

Illegal Hiring Is Rarely Penalized

Politics, 9/11 Cited in Lax Enforcement

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The Bush administration, which is vowing to crack down on U.S. companies that hire illegal workers, virtually abandoned such employer sanctions before it began pushing to overhaul U.S. immigration laws last year, government statistics show.

Between 1999 and 2003, work-site enforcement operations were scaled back 95 percent by the Immigration and Naturalization Service, which subsequently was merged into the Homeland Security Department. The number of employers prosecuted for unlawfully employing immigrants dropped from 182 in 1999 to four in 2003, and fines collected declined from \$3.6 million to \$212,000, according to federal statistics.

In 1999, the United States initiated fines against 417 companies. In 2004, it issued fine notices to three.

The government's steady retreat from workplace enforcement in the 20 years since it became illegal to hire undocumented workers is the result of fierce political pressure from business lobbies, immigrant rights groups and members of Congress, according to law enforcement veterans. Punishing employers also was de-emphasized as the government recognized that it lacks the tools to do the job well, and as the Department of Homeland Security shifted resources to combat terrorism.

The administration says it is learning from past failures, and switching to a strategy of building more criminal cases, instead of relying on ineffective administrative fines or pinprick raids against individual businesses by outnumbered agents.

It is seeking more resources to sanction employers, toughen penalties and finally set up a reliable system -- first proposed in 1981 -- to verify the eligibility of workers. That would allow the government to hold employers accountable for knowingly hiring illegal immigrants.

The Homeland Security Department also is seeking access to Social Security Administration records of workers whose numbers and names don't match -- access that has long been blocked by privacy concerns.

Still, in light of the government's record, experts on all sides of the debate are skeptical that the administration will be able to remove the job magnet that attracts illegal immigrants.

"The claims of this administration and its commitment to interior enforcement of immigration laws are laughable," said Mark Krikorian, executive director of the Center

for Immigration Studies, an advocacy group that favors tougher workplace enforcement, among other measures. "The administration only discovered immigration enforcement over the past few months, five years into its existence, and only then because they realized that a pro-enforcement pose was necessary to get their amnesty plan approved."

Angela Kelley, deputy director of the National Immigration Forum, which supports immigrant rights, agreed that enforcement has been "woefully tiny."

"Why should the public believe it, because the government hasn't done it before?" Kelley asked.

In recent months, U.S. Immigration and Customs Enforcement, which succeeded the INS, has dramatically stepped up enforcement efforts. It won 127 criminal convictions last year, up from 46 in 2004, and obtained \$15 million in settlements from an investigation of Wal-Mart and 12 subcontractors last fall, a spokesman said. Comparable figures before 2003 were not tracked, the agency said.

In the past few months, ICE has led several high-profile actions: against a Houston-based pallet-services company, Maryland restaurateurs and Kentucky homebuilders, among others. The activity marks a pronounced shift in emphasis, after increasing bipartisan criticism.

However, experts say the linchpin of comprehensive new enforcement plans -- developing an electronic employment-eligibility verification system to replace the paper I-9 forms used for two decades -- is years from being ready. Meanwhile, a cottage industry of document fraud and identity theft will continue, they say.

While most of the government's get-tough rhetoric has focused on people illegally crossing the border, others noted, about 40 percent of the nearly 12 million illegal immigrants living in the United States entered the country legally on visas and simply stayed. That means they probably can be caught only at work.

Major work-site crackdowns have run into trouble in the past. A spring 1998 sweep that targeted the Vidalia onion harvest in Georgia, and Operation Vanguard, a 1999 clampdown on meatpacking plants in Nebraska, Iowa and South Dakota, provide case studies of how the government fared when confronted by a coalition that included low-wage immigrant workers and the industries that hire them, analysts said.

The Georgia raids netted 4,034 illegal immigrants, prompting other unauthorized workers to stay home. As the \$90 million onion crop sat in the field, farmers "started screaming to their local representatives," said Bart Szafnicki, INS assistant district director for investigations in Atlanta from 1991 to 2001.

