



ICE Records Reveal Steep Drop in Worksite Enforcement Since 2013

By Jessica M. Vaughan

The Obama administration has largely abandoned efforts to enforce the laws against hiring illegal workers, according to internal ICE statistics. In the first five months of this fiscal year, ICE conducted just 181 workplace audits and brought charges against just 27 employers. This is a small fraction of the worksite activity ICE completed in 2013, when more than 3,000 companies were audited and 179 employers were arrested. The number of employer fines collected by ICE also has dropped by more than half since 2013. The administration’s near discontinuation of worksite enforcement means that employers now face very little risk in hiring illegal workers and have little incentive to abide by the law.

One of the first immigration enforcement policy changes undertaken by the Obama administration was to shift away from conducting worksite raids of employers engaging in egregious illegal hiring practices in favor of inspecting the personnel records of select employers. This significant policy change was articulated in an April 2009 memo to top ICE investigations personnel in the field.¹ Managers were instructed in conference calls to cease the successful program of raids on scofflaw employers, which caught them in the act of employing illegal workers, sometimes exposed other types of workplace violations, and resulted in the arrest and removal of thousands of illegal workers, immediately freeing up jobs for legal workers.²

Instead, ICE investigative offices received funding to hire forensic accountants to perform hiring paperwork audits, which came to be known as “virtual raids”. When done strategically (and they weren’t always) these audits, together with employer compliance programs and complementary enforcement activity, did help at first to create an improved climate of employer compliance, although they rarely resulted in consequences for the illegal alien workers, who remained free to seek work elsewhere as ICE agents were generally prohibited even from interviewing the workers, much less arresting them.³

ICE records obtained by the Center indicate that after an initial flurry of activity from 2010 to 2013, even these half-a-loaf worksite auditing efforts have been curtailed significantly, with a very sharp drop in recent years. The number of audits conducted has fallen from a high of 3,127 in 2013 to 1,320 in 2014. This year, ICE is on track to complete fewer than 500 audits.

Table 1. ICE Worksite Audits, 2008-2015

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015* |
|-------------------------|-----------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Number | 503 | 1,444 | 2,196 | 2,496 | 3,004 | 3,127 | 1,320 | 435 |
| Employer Arrests | 135 | 114 | 196 | 221 | 240 | 179 | 172 | 65 |
| Fines Collected | \$426,616 | \$1,064,058 | \$5,830,091 | \$8,189,633 | \$8,459,582 | \$9,476,273 | \$8,526,960 | \$4,620,000 |

Source: ICE.
* The 2015 number is a projection based on actual figures through February.

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Fewer audits means that there have been fewer sanctions against employers. From 2010 to 2014, the number of employers arrested for worksite immigration violations hovered near 200 per year. This year, ICE is on track to arrest fewer than 70 employers.

The amount of fines collected from offending employers also has dropped sharply. In each year from 2011 to 2014, ICE collected more than \$8 million in fines from offending employers. This year, ICE is on track to collect less than \$5 million in fines.

Judging from a recent widely reported case in Washington state,⁴ the deterrence value of the Obama administration's audit strategy appears to be limited. In 2012, ICE audited Broetje Orchards, one of the largest commercial apple growers in the country, and found that the company had employed about 1,700 illegal workers, which was more than half of the company's work force. Following such a finding, the company is supposed to terminate the illegal workers and clean up its hiring practices, for example by re-training personnel, enrolling in E-Verify, and using the Social Security Number Verification Service (SSNVS).⁵ Instead, the Broetje Orchards management reportedly tried to pull strings in Congress to avoid sanctions. Any personnel reforms that were implemented were short-lived, because when ICE came back two years later for the follow-up audit, agents found that 950 of the illegal workers identified in 2012 were still on the payroll.

The government's response to this continued flagrant and large-scale violation of the law was a settlement negotiated by ICE's scandal-ridden legal office,⁶ in which Broetje Orchards will pay a fine of \$2.25 million, but will admit no wrong-doing and is now immune from any further liability related to this matter. ICE lawyers appear to have had no interest in proving any wrong-doing, either, which probably would not have been hard to do, especially if ICE agents were allowed to speak to any actual illegal workers.

