Patterns of Employer Sanctions Enforcement in the U.S. and California

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Introduction

In 1986, after more than a decade of debate about how to reduce the swelling flow of undocumented immigrants into the United States, the U.S. Congress passed the first federal law making it illegal for employers to hire undocumented immigrants: the Immigration Reform and Control Act (IRCA).[1] The employer sanctions provision of the IRCA prohibits the knowing employment of unauthorized workers and includes a procedure for verifying the employment eligibility of all new hires in the country. The approach of this measure was one tried with some success in Europe (Miller 1992): that of removing what was thought to be the major factor drawing illegal entrants into the country—access to jobs—by forbidding employers from hiring them (USGAO 1987: 2).

The persistence, and in fact increase, in illegal entry into the country since the IRCA has led many observers to question its effectiveness. Although the number of individuals illegally entering and overstaying visas in the country declined in the first two years after the law's passage, subsequent research found that the drop was due primarily to uncertainty as to how the law would be implemented and to its legalization of current unauthorized residents and border crossers (Bean et al 1990; Bean and Fix 1992; Crane et al 1990). And indeed, as enforcement got into full swing and the economy picked up over the course of the 1990s, the flow of undocumented entrants replenished and surpassed earlier levels. Thus, while the number of undocumented immigrants in the country fell from about 4 million in June 1986 to about 2.5 million in June 1989, it had surged back to 4 million by October 1992, to 5 million by October 1996, to an estimated 8.5 million at the present (Passel 2002).

While there are many explanations for this continued and expanding flow—including the willingness of economic immigrants to surmount extreme barriers in order to sustain their families and improve their lots—one matter that existing published information does not permit us to evaluate is the adequacy of employer sanctions enforcement. There has been relatively

[1] Pub. L. No. 99-603, 100 stat. 3359. The employer sanctions provision is codified at INA Ch. 274A; 8 U.S.C. Ch. 1324a.

little published regarding the extent and manner in which employer sanctions have been implemented and the variance of how enforcement activity and foci over time.[2] This report speaks to these gaps in public knowledge.[3] It undertakes an overview of employer sanctions enforcement since the IRCA was enacted, by region, economic sector, and industry, both in the nation as a whole and the state of California. The analysis aims to clarify: which economic sectors, industries, and sizes of firms have been held most accountable by employer sanctions enforcement; whether enforcement patterns in California mirror or diverge from those in the nation as a whole; and whether the geographic and industrial foci of enforcement are appropriate to the likely concentrations of unauthorized employment. Overall, the analysis intends to determine whether the employer sanctions program has succeeded in its stated goal of shifting the burden of immigration law enforcement from workers to their employers, and whether INS enforcement efforts have been substantial enough to deter employers' violation of the law. The analysis provides only limited explanation for the patterns and shifts in enforcement emphase, reserving full examination of this topic to a separate report (Wells 2003). As a preview, the report documents low and declining levels of worksite enforcement which cannot be expected to deter unauthorized immigrant employment. It finds that the law has not effectively shifted the burden of immigration law enforcement from workers to employers. And it suggests reasons why the impacts of sanctions are likely greater on the former.

The report is based on: (1) a subset of the INS's electronic file of employer sanctions enforcement actions taken by the agency against employers in which the cases have been completed and are closed, stretching from the inception of the law through early 2000, obtained from the Center for Immigration Studies (hereafter called the INS Case Closed File, CIS); (2) an employer sanctions final order list of companies fined through early 2002, obtained via a

[2] Several useful evaluations of employer sanctions enforcement cover the law's first three years of operation (Fix and Hill 1990; USGAO 1987, 1988, 1990). In 1999 the USGAO published another helpful evaluation focused on the effectiveness of the current employment verification process in preventing employers from hiring unauthorized aliens.

[3] Funding for this project was provided by the Cultural Anthropology Program of the National Science Foundation (Grant No. SBR-9731071, "Globalization and Union Mobilization") and by the University of California Institute for Labor and Employment ("Immigration Reform and Workers' Rights in California"), Miriam J. Wells, Principal Investigator.

Freedom of Information Act (FOIA) Request submitted to the INS on June 8, 2001, and responded to on April 12, 2002, (hereafter called the FOIA File); (3) data obtained from public agencies involved in employer sanctions enforcement (esp. the United States Immigration and Naturalization Service [INS]), Department of Labor [DOL]), Department of Justice [DOJ]), and Social Security Administration [SSA]), and the California Department of Industrial Relations [CDIR]); (4) newspaper articles and other published and unpublished evaluations of employer sanctions; and (5) interviews with INS, DOL, and CDIR staff and with labor, immigrant, and community activists regarding the impacts of sanctions on workers. Full descriptions of the two databases and the procedures followed in cleaning the files are provided in Appendices I and II.[4]

The Enforcement of Employer Sanctions

The IRCA's intent was to delegate to employers the responsibility for excluding from the workforce persons ineligible for employment under U.S. immigration law. The Act makes it unlawful for employers to "knowingly hire" or continue to employ any alien not authorized to work in the U.S. To implement this provision, the IRCA requires that all existing and prospective employees hired after November 6, 1986, present documentation to their employer verifying that they are eligible to work in the U.S., and that a Form I-9 attesting to employment eligibility be filled out for each. [5] Employers are required to examine such documentation, determine its apparent legitimacy,[6] note it on the Forms I-9, and keep these forms on file for inspection by the INS. Employers who fail to properly comply with these procedures can incur civil and criminal penalties, ranging from $250 per employee for a first minor offense, up to $10,000 per employee and even imprisionment for egregious and repeat offenders.

