

**FEAR THE ICE MAN: LESSONS FROM THE SWIFT RAIDS TO
WARM YOU UP—THE NEW GOVERNMENT PERSPECTIVE ON
EMPLOYER SANCTIONS**

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FEAR THE ICE MAN: LESSONS FROM THE SWIFT RAIDS TO WARM YOU UP—THE NEW GOVERNMENT PERSPECTIVE ON EMPLOYER SANCTIONS

When Special Agents returned to the Swift & Company meat processing plant in Des Moines, Iowa on July 11, 2007, Dan Hoppes, President of the local United Food and Commercial Workers Union, said Immigration and Customs Enforcement (ICE) failed to bring the same level of intimidation and overkill that they had in December 2006. The ICE men returned to execute arrest warrants for “only” five of the company employees. 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 plant. However, this time, the significance was not the number of arrests, but rather **who** was arrested. An H.R. manager, a union steward, and an employee accused of procuring false documents were among those arrested on alien harboring, smuggling, and other charges. 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.

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. 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. But, as the most recent attempt at comprehensive immigration reform revealed, the IRCA formulation of employer sanctions fails because business has no way to verify work authorization with certainty. To the extent that employers seek a legitimate workforce comprised, in part, upon non-native workers, the employer risks its 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 worksite enforcement investigation.

THE PRECEDING IMMIGRANT ROUND-UP

On December 12, 2006, ICE raided Swift. 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. The enforcement action identified the massive use of document fraud by the Swift workforce. In total, nearly 1300 individuals were arrested.

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 worksite enforcement in the United States: “During fiscal year 2006, [DHS] set a new record [] for worksite enforcement,” he said. The Secretary’s pronouncement was not merely puffery. ICE easily surpassed the 2006 record when, in 2007, ICE executed nearly fifty well-publicized worksite enforcement raids throughout the U.S. that resulted in over five thousand arrests. As a result of its focus on worksite investigations during fiscal 2007, ICE obtained criminal fines, restitutions, and civil judgments in excess of \$31 million.

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. ICE is specifically committed to identifying document vendors. Recently, ICE has directed additional funding to its 28 Special-Agents-In-Charge to commit resources to rooting out document fraud, including the increased utilization of the ICE forensic document laboratory.

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 referral 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.

FRAUDULENT DOCUMENTS ARE THE NORM

The dilemma most commonly arises when a prospective employee presents a Social Security Card—the most misused Form I-9 List C document of all. For example, in the peak year of its use, Social Security Number (SSN) 078-05-1120 was being used by 5,755 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, 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.

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. Swift & Co. is a relatively large employer, well known by the public. 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 too 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, the President nonetheless attempted to use the Swift raids to buoy support from the far Right for immigration reform.

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

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

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.

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. 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.

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.

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

The day of the raid, although conceding it was not, “a magic bullet for every kind of problem,” Secretary Chertoff nonetheless suggested E-Verify is a useful tool in preventing illegal immigration and illegal work. What he failed to mention was that the tools used by ICE to investigate Swift are not available to the public. The Secretary’s words reflected, at best, a misunderstanding of the issues and the lack of resources available to employers.

E-VERIFY (EEV): THE TROJAN HORSE USED TO BREACH YOUR COMPANY’S PRIVACY WALLS

In retrospect, Swift was wrong about “Basic Pilot” (also referred to by DHS as the Electronic Employment Verification program): 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. 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. E-Verify was ICE’s key that unlocked Swift’s hiring practices. 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.

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; it saw a majority of its day-shift employees deported. Going forward, it faced the prospect that its remaining employees, who were not arrested, might very well possess the same work authorization which the government maintained was based upon “illegal” documents, yet which nonetheless complied with the government’s own employer verification program. 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 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.

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 11, 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, were 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.

