**A Tale of Two Raids**

Migration, or the resettlement of people, is as old as humanity. It often has shaped history, as it did when migrants from Europe to the New World formed an American civilization. Migrants are driven by the opportunity to improve their lives. Costs of migrating are very high, but individuals who leave less developed countries on average double their educational attainment and increase their income by 15 times.[1](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn1)

Today, migrants make up about 3 percent of the world population. In the U.S. population the figure is higher, 8.1 percent, or 25.1 million people. Of these, 12.6 million are legal permanent residents, 0.9 million are authorized temporary workers, and 11.6 million are unauthorized entrants. Each year 750,000 of these migrants become U.S. citizens. Another 1.2 million leave the country voluntarily or are removed.[2](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn2)

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**EXHIBIT 1Number of Persons Obtaining Legal Permanent Resident Status: 1820–2009**

Source: Department of Homeland Security. Figures are for fiscal years.

The United States has attracted many immigrants over time (see [Exhibit 1](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#ex16-1)). Although they come for many reasons, jobs are the principle motivating factor. To control the influx of people across the borders Congress has made it illegal to hire aliens lacking official authorization to work. This is the story of how that prohibition works in practice.

**OPERATION WAGON TRAIN**

December 12 is Feast Day of Our Lady of Guadalupe, one of the most important cultural and religious dates on the Mexican calendar, a day of prayer and fiestas. It celebrates a day, almost 500 years ago, when an image of the Virgin Mary miraculously appeared on a peasant’s ragged cloak.

On this day in 2006, a Tuesday, the morning shifts at Swift & Company processing plants in six states reported for work at 7:00 a.m. Swift & Company is one of the world’s largest beef and pork processing corporations. It traces its beginning to Gustavus Swift, who opened a meat store near Boston in 1859. Swift had exceptional ambition. As his business grew, he revolutionized the industry with conveyor lines on which livestock carcasses were cut apart into products and shipped on railroads. These disassembly lines required plenty of workers willing to take low wages for hard, dangerous labor. The 7,000 workers who reported for the morning shift more than 100 years later were still doing the jobs the founder created. As in the past, most were immigrants doing work spurned by more affluent Americans.

It may have been a holy day, but no miraculous images would appear. Instead, just as shifts began uniformed Immigration and Customs Enforcement (ICE) agents swarmed the six plants in a coordinated raid, the largest ever conducted before or since. They sealed entrances and exits. Inside, they sought out individuals suspected of working illegally under false identities.

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**Monica Salazar, 26, stood with this sign outside the Swift plant in Greeley, Colorado.** Source: © AP Photo/Ed Andrieski.

Panic followed. In Grand Island, Nebraska, people started running and yelling. They tried to hide in lockers and broke windows to get out. Buses came to the plant and drove 240 workers to detention centers for deportation processing. They rolled past knots of family members at the fences waiting for word of loved ones inside.[3](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn3) Guards handed out leaflets with a toll-free, bilingual phone number to call for information.

In Greeley, Colorado, some workers hid in cattle pens. Veronica Perez and her husband were pulled apart. “He tried to give me a kiss on the forehead,” she said, “but they would not let us talk to each other. They made him and myself seem like criminals.”[4](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn4) A woman in tears asked a co-worker to adopt her child, saying she had no one else in the area.[5](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn5) ICE agents handcuffed 261 workers and assembled them in the plant cafeteria. One, Sergio Rodriguez, was working legally, but did not have his resident alien card. His wife brought it to the plant but was not allowed in. He was bused to a detention center near Denver and held until 8:30 p.m. before being released. Around this time another detainee, Gabriela Terrazas, was allowed to call and ask a brother to pick up her daughter from the babysitter.