[4] The INS Case Closed, CIS, and INS FOIA Files were obtained by, and computation of the enforcement patterns analyzed here was performed by, Don Villarejo in conjunction with his report "Employer Sanctions Citations in California Agriculture" (January 24, 2003), submitted under contract to NSF Grant No. SBR-9731071, Miriam J. Wells, Principal Investigator.

[5] See CFR (2001) for detailed instructions to employers as to how to conduct the employment verification process.

[6] As a compromise in the crafting of the IRCA designed to secure the support of employers (Calavita 1994: 71), the law provides that the required document check conducted in good faith, constitutes an "affirmative defense" that the person or entity has not violated the knowing hire clause. The law also releases employers from responsibility for the authenticity of documents presented to them, stating that the employer has complied if the document appears on its face to be genuine.

Congress granted the INS new staffing and budget to enforce employer sanctions, pushing the funding levels and importance of the agency in the federal hierarchy to unprecedented levels over the next several years (Fix and Hill 1990; USGAO 1987, 1988, 1990). The INS's Investigations Division was assigned primary responsibility for enforcing the law; the Border Patrol and two offices within the Department of Labor were also funded and instructed to assist. Implementation was staged in three phases: a 6-month education period; a 1-year period of warnings for first-time violators; and full enforcement. Full enforcement began in June 1988 for most industries and in November 1988 for agriculture (USGAO 1988).

At the outset, the INS planned to devote about half of its compliance inspection time to randomly-selected employers within industries known to be heavy users of undocumented workers (the Special Emphasis Inspections Program), and the remaining half to inspecting a representative sample of employers selected from all the nation's employers (the General Inspections Program) (USGAO 1987: 27). The goal was not only to sanction employers who transgressed, but to target sectors of the economy in which violation was likely greatest, so as to more effectively deploy limited agency resources. In point of fact, however, enforcement emphases, priorities, targeting criteria, fines and fine policy, and documentation practices have varied tremendously across regions and agency divisions (Fix and Hill 1990: 84-148; USGAO 1988, 1990). On-the-ground tips from individuals in a position to know whether a firm's employees are undocumented, and information gained from random alien apprehensions, have often been more important in selecting employers to audit than has systematic random targeting. Moreover, INS districts and divisions vary as to whether they emphasize worksite raids and alien apprehensions (as Border Patrol agents and border districts tend to do), or bureaucratic document checks and employer education. As a result, enforcement patterns are often more a reflection of local priorities than central policy and the information in the employer sanctions database is in some aspects incomplete, uneven, and inconsistent. Nonetheless, this database is the only overarching longitudinal source of information regarding employer sanctions enforcement, and as such serves as an important guide to clarifying how the law has been implemented.

Despite the variance in enforcement procedures actually followed, it is possible to set out the intended general steps in a worksite enforcement investigation, so as to inform readers of this report.[7] That is, after settling on an employer to audit, enforcing agents are to notify the employer that an inspection is forthcoming and reiterate his/her obligations under the law. Each audit is to be documented in an Employer Sanctions Case Activity Report and the data entered into the Employer Sanctions Case Activity Database, which has been maintained since August 1989 and provides the basis for the present report. The employer is allowed three working days to prepare his records for review. Enforcing agents then are to visit the firm, review I-9 forms and supporting documentation for deficiencies, and verify the information provided against the INS's computerized data indexing system. At this point, enforcers are to develop a letter informing the employer of the results of the inspection. This letter is presented to the employer either by mail, via a personal visit by an agent, or (more recently) in the context of an educational meeting of other employers in an industry group which is targeted for special enforcement (Burgess 2000). The employer has from 30 to 60 days to respond, either by correcting his documentation or firing unauthorized workers. If enforcers have reason to suspect continued violation, follow-up inspections are to be scheduled. The results of such inspections can elicit a "notice of deficiency" letter, a "notice of intent to fine," and ultimately an actual fine and other sanctions. When these stages and appeals to them are complete, the case is recorded as "closed."

Employer Sanctions Investigations: The United States

According to the Case Closed File, 57,845 investigations were undertaken and completed from the inception of the law into early 2000. Only partial records are in this file for FY2000 and beyond. The FOIA file, however, contains data on companies fined through early 2002. The Case Closed File indicates that about 4,820 employers per year were investigated over the 12-year period for which available data are most complete (1988 through 1999). Investigations

[7] Fix and Hill (1990: 62-66) provide a good overview of this process. Burgess (2000) describes the new "Restore-type" enforcement approach that came into widespread use in the late 1990s.

focused on employers in relatively few states. Table 1' shows the total number of cases for each of the ten leading states, by the state of the employer's establishment address. It shows that just three states—California, Texas, and New York—account for almost half (46%) of all investigations.

Table 1'. Ten Leading States, Employer Sanctions Citations,[8] United States, FY1988-FY2000 (partial), N =57,845, INS Case Closed File, CIS

State	Number of Citations	Per Cent of Total
California	10,091	17.5%
Texas	9,565	16.5%
New York	6,657	11.5%
Arizona	3,300	5.7%
Illinois	2,379	4.1%
New Mexico	2,147	3.7%
Washington	1,479	2.6%
Michigan	1,431	2.5%
Oregon	1,321	2.3%
Florida	1,311	2.3%

A number of factors can contribute to larger numbers of cases in certain states, including the priorities and practices of local enforcing agents, but also the demographic characteristics of the states' populations. High proportions of foreign-born and/or undocumented immigrant residents could be expected to translate into higher numbers of investigations. On the basis of their demographic composition, these three states are likely candidates for high proportions of

[8] The term "citation" is used in the figures, tables, and text of this report as in the INS database itself: to mean a "case" or "investigation."

investigations, in that they are the three states that the U.S. Census' Current Population Survey identifies as having the largest populations of foreign-born workers (U.S. Bureau 2002c). Fifty-three percent of all foreign-born employed persons in the U.S. are located in these states, only slightly more than their combined share of sanctions investigations (46%). However, the rank order of these states in their numbers of foreign-born workers differs somewhat from their ordering in proportions of cases: while California is first in both instances, New York is second in numbers of foreign-born workers, while Texas is second in numbers of cases. The leading positions of California and Texas could result from the fact that the INS has prioritized enforcement efforts along these two states' borders with Mexico. These states also have exceptionally-high proportions of undocumented workers (Passel 2002).