Georgia's two senators and three of its House members, led by then-Sen. Paul Coverdell (R) and [Rep. Jack Kingston](#) (R), complained in a letter to Washington that the INS did not understand the needs of America's farmers. The raids stopped.

For Operation Vanguard, the INS used a more sophisticated tactic. It subpoenaed personnel records from Midwestern meatpacking plants and checked them against INS and Social Security databases of authorized workers, then interviewed suspect employees. Of 24,148 employees checked, 4,495, or 19 percent, had dubious documents at about 40 plants in Nebraska, western Iowa and South Dakota. Of those workers, 70 percent disappeared rather than be interviewed. Of 1,042 questioned, 34 were arrested and deported.

Nebraska's members of Congress at first called for tougher enforcement, recalled Mark Reed, then INS director of operations. But when the result shut down some plants, "all hell broke loose," he said.

Secretary of Agriculture Mike Johanns (R), who was governor at the time, appointed a task force to oppose the operation. Former governor Ben Nelson (D), now a U.S. senator, was hired as a lobbyist by meatpackers and ranchers. Sen. Chuck Hagel (R) pressured the Justice Department to stop.

Members of Congress at first hostile to immigrants embraced "all the same people who were so repugnant to them before," Reed said, "and they prevailed." Operation Vanguard -- which was designed to expand to four states in four months and nationwide the next year, eventually including the lodging, food and construction industries -- was killed.

Congress "came to recognize that these people . . . had become a very important part of their community, churches, schools, sports, barbecues, families -- and most importantly the economy," Reed said. "You've got to be careful what you ask for."

The mention of Operation Vanguard provokes strong reactions in Omaha, where people say a similar effort today would still cause trouble.

Henry Davis, chief executive of Greater Omaha Packing Company and a third-generation meatpacker, fumes that the INS singled out Nebraska's beef industry. Davis said there is a symbiosis between his company and its workers. His business, which slaughters 2,400 cattle a day, offers free English and citizenship classes, paid vacations, health fairs and citizenship ceremonies to workers, he said.

Lourdes Gouveia, a sociologist at the University of Nebraska at Omaha who has studied the meatpacking industry for two decades, said Operation Vanguard's lessons have gone unlearned. Rather than leave the country after the crackdown, workers just changed jobs.

Meatpackers "need workers, and white Americans are not going to apply for these jobs," said Ben Salazar, a longtime activist and publisher of the newspaper *Nuestro Mundo*. "Immigrants know they're needed, so they will take their chances."

In an interview, Homeland Security Secretary Michael Chertoff acknowledged the administration's record but said a combination of carrots and sticks for business can work.

"It would be hard to sustain political support for vigorous work-site enforcement if you don't give employers an avenue to hire their workers in a way that is legal, because you're basically saying, 'You've got to go out of business,' " Chertoff said.

On the other hand, he said, "businesses need to understand if you don't . . . play by the rules, we're really going to come down on you. . . . That's a very powerful place to stand in resisting people who are going to push back."

Company officials who knowingly employ illegal workers can be fined and, if they continue, face jail time. Housing or harboring illegal workers or laundering money can carry long prison sentences. But the easy availability of fraudulent documents frustrates investigators, as does a law that protects businesses as long as a worker's document "appears on its face to be genuine."

Statistics show that the numbers of fines and convictions dropped sharply after 1999, with fines all but phased out except for occasional small cases. After the Sept. 11, 2001, attacks, a 2003 memorandum issued by ICE required field offices to request approval before opening work-site cases not related to protecting "critical infrastructure," such as nuclear plants. Agents focused on removing unauthorized workers, not punishing employers.

ICE also faced a \$500 million budget shortfall, and resources were shifted from traditional enforcement to investigations related to national security. Farms, restaurants and the nation's food supply chain "did not make the cut," Reed said. "We were pushed away from doing enforcement."

Lydersen reported from Omaha.