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## E-Verify vs. Real Reform: What It Means for Immigrants, Their Communities and the U.S. Economy

ELIZABETH O'CONNOR\*

There is widespread consensus across the United States that the nation's immigration system is broken. However, a divisive and angry debate rages as to what to do. Some call for closed borders, building massive walls, and deportation of "those people" who come to take away jobs from Americans. Others call for humane reform, including total amnesty and the recognition of mobility as a human right. Most Americans find themselves somewhere in the middle –descendents of immigrants (this author has ancestors from Ireland and Poland), sympathetic to those striving for a better life for their families, interested in new cultures, but fearful of the impact on overburdened local schools, hospitals, social services, and jobs. The result is that no one is happy with the current system, including employers, state officials, anti-immigrant forces, immigrant rights advocates, and immigrants themselves (Scherer, 2010).

In this environment, the Obama administration's approach has been to mandate greater enforcement of immigration laws since 2009 while calling for comprehensive immigration reform. The president's argument is that strengthening the enforcement of our nation's laws can set the stage for a rational discussion of immigration reform; that once members of Congress see improved actions against lawbreakers, they will be more confident about discussing reforms that may create a lawful path to citizenship.

Unfortunately, Congress has resisted passing comprehensive immigration reform, and so the actual result of Obama's policy has been simply a massive enforcement push by the U.S. Immigration and Customs Enforcement (ICE). This has not solved the issues, but instead has shown the

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severe limitations of an enforcement-only approach to immigration, and, as will be described below, its damaging effect on the U.S. economy.

The United States has always attracted immigrants. Currently, an estimated 12 million undocumented immigrants live within its borders and 8 million work there. Enforcement measures will never be able to locate –let alone expel– 12 million people nor seal borders, even if such a thing were desirable. Attempts have proven costly and only serve to drive immigrant communities underground, fostering an illegal, informal economy that evades regulation, impedes integration, and risks moving the national economy in the wrong direction.

This article will describe various enforcement measures used in recent years to address immigration and employment, looking in particular at E-Verify, a measure currently being considered in Congress. Then, using the example of one immigrant-dominated industry, janitorial services, it will examine the impact of enforcement-only policies on immigrants, their communities, and local economies. It will make clear that the result has been to steer janitors into an underground economy and to reduce the number of legal, family-supporting, tax-paying jobs in the industry, rather than encourage undocumented workers to leave the United States. Moreover, it shows that unless enforcement actions are connected with a path to legal residency and citizenship, enforcement will expand the underground economy, with a huge work force operating outside the legal and payroll tax systems, which harms both immigrants and the U.S. economy.

## ENFORCEMENT APPROACHES SINCE THE 1970S

Since at least the early 1970s, a mainstay of U.S. immigration policy has been to eliminate the “magnet” of access to jobs by sanctioning employers who knowingly hire immigrants without the correct legal documents (Rosenblum, 2009: 3). For many years, immigrants have been experiencing this policy through workplace raids and roundups, actions during which authorities raid a worksite, round up workers, and deport those deemed –correctly or not– to be in the United States illegally. In addition to the inhumane impact this approach has had on migrants and their families, critics point out that raids do little to actually sanction the employers who hired workers without work authorization. The past decade has seen a

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shift from raids to policies intended to verify that employers can prove their employees are eligible to work (Sherer, 2010).

The Immigration Reform and Control Act of 1986 mandates that all employers fill out an I-9 form for each hire, showing they reviewed one or more documents proving an employee's eligibility to work in the U.S. (such as a passport, a green card, a social security card, etc). The result, predictably, is a thriving market in false documents. In turn, this has led to the creation of programs designed to verify and check the documents used in the hiring process.

In 2007, the Bush administration proposed the No-Match rule, which was quickly blocked by court order and never took effect (DHS, 2009). The rule would have notified employers if the social security number provided by a worker for their payroll did not match the name that number has in the Social Security database. The No-Match notification could come years after an employee began work, and, courts found, the No-Match finding could often be due to typographical errors or unreported name changes. In 2009, following the court order, the federal government announced it would focus its efforts on auditing I-9 forms, as well as push for broader use of a program called E-Verify.

