
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K
CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED): December 12, 2006

S&C Holdco 3, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other
jurisdiction of incorporation)

333-100717
(Commission File Number)

81-0557245
(I.R.S. Employer
Identification Number)

**1770 Promontory Circle,
Greeley, CO**
(Address of principal
executive offices)

80634
(Zip code)

Registrant's telephone number, including area code: **(970) 506-8000**

Not Applicable
(Former name or former address if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 7.01 Regulation FD Disclosure.

On December 12, 2006, agents from the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) Division and other law enforcement agencies commenced on-site employee interviews of employees at six Swift & Company facilities in Cactus, Texas, Grand Island, Nebraska, Greeley, Colorado, Hyrum Utah, Marshalltown, Iowa and Worthington, Minnesota in connection with an ongoing investigation of the immigration status of an unspecified number of Swift domestic employees. No civil or criminal charges have been filed against Swift or any current employees.

Operations at the affected Swift facilities were suspended pending the completion of the interview process. On December 13, 2006, Swift resumed operations at all facilities, but at reduced output levels. Initial output levels are expected to be below normal levels over the short term. Swift anticipates no adverse long-term impacts on its operations and remains confident in its ability to serve customers.

The actions on December 12th are part of an ongoing investigation of Swift's immigration hiring compliance by ICE and the U.S. Department of Justice. Swift has cooperated with the investigation, but had urged ICE to consider alternative actions that would achieve the government's objectives while minimizing disruption to Swift's operations, its employees and its local communities.

On November 28, 2006, Swift filed a complaint for declaratory and injunctive relief against ICE and Julie L. Myers, Assistant Secretary of Homeland Security for ICE, in the United States District Court for the Northern District of Texas (Amarillo Division). The complaint, filed under seal, was intended to prevent the injury to Swift's business caused by a potential mass removal of alleged unauthorized workers by ICE officials at multiple Swift beef and pork facilities. Following a hearing on December 6, 2006, on December 7, 2006 the court denied Swift's request for an injunction against the potential action by ICE and subsequently unsealed the proceedings on December 12.

Swift & Company intends to continue to cooperate fully with ICE officials regarding this matter. Copies of the press release issued by Swift regarding the above, the Complaint for Declaratory and Injunctive Relief filed with the court by Swift and the Order entered by the court denying Swift's request for injunctive relief are attached hereto as Exhibit 99.1, Exhibit 99.2, Exhibit 99.3 and Exhibit 99.4 respectively, and incorporated herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No. Description

- | | |
|------|---|
| 99.1 | Press release, dated December 12, 2006. |
| 99.2 | Press release, dated December 13, 2006. |
| 99.3 | Complaint for Declaratory and Injunctive Relief in <i>Swift & Company vs. Immigration and Customs Enforcement Division of the Department of Homeland Security and Julie L. Myers</i> , Civil Action No. 2-06CV-314-J, filed on November 28, 2006, in the United States District Court for the Northern District of Texas (Amarillo Division). |
| 99.4 | Order entered in <i>Swift & Company vs. Immigration and Customs Enforcement Division of the Department of Homeland Security and Julie L. Myers</i> , Civil Action No. 2-06CV-314-J, entered on December 7, 2006, in the United States District Court for the Northern District of Texas (Amarillo Division). |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

S&C HOLDCO 3, INC.

By: /s/ Donald F. Wiseman

Name: Donald F. Wiseman

Title: Senior Vice President, General Counsel and Secretary

Date: December 13, 2006

EXHIBIT INDEX

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Swift & Company

Contact:

Sean McHugh
Vice President
Investor Relations and Communications
sean.mchugh@swiftbrands.com
(970) 506-7490

**U.S. IMMIGRATION OFFICIALS COMMENCE EMPLOYEE INTERVIEWS
AT SIX SWIFT & COMPANY FACILITIES**

GREELEY, COLO., December 12, 2006 – Swift & Company today announced that this morning, agents from the U.S. Department of Homeland Security’s Immigration and Customs Enforcement (ICE) division and other law enforcement agencies commenced employee interviews at six Swift & Company production facilities, located in Cactus, Texas; Grand Island, Nebraska; Greeley, Colorado; Hyrum, Utah; Marshalltown, Iowa; and Worthington, Minnesota, in connection with an investigation of the immigration status of an unspecified number of Swift workers. All the facilities except Hyrum are unionized. No civil or criminal charges have been filed against Swift or any current employees.

