What the Immigration Conundrum Portends: ICE in the Workplace

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Introduction

During the 2008 election year, the immigration debate did not resonated in the way many predicted it would. After the defeat of immigration reform in June of 2007[1], many believed that anti-immigration voices would gain momentum, particularly on the Republican side. But that did not happen. Indeed, the issue was relegated to the back burner and barely addressed by the candidates. But many employers and their employees found that while the issue did not gain much traction, the government continued to step up its enforcement activities in America's workplace. These actions go well beyond the employer sanctions provisions of the Immigration Reform and Control Act (known as IRCA) of 1986,[2] which emphasized civil actions and administrative fines.

For decades, the job of enforcing employer sanctions fell to the now defunct Immigration and Naturalization Service (INS), an agency within the U.S. Department of Justice. The INS mission was specifically dedicated to immigration and naturalization/citizenship issues. After 9/11, the Bush administration established a cabinet-level agency, the Department of Homeland Security (DHS), with a far broader mission to "anticipate, preempt, detect and deter threats to the homeland and to safeguard our people and their freedoms, critical infrastructure, property and the economy of our

nation from acts of terrorism, natural disasters and other emergencies"[3] Within DHS, the U.S. Citizenship and Immigration Service (USCIS) is responsible for the traditional adjudications functions of the INS, and the Immigration and Customs Enforcement agency (ICE) is responsible for interior enforcement of the immigration laws[4]. ICE is the largest agency within the DHS, and is the federal government's second largest investigative agency (after the FBI).[5] Because ICE is an amalgamation of prior agencies of immigration and customs, many of the tools that had been used in the area of customs enforcement have migrated into immigration enforcement in the workplace.

It is becoming common to see headlines in newspapers and Internet news sites reporting indictments of corporate executives, managers and human resource personnel on charges of knowingly hiring illegal workers[6]. With an estimated 12 million people living and working in the United States illegally, [7]the focus is no longer only on the so-called "illegals," but also on the U.S. employers who supply their jobs. ICE has been issuing new priorities and regulations for worksite enforcement that has placed a target squarely on the backs of employers. According to former ICE Assistant Secretary Julie L. Myers:

> In fiscal year 2007, ICE secured more than $30 million in criminal fines, restitutions, and civil judgments in worksite enforcement cases. We arrested 863 people in criminal cases and made more than 4,000 administrative arrests. That is a tenfold increase over just five years before.[8]

The laws prohibiting employment of unauthorized workers have been on the books for over twenty years[9]. But until the establishment of ICE, enforcement was so minimal as to be almost nonexistent, especially since the late 1990s. Moreover, the immigration laws passed in 1996[10] made it even more difficult for people who came to or stayed in the United States illegally to legalize their status, so the number of illegal

workers has grown[11]. Furthermore, many of the jobs filled by illegal workers, particularly the millions of low-skilled jobs, are difficult to fill, and unauthorized workers are eager for the work[12]. The industries with severe labor shortages[13] are now those targeted by ICE.

The implications of strict enforcement, especially criminal enforcement, without a comprehensive reform of our immigration laws, are only just beginning to register. As they do, employers must balance the intricacies of appropriate employment verification procedures, the possibility of losing large numbers of workers, which would directly affect the viability of the company, potential criminal exposure, discrimination and wrongful termination lawsuits from employees.

Employer Sanctions for Unlawful Employment of Foreign Workers

With the passage of IRCA in 1986[14], employers—for the first time—became liable for employing foreign nationals without employment authorization. Prior to IRCA, unauthorized workers could be arrested and deported, but nothing happened to the employer.[15] After IRCA, employers had to take on the role of immigration enforcement officers.[16] Generally, the law requires an employer complete an "I-9"[17] verification form for all employees, citizens and noncitizens, with the exception of 1) grandfathered employees who have been working for an employer since before IRCA (November 9, 1986); 2) employees of independent contractors; and 3) intermittent or sporadic domestic employees[18].