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 Customs service, a post-2003 ICE worksite enforcement action has the telltale 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. Agents utilize wiretaps, “snitches,” informants, and state-of-the art electronic surveillance 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 other upper management in exchange for sentencing departures.

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 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.

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. The Social Security Administration issued cards upon the alien's submission of a **valid Puerto Rican birth certificate**. Mexicans, Hondurans, El Salvadorans, and others had purchased the valid Puerto Rican birth certificates from a document vendor in Puerto Rico. Their false claim to U.S. citizenship fatally jeopardized any hope the aliens had to ever immigrate legally, but resulted in the issuance of a valid social security number with which they could obtain employment and state IDs. 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.

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—i.e., authorizing employers to view immigration photographs—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 immigration database. Even if the alien were in the database, any photograph maintained by the immigration service would match the photograph issued by the state identification agency because his valid social security card was issued under false pretense.

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.

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.

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. 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. So, as he requests a legislative fix, employers are still subject to sanctions arising from the Secretary's enforcement of the current law.

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 House—state legislatures have taken it upon themselves to join the game and require businesses to utilize E-Verify. Georgia and Minnesota recently added themselves to the list of states including Arizona and Colorado, which require businesses that enjoy public contracts to agree to the federal terms of E-Verify. Arkansas is soon to follow. 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. The employees claim that they are damaged whenever business is allowed to inadequately compensate them because of the availability of undocumented workers. 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.

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. 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. The suits routinely allege that management's failure to audit the entire corporation's Forms I-9 amounts to a breach of their obligations to the company.

Those are just the new players; the **rules** are also changing. Recently, the DHS promulgated regulations re-interpreting how business is required to respond to the Social Security Administration's "No-Match" letters. 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. 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. 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, the regulation has been enjoined. Ultimately, DHS ceded many of the arguments identified by the District Judge by requesting a stay of further litigation pending the release of additional regulation set for publication in March 2008 after additional rulemaking.

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 Forms 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.
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 I-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.

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 4,100 persons had been administratively arrested during the following enforcement actions:

On January 24, 2007, eleven workers were arrested in Chicago, Illinois. CleanPol, a residential and business sanitation company employed all the women arrested.

On Valentine's Day, fifty-one illegal workers were arrested at two UPS warehouses in Auburn, Washington outside of Seattle. USP Supply Chain Solutions, a UPS subsidiary that operates 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 Nevada-based Rosenbaum-Cunningham International, Inc. were arrested in sixty-three different locations in eighteen 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 downtown Chicago in Arlington Heights, Illinois. The government investigation began sometime in October 2006.

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 50 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 conspiracy 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 handbags and other fine leather goods. 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, fourteen workers were arrested at Sun Dry Wall & Stucco Inc. in Sierra Vista, Arizona, outside of Tucson. The company president and the firm's human resources manager were also taken into custody.

On March 29, 2007, sixty-nine workers were arrested at Jones Industrial Network. ICE agents executed a criminal search warrant, civil warrants, and conducted consent searches at nine business locations. ICE also seized a bank account belonging to the company worth more than \$630,000. The Baltimore area business provided temporary workers for local companies, including the sportswear fashion maker Under Armour Inc. The investigation began in 2006.

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

On April 4, 2007, sixty-two managers and employees were arrested by ICE at Quality Service Integrity Inc., a cleaning service operating within the Cargill Meat Solutions Plant in Beardstown, Illinois. A criminal complaint charges two QSI managers with aggravated identity theft and aiding and abetting aggravated identity theft in connection with the alleged hiring of illegal aliens. The affidavit filed under seal alleged managers knowingly hired illegal aliens to work at QSI.

On April 17, 2007, nineteen employees of Worley & McCullough Inc., a potato farm and processing plant, were arrested in Monte Vista, Colorado. The

eleven-month investigation resulted in criminal charges against three employees: the general manager, company foreman, and another employee. The Office of the Social Security Administration's Office of Inspector General assisted ICE with the investigation and the execution of the search warrants.

