Fear the ICE Man: Lessons From the Swift Raids to Warm You Up - The New Government Perspective on Employer Sanctions

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When Special Agents returned to the Swift & Company meat processing plant in Des Moines, Iowa on July 11, 2007, the local United Food and Commercial Workers Union announced that the Immigration and Customs Enforcement (ICE) failed to “engage[] in the same level of intimidation and
overkill" that they had in December 2006.\(^1\) The ICE men returned to execute arrest warrants for many of the company employees.\(^2\) Seemingly, the lack of helicopters hovering about in support of armed agents in bulletproof vests was intended to minimize public scrutiny of ICE's follow-up visit to the plants. However, this time, the significance was not the number of arrests, but rather who was arrested. A Human Resources manager, a union steward, and an employee accused of procuring false documents were among those arrested on alien harboring, smuggling, and other charges.\(^3\) For those employers noting the developments of the potential criminal case against Swift, the focused follow-up visit may speak at a higher pitch than the preceding round-up of immigrant workers.

I. LEGAL BACKGROUND

In 1986, Congress enacted employer sanctions as part of the Immigration Reform and Control Act (IRCA) in an attempt to curtail the illegal migration of alien workers.\(^4\) Increased worksite enforcement represented the stick to the carrot—amnesty for hundreds of thousands of undocumented workers—that had also been enacted as a result of IRCA. However, as the

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\(^3\) See Press Release, Additional Criminal Arrests, supra note 1.

\(^4\) See id.
most recent attempt at comprehensive immigration reform revealed, the IRCA formulation of employer sanctions fails because businesses have no way to verify work authorization with certainty.\textsuperscript{5} Because employers seek a legitimate workforce comprised, in part, of non-native workers, they risk their business upon the assumption that its alien workforce has a legitimate basis to work. To the extent that the government seeks to disrupt the incentive for illegal immigration, the government seeks to sanction any employer it believes is responsible for the illegal migration. Unfortunately for the employer, the government maintains information that is inaccessible to the employer. As a result, the employer, who has the most to risk, also suffers from a lack of reliable information necessary to minimize its exposure during a workplace enforcement investigation.

II. THE PRECEDING IMMIGRANT ROUND-UP

On December 12, 2006, ICE raided several Swift & Company plants.\textsuperscript{6} Nine specially outfitted “Greyhound” buses, three helicopters, and dozens of “G” cars transporting several hundred ICE special agents descended on six Swift processing facilities culminating from an investigation initiated in the Minneapolis/Saint Paul ICE’s Office of Investigations.\textsuperscript{7} The enforcement action identified the massive use of document fraud by the Swift workforce. In total, nearly 1300 individuals were arrested.\textsuperscript{8}

In a press conference the following day, Department of Homeland Security (DHS) Secretary Michael Chertoff was quick to point out that his Department and the President were committed to substantially increasing workplace enforcement in the United States.\textsuperscript{9} Referring to the 2006 fiscal year,
Secretary Chertoff stated, "we’ve set a new record this past year for worksite enforcement."10 The Secretary’s pronouncement was not merely puffery. ICE easily surpassed the 2006 record when, in 2007, ICE executed several worksite enforcement investigations throughout the U.S. that resulted in almost five thousand arrests.11 As a result of its focus on worksite investigations during fiscal year 2007, ICE obtained “criminal fines, restitutions, and civil judgments” in excess of $31 million.12

III. EMPLOYER’S “NO-WIN DILEMMA”: VERIFY WITHOUT VERIFICATION

Part of the overall strategy of worksite enforcement is to focus on those who exploit “illegal” documents and identity theft.13 ICE is specifically committed to identifying fraudulent document vendors.14 Recently, ICE has directed additional funding to its twenty-seven Special Agents-In-Charge to commit resources to rooting out document fraud, including the increased utilization of the ICE forensic document laboratory.15

The problem for any business, and for Swift specifically, arises from the employer’s inability to readily verify the legitimacy of the documents presented by the alien for employment. The same law which sanctions employers for employing illegal immigrants also prohibits them from discriminating on the basis of national origin or citizenship in hiring, firing, recruitment, or

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10. Id.
12. Id.
referring for a fee, and prohibits them from requiring more or different documents than are legally acceptable for employment verification purposes. If the documents presented by the employee are legally acceptable, and on their face, reasonably appear to be genuine, an employer must assume the employee is authorized to work. In other words, an employer cannot request any more of a prospective employee than a genuine looking document. However, should the employee obtain a reasonably genuine document that ultimately turns out to be fraudulent, the employer may still be subject to a workforce disruption.

IV. FRAUDULENT DOCUMENTS ARE THE NORM

The "no win dilemma" most commonly arises when a prospective employee presents a social security card—the most misused Form I-9 document of those available in list "C." For example, in the peak year of its use, social security number (SSN) 078-05-1120 was being used by 5755 different people; in all, over 40,000 people have reported the same social security number. The problem of multiple SSN use has become such a concern for the Social Security Administration that in July it proposed a change to its "area number" designations—a number which has historically retained geographical significance. So many fraudulent cards containing the same "area number" were being used that locales were running out of legitimate numbers.

Fraudulent documentation is so pervasive that Ray Marshall, former Secretary of Labor during the Carter administration, recently identified IRCA’s failure to implement a secure worker identity or work authorization system as the most significant cause of the country’s current immigration crisis.
V. SWIFT AS AN UNWILLING EMPLOYER SANCTIONS “POSTER CHILD”

In retrospect, Swift was the perfect illustrative target for what has been called the “largest worksite enforcement” raid in U.S. history.22 Swift & Co. is a relatively large employer, well known by the public.23 Swift provides the majority of employment to very small communities—communities whose constituencies are perceived as too small to have any effect on national elections. The bigger the employer, the better the headline. Given the pervasiveness of false documentation in the general U.S. workforce, there was little risk of failure: the government could safely assume the workforce was comprised of large numbers of unauthorized labor given the nature of the work—very difficult and injury prone. It was a logical target.