IRCA also made it illegal to knowingly hire, recruit or continue to employ aliens not authorized to work in the United States[19]. On the I-9 form, the employer must verify

the employment eligibility and identity documents presented by the employee and record the documented information[20]. The form itself contains a list of permissible identity documents[21]. Section 1 of the I-9 is completed by the employee, requiring the employee to affirm their employment eligibility to work[22]. A fraudulent claim of employment eligibility is a crime.[23] The employer should review Section 1 for completeness[24]. The employer then completes Section 2, using original documents provided by the employee[25]. The employer attests on the I-9 that they have reviewed the documents and they appear genuine[26]. The employer cannot require, suggest, or request specific or preferred documents for the employee to present for verification[27]. The verification process begins on the first day of the employee's work and must be completed by the third day, unless the employee is hired for fewer than three days[28].

Just after IRCA passed, there was a period where employers were educated about the new requirements and received warnings rather than penalties. Eventually the education period ended and enforcement actions were taken against employers.[29] Generally, employers were assessed fines, which were often negotiated.[30] During the early to mid-1990s, most actions taken by the then-INS were civil and employers were often targeted randomly. Too often, especially by employers who relied heavily on the employment of unauthorized workers, the penalties were perceived as a cost of doing business.[31]

The imposition of IRCA I-9 requirements spawned a proliferation of fraudulent document providers to make documents easily available in immigrant communities.[32] Indeed, some employers even assisted in supplying documents to needed workers. INS did take action against employers during the early years, gradually increasing them.[33] But

then, later in the 1990s, the INS determined that their priorities on workplace enforcement actions should focus on employers who were exploiting workers, particularly some egregious violators who may have been involved in assisting in the procurement of documents and even assisting in the transporting of workers. Random enforcement actions disappeared and by the turn of the millennium the INS workplace enforcement actions were all but stopped.[34]

Anti-Discrimination Provisions

A major concern surrounding the enactment of IRCA was the likelihood that employers would choose to discriminate against applicants who appeared to be non-U.S. citizens. The statute included specific protections, establishing the Office of Special Counsel for Immigration-Related Unfair Employment Practices.[35] This agency, within the Department of Justice, is charged with enforcing the anti-discrimination provisions of IRCA[36]. These provisions prohibit discrimination with respect to hiring, firing, and recruitment or referral for a fee, by employers with four or more employees on the basis of citizenship or immigration status[37]. It also prohibits national origin discrimination with respect to hiring, firing and recruitment or referral for a fee by employers with more than three and fewer than 15 employees[38].

IRCA also prohibits unfair documentation practices, i.e. document abuse related to verifying the employment eligibility of employees[39]. Employers may not, on the basis of citizenship status or national origin, request more or different documents than are required to verify employment eligibility and identity, and may not reject reasonably genuine-looking documents or specify certain documents over others[40]. U.S. citizens and

all work-authorized immigrants are protected from document abuse[41]. Finally, employers may not retaliate against individuals who file charges or cooperate with an investigation, or who contest actions that may constitute unfair documentary practices or discrimination based upon citizenship status or national origin[42].

Significant evidence of widespread discrimination was found soon after the I-9 requirements were enforced.[43] Many attributed the discrimination to a lack of understanding of the requirements.[44] The dual interests being served, i.e. to prevent discrimination and unauthorized employment, were confusing to employers. Some felt it was easier to avoid hiring anyone who looked foreign or talked with an accent, so they would have no problems with

Constructive Knowledge that a Worker is Unauthorized

Specifically, IRCA prohibits an employer from "knowingly" hiring or continuing to employ aliens who do not have employment authorization[45]. The term "knowing" includes not only actual knowledge, but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition[46]. Constructive knowledge may include, but is not limited to, situations where an employer:

- Fails to complete or improperly completes the Employment Eligibility Verification Form, I-9;
- Has information available to it that would indicate that the alien is not authorized to work, such as Labor Certification and/or an Application for Prospective Employer; or
- Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf.
- Knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent.

> Nothing in this definition should be interpreted as permitting an employer to request more or different documents that are required under the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual[47].

Court Interpretation of Constructive Knowledge

The case law that has developed around the notion of constructive knowledge evolved during the period when the INS was conducting I-9 audits and pressing employers to comply with IRCA. Most of these cases were decided in the early 1990s. At the time, it appeared that enforcement would create more and more clarity as to appropriate employer conduct, taking into consideration the anti-discrimination obligations as well. But instead, enforcement literally dried up.[48] From about 1995 until the INS was dismantled in 2003, enforcement was on the decline.[49] With the establishment of ICE in 2003, enforcement has re-emerged rather dramatically[50]. Suddenly the concept of constructive knowledge is taking on a new and urgent meaning for employers.