Operations at the affected Swift facilities have been temporarily suspended pending the anticipated end-of-day completion of the interview process. Shortly thereafter, Swift expects to resume operations, but production levels will depend on the number of employees, if any, detained for further interviewing or otherwise unable to return to work.

At this time, Swift cannot assess how, if at all, the results of the employee interview process will affect its business or results of operations. Any loss of a significant number of employees at any facility could adversely affect the operations of that facility until Swift is able to replace any lost members of its workforce and return to normal production levels. The six facilities represent all of Swift’s domestic beef processing capacity and 77% of its pork processing capacity. The Company also operates a pork processing facility in Louisville, Kentucky.

Swift believes that today’s actions by the government violate the agreements associated with the Company’s participation over the past ten years in the federal government’s Basic Pilot worker authorization program and raise serious questions as to the government’s possible violation of individual workers’ civil rights.

Swift & Company President and CEO Sam Rovit said: “Swift has never condoned the employment of unauthorized workers, nor have we ever knowingly hired such individuals. Since the inception of the Basic Pilot program in 1997, every single one of Swift’s new domestic hires, including those being interviewed today by ICE officials, has duly completed I-9 forms and has received work authorization through the government’s Basic Pilot program. 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 laws¹.”

¹ Basic Pilot fact sheet (<http://www.whitehouse.gov/news/releases/2006/07/20060705-6.html>)

Rovit added: “We are committed to maintaining production at all Swift facilities while, to the extent necessary, actively managing customer service levels. While the specific financial impact of today’s government actions is not yet known, we are currently comfortable with the financial flexibility afforded to us by our existing credit agreement.”

Swift & Company’s comprehensive work authorization diligence has included, since 1997, participation in the federal Basic Pilot program – a voluntary, online verification system that allows employers to confirm the eligibility of new hires by checking the personal information they provide against federal databases. Today, Swift remains one of the very few employers to use the system. All Company domestic production facilities have agreements in place with the federal government under Basic Pilot – agreements which contain provisions that are supposed to protect employers who properly comply with the Basic Pilot program from government-initiated civil and criminal penalties.

Current law limits an employer’s ability to scrutinize the background and identity of new hires, and – as Swift learned first-hand – employers can, in fact, be punished for probing too deeply into applicants’ backgrounds. Specifically, in 2001 the Department of Justice’s Special Counsel for Unfair Immigration-Related Employment Practices brought a complaint against Swift for an alleged “pattern and practice” of document-based discrimination against job applicants, and sought civil damages of \$2.5 million. After two years of cooperation and negotiation, Swift settled the claim, with no admission of guilt, for approximately \$200,000.

Swift & Company fully supports comprehensive immigration reform to address the significant policy tension that exists between the need for employers to accurately determine workers’ eligibility versus the need to address privacy and non-discrimination concerns. The Company remains committed to preventing the employment of unauthorized workers in its workforce.

About Swift & Company

With more than \$9 billion in annual sales, Swift & Company is the world’s second-largest processor of fresh beef and pork. 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. Domestically Swift pays production employees more than twice the federal minimum wage, offers affordable and comprehensive health care benefits, and possesses industry-leading employee safety records. For more information, please visit www.swiftbrands.com.

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Swift & Company[®]

Contact:

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(970) 506-7490

**SWIFT & COMPANY DOMESTIC PRODUCTION FACILITIES RESUME
OPERATIONS AFTER COMPLETION OF EMPLOYEE INTERVIEWS BY U.S.
IMMIGRATION OFFICIALS**

GREELEY, COLO., December 13, 2006 — Swift & Company today announced the resumption of operations at all six facilities involved in yesterday's U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) division operation related to an identity theft investigation allegedly involving employees at six Swift & Company production facilities, located in Cactus, Texas; Grand Island, Nebraska; Greeley, Colorado; Hyrum, Utah; Marshalltown, Iowa; and Worthington, Minnesota.

Operations at the affected Swift facilities were temporarily suspended yesterday while ICE officials questioned all Swift employees present in each respective plant. Approximately 1,300 workers were detained by ICE for further questioning. The Company was able to resume operations at all facilities the same day, but at reduced output levels.

