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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

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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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1. Press Release, United Food & Commercial Workers Union, ICE Agents Arrest Workers at Swift Plants (July 10, 2007), http://www.ufcw.org/press_room/index.cfm?pressReleaseID=334 [hereinafter Press Release, Arrest at Swift Plants]. See also Press Release, U.S. Immigration & Customs Enforcement, ICE Makes Additional Criminal Arrests at Swift & Company Plants (July 11, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070711washingtondc.htm> [hereinafter Press Release, Additional Criminal Arrests].

2. See Press Release, Additional Criminal Arrests, *supra* note 1.

3. See *id.*

4. See Immigration Reform and Control Act of 1986, § 101, Pub. L. No. 99-603, 100 Stat. 3359, 3367-68.

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.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 worksite enforcement investigation.

II. THE PRECEDING IMMIGRANT ROUND-UP

On December 12, 2006, ICE raided several Swift & Company plants.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.⁷ The enforcement action identified the massive use of document fraud by the Swift workforce. In total, nearly 1300 individuals were arrested.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 worksite enforcement in the United States.⁹ Referring to the 2006 fiscal year,

5. The House of Representatives presently has bill H.R. 4088 pending. SAVE Act of 2007, H.R. 4088, 110th Cong. (2007). The Senate companion bill is S. 2368. SAVE Act of 2007, S. 2368, 110th Cong. (2007).

6. See Press Release, U.S. Immigration & Customs Enforcement, ICE Executes Warrants in Worksite Enforcement Investigation Involving a Large-Scale Identity Theft Scheme (Dec. 12, 2006), available at <http://www.ice.gov/pi/news/newsreleases/articles/061212DC.htm>.

7. See Julia Preston, *U.S. Raids 6 Meat Plants in ID Case*, N.Y. TIMES, Dec. 13, 2006, available at <http://www.nytimes.com/2006/12/13/us/13raid.html?n=Top/Reference/Times%20Topics/Organizations/U/United%20Food%20and%20Commercial%20Workers%20Union>. See also Spencer S. Hsu & Krissah Williams, *Illegal Workers Arrested in 6-State ID Theft Sweep*, WASH. POST, Dec. 13, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/12/AR2006121200525.html>.

8. Tamar Jacoby, *The System is the Problem*, WASH. POST, Dec. 15, 2006, at A35.

9. See Michael Chertoff, U.S. Sec’y of Homeland Sec., Remarks by Secretary of Homeland Security Michael Chertoff, Immigration and Customs Enforcement Assistant Secretary Julie Myers, and Federal Trade Commission Chairman Deborah Platt Majoras at a Press Con-

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

ference on Operation Wagon Train (Dec. 13, 2006), *available at* http://www.dhs.gov/xnews/releases/pr_1166047951514.shtm.

10. *Id.*

11. Press Release, U.S. Immigration & Customs Enforcement, ICE Releases Final Arrest Numbers for Utah Worksite Enforcement Operation (Feb. 8, 2008), *available at* <http://www.ice.gov/pi/news/newsreleases/articles/080208orem.htm>. [hereinafter Press Release, Final Arrest Numbers].

12. *Id.*

13. See Press Release, Immigration and Customs Enforcement, Fact Sheet: Worksite Enforcement (Oct. 15, 2007), *available at* <http://www.ice.gov/pi/news/factsheets/worksite.htm> [hereinafter Fact Sheet: Worksite Enforcement]. In an effort to decrease the incidence of document fraud, the government reduced the number of acceptable supporting documents to the Form I-9. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 412, Pub. L. 104-208, 110 Stat. 3009-546, 3009-666 to 3009-668.

14. Hsu & Williams, *supra* note 7.

15. See U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, 2007 ICE FISCAL YEAR 2007 ANNUAL REPORT (2007), *available at* http://www.ice.gov/doclib/about/ice07ar_final.pdf (discussing the allocation of resources used to stop document fraud and to aid forensic document laboratories) [hereinafter ICE 2007 REPORT]; U.S. Immigration & Custom Enforcement, Office of Investigations, About Us: Contact, <http://www.ice.gov/about/investigations/contact.htm> (last visited Apr. 16, 2008) (listing the twenty-seven Special Agents-In-Charge offices).

referring for a fee, and prohibits them from requiring more or different documents than are legally acceptable for employment verification purposes.¹⁶ 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.¹⁷ 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.”¹⁸ 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.¹⁹ 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.²⁰ 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.²¹

16. See generally 8 U.S.C. § 1324b (2000).

17. *Id.* § 1324b(a)(6).

18. See *Identity Fraud: Prevalence and Links to Alien Activities: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security and the Subcomm. on Immigration, Border Security, and Claims of the H. Comm. on the Judiciary*, 106th Cong. 12 (2002) (statement of Richard M. Stana, Director, Justice Issues), available at <http://www.gao.gov/new.items/d02830t.pdf>.

19. U.S. Soc. Sec. Admin., Social Security Numbers: Social Security Cards Issued by Woolworth, <http://www.ssa.gov/history/ssn/misused.html> (last visited Apr. 16, 2008).