Investigations were also concentrated in a small number of industries, in all likelihood as a result of intentional targeting. Industries known to be heavy users of undocumented immigrants were targeted from the start by INS national policy in its Special Emphasis Inspections Program (GAO 1987). In the late 1990s, INS district directors were asked to identify and develop initiatives to audit the most significant illegal alien problems in their domains (USINS 1999). Most striking regarding the industrial targeting of enforcement is the fact that 55% of all investigations were undertaken in just two economic sectors—Retail Trade and Services—which had about 31% and 25% of all investigations, respectively (see Figure 1). Manufacturing followed with about 14% and Construction with 12%. Only 7% of all investigations were undertaken with employers in Agriculture, Fishing and Forestry.

Insert Figure 1 about here

The share of cases represented by the top three industries–in order, Retail Trade, Services, and Manufacturing–is equal to their aggregate national share of the nation's employers (67%), as documented by the U.S. Bureau of Labor Statistics' data on the number of employers in those industry groups (U.S. Bureau 2002a,b). Interestingly, though, Bureau data provide a different

ordering of the top three employer groups by size (Services, Retail Trade, and Manufacturing, followed closely by Construction), suggesting that the enforcement rate in Retail Trade may be higher than the group's share of employers alone would explain.

The enforcement record reveals that more than 37% of all cases were undertaken with very small firms, those with from one to four employees. Figure 2 shows the size distribution of the number of employees at investigated firms for the full period of documented enforcement. The median number of employees at investigated firms was just eight, meaning that half of the firms had eight or fewer employees. The average number of employees per firm was much higher (136), indicating that although the number of large employers was small, such employers accounted for the vast majority of employees. Overall, the enforcement record suggests the continuation of a pattern identified by evaluators of the employer sanctions program in its early years of implementation: the prevalence of enforcement actions against small businesses, the largest share of which were ethnically-owned restaurants (Fix and Hill 1990: 118).[9]

Insert Figure 2 about here

One of most important questions for an evaluation of employer sanctions is whether enforcement efforts have been substantial enough to cause employers to expect that they would be punished for violating the law. Overall , the INS Case Closed File, CIS, shows that, by several measures, enforcement levels have been too low to accomplish the law's stated goal of eliminating the "magnet of employment" and shifting the burden of immigration law enforcement from workers to employers.

First, if we examine the pattern of enforcement over time (Figure 3), we find that the annual number of investigations has been relatively low, has fluctuated tremendously over the

[9] Enforcers across the country varied as to the size and characteristics of firms targeted. Fix and Hill found, for example, that in New York, Chicago, and Los Angeles, investigated employers represented a range of industries, sizes, and capitalization levels, whereas in other sites almost all actions were against small, ethnic-owned businesses (1990: 118).

course of the law's life, and had shrunk to a negligible few by the end of our documented period. Overall, enforcement was greatest from 1990 through 1992. The annual number of cases peaked at 9,560 in FY 1990, perhaps not coincidentally the year that the GAO undertook its first evaluation of INS enforcement in full swing. The number of cases then fell off sharply, dropping to 3,869 by 1996—the year in which the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) formalized the redirection of U.S. immigration policy away from interior enforcement and toward sealing off the U.S.-Mexican border (Andreas 2000: 88; 110-111; USINS 1994). The number of investigations picked up in 1997 and 1998, but was more than cut in half (to a to-date low of 2,337) in 1999, the year that the INS announced its new interior enforcement strategy which relegated worksite enforcement to the fifth and lowest priority of interior enforcement—behind criminal arrest and removal, smuggling, community complaints, and document fraud (USINS 1999). This strategy formalized an agency policy of focusing on flagrant violators and of using education and cooperation to deal with "ordinary" employers, who were assumed to be voluntarily complying with the law.

Insert Figure 3 about here

Second, overall, the number of investigations conducted has been low relative to the number of employers and it had fallen to a miniscule proportion by the end of our documented period. If we figure that there were on average between 7 and 7.4 million U.S. employers per year over the enforcement period (see USGAO 1987, 1999; U.S. Bureau 2002b),[10] the 57,845 cases documented in the sanctions database represent less than 1/10 of 1% of all employers in a

[10] The best available source of data regarding the number and industrial distribution of employers nationally is provided by the Current Employment and Wage (CEW) File of the Bureau of Labor Standards, which records data on firms that have employees covered by unemployment insurance. The number of covered firms is lower than the overall number of U.S. firms, however, as in some states only larger employers are required to provide coverage. There is reasonable confidence that, for non-agricultural employment, the CEW accounts for all but a small portion of payroll employment: for a number of reasons the total employment accounted for by employers that are not covered is likely to be quite small relative to the total national payroll employment.

typical year.[11] This is even less than the 1/5 of 1% foundin the first several years of the law's enforcement (Calavita 1994: 70).

Third, the infrequency with which investigations resulted in fines collected, and the small size of fines assessed, suggest that enforcement has been an insignificant deterrent to employers' violation of the law. An examination of the INS FOIA File and INS Case Closed File, CIS, provide insight into fining activity. These files reveal that over the 14-year period for which fining activity can be evaluated fines were collected in only 12% of the investigations.[12] As Figure 4 shows, the number of cases in which fines were collected was greatest, as was enforcement overall, from 1990 through 1992, when 38% of all cases with fines collected were undertaken. After the implementation of the 1999 INS Interior Enforcement Strategy which urged fining primarily for egregious offenders (USINS 1999), the number of cases in which fines were collected plummeted—as did the number of investigations conducted overall.

