

# READING THE TEA LEAVES

Utah should be wary of the problems that SB 81 may cause and should change the law once the problems appear.

SB 81 SUBSTANTIALLY  
INCREASES STATE INFLUENCE  
IN CITIZENS' LIVES.  
RESPONSIBLE CITIZENS  
RIGHTLY ASK: "WHAT WILL  
THE CONSEQUENCES BE?"

## INTRODUCTION

Responsible citizens are rightly concerned about the effects that SB 81 will have on Utah's communities and businesses once it is implemented. The law substantially increases the influence of state government in citizens' lives, and is likely to impact most people either directly or indirectly. Such actions will have consequences, but what will they be?

No one, of course, can clearly foresee all the outcomes. Due to significant flaws in the new law, however, many impacts will likely be negative.

One reason SB 81 will have adverse effects is that the law is based on a false notion: undocumented immigrants behave differently than the rest of us. It is premised on the idea that, after arriving in Utah, undocumented individuals become social parasites that act based on some inherently alien and criminal nature.

Hence, being undocumented must mean that gaining access to public benefits is life's primary motivation, or that you must be a drug dealer, a violent gang member, or someone who preys on innocent children. In other words, you are a criminal whose "victimless crimes" are beyond the pale and only one question remains: "what part of illegal don't you understand?" The reality, of course, is much more complex than what is conveyed by this simple question.

Ironically, most Utahns commit similarly "victimless crimes" every day with little uproar. For example, driving too fast on the highway was the second-

leading cause of traffic deaths in Utah in 2008.<sup>1</sup> Further, the number of speed-related deaths that year (55) was equal to the number of murders and negligent homicides combined.<sup>2</sup> Yet, despite the devastating tragedies caused by speeding, responsible citizens understand

that, similar to illegal immigration, such an offense does not warrant the title of “criminal.”

Far from exhibiting criminal behavior, undocumented immigrants in Utah get married just like the rest of us, they

work hard just like the rest of us, once they get settled they obey the law just like the rest of us, and they try to assimilate into society just like the rest of us.<sup>3</sup> To use a medical analogy, SB 81 is a treatment based on a flawed diagnosis. And just like most such treatments, SB 81 will probably do more harm than good to the people that it aims to protect.

From Sutherland’s perspective, the damage will impact Utah citizens in two main ways: 1) their public safety, and 2) their employment. Once these impacts surface, the state should take action to responsibly modify or repeal Utah’s new immigration law.

## PUBLIC SAFETY

SB 81 will make Utahns less safe because undocumented immigrants are not a primary source of crime in the state. This assertion is supported by data on prison populations at both state and county levels.

For example, between 2004 and 2008 the undocumented-immigrant portion of the state-inmate population remained essentially flat, at just under five percent.<sup>4</sup> During the same period, however, the undocumented portion of the total state population grew by 1.2 percentage points.<sup>5</sup> Moreover, the total number of undocumented immigrants in Utah grew by 57 percent over that time.<sup>6</sup> Though some have criticized such use of state-inmate data, those criticisms are misplaced.<sup>7</sup> At the county level, undocumented immigrants represent less than four percent of the county-jail population.<sup>8</sup>

In other words, SB 81 commits an excessive amount of resources toward a relatively minor source of serious crime. It will subsequently have the perverse effect of damaging local law enforcement’s ability to prevent such crime, largely because of its impact on the rest of the undocumented community.

Law enforcement officials in Utah have succeeded at capturing undocumented criminals by gaining cooperation and assistance from undocumented immigrants who obey the law once they are here.<sup>9</sup> By creating a law like SB 81, which targets undocumented immigrants regardless of criminal record and simultaneously allows local law enforcement to act as federal immigration agents, the state will likely lose the trust of the undocumented community. The outcome will be more drug dealers, murderers, and violent criminals on Utah’s streets.

Perhaps even more troubling is that SB 81 allows private citizens to sue local law enforcement for failing to perform administrative duties like sharing information on undocumented individuals.<sup>10</sup> Though this provision may be well-intentioned, it will push law enforcement to spend more time on paperwork and less time catching criminals. After all, it will be better to let a few crimi-

**FACT: IDENTIFIED  
UNDOCUMENTED IMMIGRANTS  
ACCOUNT FOR LESS THAN FIVE  
PERCENT OF STATE PRISONERS  
AND LESS THAN FOUR PERCENT  
OF COUNTY-JAIL INMATES**

nals get away due to a little unnecessary paperwork than to let a lot of criminals get away because public resources were drained by an expensive lawsuit.

