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20 years of seniority from 30 months to 20 months, its score moved from 41 to 35. When Australia passed a reform law abolishing limits on overtime and night work and freeing companies with 100 or fewer workers from unfair dismissal laws, its score improved from 17 to 3. Such flexibility reforms lessen worker protections and weaken unions, which naturally oppose them. An editorial in the pro-labor *Multinational Monitor* argued that "flexibility is all for employers, not workers," calling it "a corporate con" that should be seen "as a fancy and obscure term for enhanced employer power over workers."⁶¹

CONCLUDING OBSERVATIONS

Six forces are changing the workplace—demography, technology, structural shift, competition, reorganization of work, and government regulation. All have a profound affect on the fortunes of millions of workers around the globe. In the United States demographic change is creating more diverse, less discriminatory workplaces. Structural change and automation are moving more workers into service occupations. Global competition in labor markets and reorganization of work has reduced the job security of American workers. However, government regulation in the United States gives workers many protections.

Every nation must strike a balance between worker protection and employer flexibility. After nearly 100 years of labor strife and legislation the United States seems to have found its way to a balance that protects a broad range of worker rights while leaving employers relatively free to hire and fire for economic reasons. In the next chapter we will explore in more depth one of the most fundamental of workers' rights—civil rights.

⁶¹ "The Labor Flexibility Con," *Multinational Monitor*, July/August 2006, p. 6.

A Tale of Two Raids

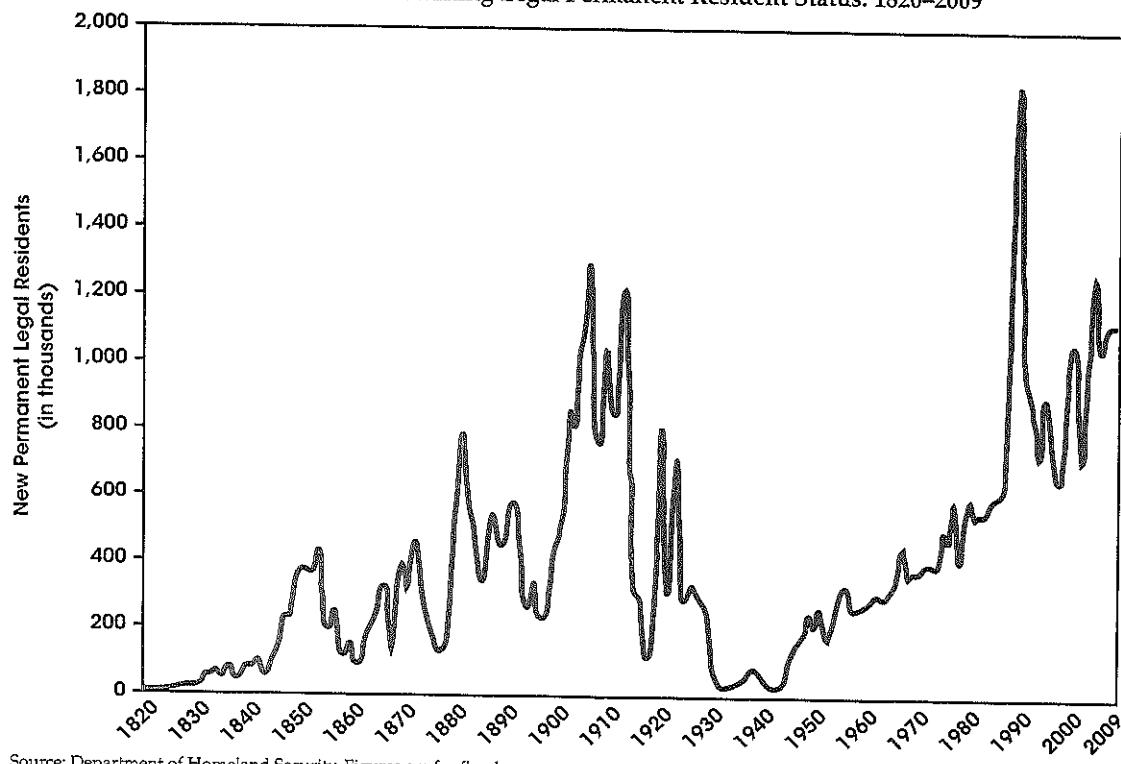
Migration, or the resettlement of people, is as old as humanity. It often has shaped history, as it did when migrants from Europe to the New World formed an American civilization. Migrants are driven by the opportunity to improve their lives. Costs of migrating are very high, but individuals who leave less developed countries on average double their educational attainment and increase their income by 15 times.¹

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

¹ United Nations Development Programme, *Human Development Report 2009, Overcoming Barriers: Human Mobility and Development* (New York: UNDP, 2009), p. 24.