All facilities continue to operate today on all shifts. Initial output levels are expected to be below normal levels over the short term. The Company anticipates no adverse long-term impacts to its operations and remains confident in its ability to serve customers.

No civil or criminal charges have been filed against Swift & Company.

About Swift & Company

With more than \$9 billion in annual sales, Swift & Company is the world's second-largest processor of fresh beef and pork. 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. Domestically Swift pays production employees more than twice the federal minimum wage, offers affordable and comprehensive health care benefits, and possesses industry-leading employee safety records. For more information, please visit www.swiftbrands.com.

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EX-99.3

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<DESCRIPTION>

Complaint for Declaratory and Injunctive Relief in Swift & Company vs. Immigration

<TEXT>

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

SWIFT & COMPANY

VS.

IMMIGRATION AND CUSTOMS
ENFORCEMENT DIVISION OF THE
DEPARTMENT OF HOMELAND
SECURITY and JULIE L. MYERS

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CIVIL ACTION NO. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

For its complaint against the Immigration and Customs Enforcement division (“ICE”) of the U.S. Department of Homeland Security (“DHS”) and Julie L. Myers, Assistant Secretary of Homeland Security for ICE (“Myers”), Swift & Company (“Swift” or the “Company”) alleges as follows:

NATURE OF THE ACTION

1. Plaintiff Swift is one of the oldest and largest meat producing companies in the United States. Swift is the third largest beef packer and the third largest pork packer in the country. The Company has production and distribution facilities throughout the United States, including a plant in Cactus, Texas. Swift employs approximately 15,000 people in the United States.
2. Swift uses strong hiring practices that attempt to ensure that Swift employs only those people legally authorized to work in the United States. These practices include voluntary membership in the federal government’s Basic Employment Verification Pilot (“Basic Pilot”)

system since 1997. Basic Pilot, which is overseen and managed by the Department of Homeland Security and the Social Security Administration (“SSA”), is the program through which the federal government contractually provides employers with a mechanism to verify the employment eligibility of new employees. Basic Pilot was created under The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009.

3. Through Basic Pilot, using information provided by prospective employees on a federal government “I-9” form, Swift electronically screens all new hires through the government’s Social Security Administration database and (if applicable) alien number database. The government’s system confirms that the prospective employee is legally authorized to work or it identifies the prospective employee as an illegal worker. This information is then forwarded to Swift. Based on this information, all of Swift’s current employees have been verified by the government as eligible to work in the United States.

4. In order to enroll in Basic Pilot, Swift signed a Memorandum of Understanding (“MOU”), which recites the responsibilities of the parties, Swift, DHS and SSA, as well as the procedures to be followed under the program for each of its facilities. The language of the MOU, including the respective rights, responsibilities, and liabilities of the parties, mirrors that of the IIRIRA, the federal statute under which the Basic Pilot program was created. The MOU for each facility was executed by the parties between 1996 and 1997, and each is in effect as of the date of this Complaint. The language of the MOU and the IIRIRA states “no person or entity participating in the Basic Pilot shall be civilly or criminally liable under any law for any action taken in good faith on information provided through the confirmation system.” P.L. 104-208,

Subdivision D, §403(b)(3)(d)(1996); MOU, Article II at C(6)(5).

5. In March 2006, agents from ICE issued administrative subpoenas for the I-9 forms and supporting identity documents for all employees at in Swift's Marshalltown, Iowa facility. (The I-9 form is the federal government's form that employers use to review and verify an employee's legal status.) The Company promptly complied. Of the approximately 1300 forms produced, ICE retained 665 of the forms for "further review."

6. ICE further informed Swift that ICE suspected that the 665 retained I-9 forms related to unauthorized workers. ICE further informed Swift that several of the retained forms may contain indications of document fraud involving State identification cards and falsely obtained Social Security cards.

7. Following the Marshalltown request, ICE issued similar I-9 subpoenas to the Company's other plants, including Cactus, Texas. Swift completed production of all requested I-9 forms and supporting documents in the late summer of 2006.

8. Concerned about ICE's investigation and in an attempt to evaluate its own hiring practices to determine what steps, if any, should be taken to ensure compliance with federal law, including the Immigration and Nationality Act ("INA") and anti-discrimination statutes, Swift retained outside immigration experts to review the Company's I-9 files and its hiring practices.