A series of early cases decided in the 9th Circuit established the standard for determining constructive knowledge. In *Mester Manufacturing Company v. Immigration and Naturalization Service*, the court was not persuaded by the argument that the employer would have had to receive written notice that employees were using false green cards from the INS in the context of an I-9 audit. [51] The court found sufficient knowledge where the employer was told that several employees were likely not authorized, and took no further steps to determine their status.[52] The workers were in fact unauthorized and the court found that the knowledge element was satisfied.[53]

Later, in *U.S. v. Noel Plastering and Stucco, Inc.*, the 9th Circuit found that the employer had constructive knowledge, even if it had no specific knowledge of the employee's unauthorized status.[54] The elements of a "continuing-employment" violation were premised upon the constructive knowledge theory in a re-verification situation.[55] The Court found that the employer acquired a duty to re-verify the individual's employment eligibility after receiving specific and detailed information regarding that individual's possible unauthorized status.[56] The fact that the employer continued to employ that individual without taking appropriate steps to re-verify his employment eligibility, and that the individual was in fact an unauthorized worker amounted to sufficient constructive knowledge.[57] The court said that the standard applicable in IRCA proceedings is modeled after the criminal law concept of "imputed-knowledge" which holds that a deliberate failure to investigate suspicious circumstances imputes knowledge.[58]

Limiting the extent of constructive knowledge, the court in *Collins Food International, Inc. v. U.S. Immigration and Naturalization Service*, found that the employer satisfied its obligations to verify employment eligibility when it examined the face of the alien's false social security card and his genuine driver's license.[59] The crucial inquiry in constructive notice cases, according to the court, was whether the employer has deliberately failed to investigate suspicious circumstances brought to its notice by the INS.[60] In *Collins Food*, the employer offered the employee a job over the phone before having opportunity to verify documents, and did not have constructive knowledge that employee was unauthorized to work.[61] The fact that the employer did not look at the back

of the Social Security card, or that it did not compare the alien's card to the social security card in the INS handbook, did not rise to the level of constructive knowledge.[62]

Role of Social Security "No-Match" Letters

Constructive knowledge is redefined in the long anticipated and highly controversial regulations published by the DHS in August of 2007, entitled "Safe-Harbor Procedures for Employers Who Receive a No-Match Letter."[63] The regulations provide a safe harbor from a finding of "constructive knowledge" if an employer receives a Social Security "No-Match" letter.[64] A "No-Match" letter is written notification from the Social Security Administration (SSA) that the Social Security number (SSN) provided by the employer does not match the information in the agency's database. To obtain safe harbor after receiving such a "No-Match" letter, employers must act during very specific time periods to resolve discrepancies between their employee records and the SSA's records.[65] Prior to this regulation, the arrival of a "No-Match" letter would not have triggered a finding of construction knowledge. If enforced, these regulations will have a wide-ranging impact on all U.S. employers in the context of workplace employment authorization verification. Despite its stated intention to provide a "safe harbor" for employers who follow its provisions, its enforcement will likely leave many employers in a catch-22 position.

Since its inception, ICE has sought to improve its investigative capability by working with other governmental agencies. The joining of immigration functions with customs functions created a synergy that did not exist with the INS. The idea of obtaining access to the Social Security database information in order to go after employers is consistent with this effort. The SSA has traditionally sent employers "No-

Match" letters when a SSN listed on an employee's W-2 does not match the name in the SSA database.[66] The SSA, of course, is not involved in immigration enforcement and until recently, it had no role in determining the immigration status of U.S. workers. The mission of the SSA is to provide proper credit of earnings to the appropriate person so that future retirement or disability benefits remain intact for the appropriate beneficiary.[67] A "No-Match" letter may signify no more than just a transposition of numbers or a recent name change, or it may result because of a system error in the database. But, as the DHS knows quite well, it may also mean identity theft or fabricated SSNs, either of which may signal the employment of unauthorized workers.