20. See Press Release, L.A. Soc. Sec. L. Atty, SSA Proposes Changes to SSN Assignations (July 12, 2007), http://pressexposure.com/SSA_Proposes_Changes_To_SSN_Assignations-4154.html; U.S. Soc. Sec. Admin., Social Security Numbers: The SSN Numbering Scheme, <http://www.ssa.gov/history/ssn/geocard.html> (last visited Apr. 16, 2008).

21. Ray Marshall, *Getting Immigration Reform Right 2* (Econ. Pol’y Inst., Briefing Paper No. 186, 2007), available at <http://www.sharedprosperity.org/bp186/bp186.pdf>.

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 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,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

22. Mark Schoeff Jr. & Gina Ruiz, *Federal Employment Raid Hits Firm Using Verification Program*, WORKFORCE MGMT., Dec. 14, 2007, available at <http://www.workforce.com/section/00/article/24/60/75.html>.

23. For information about Swift & Company, visit <http://www.jbsswift.com/about/index.php>.

24. Richard Dunham & Eamon Javers, *The Politics of Change*, BUS. WK., Nov. 20, 2006, at 34.

25. See President George W. Bush, Press Conference by the President (Dec. 20, 2006), <http://www.whitehouse.gov/news/releases/2006/12/20061220-1.html>.

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,"³⁰ a government program which allows participating employers to check names and social security numbers presented by prospective employees against a government database³¹—now called E-Verify.³² 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.³³ 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.³⁴

Ultimately, the suit was dismissed, and the raid occurred a fortnight late.³⁵

26. See Monica Guizer, *ICE Announces a New Interior Enforcement Strategy*, IMMIGRANTS' RTS. UPDATE, (Nat'l Immigr. L. Ctr., Los Angeles, Cal.), May 23, 2006, http://www.nilc.org/immsemplymnt/wkplce_enfrcmnt/wkplcenfrc022.htm.

27. See Editorial, *Failed System Maintained by Immigration Reform Foes*, POST & COURIER, June 29, 2007, at A14.

28. See generally U.S. Immigration & Customs Enforcement, Worksite Enforcement, <http://www.ice.gov/pi/worksite> (last visited Apr. 16, 2008).

29. Christine Tatum, *Swift Tried to Block Raid*, DENVER POST, Dec. 14, 2006, at C1.

30. Editorial, *Swift Raids*, N.Y. Times, Dec. 18, 2006, at A28.

31. INST. FOR SURVEY RESEARCH, INS BASIC PILOT EVALUATION: SUMMARY REPORT 5 (2002), http://www.uscis.gov/files/nativdocuments/INSBASICpilot_summ_jan292002.pdf.

32. U.S. Dep't of Homeland Sec., E-Verify, http://www.dhs.gov/ximgtm/programs/gc_1185221678150.shtm (last visited Apr. 16, 2008).

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.

37. See 5 U.S.C. § 552(b)(7) (2000).

38. See Jacoby, *supra* note 8.

39. See 8 U.S.C. § 1324a(e)(2)(A) (2000).

40. See Jacoby, *supra* note 8.

41. See 8 U.S.C. §§ 1324a(e)(4), (f)(1).

42. Jacoby, *supra* note 8.

43. See Julia Preston, *Immigrants’ Families Figuring Out What to Do After Federal Raids*, N.Y. TIMES, Dec. 16, 2006, at A13.

44. See Associated Press, *Feds Seek More Illegal Workers in Meatpacking Plant Probe*, FOX NEWS, Dec. 21, 2006, http://www.foxnews.com/printer_friendly_story/0,3566,237992,00.html.

fraudulent documentation.⁴⁵ 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.⁴⁶

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.⁴⁷ They point out that raiding worksites is not the most effective way of controlling illegal immigration⁴⁸ and noted that the Swift raids wiped out entire neighborhoods of the six communities affected by the raids.⁴⁹

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.⁵⁰ 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.⁵¹ 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.⁵²

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.

46. Mark Schoeff Jr., *Basic Pilot Under Fire*, WORKFORCE MGMT., May 21, 2007, at 34.

47. Jennifer W. Sanchez & Tom Harvey, *Swift Raid Aftermath: Success or Human Tragedy*, SALT LAKE TRIB., Feb. 6, 2008, available at http://www.sltrib.com/news/ci_8185714.

48. See Marielena Hincapie, *Aqui Estamos y No Nos Vamos!: Immigrant Workers Organize Amidst Growing Attacks*, RESIST (Resist Inc., Somerville, Mass.) Mar.–Apr. 2007, available at http://www.resistinc.org/newsletters/issues/2007/immigrant_workers.html.

49. See, e.g., Ctr. For Human Rts & Const. L., *Swift Raid Collaborative*, Welcome to the Swift Raid Collaborative, <http://www.swiftraid.org> (last visited Apr. 16, 2008).