And so it went. Another 230 workers were arrested in Worthington, Minnesota; 275 in Cactus, Texas; 196 in Marshalltown, Iowa; and 95 in Hyrum, Utah, for a total of 1,297. All were charged with immigration status violations and 274 were also charged with criminal offenses. Families were torn apart. When Juan Ramirez was taken in Greeley, he left behind his wife, Isabel, and three children, two of whom had been born in the United States. Juan brought in the family’s only income. Now his wife, who also was in the country illegally, had no way to pay the bills. Church officials in Greeley said more than 100 children were left without one or both parents.[6](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn6)

Communities were challenged. On the day of the raid nearby schools saw attendance plummet and sales at local stores fell off as immigrant families stayed in their homes. Some would hide for days. A woman in Worthington, Minnesota, took in 24 immigrants too afraid to go back to their homes.[7](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn7) In Cactus, Texas, hundreds appeared at an evening mass offering prayers for divided families.[8](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn8) Swift & Company made contributions to the United Way to help people affected by the raids. However, distrust of authority kept most families from approaching social service and welfare agencies for aid. Many turned to their churches instead.

Operation Wagon Train, the agency’s code name for the raids, left Swift & Company in disarray. Nearly 20 percent of its morning shift was gone. Hundreds more employees failed to show up for the second shift. It was unsure exactly how many employees it had. In the end it estimated the raid cost it $30 million.[9](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn9) When the company criticized ICE for a heavy-handed operation, it got a curt response. “ICE is not responsible for Swift’s illegal alien workforce, nor did ICE create this problem for Swift,” said an agency statement. “Any company with illegal aliens on its payroll should not be surprised to see ICE agents at its door.”[10](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn10)

In fact, the company knew the raid was coming. Ten months earlier ICE had opened a review of its employment records. Its investigation was started by tips from local police and anonymous calls from individuals suggesting that hundreds of illegal aliens, aided by document rings, were using identities stolen from U.S. citizens to work at Swift plants.[11](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn11) Soon the agency’s investigators suspected that up to 30 percent of Swift’s employees were unauthorized workers. It decided to obtain search warrants for raids.

When Swift learned this, it asked to work with ICE to reduce disruption. Instead of a one-day raid it proposed a step-by-step action in one plant at a time over four months. ICE rejected the idea because it would alert unauthorized workers who would vanish and use their stolen documents to get jobs elsewhere.

Then Swift suggested doing its own voluntary review of employees. At first ICE restrained the company, but finally gave it permission. Swift hired immigration experts, identified suspect employees, and scheduled interviews with them. As a result, more than 400 workers were fired, quit, or failed to show up for the interviews. At that point ICE ordered Swift to end its self-review because many unauthorized workers were disappearing before they could be taken into custody and deported.

Finally, Swift tried to stop the raids with a court order, arguing they would “irreparably harm Swift by interfering with its legal business operations and by damaging its reputation” in violation of its constitutional property rights.[12](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn12) ICE countered: “Put simply, there is no constitutional or statutory right for anyone to continue violating the law, and the government need not work on a potential violators’ timetable . . .”[13](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn13) A federal judge allowed the raids to proceed.[14](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn14)

The enforcement philosophy at ICE is to focus on employers suspected of egregious violations. It seeks out those who “knowingly” violate immigration law by trafficking in illegal laborers, harboring illegal aliens, or participating in identity fraud. Swift & Company did not seem to fit these characteristics of an egregious violator. In many ways it exemplified compliance with the law.

It did not exploit unauthorized laborers. It paid its packing plant employees more than twice the federal minimum wage. It offered them comprehensive health plans that 80 percent joined. Its accident rate was lower than the industry average. When Congress passed the Immigration Reform and Control Act in 1986, it complied strictly with the law’s requirement that every newly hired employee fill out a Form I-9.

**FORM I-9**

The Immigration Reform and Control Act was a compromise. In return for granting amnesty to 3 million unauthorized residents Congress promised to curtail further illegal entry. A major lure for illegal entrants was the ease of finding work. To attack this problem, Congress flourished a sword of paperwork called the Employment Eligibility Verification Form, or Form I-9, and drafted the nation’s employers to wield it.

Hiring an alien worker is illegal if the employer knows that person is not authorized to work in the United States. The employer must complete Form I-9 to check on the status of every employee hired.[15](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn15) It is a one-page form with three sections (see [Exhibit 2](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#ex16-2)).

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**EXHIBIT 2Form I-9**

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In Section 1 the employee fills in a name, address, date of birth, and Social Security number, checks a box regarding authorization to work in the United States, and signs with the date.

In Section 2 the employer certifies a review of documents that show the new employee is authorized to work. The employer must verify this review by writing down which of a combination of 26 different documents from three “Lists of Acceptable Documents” has been reviewed. These documents must establish both identity and employment authorization. Some documents, such as a U.S. passport or a permanent resident card (commonly called a “green card”), establish both. Other documents establish one or the other and must be presented in combination.