Under these new regulations, if an employer receives a "No-Match" letter from the SSA, it has 30 days to internally verify and correct any typographical, transcription or similar errors; inform the SSA if such errors exist; then verify with the SSA that the employee name and SSN assigned, as corrected, now match SSA records.[68] If the employer cannot locate the source of the "No-Match" error internally, it must advise the employee in question to first ensure that no typographical or clerical error exists, and then ask the affected employee to resolve the discrepancy with the SSA individually and immediately.[69] The employer must inform the affected employee of the date of receipt of the "No-Match" letter, and advise the employee that the discrepancy must be resolved within 90 days of that receipt date.[70] If the employer is unable to verify the record correction with SSA within 90 days, it then has only three more days to re-verify the I-9 with the employee based on documents un-related to those with the "No-Match SSN.[71] If the employer is unable to re-verify, the employee must be terminated.[72]

If the employer takes the actions described above within the timeline prescribed, DHS cannot impute "constructive knowledge" of unauthorized alien employment and provide a safe harbor from any subsequent DHS audits, fines, or sanctions.[73] However, failure to take those specific actions could result in a finding of constructive knowledge. In other words, the Catch-22.

This Safe Harbor rule has been challenged in federal court, and there is currently an injunction against the DHS from enforcing the regulation.[74] Moreover, after the rule was published, the SSA announced that it would not send out hundreds of thousands of no-match letters.[75] It is not clear whether SSA is ready for the sudden and additional administrative burden this DHS regulation will bring, or whether 90-days will be enough to clarify all SSN discrepancies. Further, it is unclear how strict adherence to this new regulation will impact states such as California, which expected the relief of a temporary guest worker program and overall immigration reform to be implemented hand-in-hand with these tougher enforcement rules.

On March 26, 2008, the DHS published supplemental proposed rulemaking addressing the concerns raised by the court in the injunction, but this supplemental rulemaking does not alter any of the required steps or time frames for safe harbor.[76] Based on this supplement, it appears the DHS intends to pursue the SSA's database to further its obligations to go after employers of unauthorized workers. So, while it has been estimated that SSA database errors could affect literally millions of workers, the majority of whom are U.S. citizens[77], employers who receive these "No-Match" letters are left to wonder what to do.

E-Verify: The Government's Automated Verification System

In an effort to avoid issues relating to unauthorized employment, constructive knowledge, and "No-Match" letters, DHS, in conjunction with the SSA, has introduced the E-Verify program that allows employers to electronically verify the employment eligibility of their newly hired employees.[78] Formerly known as Basic Pilot, the E-Verify system allows participating employers to compare employee information taken from employees against the database records of the SSA and the DHS.[79] There are more than 425 Million records in the SSA database and more than 60 Million records in the DHS database.[80] Employers who participate in the program receive virtually immediate responses regarding new employees.

Unfortunately, there are several problems with the E-Verify program. First, it is still prone to error, as it relies upon the information in the SSA database.[81] According to some estimates, the SSA database has a 4.1% error rate, and approximately 12.7 millions of the discrepancies pertain to U.S. citizens.[82] The problem with relying on E-Verify is that some people entitled to work may come with a nonconfirmation.[83] While at this time, the program is voluntary, some state laws and municipal ordinances have made E-Verify mandatory.[84] Further, the program does not eliminate the requirement that an employer complete the I-9 form in person, which must still be completed before using E-Verify.[85] Finally, using E-Verify does not provide the employer with any Safe Harbor against audits or raids. In fact, the Memorandum of Understanding for E-Verify states that DHS "reserves the right to conduct Form 1-9 compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity."[86] Therefore, until the

system is improved substantially, it is not likely to be the solution for employers who wish to avoid I-9 problems.

As new technologies provide hope of improved efficiency and accuracy in employee records, perhaps document review can eventually be taken out of the equation. But these technologies are still new and relatively untested. Meanwhile, employers must brace themselves against the scrutinizing eyes of a DHS auditor, or worse, have to confront an ICE raid. There are many voices and angles to this issue, and it has led to a chaotic situation where employers and their attorneys are scrambling to find the right balance.

Conclusion

As the immigration debate rises and falls, employers are finding the requirements of I-9 verification for employment authorization to be an increasingly complex minefield. The stakes are considerable, as managers are being held criminally liable, and the lives of thousands are irreparably disrupted.[87] Moreover, the traditional context of immigration law enforcement, which in the past was primarily civil, has been transformed to a criminal environment, against the foreign worker and the employer. A host of problems are only just beginning to be understood. Employers are being forced to balance between implementing immigration laws and accurately complying with I-9, E-Verify, and "No-Match" requirements, while simultaneously building a business, avoiding discrimination and improperly laying off authorized workers and US citizens. As the DHS relies more and more on criminal charges against companies and their employees, immigration enforcement in the workplace has become an extremely volatile area of law.

