries, the unauthorized alien share of the labor force was considerably higher than its 5% overall share. **Table 1** presents 2005 data from the Center on industries with high concentrations of unauthorized workers. Unauthorized immigrants accounted for about one in five workers in private households and between 10% and 15% in the other industries shown.[6]

Table 1. Estimates of Unauthorized Employment in Selected Industries, 2005

Industry Group	Unauthorized Workers (in Industry)
Private Households	21%
Food Manufacturing	14%
Agriculture	13%
Furniture Manufacturing	13%
Construction	12%
Textile, Apparel, and Leather Manufacturing	12%
Food Services	12%
Administrative and Support Services	11%
Accommodation	10%

Source: Jeffrey S. Passel, Size and Characteristics of the Unauthorized Migrant Population in the U.S., Pew Hispanic Center, March 7, 2006.

DHS Enforcement

Section 274A of the Immigration and Nationality Act (INA)[7] prohibits employers from employing individuals who they know are not authorized to work. More specifically, the INA §274A provisions, sometimes referred to as *employer sanctions*, make it unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. These provisions also make it unlawful for an employer to hire an individual for employment without examining documents to verify his or her identity and work eligibility, and completing and retaining verification forms, known as I-9 forms. These verification procedures, commonly referred to as the I-9 process or the I-9 requirements, are separate from the largely

[5]The Pew Hispanic Center's unauthorized alien population estimate for March 2005 was 11.1 million and its estimate for March 2006 was 11.5 million. Jeffrey S. Passel, *Size and Characteristics of the Unauthorized Migrant Population in the U.S.; Estimates Based on the March 2005 Current Population Survey*, Pew Hispanic Center, March 7, 2006 (hereafter cited as Passel, *Size and Characteristics of the Unauthorized Migrant Population in the U.S.*, 2006). Passel, *Unauthorized Immigrants*, 2008.

[6] Passel, *Size and Characteristics of the Unauthorized Migrant Population in the U.S.*, 2006.

[7] Act of June 27, 1952, ch. 477, as amended. The INA is the basis of current immigration law.

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voluntary E-Verify electronic employment eligibility verification system, which is administered by DHS's U.S. Citizenship and Immigration Services (USCIS).[8]

Enforcement of the prohibitions on unauthorized employment in INA §274A—or *worksite enforcement*—has been the job of U.S. Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS) since March 2003.[9] Worksite enforcement is one component of ICE's responsibility to enforce federal immigration laws within the United States, known as *interior enforcement*. Employers violating the INA §274A prohibitions on unlawful employment may be subject to civil and/or criminal penalties.

The federal government's approach to immigration-related worksite enforcement has changed over the years. In 1999, for example, the Immigration and Naturalization Service (INS) unveiled a new interior enforcement strategy, which, as explained by an INS official at the time, gave priority in the area of worksite enforcement to two types of cases: (1) criminal employer cases, in which there was a pattern or practice of knowingly employing unauthorized workers, and (2) cases of employers who abused their workers and who violated multiple laws.[10] In the aftermath of the September 11, 2001, terrorist attacks, interior enforcement priorities again shifted. Resources were redirected from traditional program areas, including worksite enforcement, to national security-related investigations, and the primary focus of worksite enforcement became removal of unauthorized workers from critical infrastructure facilities such as airports and military bases.[11]

Homeland security remains a paramount concern of ICE's worksite enforcement program today. As described by ICE:

> The Worksite Enforcement Unit's mission encompasses enforcement activities intended to mitigate the risk of terrorist attacks posed by unauthorized workers employed in secure areas of our nation's critical infrastructure. In order to fulfill this mission, ICE special agents apply risk assessment principles to their critical infrastructure and worksite enforcement cases in order to maximize the impact of our limited resources against the most significant threats and violators.[12]

According to ICE, its worksite enforcement program also targets employers who commit "egregious violations" of criminal statutes and engage in worker exploitation.

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[8] For information and related legislation on E-Verify, see CRS Report RL34204, *Immigration Legislation and Issues in the 110th Congress*, by Andorra Bruno et al.