As it turned out, identifying the target was the easy part; releasing the trap on cue proved too difficult. In the end, the raid came two weeks two late for the White House.

Immigration enforcement is currently a hot-button, national political issue, and it is purported that ICE’s Swift sting was planned to occur before the November 2006 mid-term election, as were the press conferences and press releases. The theory was that the raid would rally the conservative base to support moderate Republicans polling poorly in districts because the prospect of immigration reform—including the President’s guest worker plan and some form of amnesty—was keeping Republicans from voting.

When the raid failed to take place on schedule, followed by a mid-term landslide loss,24 the President nonetheless attempted to use the Swift raids to buoy support from the far Right for immigration reform.25

The more onerous employer sanctions component of the proposed comprehensive immigration reform package seemingly provided the President an ideal opportunity to buttress bipartisan support to ensure passage. Specifically, in a time when a very unpopular President needed to satisfy his conservative base, while reaching out to the moderates and liberals whose votes he desperately needed to pass reform, employer sanctions provided the perfect avenue for him to achieve both goals. The conservatives saw greater

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worksite enforcement action as the key deterrent to stymieing illegal immigration at its root cause—the economic incentive; moderates and liberals were encouraged because greater worksite enforcement action punishes employers for their illicit hiring practices.26

Unfortunately for the President, the push for immigration reform failed.27 Nonetheless, ICE continues to commit a great deal of its resources to worksite enforcement.28

VI. SWIFT’S FAILED ATTEMPTS TO APPEASE THE GOVERNMENT

Ironically, DHS’s rush to execute the raid in November was attacked by its target; Swift sued to enjoin the raid.29

Understanding that its entire industry was a target, Swift believed it could defer and perhaps avoid enforcement by contracting with the government to take part in an employee pre-screening program. Accordingly, Swift became a participant in "Basic Pilot," a government program which allows participating employers to check names and social security numbers presented by prospective employees against a government database—now called E-Verify.30 The system’s utility is limited to verifying that a prospective employee holding a social security card is in possession of a legitimate number which matches the name of the employee and number in the system.31 Swift sued in federal court in Amarillo, Texas to prevent the raid from occurring, noting that the Government had implied that its participation in "Basic Pilot"—now E-Verify—would forestall worksite enforcement.32

Ultimately, the suit was dismissed, and the raid occurred a fortnight late.33

33. See id.
34. See Tatum, supra note 29.
35. Id.
The day of the raid, although conceding it was "not a magic bullet for every kind of problem," Secretary Chertoff nonetheless suggested that E-Verify is a useful tool in preventing illegal immigration and illegal work.\(^{36}\) What he failed to mention was that the tools used by ICE to investigate Swift are not available to the public.\(^ {37}\) The Secretary's words reflected, at best, a misunderstanding of the issues and the lack of resources available to employers.

VII. E-VERIFY: THE TROJAN HORSE USED TO BREACH YOUR COMPANY'S PRIVACY WALLS

In retrospect, Swift was wrong about "Basic Pilot": E-Verify not only failed to deflect scrutiny, but may have hastened the raids. E-Verify provided the government with an opportunity, not otherwise available, to examine the legality of Swift's workforce at a leisurely and thoughtful pace.\(^ {38}\) Because of E-Verify, the government was not required to request human resource data or Form I-9 records via civil subpoena or criminal warrant.\(^ {39}\) E-Verify was ICE's key that unlocked Swift's hiring practices.\(^ {40}\) By signing on to take part in E-Verify, Swift allowed the government to investigate it without securing in return the benefit of civil or criminal immunity.\(^ {41}\)

As a result of the raids, Swift—the nation's third largest processor of fresh pork and beef—saw its production at six facilities, including its largest, grind to a halt;\(^ {42}\) it saw a majority of its day-shift employees deported.\(^ {43}\) Going forward, it faced the prospect that its remaining employees, who were not arrested, might very well possess the same work authorization that the government maintained was based upon "illegal" documents, yet which nonetheless complied with the government's own employer verification program.\(^ {44}\) In other words, the law that authorized the government's raid of Swift is the same law that prohibited Swift from requesting additional verification documentation of those employees they suspected of having presented

\(^{36}\) Chertoff, supra note 9.
\(^{38}\) See Jacoby, supra note 8.
\(^{40}\) See Jacoby, supra note 8.
\(^{42}\) Jacoby, supra note 8.
fraudulent documentation. To suggest that Swift faced a Catch-22 scenario might be an understatement. Published reports indicate that the raid cost Swift upwards of $30 million in direct expenses and lost production.

VIII. GOING AFTER THE FALSE DOCUMENT "SOURCE"

Commentators have criticized the government’s justification for the enforcement action in that only a small percentage of those arrested during the raids resulted in criminal convictions for identity theft. They point out that raiding worksites is not the most effective way of controlling illegal immigration and noted that the Swift raids wiped out entire neighborhoods of the six communities affected by the raids.

The criticism was not misplaced, it was merely premature. On July 10, 2007, ICE agents returned to Swift’s production facilities and arrested twenty more employees. Most notably, a human resources manager, a union official, and a document vendor, who worked at one of the plants, was charged with harboring illegal aliens, aiding and abetting identity theft, and misprision of a felony. ICE was quick to note in its press release that the arrests resulted from a continuing investigation with assistance from the Federal Trade Commission—the entity charged with investigating reports of identity theft—the Social Security Administration’s Office of the Inspector General, four U.S. Attorneys Offices, and two District Attorney’s Offices.