Insert Figure 4 about here

The fines levied against employers have also been relatively small, averaging only $3,668 per case over the course of the documented period. As Figure 5 shows, the annual dollar value of fines collected was greatest from 1990 through 1996. In FY1999 the value of fines collected fell off sharply, dropping even more in FY2000, but rising somewhat in FY2001. The rate of fining and the size of fines collected also varied over time. In the three year period during which the greatest number of sanctions investigations were undertaken (1990-1992), fines were collected on 11.6% of all cases and averaged a modest $2,876 per case. In 1996–the year in which the IIRIRA was passed and when Congressional scrutiny of immigration law enforcement was at a peak–the proportion of cases on which fines were collected increased to 14.9% and the average

[11] For example, the U.S. Bureau of Labor Statistics reported in 1997 that there were 7,369,473 firms which had employees covered under the unemployment insurance program (U.S. Bureau 2002b). Thus, the 5,886 investigations for that year amounted to just 0.08% of all covered employers. Clearly, the fraction of all employers represented in investigations must be smaller.

[12] Note that the records for firms in which fines were collected are complete through 2001, as they include full data for 2000 and 2001 provided by the FOIA request (Appendix I).

fine collected rose to $5,783. After 1999, the pattern of enforcement suggests the impact of INS's new Worksite Enforcement Strategy which emphasized issuing larger fines against egregious offenders (USINS 1999). That is, in 1999, the only year of this latter period for which the percent of all cases in which fines were collected can be assessed,[13] fines were collected in only 5.3% of all cases, but the average fine size maintained at $4,500. In FY2000, the average fine size increased to $5,522, and in 2001 it increased to a high of $7,988.

Insert Figure 5 here

Finally, the most recent INS Statistical Yearbooks, those for 2000 and 2001, show a sharp nationwide decrease in sanctions levied against employers from 1999 through 2001: notices of intent to fine decreased by 57% between 1999 and 2000 and by another 44% between 2000 and 2001; warnings to employers decreased by 26% between 1999 and 2000 and by another 40% between 2000 and 2001; final orders decreased by 39% between 1999 and 2000 and by another 57% between 2000 and 2001.[14]

Employer Sanctions Investigations: California

As noted earlier, California led the nation in the number of employer sanctions investigations, with 10,091 recorded between FY1988 and FY2000 (partial year)—a finding that is not surprising, since California leads the nation in population, employment, and number of foreign-born workers. California's share of total U.S. employer sanctions investigations (17.5%), however, is about half again larger than would be expected based on population or employment alone. This finding is likely explained in part by the fact that the state's share of the nation's foreign-born employed work force (31%) is much larger than its share of U.S. population or total

[13] Although the FOIA request provided data for firms on which fines were collected through 2001 with partial data for 2002, complete data for all sanctions cases undertaken provided by the INS Case Closed File are complete only through 1999.

[14] See USINS (2002, 2003, chapters on "Enforcement," subsections "Data Overview: Investigations,Work Site Enforcement, Table 63").

employment (U.S. Bureau of Labor Statistics, 2002b). Thus, it would be expected that INS inspections would be more likely to turn up cases requiring employer sanctions investigation in California than would be indicated by population or employment figures alone. In addition, most observers agree that California probably has more unauthorized immigrant workers than any other state (Passel 2002).

The geographic distribution of investigations within the state suggests the likely combined influence of INS policy and undocumented immigrant concentration. This distribution can be measured in three ways: by county, region, and Case Number Prefix. County refers to the county in which the citation was issued, which is not necessarily the same as the county where the firm's principal business address is located. Region refers to the six geographic districts into which the California Department of Employment Development divides the state. The Case Number Prefix was assigned by the INS officer who opened the case and reflects the locality in which the officer is based. Table 2' shows the ranked order of the number of investigations by county.

As Table 2' indicates, San Diego County leads the state in employer sanctions investigations, with more than twice as many cases as in Los Angeles County. This concentration is surprising, in that it is at odds with the enormously greater population and employment of Los Angeles County. For example, the average number of establishments in the period 1997-2000 was 294,222 in Los Angeles County—more than four times greater than the average of 72,594 in San Diego County (U.S. Bureau of Labor Statistics, 2002 a, b). Yet the data reverses this expected distribution at a stepped-up rate: over eight times as many cases were undertaken in San Diego County as in Los Angeles County. Explanations of this pattern can only be suggestive, but in any scenario the national policy emphasis on sealing off the U.S.-Mexican border, the consequent concentration of INS activities in border regions, and the pre-eminent

focus on San Diego County in this border-control campaign (Andreas 2000), would play important roles.[15]

Table 2'. Top Fifteen Counties, Employer Sanctions Cases, California, FY1988-FY2000 (partial), N=10,091, INS Case Closed File, CIS

County	Number of Cases	Percent of Total
San Diego	3,278	32.5%
Los Angeles	1,544	15.3%
Riverside	822	8.1%
San Bernardino	490	4.9%
Orange	438	4.3%
Alameda	379	3.8%
San Francisco	328	3.3%
Fresno	318	3.2%
Santa Clara	284	2.8%
Sacramento	279	2.8%
Imperial	224	2.2%
San Mateo	195	1.9%
Ventura	176	1.7%
San Joaquin	138	1.4%
Kern	133	1.3%

[15] In addition, according to INS staff and national INS directives, after the IIRIRA district directors were instructed by national agency leadership to identify annually the key illegal immigrant employment challenges in their districts and to develop enforcement campaigns to deal with them. A number of the crucial targeted industry groups were situated in San Diego County, which has a high concentration of undocumented residents and traditionally draws cross-border commuters from Mexico.