50. Press Release, *Additional Criminal Arrests*, *supra* note 1.

51. See *id.*

52. *Id.*

customs service,⁵³ 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.⁵⁴ ICE utilizes informants and undercover agents during worksite enforcement.⁵⁵ 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.⁵⁶ 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.⁵⁷

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,⁵⁸ at the end of March 2007, DHS announced a change to the system.⁵⁹ DHS upgraded the E-Verify system to allow employers the ability to access a database of lawful permanent resident and employment authorization document photos.⁶⁰ The result provides pictures that can be used to confirm that the applicant is presenting authentic immigration papers.⁶¹ "Gerri

53. See U.S. Immigration & Customs Enforcement, About Us, <http://www.ice.gov/about/index.htm> (last visited Apr. 16, 2008).

54. See generally U.S. Dep't of Homeland Sec., Department Subcomponents and Agencies, <http://www.dhs.gov/xabout/structure/index.shtm> (last visited Apr. 16, 2008).

55. See SCOTT W. WRIGHT, FAEGRE & BENSON LLP, WORKSITE ENFORCEMENT OF U.S. IMMIGRATION LAW: A COMPREHENSIVE REVIEW OF THE FEDERAL GOVERNMENT'S 2007 WORKSITE ENFORCEMENT ACTIONS AND A FORECAST FOR 2008 3 (2008), http://www.faegre.com/pdf/pdf_38196.asp.

56. Zulima V. Farber & Khizar A. Sheikh, *Employers and Homeland Security: The United States' Strategy for Combating Terrorism and its Direct Impact on Employers*, N.J. LAW., Oct. 2007, at 36, 38.

57. See WRIGHT, *supra* note 55, at 41.

58. See Jacoby, *supra* note 8.

59. Press Release, U.S. Citizenship & Immigration Servs., USCIS Launches Photo Screening Tool for Every E-Verify Program (Sept. 25, 2007), <http://www.uscis.gov/tiles/pressrelease/EVerifyRelease25Sep07.pdf>.

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 photographs⁶⁸—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

62. Mark Schoeff Jr., *Basic Pilot Adds Pics*, WORKFORCE MGMT., Mar. 29, 2007, available at <http://www.workforce.com/section/00/article/24/83/70.html>.

63. See Shannon Prather, *Need Phony ID? Get the Real Thing—for a Price*, KNIGHT RIDDER TRIB. BUS. NEWS, Dec. 15, 2006, at 1.

64. See *id.*

65. *Id.*

66. See *id.*

67. See Jacoby, *supra* note 8.

68. U.S. Dep’t of Homeland Sec., Fact Sheet: E-Verify (Aug. 9 2007), http://www.nilc.org/immsemplymnt/ircaempverif/E-Verify_Fact_Sheet_2007-08-09.pdf [hereinafter Fact Sheet: E-Verify].

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

69. See generally Press Release, U.S. Citizenship & Immigration Services, USCIS Launches Photo Screening Tool for Every E-Verify Program (Sept. 25, 2007), <http://www.uscis.gov/files/pressrelease/EverifyRelease25Sep07.pdf>.

70. See Fact Sheet: E-Verify, *supra* note 68.

71. Stanley Mailman & Stephen Yale-Loehr, *Criminalizing Employer Sanctions: Employers Walk a Tightrope*, N.Y.L.J., Aug. 25, 2006, at 3.

72. Nicole A. Kersey, *Misplaced Opposition: Immigration Incentives of the Proposed Social Security Totalization Agreement with Mexico*, 22 GEO. IMMIGR. L.J. 57, 76 (2007).

73. See Chertoff, *supra* note 9.

74. See Dave Michaels & Diane Solis, *Administration Increases Penalties for Knowingly Hiring Illegal Immigrants: Employers Blast Latest Crackdown on Undocumented Workers*, DALLAS MORNING NEWS, Feb. 22, 2008, available at <http://www.dallasnews.com/sharedcontent/dws/bus/stories/022308dnbusemployerfines.3792180.html>.

House—state legislatures have taken it upon themselves to join the game and require businesses to utilize E-Verify.⁷⁵ Georgia⁷⁶ and Minnesota⁷⁷ recently added themselves to the list of states including Arizona⁷⁸ and Colorado,⁷⁹ which require businesses that enjoy public contracts to agree to the federal terms of E-Verify. Arkansas is soon to follow.⁸⁰ 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.⁸¹ The employees claim that they are damaged whenever businesses are allowed to inadequately compensate them because of the availability of undocumented workers.⁸² 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.⁸³

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.⁸⁴ 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.⁸⁵ 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.⁸⁶

75. See Goulder 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].

76. S.B. 529, Reg. Sess. (Ga. 2006).

77. 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>.

78. H.B. 2779, 48th Leg., 1st Reg. Sess. (Ariz. 2007).

79. COLO. REV. STAT. § 8-2-122 (2007).

80. Michaels & Solis, *supra* note 74.

81. See, e.g., *Commercial Cleaning Servs., L.L.C. v. Colin Serv. Sys., Inc.*, 271 F.3d 374 (2d Cir. 2001). See also Amy A. Weems, Note, *A New Use for Civil RICO: Employees Attempt to Combat the Hiring of Illegal Immigrants*, 28 AM. J. TRIAL ADVOC. 429, 440-41 (2004).