Employers and immigrant workers immediately felt the impact of increased I-9 audits (often called "paper raids"). ICE states that it has carried out up to 2740 audits since February 2010. In an I-9 audit, ICE, usually acting on a tip or lead, asks an employer to turn over their I-9 forms for review. If the documents used in the forms are deemed "questionable," the employer receives a notice and is asked to take action. A major shortcoming of the policy is that ICE often does not inform employers what discrepancies they have found, the procedures for addressing questionable documents, or a timeline for resolving found issues (González, 2011). As a result, employers have chosen to, or feel pressured to, dismiss large numbers of immigrant employees (Cancino, 2011).

Chipotle Mexican Grill, Inc., which employs 25 000 people at nearly 1100 restaurants across the United States, was audited this year. ICE officials reviewed documents from stores in Minnesota, Virginia, Washington D.C., Los Angeles, Denver, and other locations. The investigation is ongoing, and to date at least 500 employees have been fired. According to workers interviewed by Reuters, the chain often knew employees were presenting false documents. Says a 35-year-old mother of four identified as Tanya, "They know beforehand you don't have papers...and after the

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6 years I worked there or the 10 years of some of my colleagues, they get rid of us without warning" (Yekopa, 2011).

Similar audits have occurred at McDonald's, major cleaning companies, and other workplaces around the country. A noteworthy characteristic of these audits is that they target employers with enough records and documents to audit in the first place. In other words, these are relatively large, "formal" employers, who took the initial steps to seek documentation of employees and pay immigrant workers through a legal payroll system, in which workers and the company make payroll tax payments into Social Security, Medicare, and the income tax system. Off-the-books employers or those hiring maids and day laborers from their pickup trucks often escape auditing. According to Javier Morillo, president of the Service Employees International Union (SEIU) Local 26 in Minnesota,

ICE reports targeting egregious employers that exploit workers –but it's become increasingly obvious that this policy is nothing short of lip service. Let's be clear: I-9 audits, by definition, do not go after egregious employers who break immigration laws because many of them do not use I-9 forms. Human traffickers do not ask their victims for their social security cards. (Smith, 2011)

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The emphasis ICE places on auditing large, established companies rather than egregious, lawbreaking employers has become a major source of concern for immigrants and their advocates. Employees impacted by the I-9 audits frequently have long histories in the United States, with children in U.S. schools, communities here, and relatives in Mexico who depend on them. It is unrealistic to think that most will return to Mexico when they lose a job. More commonly, dismissed immigrant workers move to jobs in the cash or underground economy, becoming nannies, day laborers, or working for small, fly-by-night companies (Garza, 2011). These workers swell the large and growing informal economy, leading to more people not paying taxes, and more employers outside the realm of labor, immigration, environmental, and many other regulations.

The growing numbers of ICE audits only reach a limited number of worksites. The electronic verification program called E-Verify, however, threatens to dramatically expand the reach of ICE enforcement efforts and push greater numbers of workers into the underground economy. As SEIU Director for Immigration Strategy and Policy Joshua Bernstein puts it, "E-Verify will be like I-9 audits on steroids" (2011).

## E-VERIFY, EXPANDING ENFORCEMENT WITHOUT REFORM

E-Verify was conceived in 1997 as a voluntary program, called the Basic Pilot Program. Employers, who sign up voluntarily for the program, upload the I-9 Form information collected for new hires to an online system run by the U.S. Citizenship and Immigration Services (USCIS), which then checks that information against the databases of the Social Security Administration (SSA) and the Department of Homeland Security (DHS) (DHS, n.d). In September 2009, E-Verify became mandatory for all federal contractors. Its use is continually expanding, but at this writing, several states, including Georgia, Colorado, and South Carolina, require state agencies and public contractors to use E-Verify; other states, such as Virginia and Rhode Island, require parts of the state government to use it in hiring, as do some cities of California. Mississippi and Utah require large private employers to use E-Verify, and Arizona mandates E-Verify for every employer in the state (Rosenblum, 2011: 4).