² Figures in this paragraph are from Department of Homeland Security, Office of Immigration Statistics, at www.dhs.gov/files/statistics/immigration.shtml, August 4, 2010.

EXHIBIT 1 Number 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). 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.

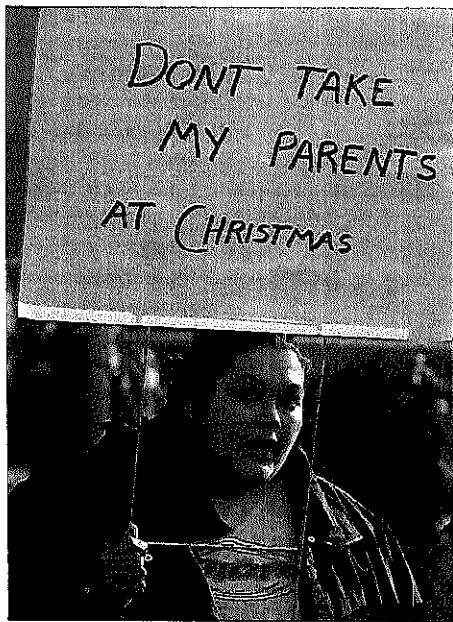
OPERATION WAGON TRAIN

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.



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 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 A woman in tears asked a co-worker to adopt her child, saying she had no one else in the area.⁵ ICE agents

³ Leslie Reed, "'Terrible' Day Separates Families," *Omaha World Herald*, December 13, 2006, p. 1A.

⁴ Quoted in Julia Preston, "Immigrants' Families Figuring Out What to Do after Federal Raids," *The New York Times*, December 16, 2006, p. 13.

⁵ Bruce Finley, "Fractured Families," *Denver Post*, December 14, 2006, p. A1.

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

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 In Cactus, Texas, hundreds appeared at an evening mass offering prayers for divided families.⁸ 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

⁶ ICE policy is not to detain or arrest sole caregivers for small children. Its agents worked with Swift to identify and release them. Julie L. Myers, U.S. Immigration and Customs Enforcement, speech to the American Immigration Lawyers Association, June 14, 2007, pp. 3-4.

⁷ Maricella Mirand and John Brewer, "Worthington Still Reeling After Raid," *St. Paul Pioneer Press*, December 14, 2006, p. A1.

⁸ Frank Trejo and Isabel Morales, "Raid, Fear Tear Apart Families," *Dallas Morning News*, December 13, 2006, p. A21.

second shift. It was unsure exactly how many employees it had. In the end it estimated the raid cost it \$30 million.⁹ 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

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 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

⁹ Testimony of John Shandley, senior vice president for human resources, Swift & Company, Hearing on *Problems in the Current Employment Verification and Worksite Enforcement System*, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the Committee of the Judiciary, U.S. House of Representatives, 110th Congress, 1st Session, April 24, 2007, p. 4.

¹⁰ Quoted in Christine Tatum, "Raid on Swift Leaves Staffing in Disarray," *Denver Post*, December 15, 2006, p. C1.

¹¹ Julie Myers, assistant secretary, Department of Homeland Security, "Remarks at a News Conference Announcing a Worksite Enforcement Operation at a Nationwide Meat Processor," Washington, D.C., December 13, 2006, p. 2.

by interfering with its legal business operations and by damaging its reputation" in violation of its constitutional property rights.¹² 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 A federal judge allowed the raids to proceed.¹⁴

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 It is a one-page form with three sections (see Exhibit 2).

¹² S&C Holdco 3, Inc., Form 8-K, December 13, 2006, p. 5.

¹³ Christine Tatum, "Swift Tried to Block Raid," *Denver Post*, December 14, 2006, p. C1.

¹⁴ *Swift & Company v. Immigration and Customs Enforcement*, No. 2-06-CV-314-J, N. Dist. Texas, order entered December 7, 2006.

¹⁵ There are very limited exceptions, for example, for householders hiring domestic workers and for employees who will not be working on U.S. soil.

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 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

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 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.

¹⁷ These prosecutions are, however, difficult because the Supreme Court has required the government to prove the worker used counterfeit documents knowing the numbers on them belonged to other people. See *Flores-Figueroa v. United States*, 129 S. Ct. 1886 (2009).

¹⁸ Department of Justice, "Department of Justice Announces Settlement Agreement with Swift & Company," press release 630, November 4, 2002.

¹⁶ U.S. Citizenship and Immigration Services, *Handbook for Employers: Instructions for Completing Form I-9* (Washington, DC: Department of Homeland Security, July 31, 2009), p. 6.



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