82. See Weems, *supra* note 81, at 441; *Commercial Cleaning Servs.*, 271 F.3d at 379.

83. See Weems, *supra* note 81, at 441-42; *Commercial Cleaning Servs.*, 271 F.3d at 381.

84. 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).

85. See *id.*; State and Local Employment Verification Laws, *supra* note 75.

86. See Halligan, *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.

87. See generally Safe-Harbor Procedures for Employers Who Receive a No-Match Letter, 72 Fed. Reg. 45,611 (Aug. 15, 2007) (to be codified at 8 C.F.R. pt. 274a).

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).

91. Order Granting Motion for Preliminary Injunction, *Am. Fed'n of Labor v. Chertoff*, No. C 07-04472 CRB (N.D. Cal. Oct. 10, 2007).

92. Motion to Stay Proceedings Pending New Rulemaking, *Am. Fed. of Labor & Cong. of Indus. Orgs. v. Chertoff*, No. 07-4472 CRB (N.D. Cal. Nov. 23, 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 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.

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.⁹³ Additionally, over 4100 persons had been administratively arrested during the following enforcement actions:

93. Press Release, U.S. Immigration & Customs Enforcement, ICE Arrests 15 Illegal Aliens Unlawfully Employed at Louisville-Area Restaurants (Nov. 14, 2007),

On January 23, 2007, eleven workers were arrested in Chicago, Illinois.⁹⁴ CleanPol, a residential and business sanitation company employed all the women arrested.⁹⁵

On Valentine's Day, fifty-one illegal workers were arrested at two UPS warehouses in Auburn, Washington outside of Seattle.⁹⁶ "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.⁹⁷

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.⁹⁸ Three of RCI's executives were charged with conspiracy to defraud the United States and to harbor illegal aliens for profit.⁹⁹ The illegal workers were employed at restaurants, including the House of Blues, "Hard Rock Café, ESPN Zone, Planet Hollywood," and others.¹⁰⁰ The investigation began in July 2005.¹⁰¹

On February 27, 2007, seventeen undocumented workers were arrested at Cano Packaging, "which provides packaging services for the confections and food industry."¹⁰² Cano Packaging is a company located on the outskirts

<http://ice.gov/pi/news/newsreleases/articles/071114louisville.htm> [hereinafter Press Release, Louisville-Area Restaurants].

94. See Press Release, U.S. Immigration & Customs Enforcement, ICE Arrests 11 Illegal Aliens Working at Cleaning Service (Jan 24, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070124chicago.htm>.

95. *Id.*

96. Lornet Turnbull, *UPS Crackdown Hits Workers, Spares Business*, SEATTLE TIMES, Mar. 9 2008, available at http://seattletimes.nwsourc.com/html/localnews/20043781_ups09mhtml.

97. Lornet Turnbull, *Immigration Crackdown at UPS Plants Nets 51 Workers*, SEATTLE TIMES, Feb. 15, 2007, at B1.

98. *CNN Newsroom: Immigration Sweep* (CNN television broadcast Feb. 22, 2007), <http://transcripts.cnn.com/TRANSCRIPTS/0702/22/CNR.04.html> [hereinafter *CNN Newsroom*]; Jerry Seper, *Janitor-Service Chiefs in Illegal Ring*, WASH. TIMES, Feb. 23, 2007, at A1.

99. See *CNN Newsroom*, *supra* note 98.

100. Seper, *supra* note 98.

101. See Spencer S. Hsu, *Janitorial Service Officials Charged in Sweep of Illegal Immigrants*, WASH. POST, Feb. 23, 2007, at A10.

102. Stacy St. Clair, *17 Illegal Workers Arrested in Arlington Heights Sting*, ST. CLAIR DAILY HERALD, Mar. 1, 2007, at 3.

of downtown Chicago in Arlington Heights, Illinois.¹⁰³ The government investigation began sometime in October 2006.¹⁰⁴

On March 1, 2007, sixty-seven illegal workers were arrested at a raid at Super Express Van Tours in southeast Houston, Texas.¹⁰⁵

On March 6, 2007, thirty-six workers were arrested at Janco, a fiberglass fabrication company.¹⁰⁶ Janco is a company located in Mishawaka, Indiana.¹⁰⁷ More than fifty special agents surrounded the factory before a large white bus transported the detained workers to Broadview, Illinois.¹⁰⁸ The government investigation began in late 2006.¹⁰⁹

The same day, 361 workers were arrested at Michael Bianco Inc., a factory in New Bedford, Massachusetts.¹¹⁰ Included in the arrests were the owner of the company and three managers.¹¹¹ 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].”¹¹² 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.¹¹³ The company specializes in the manufacture of safety vests and backpacks for the U.S. Military.¹¹⁴ The investigation began in late 2005.¹¹⁵

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.¹¹⁶

On March 9, 2007, thirteen workers were arrested at Sun Dry Wall & Stucco Inc. in Sierra Vista, Arizona, outside of Tucson.¹¹⁷ The company

103. Kari Lydersen, *Abuses Alleged During Immigration Raid*, IN THESE TIMES, Apr. 23, 2007, available at http://www.inthesetimes.com/article/3143/abases_alleged_during_immigration_raid/.