9. In a further attempt to cooperate with ICE, Swift asked ICE if it could take measures to ensure Company compliance with the INA. Specifically, Swift requested that ICE permit the Company to more closely review the allegedly questionable I-9 forms and determine whether signs of identity fraud did exist and whether any of these forms were tied to unauthorized workers. Swift told ICE that it would terminate any employees determined to be

illegal aliens, as required by federal law.

10. Rather than permitting Swift to comply with federal law, ICE directed the Company not to take any action against suspect employees without coordination with and approval from ICE. In September 2006, one of the ICE field agents responsible for the investigation expressed concerns that if Swift reviewed the suspect files, employees might leave, thereby making it difficult or impossible for ICE to locate the employees for possible enforcement actions. The agent even suggested that if Swift were to start any review of suspect files, the government might consider Swift's conduct to constitute the criminal offense of obstruction of justice.

11. In an October 19, 2006 meeting between Swift and ICE, ICE withdrew its previous prohibition on Swift closely reviewing its own I-9 files. Swift immediately began such a review and has identified a number of workers who appear to have deliberately defeated the Basic Pilot verification program and who may have engaged in some form of identity theft.

12. In that meeting, Swift emphasized the substantial damage to its business that would result from simultaneous enforcement actions at its plants and offered to cooperate with ICE in a phased or managed process that would accomplish ICE's goals without placing an unnecessary financial and operational burden on the Company.

13. Although ICE has lifted its prohibition of Swift acting to comply with the law, ICE has still refused to work cooperatively with Swift to examine whether unauthorized workers have evaded the Basic Pilot verification process. Swift has made several proposals for review procedures which would allow for a focused review of suspect I-9 files while also minimizing any disruption to Swift's operations and the employment of its legal work force.

14. To date, ICE has refused to discuss or agree to Swift's review procedures. ICE has not made any suggestions or recommendations of its own.

15. On November 17, 2006 and again on November 20, ICE informed Swift that it plans to, with or without Swift's cooperation, shut down six of Swift's seven plants on December 4, 2006 so that ICE agents can interview every employee, regardless of suspected illegal status. If and when ICE determines which employees are suspected to be illegal aliens, it plans to segregate them for further questioning and possible deportation. These actions by ICE (the "December 4th Plan"), or a comparable mass removal action, would have a direct impact on many legal workers, as well as suspected illegal workers, and would irreparably harm Swift by interfering with its legal business operations and by damaging its reputation.

16. Swift seeks appropriate judicial review of ICE's actions and proposed actions prior to any action actually being taken. Swift asserts that the December 4th Plan, or a comparable mass removal action by ICE, would constitute a violation of the IIRIRA as that federal statute prohibits ICE from imposing penalties on Swift for actions taken based on information provided through the Basic Pilot confirmation system.

17. Swift further asserts that a mass removal action by ICE would be an unconstitutional deprivation of property without due process of law because Swift has a protected property interest in operating a legitimate business.

18. Swift would not have an adequate remedy at law after the execution of the December 4th Plan, or a comparable mass removal constituting a violation of the IIRIRA and a deprivation of property, and therefore Swift is entitled to declaratory judgment and injunctive relief before any mass removal action occurs.

PARTIES

19. Swift is a Delaware corporation with its principal place of business in Greeley, Colorado. Swift operates plants that process and pack meat, including beef, pork, and lamb. Its plants, distribution centers, and sales offices are located across the United States, including in Minnesota, Texas, Nebraska, Iowa, Utah, and Kentucky.

20. ICE, a division of the U.S. Department of Homeland Security, through ICE, is primarily responsible for interior immigration enforcement and investigations, and the detention and removal of illegal aliens. Along with the SSA, ICE is a signatory to the MOU with Swift.

21. Julie Myers, the Assistant Secretary of Homeland Security for ICE, is the individual charged with the responsibility of ensuring that ICE's actions abide by the relevant statutory authority.

JURISDICTION AND VENUE

22. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1491(a)(1).

23. This court has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, as there is an actual case or controversy between the parties.

24. Venue is proper under 28 U.S.C. § 1391(e), as Swift maintains a plant in this judicial district.

GOVERNING STATUTORY PROVISIONS

25. The Immigration and Nationality Act, 8 U.S.C. § 1324a(a)(2), prohibits continuing to employ an alien in the United States knowing that the alien is (or has become) an unauthorized alien with respect to such employment.

26. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the

“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009, is the statute authorizing the creation of the Basic Pilot and the basis for the MOU.

