

Worksite Enforcement of U.S. Immigration Law

**A Comprehensive Review of the Federal Government's 2007
Worksite Enforcement Actions and a Forecast for 2008**

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EXECUTIVE SUMMARY

This article analyzes immigration enforcement actions taken against employers in approximately forty states over the course of 2007.

U.S. Immigration and Customs Enforcement (ICE) was established in 2003 as a sub-agency of the newly formed U.S. Department of Homeland Security (DHS). ICE took over responsibility for enforcing immigration law from the disbanded Immigration and Naturalization Service (INS), while U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS) assumed responsibility for other INS functions. For the first two years of its existence, ICE confined its worksite enforcement efforts mostly to work locations that involved national security or critical infrastructure. By 2006, the agency had dramatically shifted those efforts to other types of workplaces, particularly those that had long been associated with employing large numbers of illegal aliens. Highly orchestrated, simultaneous raids, first at manufacturing facilities and later meatpacking plants, drew nationwide media attention—exactly what ICE intended. In those raids, ICE arrested thousands of workers and charged hundreds with identity theft or the use of fraudulent documents.

Bolstered by increased budgets and broad public support, ICE again increased its worksite enforcement activities in 2007. Most of the agency's significant raids and prosecutions were the result of lengthy investigations, dating back a minimum of several months and in some cases years. Those efforts featured an unprecedented level of collaboration with U.S. attorneys' offices across the country, and with a variety of other federal and state law enforcement agencies. As the frequency of ICE's worksite actions rose, their novelty quickly wore off, and most cases received little media attention outside the metropolitan area where a raid or arrests took place.

Lost in that sporadic and scattered media attention is the fact that ICE's tactics reflect an extraordinary shift in strategy. No longer are those who enforce U.S. immigration laws content, as the INS was, to have administrative judges impose slap-on-the-wrist fines and send illegal immigrants home. Instead, they have prosecuted a surprisingly high number of company owners, managers, human resources personnel and others in federal court, imposed heavy fines, seized property and bank accounts, and even sent people to prison

for immigration-related charges. Yet, even as these actions shattered many myths about the government's unwillingness to apply sustained effort in combatting unlawful employment, these events often failed to resonate in the business community, as other events dominated headlines and priority lists.

This review provides a comprehensive analysis of ICE's 2007 worksite enforcement activities to underscore why business owners and executives must make immigration compliance a priority in 2008. In studying this report, employers may be able to identify vulnerability points in their organizations and take steps to reduce the potential for an ICE investigation or audit.

For employers, it's important to realize, among other things, how 2007 was different from 2006, as ICE has shown an ability to adapt and change in its efforts to aggressively curtail illegal employment. Faced with criticism, lawsuits and, in some cases, the reluctance on behalf of federal prosecutors, the agency has steered away from high-profile, multi-site raids, targeting a substantial number of small and medium-sized employers, such as restaurants, construction companies and manufacturing plants.

Today interagency cooperation is the norm, not the exception. It's not uncommon for a half dozen or more local, state and federal agencies to work together on an investigation—the Social Security Administration, state wage and labor investigators, postal service investigators, the U.S. Department of Labor and others. In some cases, state and local law enforcement agencies, sometimes—but not always—trained by ICE, have taken the lead in investigating alleged violations. This trend is almost certain to grow in the next few years, as numerous states follow the lead of Arizona, Colorado and others, enacting immigration laws and policies of their own.

Meanwhile, ICE has expanded its geographic reach, targeting businesses in parts of the country, from upstate New York to South Dakota and dozens of other locations that had seen little worksite enforcement activity in the past 20 years. The agency has similarly reached deeper into businesses that hire illegal aliens, prosecuting not only owners but managers, human resources personnel, a union steward and others who help illegal aliens get work; in one Missouri case, a federal grand jury indicted a receptionist. Much as prosecutors routinely seize the assets and profits from drug dealing, they have begun targeting assets and cash profits tied to the employment of illegal workers. Severe penalties have been imposed for employing a small number of people: One Ohio employer lost his home, valued at \$770,000, for employing four aliens. Even individual

workers are sometimes going to prison, in part because of the realization that even the simplest type of identity theft—using someone else’s Social Security number to get a job—is not a victimless crime.

To accomplish such goals, ICE and prosecutors are dusting off long-unused laws to charge individuals with crimes associated with illegal employment. This shift in policy, with no change in the underlying laws, has been the most significant development in immigration enforcement since the passage of the Immigration Reform and Control Act of 1986 (IRCA), when employer sanctions and the I-9 form first came into effect.

The question has now become: Has DHS gone too far, threatening and sometimes imposing too-severe measures against employers who are vigilant and who follow required employment verification procedures?

ICE has also broadened its arsenal of investigative tactics. In Portland, Oregon, for example, ICE worked with an undercover informant, while in Texas undercover agents posed as workers at chicken processing facilities. In fact, the use of undercover agents is now common.

But while employers have sometimes complained about being unfairly singled out, the ICE raids and other enforcement actions are anything but random. Indeed, they have tended to target employers who exploit illegal workers; who brazenly disregard the law; who do more than simply hire illegal aliens (for example, who help them come to the U.S. illegally); or who help criminals and fugitives.

With comprehensive immigration reform all but dead in Congress, 2008 likely promises more of the same, perhaps with some shifts in tactics. Some critics, for example, have called for ICE to focus more on the individuals and syndicates that traffic in fake documents and stolen identities; those who transport, house or otherwise aid illegal aliens; criminals and fugitive; aliens who steal citizens’ or legal residents’ identities; and employers who exploit workers. Regardless what the government ultimately decides is the fairest or most effective way to combat illegal immigration, the fact is that worksite enforcement is here to stay, in one form or another. New immigration legislation won’t change that. Even the most amnesty-oriented immigration bill will require a foundation of strong enforcement if it is to have any hope of being signed by our next president, either Democrat or Republican.

In the last two years the government's enforcement efforts have succeeded in driving home the point that employers ignore immigration law at their peril. For 2008, especially in highly targeted industries, employers need to be proactive and make immigration compliance a high priority. Preferably before ICE arrives at the door.

I. ICE WORKS TO DEVELOP A COMPREHENSIVE WORKSITE ENFORCEMENT STRATEGY

U.S. Immigration and Customs Enforcement (ICE) was established in 2003 as the immigration enforcement sub-agency of the newly formed U.S. Department of Homeland Security (DHS). ICE took over responsibility for I-9 audits and the enforcement of immigration law in worksites, among other functions, from the Immigration and Naturalization Service (INS), which disappeared as an agency. The INS's other functions were transferred to other DHS sub-agencies: Border-control duties, for example, were assumed by U.S. Customs and Border Protection (CBP), while immigration benefit services were transferred to U.S. Citizenship and Immigration Services (USCIS). At first, ICE confined its enforcement efforts primarily to work locations that involved national security or critical infrastructure. The agency took its first significant steps to prosecute illegal employment in other types of workplaces in 2005.

In 2006, ICE announced publicly that it would expand its worksite enforcement actions against employers in industries that were traditionally viewed as employing high numbers of illegal aliens. The number of worksite raids increased significantly that year, and the number of suspected illegal aliens arrested by ICE tripled in 2006 as compared to 2005.

Three major operations defined ICE's worksite enforcement efforts in 2006:

- ***Manufacturing.*** In April, ICE simultaneously raided more than 40 pallet plant facilities owned and operated by IFCO Systems North America, arresting nearly 1,200 illegal aliens. The IFCO raids were also significant because ICE arrested several senior managers as well as those 1,200 workers. By the summer of 2007, most of the IFCO managers had pled guilty to felony charges for harboring illegal aliens or similar crimes.
- ***Construction.*** The IFCO case, which captured headlines around the country, was quickly followed in May by ICE raids on several Kentucky work locations of a company called Fischer Homes. Sending a clear signal of heightened enforcement to the construction industry, ICE arrested 76 suspected illegal aliens and four senior management employees of Fischer Homes. The managers were charged in a criminal complaint for aiding and abetting, and for harboring illegal aliens for commercial advantage.

- ***Meat Industry.*** Acting on evidence of the widespread use of identity theft as a means to secure employment, in December ICE simultaneously raided six Swift & Company meat plants in six states. ICE agents arrested more than 1,200 illegal aliens; of those 1,200, approximately 270 were criminally charged for identity theft or the use of fraudulent documents.

These enforcement actions have not come without controversy. Many groups have criticized ICE's tactics, and others question the effectiveness of company raids. But these and other ICE investigations showed among other things a new level of inter-agency collaboration to investigate, apprehend and prosecute both illegal alien workers and employers who acted with knowledge or impunity. ICE gained experience in 2006 working with the Federal Trade Commission, the Social Security Administration, U.S. attorneys' offices around the country, and a wide variety of state and federal law enforcement personnel. ICE opened many new worksite investigations in 2006, and benefited from even larger budgets, with more resources at its disposal, in 2007. These increases, in turn, led to even more multi-state raids in 2007, as ICE leadership sought to increase the effectiveness of its worksite enforcement efforts through large-scale crackdowns. DHS Secretary Michael Chertoff and ICE senior managers expressed confidence that the combination of regular high-profile raids and the resulting media coverage would act as a deterrent to businesses employing illegal aliens.

II. INDUSTRIES TARGETED BY ICE WORKSITE RAIDS IN 2007

ICE's worksite raids continued in 2007 with even greater frequency, but the agency did not increase its use of coordinated, simultaneous raids on multiple facilities owned by a single company in different states (per the IFCO and Swift examples). ICE conducted only a handful of raids in that fashion in 2007. Instead, 2007 saw ICE conducting far more raids on single work locations in a variety of industries, most of which have long been known to employ large numbers of illegal immigrants.

