Swift & Company®

TESTIMONY BY

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REGARDING

PROBLEMS IN THE CURRENT EMPLOYMENT VERIFICATION AND WORKSITE ENFORCEMENT SYSTEM

BEFORE

THE HOUSE SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW OF THE COMMITTEE ON THE JUDICIARY UNITED STATES CONGRESS

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About Swift & Company

With more than $9 billion in annual sales, Swift & Company is the third-largest processor of fresh beef and pork in the U.S. and the largest beef processor in Australia. Founded in 1855 and headquartered in Greeley, Colorado, Swift processes, prepares, packages, markets, and delivers fresh, further processed and value-added beef and pork products to customers in the United States and international markets. For additional information, please visit www.swiftbrands.com.

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Chairwoman Lofgren, Ranking Member King, members of the Subcommittee, and other guests – good morning. My name is Jack Shandley I am Swift & Company's Senior Vice President of Human Resources. Thank you for inviting me to testify today.

This morning I will cover some background on Swift, our experience with employment verification and worksite enforcement systems, and recommendations for improving such systems.

Swift is the third largest processor of both fresh beef and pork in the U.S. Our annual sales exceed $9 billion. We employ 15,000 people domestically and operate seven major processing plants in seven states.

All but one of our seven domestic plants have union representation. Swift's production wages are at or above average rates in the communities within which we operate; mean take home pay is $28,000. We offer affordable healthcare and retirement benefits to eligible employees. Approximately 80% of our employees elect to participate in our health plans. Our production employee turnover rate is lower than industry figures for leisure and hospitality, construction, and retail trade. Swift's worker safety record, as measured by lost time injury incidence, is better than all manufacturing businesses in the U.S. In short, employee safety and satisfaction is of utmost importance to Swift.

Our hiring processes go above and beyond what is required by federal or state law in terms of identity determination and work authorization.

First, in accordance with federal law, every new Swift employee is required to complete an I-9 form and provide one or more forms of government issued photo identification, usually a state identification card or driver's license. I would like to note that state requirements for issuing identification cards or driver's licenses vary greatly. Many do not require proof of legal presence in the U.S. The state level is the government's first line of defense in preventing unauthorized workers from obtaining employment.

Not only must employers accept designated identification documents that on their face seem valid, we <u>cannot</u> specify which of the 29 authorized forms of identification the applicant must supply. Employers are also prohibited from asking for additional documents. In fact, in 2001, Swift was sued for $2.5 million by the Department of Justice for discrimination because the company allegedly went <u>too far</u> in trying to determine applicant eligibility. We subsequently settled the case for less then $200,000 with no admission of wrong doing.

Second, less than one tenth of one percent of all employers use the government's Basic Pilot program. Swift has participated in this program since 1997 and every production employee hired since then has had his or her Social Security number run through a government data base that subsequently returned an employment authorization, meaning the Social Security number was valid and matched the name of the applicant hired and was authorized to work.

Third, during the summer of 2006, and with the assistance of third party immigration compliance consultants, we implemented a hiring process improvement program called Employee, Eligibility, Identification, Verification Program (EEIVP) or "connect the dots." In simplest terms, we enhanced our standard new hire interviewing and information evaluation procedures to allow us to better detect identity fraud in a non-discriminatory way. For example, we implemented an internal IT program that flags an applicant that was previously employed or denied employment at another Swift location.

Simply put, a company cannot legally and practically do more than we have done to ensure a legal workforce under the current tools and regulations available from the government.

Despite these facts, the government raided six Swift production facilities on the morning of December 12th, 2006, and detained 1,282 employees. This event cost the company more then $30 million and disrupted communities that Swift has worked hard to enrich.

The raids came after numerous attempts over many months by senior management, outside counsel and others to understand ICE's concerns. We asked for information, meetings, and a collaborative way of apprehending and removing all potential illegal workers and criminals in order to minimize disruption to the company, communities and livestock producers. All attempts to generate a collaborative solution were repeatedly rebuffed by ICE under the guise of an 'ongoing criminal investigation'

Please note that after 14 months of investigation the government has not accused or charged Swift or any current or former member of management with any wrongdoing in connection with its immigrant worker investigation. We have no reason to believe it will do so in the future. DHS and ICE do however continue to unfairly insinuate that the Company is somehow guilty in some unspecified way by parrying all inquiries with the reply of "there's an ongoing investigation." We believe it is past time for ICE to publicly admit that the Company is not guilty of violating immigration laws.

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.

These ICE raids once again highlight significant weaknesses in the Basic Pilot program – flaws that we've discussed with Congress and other interested parties several times over the past year.

The Basic Pilot program, along with increased employer sophistication in processing identity documents, was reasonably effective at its inception in helping to eliminate the use of counterfeit paperwork in the job application process.

However, in response to Basic Pilot the underground market evolved by replacing counterfeit documents with genuine identification documents obtained under fraudulent terms. For example, the most common form of I-9 documents produced – state

identification cards or driver licenses – are obtained with valid copies of birth certificates and social security cards. As I stated earlier, an employer is required by law to accept eligible documents on face value. We believe this challenge will continue, as valid birth certificates can be resold to another undocumented worker for reuse in obtaining yet another official state identification card.

Furthermore, over time fatal flaws in the Basic Pilot Program came to light. As currently structured, Basic Pilot does not detect duplicate active records in its database. The same Social Security number could be in use at another employer, and potentially multiple employers, across the country.

As a result, today employers are confronted with a prolific and sophisticated document fraud industry now capable of providing unauthorized workers with documents and identities that challenge our ability to detect identity and document fraud and seem to defeat the government's Basic Pilot Program that we depend upon to gauge our effectiveness. Let me underscore this point: Basic Pilot is currently the only government tool provided to employers today and it is fatally flawed.

As you can see, employers have no foolproof way to determine if a new hire is presenting valid identification documents obtained under fraudulent circumstances. Furthermore, attempts to use additional means to determine employee eligibility place employers in jeopardy with government agencies who try to protect the rights of our employees. From our point of view, employers like Swift who are trying to abide by the law are not the problem in the immigration reform debate – the current immigration system is the problem.

Our country needs a legislative solution to the issue of employment verification – and more broadly comprehensive immigration reform – that includes:

- revamped federal work verification systems such as an improved Basic Pilot program that ensures one worker, one identification number;
- standardized state identification / driver's license requirements, that provide robust validation of U.S. work authorization;
- tamper-proof, biometric identity documents;
- tough penalties for employers who break the law with protection from disruptive and costly enforcement actions like Swift experienced on December 12th for those who follow the law;
- a re-focused mission for ICE that includes true cooperation with employers who play by the rules;
- a guest worker program; and
- earned status adjustment for a large portion of the estimated 12 million individuals illegally here today, whether as citizens or permanent alien residents.

Swift & Company is working diligently under current regulations and available resources to bar the employment of unauthorized workers in our workforce. Thank you for inviting me to speak today and for your ongoing efforts to implement common sense, balanced and comprehensive immigration reform legislation.

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