IX. CRIMINAL INVESTIGATIONS: FORGET WHAT YOU THINK YOU KNOW ABOUT “MERE” FINES

What is critical to note is the continuing nature of the investigation. As a result of the commingling of the immigration expertise of the legacy INS special agents, with the complex criminal investigation tools of the legacy

45. See Jacoby, supra note 8.
51. See id.
52. Id.
customs service, a post-2003 ICE worksite enforcement action has the tell-tale signs of a complex white-collar or narcotics criminal investigation. Gone are the days of tips from citizens complaining about lost job opportunities. Now, investigations begin as a result of information sharing between government branches that touch upon all aspects of business—employment authorization verification, social security taxation, consumer protection, and document fraud. ICE utilizes informants and undercover agents during worksite enforcement. Additionally, U.S. attorneys have become remarkably creative with criminal charges arising from these investigations, including money laundering, harboring, and Racketeer Influenced and Corrupt Organizations (RICO) charges. Special agents use the statements of illegal aliens against HR managers, union stewards, and middle-management, who in turn provide state’s evidence against CEOs, company executives, and others in upper management, in exchange for sentencing departures.

X. GOVERNMENT’S “IMPROVEMENTS” TO E-VERIFY AMOUNT TO A PLACEBO

The government is confounded as to why more businesses have not signed on to E-Verify. With a growing recognition that the E-Verify system was flawed, at the end of March 2007, DHS announced a change to the system. DHS upgraded the E-Verify system to allow employers the ability to access a database of lawful permanent resident and employment authorization document photos. The result provides pictures that can be used to confirm that the applicant is presenting authentic immigration papers. “Gerri

57. See WRIGHT, supra note 55, at 41.
58. See Jacoby, supra note 8.
60. See id.
61. See id.
Ratliff, chief of the verification division of U.S. Citizenship and Immigration Services" (USCIS), attempted to deflect criticism of the government program by stating that, "assigning blame to [E-Verify] for the problems at Swift is 'disingenuous' because the immigrants fooled the [state DMV offices] into issuing false driver's licenses." 62

Remarkably, Ratliff’s conclusion is wrong; it is based upon the premise that the majority of the undocumented aliens working at the Swift plants illegally acquired an American citizen’s social security number to obtain employment. What DHS has not said is that, for the most part, the illegal aliens at Swift presented legitimate social security cards. 63 The Social Security Administration issued cards upon the aliens’ submission of a valid Puerto Rican birth certificate. 64 Mexicans, Hondurans, El Salvadorans, and others had purchased the valid Puerto Rican birth certificates from a document vendor in Puerto Rico. 65 Their false claim to U.S. citizenship fatally jeopardized any hope the aliens had to ever immigrate legally, although they previously had a valid social security number with which they could obtain employment and state IDs. 66 Assuming Swift utilized E-Verify to verify the social security numbers provided by any alien involved in the scheme—who had obtained the valid social security cards using the fraudulent birth certificates—E-Verify would have failed to recognize that they were not authorized to work. 67

Stated differently, had Swift relied solely upon E-Verify to verify employment eligibility, most of their illegal workforce would have cleared E-Verify as authorized to work. Not only that, but the government’s proposed fix—authorizing employers to view immigration photographs 68—would still have failed to identify that the employee presenting the valid social security card utilized a false birth certificate. An employee who fraudulently obtained a valid social security number would not have a photograph in the

64. See id.
65. Id.
66. See id.
67. See Jacoby, supra note 8.
immigration database.⁶⁹ Even if the alien were in the database, any photograph maintained by the immigration service would not match the photograph issued by the state identification agency because his valid social security card was issued under false pretense.⁷⁰

Given these facts, the Secretary proposing E-Verify as a cure to Swift’s employment eligibility verification problems is ridiculously inapplicable, if not intentionally disingenuous.

XI. LIONS AND TIGERS AND BEARS, OH MY!—NEW PLAYERS AND RULES TO THE GAME

In sum, any employer similarly situated faces a catastrophic work stoppage, not to mention the possibility of civil and criminal sanctions for knowingly hiring illegal labor, unless it takes measures beyond those currently provided and even proposed by the government in a manner which is not discriminatory.⁷¹

Presently, the government offers no tool for employers to discern between a valid social security number issued upon fraudulent identity documentation and any other valid social security number.⁷² The problem is so severe, Secretary Chertoff called upon Congress to address the issue, but provided for no alternative for employers other than E-Verify.⁷³ So, as he requests a legislative fix, employers are still subject to sanctions arising from the Secretary’s enforcement of the current law.⁷⁴

XII. STATE LEGISLATURES, EMPLOYEE GROUPS, AND SHAREHOLDERS WANT TO PLAY ON THE SEEMINGLY VACANT FEDERAL FIELD

The playing field is changing. Although comprehensive immigration reform appears dead—at least until there is a new president in the White

⁷⁰. See Fact Sheet: E-Verify, supra note 68.
⁷³. See Chertoff, supra note 9.
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House—state legislatures have taken it upon themselves to join the game and require businesses to utilize E-Verify.\footnote{See Boulder Immigration Law Firm, State and Local Employment Verification Laws, http://i-9employmenteligibility.com/state_verification_laws.html (last visited Apr. 16, 2008), [hereinafter State and Local Employment Verification Laws].} Georgia\footnote{S.B. 529, Reg. Sess. (Ga. 2006).} and Minnesota\footnote{See Press Release, Off. of the Governor of Minn., Governor Pawlenty Unveils Actions to Combat Illegal Immigration (Jan. 7, 2008), available at http://www.governor.state.mn.us/mediacenter/pressreleases/PROD008597.html.} recently added themselves to the list of states including Arizona\footnote{H.B. 2779, 48th Leg., 1st Reg. Sess. (Ariz. 2007).} and Colorado,\footnote{COLO. REV. STAT. § 8-2-122 (2007).} which require businesses that enjoy public contracts to agree to the federal terms of E-Verify. Arkansas is soon to follow.\footnote{Michaels & Solis, \textit{supra} note 74.} Accordingly, those businesses that transact with these four states will be allowing the federal government into its hiring process, just as Swift did.

