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ILLEGAL ALIENS

Significant Obstacles to Reducing Unauthorized Alien Employment Exist



General Government Division

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The Honorable Orrin G. Hatch
Chairman
The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable Henry J. Hyde
Chairman
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House of Representatives

One of the primary magnets attracting illegal aliens to the United States is jobs. Even among those who enter the United States legally (e.g., as tourists or students), many are believed to overstay their visas and take jobs. The Department of Justice's Immigration and Naturalization Service (INS) estimated that about 5 million illegal aliens resided in the United States in October 1996, and that their numbers increased at an average rate of about 275,000 per year between October 1992 and October 1996. Many immigration experts have said that as long as opportunities for employment exist, the incentive to enter the United States illegally or overstay visas will persist and efforts at the U.S. borders to prevent illegal entry will be undermined. Therefore, these experts believe that reducing the magnet of employment should be an integral part of a comprehensive strategy to reduce illegal immigration.

This is our second of six planned reports on the Attorney General's strategy to deter illegal entry into the United States. These reports are mandated by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (1996 Act), Public Law 104-208. In our first report,¹ we discussed the Attorney General's strategy to deter illegal entry along the southwest border. As agreed with your committees, this second report reviews the strategy's objective related to enforcing workplace immigration laws. Specifically, this report addresses the following: (1) the effectiveness of the current employment verification process in preventing

¹Illegal Immigration: Southwest Border Strategy Results Inconclusive; More Evaluation Needed (GAO/GGD-98-21, Dec. 11, 1997).

employers from hiring unauthorized aliens,² (2) INS' efforts to improve the employment verification process, (3) the level of effort INS and the Department of Labor devoted to worksite enforcement activities and the results of these activities, and (4) changes being made to INS' worksite enforcement program.

Results in Brief

More than 12 years after the Immigration Reform and Control Act (IRCA) of 1986³ created an employment verification process intended to prevent employers from hiring unauthorized aliens, significant numbers of unauthorized aliens can still obtain employment. The effectiveness of the current verification process, which relies on identity and employment eligibility documents that employees are to show employers, can be undermined by unauthorized aliens using fraudulent documents. Fraudulent documents, which can often appear genuine, are widely available and widely used by unauthorized aliens to obtain employment.

INS has undertaken several initiatives to improve the employment verification process to make it less susceptible to fraud, but significant obstacles remain. First, as mandated in the 1996 Act, INS is testing or expects to test three pilot programs in which employers electronically verify an employee's eligibility to work. However, employer participation in the pilot programs under way has been significantly less than INS anticipated. Other federal and state agencies that have contact with potential participants generally have not had a role in informing them about INS' pilot programs. According to INS, Labor, and Social Security Administration (SSA) officials, some employers believe that pilot participation could place them at a disadvantage, relative to nonparticipating competitors, in a tight labor market.

Second, INS has made little progress toward its goal of reducing the number of documents that employers can accept to determine employment eligibility. In February 1998, INS issued proposed regulations to reduce the number of documents that can be used from 27 to 14. However, INS received numerous comments on the proposed regulations and INS officials do not know when these regulations will be finalized. Lastly, INS has begun issuing new documents with increased security features, which INS hopes will make it easier for employers to verify the documents' authenticity. However, aliens are statutorily permitted to show

²We use the term "unauthorized aliens" to refer to aliens who do not have permission from INS to work in the United States but who are working, regardless of whether they entered legally or illegally. Unauthorized aliens in the United States are subject to removal from the country by INS.

³P.L. 99-603, 8 U.S.C. 1324a *et seq.*

employers various documents other than the INS documents that authorize aliens to work, and other widely used documents (e.g., Social Security cards and birth certificates) do not have the security features of the INS documents.

Since 1994, INS has devoted about 2 percent of its enforcement workyears to its worksite enforcement program, which is designed to detect noncompliance with IRCA. In 1998, INS completed about 6,500 investigations of employers, which equated to about 3 percent of the country's estimated number of employers of unauthorized aliens. Labor has provided limited assistance to INS in identifying employers suspected of hiring unauthorized workers, and, under a new agreement with INS, Labor's role in this area will be reduced. Labor believes that delving into immigration-related worksite enforcement matters, such as the immigration status of workers, could hamper its own mission of enforcing workplace standards by limiting workers' willingness to report possible violations to Labor.

The results of INS' worksite enforcement program indicate it has infrequently imposed sanctions on employers. Although a major goal of the program was to target for investigation employers who knowingly violated the law, more than 8 out of 10 investigations completed during the period we reviewed did not result in a penalty. INS officials attributed these modest results to various factors. They stated that the widespread use of fraudulent documents made it difficult for INS to prove that an employer knowingly hired an unauthorized alien. In addition, they stated that INS' requirement that district worksite programs meet various numerical goals, such as identifying a certain number of unauthorized aliens, may have placed an undue focus on arresting unauthorized aliens and may have undermined INS' overall goal to target employers suspected of being major violators.

INS is in the process of changing its approach to worksite enforcement. The Service has developed an interior enforcement strategy with five strategic priorities. Two of the priorities involve worksite enforcement, with one calling for INS to pursue the criminal investigation of employers who are flagrant or grave violators. However, the strategy does not define "flagrant or grave violation." According to an INS official, as of March 1999, INS was still developing implementation plans for the five strategic priorities. Since INS is just beginning this new approach, it is too soon to know how the proposed changes will be implemented or to assess their impact on the employment of unauthorized workers.

We have made recommendations to the Commissioner of INS for addressing certain issues identified during our review.

Background

IRCA made it illegal for employers knowingly to hire or continue to employ or recruit or refer for a fee unauthorized aliens. IRCA required employers to comply with an employment verification process intended to provide employers with a means to avoid hiring unauthorized aliens. Generally, IRCA requires employers to verify the identity and eligibility of all new employees hired after November 6, 1986.

Under IRCA, employers must request newly hired employees to present a document or documents that establish their identity and eligibility to work. As of February 1999, INS rules allowed employees to present 27 different documents—8 that establish both identity and eligibility to work (e.g., a U.S. passport or INS permanent resident card, which is also called a “green card”); 12 that establish identity (e.g., a driver’s license); and 7 that establish eligibility to work (e.g., a Social Security card, other than one containing the following legend: “Not Valid for Employment”). The employment verification process that INS established pursuant to IRCA requires employers to complete the Employment Eligibility Verification Form, INS Form I-9, certifying that they have reviewed the documents and that the documents appear genuine and relate to the individual.⁴ In making their certifications, employers are expected to judge whether the documents presented are obviously counterfeit or fraudulent.⁵ Unless INS has evidence that the employer knew the employee was unauthorized to work, employers are deemed in compliance with the law if they have followed the verification procedures, even though an unauthorized alien may have presented fraudulent documents that appeared genuine.

IRCA provides penalties or sanctions against employers who violate the law. Employers who fail to properly complete, retain, or present for inspection a Form I-9 may face civil fines ranging from \$100 to \$1,000 for each employee for whom the form was not completed, retained, or presented. Employers who knowingly hire or continue to employ unauthorized aliens may be fined from \$250 to \$10,000, depending upon whether the violation is a first or subsequent offense. Employers who engage in a pattern or practice of knowingly hiring or continuing to employ

⁴Appendix I contains a copy of the Form I-9 and a complete list of the 27 acceptable documents.

⁵We use the term “fraudulent” throughout this report to refer to situations in which unauthorized aliens illegally used documents for the purposes of obtaining employment. For our purposes, fraudulent documents include documents that were illegally manufactured as well as genuine documents used illegally (e.g., an unauthorized alien using another person’s valid document).

unauthorized aliens are subject to criminal penalties consisting of fines up to \$3,000 per employee and/or up to 6-months imprisonment.

During the legislative debate on IRCA, concerns were expressed that employers fearing sanctions would not hire “foreign-looking or foreign-sounding” citizens and aliens authorized to work. As a result, IRCA prohibits employers with four or more employees from discriminating against any authorized worker on the basis of citizenship or national origin. IRCA established Justice’s Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) to investigate certain charges of discrimination.⁶

INS has a worksite enforcement program that is responsible for checking employer compliance with IRCA’s verification requirements and enforcing IRCA’s employer sanctions provisions. Labor has agreed to assist INS by checking employer compliance with verification requirements in the course of some of its own employer investigations.

Findings From Our March 1990 Study of IRCA’s Employment-Related Provisions

In March 1990, we issued our third and final report required by IRCA.⁷ In that report, we concluded that, on the basis of our analysis of INS apprehension data and research by other organizations, employer sanctions had slowed illegal immigration. However, we also concluded that the prevalence of counterfeit and fraudulent documents was threatening the security of IRCA’s employment verification process for prohibiting unauthorized alien employment. As a result, unauthorized aliens’ use of fraudulent documents was undermining IRCA’s employment verification process and improvements were needed. On the basis of responses from about 4,400 employers who responded to our survey, we also concluded that, while about 65 percent of employers were complying with the Form I-9 verification requirements, most employers wanted a simpler or better verification system. A majority of the employers we surveyed indicated that the federal government should consider such

⁶OSC is responsible for investigating charges of citizenship status discrimination against employers with 4 or more employees and national origin discrimination by employers with 4 to 14 employees. Title VII of the Civil Rights Act of 1964 and the remedies against discrimination it provides remain in effect. Title VII prohibits discrimination against anyone on the basis of national origin in hiring, discharging, recruiting, assigning, compensating, and other terms and conditions of employment. Charges of national origin discrimination against employers with 15 or more employees are generally filed with the Equal Employment Opportunity Commission.

⁷IRCA required us to issue three studies on IRCA’s implementation. In response, we issued the following reports: [Immigration Reform: Status of Implementing Employer Sanctions After One Year](#) (GAO/GGD-88-14, Nov. 5, 1987); [Immigration Reform: Status of Implementing Employer Sanctions After Second Year](#) (GAO/GGD-89-16, Nov. 15, 1988); and [Immigration Reform: Employer Sanctions and the Question of Discrimination](#) (GAO/GGD-90-62, Mar. 29, 1990).

things as reducing the number of work authorization documents INS issued and establishing systems for employers to contact INS and SSA to verify INS documents and Social Security numbers (SSN).

We also concluded that there was widespread discrimination against eligible workers as a result of IRCA. We stated that many employers appeared confused over the variety of documents that could be used to verify employment and uncertain about how to comply with IRCA's verification system. For example, some employers did not accept valid work authorization documents, and some employers said they only asked alien employees, rather than all employees, to show documents. Noting that this uncertainty and confusion as well as the prevalence of fraudulent documents may have caused the widespread pattern of discrimination, we concluded that a simpler system that relied on the use of fewer documents could reduce discrimination.

Illegal Alien Employment Is a Small Portion of the Total Workforce, but Is Significant in Certain Industries

No one knows exactly how many unauthorized aliens are illegally employed in the United States or what percentage of the total workforce they represent. According to the Bureau of Labor Statistics, about 132 million people were employed in the civilian labor force as of October 1998. Even if all of the estimated 5 million illegal aliens residing in the United States as of October 1996 held jobs in October 1998, they would have represented less than 4 percent of the nation's workforce. The results from INS' inspection of a random sample of the nation's 6.5 million employers in fiscal year 1997 indicated that about 195,000 employers (or about 3 percent) had employed unauthorized aliens.

