

## How Errors in Basic Pilot/E-Verify Databases Impact U.S. Citizens and Lawfully Present Immigrants

April 2008

The Basic Pilot/E-Verify employment eligibility verification program is being sold as an easy fix that would curb unauthorized employment by undocumented immigrants. But state laws mandating businesses to use Basic Pilot/E-Verify, federal administrative efforts to expand the program, and congressional proposals to require its use by all employers entirely ignore the effect the program will have on U.S. citizens and lawfully present noncitizens. The program has been plagued by serious problems since its inception in 1997, including (1) its reliance on government databases that have unacceptably high error rates that misidentify work-authorized individuals as not employment-eligible and (2) employer misuse of the program to take unjustified adverse action against workers.<sup>1</sup> These deficiencies will be magnified many times over if the program is further expanded before they are addressed. The inevitable result will be to threaten the livelihood of hundreds of thousands of citizens and lawfully present immigrants who may be either wrongfully dismissed from or refused employment.

### Database errors incorrectly identify U.S. citizens as not authorized for employment.

- A 2007 independent evaluation of Basic Pilot/E-Verify commissioned by the U.S. Department of Homeland Security (DHS) found that “the database used for verification is still not sufficiently up to date to meet the [Illegal Immigration Reform and Immigrant Responsibility Act] requirements for accurate verification.”<sup>2</sup>
- These database errors have a disproportionate impact on foreign-born U.S. citizens, with almost 10 percent initially being told that they are not authorized to work (versus 0.1 percent for native-born U.S. citizens).<sup>3</sup> Between October 2006 and March 2007, about 3,200 foreign-born U.S. citizens were initially improperly disqualified from working by Basic Pilot/E-Verify.<sup>4</sup>
  - Juan Carlos Ochoa became a citizen in 2000. When he applied for and was offered a job at a car dealership in early 2008, his employer used Basic Pilot/E-Verify to verify his employment eligibility. The employer received a “tentative nonconfirmation” notice due to errors in the Social Security Administration’s (SSA’s) database;<sup>5</sup> SSA did not have any record of Ochoa’s naturalization. Upon receiving the notice, Ochoa’s employer fired him, a violation of Basic Pilot/E-Verify rules. Because he is out of work, he is late on his rent and his electricity has been shut off. Though Ochoa has a U.S. passport, the local SSA office told him that he must bring in his naturalization certificate to prove his U.S. citizenship, but he lost it years ago. To comply with this unreasonable requirement, Ochoa will have to pay close to \$400 and wait up to ten months for a replacement certificate.<sup>6</sup>
  - 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



NATIONAL  
IMMIGRATION  
LAW CENTER  
www.nilc.org

#### LOS ANGELES (Headquarters)

3435 Wilshire Boulevard  
Suite 2850  
Los Angeles, CA 90010  
213 639-3900  
213 639-3911 fax

#### WASHINGTON, DC

1444 Eye Street, NW  
Suite 1110  
Washington, DC 20005  
202 216-0261  
202 216-0266 fax

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 SSA's database. (It's very possible that one or more of the companies that didn't call him back had run his information through Basic Pilot/E-Verify and, upon receiving a tentative nonconfirmation, decided not to take a chance on hiring him. This is an illegal but not uncommon practice (see below).) 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.<sup>7</sup>

- Ken Nagel, a restaurant owner in Phoenix, Arizona, 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.<sup>8</sup>

**☑ Database errors incorrectly identify lawfully present immigrants as not authorized for employment.**

- Due to database errors, foreign-born lawful workers are 30 times more likely than native-born U.S. citizens to be incorrectly identified as not authorized for employment.<sup>9</sup>
  - A refugee applied for a job with an oil production company in Texas in 2007. When his employer entered his information into Basic Pilot/E-Verify, the employer received a tentative nonconfirmation notice due to errors in SSA's database. After receiving the notice, the company fired the worker without giving him an opportunity to contest the finding, which opportunity is required under law. The refugee went on his own to SSA to correct the matter, but it wasn't until the Office of Special Counsel for Immigration-Related Unfair Employment Practices (an office within the Civil Rights Division at the U.S. Justice Department) intervened that the company hired him back.<sup>10</sup>
  - An employment-authorized immigrant was hired by a laundry facility in Minneapolis, Minnesota, in 2008. His employer was enrolled in Basic Pilot/E-Verify, but when the employee's name was entered into the system, his employer received a tentative nonconfirmation notice about the worker because of discrepancies in SSA's database. The worker was able to resolve the issue with the local SSA field office; however, when the employer reentered his information into the system, the employer received a "final" nonconfirmation. Although the employer wanted to keep the worker, under Basic Pilot/E-Verify rules, the employer had to fire the worker or risk being found liable for violating immigration laws.<sup>11</sup>