CAUSES OF ACTION

COUNT I

**(Violation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996
 (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009)**

27. Swift incorporates herein the allegations in paragraphs 1 through 26 of this Complaint.

28. The MOU constitutes Swift’s enrollment in the Basic Pilot Program.

29. Under the IIRIRA, a participant in the Basic Pilot Program cannot be held civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the Basic Pilot confirmation system.

30. ICE’s December 4th Plan, or any similar large scale mass removal action to interview and remove suspected unauthorized workers simultaneously at Swift’s plants, would cause irreparable harm to Swift’s business. Such irreparable, indirect harm would constitute a *de facto* penalty for Swift’s reliance on information provided by the Basic Pilot confirmation system, and such a penalty or liability is a statutory violation of the IIRIRA.

COUNT II

(Violation of Constitutional Due Process Rights Under the Fifth Amendment)

31. Swift incorporates herein the allegations in paragraphs 1 through 26 of this Complaint.

32. ICE’s execution of its December 4th Plan, or any similar mass removal action, without notice to Swift and an opportunity to challenge ICE’s foundation and procedures for the action before this Court deprives Swift of its property without due process of law in violation of

the Fifth Amendment of the United States Constitution.

REQUEST FOR RELIEF

WHEREFORE, Swift respectfully requests this Court:

- a. for a declaratory judgment order stating that
 1. ICE's December 4th Plan, or any comparable mass removal action by ICE at one or more of Swift's facilities, would constitute a violation of the IIRIRA, a federal statute;
 2. in the event of such a statutory violation by ICE, Swift would not have an adequate or available remedy at law;
 3. Swift has a constitutionally protected property right to operate its business;
 4. Swift's property rights would be interfered with and Swift would be deprived of its property right to operate its business in the event of a mass removal action by ICE;
 5. under the Fifth Amendment of the United States Constitution, Swift is entitled to due process before it can be deprived of its property rights to operate its business.
- b. for an order
 1. permanently enjoining ICE from executing its December 4th Plan, or conducting any comparable mass removal action at a Swift facility without prior notice to this Court and Swift;
 2. requiring that no fewer than [7] business days prior to executing its December 4th Plan, or any similar mass removal action at a Swift facility, ICE must file with this court, with copy provided simultaneously to Swift,

a description of its plan, including a description of the anticipated impact on Swift's operations;

3. requiring an expedited hearing to be held, prior to any mass removal action by ICE, in which ICE must demonstrate to this Court that its December 4th Plan, or any comparable planned mass removal, will not unfairly and improperly deprive Swift of its property rights without affording Swift an opportunity to mitigate the serious adverse effects such an action would have on its business and its employees; this expedited hearing shall permit Swift to fully participate and offer arguments in opposition to ICE's mass removal plans;
- c. for an award of attorney fees and costs, and
- d. for such other relief as the court may deem appropriate.

Respectfully submitted,

William E. Lawler, III – Lead Counsel
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Kevin A. Isern – Local Counsel
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By: /s/ Kevin A. Isern

Kevin A. Isern
Texas State Bar No.10432900

<DOCUMENT>

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<FILENAME> d42009exv99w4.htm

<DESCRIPTION> Order Entered in Swift & Company vs. Immigration and Customs Enforcement Division

<TEXT>

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

SWIFT & COMPANY,

Plaintiff,

v.

IMMIGRATION AND CUSTOMS
ENFORCEMENT DIVISION OF THE
DEPARTMENT OF HOMELAND
SECURITY and JULIE L. MYERS,

Defendants.

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2:06-CV-314-J

ORDER

Swift & Company filed an action on November 28, 2006, seeking declaratory and injunctive relief to prevent the Immigration and Customs Enforcement Division (“ICE”) of the Department of Homeland Security from proceeding with ICE’s December 4, 2006, plan or any comparable planned mass removal of unauthorized workers at 6 of Swift’s plants. Swift contends it participated in the Government’s Basic Pilot Program and that such a removal would violate the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009, by subjecting Swift to civil and criminal liability for actions which it took on reliance on that Program. Swift also contends that such ICE action would deprive Swift of a protected property interest in its business without due process of law. The matter is before this Court on Swift’s *Motion for Preliminary Injunction* on which a closed hearing was heard on December 6, 2006.