Currently, various proposals exist, at both state and federal levels, to expand the use of E-Verify. Proposals vary in scope: some mandate E-Verify for employers over a certain size, some for all employers; for new hires only, or for all current employees. As these proposals are debated, E-Verify is promoted by DHS as a simple method for employers to verify the information given to them by new hires and ensure they are only employing workers who are in the country legally.

The reality, however, is far more complex. The proposed expansion of E-Verify has created alarm among an unusually broad mix of organizations, not only immigrant's rights organizations, unions, and community groups, but also some anti-immigration groups, SSA administrators, several state governments, and even the U.S. Chamber of Commerce.

One major concern about E-Verify is its accuracy and thus its effectiveness. Questions have arisen over E-Verify's ability to properly identify which workers are illegally employed, the potential for discriminatory impacts on workers, and that employers may be encouraged to simply take workers off their formal payrolls. The Westat Corporation, hired by the United States Citizenship and Immigration Services (USCIS) to assess E-Verify, estimates that it misses about 54 percent of unauthorized workers during its database scans (Westat Corporation, 2009). This occurs largely because, while a database can detect if a document is flawed or inaccurate, it cannot determine if it belongs to the person who submitted it (Croft, 2010).

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In addition, in 2010, E-Verify returned Temporary Non-Confirmations (TNCs) erroneously in 0.8 percent of its checks, impacting about 128 000 workers (NILC, 2011b: 2). Under E-Verify, an employer is notified of a TNC, meaning some problem surfaced with their documents. The employer should then inform the worker, who has 90 days to contest or resolve the issue before the program issues a Final Non-Confirmation notice (FNC), at which point the employee should be prevented from working (Rosenblum, 2009: 5).

In reality, however, few employees ever learn of a TNC. Many employers simply opt not to hire them, and the worker is never given the chance to clear up the issue. Employees who have the opportunity to contest a TNC are often able to prove the discrepancy is the result of a data error, a name change, or a new immigration status (NILC, 2011b: 2). The National Immigration Law Center (NILC) gave an example in its testimony before the U.S. Congress: "A U.S. citizen and former captain in the U.S. Navy with 34 years of service and a history of having maintained high security clearance was flagged by E-Verify as not eligible for employment. It took him and his wife, an attorney, two months to resolve the discrepancy" (NILC, 2011b: 3).

Clearly, the process to clear up a false TNC is difficult, time-consuming, and costly for the worker, who probably has to take days off work to do it.

To date, information about E-Verify's accuracy and impact on workers is based mostly on its use by companies who volunteered for the program, as well as the state and federal contractors and agencies required to use it. This group is, by definition, motivated to use the system and generally has the logistical capacity to use it correctly. Should the E-Verify program become mandatory, advocacy organizations have expressed deep concern about its impact on employers who are required to use the system against their wishes or who do not have the necessary capacity. Another concern is that employers will use E-Verify in a discriminatory manner, or begin to shift workers off the books, leading to lost taxes for state and federal government, as well as opening the door to exploitative practices against vulnerable workers (NILC, 2009: 2).

For some employers, the logistics of using E-Verify are daunting. Construction companies, for example, employ large numbers of immigrants (22 percent of Mexican immigrants work in construction [Batalova, 2006: 6]) and usually do not have computers at worksites (Vedantam, 2011). Will these employers simply shift to the practice of using day laborers who are paid a daily cash wage and therefore have no recourse or protection

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against incorrect wages or help if they are injured? Evidence indicates that employers with off-the-books workers may be more likely to violate wage, safety, and environmental regulations (Bernstein, 2011). If employers move employees off the books, hundreds of thousands of workers could find themselves beyond the reach of regulation: no social security network, no proof of employment, no labor protections, and also no longer paying taxes to support the communities where they live.

Some employers are likely to assume that job applicants with foreign-sounding names are more likely to have issues with E-Verify and will create extra paperwork and take longer to hire. Employers may thus use E-Verify as a pretext for discriminatory hiring practices. The assumption that native-born workers will sail through E-Verify, while foreign-born workers probably will not is likely to shape interviewing and hiring practices, especially among those employers who are required to use the system by mandate, not by choice.