Illegal alien employment has been shown to be more significant in certain industries and locations. For example, Labor's National Agricultural Workers Survey estimated that 37 percent of the agricultural workers in 1995 were illegal. There is also evidence that the meatpacking, construction, and garment industries have employed large numbers of unauthorized aliens. For example, in February 1998, we reported that in 1996 and 1997, INS found that about 23 percent of the workers at seven Nebraska and Iowa meatpacking plants had questionable documents.⁸ INS' inspection of 89 construction businesses in Las Vegas, NV, starting in March 1995 found that 39 percent of the approximately 6,000 employees for whom a Form I-9 was completed appeared to be unauthorized to work. Similarly, inspections of 74 Los Angeles area garment contractors in March

⁸Community Development: Changes in Nebraska's and Iowa's Counties With Large Meatpacking Plant Workforces (GAO/RCED-98-62, Feb. 27, 1998).

1998 revealed that 41 percent of the 7,100 employees at these worksites were unauthorized to work.

INS Worksite Enforcement Program

INS Investigations is responsible for enforcing IRCA's employer sanctions provisions. Investigations receives information, referred to as leads, from a variety of sources, including the public and other federal or state agencies, regarding unauthorized alien employment. Worksite enforcement unit supervisors are to systematically analyze these leads and, as a first priority, open investigations on employers suspected of knowingly hiring unauthorized aliens and/or suspected of engaging in abusive employment practices.

To track employer sanctions case activity, Investigations field personnel are to prepare Employer Case Activity Reports documenting such case activities as the opening of a case, a Form I-9 inspection, or the arrest of unauthorized aliens. Data from these reports are to be entered into INS' Employer Case Activity database. For ease of presentation, we refer to this database as the Employer Sanctions database throughout this report. The database contains case-specific information submitted by local INS offices since August 1989. As of May 1998, the system contained data on over 69,000 employer sanctions cases.

In May 1998, INS issued a directive regarding worksite enforcement operations. According to the Executive Associate Commissioner for Field Operations, the directive was intended to provide consistency among INS districts in conducting worksite operations. Under the directive, all investigations in which INS believes an employer is unknowingly hiring unauthorized aliens must start with a review of Form I-9 and other employment records. INS is then to hold a seminar for these employers to educate them on such things as how to properly prepare the Form I-9 and how to detect fraudulent documents. The employers are then to be given a list of aliens INS believes are unauthorized to work. The employer must either re-verify that the alien is authorized to work or dismiss the alien. INS could then inform the employer that it intended to arrest any unauthorized aliens. For investigations in which INS believes an employer is knowingly hiring unauthorized aliens, INS is to arrest the unauthorized aliens first, followed by a review of the Form I-9 and other employment records. In addition, before an enforcement action can be conducted at an employer's place of business, INS worksite enforcement units must prepare an operational plan to be approved by either the INS Regional Director or the Executive Associate Commissioner for Field Operations.

Before this directive, the decision of whether INS arrested unauthorized aliens before or after a Form I-9 inspection was left to the discretion of the INS district office. In addition, there was no requirement that INS hold seminars for employers or that operational plans be approved by the regional office or headquarters.

Objectives, Scope, and Methodology

As agreed with your offices, this report addresses the following: (1) the effectiveness of the current employment verification process in preventing employers from hiring unauthorized aliens, (2) INS' efforts to improve the employment verification process, (3) the level of effort INS and Labor devoted to worksite enforcement activities and the results of these activities, and (4) changes being made to INS' worksite enforcement program.

To determine the effectiveness of the current employment verification process, we reviewed previous reports by us and others, such as the Commission on Immigration Reform and other immigration researchers. In addition, we held discussions with INS, Labor, and SSA officials and analyzed data from INS' Employer Sanctions database to obtain INS statistics on the use of fraudulent documents by unauthorized aliens.

To determine what actions INS had undertaken to improve the employment verification process, we held discussions with and obtained documents from INS, SSA, Labor, and OSC officials. Using a data collection instrument, we surveyed worksite enforcement unit supervisors representing 32 of INS' 33 districts who attended a national worksite enforcement conference in San Diego in June 1998. We also contacted representatives of four national organizations representing business owners or employee unions to discuss their views on INS' efforts to improve the employment verification process.

To determine the extent of INS' activities in worksite enforcement and the results of these activities, we analyzed INS budget data, workload data from INS' Employer Sanctions database, and responses provided by the 32 INS worksite enforcement unit supervisors who responded to our survey. In addition to surveying these supervisors about their offices' coordination with Labor, we also surveyed Labor officials from 10 districts in states with a high number of unauthorized aliens about their enforcement activities and coordination with INS. We also analyzed Labor workload data to determine the extent to which Labor referred cases to INS for investigation, and we conducted structured telephone interviews with state labor officials in six states to determine the extent to which they coordinated their role with INS.

To identify changes being made to INS' worksite enforcement program, we reviewed INS strategy documents, attended INS meetings in which INS officials explained worksite enforcement program changes, and discussed a draft of INS' interior enforcement strategy with INS headquarters and regional officials.

We discussed the strengths and limitations of INS' automated workload data with INS headquarters officials and with investigators at the local level, but we did not independently verify the validity of the data. These officials indicated that the data could be used to accurately portray trends over time. See appendix II for a more complete description of our objectives, scope, and methodology.

We did our work from December 1997 through March 1999 in accordance with generally accepted government auditing standards. We requested comments on a draft of this report from the Attorney General, Secretary of Labor, and Commissioner of Social Security. Justice and SSA provided written comments, which are summarized at the end of this letter. Justice's written comments are contained in appendix III. Labor did not provide comments.

Fraudulent Documents Have Undermined the Effectiveness of INS' Employment Verification Process

The employment verification process can be easily thwarted by fraud. Large numbers of unauthorized aliens have either fraudulently used valid documents that belong to others or presented counterfeit documents as evidence of employment eligibility. As a result, unauthorized aliens have been able to circumvent the current employment verification process, thereby making it difficult for employers who are willing to comply with the law by hiring only authorized workers to do so.

Various studies have pointed out that fraudulent documents are largely responsible for the ineffectiveness of the employment verification process. For example, we reported in 1990 that the prevalence of fraudulent documents threatened to undermine the employment verification process and the system needed improvement.⁹ In its 1997 report to Congress, the Commission on Immigration Reform reiterated its 1994 conclusion that the single most important step that could be taken to reduce unlawful migration was the development of a more effective system for verifying work authorization. It noted that the widespread availability of fraudulent documents makes it easy for unauthorized aliens to obtain jobs. Similarly, INS has noted that the proliferation of inexpensive fraudulent documents

⁹GAO/GGD-90-62.

makes it almost impossible for employers to ensure employment to only authorized workers.

Our analysis of INS data showed that large numbers of unauthorized aliens have used fraudulent documents to obtain employment. Between October 1, 1996, and May 29, 1998, INS completed about 9,600 employer investigations that were based on leads from various sources, such as the public or other agencies. In about 3,500 investigations (or 36 percent) INS reported that about 78,000 fraudulent documents pertaining to about 50,000 unauthorized aliens were used to obtain employment. In about 2,100 (or 60 percent) of the 3,500 investigations in which INS found fraudulent documents, INS determined that the employer had complied with the employment verification process and did not knowingly hire unauthorized aliens, but that unauthorized aliens' use of fraudulent documents circumvented the process. In the other 1,400 (or 40 percent) of the 3,500 investigations involving fraudulent documents, INS decided to fine the employer, take no action against the employer for various reasons (e.g., the employer went out of business), or issue the employer a warning notice. Of the 78,000 fraudulent documents identified, about 60 percent were INS documents, such as permanent resident cards; about 36 percent were Social Security cards; and about 4 percent were other documents, such as drivers' licenses. These documents were either counterfeit documents or genuine documents used fraudulently to obtain employment.

Large-scale counterfeiting of employment eligibility documents has reportedly made such documents widely available. According to a January 1997 Justice Office of Inspector General (OIG) audit report, on the basis of a review of 30 INS fraud cases in 5 INS district offices, INS confiscated nearly 300,000 counterfeit documents.¹⁰ Nearly all of these counterfeited documents were confiscated in Los Angeles. In May 1998, INS seized more than 24,000 counterfeit Social Security cards in Los Angeles after undercover agents purchased 10,000 counterfeit INS permanent resident cards from a counterfeit document ring. In November 1998, INS seized more than 2 million counterfeit documents in Los Angeles, including INS permanent resident cards, Social Security cards, and drivers' licenses from various states. According to INS, these counterfeit documents were headed for distribution points around the country.

¹⁰Immigration and Naturalization Service Replacement of Resident Alien Identity Cards, U.S. Department of Justice, Office of Inspector General, Audit Report 97-06, January 1997. The OIG selected a judgmental sample from INS investigations that were conducted between 1990 and 1995 involving major counterfeit document seizures in Atlanta, Chicago, Los Angeles, Miami, and New York.

INS Is Taking Steps to Improve Verification Process, Yet Considerable Obstacles Remain

The 1996 Act mandated INS to test three pilot programs in which employers use computer technology to verify employees' eligibility to work. INS has one of the three pilot programs under way, but, reportedly, reluctance on the part of some employers to participate in the pilot has made it difficult for INS to meet its enrollment goal. Also, in accordance with the 1996 Act, INS has removed some documents from the list of those that can be considered by employers, but this still leaves 27 acceptable documents that employees can use for employment verification purposes. To give employers confidence in the integrity of certain INS documents, INS has begun issuing documents more resistant to tampering and counterfeiting to lessen the potential of fraudulent document use. However, opportunities still exist for unauthorized aliens to use fraudulent documents because alien employees are statutorily permitted to present documents other than INS-issued documents to demonstrate employment eligibility, and these may have fewer security features.

INS Has Had Difficulty in Meeting Its Pilot Program Enrollment Goal

As mandated in the 1996 Act, INS is testing or expects to test three programs to make it possible for employers to electronically verify an employee's eligibility to work. The 1996 Act allows the pilots to last up to 4 years; generally, employer participation in these pilot programs is voluntary. Under the first pilot, called the Basic Pilot, the employer is to verify the employment eligibility of all new hires, regardless of citizenship status, by querying an SSA database containing the names of all individuals with Social Security numbers. If the SSA database cannot confirm employment eligibility and the employee indicated that he or she is not a citizen or national of the United States, an employer would then query INS' database containing the names of all of those individuals to whom INS has issued alien numbers. Employers in the five states with the highest estimated numbers of illegal aliens—California, New York, Texas, Florida, and Illinois—are eligible to participate in the Basic Pilot. As of November 1998, 1,341 employers had signed up to participate in the Basic Pilot.