Legal Standards

In considering Plaintiff’s request for a preliminary injunction, this Court must weigh four factors: (1) whether the plaintiff has a substantial likelihood of succeeding on the merits; (2)

whether the plaintiff would suffer irreparable injury were an injunction not granted; (3) whether an injunction would substantially injure interested parties; and (4) whether the grant of an injunction would further the public interest. *University of Texas v. Carnenisch*, 451 U.S. 390, 392 (1981). The decision to grant a preliminary injunction is to be treated as the exception rather than the rule. *State of Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 179 (5th Cir. 1975). Plaintiffs must carry the burden of proving all four factors. *Black Fire Fighters Ass'n v. City of Dallas, Tex.*, 905 F.2d 63, 65 (5th Cir. 1990).

DISCUSSION

Jurisdiction

This Court has jurisdiction pursuant to 28 U.S.C. §1331 to adjudicate Plaintiff's statutory claim asserted under §403(d) of IIRIRA and its Forth Amendment constitutional due process claim. Plaintiff has standing to assert those claims in this action. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)(quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990)). One of the Swift plants is at Cactus, Texas, in the Amarillo Division of the Northern District of Texas.

The Basic Pilot Program

Pursuant to §§401, 402(a) and 404 of IIRIRA, Plaintiff Swift elected to enter into a series of Memorandum of Understandings (MOU) allowing all of Swift's plants to access the Department of Homeland Security's web-based employment eligibility verification system known as the Basic Pilot Program. That program is designed to permit employers to determine whether newly hired employees are legally authorized to work in the United States.

Both IIRIRA and the MOU state that “no person or entity participating in a pilot program shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.” IIRIRA §403(d); MOU Art. II(C)(5).

However, pursuant to Article II(C)(6) of the MOU the government expressly reserves the right “to conduct any other enforcement activity authorized by law.” An employer who signs a MOU agrees to allow ICE to make periodic visits to review Basic Pilot-related employment records and conduct Form I-9 compliance inspections.

Swift argues that its participation in The Basic Pilot Program and the language of 403(d) prevent ICE from causing disruption of business and economic damages which Swift refers to as a *de facto* penalty by conducting a mass removal enforcement action as proposed by ICE. The Court has found no authority that would support that contention and concludes that the language “which offers protection from civil or criminal liability” cannot be parlayed to include economic damages to an employer resulting from the removal of suspected unauthorized workers.

For years a known principal weakness of the Basic Pilot Program has been its inability to detect identity theft. The government has known since at least 2002 that “the prevalence of identity fraud seems to be increasing.” GAO Report 02-363 (March 2002). The government has known since at least August, 2005, that the current Basic Pilot Program can not successfully detect identity theft and would likely permit an unauthorized worker to be improperly verified as work-authorized. GAO Report 05-813 (August 2005).

For example, the program does not check Social Security or IRS databases to determine if a particular social security number is already being used at another workplace. It is known to the government that some social security numbers are widely used at multiple employment

locations, over two hundred workplaces for some numbers, but the Basic Pilot program has not been changed to flag such suspicious numbers or to return non-authorizations for persons presenting identity documents under such conditions.

It should be noted that, despite these known significant flaws, the law permits only limited and insufficient additional verification options to an employer. The Basic Pilot Program provides for a list of acceptable documents which may be furnished to prove identity and establish employment eligibility. Section 1324b(a)(6), Title 8, United States Code, addresses unfair immigration related employment practice as follows:

“A person’s or other entity’s request, for purposes of satisfying the requirements of section 1324a(b) of this title [setting up the employment verification system to prevent employment of unauthorized workers], for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)[i.e., an alien applying for employment].”

An employer could reasonably consider that the limitation on the documents which it may require makes it difficult to protect itself from the adverse effects of employing unauthorized workers.¹

ICE believes that the enforcement action at issue here will allow ICE to identify and detain persons who are engaged in such identity theft, approximately 170 of which are known by ICE to currently be using false identities at Swift plants to the detriment of U.S. citizens. ICE further expects to apprehend persons who are engaged in large-scale identity theft and document

¹ On February 12, 2001, the OSC brought a complaint against Swift for an alleged “pattern and practice” of document-based discrimination, in which it sought civil damages of \$2.5 million. After two years of negotiations, Swift settled the case with no admission of guilt for approximately \$200,000.

fraud by providing illegal immigrants with documentation permitting them to successfully achieve Basic Pilot system work-authorized verification.