Some combinations work. Others do not. For example, the employee might use a driver’s license to establish identity and a Social Security card to establish work authorization. Another sufficient combination is a school identification card (for identity) and a birth certificate issued in the United States (for work authorization). However, a Social Security card and a birth certificate in tandem are not acceptable because neither establishes identity.

The company must examine the documents to make sure they are current and “reasonably appear on their face to be genuine.”[16](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn16) It is not required to investigate their authenticity. However, it must teach its staff such arcana as when to expect watermarks, where seals appear, and how designs changed in certain years. If documents are stolen or skillfully counterfeited the employer is not expected to detect the fraud. Simply taking a good faith look shields companies from prosecution.

Section 3 is for updating. If an employee’s work authorization had an expiration date, the employer must ask the employee for new documents to verify reauthorization, then attest that they appear genuine.

Form I-9 has to be completed within three days after a new employee first reports for work. An employee who does not produce the required documents within that time can be fired.

Violation of this paperwork regime invites serious penalties for corporations and their managers. Failure to properly complete Form I-9 can lead to civil penalties of up to $1,100 for each violation. If a company knowingly hires an unauthorized alien, it can receive a civil fine of up to $16,000 per alien hired. Where there is a “pattern or practice” of knowingly hiring unauthorized workers, managers and companies face criminal fines of up to $3,000 per hire and six months in prison. Aliens who use counterfeit or stolen documents or falsely attest their work eligibility on a Form I-9 can be fined and sentenced to a maximum of five years in prison.[17](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn17)

Employers must be careful how they handle the Form I-9 process. It is unlawful to discriminate against job applicants or employees based on national origin, race, ethnicity, citizenship, or immigration status. A company cannot require job applicants to complete Form I-9 and reveal their citizenship status before hiring. It cannot decide to hire only citizens. It cannot treat applicants or workers differently because they look or sound “foreign.” A job requirement for fluent English is only permitted if it is required to do the job effectively or essential to safety. Employers cannot dictate the specific documents workers offer or ask for documents beyond the minimum required. It was here that Swift & Company ran into trouble.

After passage of the 1986 immigration law the company decided to exercise great caution. It tried to avoid hiring unauthorized workers by taking extra care to screen individuals who looked or acted “foreign,” asking these persons for extra documentation not required of others. It may have hired fewer unauthorized workers this way, but it also subjected some U.S. citizens and lawful immigrants to greater scrutiny, thus violating their civil rights. In 2002 it was sued for $2 million by the Department of Justice for engaging in “a pattern or practice of citizenship status discrimination . . . against U.S. citizens” and lawful immigrants.[18](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn18) Swift paid a settlement of $174,088, a record sum, and agreed to retrain its hiring staff. It was a lesson that there were limits in its ability to screen its workers.

**E-VERIFY**

Swift always prided itself on its diligent hiring. In 1997 it volunteered to be one of the first companies using a pilot program for electronic screening set up by the government. This program, which is now called E-Verify, allows the employer to enter the employee’s name and Social Security number in a government Web portal. That information is then compared with databases at the Department of Homeland Security and the Social Security Administration.

If the employee’s information matches entries in the databases, within seconds the company receives a certification that the employee is eligible to work. If there is no match, the employer has a chance quickly to check for typographical errors. If there still is no match, the employee’s information is referred to staffs of verifiers who check other databases. If they cannot confirm eligibility then the system issues a tentative nonconfirmation. The employee has eight working days to correct any errors by calling toll-free Social Security Administration or United States Customs and Immigration Service numbers or by visiting these agency’s local offices.

Some errors are simple to correct, for example, a name change. If the employee does not correct an error during this eight days the E-Verify system issues a final nonconfirmation to the employer who must then either discharge the employee or continue employment only for a brief time if it seems likely an error will be corrected.