104. St. Clair, *supra* note 102.

105. *Immigration Raid Nets 67 Suspects*, HOUS. CHRON., Mar. 2, 2007, at B3.

106. Joseph Dits, *36 Arrests in Janco Immigration Raid*, S. BEND TRIB., Mar. 7, 2007, at 1.

107. *Id.*

108. *Id.*

109. *Id.*

110. Bill Estrada & Betty Farley, *New Bedford Factory Raid Sparks Outrage, Protests*, MILITANT, Mar. 26, 2007, available at <http://www.themilitant.com/2007/7112/711202.html>.

111. Yvonne Abraham & Brian R. Ballou, *350 Are Held in Immigration Raid: New Bedford Factory Employed Illegals, US Says*, BOSTON GLOBE, Mar. 7, 2007, at A1.

112. *Id.*

113. *Id.*

114. *Id.*

115. *See id.*

116. Allison Hoffman, *Immigration Agents Arrest 11 in Raid on Party Rental Company*, SAN DIEGO UNION TRIB., Mar. 8, 2007, available at <http://www.signonsandiego.com/news/metro/20070308-1648-ca-immigrationraid.html>.

president and the firm's human resources manager were also taken into custody.¹¹⁸

On March 29, 2007, sixty-nine workers were arrested at Jones Industrial Network.¹¹⁹ “[ICE] agents executed a criminal search warrant, civil warrants, and conducted consent searches at nine business locations”¹²⁰ ICE also seized a bank account belonging to the company worth more than \$600,000.¹²¹ The Baltimore area business provided temporary workers for local companies, including the sportswear fashion maker Under Armour Inc.¹²² The investigation began in 2006.¹²³

The same day, seventy-seven workers on construction projects in four states were arrested following a five-month ICE worksite enforcement investigation.¹²⁴ Many of the workers were employed by Greenville, Mississippi-based company, Tarrasco Steel.¹²⁵ ICE has alleged that Jose Gonzalez, the Tarrasco Steel owner, falsified and altered information on the I-9 employee eligibility forms.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.¹²⁷ “A criminal complaint charges two QSI managers with aggravated identity theft and aiding and abetting aggravated identity theft in connection with [the] alleged

117. See Jonathan Clark, *Contractor Target of Immigration Raid*, ARIZ. RANGE NEWS, Mar. 13, 2007, available at <http://www.wilcoxangernews.com/articles/2007/03/14/news/news3.prt>.

118. *Id.*

119. Brent Jones, *Illegal Workers Arrested*, BALT. SUN, Mar. 30, 2007, available at <http://www.baltimoresun.com/news/local/bal-md.ciaraid30mar30,0,3576930.story>.

120. Press Release, U.S. Immigration & Customs Enforcement, ICE Arrests Illegal Aliens in Baltimore Worksite Enforcement Operation (Mar. 29, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070329baltimore.htm> [hereinafter Press Release, Baltimore].

121. *Id.*

122. See Jones, *supra* note 119.

123. Press Release, Baltimore, *supra* note 120.

124. Press Release, U.S. Immigration & Customs Enforcement, ICE Worksite Enforcement Investigation Yields Seventy-Seven Arrests (Mar. 29, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070329greenville.htm>.

125. *Id.*

126. *Id.*

127. Press Release, U.S. Immigration & Customs Enforcement, ICE Arrests 62 Managers, Employees of QSI Industrial Cleaning Service in Worksite Enforcement Operation (Apr. 4, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070404beardstown.htm>.

hiring of illegal aliens.”¹²⁸ The affidavit, filed under seal, alleged managers “knowingly hired illegal aliens to work at QSI.”¹²⁹

On April 17, 2007, nineteen employees of “Worley & McCullough Inc.’, a potato farm and processing plant,” were arrested in Monte Vista, Colorado.¹³⁰ The eleven-month investigation resulted in criminal charges against three employees: the general manager, company foreman, and another employee.¹³¹ The Social Security Administration’s Office of Inspector General assisted ICE with the investigation and the execution of the search warrants.¹³²

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.¹³³

Two days later, thirteen employees were arrested at Eagle Bag, an Oakland, California packaging facility.¹³⁴ 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.”¹³⁵

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.¹³⁶ The investigation was initiated upon a Social Security Administration mailing of employment documents “utilizing social security

128. *Id.*

129. *Id.*

130. Press Release, U.S. Immigration & Customs Enforcement, Three Employees at Colorado Potato Farm Arrested by ICE on Criminal Charges for Possessing False ID Cards, Aggravated ID Theft (Apr. 19, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070419montevista.htm>.