The geographic distribution of investigations can be examined at a coarser level as well, according to the six geographic regions into which the California Department of Employment Development divides the state: Central Coast, Desert, North Coast, Sacramento Valley, San Joaquin Valley, and South Coast (EDD 2002). Table 3' shows the regional distribution of investigations and the corresponding regional distribution of the number of establishments. Both sets of data are expressed as percentages. From this table it is clear that the Desert and South Coast regions (which encompass the border counties) were over-represented in investigations and that all other regions were under-represented, relative to the regional distribution of the number of establishments. The San Joaquin Valley, however, was only slightly under-represented.

Table 3'. Employer Sanctions Cases and Establishments, by Region (percent), California, FY1988-FY2000 (partial), INS Case Closed File, CIS[16]

Region	Employer Sanctions Cases	Establishments
Central Coast	14.8%	21.7%
Desert	15.2%	6.4%
North Coast	2.0%	3.2%
Sacramento Valley	4.9%	8.8%
San Joaquin Valley	8.8%	9.6%
South Coast	54.2%	47.0%

A third measure of the regional distribution of cases can be derived from the Case Number Prefix assigned to each case, which identifies the locality in which the INS officer who issued the citation was based.[17] The distribution of the top 15 prefixes is shown in Table 4', in

[16] The regional distribution of the number of establishments is calculated from the 4-year average number (CY1997-CY2000) reported for all counties in each region. Source: www.bls.gov/cew.

[17] Each case is assigned a Case Number, of the form: Case Number = XXXYYEONNNNNN, in which XXX refers to a District, Sub-office, or Sector Code (the precise referral varied systematically with Fiscal Year in the raw data), YY refers to the Fiscal Year, and NNNNNN is a number, likely to have been assigned sequentially in the course of

which the code, corresponding place name, number of cases, and percent of the total are all presented.[18] Once again, the predominance of San Diego is evident, again surpassing—but followed by—Los Angeles.

Table 4'. Top 15 INS Case Number Prefixes, Employer Sanctions Cases, California, FY1988-FY2000 (partial), INS Case Closed File, CIS

Case Number Prefix	Place Name	Cases	Percent of Total
SND	San Diego	2,341	23.2%
LOS	Los Angeles	1,944	19.3%
SFR	San Francisco	1,485	14.7%
ELC	El Centro	620	6.1%
SAA	Santa Ana	357	3.5%
SAC	Sacramento	313	3.1%
FRS	Fresno	307	3.0%
SNJ	San Jose	280	2.8%
TEM	Temecula	256	2.5%
FRE	Fremont	198	2.0%
RIV	Riverside	198	2.0%
IDO	Indio	192	1.9%
CHU	Chula Vista	186	1.8%
SNM	San Marcos	135	1.3%
SCM	San Clemente	134	1.3%

the year. For example, the XXX prefix ELC refers to El Centro, in Imperial County of the Desert Region (as assigned by the state Employment Development Department), near the Mexican border.

[18] In this table, no effort has been made to distinguish the use of the prefix as a reference to District, Sub-Office, or Sector.

The distribution of cases by industry group in California is like that found in the U.S. as a whole (see Figure 6). In both, Retail Trade and Services are the top two industry groups; together, they account for 56% of California investigations, as opposed to 55% of those in the U.S. The distribution of cases for other industries is identical to that in the nation (Manufacturing, 14%; Construction, 12%; Agriculture, Forestry and Fishing, 7%). Importantly, at the 4-digit SIC level, the leading categories of cases are Restaurants & Eating Places (SIC 5812, with 1,897) and Hotels & Motels (SIC 7011, with 651). Altogether, these two categories account for fully one-fourth of all California cases; no other category approaches them in size.[19] Interestingly, within Agriculture, farm labor contractors are eight times more likely to have been investigated than are direct-hire employers. INS staff interviewed attribute this concentration to the known particular reliance of contractors on undocumented immigrants, and to the large employment size of certain contractors. It is also significant that the focus of agricultural enforcement on farm labor contractors offers the agency strategic benefits, in that it avoids raising the ire of the agribusiness establishment, which has long been the main supporter of INS programs and funding in Congress (Calavita 1992).

Insert Figure 6 about here

The representativity of enforcement can be examined by comparing the distribution of investigations by industry group with the corresponding distribution of the number of establishments.[20] As Table 7 shows, the numbers of cases in Transportation and Public Utilities, Wholesale Trade, Finance, Insurance and Real Estate, and Public Administration were fewer than warranted by those industry groups' shares of all establishments, a pattern likely explained by

[19] There were hundreds of additional 4-digit SIC codes represented in the INS Case Closed File, and no other had as many 300 cases. Thus, the concentration of cases in the two aforementioned categories must be regarded as significant.

[20] California requires virtually every employer to provide unemployment insurance for its work force (employers paying less than $100 in wages and salaries in every calendar quarter are exempt). Nearly all California employers provide detailed information concerning their payroll and number of employees on a quarterly basis for state and federal agencies, which aggregate the data and publish summaries (U.S. Bureau of Labor Statistics, 2002 a, b, c).

their acknowledged lesser tendency to employ undocumented immigrants. Citations in Retail Trade, Agriculture, Forestry and Fishing, Construction, and Manufacturing were significantly more numerous than explicable by those industries' shares of all establishments, perhaps due to these industries' greater tendency to hire unauthorized immigrants. The relatively low investigation rate in Services—a sector known to hire many undocumented immigrants—is unexplained.