[9] Prior to March 1, 2003, the Immigration and Naturalization Service (INS) of the Department of Justice was responsible for interior enforcement. The Homeland Security Act of 2002 (P.L. 107-296), November 25, 2002) abolished INS and transferred most of its functions to DHS as of March 1, 2003.

[10] See written statement of Robert Bach, Executive Associate Commissioner for Policy and Planning, INS, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Claims, *Immigration and Naturalization Service's Interior Enforcement Strategy*, 106th Cong., 1st sess., July 1, 1999 (Washington: GPO, 2000), p. 13.

[11] For further discussion of these policy shifts, see CRS Report RL33351, *Immigration Enforcement Within the United States*, by Alison Siskin et al.

[12] A description of the ICE worksite enforcement program is available on the agency's website, at http://www.ice.gov.

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Penalties

As discussed above, employers who violate INA prohibitions on the unlawful employment of aliens may be subject to civil and/or criminal penalties.

Civil Penalties

Under INA §274A, civil money penalties can be imposed for failing to comply with the I-9 employment verification requirements and for knowingly hiring, recruiting or referring for a fee, or continuing to employ an unauthorized alien.[13] A person or entity determined to have violated the I-9 requirements may be subject to a fine of not less than $110 and not more than $1,100 for each individual with respect to whom a violation occurred. A person or entity found to have engaged in hiring, recruiting, referring, or employing violations may be subject to a cease and desist order and to fines, as follows:

- for a first offense, not less than $275 and not more than $2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008, and not less than $375 and not more than $3,200 for each unauthorized alien with respect to whom the offense occurred on or after March 27, 2008;
- for a second offense, not less than $2,200 and not more than $5,500 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008, and not less than $3,200 and not more than $6,500 for each unauthorized alien with respect to whom the offense occurred on or after March 27, 2008; and
- for more than two offenses, not less than $3,300 and not more than $11,000 for each unauthorized alien with respect to whom the third or later offense occurred before March 27, 2008, and not less than $4,300 and not more than $16,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008.

If ICE believes that an employer has committed a civil violation, the agency may issue the employer a Notice of Intent to Fine (NIF). A NIF may result in a Final Order for civil money penalties, a settlement, or a dismissal.

Criminal Penalties

Under INA §274A, employers convicted of having engaged in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens may face criminal fines and/or imprisonment. They may be fined not more than $3,000 for each unauthorized alien with respect to whom the violation occurred and/or imprisoned for not more than six months for the entire pattern or practice.

Criminal investigations may result in employers and other individuals being charged with crimes other than unlawful employment, such as document fraud or harboring unauthorized aliens, and being subject to the relevant penalties for those violations.

[13] Current fine amounts are set forth in 8 C.F.R. §274a.10. They reflect increases that took effect in 1999 and 2008 pursuant to the Debt Collection Improvement Act of 1996 (P.L. 104-134, April 26, 1996).

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Program Performance

A variety of measures can be used to assess the performance of the DHS worksite enforcement program. Over the years, such assessments have been complicated by data reporting problems, the existence of conflicting data, and other issues. Unless otherwise noted, all data presented here were provided directly to the Congressional Research Service (CRS) by ICE on July 1, 2008. The paucity of comparable and/or reliable data for the pre-ICE worksite enforcement program, as indicated by ICE to CRS, however, limits the ability to place the recent performance data in historical context.

Administrative Fines

As discussed above, INA §274A establishes civil penalties for violations of the I-9 requirements and for unlawful employment. According to ICE, from the beginning of FY2003 through June 16, 2008, the agency issued Final Orders against 85 employers for civil monetary penalties (also known as *civil or administrative fines*) totaling $1,428,179. **Table 2** provides annual data on Final Orders for civil money penalties and associated administrative fine collections for this period.[14] As of June 16, 2008, ICE had collected $633,143 of the original fine total of $1,428,179.[15]

As shown in **Table 2**, issuances of Final Orders and administrative fine collections decreased from FY2003 to FY2006, when both measures equaled "0." Since FY2006, both measures have posted gains. At the same time, employers receiving Final Orders in any year shown represent less than .001% of U.S. employers.[16]

Table 2. Final Orders and Administrative Fine Collections, FY2003-FY2008

Fiscal Year	Number of Final Orders Issued	Administrative Fines Collected
2003	52	$267,480
2004	10	$87,946
2005	10	$27,547
2006	0	$0
2007	2	$26,560
2008[a]	11	$223,610

Source: CRS presentation of data from U.S. Department of Homeland Security, Immigration and Customs Enforcement, July 1, 2008.