The MOU and the law expressly permit such enforcement actions. At this stage Plaintiff has not shown that it has a substantial likelihood of succeeding on the merits of this statutory claim.

Due Process Claim

Swift argues that by simultaneously conducting the enforcement action at 6 of its 8 work places, ICE will unreasonably cause substantial and irreparable injury to its business in violation of the due process clause of the Constitution. Swift estimates that as many as 40% of its employees might be removed in the enforcement action and estimates that the disruption of its operations could result in as much as a one hundred million dollar loss to Swift. ICE does not dispute that the removal of an estimated 30 to 40% of Swift's 13,000 workers at one time will significantly impair Swift's ability to meet its contractual obligations, negatively impact its business operations, and cause Swift substantial economic damage. ICE argues, however, that Swift has no right to continue to utilize thousands of illegal workers in violation of the immigration laws.

"It is clear, of course, that no Act of Congress can authorize a violation of the Constitution." *Almeida-Sanchez v. U.S.*, 413 U.S. 266, 271, 93 S.Ct. 2535, 2539, 37 L.Ed.2d 596 (1973). "But under familiar principles of constitutional adjudication, our duty is to construe the statute, if possible, in a manner consistent with the Fourth Amendment." *Id.* (citing *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 348, 56 S.Ct. 466, 483, 80 L.Ed. 688 (1936)).

The Supreme Court has "consistently has held that some form of hearing is required before an individual is finally deprived of a property interest." *Mathews v. Eldridge*, 424 U.S.

319, 333, 96 S.Ct. 893, 902, ___L.Ed.___(1976)(citing *Wolff v. McDonnell*, 418 U.S. 539, 557-558, 94 S.Ct. 2963, 2975-2976, 41 L.Ed.2d 935 (1974); *Phillips v. Commissioner of Internal Revenue*, 283 U.S. 589, 596-597, 51 S.Ct. 608, 611-612, 75 L.Ed. 1289 (1931); *Dent v. West Virginia*, 129 U.S. 114, 124-125, 9 S.Ct. 231, 234, 32 L.Ed. 623 (1889)). The “right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.” *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 (1951)(Frankfurter, J., concurring). The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful maimer.” *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965). See *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914).

While in *Goldberg v. Kelly*, 397 U.S., at 266-271, 90 S.Ct., at 1019-1022, 25 L.Ed.2d 287 (1970), the Supreme Court held that a hearing closely approximating a judicial trial is necessary before governmental action that deprives a person of *essentials* needed for survival, that does not appear to be the case here. “In other cases requiring some type of pretermination hearing as a matter of constitutional right the Court has spoken sparingly about the requisite procedures,” such as an *ex parte* hearing, a probable-cause determination, or a post-action evidentiary hearing such as a trial on the merits. *Mathews v. Eldridge*, 424 U.S. at 333, 96 S.Ct. at 902. These decisions underscore the truism that” ‘(d)ue process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.” *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961). “(D)ue process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey*

v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972). Accordingly, resolution of the issue whether the procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. *Arnett v. Kennedy*, 416 U.S. at 167-168, 94 S.Ct., at 1650-1651; *Goldberg v. Kelly*, *supra*, 397 U.S., at 263-266, 90 S.Ct., at 1018-1020; *Cafeteria Workers v. McElroy*, 367 U.S., at 895, 81 S.Ct., at 1748-1749. More precisely, identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See, e.g., Goldberg v. Kelly*, *supra*, 397 U.S., at 263-271, 90 S.Ct., at 1018-1022.

Instead of a one-day raid at six plants, Swift proposes that ICE conduct a phased workplace enforcement action over a ten week to four-month period, targeting one plant at a time. Swift believes that such a plan, while still costing Swift significant damages, is the best way to minimize damages and argues that it would catch as many illegal workers as would be caught under ICE's plan of action.

ICE has rejected that proposal because, in part, it is impossible to proceed in such a manner without alerting other suspects who will then disappear into the homeland, each one possessing false documentation permitting them to receive employment verification through the Basic Pilot Program with another employer.