In addition to conducting raids, however, in 2007 ICE worked to develop a more diversified approach to worksite enforcement. Recognizing the depth of the problem and the sophistication of the illegal employment culture, ICE developed a portfolio of tactics, which included the following:

- ***Increased Worksite Arrests.*** ICE quite simply set out to handcuff more illegal aliens. And succeeded: In 2007, ICE reported making over 4,000 worksite arrests, its highest total ever.
- ***Increases in Fines and Judgments.*** ICE secured immigration-related fines and judgments against employers totaling in the range of \$30 million. These fines and judgments were coupled with more than 850 criminal arrests in 2007. All were record highs.
- ***Arrests of and Criminal Charges Against Business Owners, Managers and Human Resources Personnel.*** Unlike the INS, ICE was not content simply to fine business owners and others who were responsible for hiring and employing illegal aliens. Across the United States, ICE worked with U.S. attorneys to file criminal charges against the business owners, managers and human resources personnel who illegally hired, employed and sometimes provided shelter for immigrants. Some went to prison.
- ***Targeting of Fugitive Aliens.*** In the past two years, ICE has quadrupled its staffing of Fugitive Operations Teams, which have apprehended tens of thousands of illegal aliens who were criminals or had outstanding deportation orders. Although these efforts do not target employers, the arrests nevertheless affect businesses, as thousands of fugitives and some family members have disappeared from the workforce.

- ***Document and Benefit Fraud Task Forces.*** These two task forces have been working in many of the country's major cities. Task force investigators provide ICE and other law enforcement agencies with leads, which have resulted in the arrest of illegal alien workers across the country. The task forces were credited with developing evidence that led to 1,500 arrests in 2007. In some cases, ICE and other agencies arrested individuals who provide illegal immigrants with fraudulent documents. In others, they filed charges against workers.
- ***Partnerships with Local Law Enforcement Agencies.*** ICE has two programs through which its agents work with and train both state and local law enforcement officers. The "ICE ACCESS" program focuses on fighting traditional criminal activity. The second program, called "287(g)" (the name of the law that authorizes its funding), provides state and local officers with training to combat identity theft and illegal immigration. In 2007, ICE provided training to 33 different local law enforcement agencies. The agency refers to these programs as a "force multiplier"—an accurate description, as local agencies put their training to use in a number of worksite-related initiatives that targeted illegal immigrants in 2007.

In 2007, ICE continued to focus much of its attention to following leads concerning allegations of identity theft and the use of fraudulent documents to obtain employment. As a result, the majority of ICE's worksite enforcement actions occurred in industries that have been and are commonly suspected of employing a high percentage of illegal workers.

A. Construction and Building Trades

No industry was the subject of more immigration-related investigations and raids in 2007 than the construction and building trades. That is especially true if the number and severity of federal sentences are taken into account.

In 2007, federal prosecutors and the courts wrote the final chapters on several worksite enforcement actions that ICE had carried out against the construction industry in 2006. In November 2007, for example, a judge sentenced the owner of Progressive Builders, Pratt Quality Construction and other new home construction businesses in northern Kentucky to prison. Six managers were also sentenced. The judge sentenced the owner to 18 months in jail, his son to one year in prison, and a daughter to six months of

in-home, monitored incarceration, followed by probation. These three family members, all of whom were U.S. citizens, pled guilty to conspiring to harbor illegal aliens for commercial gain, a felony that could have led to far longer prison sentences, which likely factored into their decision to strike a deal and avoid trial. The judge also sentenced four of the company's long-time foremen to federal prison terms ranging from five to twelve months. All sentences were based on guilty pleas for admitting to knowingly employing illegal aliens over a five-year period. The four foremen sentenced to prison were themselves illegal aliens; they will be turned over to ICE and placed in deportation proceedings once they serve their sentences in U.S. federal prisons.

But the Kentucky builder's legal problems were not resolved with his sentencing on immigration-related charges. Newspapers reported that county authorities arrested him immediately after his sentencing in federal court, apparently for underpayment of state unemployment taxes.

The prison sentence for the Kentucky builder was likely influenced by the sentence imposed in an earlier case. In March 2007, the owner of an Indiana company, Stucco Design Inc., pled guilty to similar charges of harboring illegal aliens and likewise received an 18-month prison sentence. But the owner of Stucco Design, whose business provided services on construction sites in seven midwestern states, was also forced to forfeit \$1.4 million, as the government presented evidence to show that he was able to undercut the bids of other contractors because he incurred lower labor costs through the use of illegal employees.

Also in March 2007, ICE arrested 77 suspected illegal aliens who were working for a variety of construction companies during simultaneous raids in four southern states—Arkansas, Mississippi, Tennessee and Louisiana. The primary focus of the raids was a Mississippi-based company, Tarrasco Steel, which provided steel re-bar and installation services on major highway bridge projects. In August, agents returned to the Tarrasco Steel main office in Greenville, Mississippi, and arrested the owner on charges that he knowingly hired and employed illegal aliens from Mexico, Honduras and Guatemala. The government also seized a total of \$450,000 from company bank accounts in connection with those charges.

In a third March 2007 enforcement action, federal and state authorities together executed search warrants at several worksites associated with Sierra Vista, an Arizona drywall and stucco firm. Law enforcement agents executed search warrants on the

company's headquarters, an employee's home and other residences suspected of housing counterfeit document "mills," seizing employee records, computers and other evidence. Sierra Vista's president and ten employees were charged with state and criminal law violations. The investigation had begun in 2005, after ICE received complaints of illegal hiring practices, which triggered a standard audit of the company's I-9s. But that audit quickly led to a more intensive investigation of the company in conjunction with U.S. Customs and Border Protection, the U.S. Department of Labor's Wage and Hour Division, and the Arizona Fraudulent Identity Task Force. These efforts resulted in criminal charges against the company president, the human resources manager and four other managers, who were collectively charged with conspiring to knowingly hire or harbor illegal aliens.

ICE targeted several roofing companies in the Kansas City area in June 2007. Several dozen roofers were arrested, but they were not the primary targets. Working with the Internal Revenue Service's Criminal Investigation Division, the Federal Deposit Insurance Corporation and the Social Security Administration, ICE had gathered evidence for federal prosecutors to bring charges against the companies' owners. As a result, a federal grand jury indicted the owners of several Missouri roofing companies and a number of employees for purposely using a workforce composed largely of illegal employees. The prosecuting attorney accused the owners of using "a business model that relied upon hiring illegal aliens."

In December 2007, a Utah contractor was arrested and charged with smuggling individuals into the United States. More than 20 employees of MJH Construction were arrested on charges of immigration violations, and the firm's owner, who is also an immigrant, faces federal criminal charges for being part of an alleged scheme to bring illegal aliens into the United States. The government also alleges that he required employees to work for his business to pay off their smuggling debts.

As 2007 drew to a close, in late December, federal agents raided a luxury high-rise in downtown Honolulu searching for construction workers who were suspected of being illegal aliens. After executing several warrants, ICE agents went through the construction project floor by floor and ultimately arrested 19 unauthorized workers. Although never confirmed by authorities, there were indications that the raids came as a result of earlier safety violations and possibly complaints from union workers; the Hawaii Department of Labor had recently fined the worksite contractor, and a number of safety violations on the project were said to be under investigation. The safety issues were brought to public

attention not long before the ICE raid, when a piece of rebar fell from the building and struck a vehicle in the street below.

Throughout 2007, ICE maintained a consistent campaign to identify and arrest construction workers who were suspected illegal alien at locations across the United States. However, many enforcement actions in the construction and building trades did not result in criminal charges being filed against company owners or managers. Instead, most were very localized in nature, resulting in the apprehension of between a handful and a few dozen illegal aliens. Accordingly, most of these actions received little or no media coverage. But occasionally these routine ICE arrests would reach the media, especially if the location was in a part of the country not typically associated with the employment of illegal aliens. That occurred, for example, with the July 2007 raid on a children's summer camp in the Catskill Mountains resort region of New York. In that case, the local county sheriff's office had gathered its own evidence, then called in ICE agents, who ultimately arrested 31 illegal aliens who were working in construction and maintenance jobs at the camp. Most of the arrested men were processed and deported to their home countries in Central America.

B. Cleaning and Janitorial Services

The cleaning and janitorial services industry was also hit especially hard by ICE in 2007. In fact, the crackdown on Rosenbaum-Cunningham International (RCI), a Florida-based national janitorial services contractor, was one of the few multi-jurisdictional worksite raids that occurred throughout the year. Nearly 200 illegal aliens were arrested in February 2007 at 64 different work locations in 18 states operated by RCI, whose crews cleaned popular franchise bars and restaurants, including the House of Blues, Planet Hollywood, Hard Rock Café, ESPN Zone and China Grill. What was most significant about this enforcement action was the 23-count indictment of RCI's president, vice president and controller. The three executives ultimately pled guilty to a variety of charges that arose from operating a nationwide cleaning service staffed predominantly by illegal aliens. The charges included conspiring to defraud the United States through tax evasion and harboring illegal aliens. Court documents also alleged that RCI failed to collect and pay federal income, Social Security, Medicare and employment taxes on the wages paid to its workforce.

In April 2007, ICE raided a pork processing plant in Beardstown, Illinois, and arrested dozens of cleaning crew personnel employed by Quality Service Integrity, Inc. (QSI), which provided cleaning services to plants of companies in several states. In this raid, ICE arrested 13 people on criminal charges and approximately 50 on administrative immigration violations; 18 QSI employees were ultimately charged with criminal offenses. Some were illegal alien employees themselves, and received prison sentences ranging from three to seven months, primarily in connection with using false documents, identity theft or related charges. Two supervisors who were more heavily involved in orchestrating the illegal employment were sentenced to terms of ten and 38 months, respectively, with no opportunity for parole.