States are not the only new players. Groups of workers have sued businesses in federal court for civil RICO violations.\footnote{See, e.g., Commercial Cleaning Servs., L.L.C. v. Colin Serv. Sys., Inc., 271 F.3d 374 (2d Cir. 2001). \textit{See also} Amy A. Weems, Note, \textit{A New Use for Civil RICO: Employees Attempt to Combat the Hiring of Illegal Immigrants}, 28 AM. J. TRIAL ADVOC. 429, 440–41 (2004).} The employees claim that they are damaged whenever businesses are allowed to inadequately compensate them because of the availability of undocumented workers.\footnote{See Weems, \textit{supra} note 81, at 441; Commercial Cleaning Servs., 271 F.3d at 379.} Because the company can pay illegal aliens to perform the same job at a disproportionate rate, the suits generally allege that wages are depressed as a result of a criminal conspiracy by management.\footnote{See Weems, \textit{supra} note 81, at 441–42; Commercial Cleaning Servs., 271 F.3d at 381.}

Another new player: shareholders have filed derivative suits against the publicly traded corporations they own under Sarbanes-Oxley for management’s failure to comply with their fiduciary duties.\footnote{See R. Mark Halligan, Buildingipvalue.com, Sea Change in the Boardroom: The Fiduciary Duty to Identify and Protect Trade Secret Assets, http://www.buildingipvalue.com/06US_Can/135_137.htm (last visited Apr. 16, 2008).} The shareholders allege that because of technical and substantive violations of Form I-9 compliance, the corporation maintains unrealized civil exposure that might result in criminal charges against the business.\footnote{See \textit{id}; State and Local Employment Verification Laws, \textit{supra} note 75.} The suits routinely allege that management’s failure to audit the entire corporation’s Form I-9s amounts to a breach of their obligations to the company.\footnote{See Halligan, \textit{supra} note 84.
Those are just the new players; the rules are also changing. Recently, the DHS promulgated regulations re-interpreting how businesses are required to respond to the Social Security Administration’s “No-Match” letters.87 DHS will allow an employer “safe harbor” from a criminal charge of constructive knowledge that an employee was not authorized to work if, and only if, it terminates the employee who fails to resolve the mismatch with the Social Security Administration within ninety days, under certain circumstances.88 Stated differently, in most situations, constructive knowledge of hiring an unauthorized alien will be imputed to any employer who fails to fire an employee who is unable to resolve a discrepancy between his name and social security number.89 Civil liability for discrimination claims remains in force, thereby raising the odds of some form of liability for almost any action taken.

As a result of litigation in the Ninth Circuit Court of Appeals,90 the regulation has been enjoined.91 Ultimately, DHS ceded many of the arguments identified by the District Judge by requesting a stay of further litigation, pending the release of additional regulations set for publication in March 2008, after additional rulemaking.92

XIII. WHAT IS AN EMPLOYER TO DO?

Cognizant that civil and criminal penalties flow from the renewed enforcement of federal, and now state employment-eligibility verification law requirements, employers and their counsel should be mindful of the following:

1. Employers must be intimately aware of and remain constantly vigilant of their Form I-9 employment-eligibility verification requirements.

2. Employers must require that prospective employees complete Form I-9 within three days of their hire.

3. Employers must examine the genuineness of the documents presented and record that the documentation presented proves the employee’s identity and employment eligibility.

88. Id. at 45,617.
89. Id. at 45,612.
90. See Incalza v. Fendi N. Am., Inc., 479 F.3d 1005, 1011 (9th Cir. 2007).
4. Vigilance requires proper re-verification of employment eligibility for all hires and must occur prior to the date that work authorization is due to expire.

5. Employers must have a system of document verification beyond compliance in E-Verify.

6. Employers must be prepared to deal immediately when presented with any situation which tends to suggest an employee may have, or has revealed to management, that they presented false documents during the Form 1-9 review process.

7. Moreover, employers must be prepared to internally audit the entirety of its Form I-9 documentation to discover correctible or recurring errors in order to minimize civil and criminal exposure.

8. Finally, employers must be prepared for worksite enforcement actions at any time. Every employer is subject to a raid, just as Swift faced on December 12, 2006.

9. Accordingly, the employer should have contingency plans in place for dealing with the ramifications of losing significant portions of its operating labor without notice.

Given the nature of and availability of fraudulent documentation and the lack of government assistance with employment eligibility verification when presented with such sophisticated documents, it is easy to see how Swift could have been ill prepared for dealing with the consequences of the government raids—consequences it is still dealing with. However, awareness of the law and its liabilities are the first of a multi-tiered process in minimizing significant exposure.

APPENDIX

XIV. RECENT WORKSITE ENFORCEMENT RAIDS: THE RECORD-SETTING YEAR

BY KEVIN LASHUS

The government easily surpassed last year’s totals for arrests and forfeitures resulting from the rash of government worksite enforcement raids. By the close of the fiscal year on September 30, 2007, 863 individuals had been criminally arrested. Additionally, over 4100 persons had been administratively arrested during the following enforcement actions:


On Valentine’s Day, fifty-one illegal workers were arrested at two UPS warehouses in Auburn, Washington outside of Seattle. UPS Supply Chain Solutions, a UPS subsidiary that operates the [UPS] warehouses, and . . . Spherion, a temporary-employment agency that helped staff the facilities, employed the workers.

On February 22, 2007, over three hundred janitors employed by Florida-based Rosenbaum-Cunningham International, Inc. were arrested in sixty-three different locations in seventeen states and the District of Columbia. Three of RCI’s executives were charged with conspiracy to defraud the United States and to harbor illegal aliens for profit. The illegal workers were employed at restaurants, including the House of Blues, “Hard Rock Café, ESPN Zone, Planet Hollywood,” and others. The investigation began in July 2005.