We can get a sense of how mandatory E-Verify could work in practice by looking at Arizona. The Legal Arizona Workers Act ruled that all employers in Arizona must start using E-Verify as of January 1, 2008. In reality, Arizona employers seem resistant to its use. Census Bureau data for the fiscal year 2009 show that for the state's 1.3 million new hires, only 730 000 E-Verify checks were run (Berry, 2010). The Arizona Chamber of Commerce estimates 100 000 to 110 000 businesses have employees, but, as of July 2010, only 34 327 firms had signed up to use E-Verify (Berry, 2010). Small businesses are especially reluctant to assume the cost and burden of E-Verify. In Arizona, business owner Mike Castillo of Scottsdale explained to a local paper that the program is not user-friendly for small businesses and that "if you don't have the luxury of a human-resources staff, E-Verify takes time away from your core business" (Berry, 2010).

Seeing and hearing this, business organizations have been leery of expanding E-Verify. In a letter to DHS, the U.S. Chamber of Commerce, which represents more than 3 million U.S. businesses, questioned the potential liability, burden, and privacy issues mandatory E-Verify could create for its members (Johnson and Nice, 2011). "I have a real mixed reaction from my members," Chamber Senior Vice President Randall Johnson told reporters. "Some find it workable, others do not. If you are running a small business, there is aversion to a new system that will make things more complicated" (Vedantam, 2011). Some state Chambers of Commerce have gone further. In Georgia, House Bill 87 and Senate Bill 40 would require

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many businesses to use E-Verify. "There are some inaccuracies within pilot programs such as E-Verify," stated David Raynor, a lobbyist for the Georgia Chamber of Commerce, in February 2011 before the state legislature (Raynor, 2011). In Florida, the Chamber of Commerce sent out an e-mail alert in May 2011, asking its members "to contact Senators NOW and tell them you OPPOSE mandatory E-Verify" (Restrepo, 2011).

Among the employers most concerned about E-Verify are farmers and agricultural companies. These industries, which rely heavily on undocumented workers, caution that mandatory E-Verify could be completely destabilizing. "Simply put, any E-Verify expansion that comes without meaningful immigration reform would be disastrous for the American agricultural economy," says Craig Rugelbrugge, vice president of the American Nursery and Landscape Association. "It will leave the United States importing food and exporting jobs" (Vedantam, 2011).

E-Verify's impact on workers has been devastating. A survey of 376 immigrant workers in Arizona found that 33.5 percent had been fired due to erroneous E-Verify non-confirmations, and *none* of them had been informed, as required by law, that they could appeal the E-Verify finding (Issacs, 2009). It is not only immigrant workers who are affected. For example, a worker in Florida who is a U.S. citizen lost her telecommunications job due to an E-Verify error. Despite contesting the error with government officials, she remained unemployed for several months (NILC, 2011b: 2).

According to the NILC, "In fiscal year 2009, about 80 000 workers likely received erroneous findings from the system and may have lost their jobs as a result" (2011a). NILC's prediction based on these patterns is that if E-Verify is made mandatory nationwide, about 1.2 million workers would need to contact some government agency to correct erroneous non-confirmations, and it is likely that close to 770 000 of those workers will lose their jobs.

With E-Verify, the SSA, will face a burden that could affect elderly and disabled persons across the United States. Undocumented immigrants paid an estimated US\$12 billion into the Social Security Trust Fund in 2007, and similar annual contributions have helped keep Social Security solvent in recent years (NILC, 2011b: 5). If millions of undocumented workers move into the informal economy, SSA will lose this income. Moreover, SSA will bear a large part of the burden of implementing mandatory E-Verify. An SSA administrator testified before the U.S. Congress that it

could need to process as many as 154 million queries as employers check the records of their employees (NILC, 2011b: 6), and as many as 3.6 million workers would need to visit a local SSA office to correct their records or risk losing their jobs (NILC, 2011b: 7). This could “cripple SSA’s service capabilities,” leaving senior, disabled, and retired Americans in the lurch (NILC, 2011a).