Federal authorities were not alone in exploring new methods of sanctioning employers who fail to comply with immigration laws. It was the state of Missouri that doled out punishment to the owner of Sam's Janitorial Services of Jefferson City, Missouri, after a March 2007 raid by ICE agents. In that raid, ICE detained 25 Sam's employees, with state law enforcement agents assisting in the investigation and raid. Several of the apprehended workers were later indicted in federal court on charges of possessing false Social Security numbers and identification documents. But ICE did not seek to penalize the owner of Sam's Janitorial Services. The Missouri Office of Administration and Division of Purchasing and Materials Management, however, terminated the company's contracts to clean a number of state buildings and barred the owner from bidding on other state contracts. The owner, himself an immigrant and naturalized U.S. citizen, has brought suit against the state challenging its actions.

The majority of workers arrested in this industry and others in 2007 were from Mexico and Central America. But there were some exceptions. For example, in January 2007 ICE arrested a cleaning service crew near Chicago that was composed of 11 women, all from Poland. All had entered the United States on valid visitor visas and remained here illegally past the expiration dates on their visas. The women were immediately placed in removal proceedings to be processed for deportation.

C. Temporary Labor Services and Staffing Agencies

Going back to the 1990s, temporary labor and staffing agencies have often been targeted by immigration authorities. In 2007, ICE continued to focus on this industry as a primary target of its worksite enforcement actions. But the similarities between the INS

enforcement actions of the 1990s and those of today's ICE share little else in common. INS typically restricted its enforcement actions to proceedings before administrative law judges, seeking to secure administrative fines. Now ICE, with the backing of U.S. attorneys' offices and a multitude of other agencies, often seeks criminal indictments and other sanctions to send a stronger message of deterrence.

In March 2007, for example, the president and co-owner of two temporary labor service companies was sentenced to 15 months in federal prison followed by two years of supervised release, with a fine of \$25,000. The targets of that investigation primarily provided workers for cargo transportation in package sorting, handling and other freight services. In that case, Garcia Labor Company, which operated out of Tennessee and Ohio, was required to forfeit \$12 million—the revenue earned from employing illegal aliens. The joint ICE-Department of Labor investigation concluded that the majority of the agency's workers were illegal aliens. The company's director of human relations was also sentenced to prison (for eight months, followed by two years of supervised release, with a fine of \$7,000).

But ICE also completed sporadic arrests of staffing agency employees without bringing criminal charges against company owners or supervisors. One example was the October 2007 arrest of 23 illegal aliens in Joliet, Illinois. These workers were provided as day laborers at warehouses in the greater Chicago area.

One of the year's largest ICE raids on staffing agency workers occurred in Portland, Oregon, in June. Agents executed arrest and search warrants at various locations, pursuing alleged criminal violations by employees of a national firm, American Staffing Resources, that recruits workers for a fruit and vegetable processing plant operated by Fresh Del Monte Produce. This raid was noteworthy, though, not for its size—more than 100 arrests—but ICE's investigatory tactics: The agency conducted an undercover operation of the staffing company and Del Monte, using an undercover informant to engage in discussions with Del Monte personnel and managers of the staffing company about counterfeit documents and immigration issues. Despite this investigation, the arrest of more than 100 temp agency workers, and evidence that more than 90 percent of those workers were using false Social Security numbers, no criminal charges have yet been filed against any management employees of American Staffing Resources or Del Monte.

ICE carried out another major operation against an employment services firm in Baltimore in March 2007. This action, taken against Jones Industrial Network (JIN), was

noteworthy because ICE directed an investigation that also included the Maryland state police, the Baltimore city police, two county police forces and U.S. Customs and Border Protection. The investigation had begun in 2006, when ICE first received tips about temporary agencies providing illegal immigrants to work at companies throughout the Baltimore area. JIN was suspected of providing illegal aliens to work at the Port of Baltimore, among other locations. On the day of the raid, ICE agents executed a criminal search warrant and civil warrants at five business locations. ICE also seized a JIN bank account with a balance of more than \$600,000, in addition to arresting 69 suspected illegal alien workers whom JIN had contracted to work at a variety of locations.

D. Meat and Food Processing Plants

The country's meat industry was again high on the ICE hit list in 2007. ICE and federal prosecutors also increased pressure on this industry by bringing a number of criminal charges against meat plant personnel.

After the multi-state raids on the Swift & Company plants in early December 2006, ICE set its sights on the massive Smithfield Foods hog-butchering plant in Tar Heel, North Carolina, said to be the largest facility of its kind in the world. The first of two ICE raids came in January 2007, when agents arrested 21 workers. Tensions had been running high at the plant for several months, as the company was attempting to stave off major interruptions in plant operations by proving to ICE that it took immigration compliance seriously.

But the modest arrest total at the 5,200-employee Smithfield plant was misleading. With the ever-present threat of an ICE raid that threatened millions of dollars in operational costs for Smithfield, the company was forced to put its own immigration house in order. This pressure resulted in the termination of hundreds of employees who could not address discrepancies between the documents they had presented to gain employment and Social Security Administration records. Rumors of impending raids circulated in the communities around the plant. In a matter of months, more than 1,100 Hispanic workers reportedly left the plant, many through involuntary termination; others quit out of fear of being apprehended. ICE kept the pressure on Smithfield and its Hispanic workforce throughout the year. Agents returned to conduct a series of pre-dawn raids in August 2007, ultimately arresting another 25 individuals, some at the hog plant but most at their homes. Most of those arrested were charged with using fraudulent

documents and stolen identities to secure their jobs. Some were long-time Smithfield employees. Several have since been convicted and sentenced to as long as 18 months in prison on charges related to identity theft.

One of the year's major meat plant raids occurred in the small Missouri community of Butterfield in May 2007, when ICE arrested 136 employees at the George's Processing poultry plant. ICE and special agents from the Social Security Administration Office of Inspector General (SSA-OIG) executed two federal criminal search warrants as part of an ongoing criminal investigation into identity theft and related illegal employment. Several employees were prosecuted in federal court on charges of Social Security fraud, aggravated identity theft and other felony charges. Of those arrested, Guatemalan citizens outnumbered workers of Mexican origin nearly two to one.

Several months later, a federal grand jury in Missouri indicted seven George's Processing employees on a variety of charges related to the employment of illegal aliens. The seven defendants included supervisors, managers, human resources personnel and even a receptionist. In January 2008, a federal jury convicted one human resources employee on charges of aiding and abetting and immigration violations. Under federal guidelines, the employee could be sentenced for up to ten years in federal prison without parole. Evidence presented during the trial showed that the employee had assisted illegal alien workers in completing I-9 forms with information known to be false. The prosecutors presented evidence to show that many company employees were illegal aliens who used fraudulently obtained Social Security numbers and identification documents in order to secure employment with George's Processing. Another former human resources employee has pled guilty to aiding and abetting others to commit aggravated identity theft. Charges remain pending against other company personnel.

In July 2007, ICE conducted its second series of coordinated raids on different Swift & Company plants in less than eight months. Based on evidence developed since the December 2006 raids on six facilities owned by Swift, one of the country's largest producers of pork and beef, ICE engaged in a more targeted set of worksite actions, arresting 20 employees. This time, ICE agents made simultaneous arrests at plants in Iowa, Nebraska, Minnesota, Colorado, Utah and Texas. Of those arrested, most were identified as suspected illegal aliens who were later charged with identity theft and immigration violations. The most significant criminal arrests took place in Marshalltown, Iowa, where agents apprehended a union official and a human resources employee who had worked at Swift for 17 years. Despite the fact that ICE arrested more than 1,300

Swift employees as suspected illegal aliens in 2006 and 2007, the charges against that Iowa employee are, to date, the only ones that have been brought against any company representative. Moreover, the charges against the human resources employee include allegations relating to just one unauthorized worker.

In August 2007, ICE expanded its focus on the meat processing industry by simultaneously executing criminal search warrants on Koch Foods headquarters in Chicago and at one of the company's poultry processing plants in Ohio. On the day of the raid, ICE arrested more than 160 employees on suspected immigration violations. ICE reported that the enforcement action was the result of an ongoing two-year investigation into evidence that Koch Foods may have been knowingly hiring illegal aliens. The company has adamantly denied such allegations, and to date no criminal charges have been brought against it, any executives or any employees.

ICE also hit other kinds of food processing facilities in 2007. In doing so, the agency demonstrated its interest in expanding worksite enforcement efforts in parts of the country that had seen very little activity over the past 20 years. One example is the December 2007 raid on Proper Foods, Inc. in New Mexico. ICE agents referred to it as "Operation Tamale," as the plant packages and distributes tamales. The raid, which led to the arrest of more than 20 suspected illegal aliens, was the result of a five-month investigation.

As 2007 came to a close, scattered newspaper reports suggested that Pilgrim's Pride Corporation, the nation's largest chicken producer, was taking steps to identify and discharge undocumented workers at some of its plants in Texas. Soon after the New Year, a federal grand jury in Texas returned 24 indictments relating to illegal immigrants allegedly working in the company's East Texas plants. The indictments revealed among other things that undercover agents had been posing as workers at Pilgrim's Pride facilities in an effort to infiltrate a reported network of illegal immigrants who were being required to pay hundreds of dollars to secure jobs at Pilgrim's Pride plants. A number of employees have been arrested and charged with fraud, identity theft and associated felonies. Among the 24 people arrested, the indictments identify one employee who is accused of selling false identification documents, and at least one of the company's human resources employees has been charged. Other individuals are accused of being part of the overall scheme to secure identification documents for illegal aliens. Perhaps of more concern to the company is the fact that court documents suggest more than a dozen human resources employees might have been involved at some level in knowingly hiring

illegal aliens. Pilgrim's Pride, which is based in Pittsburgh, is not currently facing any charges. The company is cooperating in the federal investigation, and has terminated the human resources employee who was named in the initial indictments.