Under the second pilot, called the Citizen Attestation Pilot, employers are to verify with the INS database only those newly hired employees who claim to be aliens. The 1996 Act limits this pilot to states that meet specific requirements for issuing drivers' licenses and identity documents. INS plans to test the Citizen Attestation Pilot in Arizona, Massachusetts, Maryland, Michigan, and Virginia.

The third pilot, called the Machine-Readable Document Pilot, is to verify all new employees who present a driver's license or identification document that contains a machine-readable SSN. INS plans to test the Machine-Readable Document Pilot only in Iowa because it is the only state

with a machine-readable SSN, name, and date of birth on its drivers' licenses or identification cards.

Even before mandated to do so, INS was testing electronic verification. In 1995, INS began testing electronic verification systems similar to the Basic and Citizen Attestation Pilots. As of November 1998, 1,178 employers participated in these pre-1996 Act pilots.

INS' original goal was to have 16,000 employers enrolled in all of its pilot programs by the end of fiscal year 1999. However, INS has had difficulty in meeting this enrollment goal. As of November 1998, INS had enrolled 2,519 employers, or about 16 percent of its goal. Some employers are reportedly reluctant to participate in the pilots because of concern that participation may have a negative economic impact on their businesses. According to officials with whom we spoke from INS, Labor, and SSA, employers in some industries believe that in the current tight labor market, they would not have enough authorized workers applying for jobs if they participated in a verification pilot. The employers reportedly fear that they could be put at a competitive disadvantage because employees rejected by the verification system might go to work for competitors who are not enrolled in a pilot. In addition, according to INS officials, some employers are reluctant to participate because (1) they do little hiring, (2) illegal alien employment is not a problem in their industry, or (3) they fear participating will bring additional INS scrutiny (e.g., a Form I-9 inspection). Also, INS believes some multistate employers that want to consolidate verification operations to one location are reluctant to participate because they cannot comply with the 1996 Act's statutory requirement that verification be completed within 3 days after an employee is hired.

According to INS officials, INS' failure to meet its enrollment goal was affected primarily by employer reluctance to participate in the pilots and not by the fact that two pilot programs have not yet been implemented. As a result of its difficulty in recruiting participants for its Basic Pilot, INS has adjusted its enrollment goal. INS plans to reduce its employer enrollment goal for fiscal year 1999 from the original 16,000 to 5,000.

The 1996 Act required the Attorney General to widely publicize the pilot programs and required INS district offices in which pilot programs are to be implemented to assist those employers wishing to participate. INS' Internet World Wide Web site has information about the pilots, and INS officials told us they have presented information about the pilots at various employer association meetings. In addition, according to these officials,

each of the 12 INS districts in which the Basic Pilot is operating has an INS liaison officer who is responsible for conducting outreach activities, such as conducting employer seminars to explain the pilots. In responding to our survey on how active their districts' outreach efforts have been, 8 of the 12 worksite unit supervisors indicated that the efforts have been somewhat active, 2 indicated very active, and 2 indicated not active at all.

Other federal and state agencies, such as Labor and state labor agencies, have contact with employers who might be interested in INS' pilot programs. These agencies did not have a formal role in informing employers about INS' pilot programs and generally said they did not do so. For example, officials from 7 of the 10 Labor offices we contacted stated that they did not inform employers about INS' pilot programs. In addition, neither the informational material for employers that OSC provided us nor OSC's Web site mentioned INS' pilot programs. In addition, none of the representatives from the six state labor agencies we contacted said their agencies distributed information about INS' pilot programs, although all of the representatives said they would be willing to do so. Officials in charge of INS' pilot programs stated that INS has contracted with a public relations firm to conduct more extended outreach about the pilot programs. In December 1998, the contractor submitted the strategy for the outreach campaign, which is set to begin in April 1999.

Although electronic verification could be an improvement over the current verification process, it also has limitations. For example, an unauthorized alien could use the documents of an authorized worker and thereby circumvent the process. In May 1998, INS selected two contractors to conduct an evaluation of the effectiveness of its pilot programs in preventing unauthorized alien employment and ensuring authorized workers do not encounter discrimination. According to INS' Director of Research, as of December 1998, the evaluation plan was under development.

Little Progress in Reducing the Number of Acceptable Documents

Various studies of IRCA's employment verification process have advocated that the number of documents that employees can use to demonstrate employment eligibility should be reduced to make the employment verification process more secure and to reduce employer confusion. For example, in 1990, we reported that the multiplicity of documents contributed to (1) employer confusion about how to comply with the employment verification requirements and (2) discrimination against authorized workers.¹¹ INS first published a proposed rule to reduce the

¹¹GAO/GGD-90-62.

number of documents that can be used to demonstrate employment eligibility in 1993.

The 1996 Act mandated that four documents be eliminated from the statutory list of acceptable documents that can be used to demonstrate employment eligibility.¹² However, the Attorney General retained her authority to add documents to the list as specified in the statute under certain circumstances. At the time of the 1996 Act's enactment, 29 acceptable documents were designated by regulation.

In September 1997, INS issued an interim rule (1) eliminating four documents from the list of documents that establish both identity and employment eligibility, (2) redesignating one document that the 1996 Act removed (using the Attorney General's authority to designate additional documents), and (3) limiting the use of another document. The interim rule also added two new types of receipts that an individual can present in lieu of an acceptable document from the list. According to INS, the purpose of the interim rule was to maintain the status quo as much as possible until INS completed a separate rulemaking proceeding that would make comprehensive changes to the employment verification process, a further reduction in the number of acceptable documents, and a revision to the Form I-9.¹³

In February 1998, INS issued proposed regulations that would cut the number of documents by half. The rule proposed maintaining the number of documents that establish both identity and employment eligibility at 8, and reducing the number of documents that establish (1) identity only, from 12 to 3 documents, and (2) employment eligibility only, from 7 to 3 documents. According to an INS official, INS received about 70 comments on the proposed regulations. Some of the comments have caused INS to revisit several issues related to the documents INS planned to eliminate from the list. According to this official, INS does not know when the proposed regulations will be finalized. As of February 1999, employees

¹²The 1996 Act mandated the elimination of the Certificate of United States Citizenship, the Certificate of Naturalization, an unexpired foreign passport with an endorsement that identifies employment eligibility, and a birth certificate from the list of acceptable documents.

¹³In response to the 1996 Act, the interim rule eliminated the Certificate of United States Citizenship and Certificate of Naturalization; restricted the use of an unexpired foreign passport; and, due to public concerns, designated the use of a birth certificate until completion of a separate rulemaking procedure. INS also eliminated two other documents, the Refugee Travel Document and the Re-entry Permit. However, INS has made changes to the list since the previous regulations were issued. It designated a new document that will eventually replace another document already on the list. The net effect of the interim rule was to reduce the number of documents that established identity and employment eligibility from 10 to 8 documents.

could still use 27 different documents to demonstrate their authorization to work.

Increasing Document Integrity

INS has taken steps to increase the integrity of the documents it issues to reduce fraudulent document use and make it easier for employers to verify the authenticity of the cards they review. For example, in February 1997, INS began issuing a new Employment Authorization Document containing visible security features, such as a hologram. In April 1998, INS also began issuing a new version of the card for lawful permanent resident aliens. In addition to a hologram, the card contains other visible security features, such as a digital photograph and fingerprint images.

However, there will still be ample opportunities for unauthorized aliens to use fraudulent documents to obtain employment. INS plans to replace previous versions of the permanent resident cards issued between 1989 and 1998 with the new version as these cards expire. It could take up to 10 years before all previous versions are replaced. Cards issued from 1977 to 1989 have no expiration date and will remain valid until INS replaces them. This means that existing versions, which are more susceptible to counterfeiting, could still be used fraudulently to obtain employment. Also, statute allows alien employees to present various documents other than the INS documents to demonstrate they are authorized to work in this country. Therefore, unauthorized aliens seeking employment can circumvent the improved security features of INS documents by simply presenting non-INS documents—such as Social Security cards—to employers. Documents such as the Social Security card do not contain enhanced security features at the level of those contained in the new INS cards, and, as previously noted, counterfeit Social Security cards were reported to be widely available. Although SSA has developed several prototype counterfeit-resistant cards as required by the 1996 Act, according to an SSA official, SSA had no plans to replace the existing card with one that contains enhanced security features.

INS and Labor Worksite Enforcement Efforts Have Been Limited

Enforcing the employer sanctions provisions of IRCA will continue to be important because no verification system is foolproof, unauthorized aliens can still use fraudulent documents to circumvent the employment verification process, and not all employers may want to comply with the law. INS has devoted a relatively small percentage of its enforcement resources to worksite enforcement. As a result, the number of employer investigations INS has conducted yearly is only a fraction of the estimated number of employers who may have hired unauthorized aliens. To efficiently use its limited worksite enforcement resources, INS has intended to target its investigative efforts on 15 industries with a history of

using unauthorized labor. During a recent 20-month period, INS conducted about 60 percent of its investigations in targeted industries and about 40 percent in nontargeted industries. Despite a formal agreement that was in effect from June 1992 to November 1998 that sought to enhance cooperation and coordination between Labor and INS, Labor provided limited assistance and had rarely referred employers suspected of hiring unauthorized aliens to INS. Labor is concerned that because most of its investigations are based on employee complaints, actively assisting INS with immigration-related worksite enforcement could reduce employees' willingness to report employer workplace violations to Labor, thus adversely affecting its ability to enforce labor standards. A new agreement signed November 23, 1998, limited this assistance even further.

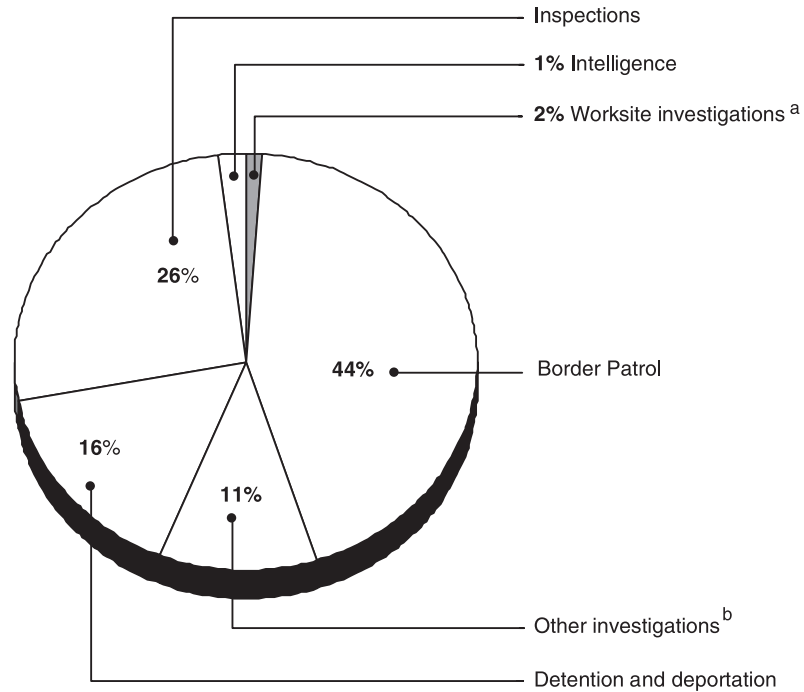
INS Assigned a Relatively Small Portion of Its Resources to Worksite Enforcement

Relative to other enforcement programs in INS, worksite enforcement has received a relatively small portion of INS' staffing and enforcement budget. INS' overall enforcement budget grew by about 130 percent between fiscal years 1994 and 1998, from about \$1 billion to nearly \$2.4 billion. However, INS' Investigations budget, which includes worksite enforcement, increased about 62 percent during this same period. Most of the increased enforcement funding was directed at the southwest border, where a buildup of about 4,000 border patrol personnel was intended to prevent illegal alien entry.