[14] ICE was unable to provide any data in July 2008 on Notices of Intent to Fine (NIFs); conflicting NIF data appear in different reports and congressional testimony. ICE also was unable to provide data on Final Orders and fine collections prior to FY2003 "due to system constraints and the merger of INS and Customs during FY03." According to data confirmed by ICE in February 2008, however, there were between 500 and 1,100 Final Orders for civil money penalties issued each year from FY1991 to FY1998, between 200 and 350 Final Orders issued each year from FY1999 to FY2001, and 91 Final Orders issued in FY2002.

[15] Some employers are on payment schedules that enable them to pay civil money penalties over a number of years.

[16] According to the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB), there were almost 6 million firms in the United States in 2005. SUSB data are available on the Census Bureau's website, at http://www.census.gov.

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Note: Administrative fines may be collected in the same fiscal year that the associated final order is issued, or in one or more subsequent years.

a. As of June 16, 2008.

Administrative and Criminal Arrests

ICE maintains that relying mainly on administrative fines to deter unlawful employment is not an effective strategy and that administrative fine collections do not adequately reflect the agency's worksite enforcement efforts.[17] In April 2008 congressional testimony, DHS Secretary Michael Chertoff highlighted administrative and criminal arrests in worksite enforcement operations as evidence of the progress being made by ICE on the worksite enforcement front.[18] Administrative arrests are for civil violations of the INA, such as being illegally present in the United States. Only a noncitizen can be the subject of an administrative arrest, which represents an initial step in the process of removing an alien from the United States. Criminal arrests include arrests for illegal hiring as well as for identity theft, alien harboring, money laundering, and other criminal violations. Both citizens and noncitizens can be the subject of criminal arrests.

Table 3. Administrative and Criminal Arrests in Worksite Enforcement Operations, FY2001-FY2008

Fiscal Year	Number of Individuals Arrested on Administrative Charges	Number of Individuals Arrested on Criminal Charges
2003	445	72
2004	685	165
2005	1,116	176
2006	3,667	716
2007	4,077	863
2008[a]	3,051	882

Sources: CRS presentation of data from Statement of the Honorable Michael Chertoff, Secretary U.S. Department of Homeland Security Before the United States Senate Judiciary Committee, February 28, 2007 (FY2003-FY2004 data), and Department of Homeland Security, Immigration and Customs Enforcement, July 1, 2008 (FY2005-FY2008 data).

a. As of June 14, 2008.

During FY2003-FY2006, the number of administrative and criminal arrests in worksite enforcement operations increased markedly (see **Table 3**). Since then, there has been steady growth in both types of arrests.[19] These arrests, however, represent a very small percentage of the potential population of violators. For example, **Table 3** shows 3,667 administrative arrests in worksite operations in FY2006, while, according to the Pew Hispanic Center, there were an

[17] See, for example, written statement of ICE official Matthew Allen, in U.S. Congress, House Committee on Government Reform, Subcommittee on Regulatory Affairs, *Is the Federal Government Doing All It Can to Stem the Tide of Illegal Immigration?* hearing, 109th Congress, 2nd sess., July 25, 2006 (Washington: GPO, 2007), pp. 43-53.

[18] See Testimony of Secretary Michael Chertoff before the House Subcommittee on Homeland Security Appropriations, April 10, 2008, available on the DHS website, at http://www.dhs.gov.

[19] ICE news releases on recent worksite enforcement investigations are available on the agency's website, at http://www.ice.gov.

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estimated 7.8 million unauthorized aliens in the U.S. civilian labor force that year.[20] With respect to criminal arrests, the potential population of employers and workers committing worksite-related criminal violations is not known.