E. Restaurants

The restaurant industry played very prominently in ICE's 2007 worksite enforcement actions. Nearly all of the raids in this industry occurred at family-owned ethnic restaurants or small chains. Although many of those enforcement actions resulted in the apprehension of only a small number of illegal aliens, a significant percentage led to criminal charges against business owners. The following summaries of ICE actions in the restaurant industry are indicative of what occurred across the country in 2007:

- The owner of a Japanese steakhouse in Hot Springs, Arkansas, pled guilty to harboring illegal aliens and paid a fine of \$45,000. Five illegal alien employees were arrested—four from Mexico and one from the Philippines.
- ICE raided a Greek restaurant in Chicago and arrested ten employees. Eight were from Mexico; two were from Albania; and one was from Bulgaria. The investigation was prompted by complaints of illegal aliens using false Social Security numbers.
- The owner of a Chinese restaurant in Fairfield, Ohio, pled guilty to various counts related to the employment of illegal aliens. The business owner himself was found to be residing in the United States without authorization, as he had been ordered deported more than a decade ago. As part of a plea agreement, the restaurant owner agreed to forfeit more than \$500,000 in cash and other assets.
- The immigrant operator of two pizza parlors in the San Francisco Bay Area was charged with harboring illegal workers from Brazil. The four Brazilian nationals were also charged with federal identity theft.
- Fifteen Chinese and Mexican nationals were arrested as part of a year-long criminal investigation that focused on several restaurants in the Louisville, Kentucky, area.
- A married couple in Iowa pled guilty to hiring undocumented workers at two restaurants. The husband received probation and home confinement, in addition to

being required to forfeit property. The five apprehended employees included four Chinese nationals and one Hispanic.

- Sixteen illegal aliens employed by four Mexican restaurants in different Montana cities were arrested. All were from Mexico.

Though hardly comprehensive, this list demonstrates a pattern of what occurred in the restaurant industry in 2007. Typically driven by reports of worker exploitation or identity theft, ICE agents collaborated with federal prosecutors to arrest the workers suspected of being illegal aliens. The business owners who faced criminal charges rarely, if ever, sought their day in court. Instead, plea agreements were common, and prison sentences tended to be light or non-existent. But in exchange for lighter sentences, restaurant owners frequently faced the seizure of bank accounts and other assets, along with the forfeiture of properties.

Three immigration enforcement actions in the restaurant industry stand out among those conducted in 2007.

One was the September 2007 ICE sweep of 11 McDonald's restaurants in and around Reno, Nevada, when ICE arrested 56 workers. This coordinated action appears to be the only significant raid on one of the country's large fast-food restaurant chains last year. There was speculation that this raid might foreshadow similar arrests at other McDonald's location across the country, or at other fast-food outlets. Instead, it was a flash-in-the-pan strike that targeted restaurants operated by one owner. Media reports suggested that the raids were prompted by evidence that one restaurant manager was working illegally under another person's identity. To date, no charges have been brought against either McDonald's or the owner of the restaurants where the immigrant employees were found to be working illegally.

The July 2007 ICE enforcement action against the owners of El Pollo Rico restaurants in Maryland also stood out. In the El Pollo Rico case, a criminal complaint was filed charging the company owner and other family members with employing illegal aliens, money laundering and structuring deposits to avoid currency reporting requirements. What distinguished this case was the scope of the government's reach in charging the owner's family. Only a half dozen employees were arrested. Upon arresting the owners, agents seized more than \$2 million in cash and jewelry from the defendants' homes and vehicles. Prosecutors accused the owners of developing an intricate scheme

that involved making hundreds of small deposits in the restaurant bank account to avoid triggering an obligation to file currency transaction reports. The government alleged that the family deposited over \$7 million in smaller amounts in order to reduce their tax obligations and hide wage payments to illegal alien employees.

The third outstanding restaurant enforcement case of 2007 bore similarities to the El Pollo Rico restaurant case in Maryland. In December, agents raided a handful of small-town restaurants in northwestern Arkansas. As was the case in Maryland, illegal alien employees and owners were arrested and charged with immigration-related and financial felonies. The Arkansas case similarly involved a family-owned business, Acambaro Mexican Restaurants Inc. The federal government has filed a civil forfeiture action and is seeking to seize 11 properties worth \$3.5 million, including five Acambaro restaurants. What is distinctive about this case is that the raid was largely due to the efforts of state and local law enforcement, not ICE. It was the first high-visibility immigration enforcement action carried out by local police after they had received special immigration enforcement training. The northwest Arkansas task force that received the training included officers from several municipal police departments and county sheriffs' offices. A growing number of state and local law enforcement organizations have received this same kind of immigration training under the direction of federal agents, suggesting that this type of legal action could be yet another source of immigration enforcement in 2008. Another factor that might contribute to this trend is the growing number of states that have passed laws designed to stop illegal immigration.

F. Agriculture

ICE's sweeps and apprehension efforts in 2006 led to reports of worker shortages in many kinds of agricultural jobs. The pressure on agriculture continued in 2007. In the spring, ICE raided the Worley & McCullough potato processing plant in Colorado, arresting approximately 20 workers. Farmers throughout the region pointed to chronic labor shortages as the problem. But a more chilling message was delivered to the ag industry with reports that the farm's general manager and at least one foreman were arrested on charges of aggravated identity theft and possession of false documents.

The agriculture industry has also seen that ICE agents will return to previous targets of worksite enforcement actions. In September 2007, for example, ICE agents raided DeCoster egg farms in Iowa for the fourth time in six years. This most recent raid on one

of the country's leading egg producers resulted in the arrest of more than 50 workers in less than three hours. These types of raids have led many leaders in the agriculture industry to increase pressure on Congress to pass comprehensive immigration reform.

Most apprehension efforts on farms and in the agriculture industry generally tend to be small. As a result, ICE's crackdown against illegal employment in this industry largely passes "below the radar," as cases of illegal aliens being arrested on farms and ranches, or in orchards and produce fields, rarely receive media attention. But the progressive efforts by ICE and local law enforcement authorities to apprehend ag workers has, according to industry leaders, been nothing short of devastating in much of the country.

ICE and federal prosecutors have also shown that they will not limit their enforcement efforts to workers. One Missouri apple grower, for example, pled guilty in November 2007 to immigration-related charges; in the plea agreement, the owner of Lochirco Fruit and Produce, Inc., which does business under the name "Happy Apples," admitted to employing dozens of illegal aliens over a five-year period. In support of those criminal charges, the prosecuting attorney pointed, among other things, to evidence that investigators found nearly three dozen illegal aliens working on a single day shift. As part of the plea agreement, the company agreed to pay a federal fine of \$99,000 and forfeit another \$500,000, making it the highest fine and forfeiture total ever negotiated by federal authorities in a case involving the agricultural industry.

G. Landscaping and Lawn Care

Over the past three years, ICE has arrested workers from many landscaping and lawn care companies around the country. Most of those operations apprehended a small number of foreign nationals suspected of using false documents. But some cases in this industry, as in so many others, have led to criminal prosecutions against company owners.

In October 2007, the owner of a landscaping company in Louisville, Kentucky, pled guilty to employing illegal aliens. As part of the plea agreement in federal court, he admitted that he knowingly employed illegal aliens through several related businesses (Hedges Landscape Specialists; Exterior Designs Inc.; and Performance Irrigation LLC). In addition to the agreement he made to secure the plea bargain, which requires him to

forfeit \$147,000 from corporate bank accounts, the owner is subject to possible imprisonment and fines of thousands of dollars.

In Nebraska, also in October 2007, the owner of Cloudburst Lawn and Sprinkler Systems negotiated a guilty plea with federal prosecutors through which he agreed to restitution and forfeiture penalties totaling over \$400,000. As part of the plea agreement, which included a sentence of 30 months in prison, the business owner, who was from Grand Island, Nebraska, pled guilty to structuring financial transactions so as to avoid federal cash transaction reporting requirements. The reimbursements the owner must pay include overtime pay that was due to several employees. (Nineteen employees were arrested along with the owner in ICE's September 6, 2007, raid.) This case highlights the fact that an employee's unlawful immigration status does not negate his entitlement to protection under wage and hour laws.

H. Manufacturing

ICE engaged in a moderate level of worksite enforcement activity in the manufacturing industry in 2007. The cases include a mix of operations. In some actions, employees were simply arrested, with no subsequent charges against the employers. In a handful of enforcement actions, though, manufacturers ended up on the criminal docket at a federal courthouse.

Several ICE raids on manufacturing facilities in 2007 fit the model of triggering little or no media interest outside the city in which the action took place. And even in those communities, the stories appear to have quickly faded from public view. ICE raids of this kind were scattered across the country and included the following:

- ICE arrested 36 illegal aliens at Janco Composites Inc., an Indiana plastic product manufacturer. A criminal search warrant was used to confiscate company records and copy computer hard drives. The raid occurred in March 2007.
- In April 2007, ICE raided a pre-stressed concrete manufacturing plant in Iowa and arrested a number of illegal alien workers, who were charged with fraud, misuse of documents and falsely representing Social Security numbers.

- In June 2007, a watch repair facility in the Dallas area was raided, with 30 suspect workers detained. Again, there has been no indication that criminal charges will be filed against any company personnel.
- Also in June, federal agents arrested more than 80 suspected illegal aliens during a raid at a manufacturing plant in the Pocono Mountains region of Pennsylvania. The facility, approximately one hour north of Philadelphia, makes plastic tubes for lotions and other consumer products. One of the interesting footnotes to this ICE action was the fact that many of the arrested immigrants were from Indonesia and Malaysia.
- A few months later, ICE agents were again active in eastern Pennsylvania, raiding a manufacturing facility in Scranton. Nearly 40 people were taken into custody at North American Manufacturing, which makes cots, field packs, artillery packs and other products for the U.S. military.