Finally, E-Verify will also be costly to implement, potentially up to US\$3 billion over 5 years, according to Congressional Budget Office (CBO) estimates (NILC, 2011a: 3). But the larger expense will be in lost tax revenues. As in the case of the I-9 audits described earlier, undocumented workers who lose their jobs are unlikely to leave their communities in the United States. If they cannot change their legal and work status in the U.S., they will become part of the underground economy, taking jobs where employers pay cash and do not pay taxes. This has serious consequences for tax revenues at the local, state, and federal levels (NILC, 2011b: 1).

In 2008, the CBO estimated that federal revenues would decrease by U.S. \$17.3 billion over the 2009-2018 period if E-Verify was made mandatory (Orzag, 2008), during a time when the United States is struggling toward economic recovery. The impact in Arizona lends credibility to these estimates. In 2008, the first year in which E-Verify was mandatory, income tax collection dropped 13 percent from the previous year, but other types of tax revenue, such as sales tax, dropped by much smaller percentages. This implies that workers were not paying income tax but were continuing to earn money to make purchases (González, 2008). As this drop in income tax revenue occurs, Arizona is facing a huge budget gap and faltering economy, and without a path to become legal citizens and authorized workers, Arizona’s immigrants will still work but will be unable to fully contribute to the state’s economic recovery.

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## THE JANITORIAL INDUSTRY: A CASE STUDY OF THE ELLIS ISLAND INDUSTRY

Janitorial services have been called the “the Ellis Island industry” (Regan, 2011). Since the turn of the twentieth century, the growth of U.S. cities has spurred a demand for labor to clean and maintain office and apartment buildings, and recently-arrived immigrants often filled the need. In 1921, Polish immigrants founded the Service Employees International

Union, one of the largest in the United States today. In recent decades, the industry has become predominantly Latino. Of Mexican immigrants in the U.S., 32.9 percent work in service and maintenance jobs (Batalova, 2006). In some cities, other nationalities are also common in the cleaning industry: for example, Polish and Serbian immigrants in Chicago and East African immigrants in Minneapolis.

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In addition to being comprised largely of immigrants, the cleaning industry is also an area where large "formal," law-abiding employers compete with off-the-books, fly-by-night employers. It is an industry that represents the impacts of an enforcement-only immigration policy.

There are roughly three tiers of employers in cleaning: national and regional unionized companies with good, negotiated wages and benefits; non-union companies who tend to run legal payrolls and fulfill Social Security and tax requirements but pay minimum wage with few benefits; and underground, cash-only companies who often violate minimum-wage regulations and do not participate in Social Security or pay taxes. To date, ICE audits have mostly affected cleaning companies and their employees in the first tier.

For seven years, Alondra had worked for the ABM cleaning company in Minneapolis, cleaning skyway tunnels and the city's large sports arena. Her husband worked for the same company. As she later described to a journalist, they were edging into the middle class with steady, unionized employment. They had bought a small house, renovated it, and had a child. Then, in October 2009, their world collapsed. ABM informed them that ICE had audited the company's personnel files. After years of employment and hard work, Alondra and her husband were asked to bring in "documents that ICE deems acceptable." They were unable to do this, and were fired (Kaye, 2011).

In Minneapolis alone, almost 1500 unionized janitors lost their jobs during 1-9 audits in the past 18 months. An audit of the ABM cleaning company in 2009 led to the dismissal of 1200 workers and a later audit of Harvard Maintenance resulted in 240 more job losses (in addition, the Chipotle audit mentioned earlier led to a couple hundred more dismissals in Minnesota) (SEIU Local 26 website). What happened to these workers?

In Alondra's case, she and her husband are scraping by on house-keeping work, dog-walking, and other odd jobs, always paid in cash. They now rent their house to boarders and live in the attic with their son. They no longer have access to medical care. They have been pushed fur-

ther underground, earning cash wages, paying fewer taxes, and living a marginal existence. But she has not even considered returning to her country of birth, Ecuador. “I have my home here, I have my child. I have nothing back in my home country” (Kaye, 2011).