On February 27, 2007, seventeen undocumented workers were arrested at Cano Packaging, “which provides packaging services for the confections and food industry.” Cano Packaging is a company located on the outskirts of Louisville, Kentucky.


95. Id.


99. See CNN Newsroom, supra note 98.

100. Seper, supra note 98.


On March 1, 2007, sixty-seven illegal workers were arrested at a raid at Super Express Van Tours in southeast Houston, Texas.

On March 6, 2007, thirty-six workers were arrested at Janco, a fiberglass fabrication company. Janco is a company located in Mishawaka, Indiana. More than fifty special agents surrounded the factory before a large white bus transported the detained workers to Broadview, Illinois. The government investigation began in late 2006.

The same day, 361 workers were arrested at Michael Bianco Inc., a factory in New Bedford, Massachusetts. Included in the arrests were the owner of the company and three managers. The executives "were charged with conspiring to encourage or induce illegal [aliens] to [reside] in the United States, and conspir[acy] to hire illegal [aliens]." It is alleged that the company was aware that many of its employees used fraudulent alien registration cards and social security cards to obtain employment. The company specializes in the manufacture of safety vests and backpacks for the U.S. Military. The investigation began in late 2005.

On March 8, 2007, eleven workers were arrested at "Raphael’s Party Rentals, a long-established business that" services the Marine Corps Air Station at Miramar outside of San Diego, California.

On March 9, 2007, thirteen workers were arrested at Sun Dry Wall & Stucco Inc. in Sierra Vista, Arizona, outside of Tucson. The company

104. St. Clair, supra note 102.
107. Id.
108. Id.
109. Id.
112. Id.
113. Id.
114. Id.
115. See id.
president and the firm's human resources manager were also taken into custody.\textsuperscript{118}

On March 29, 2007, sixty-nine workers were arrested at Jones Industrial Network.\textsuperscript{119} "[ICE] agents executed a criminal search warrant, civil warrants, and conducted consent searches at nine business locations . . . ."\textsuperscript{120} ICE also seized a bank account belonging to the company worth more than $600,000.\textsuperscript{121} The Baltimore area business provided temporary workers for local companies, including the sportswear fashion maker Under Armour Inc.\textsuperscript{122} The investigation began in 2006.\textsuperscript{123}

The same day, seventy-seven workers on construction projects in four states were arrested following a five-month ICE worksite enforcement investigation.\textsuperscript{124} Many of the workers were employed by Greenville, Mississippi-based company, Tarrasco Steel.\textsuperscript{125} ICE has alleged that Jose Gonzalez, the Tarrasco Steel owner, falsified and altered information on the I-9 employee eligibility forms.\textsuperscript{126}

On April 4, 2007, sixty-two managers and employees were arrested by ICE at "Quality Service Integrity Inc. [QSI], a cleaning service operating within the Cargill Meat Solutions Plant" in Beardstown, Illinois.\textsuperscript{127} "A criminal complaint charges two QSI managers with aggravated identity theft and aiding and abetting aggravated identity theft in connection with [the] alleged

\begin{itemize}
  \item\textsuperscript{118} Id.
  \item\textsuperscript{121} Id.
  \item\textsuperscript{122} See Jones, \textit{supra} note 119.
  \item\textsuperscript{123} Press Release, Baltimore, \textit{supra} note 120.
  \item\textsuperscript{125} Id.
  \item\textsuperscript{126} Id.
\end{itemize}
hiring of illegal aliens." The affidavit, filed under seal, alleged managers "knowingly hired illegal aliens to work at QSI." The eleven-month investigation resulted in criminal charges against three employees: the general manager, company foreman, and another employee. The Social Security Administration's Office of Inspector General assisted ICE with the investigation and the execution of the search warrants.

On February 1, 2007, in El Paso, Texas, two brothers were sentenced to about "five months in federal prison for harboring" and hiring illegal aliens to work in a quarry they owned. Two days later, thirteen employees were arrested at Eagle Bag, an Oakland, California packaging facility. ICE conducted a Form I-9 compliance audit that revealed that more than two-thirds of the workforce "submitted counterfeit immigration documents bearing fraudulent alien registration numbers."

On May 11, 2007, Jose Calhelha and his daughter, Diana, proprietors of ten Dunkin' Donuts stores at locations in Branford, Westbrook, Derby, East Haven, and Old Saybrook, Connecticut, were sentenced to serve ten months of imprisonment, followed by two years of supervised release, and to pay $1 million in criminal fines stemming from their guilty pleas to one count each of illegally "encouraging . . . aliens to come into the United States and harboring" aliens. The investigation was initiated upon a Social Security Administration mailing of employment documents "utilizing social security
numbers that were invalid or that did not match the name of the employee.\textsuperscript{137}

On May 10, 2007, twelve employees, some of which were employed by El Nopal, a dining facility contractor at Camp Joseph T. Robinson Army National Guard base in Little Rock, Arkansas, were arrested as part of an ongoing worksite enforcement investigation.\textsuperscript{138}

The same day and the day after, "[t]welve defendants pleaded guilty . . . to fraud and misusing [Form I-9] documents related to a criminal worksite enforcement investigation against Quality Service Integrity Inc. . . . in Beardstown, Ill[inois]."\textsuperscript{139} Sentencing is "scheduled for July 5 and 6."\textsuperscript{140} The charges range from harboring illegal aliens, which have been lodged against the company managers, to "aiding and abetting aggravated identity theft," which have been lodged against hiring personnel for the company.\textsuperscript{141} "If convicted, the offense of harboring illegal aliens carries a maximum statutory penalty of [ten] years in prison;" "aiding and abetting aggravated identity theft" carries a mandatory statutory penalty of two years in prison.\textsuperscript{142} "The charges resulted from a criminal worksite enforcement operation conducted by ICE April 4."\textsuperscript{143}

On May 22, 2007, more than 100 employees were arrested at a large poultry-processing plant in Butterfield, Missouri.\textsuperscript{144} Armed ICE Special Agents rounded up all George’s Processing Inc.’s employees during the morning shift and checked them one by one.\textsuperscript{145} ICE spokesperson, Tim Counts, noted that employees who maintained legitimate work authorization but who, as a result of the enforcement action, missed several hours of work


\textsuperscript{140} Id.