The results were harsher for the owner of Star Packaging, a manufacturing business in Wisconsin. In July 2007, he pled guilty to five felony counts of conspiring to commit identity theft in connection with helping employees, whom he knew were illegal aliens, use other individuals' names and Social Security numbers. The owner's actions and government prosecution of the case led to a deep divide in the Whitewater, Wisconsin, community where Star Packaging was located. In October 2007, the owner accepted a 90-day jail sentence with three years of probation as part of a plea agreement. In the process, he lost his business, and more than 100 employees lost their jobs.

The most striking example of ICE's enforcement efforts in the manufacturing industry commenced with the highly orchestrated March 2007 raid on the New Bedford, Massachusetts, facilities of Michael Bianco, Inc. (MBI), a company that specialized in the manufacture of handbags and fine leather goods. From 2001 through 2006, government records indicate, MBI received U.S. Department of Defense contracts worth approximately \$230 million to manufacture products for the U.S. military. As a result of those contracts, MBI expanded its workforce from 85 employees in 2001 to approximately 650 workers in 2006. In securing indictments against MBI's president and two managers, the government alleged that the dramatic growth in the company's workforce was based on a brazen conspiracy to recruit and employ illegal aliens.

In the MBI raid, ICE arrested more than 300 illegal aliens—nearly half the MBI workforce. The indictment alleges that the company’s senior management team directly assisted illegal aliens in obtaining housing and provided advance payments to some. The government has also alleged that the company instructed illegal alien employees on ways to avoid government detection.

The raid on MBI was in many ways heralded as a success by ICE. It was an example of ICE working in conjunction with other agencies and law enforcement personnel to punish company executives who allegedly used illegal immigrants for significant commercial gain. But the raid on the Massachusetts manufacturer soon became a rallying point for those who oppose the manner in which ICE has carried out raids in the past two years. This raid in particular brought numerous complaints about the treatment of workers, as there was evidence that as many as 150 minor children were stranded without their parents as a result of the arrests. Massachusetts Senator John Kerry, for example, joined immigrant advocacy groups to call for a government review of the raid. That review is now proceeding through the DHS Office of the Inspector General. ICE officials have since confirmed that these complaints led to changes in worksite enforcement protocol.

I. National Security and Critical Infrastructure Facilities

ICE has a mandate to give priority to problems at worksites that involve national security or are considered part of the nation’s critical infrastructure. Because some ICE actions may not have been reported due to national security concerns, it is difficult to judge whether this industry was an area of heightened concern in 2007. . For those cases that were reported, ICE’s worksite enforcement efforts appeared to be moderate to low in 2007.

In May 2007, ICE agents arrested a dozen illegal aliens employed by two different companies performing contract work at a National Guard base in Arkansas. In November, 30 workers were apprehended at a construction site for the National Infantry Museum in Columbus, Georgia. Similar routine arrests also occurred at other military and government locations. For example, in January 2007, ICE announced the results of a sweep of U.S. military installations in Nevada, Virginia and Georgia that resulted in the arrest of several dozen illegal aliens who had been working for various contractors. At least two individuals faced federal harboring charges as a result of those investigations.

ICE touted the Tarrasco Steel Company case described above (see the Construction and Building Trades section) as an accomplishment of the agency's Critical Infrastructure Protection (CIP) investigations unit because the company was working on significant bridge construction projects. The goal of the CIP investigations unit is to ensure that all major systems and assets that are vital to United States are protected from incapacitation or destruction. Those systems and assets include not only physical facilities (such as nuclear power plants, ports, major highways and bridges) but also virtual/electronic systems that are deemed vital to the nation's security.

The arrest of 23 illegal alien workers at O'Hare International Airport in November 2007 hinted at the potential for a security breach. In criminal complaints against two managers at a company named Ideal Staffing, the government alleged that it not only knowingly employed illegal aliens but also facilitated their use of fraudulent security badges to gain access to secure areas throughout O'Hare, including the tarmac.

J. Day Laborers and "In Transit" Workers

For many Americans, the day laborers gathered on roadsides and in parking lots, often near "big box" retailer like Home Depot, are the most tangible examples they can see of the country's illegal immigrant workforce. For many years, immigration authorities essentially ignored this segment of the economy. That's no longer the case.

One ICE crackdown on day laborers occurred entirely by accident in Baltimore. In January 2007, a group of ICE agents were preparing to execute a number of warrants for illegal alien fugitives. When they stopped at a convenience store, a large group of men descended upon the agents' unmarked vehicles, under the impression that they were contractors looking to hire workers. The agents arrested two dozen laborers. Six had criminal records in the United States, and eight had failed to comply with outstanding deportation orders.

There were similar reports of day laborers being arrested at locations across the country throughout 2007. Most, however, do not link ICE to the initial arrest. Rather, as many communities respond to complaints about day laborers from disgruntled residents, local police and sheriffs' officers are using anti-loitering, vagrancy and other ordinances to make arrests or at least force workers to move elsewhere. Some of the illegal workers apprehended by local law enforcement are invariably referred to ICE, especially those

with outstanding criminal warrants. Such tactics are sometimes controversial. Community groups in Chicago, for example, have threatened to sue local police to reduce law enforcement pressure on day laborers. Immigrant advocacy groups are also lodging complaints in Virginia, California and other states, arguing that local police should not be allowed to use the “cover” of municipal ordinances and minor infractions to crack down on day laborers.

Although harshly criticized for his efforts, the Maricopa County Sheriff in Phoenix epitomizes those local authorities who have decided to make it their business to crack down on illegal immigration. The sheriff of Arizona’s most populous county has authorized his officers to inquire into a person’s immigration status during their regular course of duty, which has resulted in growing pressure on the enormous day labor job market in Phoenix. Tough new state immigration laws that have gone into effect in Arizona, Colorado and Oklahoma over the past two years are also said to be pushing day laborers to other parts of the country. But many other states have already passed their own immigration measures, and more state and local initiatives are expected to pass in 2008.

The focus on day laborers is itself a natural consequence of ICE’s increased worksite enforcement program, which drives thousands of illegal workers out of regular workplaces. ICE audits and investigations force companies to look more carefully at new hires’ documents. In addition, more companies are using criminal background checks as a routine part of their pre-employment due diligence. These responses to ICE’s enforcement efforts push more workers into the day labor market.

Some ICE field agents view the purpose of the agency’s worksite enforcement efforts as “flushing out” those who were previously able to hold jobs because of fake documents or identity theft. Without the protection of a job, an illegal immigrant is increasingly susceptible to detection and arrest by a host of federal, state and local authorities. There are countless reports from across the country of federal, state and local authorities arresting van-, truck- and carloads of illegal aliens in transport—en route either to a local job or as part of underground cross-country transportation networks.

ICE collaborates with its DHS sibling, CBP, and state highway patrols to interrupt the flow of illegal immigrants that crisscross the country. In perhaps the largest sting operation of its kind in 2007, federal agents arrested approximately 100 suspected illegal aliens at a Twin Falls, Idaho, bus terminal in November. Commercial bus employees had

told law enforcement officials they suspected that large blocks of tickets were being purchased to transport illegal workers on various bus lines to points as close as Boise and as far east as Atlanta and South Carolina. All but three of those arrested were Mexican citizens. A government spokesman said that as many two dozen had criminal records.

III. NOTABLE CHARACTERISTICS OF ICE'S 2007 INVESTIGATIONS AND PROSECUTIONS

A. Multiple-Agency Efforts

Today's immigration investigations exhibit an unprecedented level of inter-agency cooperation, involving what seems to be an ever-growing mix of federal, state and local law enforcement agencies.

The March 2007 Massachusetts raid on MBI (referenced above), for example, followed an investigation that involved agents from the following offices:

- ICE Office of Investigations, Boston;
- Social Security Administration's Office of Inspector General;
- Department of Defense's Criminal Investigation Service;
- U.S. Department of Labor's Office of Inspector General;
- Massachusetts Insurance Fraud Bureau;
- U.S. Postal Inspection Service; and
- The Criminal Division of the U.S. attorney's office.

The combination of investigatory teams reflects how the government is pursuing leads from multiple sources, generating a more complex, multi-disciplinary effort to combat illegal immigration. In some cases, the focus is on identity theft among workers. In others, the objective is to crack down on tax or payroll fraud by the employer. ICE has been successful in forging cross-agency alliances to gather evidence that will hold up in federal court. Likewise, the agency has in recent years received a far better reception among U.S. attorneys' offices nationwide to get matters on grand jury calendars and in the hands of prosecutors. Compared to the 1990s, when immigration investigators often conducted investigations with little input from other agencies, it is now common to see several agencies credited for helping to bring non-compliant employers and illegal aliens into court.

It would be inaccurate, however, to say that these alliances remain uniformly strong. There is certainly a great deal of anecdotal evidence to suggest that these agencies occasionally become embroiled in "turf warfare." Many enforcement actions, in fact, fail

to develop due to philosophical and tactical differences of opinion among different agencies and federal lawyers. Despite such inter-agency quarreling, the following are some of the other government agencies that contributed to ICE worksite investigations in 2006 and 2007:

- U.S. Customs and Border Protection;
- U.S. Transportation Security Administration;
- U.S. Marshals Service's Fugitive Task Force;
- U.S. Department of Agriculture;
- Federal Bureau of Investigation;
- Internal Revenue Service, Criminal Division;
- Federal Deposit Insurance Corporation;
- County and state prosecutors; and
- City police, county sheriffs' offices and state highway patrol personnel.

This list will likely grow in 2008, as more states have enacted laws and executive orders that impose immigration-related requirements on companies with public contracts. Different types of immigration laws in Colorado, Arizona, Tennessee, Georgia, Oklahoma, Arkansas and other states will obligate more state agencies and prosecutors to pursue complaints, conduct audits and potentially escalate allegations of illegal alien employment by sending them to ICE and other federal agencies.