As a case in point, between October 19, 2006, and November 17, 2006, Swift voluntarily conducted approximately 450 interviews of suspect employees at several of its plants. Swift found that between 90 to 95% of its suspect employees were either not who their identification documents said they were and/or they were not legally eligible to be employed in the United States. Over 400 illegal workers were terminated, self-terminated (quit), or did not show up for scheduled interviews and were fired. Swift did not notify ICE. Neither Swift nor ICE knows where those 400 workers are now. Swift ended that self-review at ICE's insistence.

It is clear, as ICE contends, that it is impossible to proceed in the manner advocated by Swift without alerting suspects who will then disappear into the homeland, each one possessing false documents penning them to receive employment verification through the Basic Pilot Program with another employer.

Form I-9 review is a "snapshot in time," a view which ICE believes may be months out of date by the date its enforcement action occurs at the workplace. Therefore, ICE believes that it must interview all Swift workers because it can not accurately determine on the basis of Form I-9 reviews alone which workers are illegal and which employees are legally entitled to work. ICE therefore believes that the most effective enforcement action is one in which it interviews all workers at all six plants and all in one day.²

ICE proposes to interview all workers in one day by gathering, with Swift's consent, the workers on each shift in a common place such as the cafeteria as they report for work. It believes that this procedure will avoid problems such as contamination of product that might occur if it interviewed workers on the floor as they work.

The Court finds that Swift has not carried its burden of showing that grant of the requested injunction would further the public interest. Swift has not proposed, and this Court has not been able to devise, a procedure that would not be detrimental to important public interest and at the same time protect Swift from economic loss. The testimony in this case and the General Accounting Office reports on identity theft which are filed of record in this case evidence that U.S. citizens are being harmed, continually and daily, by identity theft and document fraud of the types which this enforcement action specifically targets. The testimony that Federal Trade Commission reports show that 331 Swift employees have used false identities to the harm of other citizens, 170 of which still work at Swift, is evidence that grant of the requested injunction would harm the public's interest in quickly catching such criminals, swiftly breaking up any rings which cause or contribute to such harm, and minimize continuing damages to innocent citizens. While Swift has offered to assist ICE in apprehending the 170 current workers and agreed to assist ICE in enforcement actions to catch and break up identity theft operations at Swift plants, beyond that general offer no showing was made that grant of the injunction specifically requested by Swift would accomplish those goals, or how.

Conclusion

The Court concludes that:

- 1) Plaintiff has not established a substantial likelihood of succeeding on the merits;
- 2) the Plaintiff will suffer irreparable injury if the injunction is not granted;
- 3) an injunction would substantially injure legitimate ICE enforcement activities; and

² ICE's review of the Form I-9s at Swift's other two plants showed no significant numbers of suspected illegal workers, therefore ICE does not propose to raid those plants at this time.

4) the grant of an injunction would not further and, in fact, would be contrary to the public interest.

Accordingly, the *Motion for Preliminary Injunction* is DENIED.

CAVEAT

Swift did not bring this action on behalf of the employees to be interviewed.

In argument, ICE argued that *INS v. Delgado*, 466 U.S. 210, 104 S.Ct.(1984), authorized it to conduct a factory survey of the work force in search of illegal aliens by walking through the plant and interviewing the workers as they performed their duties. In *Delgado*, the INS conducted a survey of the work force at a garment factory (Southern California Davis Pleating Co.) in search of illegal aliens. INS agents moved systematically through the factory approaching employees and identifying themselves and asked the employees from one to three questions relating to their citizenship. During the survey, employees continued with their work and were free to walk around within the factory. Questioned employees who were United States citizens or permanent resident aliens alleged that the survey violated their Fourth Amendment rights. The Supreme Court held that their Fourth Amendment rights were not violated under the circumstances.

The facts in the case before this Court involving a meat packing plant are significantly different from those in *Delgado*. Workers in a meat packing plant are working with exceedingly sharp knives and with potentially dangerous equipment along a steadily moving line. The difficulty of safely interviewing employees under those circumstances is apparent.

ICE has stated that, if Swift consents, it will interview all of the employees at a central location as each shift reports for duty. There remain questions concerning the nature and length of detention.

This Order does not address the Fourth Amendment rights of the employees to be questioned under either of these scenarios and should not be so construed.

For the reasons set forth above, Plaintiff's *Motion for a Preliminary Injunction* is DENIED.

It is SO ORDERED.

Signed this the 7th day of December, 2006.

/s/ MARY LOU ROBINSON

MARY LOU ROBINSON

United States District Judge