From fiscal years 1994 to 1998, the amount of time that INS personnel spent on all enforcement programs increased from about 12,000 workyears to about 18,800, an increase of about 57 percent. During this same period, the amount of time that INS personnel spent on worksite enforcement increased about 28 percent, from 243 to 311 workyears.¹⁴ These increases notwithstanding, INS consistently devoted about 2 percent of its enforcement workyears to worksite enforcement during this period. (Fig. 1 shows the percentage of time that INS devoted to its enforcement programs in fiscal year 1998.)

¹⁴We could not determine a specific dollar amount spent on worksite enforcement activities because, according to INS officials, INS does not track expenditures within the Investigations budget. INS uses staff workyears reported through its Performance Analysis System to determine the level of effort devoted to specific investigative activities. Worksite workyears include time spent by Investigations agents only.

Figure 1: INS Enforcement Program Workyears for Fiscal Year 1998



N = 18,824

Note: For the major INS enforcement programs, fiscal year 1998 workyears are budget amounts. Actual workyear data for these programs were not available at the time of our review.

^aIncludes actual time spent by INS agents and support staff on investigations that target employers who are suspected of hiring unauthorized workers.

^bIncludes all other investigations (other than employers), such as criminal aliens, drug trafficking, fraud, smuggling, and immigration status violations.

Source: GAO analysis of INS data.

The number of employer investigations INS is able to conduct each year covers only a fraction of the estimated number of employers who may have unauthorized aliens. As previously noted, the results from INS' inspection of a random sample of the nation's 6.5 million employers in fiscal year 1997 indicated that about 195,000 employers had employed unauthorized aliens. In fiscal year 1998, INS' worksite investigators completed about 6,100 lead-driven investigations¹⁵ and about 400 compliance audits¹⁶ for a total of about 6,500 investigations, which equated

¹⁵These investigations were opened in response to a complaint by the public or a referral by another agency.

¹⁶Each year from fiscal year 1989 through fiscal year 1998, INS headquarters selected for inspection a random sample of the nation's employers to determine a nationwide employer compliance rate with

to about 3 percent of the estimated number of employers of unauthorized aliens.

According to worksite program officials, significantly increasing the funding for and staff assigned to worksite investigations may not significantly reduce unauthorized alien employment. Even with a two- or three-fold increase in staffing levels, INS would still only be able to investigate a small portion of the estimated number of employers who may have unauthorized aliens and remove only a fraction of the estimated number of unauthorized alien workers. According to these and other INS officials, most employers want to comply with the law and not hire unauthorized aliens. Therefore, the increased use of electronic verification by those who may be unknowingly hiring unauthorized aliens would permit INS to concentrate its limited enforcement staff on those who knowingly violate the law.

To best use its limited worksite enforcement staff, INS' priority has been to target for investigation employers in specific industries, such as farming, construction, apparel, hotels and motels, and eating and drinking places that historically have had a high probability of violations. However, of the approximately 11,000 cases opened between October 1996 and May 1998, about 43 percent were opened in industries other than those targeted. About 38 percent of the 11,000 cases were in 2 of the targeted industries, eating and drinking places (about 31 percent) and hotels and motels (about 7 percent). According to INS' worksite enforcement program officials, despite their intent to target employers in certain industries, INS opened most investigations on the basis of the leads it received, not by industry.

Labor's Activities Are Limited to Reviewing Employers' Compliance With Paperwork Requirements

The INS and Labor agreement that was in effect between June 1992 and November 1998 called for the agencies to work together, but at the same time, limited how far Labor would go in cooperating and coordinating with INS. As a result, Labor had provided little assistance to INS in identifying employers suspected of hiring unauthorized workers. A new agreement signed on November 23, 1998, limits Labor assistance even further.

In June 1992, officials from INS and Labor's Employment Standards Administration signed a memorandum of understanding that was intended to, among other things, foster cooperation and coordination between INS

IRCA's employment verification provisions. INS discontinued this annual program, called the General Administrative Plan, beginning with fiscal year 1999, to make what it considers more efficient use of its limited enforcement resources. We used the fiscal year 1997 compliance results to determine the estimated number of employers who may have unauthorized aliens because complete fiscal year 1998 data were not available at the time of our review.

and Labor, clarify the enforcement role of each agency, and ensure more efficient use of resources. The memorandum called for the cross training of staff, sharing of automated information, and conducting of joint activities when appropriate. Labor was to review employer compliance with the employment verification requirements during the course of its own investigations. Since Labor visited many more worksites in connection with its own mission than INS resources would permit, Labor's inspections were to bolster INS' coverage of worksites.

In the memorandum, Labor agreed to make prompt referrals to INS of employers suspected by Labor to have knowingly hired unauthorized aliens. However, the memorandum also stated that Labor "will take no action which will compromise its ability to carry out its fundamental mission, regardless of the workers' immigration status" (underlining added). Labor officials told us that they have interpreted this to mean that if Labor investigators delve into worksite immigration matters, beyond reviewing Form I-9s, it could have a detrimental effect on Labor's primary mission of enforcing worker protection laws. A Labor official told us that about 70 percent of Labor's investigations are based on worker complaints. Labor initiates the other 30 percent of its investigations. If employees perceived that Labor investigators were trying to determine their immigration status and possibly report those who may be unauthorized to INS, it would have a "chilling effect" on employees' willingness to report workplace violations.

Labor's concern with preserving the integrity of its mission-related investigations has prevented Labor investigators from carrying out all of the provisions of the memorandum with INS. For example, although the agreement calls for Labor to "make prompt referrals of employers suspected of knowingly hiring unauthorized aliens," Labor field officials told us that they do not conduct any investigative activities to determine whether employees may be unauthorized. The Labor Field Operation Handbook states that the role of Labor investigators does "not include investigating beyond the records (e.g., interviewing employees for I-9 purposes)." Instead, Labor's assistance to INS has primarily been in the form of reviewing employers' Form I-9 paperwork and providing the results to INS. Even in this area, Labor has decreased its activity, although not because of any conflict in mission. The percentage of inspections in which Labor investigators did not determine whether employers were in compliance with Form I-9 paperwork requirements increased from 13 percent of Labor inspections in fiscal year 1990 to 26 percent in fiscal year 1998. According to Labor officials, the increase has been due, in part, to the shortened time that investigators spend at worksites. In many cases,

these officials stated, investigators complete their inspections and leave worksites within 3 days. Since regulations require that employers be given 3 days' advance notice before their Form I-9s will be reviewed, Labor investigators are frequently gone from worksites by the time employers are required to make their Form I-9s available for review.

Labor has referred few employers suspected of hiring unauthorized workers to INS. Of the over 367,000 employer Form I-9 reviews that Labor conducted between fiscal years 1988 and 1998, Labor data showed it referred to INS 236 employers it suspected of having unauthorized aliens. Further, according to Labor and INS field officials, the agencies have undertaken few cooperative efforts, such as cross training, sharing data, or conducting joint investigations.

On November 23, 1998, the INS Commissioner and Labor's Assistant Secretary, Employment Standards Administration, signed a new Memorandum of Understanding. Similar to the 1992 agreement, the purpose of the new agreement is to foster appropriate cooperation and coordination between INS and Labor. In addition, the agreement is intended to enhance worksite enforcement of employer sanctions and labor standards to reduce the employment of unauthorized workers in the United States. According to the agreement, unauthorized workers' willingness to accept substandard wages and working conditions provides opportunities for some employers to hire unauthorized aliens. INS and Labor officials told us and the agreement suggests that unauthorized aliens are a source of "cheap labor," and that their employment leads to the degradation of overall workplace conditions.

Under this agreement, however, Labor will significantly reduce its reviews of employer compliance with IRCA's employment verification procedures. Labor will no longer review employer compliance with the employment verification procedures in investigations stemming from complaints, which account for about 70 percent of all Labor investigations. Labor will only review employer compliance in noncomplaint-driven investigations. The agreement calls for Labor to refer to INS all suspected serious violations, such as the use of fraudulent documents to obtain employment or employers' knowingly hiring unauthorized aliens, but only in noncomplaint-driven investigations.

The agreement is intended to avoid discouraging unauthorized workers from complaining about labor standards violations out of fear of the possible consequences, such as apprehension and possible removal by INS. According to Labor officials, there is a misperception among the

immigrant working community, actively promoted by those who do not want employees to cooperate with Labor, that cooperating with Labor will automatically result in an INS inspection. As a result, according to these officials, Labor investigators have had increasing difficulty in getting employees to cooperate with them. The new agreement is meant to correct this misperception so those workers understand that Labor will not report the results of any of its complaint-driven investigations to INS. Labor officials told us that they hoped the new agreement would result in more employee cooperation, thereby enabling Labor to better enforce workplace labor standards. INS worksite program officials told us that they believe the new agreement may create more barriers to enforcing employer sanctions and reducing unauthorized alien employment. For example, the agreement does not require Labor to refer to INS any serious violations Labor investigators may encounter during investigations that are based upon complaints.

In contrast to this new agreement, the U.S. Commission on Immigration Reform has advocated that Labor take a more active role in employer sanctions enforcement. In its 1997 report, the Commission stated that Labor's participation in verifying that only authorized workers are hired should be seen as integral to its mission of protecting U.S. workers. It recommended that Labor be responsible for verifying employer compliance with the employment verification requirements.

INS Worksite Investigation Efforts Produced Modest Results

The results from INS' worksite enforcement program have been modest. Although a major INS goal was to investigate employers that it believed intentionally hired illegal workers and were "major violators" and/or abusive employers, 83 percent of the INS lead-driven workplace investigations resulted in no employer sanctions. Our examination of about 800 closed cases with the most complete data available, revealed that INS had collected about \$2.5 million, or about one-half of the \$4.9 million that employers had been ordered to pay.

Overall, INS arrested about 27,500 unauthorized workers during the course of its worksite investigations, including about 12,700 at the worksites of employers found to be in compliance with the Form I-9 requirements. Because of INS data limitations, we could not determine how many of these aliens were subsequently released, how many were placed into deportation hearings, and how many were removed from the country. However, INS said that in light of limited detention capacity, the 1996 Act's requirement that INS detain virtually all criminal aliens gives INS less flexibility to detain noncriminals.

Worksite Program in Relation to the Government Performance and Results Act

The Government Performance and Results Act, Public Law 103-62, requires agencies to prepare strategic plans and yearly program performance goals. One of the goals in Justice's September 1997 Strategic Plan was to reduce the incentives for unauthorized employment by (1) focusing enforcement efforts in areas that have a high probability of violation and (2) facilitating the replacement of unauthorized workers with legal workers.