B. Abandonment of Administrative Prosecution and the Focus on Federal Criminal Prosecution

In prosecuting employers for immigration law violations, ICE officials speak of "the old approach" versus "the new approach." The old approach, which was used for years by the INS, focused principally on the administrative fines that could be tallied from I-9 "paperwork" violations and counting the number of employees whom the employer knew or should have known were illegal. With the old approach, cases were not handled by the U.S. attorney's office. Instead, INS agents would issue a Notice of Intent to Fine (NOIF), typically based on evidence developed from an audit of the employer's I-9s and possibly statements from former employees who had been apprehended by the INS.

Under the old approach, it was common for an INS-issued NOIF to be used as a negotiating tool to exact a settlement from the employer. INS attorneys prosecuted a relatively small number of cases, not in federal court, but before administrative law judges whose primary job was to conduct deportation hearings. Most INS attorneys, meanwhile, had an enormous backlog of deportation cases. And few had the training or resources to mount serious investigations of suspected employer misconduct. As a result, few employers faced vigorous prosecution. And where the evidence pointed to serious immigration violations, companies were typically able to settle cases with no criminal sanctions and administrative fines that would hardly compromise their ability to conduct business. The net effect of the “old approach” was a sense of employer invulnerability, especially in certain industries.

Since the reorganization that led to the creation of ICE in 2003, the government has essentially abandoned the practice of taking I-9 and employer sanctions cases before administrative law judges. ICE recognized that the administrative process had failed to have a deterrent effect on employers. Now, even more routine worksite enforcement operations focus on sending a strong deterrent message to illegal aliens by arresting, prosecuting and deporting them in higher numbers, with criminal charges often tagged onto immigration violations. More serious cases that involve allegations of employer misconduct are now coordinated so owners and managers might find themselves being taken from the company premises in handcuffs along with suspected illegal aliens.

But this change in tactics was not driven solely by the government’s desire to send a message to the business establishment. The new approach dramatically increases the number of tools at the disposal of ICE investigators, and thus their effectiveness. In addition, cases selected for prosecution move through the federal system of indictment, trial and sentencing much faster than they ever moved through the clogged channels of administrative proceedings—again, increasing ICE’s effectiveness.

Having more tools in its investigative and prosecutorial toolboxes has raised questions about whether ICE uses the best judgment in choosing where and how to use its additional resources. There were many examples in 2007 of ICE’s “new approach” being used under circumstances that in years past would never have resulted in such an investment of federal resources.

- In Vermont in October 2007, the media quickly and widely distributed the photo of a hotel management executive being escorted from company premises in

handcuffs. In an investigation that featured ICE collaborating with the FBI, evidence was presented showing that a number of illegal alien employees lived on the hotel premises, while their payroll was handled differently than legal workers' pay. There was also evidence that the executive who was arrested, a naturalized citizen, had lied on his own immigration paperwork. He was charged with harboring illegal aliens and other crimes that could lead to years in prison and a \$250,000 fine. Ten suspected employees were arrested at the hotel under suspicion of working illegally.

- In November 2007, the 35-year-old owner of a California carpentry business, himself an illegal alien, was arraigned in federal court on criminal charges related to employing eight other illegal aliens. A swarm of ICE agents executed a search warrant at Pepe's Cabinets in Oakland, and the subsequent ICE press release included statements about the agency working to "promote national security" and protect "critical infrastructure." ICE did not explain how these nine individuals had threatened national security or critical infrastructure.

It is unlikely that INS agents of a decade ago would have taken such an aggressive prosecutorial approach based on these facts. It is even harder to imagine the FBI or the U.S. attorney's office having the time or interest to pursue such matters in the days of "the old approach." Even today, some prosecutors and ICE investigators would have responded to the two cases described above with fewer agents, and would have been satisfied with simply placing the illegal aliens in deportation proceedings. Advocates of the new approach argue that when linked together, the collective effect of these many smaller enforcement actions has an impact on businesses of all types and sizes, driving home the point that no company or individual is above the law.

Still, it is clear that the choices ICE made in 2007 about how to deploy resources, what type of conduct to punish, and which methods to use in combating illegal employment have created rifts within the agency itself (sometimes pitting field agents against political appointees) and with other government offices (for example, with some U.S. attorneys). These matters are now being debated, although almost entirely behind closed doors. This debate is fueled by fundamental differences among government personnel. While almost all may agree on the need for increased immigration enforcement, different factions maintain strong differences of opinion about how to prioritize targets and use federal authority in the workplace.

The government's ongoing internal debate highlights the fact that the new approach to immigration enforcement was not forged through an act of Congress. Instead, sweeping changes have occurred in the past few years, without one law being added to the government's arsenal. The new approach simply reflects shifting priorities. Laws that were rarely used to prosecute employers for over 20 years are now being dusted off by U.S. attorneys who are prosecuting company personnel and illegal employees on federal crimes that have long been on the books. This shift in policy, with no change in the underlying laws, has been the most significant development in immigration enforcement since the passage of the Immigration Reform and Control Act of 1986 (IRCA), when employer sanctions and the I-9 form first came into effect.

C. Shattering the Myths: Prison Sentences Sought for Company Management and Illegal Alien Workers

ICE has been criticized extensively in congressional committee hearings, court filings and the media for allegedly abusing the rights of workers, violating the rights of employers, being too aggressive (or not aggressive enough), and a broad spectrum of real and perceived organizational and procedural shortcomings. Regardless where a person stands on those issues, though, there is no dispute that ICE has shattered a number of myths that had long defined how employers and illegal alien workers viewed the government's resolve about immigration compliance. As with all forms of mythology, immigration myths in the United States have been based in part on historical fact.

Myth No. 1: The government would never put me in jail for employing just one illegal alien. This myth was proved false in October 2007, when a federal court in Michigan sentenced a man to 18 months in prison for employing a single illegal alien in his home. The severity of his prison sentence was due to his direct involvement in smuggling the worker across the Mexico-U.S. border. His wife was put on probation. In a case brought by the U.S. Department of Labor, the couple was also forced to pay a \$26,000 settlement for wage and hour infractions.

Myth No. 2: If the government figures out that I employ illegal aliens, the most it would do is slap me with a fine of a few thousand dollars. It's not like I'd lose my house! One of the most poignant tales in the destruction of this myth played out in the U.S. District Court for the Southern District of Ohio in the summer of 2007. There, the owner of a business called the Stitching Post—which repaired and sold sewing machines—felt

the full force of the government's new approach to immigration enforcement. For his admission to helping Mexican workers travel to the U.S. and knowingly employing them without proper authorization in his business, the owner: (a) was sentenced to six months in prison; (b) was required to forfeit his home, valued at \$770,000; and (c) had other cash assets seized by the government. The man had employed just four illegal aliens in his store.

Myth No. 3: U.S. workers aren't willing to do this kind of work anymore; there's no way the government is going to shut us down. Few industries in the U.S. are as closely associated with the employment of illegal aliens as the roofing industry. From coast to coast, Mexican and Central American men shingle American homes and do most other types of roofing work. Many certainly have legal status. Many do not. So many, in fact, that this is one of the industries where it's fair to pose the question: Who would do the work if we arrested and deported all the illegal aliens? While ICE has hit the construction industry repeatedly in the past few years, the agency took its strongest action against roofing companies in Kansas City, Missouri, in June 2007. There, ICE indicted the owners of several companies and management employees on a series of federal charges, including accusations of harboring illegal aliens, unlawful financial transactions, conspiracy to commit money laundering and other charges. Other raids occurred that same month across the state, leading to criminal convictions of three brothers who recruited illegal aliens to work as roofers for their St. Louis business. The brothers were each sentenced to a year in prison related to convictions for smuggling, transporting and harboring illegal aliens.

Myth No. 4: I'm too small of a "catch" for the government to worry about; if there's a raid, the government will either go after my boss or just the illegals, but not me. All of the managers, supervisors and human resources personnel who were arraigned in federal court on immigration-related criminal charges in 2007 likely had at least one thing in common: shock. After nearly two decades of inconsistent or completely non-existent immigration enforcement, the American business community had developed a belief that enforcement would never happen, but even if it did, the "other guy" would get caught. This sense of invulnerability is inevitable in any system that does not hold people accountable for their actions. In addition, even though immigration enforcement is at an all-time high, the number of company personnel who have actually been arrested, charged and convicted is still in the hundreds—an infinitesimally small percentage of the business owners, managers, supervisors, human resources personnel, union stewards and

others who engage in non-compliant business practices for which they could be held liable.

With the Enron financial scandals a number of years ago, the federal government went after the company's top brass. As the cases summarized above confirm, that philosophy has, on occasion, been used in immigration-related prosecutions. Certainly the criminal charges against senior executives of RCI, the national janitorial services contractor, and the textile products company, MBI, show ICE and federal prosecutors following the example of Enron-type prosecutions. But ICE officials have stated their belief that the government cannot effectively combat illegal immigration unless enforcement occurs at all levels within businesses where non-compliant behavior occurs. This philosophy explains why prosecutors filed federal charges against the Swift human resources employee and union steward in Iowa last summer. This philosophy explains why several supervisors and human resources personnel were charged with felonies in federal court in Missouri a few months after the George's Processing poultry plant was raided. This philosophy explains why prosecutors criminally charged a human resources employee along with the owner of an Arizona stucco company. These cases did not develop by mere coincidence. These prosecutions were the results of enforcement directives from DHS and ICE leadership in Washington, D.C.

Myth No. 5: Illegal alien workers may run the risk of getting deported, but they haven't committed any crimes; I'm sure they won't go to jail. For a foreign national, unauthorized employment in the U.S. is a deportable offense. But unlawful employment also typically involves some other violation (or violations) of federal law. Historically, most law enforcement agencies and prosecutors have viewed these crimes as too "administrative" in nature to bother prosecuting illegal aliens, choosing to leave any potential punishment to immigration authorities. But now, as identity theft has become the most common vehicle to securing employment, attitudes have changed. Laws that have long been on the books are now being used to prosecute illegal aliens on felony charges for actions they took in securing employment through the use of fraudulent documents or by using another person's identity. It is now quite common for U.S. attorneys' offices to indict illegal aliens for charges that include: (a) fraud and misuse of immigration documents; (b) aggravated identity theft; (c) making a false statement on a government document; (d) misuse of a Social Security document or number; (e) making false statements in a government investigation; and (f) re-entering the U.S. after being deported.