Criminal Prosecutions and Fines

In its FY2006 annual report, ICE described using criminal prosecution and asset forfeiture as tools against employers of unauthorized aliens. According to the report,

> ICE believes that criminally charging and seizing the assets of unscrupulous employers will create the kind of deterrence that was previously absent in worksite enforcement efforts.[21]

Table 4 provides data on criminal prosecutions related to worksite enforcement investigations for FY2005-FY2008. These data build on the criminal arrest data in **Table 3**. It is difficult to draw conclusions from these data, however, because they cover such a short period.[22]

Table 4. Criminal Indictments and Convictions Related to Worksite Enforcement Investigations, FY2005-FY2008

Fiscal Year	Indictments	Convictions
2005	254	156
2006	411	340
2007	750	561
2008[a]	596	631

Source: CRS presentation of data from U.S. Department of Homeland Security, Immigration and Customs Enforcement, July 1, 2008.

Note: A conviction may occur in the same year as the related indictment or in a subsequent year.

a. As of June 14, 2008.

It is important to note that the decision to seek an indictment and/or conviction rests with the Department of Justice's U.S. Attorneys, not with ICE. In a September 2008 *Washington Post* article on the federal government's worksite enforcement strategy, an ICE spokeswoman was quoted as saying that "prosecutorial discretion is certainly a key issue." She noted that different U.S. Attorneys set "different thresholds and different bars based on different ... priorities or degrees of interest in pursuing those sorts of cases."[23]

[20] Jeffrey S. Passel, Size and Characteristics of the Unauthorized Migrant Population in the U.S.; Estimates Based on the March 2005 Current Population Survey, Pew Hispanic Center, March 7, 2006. For further discussion of these estimates, see CRS Report RL33973, *Unauthorized Employment in the United States: Issues and Options*, by Andorra Bruno.

[21] U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE Fiscal Year 2006 Annual Report*, p. 7.

[22] Comparable data are not available for earlier years.

[23] Quoted in Spencer S. Hsu, "Raid's Outcome May Signal a Retreat in Immigration Strategy, Critics Say," *Washington Post*, September 2, 2008, p. A13.

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Table 5 provides data on criminal fines and forfeitures related to worksite enforcement investigations that were imposed in FY2003-FY2008. ICE characterizes these data as follows:

> Criminal fines and forfeitures include fines imposed by a U.S. District Court as a result of a criminal conviction, seizures made by ICE and forfeited to the U.S. government, payments made to ICE in lieu of the seizure and forfeiture of real or personal property, and restitution payments made by an employer to their unauthorized alien employees as a result of labor law violations. Due to system constraints, ICE manually tracks criminal fine and forfeiture statistics.[24]

As shown in **Table 5**, worksite enforcement-related criminal fines and forfeitures have varied dramatically during FY2003-FY2008, although they have remained well above the FY2003 level in all subsequent years. In light of the number of factors that contribute to determining the total for any year (as indicated in the above description from ICE), which presumably helps explain the great annual variability, it may be that the total for any particular year is less significant than the fact that criminal fines and forfeitures were being pursued.

Table 5. Criminal Fines and Forfeitures Related to Worksite Enforcement Investigations, FY2003-FY2008

Fiscal Year	Criminal Fines and Forfeitures Imposed
2003	$37,514
2004	$2,929,000
2005	$15,822,100
2006	$233,044
2007	$31,426,443
2008[a]	$9,422,757

Source: CRS presentation of data from U.S. Department of Homeland Security, Immigration and Customs Enforcement, July 1, 2008.

a. As of June 30, 2008.

In summary, the data presented here offer an available, but limited, means to examine the performance of ICE's worksite enforcement program. Some measures, namely issuances of Final Orders, administrative fine collections, and administrative arrests, follow a downward trend in the initial years included and then an upward trend in more recent years. Other measures, namely criminal indictments and criminal convictions for which data are available only for more recent years, as well as criminal arrests, register increases throughout the period included. The data on criminal fines and forfeitures imposed, the remaining measure, reveal no discernible pattern. More generally, the values of the various measures for the years shown seem quite small relative to the estimated size of the unauthorized alien workforce.

[24] E-mail from ICE to CRS, July 1, 2008.

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DOL Enforcement

While the authority to enforce the employer sanctions provisions rests with DHS, INA §274A does grant DOL the authority to review I-9 verification forms (see above). Under INA §274A(b)(3), employers must make completed I-9 forms available to DOL officers for inspection. DOL has separate authority to enforce federal labor laws, including the Fair Labor Standards Act (FLSA),[25] which establishes minimum wage, overtime pay, youth employment, and other standards.