[1] Carl Hulse & Robert Pear, *Immigrant Bill, Lacking 15 Votes, Stalls in Senate*, N.Y. Times, June 8, 2007, at A1
[2] Immigration Reform and Control Act of 1986 *8 U.S.C.A. § 1324a. Unlawful employment of aliens*
[3] www.dhs.gov
[4] http://www.dhs.gov/xabout/structure/
[5] http://www.immihelp.com/articles/2008/ice07ar_final.pdf (ICE FY07 Annual Report) at p.1
[6] *See for example:* http://www.ice.gov/pi/nr/0807/080703cedarrapids.htm (Two Alleged Supervisors Arrested at Agriprocessors in Postville); http://www.ice.gov/pi/news/newsreleases/articles/080625houston.htm (5 employers of Action Rags USA Charged with Hiring, Employing Illegal Aliens); http://www.ice.gov/pi/news/newsreleases/articles/080228albany.htm (Five IFCO managers indicted on federal charges stemming from employing illegal aliens)
[7] *The Size and Characteristics of the Unauthorized Migrant Population in the US, Estimates Based on March 2005 Current Population Survey*, Research Rep. (Pew Hispanic Ctr., Washington, D.C.), March 7, 2008.
[8] http://www.ice.gov/doclib/pi/news/testimonies/ice_detroit_econ_club_18a.doc.
[9] Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359. *See* Immigration and Nationality Act (INA) §§274A, 274B, and 274C; 8 USC §§1324a, 1324b, and 1324c; 8 CFR §§274a.1 to 274a.10.
[10] Illegal Immigration reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)
[11] *Rise, Peak and Decline: Trends in US Immigration 1992-2004*, Rep. (Pew Hispanic Ctr., Washington, D.C.), Sept. 27, 2005; *Unauthorized Migrants, Numbers and Characteristics*, Background Briefing (Pew Hispanic Ctr., Washington, D.C.), June 14, 2005.
[12] *See Unauthorized Migrants, Numbers and Characteristics* at 26-30.
[13] *Id.*; *see also A Demographic and Employment Profile of United States Farm Workers*, Findings from the Nat. Agric. Workers Survey (NAWS) 2001-2002 (U.S. Dept. of Labor), March 2005; *Building a Competitive Workforce: Immigration and the U.S. Manufacturing Sector*, David L. Bartlett, Ph.D (In Focus, Vol. 5, Issue 6), August 2006.
[14] *See* n. 9.
[15] *See* The Declining Enforcement of Employer Sanctions, Peter Brownell University of California, Berkeley, September 2005, www.migrationinformation.org; The Employer Sanctions Provision of IRCA: Deterrance or Discrimination, 6 Geo. Immigr. L.J. 545 (Oct. 1992), Steven M. Kaplan
[16] *"Deputizing – and Then Prosecuting – America's Businesses in the Fight Against Illegal Immigration"* Thomas C. Green & Ileana M. Ciobanu, American Criminal Law Review, Vol. 43, Summer 2006
[17] www.uscis.gov
[18] 8 CFR 274a.1(c), (f), (h), and (j)
[19] 8 USC §1324a.(a)(1)(A)
[20] 8 USC §1324a.(b)(1)