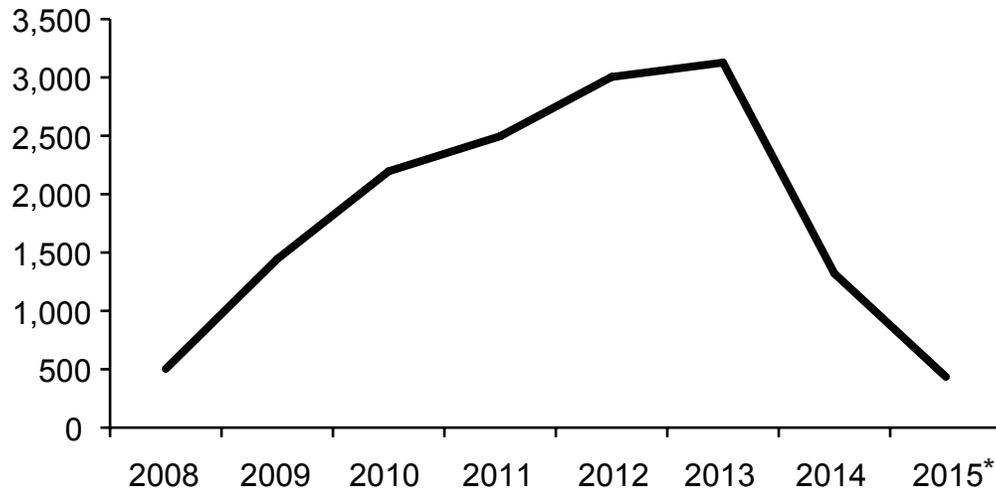
This settlement sounds large, but is more of a light slap on their huge wrist. ICE has emphasized that the \$2.25 million fine is one of the largest ever imposed on an employer, but it amounts to just \$1,300 per illegal worker, a sum that must be far less than the company saved over the years on wages, taxes, and benefits by hiring the illegal workers.

It is difficult to compare cases, because each has different circumstances, but in 2014, an ICE investigation led by the agency's New York and Virginia offices resulted in federal prison sentences of 10-20 years for five defendants who pled guilty to wire fraud and harboring illegal aliens at 7-Eleven stores. The employers also forfeited franchise rights to 14 convenience stores and other assets worth more than \$1 million, and paid \$2.6 million in restitution and back wages to a few dozen illegal employees.⁷ Experience shows that those kinds of sanctions are taken seriously by employers and have a chilling effect on illegal hiring.

Ironically, the 7-11 case, one of the most significant illegal employment cases in ICE history, was prosecuted by then-U.S. attorney Loretta Lynch, who is now the U.S. attorney general. Lynch's views appear to have evolved rapidly since then. During her confirmation hearing just a few months later, Lynch stated that she believes that illegal aliens have a right to work in the United States.⁸

Robust worksite enforcement programs produce numerous public benefits, including deterring illegal hiring, exposing exploitative workplace conditions and tax violations, punishing unscrupulous employers, uncovering document fraud rings and other criminal activity, and, most importantly, restoring job opportunities for legal workers. When considering the allocation of funding for ICE programs, Congress should take care that this critical form of enforcement, which addresses both land crossers and overstayers, is restored to a higher priority.

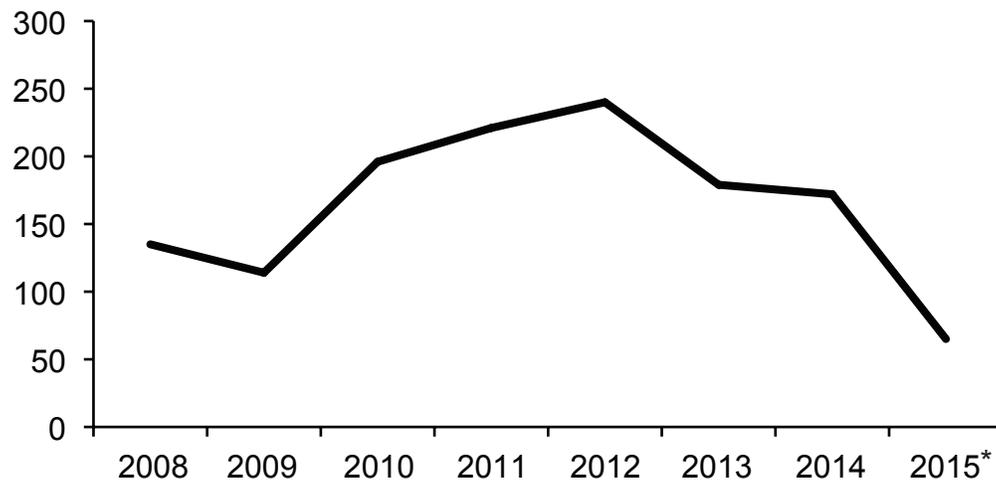
Figure 1. Number of Worksite Audits, 2008-2015



Source: ICE.