The Wage and Hour Division (WHD) of the DOL's Employment Standards Administration (ESA) administers and enforces the FLSA with respect to private sector workers, state and local government employees, and certain federal employees. In 2006 congressional hearing testimony, a WHD official described the agency's "primary responsibility" as "the effective enforcement of labor laws to ensure that all covered workers, irrespective of their immigration status, are afforded full benefits and protections."[26] In light of this mission, DOL officials historically have been cautious about delving into questions of work authorization. As reported in a 2007 paper by Georgetown University's Institute for the Study of International Migration (ISIM):

> Labor investigators express concern that their increased involvement in employer sanctions might impede their ability to gain the trust of illegal aliens who may be the victims of labor violations and potential witnesses against employers.[27]

A memorandum of understanding between DOL and DHS that has been in effect since 1998[28] describes the respective enforcement roles and responsibilities of each agency. Under the 1998 MOU, WHD investigators are to inspect employer compliance with I-9 requirements in conjunction with labor standards enforcement only in directed investigations, that is, investigations not based on complaints. According to the MOU, this limitation "is intended and will be implemented so as to avoid discouraging complaints from unauthorized workers who may be victims of labor standards violations by their employer." During these compliance inspections, WHD investigators are not to make inquiries about workers' immigration status and are not to issue warning notices or Notices of Intent to Fine. All suspected serious violations uncovered by WHD during these investigations are to be promptly referred to DHS.

While DOL's direct role in immigration-related worksite enforcement is quite limited, some maintain that the agency helps reduce unauthorized employment indirectly through its enforcement of labor laws. This argument is premised on the belief that many employers who employ unauthorized aliens also violate labor laws. The 2007 ISIM paper notes that employers have different propensities to hire unauthorized workers, and describes a category of employers

[25] Act of June 25, 1938, ch. 676, as amended.

[26] Written statement of WHD Acting Administrator Alfred B. Robinson, Jr., in U.S. Congress, House Committee on Government Reform, Subcommittee on Regulatory Affairs, *Is the Federal Government Doing All It Can to Stem the Flow of Illegal Immigration?* hearing, 109th Congress, 2nd sess., July 25, 2006 (Washington: GPO, 2007), p. 28.

[27] B. Lindsay Lowell, Susan F. Martin, and Micah N. Bump, *Worksite Solutions to Unauthorized Migration*, Institute for the Study of International Migration, Georgetown University, October 2007, p. 12 (hereafter cited as *Worksite Solutions to Unauthorized Migration*).

[28] The MOU was originally signed by ESA and the Immigration and Naturalization Service of the Department of Justice. It is available in *Interpreter Releases*, vol. 75, no. 47 (December 14, 1998), pp. 1711-1721. DHS and DOL have begun discussions about updating the 1998 MOU. E-mail from ICE to CRS, October 28, 2008.

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that "knowingly hire[s] unauthorized workers to exploit their labor." According to the paper, "such employers may pay salaries in cash, failing to pay their share of social security taxes; and they may seek unauthorized workers because they are less likely to complain about ill treatment."[29] Thus, with respect to unauthorized employment, enforcement of minimum wage, overtime, and other statutory requirements may serve as a means of reducing the economic incentives to hire unauthorized workers and thus result in decreased demand for these workers. In a *New York Times* article about worker centers that assist immigrants, Mark Krikorian of CIS explained this argument, as follows:

> [The worker centers] help people stiffed out of their wages. That can serve a purpose because it raises the price of hiring illegal aliens, and the more it costs to hire illegal aliens, the more employers might turn to legal workers.[30]

Others, such as former WHD Administrator Maria Echaveste, however, point out the limitations of using labor law enforcement to address unauthorized employment. They argue that many employers who hire unauthorized immigrants do not violate wage and hour laws. According to Echaveste:

> I know firsthand that many employers who comply with other labor standards still hire the undocumented. Many businesses pay the minimum wage and have barely tolerable working conditions because there are sufficient undocumented workers willing to accept those terms. If we care about low-income workers in this country, we need to create pressure to improve their economic condition by reducing the supply of unauthorized workers.[31]