131. *Id.*

132. *Id.*

133. Associated Press, *Quarry Owners Sent to Prison for Harboring Illegal Immigrants*, NEWS 8 AUSTIN, Feb. 23, 2007, http://www.news8austin.com/content/top_stories/default.asp?ArID=179705.

134. Press Release, U.S. Immigration & Customs Enforcement, ICE Arrests 13 Illegal Workers at Bay Area Packaging Factory Whose Clients Include U.S. Military (Apr. 20, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070420oakland.htm>.

135. *See id.*

136. Alan Cohn, *Dunkin Donuts Owner Pleads Guilty to Recruiting Illegal Aliens*, WTNH.COM, Dec. 29, 2006, <http://www.wtnh.com/Global/story.asp?S=5870733&nav=3YeX5iA6>.

numbers that were invalid or that did not match the name of the employee.”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.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].”¹³⁹ Sentencing is “scheduled for July 5 and 6.”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.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.¹⁴² “The charges resulted from a criminal worksite enforcement operation conducted by ICE April 4.”¹⁴³

On May 22, 2007, more than 100 employees were arrested at a large poultry-processing plant in Butterfield, Missouri.¹⁴⁴ Armed ICE Special Agents rounded up all George’s Processing Inc.’s employees during the morning shift and checked them one by one.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

137. Press Release, U.S. Atty’s Off. Dist. of Conn., Guilford Man, Daughter Charged with Conspiring to Bring Aliens into the U.S. (Jan. 20, 2006), <http://www.usdoj.gov/usao/ct/Press2006/20060120-1.html>.

138. Press Release, U.S. Immigration & Customs Enforcement, ICE Arrests 12 Illegal Aliens Employed by Private Contractors Working at Army National Guard Base in Little Rock (May 10, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070510littlerock.htm>.

139. Press Release, U.S. Immigration & Customs Enforcement, 12 Plead Guilty to Fraud Following QSI Worksite Enforcement Operation (May 14, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070514springfield.htm>.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. Press Release, U.S. Immigration & Customs Enforcement, 136 Workers Apprehended After Worksite Enforcement at George’s Processing Poultry-Processing Plant as Part of an Ongoing Criminal Investigation (May 23, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070523springfield.htm>.

145. Lee Siu Hin, *U.S. Immigration News Brief*, U.S. IMMIGR. ALERT (Nat’l Immigrant Solidarity Network, Los Angeles, Cal.), June 28, 2007, at 3.

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

146. Cf. Ecanned.com, Barry County, Missouri, <http://www.ecanned.com/MO/2006/10/employment-report-for-barry-county.shtml> (discussing how manufacturing is the primary source of employment in Barry County, Missouri).

147. Press Release, U.S. Immigration & Customs Enforcement, Ten Workers from Fresh Del Monte Produce Indicted on Immigration and Social Security Fraud Charges (June 28, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070628portland.htm> [hereinafter Press Release, Fresh Del Monte Produce].

148. See Press Release, U.S. Immigration & Customs Enforcement, Indictments and Search Warrants Target Criminal Violations by Staffing Firm for Portland Fruit and Vegetable Processing Plant (June 12, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070612portland.htm>.

149. See *id.*

150. Press Release, Fresh Del Monte Produce, *supra* note 147.

151. *Id.*

152. Press Release, U.S. Immigration & Customs Enforcement, Two Indicted for Smuggling Aliens to U.S. to Work at Wisconsin Motels (June 12, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070612madison.htm>.

153. *Id.*

154. Press Release, U.S. Immigration & Customs Enforcement, Roofing Companies Indicted for Money Laundering, Conspiring to Hire Illegal Aliens (June 18, 2007), <http://ice.gov/pi/news/newsreleases/articles/070618kansascity.htm>.

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

156. *Id.*

157. Press Release, U.S. Immigration & Customs Enforcement, Operator of Bay Area Pizza Parlors Charged in ICE Probe for Harboring Illegal Alien Workers From Brazil (June 19, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070619sanfrancisco.htm>.

158. *Id.*

159. U.S. Immigration & Customs Enforcement, Fact Sheet: Worksite Enforcement (Sept. 27, 2007), http://www.ice.gov/pi/news/factsheets/worksite_cases.htm.

160. *Id.*

161. Joe McDonald, *81 Workers Arrested in Immigration Raid: East Stroudsburg Firm Says Probe Is Aimed at Employment Agency*, MORNING CALL, June 21, 2007, at B3.

162. *Id.*

163. Press Release, Fresh Del Monte Produce, *supra* note 147.

164. *Id.*

165. Press Release, U.S. Immigration & Customs Enforcement, Owners of El Pollo Rico Restaurant Charged with Employing and Harboring Aliens, Money Laundering and Structuring Deposits to Avoid Reporting Requirements (July 12, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070712greenbelt.htm>.