Participation in E-Verify has grown to more than 200,000 employers. It is now mandatory for federal contractors, and 12 states require its use by some or all businesses. One mark of its effectiveness is that when a company announces it uses E-Verify it can work just like drug testing to deter unacceptable applicants. Marcelino Garcia owns a chain of Mexican restaurants. When he started using E-verify, he immediately began having trouble finding kitchen help. “It’s been very, very tough,” he says. “We can interview 20 people and maybe only one person” can legally work.[19](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn19) Ironically, Garcia entered the country years ago by swimming the Rio Grande River and traveling in a car trunk. He worked hard, was naturalized, and now employs 500 people.

According to the Department of Homeland Security, E-Verify works well. About 96 percent of initial responses are consistent with the employee’s work authorization status. Of the 4 percent that are in error, about 0.7 percent reflect database or keyboarding errors and the other 3.3 percent are cases of successful identity fraud.

Yet E-Verify has major weaknesses, as the experience at Swift & Company showed. Only 6.2 percent of E-Verify inquiries are for unauthorized workers and that 3.3 percent error rate balloons into a 53 percent failure rate when it is applied only to the 6.2 percent of inquiries about unauthorized individuals.[20](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn20) If such persons submit real Social Security numbers with matching names of persons qualified to work in the United States, E-Verify issues certifications. E-Verify has encouraged a widespread identity theft industry that helps its customers to appropriate real numbers and names to qualify for work.

**THE OUTCOME FOR SWIFT**

In the end, Swift was never charged with any crime. That did not mean it went unpunished. On the day of the raid the company issued a press release in which Sam Rovit, its president and CEO, said, “Swift has played by the rules and relied in good faith on a program explicitly held out by the President of the United States as an effective tool to help employers comply with applicable immigration laws.”[21](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn21)

It had taken on the administrative burden of helping the government detect and police illegal immigration. It had made a good faith effort as required by law to verify the status of all its employees. It had volunteered to go beyond legal requirements by participating in the E-Verify program. It paid large sums for training, software, record keeping, consultants, and attorneys.

These efforts were rewarded with the largest civil fine ever levied for national origin discrimination and the largest worksite raid ever conducted. Another Swift executive, reflecting on these events, said, “It is particularly galling to us that an employer who played by all the rules and used the only available government tool to screen employee eligibility would be subjected to adversarial treatment by our government.”[22](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn22)

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**A NEW ENFORCEMENT PHILOSOPHY**

The departure of the George W. Bush administration altered the enforcement philosophy at ICE. Although President Obama vowed not to “look the other way as a significant portion of our economy operates outside the law” and promised to “step up enforcement against the worst workplace offenders,” there have been fewer workplace raids.[23](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn23) Only 765 undocumented workers were arrested at their jobs in fiscal year 2010 versus 5,184 in 2008.[24](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn24) Instead of raids, the Obama administration emphasizes another enforcement tool—the employer audit.

Some employers call these audits “silent raids.” Employers are required to keep Form I-9 for all current employees on file. If a company is targeted for enforcement, ICE auditors scrutinize these forms, photocopies of employee documents, and payroll records.

Audits are efficient. Small numbers of ICE auditors quietly check immigration status without the confrontation and disruption of a worksite raid. When the audit is complete, ICE gives the employer the name of each employee it suspects is unauthorized to work. The employer and employee then have an opportunity to correct any error. However, if ICE is correct, the company is put on notice that some workers are unauthorized to work. It now “knowingly” employs these workers, which breaks the law. If it continues it risks fines and prosecution of managers.

**GEBBERS FARMS**

Although audits lack the sudden drama of a worksite raid, they can be harsh enforcement tools as the story of Gebbers Farms illustrates. A century ago the Gebbers family settled in Brewster, Washington, a small community in the eastern part of the state where the cool nights, sunny days, and dry atmosphere make conditions just right for growing apples and cherries. For five generations the family tended its orchards until its privately held company became the third-largest grower in the country. Other growers sprang up nearby.

The town of Brewster, population 2,189, prospered with stores and services for the area’s field hands. Apples are hand-picked and apple trees have to be pruned and thinned by hand. To avoid bruising, cherries are also picked by hand. This is hard work. It pays low wages and the only willing workers are immigrants. Spanish now prevails on the streets of Brewster and 90 percent of the students in its school district are Hispanic.[25](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn25)

In 2009 ICE targeted Gebbers Farms for an audit. When it checked Form I-9s for field hands and warehouse workers against Social Security and legal immigration databases, it found 550 employees lacking work authorization. As a result, two days before Christmas the company hand-delivered brief letters to workers explaining that those without proper documents were fired. It gave them three months to vacate company housing.