In line with these strategic goals, INS established a goal that its worksite program would investigate employers who intentionally hired unauthorized aliens, that is, substantive violators. To measure its effectiveness in meeting this goal, INS set a goal that 60 percent of all fines should be for substantive violations, and that 146 criminal cases would be presented for prosecution. Further, INS' worksite program was to serve as a catalyst for lawful employment by causing as many as 38,507 jobs to be vacated by unauthorized aliens and, therefore, made available for authorized workers. This figure was to be calculated by adding the number of unauthorized aliens INS arrested to the number that left their job due to an INS enforcement action.

INS Proposed to Fine a Small Portion of Investigated Employers

INS' priority in the worksite enforcement area has been to investigate employers who intentionally hire illegal workers, including prosecuting some employers for criminal violations. However, over a recent 20-month period, INS found IRCA violations and proposed to fine employers in less than 20 percent of the investigations it completed. According to the most recent nationwide data available from INS' Employer Sanctions database, about 9,600 lead-driven employer investigations¹⁷ were completed between October 1, 1996, and May 29, 1998.¹⁸ Of these investigations, 17 percent were served with a Notice of Intent to Fine (NIF) for IRCA violations.

About one-half of the fines proposed by INS were for paperwork violations (i.e., for failing to complete or improperly completing Form I-9s), and one-half were for substantive violations (i.e., knowingly hiring or continuing to employ unauthorized aliens).¹⁹ In addition, INS found 49 percent of the

¹⁷We omitted General Administrative Plan (GAP) cases from our analyses of INS investigative efforts because we wanted to analyze the results of districts' targeting efforts. GAP investigations rarely resulted in fines (1 percent) or warnings (10 percent).

¹⁸INS officials told us that the Employer Sanctions database was likely to be more complete for cases completed after October 1, 1996. After this date, INS' priorities for worksite enforcement emphasized accurate reporting of employer sanctions case activity. We obtained a copy of the database as of May 29, 1998.

¹⁹The INS official who provided us with the database told us that agents in the field are instructed to report that an investigation has resulted in a NIF only after district counsel has approved the NIF and it had been served on the employer. According to the Employer Sanctions database, 170 investigations (2 percent) were categorized as NIFs, but there was no additional information on the size of the proposed

9,634 employers in compliance with paperwork requirements, although this did not necessarily mean that the entire workforce was authorized for employment. INS issued a warning notice to 13 percent of the 9,634 employers²⁰ and took no action in 18 percent of the cases.²¹ About 59 percent of the fines INS issued in fiscal year 1998 were for substantive violations, nearly meeting its goal of 60 percent.

In about 2 percent of the investigations, INS initiated criminal proceedings against an employer. In its midyear review of its fiscal year 1998 priorities, INS expressed concern that its criminal case accomplishments were lagging. The emphasis on criminal cases was intended to refocus worksite enforcement on the most serious offenders. By the end of fiscal year 1998, INS had presented 127 criminal investigations, about 87 percent of its goal.

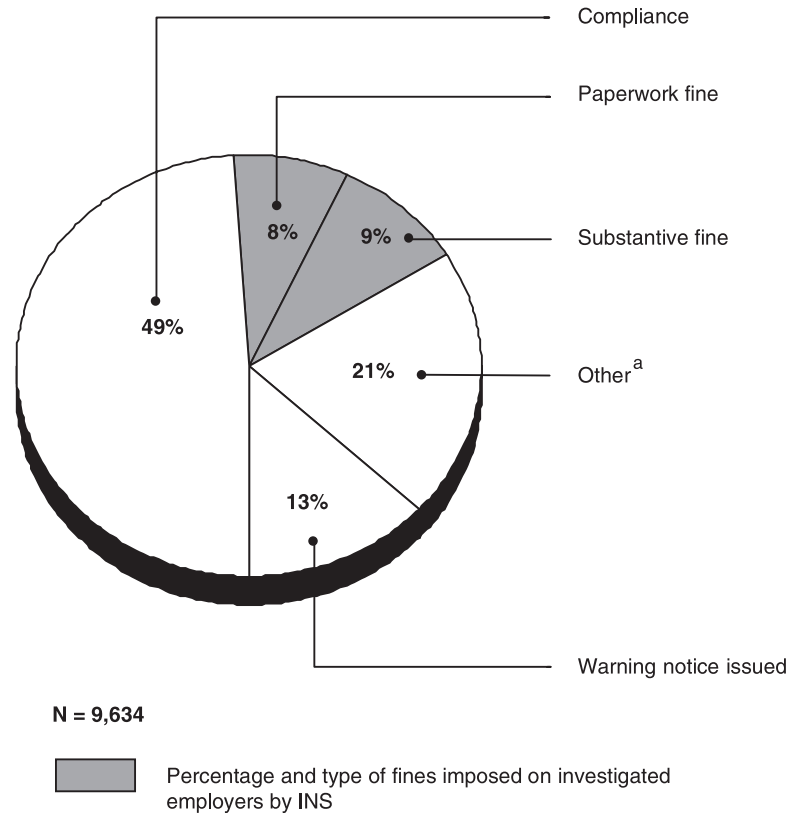
Figure 2 shows the results of INS' completed investigations during the 20-month period from October 1996 to May 1998.

fines or on whether the fines were assessed for paperwork or substantive violations. This official believed that some of these cases were misreported by agents in the field and advised us not to count them as NIFs.

²⁰The use of warning notices was a policy decision adopted in 1987 as a matter of INS discretion. Warning notices are used when INS believes an employer will come into compliance without a fine.

²¹INS completed a case with a determination of "no action" when a determination of compliance, warning, or fine could not be reached for the following reasons: the business closed or changed owners during the investigation; there were no employees; all alien employees were hired before November 6, 1986; the case was transferred to another INS office; the business was the subject of a recent inspection; or INS had already opened an investigation on this business.

Figure 2: Results of INS Investigations Completed Between October 1, 1996, and May 29, 1998



Note: Includes all lead-driven administrative investigations; excludes random compliance investigations (n=992).

^aIncludes all investigations where INS reported that a fine was assessed, but no information was reported on the type or size of the fine (n=170); no administrative disposition was recorded (n=76); and a determination of compliance, warning, or fine could not be reached, for the following reasons: the business closed or changed owners during the investigation; there were no employees; all alien employees were hired before November 6, 1986; the case was transferred to another INS office; the business was subject to a recent inspection; or INS had already opened an investigation on this business (n=1,730).

Source: GAO analysis of INS Employer Sanctions database.

According to INS program officials, several factors may have affected INS' ability to achieve more significant results. For example, the prevalent use of fraudulent documents makes it difficult for INS to prove that an employer knowingly hired an unauthorized alien. In addition, in the pursuit to meet numerical program goals, such as identifying unauthorized aliens, districts may have overemphasized the importance of removing aliens from the workplace to the detriment of the program's overall goal to investigate employers who knowingly violated the law.

INS Collected a Small Portion of Assessed Fines

INS data on the collection of employer sanctions fines are limited, but the most complete data available showed that INS collected about one-half of the amount that employers were ordered to pay. During the period we examined, INS issued about \$13 million in NIFs to 1,655 employers. After INS issues a NIF, the employer has an opportunity to negotiate the fine amount and payment schedule with INS and may receive a smaller fine. Following settlement discussions, INS issues a Final Order for the amount of the fine.²² Because this process may take some time to complete, INS' Employer Sanctions database for the period we examined did not contain complete data on the size of the Final Orders negotiated between INS and employers, or the amount collected from employers.²³ Therefore, to gain a better understanding of INS' enforcement results, we only analyzed closed cases with generally complete information.²⁴ We found that in cases closed between October 1, 1996, and February 1, 1998, INS issued NIFs against 833 employers for a total of \$6.1 million. Final Orders were issued against 794 employers for \$4.9 million, and a total of \$2.5 million (or 51 percent of the amount ordered) was collected. Reasons given by INS officials explaining why the total amount due was not collected were the following: (1) the employer went out of business; (2) the employer filed for bankruptcy; (3) the employer died; or (4) the business moved, and INS was unable to track down the employer.

Whether Unauthorized Aliens Were Replaced by Authorized Workers Is Unknown

In fiscal year 1998, INS identified 44,474 jobs held by unauthorized workers, or about 15 percent above its fiscal year 1998 goal of 38,507 jobs. However, whether authorized workers replaced these unauthorized workers as INS envisioned is unknown. According to INS officials, INS does not generally follow up to determine who is hired in positions that are vacated as a result of an INS enforcement action. Also, the Employer Sanctions database does not contain reliable information on the subsequent disposition of aliens who are arrested in worksite enforcement actions.²⁵ Thus, we could not determine how many of these aliens were

²²Employers may also request a hearing with an administrative law judge to contest the fine.

²³The OIG reported in 1996 that INS' system for tracking and collecting fines needed improvement and recommended that INS develop a better system for tracking financial transactions. INS recently implemented a new system to track the collection of employer sanctions fines. After February 1, 1998, INS no longer kept track of fine collections information in the Employer Sanctions database.

²⁴INS considers a worksite case "completed" when an administrative disposition of compliance, fine, warning, or no action has been reached or a criminal case has been initiated. However, a case is not considered "closed" until final action on the case is completed and no further action is required by either the government or the subject of the investigation to finally adjudicate the case.

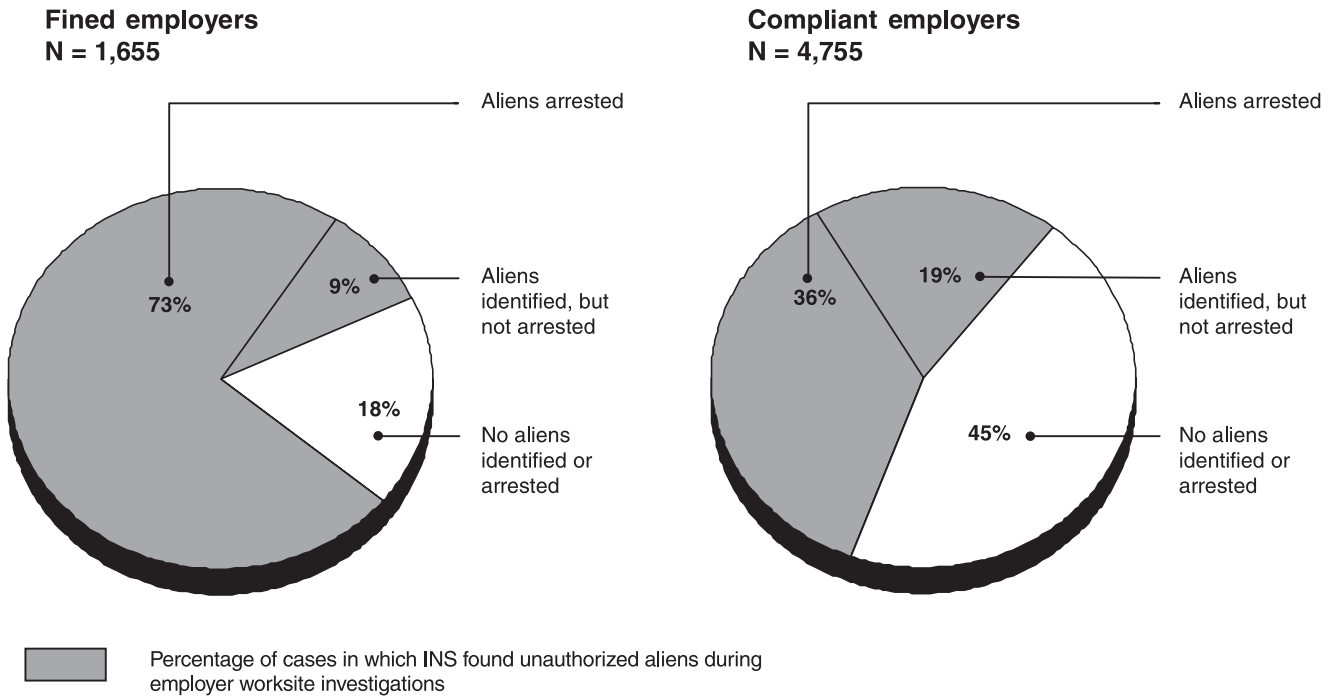
²⁵An INS official told us that data reported on the subsequent dispositions of arrested aliens were not reliable during the period we examined. This official told us that INS has subsequently revised the form used for data submission to collect more reliable information on this data element.