To the extent that some employers of unauthorized aliens violate labor standards, WHD's compliance activities in low-wage industries may be particularly relevant to efforts to reduce unauthorized employment. In FY2007, WHD devoted almost 40% of its enforcement resources to investigations in the nine low-wage industries in **Table 6**. There is significant overlap between these industries and those listed in **Table 1** as having high concentrations of unauthorized workers. For example, both tables include restaurants/food services, agriculture, hotels and motels/accommodations, and garment/apparel manufacturing. This overlap suggests that WHD's enforcement activities may affect employers of unauthorized workers. In FY2007, as indicated in **Table 6**, WHD collected $52.7 million in back wages for FLSA overtime and minimum wage violations for 86,560 workers. Top industries in terms of the amount of back wages collected were restaurants, health care, guard services, and janitorial services. In terms of the number of employees receiving back wages, the leading industries were restaurants, health care, guard services, agriculture, and janitorial services.

[29] *Worksite Solutions to Unauthorized Migration*, p. vi-vii.

[30] At the same time, Krikorian expressed opposition to worker centers as "lobbies for illegal aliens." Steven Greenhouse, "Immigrant Workers Find Support in a Growing Network of Assistance Centers," *New York Times*, April 23, 2006, sec. 1, p. 22.

[31] Maria Echaveste, "Target Employers," *American Prospect*, October 23, 2005, at http://www.prospect.org.

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Table 6. Cases and Back Wage Collections in Low-Wage Industries: FY2007

Industry	Number of Cases	Back Wages Collected	Number of Employees Receiving Back Wages
Restaurants	4,469	$17,432,805	27,661
Agriculture	1,667	$3,186,854	8,671
Health Care	1,431	$9,899,417	17,488
Hotels & Motels	880	$2,125,797	4,246
Guard Services	729	$7,545,704	11,584
Day Care	711	$1,181,539	3,191
Garment Manufacturing	676	$2,891,475	3,449
Janitorial Services	464	$6,972,362	8,420
Temporary Help	355	$1,486,728	1,850
Total	**11,382**	**$52,722,681**	**86,560**

Source: Department of Labor, Employment Training Administration, Wage and Hour Division.

Table 7 provides data on low-wage industry cases and back wage collections for FLSA overtime and minimum wage violations for FY2003-FY2007. As shown in **Table 7**, the number of cases in low-wage industries decreased each year from FY2003 to FY2006 and then increased from FY2006 to FY2007. Despite this general reduction in cases, however, back wage collections increased throughout the period. With respect to the number of employees receiving back wages, this number increased until 2005 and then began to decrease. In addition, when considered in the larger context of the potential number of employers in these low-wage industries that may be violating FLSA requirements with respect to unauthorized workers, or workers generally, the numbers in **Table 6** and **Table 7**, as in the ICE data tables, can seem quite small.

Table 7. Cases and Back Wage Collections in Low-Wage Industries: FY2003-FY2007

Fiscal Year	Number of Cases	Back Wages Collected	Number of Employees Receiving Back Wages
2003	12,962	$39,595,382	80,772
2004	12,625	$43,141,911	84,897
2005	12,468	$45,783,743	96,511
2006	11,172	$50,566,661	86,780
2007	11,382	$52,722,681	86,560

Source: Department of Labor, Employment Training Administration, Wage and Hour Division.

Conclusion

In light of the current economic difficulties and the advent of President-elect Obama's new Administration, the future of worksite enforcement is unclear. These economic and political changes could result in scaled-back worksite enforcement programs at DHS and DOL, if, for example, less funding were made available for such activities. On the other hand, especially if unemployment rates were to rise significantly, policymakers could opt to bolster worksite

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enforcement efforts at one or both agencies with the goal of protecting the jobs and working conditions of U.S. workers. Of course, it could be that these countervailing pressures—or other considerations or priorities—result in maintenance of the status quo and that worksite enforcement continues to look much like it does today. Another possibility would be a shift of emphasis from DHS worksite enforcement with its explicit focus on unauthorized employment to DOL enforcement with its immigration status-neutral focus on labor law violations. While some may see such a shift as a viable means of achieving key policy and political goals, it likely would be highly controversial.

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