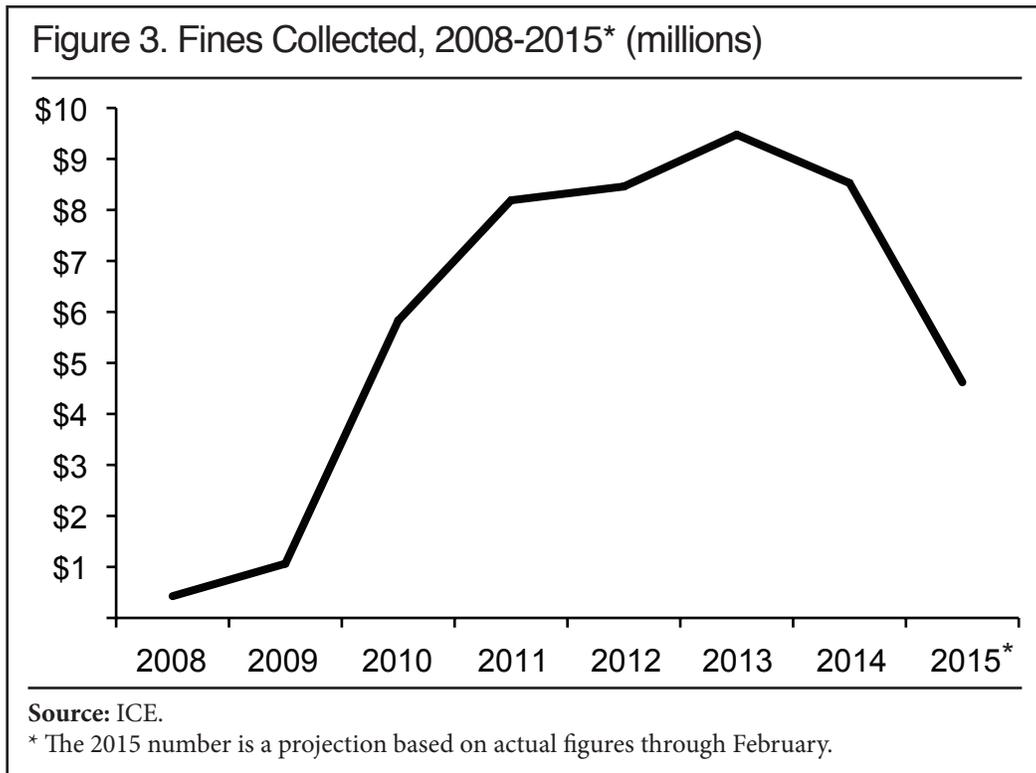
* The 2015 number is a projection based on actual figures through February.

Figure 2. Employer Arrests, 2008-2015*



Source: ICE.

* The 2015 number is a projection based on actual figures through February.



End Notes

¹ [USCIS Memorandum](#), April 30, 2009.

² See Jerry Kammer, [“Immigration Raids at Smithfield: How an ICE Enforcement Action Boosted Union Organizing and the Employment of American Workers”](#), Center for Immigration Studies *Background*, July 2009.

³ For more on worksite enforcement, see [“America’s Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration”](#), testimony of Jessica Vaughan before the U.S. House of Representatives Committee on the Judiciary, February 5, 2013.

⁴ [“Broetje Orchards to pay \\$2.25M in immigration penalty”](#), Associated Press, June 4, 2015.

⁵ [Social Security Number Verification Service Overview](#).

⁶ Jessica Vaughan, [“Lawsuit by Career ICE Attorney Exposes Obama Anti-Enforcement Campaign”](#), Center for Immigration Studies blog, November 11, 2014.

⁷ [“HSI investigation leads to largest worksite enforcement forfeiture in ICE history”](#), U.S. Immigration and Customs Enforcement news release, September 22, 2014.

⁸ Matthew Boyle, [“Loretta Lynch: Illegal Aliens Have Right to Work as Much as American Citizens”](#), Breitbart.com, January 28, 2015.