Insert Figure 7 about here

The distribution of investigations annually among industry groups was also relatively stable, in that the five leading categories were the top five in every year but one (see Figure 8).[21] There was some shifting of rankings in different fiscal years, but overall these were rather minor.[22]

Insert Figure 8 about here

The size distribution of employer sanctions enforcement in California, as measured by the number of employees per firm, is similar to that found for the nation as a whole: very small employers are the primary targets of investigations (see Figure 9). The median investigated employer in California had just 9 employees (as compared with 8 nationally) and the average number of employees per investigated firm was 59 (as compared with 136 nationally). Thirty-six percent of California investigations (as compared with 37% nationally) were of employers with fewer than five employees.

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[21] In FY1996, Wholesale Trade had more cases than Agriculture, Forestry and Fishing, and ranked fifth.

[22] Retail Trade was the leading category in FY1989-FY1991, FY1993, and again in FY1998-FY1999. Services became the leader in FY1992, and FY1994-FY1997, but ranked second in all other years. Manufacturing ranked third in FY1989, FY1991, FY1993-FY1999, and ranked fourth in all other years. Construction ranked fourth in all years except FY1990 and FY1992, when it ranked third, and FY1995, when it ranked fifth. The category Agriculture, Forestry and Fishing ranked fifth in every year, except FY1995, when it ranked fourth, and FY1996, when it ranked sixth. As noted earlier, Wholesale Trade ranked fifth in FY1996.

Insert Figure 9 about here

For California, it is possible to determine whether enforcement emphases were proportional to the representation of firm size categories in the economy—a matter that cannot be determined for the U.S. as a whole.[23] As Figure 10 shows, the share of investigations among the smallest employers (0-4 employees) is about half the proportion of all California establishments in that size category. In other words, enforcement on smaller firms is undertaken at a lower rate than the representation of those firms in the California economy. Employers who hire more than 10 workers, on the other hand, have a share of all investigations that is greater than their corresponding share of the number of firms. Only for firms with 5-9 and 10-19 employees does the share of investigations roughly correspond to the share of establishments. Among firms with 1,000 or more employees, the share of investigations was 1.0%, but the share of establishments is only one-tenth of that (0.1%). Thus, a disproportionately large number of employer sanctions investigations involved the largest employers in the state.

Insert Figure 10 about here

In terms of the deterrence impact of employer sanctions enforcement, we find that in the Golden State, as in the nation as a whole, enforcement rates have been too low by several measures to be expected to eliminate the "magnet of employment" or shift the burden of immigration law enforcement from workers to employers. First, in the state as in the nation, the number of worksite investigations have been relatively low, has fluctuated over time, and had subsided to a minimal level by the end of our documented period (FY1988 through FY1999). The pattern of investigations in California is in most respects comparable to that found in the nation as a whole: few investigations were undertaken in FY1988 and FY1989; the number of

[23] See Note 20.

cases quickly rose to an alltime high in 1990 and then fell off sharply through 1996; they picked up significantly in FY1997 and FY1998, but their number (907 and 1,107, respectively) never regained the FY1990 peak of 1,627. Overall, in the state as in the nation, FY1990 through FY1992 were the years of most vigorous enforcement.

Insert Figure 11 about here

In FYs 1998 and 1999, however, enforcement patterns in California diverged from those in the nation as a whole. Although the number of U.S. sanctions cases rose only .8% in 1998, they increased by 22% in California. While the number of U.S. sanctions cases was more than cut in half between 1998 and 1999, the number dropped by only a little over one-third in California. As a result, the state's share of all U.S. worksite investigations rose from 15.4% in 1997 to 18.7% in 1998—exceeding the state's long-term average of 17.5% for only the second year in the preceding period. The state's share of U.S. investigations increased even more in 1999, to an all-time high of 30.2%: nearly twice the state's long-term average (Figure 12).

Insert Figure 12 about here

Second, the number of sanctions investigations in California has been low relative to the total number of the state's establishments. From FY1989 through FY1999 an average of just 0.103% of all California firms were investigated: about the same as the proportion at the national level, and not higher, as might be expected, given the state's larger population of unauthorized workers.[24]

[24] Bureau of Labor Statistics data from the State CEW file (2002b) were used to determine the average number of establishments for each year. The number of cases for each year was divided by the corresponding number of establishments to obtain figures for all eleven years. The average for the entire period was 0.103%, the maximum was 0.22% (FY1990) and the minimum was 0.03% (FY1989).

Third, the frequency and size of fines collected for employer sanctions violations in California are even lower than in the nation as a whole, and the practice of fining fell off earlier and more substantially. Fines have only been collected from 7.9% of investigated employers in California, as opposed to 12% in the U.S. as a whole. As Figure 13 shows, the number of California cases in which fines were collected was greatest from FY1990 through FY1992, as was enforcement overall. Almost 56% of all cases in which fines were collected were undertaken in this period—a temporal concentration in this period much greater than that in the U.S. as a whole (38%). Fine-collecting in California began to decline in FY1992, and was negligible after 1994 (Figure 13), whereas it remained relatively strong nationally until after 1996 (Figure 4). Nor did the pattern of fines collected in California follow the pattern of investigative activity in the state, which increased in FYs1997-1999.[25] From FY1994-2001 fines were collected from an average of fewer than 20 cases per year; from FY1996-2001 the annual average was only 12 cases.