\textsuperscript{141} Id.

\textsuperscript{142} Id.

\textsuperscript{143} Id.


while being questioned, would not be compensated by ICE for their lost pay. The plant is the largest employer in Barry County, Missouri. 146

On June 12, 2007, federal agents executed a federal search warrant at Fresh Del Monte Produce in Portland, Oregon, arresting more than 160 workers. 147 Allegedly, nine out of ten employees from the staffing company that provided workers for Fresh Del Monte used social security numbers that were either fictitious or belonged to other people. 148 The investigation was aided when ICE agents directed an informant to apply for work at Fresh Del Monte. 149 Two weeks later, a federal grand jury returned indictments against ten of the workers—charging them with possession of fraudulent documents and fraud. 150 ICE’s six-month investigation identified “the fraudulent use of documents to illegally obtain employment at American Staffing Resources.” 151

On June 11, 2007, two Wisconsin men were arrested and charged for smuggling illegal aliens to live and work at two Super 8 Motels. 152 Additionally, they were charged with aiding and abetting an alien in eluding immigration authorities. 153

On June 18, 2007, several Kansas City, Missouri roofing companies, the owners, and several employees were indicted by a federal grand jury for conspiring to hire illegal aliens. 154 Additionally, “34 illegal aliens were arrested on administrative charges.” 155 The roofing companies “employed the illegal

149. See id.
150. Press Release, Fresh Del Monte Produce, supra note 147.
151. Id.
153. Id.
155. Id.
aliens as ‘sub-contractors’ for [a general contractor], thereby attempting to insulate” the general contractor from liability.156

On June 19, 2007, operators of Monterey Pizza in San Francisco, California were charged with harboring illegal alien workers.157 The employees of the restaurant were also charged with identity theft.158

The following day, twenty-eight employees of Missouri’s George’s Processing, Inc. were “indicted on criminal immigration violations.”159 Charges included Social Security fraud and aggravated identity theft.160

A day later, special agents arrested eighty-one illegal aliens during a raid at Iridium Industries Inc., a manufacturing company in the Poconos outside of Allentown, Pennsylvania.161 In a press release, Iridium was quick to suggest that the raid was focused on a temporary worker agency that supplied workers for the plant.162

On June 27, 2007, a federal grand jury returned indictments for possession of fraudulent immigration documents and Social Security fraud against ten former workers of the Fresh Del Monte Produce facility in Portland, Oregon.163 Possession of fraudulent documents “carries a maximum punishment of 10 years imprisonment and a $250,000 fine.”164

On July 9, 2007, four operators of the El Pollo Rico restaurant in Wheaton, MD were charged with “employing and harboring illegal aliens, money laundering and structuring deposits to avoid currency reporting requirements.”165 The defendants face a maximum sentence of forty years in prison for employing numerous illegal aliens, paying them in cash until the employees obtained temporary status, housing them in residences owned by the restaurateurs, and laundering cash to the employees via a restaurant ATM.166

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156. Id.
158. Id.
160. Id.
162. Id.
163. Press Release, Fresh Del Monte Produce, supra note 147.
164. Id.
166. Id.
"Pursuant to the arrests . . . agents seized over $2 million in cash and jewelry . . . and several vehicles."

A day later, ICE agents arrested thirty-one illegal aliens working construction and maintenance at a children’s summer camp in the Catskills. The aliens “were employed by two companies working as sub-contractors at the camp.”

On July 11, 2007, ICE agents arrested an additional twenty employees of Swift & Company. The additional arrests included a company “human resources employee, a union official,” and a document vendor employed at the plant.

On July 12, 2007, the former supervisor for QSI at the Cargill Pork Processing Plant in Beardstown, Illinois, pleaded guilty “to harboring illegal aliens and aiding aggravated identity fraud.” The QSI employee “admitted instructing prospective . . . employees without proper work authorization how to obtain new identities” and then employed them under their assumed identities. Seventeen other defendants have already been convicted and sentenced.

On July 16, 2007, the seventh former IFCO manager pleaded guilty to criminal charges stemming from the April 19, 2006 worksite enforcement raid which netted nearly 1200 illegal aliens at forty IFCO pallet plants nationwide. Criminal charges ranged from misdemeanor charges of unlawfully employing illegal aliens to conspiracy to possess identification documents with the intent to use them unlawfully. For the felony offenses, the potential sentence carries a maximum five year imprisonment, a $250,000 fine, and three years of supervised release.

167. Id.
169. Id.
171. Id.
173. Id.
174. Id.
176. Id.
177. Id.
On July 23, 2007, Joseph Edward Fulmer, a resident of Centerville Ohio, was sentenced to six months in prison, 100 hours of community service, was forced to forfeit his residence, valued at $770,000, plus $2693 in currency seized by ICE during its raid of “Stitching Post, a store that sells and repairs sewing machines and related items.”178

On August 2, 2007, the president and two managers of the New Bedford, Massachusetts manufacturing company, MBI, Inc., were indicted on one count each of conspiracy to “harbor or conceal or shield illegal aliens” and to “encourage and induce aliens to come to, enter, and reside in the United States.”179 If convicted, the executives “face a maximum sentence of 10 years in prison, [a] $250,000 fine, a $100 special assessment, and at least two years of supervised release.”180

The same day, the owner of Tarrasco Steel made an initial appearance in federal court following his arrest by ICE special agents “as part of an on-going investigation into charges that he hired illegal alien workers” to work on “critical infrastructure construction sites throughout the Gulf Coast.”181 Twenty-six Tarrasco employees were arrested on March 29 during an ICE-led raid in Greenville, Mississippi.182 Bank accounts totaling “$457,368.00 [have] been seized from the accounts of Tarrasco Steel.”183