Of course, it would be best if the criminals did not get away in the first place because the excessive paperwork did not exist. If the state begins to see signals that public safety is diminishing after SB 81 is fully enacted, the burdens placed by the law on local law enforcement should be repealed.

## EMPLOYMENT

When SB 81 goes into affect, most businesses seeking contracts with the state will have to verify their employees' legal status through the federal E-verify program.<sup>11</sup> Additionally, many businesses will probably sign onto the system to avoid potential lawsuits that the new law creates.<sup>12</sup>

When the rush to confirm legal status occurs, some Utahns will be improperly denied employment. This will occur for a variety of reasons, some of which are illustrated by the experience of Arizona, where using E-verify is mandatory for all public and private employers.<sup>13</sup>

The most common complaint reported by businesses in Arizona is that the system misidentifies legal employees, identifying them as illegal. Notices of such misidentification also intimidate employees because of their resemblance to formal legal documents. An evaluation of E-verify also showed that the system is many times more likely to misidentify legal immigrants than citizens as unauthorized employees.<sup>14</sup>

These seemingly-fixable problems lead to improper job denials in large part because many employers, par-

ticularly small businesses, do not receive training in the rules and proper use of E-verify.<sup>15</sup> Some, for instance, pre-screen potential employees before hiring them.<sup>16</sup> Other employers do not understand the rules and fail to inform employees who are misidentified that they have an opportunity to fix the problem.<sup>17</sup>

In California, one such rule violation kept a U.S. citizen whose name is Carmen from getting a job.<sup>18</sup> She was misidentified by E-verify, but her would-be employer failed to notify her that she could contest the system's mistake. Additionally, the employer illegally asked her to produce further documentation of her work status. Unfortunately, Utahns can expect similar results since SB 81 fails to provide training for employers in the proper use of E-verify.

Other Utahns may be denied work simply because overburdened federal employees cannot fix mistakes quickly enough. A 34-year Navy veteran with high-security government clearance, for example, was unable to resolve an E-verify misidentification for two months.<sup>19</sup> Consequently, it is likely that the hundreds of mistakes that E-verify will make after SB 81 goes into effect could lead to many Utahns wrongly being denied work.

In addition to employees, employers will be adversely affected as well. The impact on employers will likely be uneven and burdensome, despite a low reported error rate in the E-verify system.<sup>20</sup> For instance, Intel Corporation experienced a much higher error rate

**FACT: CARMEN, A LEGAL U.S. CITIZEN IN CALIFORNIA, WAS DENIED A JOB BECAUSE SHE WAS MISIDENTIFIED BY E-VERIFY**

when it ran its new employees through the E-verify system in 2008.<sup>21</sup> In all, 13 percent came back as unauthorized, though all of them were later found to be legal workers. Verifying the work status of these employees came only after “significant investment of time and money and lost productivity.”<sup>22</sup>

While a large business like Intel may be able to absorb such losses, many employers in Utah would likely be crippled by them, particularly in such a tough economic climate. For small businesses, which employ nearly 50 percent of Utahns in the private sector, such

costs could be a death blow.<sup>23</sup> For the more than 71,000 currently-unemployed Utahns, the timing of SB 81 could not be worse.<sup>24</sup>

Once the problems of E-verify begin to surface in Utah, the state should

repeal both the mandate to use the system and the penalty to private businesses for not using the system. The state should instead move toward a real solution to the problems associated with undocumented-immigrant employment: a state-based work permit that allows our undocumented neighbors to legally work without the need for status verification.

## CONCLUSION

While foreseeing the impacts of SB 81 is an inexact science to say the least, certain outcomes can be reasonably predicted. These reasonable projections are one reason why many responsible citizens object to the law. As SB 81 is implemented, both the state and the public

should track and record its impacts, for better or worse, and change or repeal the law altogether if the negative impacts are significant.