The next day, in El Paso, Texas, two brothers were sentenced to five months in federal prison for harboring 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 April 30, 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 pay \$1 million in criminal fines stemming from their guilty pleas to one count each of illegally encouraging aliens to come to the United States and harboring aliens. The investigation was initiated upon a Social Security Administration mailing of no-match letters to the stores.

On May 10, 2007, twelve employees of 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.

The same day and the day after, twelve 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, Illinois. Sentencing is scheduled July 5 and 6. 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. 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 maximum statutory penalty of two years in prison. The charges resulted from a criminal worksite enforcement operation conducted by ICE April 4.

On May 22, 2007, more than 100 employees were arrested at a large processing plant in Butterfield, Missouri. Armed ICE Special Agents rounded up all George's Processing Inc.'s employees during the

morning shift and checked them one by one. 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 while being questioned, would not be compensated by ICE for their lost pay. The plant is the largest employer in Barry County, Missouri.

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

On June 17, 2007, two Wisconsin men were arrested and charged for smuggling illegal aliens to live and work at two Super 8 Motels. Additionally, they were charged with aiding and abetting an alien in eluding immigration authorities.

On June 18, 2007, several Kansas City, MO. roofing companies, their owners, and several employees were indicted by a federal grand jury for conspiring to hire illegal aliens. Additionally, 34 aliens were arrested on administrative charges. The roofing companies employed the illegal aliens as "sub-contractors" for a general contractor—thereby attempting to insulate the general contractor from liability.

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

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

A day later, special agents arrested 81 illegal aliens during a raid at Iridium Industries Inc., a manufacturing company in the Poconos outside of Allentown, Pennsylvania. 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.

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. Possession of fraudulent documents carries a maximum punishment of ten years imprisonment and a \$250,000 fine.

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. The defendants face a maximum sentence of twenty years in prison for employing numerous illegal aliens, paying them in cash until the employees obtained temporary status, housed in residences owned by the restaurateurs, laundered cash to the employees via a restaurant ATM. Pursuant to the arrests, agents seized over \$2 million in cash and jewelry and several vehicles.

A day later, ICE agents arrested 31 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 20 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 Beardstorn, 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 40 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.

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 \$2,693 in currency seized by ICE during its raid of Stitching Post, a store that sells and repairs sewing machines and related items.

On August 2, 2007, the president and two managers of the New Bedford, Massachusetts

manufacturing company MBI, Incorporated, 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. If convicted, the executives face a maximum sentence of ten years in prison, \$250,000 fine, a \$100 special assessment, and at least two years of supervised release.

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 ongoing investigation into charges that he hired illegal alien workers to work on critical infrastructure construction sites throughout the Gulf Coast. Over eighty Tarrasco employees were arrested on March 29 during an ICE-led raid in Greenville, Mississippi. Bank accounts totaling \$457,368.00 has been seized from the accounts of Tarrasco Steel.

On August 28, 2007, ICE special agents executed a criminal search warrant at Koch Foods in Fairfield, Ohio. As a result of the enforcement raid, approximately 160 employees were administratively arrested for immigration violations. 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. 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.

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

On September 27, 2007, ICE Special Agents simultaneously executed searches and arrests of 11 McDonald's restaurants in Reno, Sparks and Fernley, Nevada. Fifty-six employees suspected undocumented workers were detained. The arrests resulted from a five-month investigation, sparked by an identity theft complaint.

On October 3, 2007, Dean Hedges, owner of Hedges Landscape Specialists Inc., Exterior Designs Inc., and Performance Irrigation LLC, pleaded guilty to knowingly employee illegal aliens at his landscaping company in Crestwood, Kentucky. 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. 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. The employee said that, at the direction of Hedges, he/she was ordered to pay the illegal aliens on about 20-25 occasions in cash “under the table” for work they performed as employees of Hedges Landscape Specialists. 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. The same employee swore out an affidavit indicating that Hedges would complete Forms I-9 for documented workers, but not for illegal alien employees. ICE agents executed a federal search warrant September 24 at Hedges Landscape. During the execution of the search warrant, ICE arrested 12 illegal alien workers from Mexico who were all placed into removal proceedings. The maximum potential penalties 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. Hedges already agreed to forfeit \$147,000 seized from corporate bank accounts. “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.