On August 28, 2007, ICE special agents executed a criminal search warrant at Koch Foods in Fairfield, Ohio.184 As a result of the enforcement raid, approximately 160 employees were administratively arrested for immigration violations.185 The enforcement actions were a result of a two-year, ongoing “investigation based on evidence that Koch...may have...knowingly hired illegal aliens at its poultry processing and packaging facility.”186

180. Id.
182. Id.
183. Id.
185. Id.
186. Id.
The enforcement action was coordinated by ICE with the assistance of the U.S. Attorney’s Office, the USDA, the Ohio Department of Public Safety, and local law enforcement. 187

On September 10, 2007, five former employees of George’s Processing Inc., a poultry processing facility in Butterfield, Missouri, pleaded guilty in federal court “to various immigration and identity-theft related violations.” 188 Each “pleaded guilty to falsely claiming to be a U.S. citizen, aggravated identity theft and misuse of a Social Security number.” 189 The U.S. Attorney’s Office, ICE, “the Social Security Administration’s Office of Inspector General, the Missouri State Highway Patrol, the U.S. Marshal’s Service, . . . and the U.S. Department of Agriculture [prosecuted the cases].” 190

On September 27, 2007, ICE special agents simultaneously executed searches of eleven McDonald’s restaurants in Reno, Sparks, and Fernley, Nevada. 191 Fifty-six employees suspected to be undocumented workers were detained. 192 The arrests resulted from a five-month investigation sparked by an identity theft complaint. 193

On October 3, 2007, Dean Hedges, owner of Hedges Landscape Specialists Inc., Exterior Designs Inc., and Performance Irrigation LLC, pleaded guilty to knowingly employing illegal aliens at his landscaping company in Crestwood, Kentucky. 194 A former employee informed ICE agents that it was “common knowledge that . . . Hedges employed illegal aliens to work for Exterior Designs Inc. and Performance Irrigation, and that those illegal aliens were considered a subclass of employees.” 195 A former employee alerted agents that, during the time he worked for Hedges, the companies knowingly and openly employed illegal aliens to work for his company. 196 The “employee said that, at the direction of Hedges, he/she was ordered to

187. Id.
189. Id.
190. Id.
192. Id.
193. Id.
195. Id.
196. Id.
pay the illegal aliens on about 20 to 25 occasions in cash ‘under the table’ for work they performed as employees of Hedges Landscape Specialists.”\textsuperscript{197} The “former employee stated that during his/her employment with . . . Hedges, he/she had several discussions with Hedges about completing Employment Eligibility” Forms I-9 on the company’s employee—“Hedges indicated he was not worried and ‘would just pay a fine’ if he were ever caught by authorities.”\textsuperscript{198} The same employee swore out an affidavit indicating that Hedges would complete Forms I-9 for documented workers, but not for illegal alien employees.\textsuperscript{199} ICE agents executed a federal search warrant September 24 at Hedges Landscape.\textsuperscript{200} “During the execution of the search warrant, ICE . . . arrested 12 illegal alien workers from Mexico” who were all placed into removal proceedings.\textsuperscript{201} “The maximum potential penalties [sic] for the corporation is a $250,000 fine, and the maximum potential penalties for Hedges are a $24,000 fine and six months imprisonment or up to five years probation.”\textsuperscript{202} Hedges already agreed to forfeit $147,000 seized from corporate bank accounts.\textsuperscript{203} “All employers in all industries and locations must comply with our nation’s laws. ICE, and our law enforcement partners, will continue to enforce immigration laws from all angles, including: criminal charges, asset seizures, administrative arrests and deportations,” Chicago ICE Special Agent-In-Charge Elissa Brown said.\textsuperscript{204}

On October 17, 2007, Richard Rosenbaum, the former president of RCI Inc., “pleaded guilty to conspiring to defraud the United States and harboring illegal aliens” arising from operating a nationwide cleaning service.\textsuperscript{205} He was ordered to “pay restitution to the United States an amount expected to exceed $16 million.”\textsuperscript{206} Personally, he “agreed to forfeit bank accounts, life insurance policies, and currency totaling more than $1.1 million.”\textsuperscript{207} Rosenbaum operated a cleaning and grounds maintenance service that contracted with theme restaurant chains, including the Grand Traverse Resort, “the
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House of Blues, Planet Hollywood, Hard Rock Café, Dave and Busters, Yardhouse, ESPN Zone, and ... China Grill. 208

One week later, special agents from both ICE and the FBI arrested a Canadian citizen residing in Brattleboro, Vermont “on charges of employing and harboring illegal aliens and” misrepresentation. 209 Gurdeep Nagra, “[p]resident of the Nanak Hotel Group, which owns the Hampton and Quality Inns in Brattleboro,” faces a ten-year sentence and a $250,000 fine, if convicted. 210 As early as two years ago, “ICE was notified that the hotels were employing illegal aliens and that the hotels were allowing the aliens to live on [the] premises.” 211 Simultaneously with Nagra’s arrest, federal law enforcement agents searched the two hotels and “took into custody 10 aliens who were illegally working and living in Vermont.” 212

On Halloween, twenty-three warehouse employees were arrested at ANNA II, Inc., a staffing company located in Bensenville, Illinois. 213 “ICE initiated the investigation into ANNA II in April 2006 after receiving credible information that illegal aliens were employed there.” 214

On November 7, 2007, “[a] corporate officer and an office manager of a . . . temporary employment agency were arrested [in Chicago] on federal charges alleging they harbored illegal aliens . . . .” 215 Twenty workers “were arrested on state charges for allegedly using fraudulent airport security badges.” 216 “[M]ore than 100 temporary workers employed by the agency were in possession of fraudulently obtained airport security badges, issued by the Chicago Department of Aviation.” 217 According to the pleadings, “a majority of the social security numbers associated with [the staffing company] employees were either numbers that did not exist or were numbers that belonged to other persons.” The Social Security Administration-Office of the Inspector General, the Department of Labor-Office of the Inspector Gen-