## ENDNOTES

1. In 2008, 55 Utahns died from speed-related traffic accidents, second only to improper use of safety restraints. “Fatality Type,” Zero Fatalities, <http://ut.zerofatalities.com/pdf/2008zerostats.pdf>, accessed June 12, 2009.
2. “Crime in Utah – Preliminary Report,” Utah Department of Public Safety, <http://publicsafety.utah.gov/bci/documents/2008prelim.pdf>, accessed June 12, 2009.
3. Sutherland Institute, *Utah’s Citizens and Illegal Immigrants: Side-by-Side*, August 27, 2008, <http://www.sutherlandinstitute.org/uploads/immigrationSideBySide.pdf>. Sutherland Institute, *Just the Facts*, June 25, 2009, <http://www.sutherlandinstitute.org/uploads/immigrationJustTheFacts.pdf>.
4. *Ibid.*
5. These figures were based on the mid-point of unauthorized-immigrant population estimates from the Pew Hispanic Center and Utah population estimates from the Governor’s Office of Planning and Budget. Jeffrey S. Passel, *Unauthorized Migrants: Numbers and Characteristics*, Pew Hispanic Center, June 14, 2005, <http://pewhispanic.org/files/reports/46.pdf>. Jeffrey S. Passel and D’Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center, April 14, 2009, <http://pewhispanic.org/files/reports/107.pdf>. “Demographics – Population Estimates,” Governor’s Office of Planning and Budget, <http://governor.utah.gov/dea/popestimates.html>, accessed June 12, 2009.
6. *Ibid.*
7. Sutherland Institute, *Just the Facts*, June 25, 2009, <http://www.sutherlandinstitute.org/uploads/immigrationJustTheFacts.pdf>.

**FACT: REMARKABLY,  
13 PERCENT OF INTEL’S  
EMPLOYEES IN 2008 WERE  
MISIDENTIFIED BY E-VERIFY  
AS UNAUTHORIZED WORKERS**

8. *Ibid.*
9. Mark Shurtleff, testimony given before the Utah Legislature Immigration Interim Committee on May 28, 2008. Brett L. Tolman, testimony given before the Utah Legislature Immigration Interim Committee on May 28, 2008. Michael R. McFall, "Felonies by illegal immigrants targeted," *Deseret News*, June 10, 2009. Sheena McFarland, "AG launches undocumented immigrant crime strike force," *Salt Lake Tribune*, June 11, 2009.
10. *Utah Code* 67-5-28 (3) (a-d)
11. *Utah Code* 63G-11-103 (3) (a-c)
12. SB 81 allows employers to be liable for a lawsuit if they fire a legal worker and hire someone that they "reasonably should have known" was unauthorized to work. Those enrolled in E-verify are exempt from such lawsuits. *Utah Code* 63G-11-103 (4) (a).
13. "Observations on the E-verify Experience in Arizona & Recommended Customer Service Enhancements," Citizenship and Immigration Services Ombudsman, [http://www.dhs.gov/xlibrary/assets/cisomb\\_everify\\_recommendation\\_2008-12-22.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf), accessed June 17, 2009.
14. National Immigration Law Center, *Basic Pilot/E-Verify – Why Mandatory Employer Participation Will Hurt Workers, Businesses, and the Struggling U.S. Economy*, February 2009, <http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-facts-2009-01-29.pdf>.
15. "Observations on the E-verify Experience in Arizona & Recommended Customer Service Enhancements," Citizenship and Immigration Services Ombudsman, [http://www.dhs.gov/xlibrary/assets/cisomb\\_everify\\_recommendation\\_2008-12-22.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf), accessed June 17, 2009.
16. National Immigration Law Center, *Basic Pilot/E-Verify – Why Mandatory Employer Participation Will Hurt Workers, Businesses, and the Struggling U.S. Economy*, February 2009, <http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-facts-2009-01-29.pdf>.
17. *Ibid.*
18. *Ibid.*
19. *Ibid.*
20. "E-verify Statistics," U.S. Citizenship and Immigration Services, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=f82d8557a487a110VgnVCM1000004718190aRCRD&vgnnextchannel=a16988e60a405110VgnVCM1000004718190aRCRD>, accessed June 17, 2009.
21. National Immigration Law Center, *Basic Pilot/E-Verify – Why Mandatory Employer Participation Will Hurt Workers, Businesses, and the Struggling U.S. Economy*, February 2009, <http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-facts-2009-01-29.pdf>.
22. *Ibid.*
23. "Utah Small Business Profile," U.S. Small Business Administration, Office of Advocacy, <http://www.sba.gov/advo/research/profiles/08ut.pdf>, accessed June 17, 2009.
24. Mike Gorrell, "State's unemployment rate holds steady in April," *Salt Lake Tribune*, May 22, 2009.



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