placed into deportation hearings and how many were removed from the country. In a 1995 INS Investigations review of the worksite program, INS acknowledged that its inability to remove aliens found illegally working in the United States eroded program effectiveness. In its fourth quarter review of fiscal year 1998 performance, INS indicated that its detention beds are to be used for mandatory criminal detainees in fiscal year 1999. This, combined with a reduction in budgeted detention space, would impede efforts to detain and remove unauthorized aliens. If unauthorized aliens are not removed, it is possible that they may obtain employment elsewhere, diluting INS' goal of making jobs available for authorized workers.

INS arrested about 27,500 unauthorized aliens during the 9,600 worksite investigations it completed between October 1, 1996, and May 29, 1998. These arrests were made in cases where INS determined the employer complied with Form I-9 paperwork requirements as well as in cases where employers did not comply. In over one-half of the 4,755 completed investigations in which INS found that employers complied with Form I-9 paperwork requirements, on the basis of a review of employers' Form I-9s, INS also found that unauthorized aliens were present (see fig. 3). INS arrested 12,698 unauthorized aliens in these worksites. In a portion of cases, INS investigators could not arrest identified unauthorized aliens because, for example, by the time the investigators went back to the worksite to make arrests, the aliens had left their jobs. According to INS officials, fraudulent document use by unauthorized aliens made it difficult for employers who complied with the Form I-9 verification requirements to avoid hiring unauthorized aliens. Officials also told us that it was often difficult to prove that employers had knowingly hired unauthorized aliens.

Figure 3 shows that in 82 percent of the 1,655 completed investigations in which INS found employers to be noncompliant and proposed to fine employers, INS found that unauthorized aliens were present. INS arrested 7,055 unauthorized aliens in these worksites. INS also arrested 7,739 unauthorized aliens in investigations where INS initiated a criminal case, where employers received warning notices, or where INS completed the case with a determination of no action.

Figure 3: Percentage of Cases in Which Unauthorized Aliens Were Arrested or Identified During INS Employer Worksite Investigations, October 1, 1996, to May 29, 1998



Note 1: Figure does not include investigations that are completed with the issuance of a warning notice; categorized as NIFs but with no information on the size and type of the fine; or completed without the determination of fine, warning, or compliance. The figure also does not include cases with missing data regarding the numbers of aliens arrested or identified.

Note 2: "Identified" refers to unauthorized aliens identified during worksite operations, but not arrested. This category includes unauthorized aliens identified through the I-9 audit that left employment, but were not arrested.

Source: GAO analysis of INS Employer Sanctions database.

INS' Investigations in Targeted Industries and "High-Alien" States Were Slightly More Productive, but Results of Targeting Were Mixed

Worksite investigations in targeted industries have proven only slightly more productive than investigations in other industries in terms of fines assessed, substantive fines assessed, and unauthorized aliens arrested. In 5,265 targeted industries investigations completed between October 1, 1996, and May 29, 1998, fines were assessed in 19 percent of the cases, and 58 percent of these fines were for substantive violations. In the other 4,203 investigations of nontargeted industries,²⁶ fines were assessed in 15 percent of the cases, and 47 percent of the fines were for substantive violations. INS arrested unauthorized aliens in 48 percent of the targeted

²⁶A number of cases (n=166) contained no information on the employer's industry code. These cases were omitted from this analysis.

industry investigations compared to 43 percent of the nontargeted investigations. However, the extent to which INS assessed fines and made arrests varied considerably among the targeted industries.

INS fined a higher percentage of employers in certain targeted industries than in others. For example, INS fined more than 20 percent of the employers in the industrial categories of “eating and drinking places” (24 percent); “miscellaneous food preparation, including seafood preparation” (28 percent); and “apparel and textile products” (44 percent). In contrast, INS fined less than 10 percent of the employers in the industrial categories of “hotels and motels” (5 percent); “nursing homes, nursing care facilities” (6 percent); and “meat products and meat preparation” (7 percent). Table 1 summarizes the results of INS worksite investigations completed over the 20-month period from October 1996 to May 1998.

Table 1 also shows that INS made arrests in certain targeted industries at higher levels than others. For example, INS made arrests in over 60 percent of the completed investigations in the industrial categories of “landscape and horticultural services” (66 percent, 1,154 arrests) and “miscellaneous food preparation” (61 percent, 672 arrests). In contrast, INS made arrests in less than 30 percent of the completed investigations in the industrial categories of “hotels and motels” (28 percent, 544 arrests) and “nursing homes, nursing care facilities” (29 percent, 42 arrests).

Table 1: Results of INS Worksite Investigations Completed in Targeted and Nontargeted Industries, October 1996 – May 1998

Type of industry ^b	Fines ^a		Arrests		
	Number of investigations completed	Percentage assessed substantive fine	Percentage assessed paperwork fine	Percentage of investigations with aliens arrested	Number of aliens arrested
Targeted industries	5,265	11	8	48	14,434
Eating and drinking places	2,672	14	10	49	4,559
Hotels and motels	678	2	3	28	544
General building contractors	354	6	5	58	1,398
Apparel and textile products	343	32	12	55	2,643
Landscape and horticultural services	293	7	8	66	1,154
Masonry, stonework, tile, plaster, insulation	192	9	6	55	538
Roofing, siding, sheet metal	159	6	8	54	575
Services to dwellings, buildings (includes janitorial)	139	4	9	34	462
General farm and field crops	99	4	6	57	468
Nursing homes, nursing care facilities	82	2	4	29	42
Miscellaneous food preparation (includes seafood)	81	16	12	61	672
Meat products, preparation	76	3	4	57	1,135
Heavy construction (not buildings)	70	6	4	33	152
Forestry	20	10	0	40	61
Farm labor contractors and labor management services	7	0	0	43	31
Nontargeted industries	4,203	7	8	43	12,649
Total	9,468	9	10	46	27,083

^aCategory does not include investigations reported as ending with dispositions of Notice of Intent to Fine and where the Employer Sanctions database had no information regarding the type of fine assessed.

^bDoes not include investigations where no standard industry code was recorded (n=166).

Source: GAO analysis of INS Employer Sanctions database.

INS' worksite priorities also call for investigating employers who knowingly hire unauthorized aliens in those geographic areas that have traditionally employed unauthorized aliens. Investigations in the seven states with the highest number of estimated illegal alien residents as of October 1996²⁷ were slightly more productive than investigations in the rest of the country. The 5,202 worksite investigations in the high-alien states resulted in fines in 20 percent of the cases, and 54 percent of these were for substantive violations. The 4,432 worksite investigations in the other

²⁷See [INS Releases Updated Estimates of U.S. Illegal Population](#) (Washington, D.C.: U.S. Immigration and Naturalization Service News Release, Feb. 1997). These states are California, Texas, Florida, New York, Illinois, New Jersey, and Arizona.

states resulted in fines in 14 percent of the cases, and 54 percent of the fines were for substantive violations. A total of 16,048 unauthorized aliens were arrested in cases in the 7 high-alien states, and a total of 11,444 unauthorized aliens were arrested in cases in the other states.

INS Is Changing Its Approach to Worksite Enforcement

INS' approach to how it will enforce IRCA's employer sanctions provisions is changing. In January 1999, INS issued an Interior Enforcement Strategy. According to the strategy, the primary strategic goal of INS' interior enforcement is to reduce the size and annual growth of the illegal resident population. The strategy established the following five strategic priorities:

- identify and remove criminal aliens;
- deter, dismantle, and diminish smuggling or trafficking of aliens;
- respond to community complaints about illegal immigration;
- minimize immigration benefit fraud; and
- block and remove employers' access to unauthorized workers.

With respect to the strategy's second priority, INS law enforcement efforts are to focus on disrupting and dismantling the criminal infrastructure that encourages and benefits from illegal migration, such as alien smugglers and counterfeit document producers. According to an INS official, INS expects that its new emphasis on dismantling the criminal infrastructure that supports unauthorized employment will result in (1) fewer worksite investigations and removals of unauthorized aliens from the workplace, (2) more criminal employer investigations, and (3) heavier penalties.

With respect to the strategy's fifth priority to block and remove employers' access to unauthorized workers, the INS official responsible for drafting the strategy told us that INS will continue using the worksite procedures outlined in the May 1998 directive to build relationships with employers to create an effective deterrent to illegal immigration. Under the May directive, which we previously described, INS' worksite enforcement efforts are to be focused on employers, not unauthorized aliens. By educating employers whom INS has found—through Form I-9 and employment record reviews—to have unknowingly hired unauthorized aliens, INS expects that such employers will be better able to comply with IRCA. This, in turn, would enable INS to focus its limited worksite enforcement resources on employers suspected of criminal activities. INS has not specified how much resources it intends to devote to such employer compliance efforts. According to an INS official, as of March 1999, INS was in the process of developing implementation plans for the strategic priorities.

The strategy calls for INS to prioritize and aggressively pursue criminal investigation of employers who are flagrant or grave violators. However, the strategy does not define “flagrant or grave violation.” As previously discussed, INS’ previous worksite enforcement goal was similar, that is, to investigate employers who were “major violators.” Yet, 83 percent of its investigations resulted in no employer sanctions.

In the months preceding issuance of the final interior enforcement strategy, worksite investigations field units had already begun instituting new procedures in response to the anticipated strategy changes. For example, an INS Central Region official told us employer investigations are now focused on those employers who INS believes may have committed criminal violations. Generally, investigations in this region are not opened in cases where the only allegation is the presence of unauthorized aliens. INS worksite program officials told us that worksite enforcement units in its other two regions continue to open investigations on the basis of the perceived merit of the lead (e.g., a strong allegation that there are unauthorized aliens at a business), even if there is no indication that the employer is involved in criminal activity.