Insert Figure 13 about here

The average size of fine collected from California employers ($3,441) is even smaller than that in the nation as a whole ($3,668). As Figure 14 shows, the annual dollar value of fines collected in California was greatest from FY1989 through FY1993 when fully 82% of all fines collected from FY1988 through early FY2002 were collected. The data also reveal differences over enforcing years in the rate of fining and size of fines collected. In the three years of most intensive investigation and fining (FY1990 through FY1992), California fines averaged $3,135 and were collected in 11.6% of cases. In the years of minimal fining, from FY1994 through

[25] A regional policy identified by earlier evaluators of the sanctions program may have contributed to the pattern of relatively little fine-collecting in the state. That is, in the South and West, where undocumented immigrants comprise a large proportion of the workforce and are engaged in a wide range of industries, enforcers try to create a widespread fear of enforcement by issuing smaller fines among a larger number of employers. In California, the tendency to issue many "notices of intent to fine" (nifs), which are infrequently followed through to collection, was encouraged by staff performance evaluations linked to a nif quota (Fix and Hill 1990: 115-17).

1999,[26] fines were collected on an average of only 2.9% of all cases. In California the average fine size increased markedly in 1999, jumping to $7,616 from the previous year's average of $781, reflecting the new INS 1999 Interior Enforcement Strategy's emphasis on giving fewer and larger fines to egregious offenders. However, average fine size in the state declined after that year, to $3,319 in 2000 and $1,750 in FY2001, although it rose over those years in the nation as a whole, to $5,522 in 2000 and $7,988 in 2001. In short, INS practice in California after 1999 diverged from that in the nation, returning to and intensifying its longstanding tendency to collect smaller fines and move away from the practice of fining.

Insert Figure 14 about here

Employer Sanctions After 9/11

Since the terrorist attacks of September 11, 2001, worksite enforcement has become almost entirely focused on "national interest industries:" on firms that employ individuals with access to secure areas of airports and other crucial security infrastructures (Becraft 2002). Airports were the first facilities targeted, followed by nuclear power plants and hazardous materials transporters. Worksite enforcement has also focused on certain events thought to be potential foci for terrorist attack—for example, the San Diego Superbowl. The expressed rationale for these emphases is national security. Undocumented immigrants are portrayed as high security risks because their illegal status makes them vulnerable to intimidation or blackmail, and because they have already started a criminal life as immigration law breakers. Immigrants from "special interest countries" (those thought to have a connection with recent terrorism) are targeted particularly (Greene 2002: 4; Stannard 2002; Ziglar 2002).

Post 9/11 worksite enforcement is a variant of the INS worksite enforcement strategy formalized in 1999, although it is much more centralized, systematic, and far-reaching. It continues the pre-9/11 emphasis on educating rather than punishing employers, and on displacing

[26] 1999 is the last year for which a percent of all cases on which fines were collected can be assessed.

unauthorized workers so as to make their jobs available for those who are authorized. While pre-9/11 worksite enforcement was carried out almost entirely by the INS, however, current actions are carried out jointly by the INS, FBI, SSA, and the Department of Transportation, along with state anti-terrorism task forces and local law enforcement officials. Counter to previous practice, worksite raids and arrests are common in post 9/11 worksite enforcement, as are the systematic planning of actions, and background checks of employees with access to secure areas.

While restricted public information about the actions precludes any precise quantification of the exact numbers of employers investigated and workers affected, the INS acknowledged on March 21, 2002, that it had conducted investigations with over 800 employers in national interest industries employing more than 200,000 workers. It stated that over 250 cases had been completed—constituting a 21% increase over the previous year in case completions (Greene 2002). By early 2003, reports from the press and affected labor organizations indicated that operations had been initiated in at least 23 airports, including most major airports in the nation, and regional and local airports as well.[27] On January 30, 2003, INS reported that, since the initiation of Tarmac, it had checked Forms I-9 at more than 3000 airport businesses, arresting over 900 workers for violations including lack of employment authorization and making false statements on job applications—such as not admitting to prior felony conviction, and fraudulently using identification documents, Social Security cards or numbers (Williams 2003). Of these 900, 680 were charged with criminal violations of the law.

To our knowledge, none of the workers arrested in these actions have been linked to terrorism. Overall, the number of workers displaced from their jobs, either through firings or flight, is much greater than the number actually arrested. According to INS staff, the majority of employers targeted in Tarmac have been found in "substantial compliance with their obligations related to employment eligibility verification" (Greene 2002), a finding not surprising given the difficulty of proving "knowing hire" under the IRCA. A survey of press reports of national interest industry actions reveals no instances in which employers have been fined.

[27] List of newspaper articles and organizations consulted available upon request.

Conclusions: Patterns and Impacts of Employer Sanctions Enforcement

The foregoing analysis indicates that employer sanctions have not been enforced at a level that could be expected to eliminate the magnet of jobs for undocumented immigrants. The number of worksite investigations has been low, both in California and the U.S. as a whole, in relation to the pool of eligible employers. Moreover, fining practices, as judged by the number and size of fines assessed and collected over the course of the law's life, have been inadequate to deter violation of the law in the state as well as the nation. The number of worksite investigations has been greatest in California and Texas—the two states witnessing the greatest amount of transit over the U.S.-Mexican border and receiving the greatest infusions of INS resources.[28] Within California, border districts are also the sites of greatest enforcement: sanctions cases are most numerous in San Diego County, but also in the South Coast and Desert border regions generally. The industrial foci of enforcement have been similar in the state and nation. In both, Retail Trade and Services account for just over half of all sanctions cases, and the proportions of cases in other industry groups are identical. In California, where it is possible to compare the number of employers investigated in an industry group with the actual number of employers in that group, we find that retail trade establishments—of which restaurants and eating places comprise the largest component—are investigated at a greater rate than warranted by that group's share of all establishments.