166. *Id.*

“Pursuant to the arrests . . . agents seized over \$2 million in cash and jewelry . . . and several vehicles.”¹⁶⁷

A day later, ICE agents arrested thirty-one illegal aliens working construction and maintenance at a children’s summer camp in the Catskills.¹⁶⁸ The aliens “were employed by two companies working as sub-contractors at the camp.”¹⁶⁹

On July 11, 2007, ICE agents arrested an additional twenty employees of Swift & Company.¹⁷⁰ The additional arrests included a company “human resources employee, a union official,” and a document vendor employed at the plant.¹⁷¹

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.”¹⁷² The QSI employee “admitted instructing prospective . . . employees without proper work authorization how to obtain new identities” and then employed them under their assumed identities.¹⁷³ Seventeen other defendants have already been convicted and sentenced.¹⁷⁴

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.¹⁷⁵ Criminal charges ranged from misdemeanor charges of unlawfully employing illegal aliens to conspiracy to possess identification documents with the intent to use them unlawfully.¹⁷⁶ For the felony offenses, the potential sentence carries a maximum five year imprisonment, a \$250,000 fine, and three years of supervised release.¹⁷⁷

167. *Id.*

168. Press Release, U.S. Immigration & Customs Enforcement, ICE Arrests 31 Illegal Workers in Catskill Worksite Enforcement Operation (July 10, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070710albany.htm>.

169. *Id.*

170. Press Release, Additional Criminal Arrests, *supra* note 1.

171. *Id.*

172. Press Release, U.S. Immigration & Customs Enforcement, Former QSI Supervisor Pleads Guilty to Harboring Illegal Aliens, Aiding Aggravated Identity Fraud (July 12, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070712springfield.htm>.

173. *Id.*

174. *Id.*

175. Press Release, U.S. Immigration & Customs Enforcement, Guilty Plea in Government’s Probe of Immigration Violations at IFCO Systems (July 16, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070716albany.htm>.

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 ongoing 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

178. Press Release, U.S. Immigration & Customs Enforcement, Centerville Business Owner Sentenced to Prison for Harboring Illegal Aliens (July 23, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070723dayton.htm>.

179. Press Release, U.S. Immigration & Customs Enforcement, President and Managers of New Bedford Manufacturer Indicted on Charges of Conspiring to Harbor and Hire Illegal Aliens to Fulfill Lucrative Government Contracts (Aug. 2, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070802boston.htm>.

180. *Id.*

181. Press Release, U.S. Immigration & Customs Enforcement, Owner of Tarrasco Steel Arrested in ICE Probe for Hiring Illegal Alien Workers at Critical Infrastructure Construction Sites (Aug. 3, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070803jackson.htm>.

182. *Id.*

183. *Id.*

184. Press Release, U.S. Immigration & Customs Enforcement, ICE Executes Federal Criminal Search Warrants at Koch Foods and Arrests More than 160 on Immigration Charges (Aug. 28, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070828cincinnati.htm>.

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.*

188. Press Release, U.S. Immigration & Customs Enforcement, Former Poultry Plant Employees Plead Guilty to Immigration, Identity Theft Violations (Sept. 10, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/070910springfield.htm>.

189. *Id.*

190. *Id.*

191. Scott Sonner, *Over 40 Arrests in Nev. Immigration Raid*, S.F. CHRON., Sep. 28, 2007, <http://www.sfchroniclemarketplace.com/cgi-bin/article.cgi?file=/n/a/2007/09/28/national/a042721D17.DTL>.

192. *Id.*

193. *Id.*

194. Press Release, U.S. Immigration & Customs Enforcement, Oldham County Landscape Owner Pleads Guilty to Employing Illegal Aliens (Oct. 3, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071003louisville.htm> [Press Release, Oldham County].

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.”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.”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.¹⁹⁹ ICE agents executed a federal search warrant September 24 at Hedges Landscape.²⁰⁰ “During the execution of the search warrant, ICE . . . arrested 12 illegal alien workers from Mexico” who were all placed into removal proceedings.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.”²⁰² Hedges already agreed to forfeit \$147,000 seized from corporate bank accounts.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.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.²⁰⁵ He was ordered to “pay restitution to the United States an amount expected to exceed \$16 million.”²⁰⁶ Personally, he “agreed to forfeit bank accounts, life insurance policies, and currency totaling more than \$1.1 million.”²⁰⁷ Rosenbaum operated a cleaning and grounds maintenance service that contracted with theme restaurant chains, including the Grand Traverse Resort, “the

197. *Id.*

198. *Id.*

199. Press Release, Oldham County, *supra* note 194.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. Press Release, Oldham County, *supra* note 194.

205. Press Release, U.S. Immigration & Customs Enforcement, Leader of Million-Dollar Scam Pleads Guilty to Immigration Violations, Tax Evasion (Oct. 18, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071018grandrapids.htm>.

206. *Id.*

207. *Id.*

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.*

209. Press Release, U.S. Immigration & Customs Enforcement, Vermont Man Arrested for Employing and Harboring Illegal Aliens (Oct. 23, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071023burlington.htm>.