These charges carry maximum penalties up to ten years in prison and the possibility of fines as high as \$250,000. ICE is encouraging this type of criminal prosecution as a further deterrence to illegal immigration. This strategy is rooted in the fact that many illegal aliens have been apprehended and deported more than once. ICE recognizes that deportation itself does not deter many illegal aliens from simply re-entering the United States. Illegal immigrants can be forced to serve time in prison for federal convictions related to document fraud or identity theft before they are returned to their home country in connection with the immigration status violation. In another example of this “dual prosecution” strategy, prosecutors are increasingly filing criminal charges against illegal aliens for violating the federal statute that makes it illegal to re-enter the U.S. after an immigration judge enters a formal deportation order. This type of crime is another example of a felony that has been part of the criminal code for years and is now being used more frequently than perhaps ever before by many federal prosecutors.

IV. CERTAIN CONDUCT ACTS AS A “MAGNET” TO ATTRACT WORKSITE ENFORCEMENT INVESTIGATIONS

After two decades of dormant or at best sporadic immigration enforcement efforts by the government, most employers targeted by ICE probably feel a sense of injustice. Why, they surely ask, with so many other companies out of compliance, is my company being picked on? Why have my competitors gone unscathed? How can I compete when others in the industry do even less about immigration compliance? In years past, these questions from the business community may have been met with a strong, supportive response from members of Congress. Not so today.

In the 1990s, the collective complaints of the American business community and ethnic groups were largely successful in getting political leaders to rein in and even stop INS efforts to enforce immigration laws in the workplace. In 2007, despite rallies in some major cities, lawsuits against the government and lobbying efforts in Washington, the public and political climate has shifted to encourage or at least tolerate the steady increase in the number of employers targeted by ICE. In fact, the media airwaves are filled with calls for even more enforcement activity (with ICE actions sometimes being branded as “Lou Dobbs Raids”).

DHS Secretary Michael Chertoff was unambiguous in his public statements throughout 2006 and 2007. He voiced support for devoting more resources to worksite enforcement, with several goals. First, increased enforcement might reverse the trend of spiraling unlawful conduct—not only to reduce the number of illegal aliens, but also to attack identity theft, employment tax violations and other associated crime. Second, enforcement is viewed as part of a multi-pronged effort to combat illegal immigration—recognizing that no single effort (such as enhanced border surveillance, fugitive operations and higher fines) will solve the problem alone. And lastly, increased enforcement activities might increase pressure on Congress to provide comprehensive solutions to the country’s broken immigration system. Without an immigration reform bill, ICE agents will continue to be given responsibility for chasing illegal alien workers across the country.

Still, even though many employers have been hit by ICE raids in the last few years, the total number represents only a small fraction of one percent of the companies in any given industry.

Are ICE raids random? Were the targeted employers simply victims of bad luck?

A thorough review of ICE's worksite enforcement actions in 2007 suggests that the raids were not random, and had more to do with factors that drew ICE's attention toward a particular employer. The reality is that ICE has literally thousands, perhaps tens of thousands, of companies to choose from when combating illegal employment. "Luck," bad or otherwise, seems to have little to do with how ICE comes to focus its investigative resources on one company rather than another. Instead, there appear to be some strong "magnets"—facts, patterns and behaviors—that attract ICE's attention and ultimately lead to a company being singled out for more thorough review.

A. Employers Who Exploit Illegal Alien Workers

ICE has conducted dozens of raids on single-facility businesses and small, family-owned chains of restaurants, which immediately raises questions about why the government would bother investing resources on such small targets. The answer is often exploitation. Many ICE agents and federal prosecutors are highly motivated to devote investigative resources to a particular employer if a tip or other evidence suggests that the company is leveraging the illegal status of workers for additional financial gain. A South Dakota couple learned this lesson when their Comfort Inn & Suites hotel business, which employed a number of foreign workers, was raided. They were no doubt shocked to learn that the government's prosecutorial focus was on them as employers, rather than on the visa status of their Filipino employees.

In November 2007, a federal jury returned guilty verdicts against the couple for mistreating their foreign workers. Both the husband and wife were convicted on such rarely used criminal charges as "conspiracy to commit peonage" and "document servitude." The jury also returned guilty verdicts for visa fraud and making false statements to federal investigators. These verdicts were based on the highly charged, often emotional testimony of workers whose passports were seized by the employers, who then forced illegal immigrants to work in essential bondage. A U.S. Department of Labor investigator testified that the foreign housekeepers, for example, were sometimes expected to work all day, every day, for an entire week.

The cases of exploitation pursued by ICE and federal prosecutors do not typically have story lines quite as shocking as the South Dakota hotel trial. Nonetheless, repeated

reports of employers taking advantage of workers are often cited by ICE investigators as one factor in explaining why a certain company was targeted despite the agency having information on illegal workers being employed by numerous competitors. The Cloudburst Lawn and Sprinkler case in Grand Island, Nebraska, is another example. A driving force behind the prosecution of that case was evidence that the company owner had failed to pay overtime wages to workers. At first blush, this allegation would appear to some to be a minor administrative violation. To the federal government personnel who investigated the case, however, it was an example of the owner's greed. He knew the illegal employees were in a difficult position to file complaints for wage and hour violations, and the prosecutor alleged that he took advantage of that fact to illegally boost his profit margins.

That Nebraska case is a relatively small example of ICE's broader concerns. One of the well-documented ills associated with the employment of illegal aliens is the susceptibility of those workers to exploitation. Now that ICE has developed stronger working relationships with the Social Security Administration, the U.S. Department of Labor Wage and Hour Division, the Criminal Division of the IRS, and other state and federal agencies, joint task force investigators are looking to punish employers who violate tax, finance and wage rules. In prosecuting these cases, the government will seek sanctions to punish the employer, restitution for workers and a recovery of money owed to the government.

B. Employers Who Act with Impunity

The owner of one Kentucky landscaping company who pled guilty to immigration law violations in 2007 had apparently been quite open about his employment practices. In fact, it was apparently illegal alien workers themselves who first contacted ICE and alerted federal authorities to the owner's business practices. Court documents show a pattern of employer impunity toward the law, brazenly employing illegal aliens to the point that it was "common knowledge." In an affidavit, one former employee recounted how the employer had discounted any concern for I-9 or other immigration violations, saying he was not worried and would "just pay a fine" if he was ever caught. But rather than having to pay administrative fines, as he might have with the INS in the 1990s, the business owner ended up pleading guilty to federal charges that threatened him with prison time and hundreds of thousands of dollars in total fines and cash forfeitures.

In the Tarrasco Steel case described above, court documents allege that the owner himself falsified and altered information on the I-9 employment eligibility forms of his employees. The Tarrasco Steel case was similar to many other ICE enforcement actions in the construction industry, as the evidence suggests the owner brazenly and purposely recruited workers he knew to be illegal in order to undercut the bids of other subcontractors on major bridge construction projects.

But employer impunity is certainly not restricted to any one industry or region of the country. By some measures, the joint ICE and IRS investigation into the janitorial services contractor RCI, also discussed above, stands out as the largest immigration enforcement operation of 2007. According to the indictment in this case, prosecutors filed felony charges against the company based on evidence that it took intricate steps to evade the payment of over \$18 million in employment taxes. The indictment alleged that executives “disguised” the company’s true business activities and cash flow by creating a series of shell companies and accounts to hide excess funds, which were then used to facilitate the executives’ luxurious lifestyles. RCI’s immigration compliance problems are almost lost in the court documents, as those allegations are overshadowed by the broader financial schemes built on financial gains from the illegal employment. In this case, the employer’s impunity was symbolized by the luxury boats, expensive cars, lavish homes and racehorses that federal prosecutors alleged were the direct benefits of money that should have been paid into government coffers through employment tax obligations.

C. Employers Who Recruit, House and Transport Illegal Alien Employees

Nothing helps the government build a better case for illegally harboring workers than evidence of an employer who buys them airline tickets, helps provide housing and transports workers from place to place. The April 2007 sentencing of a former Dunkin’ Donuts store owner and his daughter drove this point home in seven figures. Prosecutors agreed to reduce the business owner’s sentence to ten months imprisonment, with one month of home confinement for his 23-year-old daughter, once he had paid \$1 million in a monetary judgment to the United States treasury. The owner had at one time operated as many as ten Dunkin’ Donuts stores in Connecticut. He and his daughter had recruited Portuguese citizens to work as managers. Those individuals entered the United States as visitors, traveling with plane tickets purchased by the donut shop owner, who also helped with their initial housing and local transportation needs. The evidence of the family’s

direct involvement in the workers' travel and other affairs helped ensure guilty pleas on the illegal employment charges. The sizeable fine was the result of further evidence developed by the IRS's Criminal Investigation Division, the Connecticut wage and hour division, and federal prosecutors, who worked with ICE and other agencies during the lengthy investigation.

Other ICE enforcement efforts have proved that generosity toward illegal alien workers will fail to protect against government sanctions. The government's prosecution of Golden State Fence Company in California led to a March 2007 sentence of six months of home confinement for both the company president and vice president, along with personal fines of \$200,000 and \$100,000, respectively. Prosecutors sought longer sentences of actual imprisonment, and were prepared to file charges against as many as 12 other managers. But in the end a deal was struck so that the company forfeited \$4.7 million of proceeds generated from what the government said were illegal hiring practices. The company's president had prided himself on building his business from scratch, providing workers with surprisingly high salaries, health insurance, sick leave and vacation benefits. The government countered with evidence that company executives knowingly built their business, from the very start, with a labor force composed largely of illegal aliens.