**☑ Employers violate Basic Pilot/E-Verify rules.**

- The 2007 evaluation of Basic Pilot/E-Verify found that the rate of employer noncompliance with the program rules is "substantial."<sup>12</sup> Specifically, employers engaged in prohibited employment practices, including preemployment screening, adverse employment action based on tentative nonconfirmation notices, and failure to inform workers of their rights under the program.<sup>13</sup>
  - A lawfully present immigrant worker applied for and was offered a job by a construction, fabrication and maintenance company in Texas in January 2008. The employer was enrolled in Basic Pilot/E-Verify and received a tentative

nonconfirmation notice about the worker. Violating program rules, the employer did not give the worker the opportunity to contest the notice. Despite this, the worker went to the local SSA office and received the appropriate confirmation that he was, in fact, authorized to work. Even with clarification from SSA, the employer refused to take the worker back. The worker even enlisted the help of an attorney, who sent a letter to the employer outlining its obligations under Basic Pilot/E-Verify. The employer failed to respond.<sup>14</sup>

- A naturalized U.S. citizen used the services of an employment services company in San Francisco, California, in November 2007 to look for a job. After applying online, she was given an appointment and told that there were a number of employers that would be interested in her based on her extensive work history. The next day, the employment agency told her that she could not be offered a job because the agency could not verify her U.S. citizenship. The employment services company was enrolled in Basic Pilot/E-Verify and received a tentative nonconfirmation notice about the worker because the system, including the federal databases on which it relies, could not make a determination about her work authorization. The employment agency violated Basic Pilot/E-Verify rules by refusing to give her a copy of the notice, though she requested one in order to seek legal advice. The agency demanded that she sign the notice right away so it could destroy copies of her documents. When she refused, the employment agency told her that it could not place her because she was ineligible to work in the U.S.<sup>15</sup>

---

#### FOR MORE INFORMATION, CONTACT

Tyler Moran, employment policy director | moran@nilc.org | 208.333.1424

---

#### NOTES

<sup>1</sup> For a summary of NILC's concerns, see BASIC PILOT/E-VERIFY: NOT A MAGIC BULLET (NILC, Jan. 2008), [www.nilc.org/immsemplymnt/ircaempverif/e-verify\\_nomagicbullet\\_2008-01-04.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/e-verify_nomagicbullet_2008-01-04.pdf).

<sup>2</sup> FINDINGS OF THE WEB BASIC PILOT EVALUATION (hereinafter "FINDINGS") (Westat, Sept. 2007), [www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf](http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf), at xxi, emphasis added. U.S. Citizenship and Immigration Services' webpage, "Findings of the Web-Based Basic Pilot Evaluation," which links to related files, is at [www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=89abf90517e15110VgnVCM1000004718190aRCRD&vgnnextchannel=a16988e60a405110VgnVCM1000004718190aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=89abf90517e15110VgnVCM1000004718190aRCRD&vgnnextchannel=a16988e60a405110VgnVCM1000004718190aRCRD).

<sup>3</sup> FINDINGS at 50.

<sup>4</sup> Nicholas Riccardi, "Arizona Slams Door on Illegal Immigrants: Some Citizens Have Been Bruised, Too, as the State Cracks Down," LOS ANGELES TIMES, Apr. 5, 2008, [www.latimes.com/news/nationworld/nation/la-na-arizimmig5apr05.1.6970275.full.story](http://www.latimes.com/news/nationworld/nation/la-na-arizimmig5apr05.1.6970275.full.story).

<sup>5</sup> Employers receive a "tentative nonconfirmation" notice from either SSA or DHS when the agencies are unable to automatically confirm a worker's employment eligibility. A "tentative nonconfirmation" notice is not an indication of an immigration violation, and workers have the right to contest the finding with the appropriate agency.

<sup>6</sup> Veronica Sanchez, "U.S. Citizen Claims He's Victim of Employer Sanctions," 12 News, Mar. 7, 2008, <http://img.azcentral.com/12news/news/articles/employersanctions03072008.html>. See also Riccardi, *supra* note 4.

<sup>7</sup> 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](http://www.abc15.com/news/local/story.aspx?content_id=07e5d455-d95b-4fbb-be43-2d1ee7318972).

<sup>8</sup> 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](http://www.azcentral.com/business/articles/0303biz-econ-restaurants0303.html).

<sup>9</sup> See FINDINGS, *supra* note 2, at xii-xiii.

<sup>10</sup> Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice, TELEPHONIC INTERVENTIONS: OCTOBER 1, 2006 – SEPTEMBER 30, 2007.

<sup>11</sup> Case relayed to NILC staff by Bruce Nestor of De León & Nestor, Minneapolis, Minnesota, in April 2008.

<sup>12</sup> See FINDINGS, *supra* note 2, at xxii.

<sup>13</sup> See *id.* at xxiii.

<sup>14</sup> Information provided to NILC by the Southern Poverty Law Center in January 2008.

<sup>15</sup> Technical assistance request call received by NILC in December 2007.