208. Id.
210. Id.
211. Id.
212. Id.
214. Id.
216. Id.
217. Id.
eral, and other state and federal law enforcement agencies, assisted ICE in
the investigation. If convicted, the corporate officers "face a maximum
penalty of 10 years in prison for harboring illegal aliens and five years in
prison for misuse of a social security number." The same day, ICE Special Agents raided Pepe's Cabinets, an Oakland
carpentry business. "The probe was sparked by information provided to
ICE's toll-free tip line." Eight individuals were arrested during the operation.
Later in the afternoon, "the former comptroller of RCI Inc. entered a
guilty plea . . . to charges arising from operating a nationwide cleaning ser-
vice that was staffed predominantly with illegal aliens." The plea agree-
ment required her and the company's vice president "to forfeit funds totaling
$1.5 million."
A week later, "fifteen illegal alien restaurant workers were arrested in
the Louisville area" at Jumbo Buffet and the China Star Buffet and Grill. "ICE [Special] [A]gents initiated the investigation in December 2006."
A day later, "the owner and six managers of a northern Kentucky con-
struction contractor were sentenced to federal prison . . . for conspiring to
harbor illegal aliens." The owner and his son and daughter "pleaded guilty
. . . to conspiring to harbor illegal aliens for commercial advantage." The
company provided "framing services for new home construction in . . .
northern Kentucky."
On November 19, a "worksite supervisor and a former employee [of
QSI] at the Cargill Pork Processing Plant in Beardstown, Illinois, were sen-

218. Id.
219. Id.
220. Press Release, U.S. Immigration & Customs Enforcement, ICE Probe of Alleged
Illegal Hiring Practices Leads to Criminal Charges Against Owner of Oakland Carpentry
071107sanfrancisco.htm.
221. Id.
222. Id.
223. Press Release, U.S. Immigration & Customs Enforcement, The Last of 3 RCI Offi-
cers Pleads Guilty to Immigration Violations, Tax Evasion (Nov. 7, 2007),
224. Id.
226. Id.
227. Press Release, U.S. Immigration & Customs Enforcement, N. Kentucky Contractor,
Supervisors Sentenced for Harboring Illegal Aliens (Nov. 15, 2007),
228. Id.
229. Id.
enced to prison . . . for their roles in hiring illegal aliens to work for the cleaning service.”230 The supervisor was sentenced to thirty-eight months and the “employee was sentenced to 10 months in federal prison.”231 “Sixteen other QSI employees were also arrested, charged, and pleaded guilty to fraud and misusing employment documents” as a result of an April 4, 2007 worksite enforcement raid. “The 16 were sentenced to prison terms ranging from three to seven months.”232

Finally, on December 27, 2007, “[a]n Orem, Utah construction contractor” was criminally indicted on “federal criminal charges as part of an alleged scheme to bring illegal aliens into the United States and require them to work for his business to pay off their smuggling debt.”233 In all, ICE arrested 24 employees of MJH Construction on criminal and administrative violations.234

“[D]uring the three quarters of [Fiscal Year] 2007, ICE obtained criminal fines, restitutions, and civil judgments in [worksite enforcement] investigations in excess of $30 million.”235 The number of undocumented workers arrested at raids on businesses has skyrocketed to 4077 in the same time frame.236 “In criminal cases, ICE [commonly] pursues charges of harboring illegal aliens, money laundering, and/or knowingly hiring illegal aliens. Harboring . . . is a felony with a potential 10-year prison sentence. Money laundering is a felony with a potential 20-year prison sentence.”237 ICE often notes that the potential of criminal sanctions constitutes a “far greater deterrent to illegal employment schemes than administrative sanctions.”238

“I think we’re talking about something the American people have never seen before, which is what do we do and what do we see when the government gets serious about using all the legal tools available to make the law work and to enforce the law,” Homeland

231. Id.
232. Id.
234. Id.
236. ICE 2007 REPORT, supra note 15.
238. Id.
Security Secretary Chertoff told ABC News in an exclusive interview [on October 4, 2007].

Cognizant that civil and criminal penalties flow from the renewed enforcement of federal employment-eligibility verification law requirements, employers and their counsel should be mindful of the following:

Employers must be intimately aware of and remain constantly vigilant of their Form I-9 employment-eligibility verification requirements. Employers must require that prospective employees complete Form I-9s within three days of their hire. The employer must examine the genuineness of the documents presented and record that the documentation presented proves the employee’s identity and employment eligibility. Vigilance requires re-verification of employment eligibility for all hires and must occur prior to the date that work authorization is due to expire.

Employers must have a system of document verification beyond compliance in E-Verify. Employers must be prepared to deal immediately when presented with any situation which tends to suggest an employee may have, or has revealed, to management, that they presented false documents during the Form I-9 review process. Moreover, employers must be prepared to internally audit their Form I-9 documentation to discover correctible or recurring errors in order to minimize civil and criminal exposure.

Finally, employers must be prepared for worksite enforcement actions at any time. Every employer is subject to a raid. The employer should have contingency plans in place for dealing with the ramifications of losing significant portions of its operating labor without notice.

Given the nature of the fraudulent documentation, and the lack of government assistance with employment eligibility verification when presented with such sophisticated documents, it is easy to see how these firms could have been ill prepared for dealing with the consequences of the government.

241. Id. at 5.
242. See id. at 3–4.
243. Id. at 10.
244. See id. at 20.
246. See id. at 17–18.
247. See id. at 3.
248. See id.
raids. However, awareness of the law and its liabilities are the first of a multi-tiered process in minimizing significant exposure.