D. Employers Who Help Criminal Aliens

The most notorious example of an employer paying a price for helping an illegal alien is now playing out in Houston, Texas, where the owner of a landscaping firm was arrested in January 2008 and faces up to ten years in federal prison. The charges against him include employing and harboring an illegal alien from Mexico. But in this particular case, the owner of Deer Park Landscaping is charged with employing an illegal alien who was accused of murdering a Houston police officer.

The owner obviously could not have known that his employee would kill someone. But the case has an even more disturbing history. Ten years ago, the owner posted bond for the same employee, who at that time was jailed on charges for indecency with a child. The worker was deported back to Mexico in 1999. Undeterred, the landscaping company owner sent money to the individual to help him return to the United States. The owner now faces serious prison time and other penalties based on charges that he encouraged

the worker to re-enter the United States illegally, and later committed additional immigration violations by employing and harboring him in the Houston area.

The police officer was killed in September 2006 after stopping a truck owned by the landscaping company for a simple traffic violation. The worker was arrested when he could not provide a driver's license. Court documents indicate that as the police officer was writing up his report, the employee pulled a pistol and shot the officer four times in the head.

The facts in the Houston case are, of course, horrible events that fortunately have little relevance to the liability risks most employers face. But the issue of linking an employer's responsibility to the conduct of employees who are illegal aliens does have relevance to any company with poor immigration compliance. There are many examples of employers being held accountable for or suffering the consequences of such conduct. These include:

- ***Identity theft.*** Identity theft is currently the leading mechanism for illegal aliens to secure employment in the United States. This fact has led to epidemic levels of complaints that must be resolved and are percolating up to employers. Those complaints are being directed at companies who have paid wages to individuals using stolen or assumed identities. They are being driven by U.S. citizens and lawful residents whose Social Security numbers and names—whose identities—have been misused. These complaints are increasingly being investigated by law enforcement or tax authorities.
- ***Subpoenas and warrants.*** Even when an employer does not know that a certain worker or group of employees lacks proper employment authorization, those employees may be arrested (on anything from traffic violations to serious felonies) or otherwise come to the attention of immigration authorities. As ICE and other law enforcement agencies work to track such people down, they will contact employers, request information, seek copies of I-9 and personnel records, issue subpoenas, serve search and arrest warrants to gather evidence, apprehend and ultimately prosecute the illegal alien workers. As the country's immigration problems remain unresolved, these actions are becoming more frequent in the American workplace, increasing employers' costs and responsibilities for addressing these concerns.

- ***Audits and employer investigations.*** ICE agents will confirm that their focus on a particular employer is never random. They insist that they merely follow the evidence. Many of the significant ICE raids and enforcement actions in 2007 were prompted by information gathered from illegal aliens who had been arrested at a location not associated with their employment. Law enforcement and ICE agents increasingly seek to extract information from illegal aliens to determine how they obtained their identification documents and secured their employment. If several individuals provide evidence that suggests a particular employer has knowledge or is somehow complicit in the employment of illegal aliens, the chances of that company being audited, investigated and possibly prosecuted are much higher.

Just as the landscaping company owner in Houston could not have foreseen that his employee would shoot a police officer, no company can anticipate or control the consequences of having significant immigration compliance problems. This uncertainty should further encourage employers to take proactive steps to address identifiable immigration compliance problems.

V. THE FORECAST FOR ICE WORKSITE ENFORCEMENT IN 2008

As we move into 2008, we see the same apprehension in the halls of Congress that has gripped lawmakers over the past several years. There is essentially no hope of a national legislative solution to the problems associated with illegal immigration in 2008. Public opinion polls weigh heavily in favor of enforcement and border security, with declining public support for any measures that would secure legal immigration status for the millions of illegal aliens currently in the U.S. The leading Democratic and Republican presidential candidates have adjusted their message points to reflect the public opinion polls. Thus, it's doubtful that we will see any major candidate advocating "comprehensive immigration reform" as the November election approaches. Even Arizona Senator John McCain, who co-sponsored a far-reaching bill to grant legal status to illegal aliens, has placed greater emphasis on border security and enforcement. If he hadn't taken a more enforcement-minded position on immigration, many commentators believe, his campaign would not have rebounded to win early primaries.

While the issue of immigration remains stalled on the political front, ICE still has the budget, resources and directive to move forward on worksite enforcement.

ICE nevertheless finds itself involved in a bit of a "re-tooling" effort in the first quarter of 2008. The agency has been hit with litigation in several jurisdictions across the country. ICE's methods in carrying out raids and mass worker apprehensions are under both judicial and internal agency review. But the relative respite in worksite enforcement actions that occurred in December 2007 and January 2008 should not be viewed by the American business community, unions or other groups as a signal to return to old habits. ICE will likely develop a more focused set of tactical procedures, increasingly aided by state and local law enforcement agencies. The agency may not be inclined to stage mass worker round-ups, but ICE is likely to increase its efforts against national or large regional employers that have weak points in their hiring procedures or fail to respond to indications of illegal employment. ICE has faced its most serious legal challenges because of raids that involved segregating workers by appearance and ethnic origin, then interrogating large groups of workers, which invariably led to legal workers being detained and frantic repercussions in the affected community. Now that ICE has successfully shattered many of the "myths" that suggested it would never get serious about cracking down on employers and illegal aliens, it will likely focus more attention on investigations that allow agents to pinpoint individuals whom they know are in the U.S. illegally or who are aiding illegal conduct.

ICE has opened itself up to both public criticism and litigation based on its reliance on administrative search warrants, often referred to as “Blackie’s Warrants.” Although these warrants provide ICE with the legal right to enter an employer’s premises and ask workers about their legal status and identity, many critics question whether ICE oversteps its legal authority in the tactics the agency uses to segregate, interrogate and apprehend workers. In fact, many experienced ICE field agents, investigators from the Social Security Office of Inspector General and U.S. attorneys believe ICE would be more effective in gaining allies in the business community if the agency abandoned the “big raid” approach. Critics believe that raids are not an effective use of government resources. Some in government argue that more methodical, long-term investigations and targeted prosecutions would ultimately produce better results in reducing illegal alien employment. In addition, many ICE personnel and others in law enforcement believe they need to focus more resources on the following priorities:

- the syndicates that traffic in stolen identities and fake documents;
- the people who transport, house and otherwise aid illegal aliens;
- criminal aliens and fugitives;
- illegal aliens who commit “victim-based” (unauthorized) theft of legal residents’ identities; and
- “bad actor” employers who exploit workers, are complicit in illegal employment or financial activities, or refuse to take steps to comply with basic immigration compliance rules.

Those who favor such immigration enforcement priorities would scrap the complex raid plans and replace them with investigations that result in individual arrest warrants and indictments supported by evidence that will hold up in court.

If ICE were to use individual arrest warrants and subpoenas that are specific in nature, rather than general premises search warrants, the agency would likely gain a legal edge on those who seek to stop worksite enforcement through various lawsuits now pending in several jurisdictions. There are signs that ICE is moving in this direction. For example, in the Pilgrim’s Pride case that is currently unfolding in Texas, the indictments—based partly on evidence gathered by agents working undercover—point to numerous immigration compliance problems at multiple company locations. That set of facts may have prompted some at ICE to respond with a series of coordinated raids, much

as Swift & Company experienced in 2006 and again in 2007. But ICE and federal prosecutors are clearly adopting a much different strategy, at least so far, making relatively few arrests and working with the company, which has in turn taken steps to identify and discharge illegal workers.

A major wild card in determining how ICE's overall worksite enforcement efforts will proceed in 2008 may be in the hands of a federal judge in California. Last fall, DHS proposed new federal regulations that would require all U.S. employers to fire workers who do not resolve Social Security discrepancies or face liability for employing unauthorized workers. ICE was set to begin enforcement of the new rules, entitled "Safe-Harbor Procedures for Employers Who Receive a [Social Security] No-Match Letter," in the fall of 2007. They were expected to have an enormous impact on the landscape of worksite enforcement, likely leading to the termination of tens or even hundreds of thousands of workers.

But the rules were challenged in a lawsuit filed in August 2007 by the AFL-CIO, the American Civil Liberties Union and other organizations. In October, the U.S. District Court for the Northern District of California issued a preliminary injunction in *AFL-CIO, et al. v. Chertoff, et al.* that prevents DHS and the Social Security Administration from implementing the new rules. The judge has now issued a stay in the proceedings, granting DHS's motion for additional time to revise the rules and address concerns raised by the court. DHS is expected to publish a new version of the rules in the Federal Register. The government's expectation is that the rules will survive legal challenge. However, the parties that filed the lawsuit securing the preliminary injunction have already assured the court that no matter what DHS brings back from the drawing board, they stand ready to litigate toward a permanent injunction.

As DHS Secretary Chertoff has identified those new rules as a key objective for 2008, the outcome of this issue will certainly help define ICE's worksite enforcement efforts. If the rule survives legal challenge, ICE will have an immense new source of data to help identify employers that may have unauthorized workers and may be susceptible to liability for failing to address documentation discrepancies. If the upgraded Social Security no-match rules fare no better than the initial version, ICE will likely forge ahead with worksite investigations that seek to expose identity theft and those who help secure jobs and fraudulent documents for unauthorized workers. Raids will likely remain ICE's "tool of choice" where the numbers of illegal aliens are large enough to warrant the resources—especially if the employer is seen as part of the problem. If the past two years

are any indication, these investigations will no doubt work their way into even more industries, involve even more inter-agency collaboration, and branch out into regions of the country that to date have seen little or no immigration enforcement activity. These developments will be coupled with pockets of very strong local immigration enforcement, where certain state, county and local agencies have made immigration law a high-priority enforcement issue.

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