No one was handcuffed. No one was arrested. No families were separated. No one went into hiding. Still, there was trauma. Some fired workers had been with Gebbers Farms for up to 20 years. Many owned homes and had stable lives in Brewster.

In the town, business dropped off. People stopped making car and rent payments. At the La Moderna clothing store sales dropped 30 percent. The owner of the taco truck named Taqueria el Tapatio No. 4 reported “fewer people are coming to eat.”[26](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn26) A few families returned to Mexico, others wanted to stay. Antonio Sanchez, a 51-year-old orchard worker, thought he might buy a new Social Security number and reapply for his old job.[27](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn27) Most bought new documents and fanned out for work at other orchards, but because of the audit, employers in the area were wary of hiring them. Within months, Brewster lost a sizable part of its population.

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Operations at Gebbers Farms were disrupted. It immediately advertised hundreds of jobs, but had trouble filling them. Eventually it brought in about 100 temporary guest workers from Jamaica, not enough to replace its lost hands, but all it could legally get.[28](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn28) The Jamaicans spend little in local stores, preferring to send their pay back home. Meanwhile, groups of Hispanics from Los Angeles appeared in town. One man asked a reporter if there would be more audits, saying he might need a better Social Security number.[29](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn29)

Many in the area believed this kind of immigration enforcement was unreasonable and unfair. Daniel Aguilar, who had been fired along with his wife, pointed out that during “the cherry-picking season, there’s maybe 2,200 of us working in the orchards. Of those, there wasn’t a single white American. Why does it bother them that we’re doing the work they don’t want to do?”[30](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn30) Tracy Warner, an editor at *The Wenatchee World*, a local paper, elaborated on the theme.

[Y]ou wonder exactly what this “enforcement” accomplishes, by forcing people out of productive employment due to suspect paperwork. If indeed they are illegal aliens they are still illegal aliens. Presumably they will resume life in the shadows and find other work, somewhere. Meanwhile, a community will be struck an economic blow. These workers were producing wealth in a mutually beneficial pact with their employer . . . For a community to lose perhaps hundreds of hardworking people overnight will have a profound effect, and belie the false notion that immigrants make no contribution . . . But the law is the law.[31](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn31)

**UNAUTHORIZED WORKERS: RIGHTS AND ABUSES**

The 11.6 million illegal immigrants in the United States fill many jobs Americans are unwilling to take. Every year the economy creates more of these lowly jobs than the number of immigrants who legally enter the country. Those who enter without authorization are often victims of human trafficking and fraudulent recruiting. Some die on the journey.

However, once in the country they are entitled to the same civil rights protections against discrimination and sexual harassment in the workplace as American citizens. They are also entitled to protection under labor laws. For example, when six Hispanic employees at Wok Teriyaki restaurant in Gig Harbor, Washington, lied about their work authorization, its owners fired them and refused to pay their final wages. These migrants got a lawyer and sued not only for their final wages, but for failure to pay overtime and the minimum wage. A federal judge ruled their immigration status was “irrelevant” and ordered a judgment based on the Fair Labor Standards Act, a 1938 law that establishes wage standards for all employees.[32](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn32)

Despite such entitlements, unauthorized workers often face labor law violations. A study of low-wage industries in the three largest U.S. cities—Chicago, Los Angeles, and New York—found that foreign-born unauthorized workers were frequently victimized. Among those working as cooks, dishwashers, sewing machine operators, car wash attendants, child care workers, and in similar low-wage occupations, 38 percent were paid less than the federal minimum wage and 85 percent worked unpaid overtime.[33](https://jigsaw.vitalsource.com/books/1260364224/epub/OPS/xhtml/chap16.html#b-ifn33)

When unauthorized workers are found on payrolls, they can be arrested and torn from homes and families. Businesses and corporations then use a flawed verification system to fill the job vacancies, inevitably hiring more unauthorized workers. But they must walk a very thin line between being caught by ICE for “knowingly” harboring unauthorized workers and being prosecuted by the Department of Justice for citizenship status discrimination. If they are successful, the profits that come from the illegal toil are protected.