210. *Id.*

211. *Id.*

212. *Id.*

213. Press Release, U.S. Immigration & Customs Enforcement, ICE Arrests 23 Illegal Aliens Employed By Suburban Staffing Company (Oct. 31, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071031/chicago.htm>.

214. *Id.*

215. Press Release, U.S. Immigration & Customs Enforcement, ICE Investigation Leads to the Arrest of 23 Workers With Unauthorized Access at O’Hare Airport (Nov. 7, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071101chicago.htm>.

216. *Id.*

217. *Id.*

eral, and other state and federal law enforcement agencies, assisted ICE in the investigation.²¹⁸ 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.”²¹⁹

The same day, ICE Special Agents raided Pepe’s Cabinets, an Oakland carpentry business.²²⁰ “The probe was sparked by information provided to ICE’s toll-free tip line.”²²¹ Eight individuals were arrested during the operation.²²²

Later in the afternoon, “[t]he former comptroller of RCI Inc. entered a guilty plea . . . to charges arising from operating a nationwide cleaning service that was staffed predominantly with illegal aliens.”²²³ The plea agreement required her and the company’s vice president “to forfeit funds totaling \$1.5 million.”²²⁴

A week later, “[f]ifteen illegal alien restaurant workers were arrested in the Louisville area” at Jumbo Buffet and the China Star Buffet and Grill.²²⁵ “ICE [Special] [A]gents initiated the investigation in December 2006.”²²⁶

A day later, “[t]he owner and six managers of a northern Kentucky construction contractor were sentenced to federal prison . . . for conspiring to harbor illegal aliens.”²²⁷ The owner and his son and daughter “pleaded guilty . . . to conspiring to harbor illegal aliens for commercial advantage.”²²⁸ The company provided “framing services for new home construction in . . . northern Kentucky.”²²⁹

On November 19, a “worksite supervisor and a former employee [of QSI] at the Cargill Pork Processing Plant in Beardstown, Ill[inois], 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 Business (Nov. 7, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071107sanfrancisco.htm>.

221. *Id.*

222. *Id.*

223. Press Release, U.S. Immigration & Customs Enforcement, The Last of 3 RCI Officers Pleads Guilty to Immigration Violations, Tax Evasion (Nov. 7, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071107grandrapids.htm>.

224. *Id.*

225. Press Release, Louisville-Area Restaurants, *supra* note 93.

226. *Id.*

227. Press Release, U.S. Immigration & Customs Enforcement, N. Kentucky Contractor, Supervisors Sentenced for Harboring Illegal Aliens (Nov. 15, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071115covington.htm>.

228. *Id.*

229. *Id.*

tenced 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] pursu[es] 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

230. Press Release, U.S. Immigration & Customs Enforcement, QSI Supervisor, Employee Sentenced for Knowingly Hiring Illegal Aliens (Nov. 19, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071119springfield.htm>.

231. *Id.*

232. *Id.*

233. Press Release, U.S. Immigration & Customs Enforcement, Utah Construction Contractor Charged in ICE Probe with Smuggling Illegal Alien Workers into U.S. (Dec. 27, 2007), <http://www.ice.gov/pi/news/newsreleases/articles/071227saltlakecity.htm>.

234. *Id.*

235. Fact Sheet: Worksite Enforcement, *supra* note 13.

236. ICE 2007 REPORT, *supra* note 15.

237. Fact Sheet: Worksite Enforcement, *supra* note 13.

238. *Id.*

Security Secretary Chertoff told ABC News in an exclusive interview [on October 4, 2007].²³⁹

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.²⁴⁰ Employers must require that prospective employees complete Form I-9s within three days of their hire.²⁴¹ The employer must examine the genuineness of the documents presented and record that the documentation presented proves the employee's identity and employment eligibility.²⁴² Vigilance requires re-verification of employment eligibility for all hires and must occur prior to the date that work authorization is due to expire.²⁴³

Employers must have a system of document verification beyond compliance in E-Verify.²⁴⁴ 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.²⁴⁵ 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.²⁴⁶

Finally, employers must be prepared for worksite enforcement actions at any time.²⁴⁷ Every employer is subject to a raid.²⁴⁸ 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

239. Pierre Thomas et al., *The New War on Illegal Immigration*, ABC NEWS, Oct. 4, 2007, <http://abcnews.go.com/WN/FedCrimes/story?id=3691120&page=1>.

240. See U.S. DEP'T OF HOMELAND SEC., HANDBOOK FOR EMPLOYERS: INSTRUCTIONS FOR COMPLETING THE FORM I-9 (EMPLOYMENT ELIGIBILITY VERIFICATION FORM) 3 (2007), <http://www.uscis.gov/files/nativedocuments/m-274.pdf> [hereinafter HANDBOOK FOR EMPLOYERS].

241. *Id.* at 5.

242. *See id.* at 3–4.

243. *Id.* at 10.

244. *See id.* at 20.

245. See HANDBOOK FOR EMPLOYERS, *supra* note 240, 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.