In both California and the U.S., sanctions enforcement has focused on very small firms: those with from one to four employees. California reveals a smaller average size of firm investigated—less than half of that nationally. Yet the rate of enforcement among larger employers in California relative to the number of such employers extant is greater than the rate of enforcement among smaller employers. In other words, California enforcers have not only

[28] INS records show that the border crossings between Mexico and the states of California (esp. San Diego) and Texas (especially El Paso, San Antonio) record by far the greatest number of undocumented aliens identified and expelled, both at present and over time (see USINS 2003, chapter on "Enforcement," subsection "Investigations, Work Site Enforcement" (www.ins.usdoj.gov/graphics/ aboutins/statistics).

undertaken a larger number of sanctions cases than any other state, but they have investigated a range of firm sizes. They have investigated small retail establishments at a rate greater than their presence in the economy, but (especially in recent years, interviews suggest) have also targeted larger firms in which the numbers of affected workers and jobs are greater. Within Agriculture and Retail Trade, enforcement appears to have focused on some of the least politically-influential employer groups: farm labor contractors and small-scale, possibly ethnic, restaurant owners.

The vigor of worksite enforcement has also varied over time. In both the state and nation, the number of employer sanctions cases undertaken and closed was greatest from 1990 through 1992. For both, worksite enforcement was most intensive in 1990 and dropped to to-date lows in 1996. In 1999, however, enforcement patterns in the state and nation diverged significantly: the number of cases dropped sharply in the nation but much less so in California, so that the state's share of all U.S. cases rose to an all-time high of 30%. After 1999, the number of investigations, arrests, and fining activity fell off in both the nation and the state. However, while in 2000 and 2001 the U.S. exhibited the pattern advised by the 1999 INS Interior Enforcement Strategy of fewer, larger fines, fine size diminished in the state of California along with the number of fines given.

In sum, one would have to conclude that by the end of the period documented in the INS Case Closed, CIS, File and the FOIA File, the impact of employer sanctions on "ordinary" non-criminal employers could be characterized as minimal. The events of 9/11 have not altered this pattern, although there have been some shifts in the methods and foci of enforcement. Although tip-led investigations of a range of employers continue, and while INS data on worksite enforcement after 9/11 are not yet available, enforcement activity has focused on employers in "national interest industries," so that others have little to fear. Such initiatives continue the presumption that most employers intend to obey the law and that compliance can best be furthered through employer education. Available reports indicate that few, if any, employers have been fined as a result of them.

Although employer sanctions appear not to currently seriously burden most employers, their impacts on workers are substantial and growing. First, reports from labor and immigrants' rights organizations around the country indicate that employers are using the threat of employer sanctions to undercut union contract renewals, union organizing campaigns, and the reporting of labor standards violations.[29] Second, the tremendous investment in technology and personnel devoted to sealing off the U.S.-Mexican border since 1996—an investment that has grown since the events of 9/11—puts undocumented workers at enhanced risk and exposes them to economic exploitation. For example, interviews with agricultural workers along the California-Mexico border in 2001-2002 found that the fear of apprehension and increased cost and difficulty of border-crossing have had detrimental consequences for workers' family cohesion, economic well-being, and physical and mental health.[30] Farmworkers interviewed felt trapped in their homes and frightened that they would not return if they went out. They were afraid to seek health care, shop for groceries, visit friends and relatives, go to bars, or attend soccer matches. Increasingly, border crossers are single males who leave their wives and children at home in Mexico for long periods of time.[31] Many restricted the areas within which they were willing to look for jobs and were afraid to change jobs; others reported that agricultural employers used the atmosphere of heightened fear along the border to get them to complete more work for less pay.

Finally, although employer sanctions have a minimal presence through the INS's direct investigative activity, ordinary employers and workers are exposed to their threat through the "no-match letters" that the Social Security Administration sends to employers. These letters list the names of workers whose Social Security numbers do not match the SSA's database; they are

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[29] This conclusion is based on interviews with twelve such organizations in California and the U.S., on testimony given at the AFL-CIO's Hearings on Immigrant and Workers' Rights in spring 2000 in San Jose, Fresno, Salinas, and Los Angeles, and from numerous written accounts of such impacts (Aizenman 1999; Bacon 1998, 1999, 2001; Cleeland 2000; Ely 1999; Grow 1999; Arbitration 2000; Sack 2001).

[30] These interviews were conducted in conjunction with the Agricultural Worker Health Study, conducted by the California Institute for Rural Studies, P.O. Box 2143, Davis, California, 95616. The findings reported here are derived from the reports of interviewers for this project and conversations with Rick Mines, Principal Investigator.

[31] Rick Mines, California Institute for Rural Studies, report on guest worker initiatives to "Advancing Policy-Relevant Research on the Problems of Immigrant Workers," May 4, 2002, Center for Labor Research and Education, Berkeley, California. Mines associates the presence of families with higher levels of worker militancy and union support. See also Mines et al (1991) and Mehta et al (2000).

intended to help the SSA allocate withheld funds to the individuals to whom they are due. In the 1990s the agency stepped up the rate at which employers would be sent a no-match letter, and in 2002 it adopted a policy in which as few as one mismatch could trigger a letter. As a result, over 800,000 letters were sent out in 2002, up from 110,000 the previous year. The result has been a flood of firings and worker flight ("A Crackdown..." 2002; Bjorhus 2002; Sheridan 2002). Some employers dismiss workers outright or insist that they reverify their employment authorization; others use the no-match letters as a pretext to undercut union organizing or labor standards complaints. Most workers flee when they learn of a mismatch. While employers in immigrant-dependent industries are annoyed and frustrated by this process, the ready supply of undocumented workers generally assures that their positions will remain filled. Undocumented workers, however, are forced into ever more fugitive positions within the low-wage U.S. labor market (" A Crackdown..." 2002; Avila and Franklin 2002; Bjorhus 2002; Hu 2002; Sheridan 2002; Williams 2000). In short, in this era of limited worksite enforcement, the SSA's no-match letters may be the primary way in which ordinary employers and workers encounter employer sanctions. While employers are annoyed and inconvenienced by the encounter, the brunt of their burden falls on workers.

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