INS plans to implement its new strategy over a 5-year period. During fiscal years 1999 and 2000, INS expects its district directors to conduct threat assessments and use intelligence information to identify the most significant illegal alien problems in their respective districts, including industries that rely on unauthorized alien employment. Using this information, INS plans to focus its enforcement efforts and resources in the geographic areas and industries that have the most serious problems with unauthorized alien employment.

The strategy does not clearly describe the specific measures INS will use to gauge its performance. The strategy states that INS will evaluate its performance on the basis of such things as changes in the behavior or business practices of persons and organizations. One possible measure INS lists for gauging effectiveness in the worksite area is change in the wage scales in certain targeted industries. However, INS has not yet specified how wage scales will be measured; what constitutes a targeted industry and the direction, magnitude, and timing of the expected wage effect; and how INS plans to relate any changes to either its enforcement efforts or other immigration-related causes. According to the strategy, the specific performance measurements within the context of the strategy will be developed in the annual performance plans required by the Government Performance and Results Act.

Because INS is just beginning this new approach and is still developing implementation plans, it is too soon to tell how or how well INS will implement its strategy. It is also too soon to tell what impact, if any, the new approach will have on dismantling the infrastructure that supports illegal migration and employers' access to undocumented workers.

Conclusions

INS faces significant obstacles to reducing unauthorized alien employment. Although IRCA established a process for employers to follow to verify employees' eligibility to work in the United States, significant numbers of unauthorized aliens still obtain employment because the process can be circumvented or easily thwarted by fraud. Employers who want to comply with the law by hiring only authorized workers can be deceived by unauthorized aliens' use of widely available fraudulent documents. Other employers who may seek "cheap labor" could intentionally hire unauthorized aliens under the guise of having complied with the employment verification requirements. In general, employers of unauthorized aliens have faced little likelihood that INS would (1) investigate them, (2) be able to prove that they knowingly hired unauthorized aliens, (3) collect fines, or (4) criminally prosecute them. Further, Labor's efforts to identify employers suspected of hiring unauthorized aliens have been limited and appear likely to be even more limited in the future.

Because enforcement measures can only go so far, we believe INS is going in the right direction by testing electronic verification procedures, proposing to significantly reduce the number of authorization and identification documents, and making documents more tamper resistant to try to improve the verification process. However, obstacles, such as reluctance on the part of some employers to participate in INS' electronic verification pilot programs, have hampered INS' ability to improve the process. Because tools such as electronic verification will be effective with employers in industries with a history of reliance on unauthorized aliens only to the extent that they use them, getting such employers to participate in the electronic verification pilots is important. Labor and other agencies that have contact with employers generally have not augmented INS' outreach efforts by disseminating information on the pilots.

In addition to these obstacles, INS' interior enforcement strategy does not define the criteria for initiating investigations of employers suspected of criminal violations, which is an investigative priority. Having clear criteria is important if INS is to effectively focus its limited staff to achieve its enforcement goals and intended results.

Recommendations

We recommend that the INS Commissioner

- as part of the outreach program for INS' pilot programs, seek assistance from federal and state agencies, such as the Department of Labor and state labor agencies, in disseminating information to employers about the programs and
- in implementing the interior enforcement strategy, clarify the criteria for opening investigations of employers suspected of criminal activities.

Agency Comments and Our Evaluation

We requested comments on a draft of this report from Justice, Labor, and SSA. On March 1, 1999, Justice's Assistant Attorney General for Administration provided written comments addressing its activities related to our two recommendations and two other issues (see app. III).

With respect to our recommendation that INS seek assistance from federal and state agencies in disseminating information to employers about the employer verification pilot programs, Justice agreed that more systematic coordination with other agencies could be useful. Justice stated that it would add this type of coordination effort to other recruitment efforts under way. Justice did not agree, however, that it is appropriate at this time to involve OSC in publicizing the verification pilot programs. Justice's rationale was that the verification pilot programs are still in the test stage, have not been evaluated for their impact on immigration-related job discrimination, and might pose a conflict of interest to OSC. That is, OSC's litigation stance could be compromised if it were to challenge the employment practices of employers it had informed about the pilot.

We continue to believe that OSC should assist INS in disseminating information about the pilots. Our recommendation is not intended to suggest that these agencies endorse the pilot programs. Indeed, we agree that evaluative data are needed to determine the merits of the programs. A sound evaluation, however, requires that a sufficient number of employers volunteer to participate in the pilots so that the results can be meaningfully analyzed and interpreted. Agencies, including OSC, can make clear that by providing information on verification pilot programs, they are merely making employers aware of verification options, and not endorsing the programs or making assurances that employers would not be investigated or prosecuted if circumstances warrant it.

Our draft report, which was prepared before INS issued its final interior enforcement strategy, recommended that the INS Commissioner, in the final interior enforcement strategy, address (1) the criteria for opening

investigations of employers suspected of criminal activities and (2) how INS will investigate employers against whom there have been no allegations of criminal activities, but who may not be complying with IRCA's requirements. Justice did not comment specifically on this recommendation, but stated that since we finished our data collection, INS had completed its interior enforcement strategy.

INS issued its final interior enforcement strategy in January 1999. We reviewed the final strategy and made revisions to the report to reflect the new information and the need to clarify the criteria for opening investigations of employers suspected of criminal activities. Also, the final strategy contains a strategic priority to block and remove employers' access to unauthorized workers that was not in the draft strategy. This priority and INS' explanation on how it plans to implement it appears to address the second part of our initial recommendation. Therefore, we deleted this portion of the recommendation from this report.

Justice raised two other issues concerning our draft report. First, Justice indicated that it does not favor a rule requiring aliens to show only INS-issued work authorization documents as proof of employment eligibility, even if the INS documents are more fraud resistant than other documents. Justice expressed the concern that such a requirement could increase immigration-related employment discrimination because some employers may require foreign-looking U.S. citizens to present INS-issued work authorization documents.

We are not suggesting that aliens be required to show only their INS-issued work authorization document. Our intent is to point out that, although INS has made progress in increasing the integrity of some documents, the verification system can still be undermined through fraudulent use of non-INS work authorization documents. We revised this report to clarify this point.

Second, Justice characterized our draft report as suggesting that a conflict exists between INS' and Labor's missions, whereas Justice believes they are complementary. We agree with Justice that the missions of the two agencies are complementary. As noted in this report, however, Labor officials expressed concern that using Labor investigators to identify and refer to INS workers who may be unauthorized could deter unauthorized workers from reporting labor standards violations, thus compromising Labor's fundamental mission of rooting out employers who violate labor standards. To the extent that this observation is true, our intent was to point out the potential for such a conflict in certain circumstances.

We also received technical comments from Justice and SSA, and we incorporated them in this report as appropriate. Labor did not provide comments on the draft report.

We are sending copies of this report to the Honorable Janet Reno, Attorney General; the Honorable Doris Meissner, Commissioner, Immigration and Naturalization Service; the Honorable Alexis Herman, Secretary of Labor; the Honorable Kenneth Apfel, Commissioner, Social Security Administration; the Honorable Jacob Lew, Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request.

If you or your staff have any questions concerning this report, please contact me on (202) 512-8777. This report was done under the direction of Evi L. Rezmovic, Assistant Director, Administration of Justice Issues. Other major contributors are listed in appendix IV.



Richard M. Stana
Associate Director, Administration
of Justice Issues

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Abbreviations

INS	Immigration and Naturalization Service
IRCA	Immigration Reform and Control Act
NIF	Notice of Intent to Fine
OIG	Office of the Inspector General
OSC	Office of Special Counsel
SSA	Social Security Administration
SSN	Social Security number
GAP	General Administrative Plan

Employment Eligibility Verification Form I-9 and Current List of Acceptable Documents

Figure I.1: Employment Eligibility Verification Form I-9

U.S. Department of Justice		OMB No. 1115-0136	
Immigration and Naturalization Service		Employment Eligibility Verification	
<p>Please read instructions carefully before completing this form. The instructions must be available during completion of this form. ANTI-DISCRIMINATION NOTICE. It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.</p>			
<p>Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins</p>			
Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #
<p>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</p>		<p>I attest, under penalty of perjury, that I am (check one of the following): A citizen or national of the United States A Lawful Permanent Resident (Alien # A _____) An alien authorized to work until ___/___/___ (Alien # or Admission # _____)</p>	
Employee's Signature			Date (month/day/year)
<p>Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.</p>			
Preparer's/Translator's Signature		Print Name	
Address (Street Name and Number, City, State, Zip Code)			Date (month/day/year)

(continued)

**Appendix I
Employment Eligibility Verification Form I-9 and Current List of Acceptable Documents**

Section 2. Employer Review and Verification. To be completed and signed by employer. **Examine one document from List A OR examine one document from List B and one from List C** as listed on the reverse of this form and record the title, number and expiration date, if any, of the document(s)

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): __/__/__		__/__/__		__/__/__
Document #: _____				
Expiration Date (if any): __/__/__				

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) __/__/__ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment).

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name	Address (Street Name and Number, City, State, Zip Code)	Date (month/day/year)

Section 3. Updating and Reverification. To be completed and signed by employer

A. New Name (if applicable)	B. Date of rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.	
Document Title: _____	Document #: _____
Expiration Date (if any): __/__/__	

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Date (month/day/year)
--	-----------------------

Appendix I
Employment Eligibility Verification Form I-9 and Current List of Acceptable Documents

Figure I.2: Current List of Acceptable Documents for Employment Eligibility Verification

A	B	C
Documents that establish both identity and employment eligibility	Documents that establish identity	Documents that establish employment eligibility
U.S. passport (unexpired or expired)	Driver's license or identification card issued by a state or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address	U.S. Social Security card issued by SSA (other than a card stating it is not valid for employment)
Unexpired foreign passport, with form I-551 stamp	Identification card issued by federal, state, or local government agency or entity, provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address	Certification of Birth Abroad issued by the Department of State (form FS-545 or form DS-1350)
Alien registration receipt card with photograph or permanent resident card (INS form I-551)	School identification card with a photograph	Original or certified copy of a birth certificate issued by a state, county, or municipal authority or outlying possession of the United States bearing an official seal
Unexpired temporary resident card (INS form I-688)	Voter's registration card	Native American tribal document
Unexpired employment authorization card (INS form I-688A)	U.S. military card or draft record	U.S. citizen identification card (INS form I-197)
Unexpired employment authorization document issued by INS, which contains a photograph (INS form I-766)	Military dependent's identification card	Identification card for use of resident citizen in the United States (INS form I-179)
Unexpired employment authorization document issued by INS, which contains a photograph (INS form I-688B)	U.S. Coast Guard Merchant Mariner card	Unexpired employment authorization document issued by the INS (other than those listed under A list)
For aliens authorized to work for a specific employer, unexpired foreign passport with form I-94 containing an endorsement of aliens' nonimmigrant status	Native American tribal document	
	Drivers' license issued by a Canadian government authority	
	School record or report card ^a	
	Clinic, doctor, or hospital record ^a	
	Day-care or nursery school record ^a	

Note: For employment eligibility verification purposes, one document from list A or one each from list A and B are required.