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. He was ordered to pay restitution to the United States an amount expected to exceed \$16 million. Personally, he agreed to forfeit bank accounts, life insurance policies, and currency totaling more than \$1.1 million. Rosenbaum operated a cleaning and grounds maintenance service that contracted with theme restaurant chains, including the Grand Traverse Resort, the House of Blues, Planet Hollywood, Hard Rock Café, Dave and Busters, Yardhouse, ESPN Zone, and China Grill.

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. Gurdeep Nagra, President 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. 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. Simultaneously with Nagra’s arrest, federal law enforcement agents searched the two hotels and took into custody ten aliens who were illegally working and living in Vermont.

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

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. Twenty workers were arrested on state charges for allegedly using fraudulent airport security badges. More than 100 temporary workers employed by the agency were in possession of fraudulently obtained airport security badges, issued by the Chicago Department of Aviation. 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 General, and other state and federal law enforcement agencies, assisted ICE in the investigation. If convicted, the corporate officers face a maximum penalty of ten 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. Nine 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 service that was staffed with illegal aliens. The plea agreement required she 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 Agents initiated the investigation in December 2006.

A day later, the owner and six managers of a northern Kentucky construction 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 facility in Beardstown, Illinois were sentenced to prison for their roles in hiring illegal aliens to work for the cleaning service. The supervisor was sentenced to 38 months, and the employee was sentenced to ten months in federal prison. Sixteen other QSI employees were also arrested, charged, and pleaded guilty to fraud and misusing employment documents as a result of a April 4, 2007 worksite enforcement raid. The sixteen were sentenced to prison terms ranging from three to seven months.

Finally, on December 27, 2007, an Orem, Utah construction contractor was criminally indicted on federal 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. In all ICE arrested 24 employees of MJH Construction on criminal and administrative violations.

During the three quarters of FY2007, ICE obtained criminal fines, restitutions, and civil judgments in worksite enforcement investigations in excess of \$30 million. The number of undocumented workers arrested at raids on businesses has skyrocketed to 3,651 in the same time frame. In criminal cases, ICE commonly pursues charges of harboring illegal aliens, money laundering, and knowingly hiring illegal aliens. Harboring is a felony with a potential ten-year prison sentence; money laundering is a felony with a potential twenty-year prison sentence. ICE often notes that the potential of criminal sanctions constitute a far greater deterrent to illegal employment schemes than administrative sanctions.

“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 Security Secretary Chertoff told ABC News in an 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 raids. However, awareness of the law and its liabilities are the first of a multi-tiered process in minimizing significant exposure.



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Established in 1973, Tindall & Foster, P.C. has grown into the second largest immigration law firm in the United States and has one of the largest, if not the largest, Form I-9 Practice Groups available. The Form I-9 Group is made up of highly-trained and experienced Attorneys and Staff experienced in managing complex I-9 employment verification audits and the representation of companies during the course of investigations. Tindall & Foster, P.C. maintains a perfect track record of resolving Employer Sanctions cases without the attachment of an administrative award during our representation beginning at the inception of the worksite investigation. In addition to our years of experience representing employers being investigated by the government, Tindall & Foster, P.C. now has a former ICE prosecutor on the team who was on special task forces designed to organize Form I-9 enforcement investigations. Tindall & Foster, P.C. helps our clients identify immigration-related problems, and develops immigration-related hiring policies and manages internal policies and protocols. To learn more about the firm, visit www.tindallfoster.com or call (713) 229-8773.