SEIU Local 26 in Minneapolis, which lost nearly a quarter of its membership during these audits, tracked a group of its laid-off members for six months. Two-hundred fifty workers filled out surveys, describing how they were impacted by the job loss and what their plans and alternatives were (Nammacher, 2011). Of these workers, only 5 percent were even considering a return to their country of origin. Nearly all found some other kind of employment in Minnesota. The reason, says SEIU Local 26 Secretary Treasurer Greg Nammacher, “is that the economy needs them. The difference is in wages: most had been earning US\$13 an hour plus benefits while they had been in our local. Now they are in low-paid, cash-only jobs. The effect has not been to make immigrants leave; it has been to depress wages” (Nammacher, 2011).

Not only immigrants who lost their jobs experienced depressed wages. After the audits, ABM filled those positions with workers hired through a temp agency. Since they no longer had union jobs (due to subcontracting), the new workers, largely African-American youth, earned US\$9/hour and fewer benefits (Nammacher, 2011). In this case, Local 26 worked with both the fired and new employees, Latinos and African-Americans, and together filed a legal suit for discrimination that was eventually successful. They also succeeded in organizing the new ABM employees and in returning the wage level to \$13/hour (Nammacher, 2011). This was due to the presence and efforts of an exceptionally active union local; however, this is unfortunately not likely to occur in other locations where such support does not exist.

While there is not yet any research about the fiscal impact of the Minneapolis-area ICE I-9 audits on the region’s economy and tax revenue, anecdotal evidence suggests the impact is not likely to be positive. While tracking fired employees over months, the local has noted nearly 500 home foreclosures related to the job losses. As a result, families and children are relocating, and students are often moved from one school to another. With some of the local’s janitorial members working in school districts, they have heard stories of schools dedicating more resources to uprooted children. Their tracking also suggests that a larger number of families are in contact with public service or charity institutions to receive assistance or

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counseling (Nammacher, 2011). At the same time, with many of them working for cash wages in the informal economy, it is almost certain that the payroll tax revenues and social security payments from these workers have declined.

These stories, repeated thousands of times across major cities, mean that union locals representing janitors find themselves smaller and with diminished power, while non-union, underground cleaning companies are growing. If the goal of the Obama administration and legislators is to reduce the number of undocumented immigrants in the United States, enforcement-only policies are not achieving that goal. I-9 audits and E-Verify are not affecting cleaning contractors with workers off the books. Instead, the result has been to steer janitors into an underground economy and to reduce the number of legal, family-supporting, tax-paying jobs in the industry.

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For the most part, immigrant janitors, even unionized ones, work long hours for low pay precisely because the path to citizenship and better employment opportunities is denied them. If immigration enforcement were combined with improved enforcement of labor laws to create better jobs and a route that law-abiding immigrants could follow to become documented citizens, it could result in pressure on underground, law-breaking employers. But to date, ICE has not pursued employers in the third tier of the cleaning industry, the law-breaking and underground companies. Instead, the audits are creating pressure on the industry's best employers and pushing many workers into lower paying jobs.

Only if paired with a path to citizenship and directed at law-breaking underground employers can immigration enforcement play a role in reforming these employers, reducing the number of undocumented workers, and strengthening the U.S. economy. But current enforcement measures in the cleaning industry and in many others have simply led to a growing workforce operating outside the legal and tax systems, which is bad for both immigrants and the U.S. economy.

## CONCLUSION

In the United States, always a melting pot, immigrants and immigrant workers are here to stay. As President Obama emphasized in a speech in May 2011 by the Texas border, "There is consensus around fixing what is bro-

ken" (Obama, 2011). Immigrants can be –and in many cases are– part of the solution to the U.S. economic crisis. For this to be the case, however, the United States needs comprehensive immigration reform, allowing hard-working immigrants to become legal residents and motivating employers to create more tax-paying jobs that contribute to the greater economy. Resistance by congressional Republicans to full immigration reform means that current ICE efforts such as I-9 audits and calls for expanding E-Verify are likely to hurt not only immigrants but also the U.S. economy. As such, a broad group of organizations, representing not only immigrants but also business and local governments, is expressing growing concerns about the direction immigration policy is taking. As reflected in regional examples, like Arizona, and in sectoral examples, like the janitorial industry, fixing the immigration system must pair enforcement efforts with full, fair immigration reform. Immigrants, and all Americans, can only hope that the U.S. political system will eventually understand and address this reality.

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