^aFor persons under age 18 who are unable to present a document listed above.

Source: INS, "List of Acceptable Employment Eligibility Verification Documents for Form I-9," under interim rules, as of Sept. 30, 1997.

Objectives, Scope, and Methodology

Our objectives were to determine (1) the effectiveness of the current employment verification process in preventing employers from hiring unauthorized aliens, (2) the Immigration and Naturalization Service's (INS) efforts to improve the employment verification process, (3) the level of effort INS and the Department of Labor devoted to worksite enforcement activities and the results of these activities, and (4) changes being made to INS' worksite enforcement program.

To determine the effectiveness of the current employment verification process, we reviewed research and analytic reports that we issued and those issued by INS, the Department of Justice's Office of Inspector General, Labor, the Commission on Immigration Reform, and other immigration researchers. In addition, we held discussions with INS, Labor, and Social Security Administration (SSA) officials and analyzed data from INS' database of employer sanctions cases to obtain INS statistics on the use of fraudulent documents by unauthorized aliens.

To determine what actions INS had undertaken to improve the employment verification process, we held discussions with and obtained documents from INS, SSA, Labor, and Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices officials. Using a data collection instrument, we surveyed INS managers, representing worksite enforcement units in 32 of INS' 33 districts, who attended INS' June 1998 national worksite enforcement conference in San Diego. We asked respondents questions about the availability of pilot programs, the extent to which INS staff made efforts to enroll employers in the pilot programs, and the level of interest in the pilots among employers in their districts. We contacted representatives of four national organizations representing business owners or employee unions to discuss INS' pilot verification projects, among other issues. We selected three of these organizations because they represented business owners or employees in industries that INS targeted in its worksite enforcement investigations. We selected the fourth organization because it represented business owners in a wide range of industries.

To determine the extent of INS' resources devoted to activities in the worksite area, we analyzed INS budget data and workload data. To determine the results of these worksite activities, we also analyzed data from INS' database of employer sanctions investigations. This database contains such information as the business' name, address, location, industry code, owner name, and number of employees. In addition, it contains information on the predication for opening the investigation (i.e., whether the case was lead-driven or randomly selected for a compliance

inspection); the investigation's administrative and/or criminal disposition (e.g., compliance, warning notice, notice of intent to fine, or initiation of a criminal case); the number of unauthorized aliens identified and arrested by INS; the number and type of fraudulent documents identified by INS; the number and type of violations by employers; the amount of civil monetary penalties; and the amount collected by INS.

INS provided us with a CD-ROM containing information on its employer sanctions investigations for the period of October 1, 1996, to May 29, 1998. We analyzed this time period because INS officials told us that the database was likely to be more complete and accurate for this period than for previous time periods. According to these officials, starting in fiscal year 1997, the INS priorities for worksite enforcement emphasized accurate reporting of employer sanctions case activity. Also, we believed that analyzing cases opened or completed after October 1, 1996, would be more representative of INS' recent investigative activities. We discussed the strengths and limitations of these data with INS headquarters officials and with investigators at the local level, but we did not independently verify the validity of these data.

In our survey of INS worksite enforcement unit supervisors (previously described), we also asked questions about the type and extent of (1) worksite activities in the supervisors' districts and (2) coordination with Labor and other federal and state agencies. To further determine the extent of Labor's coordination with INS, we conducted structured telephone interviews with Labor officials from districts in Los Angeles; San Diego; Phoenix; Houston, TX; Chicago; Miami, FL; Baltimore; Atlanta; northern New Jersey; and New York. We selected these offices because they were in the seven states with the highest reported number of illegal aliens, based on INS data collected in 1996 (each state had an estimated population of over 100,000 illegal alien residents), or because INS worksite enforcement unit supervisors indicated they had either good coordination or problems coordinating with Labor. We also analyzed Labor workload data to determine the extent to which Labor referred cases to INS for investigation and conducted structured interviews with state labor officials from California, Texas, Florida, Illinois, New York, and New Jersey to determine the extent to which they coordinated their activities with INS.

To identify changes being made to INS' worksite enforcement program, we reviewed INS strategy documents, attended INS meetings in which INS officials explained worksite enforcement program changes, and discussed these changes with INS headquarters and regional officials.

Comments From the Department of Justice



U. S. Department of Justice

Washington, DC 20530

MAR - 1 1999

Mr. Richard M. Stana
Associate Director
Administration of Justice Issues
General Government Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Stana:

On February 2, 1999, you provided the Attorney General a copy of the draft report entitled ILLEGAL ALIENS: Significant Obstacles to Reducing Unauthorized Alien Employment Exist with a request for comments by February 17, 1999. The following observations represent the Department's views on the issues presented in this report and are comprised of the consolidated remarks of the Immigration and Naturalization Service (INS) and the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). We address our activities related to the two recommendations contained in this report. Our comments also cover promotion of the employment verification pilot program, aliens' ability to choose which documents to show for employment eligibility, and cooperation between the Department of Labor (DOL) and the INS.

The Department has long recognized that employment in the United States is one of the key magnets attracting illegal aliens to this country. As your report reflects, the INS is addressing this issue in a variety of ways--conducting worksite operations, working to reduce the number of documents that can be used for employment verification purposes, improving the security of INS documents, and conducting employment verification pilots. At the same time, OSC works to ensure equal employment opportunities for all eligible workers by preventing and combating immigration-related job discrimination through its education and law enforcement responsibilities.

Outreach on the INS Pilot Program. As part of the INS' outreach efforts to enroll employers in the employment verification pilots, the GAO recommends that the INS "seek assistance from federal and state agencies, such as the Department of Labor and state labor agencies, in disseminating information to employers about the programs." To date, the INS has worked with state departments of labor in connection with the employment pilots on

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a case-by-case basis. For example, the INS has had extensive discussions about the employment verification pilots with the New York State Department of Labor. The INS agrees that more systematic coordination with other agencies such as state departments of labor could be useful in disseminating information to employers about the pilots, and will add this to the other recruitment efforts underway.

In the section discussing the INS' efforts to recruit volunteer pilot employers, the GAO notes that the OSC, among other federal and state agencies that have contact with employers, has not had a formal role in informing employers about the INS pilot programs. (See Draft Report at 23.) One example cited is the absence of informational material on the INS pilots from the OSC's web site and employer outreach materials. While the OSC and the INS share a common mission in educating employers on their responsibilities under the law in order to prevent immigration related job discrimination, the OSC has a particular obligation to enforce the law against such discrimination. At present, the OSC does not publicize the electronic employment verification pilot programs because they are still in the pilot and test stage and have not been evaluated for their impact on immigration-related job discrimination. The INS is coordinating such evaluations and the OSC has worked cooperatively with the INS and its outside evaluators for these and other purposes. Nonetheless, it is premature for the OSC to involve itself in publicizing the pilot programs, when doing so might pose a potential conflict of interest, i.e., if the OSC were to challenge unlawful employment practices by pilot employers, and may compromise its litigation stance.

Interior Enforcement Strategy. The GAO also recommends that the final interior enforcement strategy address 1) criteria for opening investigations of employers suspected of criminal activities; and 2) investigations of employers against whom there have been no allegations of criminal activities, but who may not be complying with Immigration Reform and Control Act's requirements. Since GAO finished its data collection in November 1998, the INS has completed its interior enforcement strategy. (Copy enclosed.) The strategy states that, during Phase One, the INS will begin to identify and target specific industries or localities with a high concentration of criminal activity associated with illegal migration, including smuggling, document or visa fraud, unauthorized employment, and worker exploitation and abuse. These industries and localities will be identified based on annual threat assessments prepared by field offices and supplemented by intelligence and information gathered from the United States Attorney's offices, other law enforcement sources, and local government and community leaders. These assessments will be further reviewed and consolidated at the regional and headquarters levels.

Now on p. 13.

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Now on pp. 3, 11, and 15.

Documentation to Verify Employment Eligibility. The draft report states in several places that the effectiveness of the employment eligibility verification (Form I-9) process and concomitant INS worksite enforcement efforts are limited because non-U.S. citizens may show documents other than INS-issued work authorization as proof of employment. (See Draft Report at 4, 19, 26-27). The report reasons that other forms of work authorization are not as fraud resistant as certain new INS documents that contain various high tech security features.

While the Department recognizes that its worksite enforcement efforts may be limited by allowing a wide range of documents to prove employment eligibility, we would not favor a rule requiring that aliens show INS-issued documents for Form I-9 purposes at this time. Such a rule would be a major departure from established practice under Immigration Reform and Control Act, which allows both citizens and aliens to choose which documents to show. The effort to curb illegal employment must be balanced with other factors, such as ensuring that all legal workers have the means to demonstrate their eligibility to work and avoiding undue burdens on employers and employees. In particular, the Department's experience indicates that adoption of a requirement that non-U.S. citizens show only INS-issued work authorization as proof of employment eligibility could increase immigration-related employment discrimination. Such a rule could encourage employers to require INS-issued documentation from U.S. citizens who appear to them to be "foreign." Similarly, in order to make the improved security features on employment documents as effective as possible to reduce the number of jobs filled by unauthorized workers, employer education is important. Employers must be able to understand how to fulfill their responsibilities not to discriminate against U.S. citizens and authorized workers and not to knowingly hire unauthorized workers. For these reasons, we propose that the report recognize these countervailing concerns in its discussion of limiting the choice of non-citizens with respect to which documents to show for employment eligibility purposes.

Now on pp. 3, 16, and 18-21.

INS and DOL Cooperation. The report suggests a conflict between the INS mission of reducing unauthorized alien employment and the DOL's mission of enforcing worker protection laws. (See Draft Report at 4, 28, 32-37). We believe that these two missions are complementary, not conflicting, and that a comprehensive strategy for controlling and deterring illegal immigration must include effective enforcement of both employer sanctions and basic fair labor standards. The recent agreement between the INS and the DOL, dated November 23, 1998, reflects this fact built on lessons the two agencies have learned over the past decade. The INS' enforcement of the immigration laws can deter violations of labor standards by preventing the employment of unauthorized workers who become victims of sub-standard wages and working conditions. Illegal employment practices artificially suppress wages, lead to

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the degradation of overall conditions in the workplace, and deprive authorized U.S. workers of decent job opportunities. The DOL's responsibility is to enforce labor statutes to ensure that all covered workers are afforded the full benefits and protections of labor laws, regardless of their immigration status. Targeted enforcement of labor standards can serve as a meaningful deterrent to illegal immigration, and helps level the playing field for employers who seek to comply with the immigration laws.

The Department appreciates the opportunity to comment on the draft report and hopes the GAO will find our comments beneficial to its efforts. We have transmitted the Department's technical comments under separate cover and understand that they will be handled appropriately. If you have any questions concerning the Department's comments, you may contact the Audit Liaison Office on 202-514-0469 for assistance.

Sincerely,


Stephen R. Coogate
Assistant Attorney General
for Administration

Enclosure

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