

Mr. Trump, Give Up on That Wall



Then-president Donald Trump talks with U.S. Border Patrol Chief Rodney Scott as he tours a section of the U.S.-Mexico border wall in San Luis, Ariz., June 23, 2020. (Carlos Barria/Reuters)

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December 11, 2024 6:30 AM

Focus, if you can, on employer sanctions.

FOR the moment, President-elect Trump appears determined to deliver on his promise to deport as many illegal immigrants as possible. But sooner or later, he will turn his attention to “the wall” he has long promised to build along our border with Mexico — segments of which were constructed during his first term in office (albeit without any pesos from Mexico). After all, Trump is a builder — not so much of coalitions, perhaps, but of things: golf courses, office towers, casinos, hotels. But not unlike Mikhail Gorbachev, who more than 37 years ago was exhorted by Ronald Reagan, standing at the Brandenburg Gate, to “tear down this wall,” Trump will eventually have to reckon with the reality that walls cannot stop the movement of masses of human beings.

To be sure, the Berlin Wall was built to keep East Germans from coming *out of* their country, whereas barriers along our border with Mexico are there to keep unauthorized individuals from coming *into* ours. And some

walls are more effective than others. According to the Berlin Wall Foundation, from 1961 to 1989, 101 individuals died attempting to escape to the West. Another 5,000 were apprehended attempting to do so. Even so, approximately 5,000 individuals succeeded in escaping across the wall to freedom in the West.

Yet as a builder and especially as a showman, Trump is drawn to “the wall” as a visible image — a symbol — of his stated goal of ridding the United States of illegal immigrants. More to the point, Trump has used this symbol to distract Americans from a more effective way of deterring illegal immigration. This would be the imposition of penalties on those who hire undocumented immigrants. In fact, such “employer sanctions” were enacted into law in 1986, when after years of intense debate and controversy, Congress finally passed and Ronald Reagan signed the Immigration Reform and Control Act.

Yet to get there, several obstacles had to be overcome. Mexican-American advocates protested that sanctions would result in employers discriminating against and simply refusing to hire *all* “brown-skinned” applicants — those here legally as well as illegally. Surprisingly, employers actually went along with this implausible argument. For even though it impugned their common sense as well as their decency, they too rejected sanctions and sought to evade responsibility for “policing” the legal status of their employees. Additional support for weak or no prohibitions on hiring the undocumented came from libertarians, who successfully played on Americans’ reflexive aversion to what was considered the only means of implementing any such policy: *a national identity card*.

The bargain that was eventually struck — and which we continue to live with — has been a disaster. Immigrant advocates and their allies secured permanent resident status for approximately 2.7 million undocumented individuals. The price paid for this amnesty was sanctions on employers who *knowingly* hire the undocumented. Yet the documents that *all* prospective employees (not just immigrants) were then required to present — such as a school ID or a driver’s license plus a Social Security card — are easy to fake. The results have been predictable. Moreover, employers are not held responsible for the validity of the documents presented to them but merely for maintaining copies that can subsequently be inspected by federal auditors — which rarely happens.

Despite such glaring loopholes, some progress toward more serious enforcement has been made. After the initial passage of the Immigration Reform and Control Act, Congress enacted a pilot program that has subsequently been fine-tuned and expanded. E-Verify now enables employers to obey the law as well as protect themselves against possible fines and prosecution (however unlikely) by verifying the validity of documents presented to them against a massive government database consisting of Social Security numbers, visa information, and other state and federal administrative data.

As an internet-based program, E-Verify responds rapidly to employer inquiries. The Department of Homeland Security has most recently reported that “98.14 percent of employees are automatically confirmed as ‘work authorized’ either instantly or within 24 hours, requiring no employee or employer action.” Of the 1.86 percent who receive “system mismatches,” 0.2 percent are eventually authorized to work, while the remaining 1.67 percent are not.

Yet this process is hardly airtight. To obtain work authorization through E-Verify, one might present a valid passport or green card — both of which include photos. Alternatively, an applicant need only produce a Social Security card *and* a voter registration card, neither of which has a photo ID. Or one could present a birth certificate and a driver's license, even one without a photo! In other words, E-Verify relies on documents that are — to varying degrees — easily borrowed, rented, or counterfeited. One authoritative study reported that during one three-month period in 2008, more than 3 percent of those who applied for work authorization through E-Verify were incorrectly approved. This is the proverbial hole in the dam. Yet this snapshot does not even take into account all those workers and employers who refuse to participate in E-Verify.

In fact, E-Verify has relatively limited reach. The federal government requires its agencies as well as their contractors and subcontractors to use the program. But the Government Accounting Office reports that monitoring and enforcement of these regulations are haphazard and lax. Four states (Alabama, Arizona, Mississippi, and South Carolina) require all employers — private and public — to use E-Verify. In another 18 states, only private contractors doing business with the government are mandated to use the program. Yet once again, mandates are one thing, oversight and enforcement quite another. Rejecting even these half-hearted efforts and refusing to participate in E-Verify in any way are California, Illinois, New York, New Jersey, Massachusetts, Connecticut, Oregon, Washington, and others.

Despite such limitations, E-Verify is the single most effective program to stem the seemingly unending influx of undocumented immigrants. This is why last June, Senator Mitt Romney and five co-sponsors introduced the Mandatory E-Verify Act of 2024. As its title indicates, this legislation would phase in E-Verify for *all* employers over a period of 18 months. It would also raise civil and criminal penalties on those who hire illegal aliens or violate paperwork requirements. Job applicants would also have to provide a photo ID to their prospective employer for verification.

Right now, this bill is sitting in committee, where it will soon die. Assuming it gets reintroduced in the next Congress, it is unclear that President Trump would support it. In an August 2016 stump speech, he did declare: “We will ensure that E-Verify is used to the fullest extent possible under existing law, and we will work with Congress to strengthen and expand its use across the country.” But subsequent reports revealed that his various properties had routinely relied on undocumented workers.

In a May 2019 Fox News interview, Trump revealed his likely gut view of E-Verify, simultaneously boasting and complaining about his company's efforts to comply when building the Trump International Hotel on Pennsylvania Avenue. “We would go through 28 people — 29, 30 people before we found one that qualified,” he told Fox. “So it's a very tough thing to ask a farmer to go through that. So in a certain way, I speak against myself, but you also have to have a world of some practicality,” he added.

For those who continue to believe that E-Verify remains our best hope of stemming the tide of the undocumented arriving here (including those among the hundreds of thousands of individuals and families seeking asylum whose claims are of dubious validity), they might find some comfort in the fact that one of Senator Romney's co-sponsors on his universal E-Verify bill was Senator JD Vance. But then, perhaps not!