[21] http://www.uscis.gov/files/form/I-9.pdf (Form I-9)
[22] *Id.; see also* http://www.uscis.gov/files/nativedocuments/m-274.pdf (Handbook for Employers: Instructions for Completing the Form I-9).
[23] 18 USC §1546
[24] *See* Handbook for Employers: Instructions for Completing the Form I-9 at p. 5
[25] *Id.* at p. 6-7
[26] *Id.* at p.7.
[27] *Id.* at p. 15.
[28] *Id.* at p. 5.
[29] http://www.migrationinformation.org/Feature/display.cfm?ID=332 (The Declining Enforcement of Employer Sanctions, Peter Brownell, Migration Policy Institute, Sept. 2005)
[30] *Id.*
[31] *Law Fails to Stem Abuse of Migrants, U.S. Panel Reports*, Peter T. Kilborn, N.Y. Times (Oct. 22, 1992), at A1
[32] http://trac.syr.edu/immigration/library/P1866.pdf, CRS Report RL34007, Immigration Fraud: Policies, Investigations, and Issues, Ruth Ellen Wasem, May 17, 2007
[33] See n. 29
[34] Immigration Enforcement within the United States, http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1014&context=crs, CRS Report (2006)
[35] http://www.usdoj.gov/crt/osc
[36] *Id.; see also* 8 USC §1324b.(c).
[37] 8 USC §1324b
[38] *Id.;* The Equal Employment Opportunity Commission has national origin jurisdiction over employers with 15 or more employees.
[39] 8 USC §1324b.(a)(6)
[40] *Id.*
[41] *Id.*
[42] 8 USC §1324b.(a)(5)
[43] Immigration Reform: Employer Sanctions and the Question of Discrimination, T-GGD-90-31 March 30, 1990 GAO Study (http://archive.gao.gov/d38t12/141005.pdf)
[44] The Employer Sanctions Provision of IRCA: Deterrance or Discrimination, 6 Geo. Immigr. L.J. 545 (Oct. 1992), Steven M. Kaplan
[45] 8 USC §1324a.(a)(1)(A)
[46] 8 C.F.R. § 274a.1(l)(1)
[47] Id.
[48] See n. 15
[49] *Id.*
[50] Julia Preston, *U.S. Puts Onus on Employers of Immigrants*, N.Y. Times, July 31, 2006, at A1.
[51] *879 F.2d 561 (9th Cir. 1989)* at 566-67
[52] *Id.*
[53] *Id.*

[54] 1991 WL 717532 (O.C.A.H.O); Noel Plastering and Stucco, Inc. v. OCAHO, 15 F.3d 1088 (9th Cir. 1993) at 4.
[55] 1991 WL 717532 (O.C.A.H.O) at 3-6.
[56] *Id.* at 4.
[57] Noel Plastering and Stucco, 15 F.3d 1008 at 2.
[58] 1991 WL 717532 (O.C.A.H.O.) at 3-4.
[59] Collins Foods Int'l, Inc. v. U.S. Immigration and Naturalization Serv., 948 F.2d 549 (9th Cir. 1991)
[60] *Id.* at 555.
[61] *Id.* at 551-52.
[62] *Id.* at 552-556.
[63] 72 Fed. Reg. 45611 (Aug. 15, 2007)
[64] *Id.*
[65] *Id.* at 45617.
[66] http://www.ssa.gov/employer/noMatchNotices.htm (Description of SSA "No-Match" Letter)
[67] *See* http://www.ssa.gov/OP_Home/handbook/handbook.html (Social Security Handbook); http://www.ssa.gov/legislation/RecentIssues.html#NOMATCH2 .
[68] *See* n. 63
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *AFL-CIO v Chertoff*, NDCal, No 3:07-cv-04472-CRB
[75] http://www.ssa.gov/legislation/Release%20of%20TY07%20DECOR%20040308%20FINAL.pdf (Release of Tax Year 2007 DÉCOR Letters, Social Security Fact Sheet) April 2008.
[76] 73 Fed. Reg. 15944 (March 26, 2008)
[77] *See AFL-CIO v Chertoff*, NDCal, No 3:07-cv-04472-CRB
[78] www.uscis.gov/everify
[79] *Id.*
[80] *Id.* at "Getting Started"
[81] *ERROR! Electronic Employment Verification Systems: What Will Happen When Citizens Have to Ask the Government for Permission to Work?*, Immigration Policy Center, April 2008 (http://www.immigrationpolicy.org/images/File/factcheck/EEVSbythenumbers04-08.pdf) .
[82] *Id.*
[83] *Id.*
[84] *See for example:* Arizona (http://www.azleg.gov/legtext/48leg/1r/bills/hb2779c.pdf); Colorado (http://www.coworkforce.com/LAB/pcs/8-17.5-101.pdf); Rhode Island (http://www.governor.ri.gov/documents/Immigration_Exec_Order_08-01.pdf).

[85] *See* n. 78 at "What is the required timeframe for conducting an employment eligibility check on a newly hired employee?"
[86] http://www.uscis.gov/files/nativedocuments/MOU.pdf
[87] http://www.ice.gov/doclib/pi/news/factsheets/fy07accmplshmntsweb.pdf (ICE FY07 Accomplishments)