



BACKGROUND

To embrace and uphold our tradition as a nation of immigrants.

Immigration Enforcement in the Wake of Immigration Reform's Collapse

Beginning in July of 2005, “comprehensive immigration reform” consumed Capitol Hill and Washington as Members of Congress, the Administration, and key stakeholders considered modernizing the United States immigration system to reflect the laws of supply and demand, principles of family unity and rules that work. Trumped by politics and swamped by the angry voices of those opposed to immigration, the immigration debate ended, two years later, in filibuster without a solution.

The failure of Congress to update the laws left the government with the task of enforcing rules that make little sense. It has thrown ever more resources into the battle. Immigrant workers have been dragged from their workplaces and homes and deported, families have been split apart, and communities have been terrorized. In many cases, punishments were carried out without basic protections for civil rights, due process, and civil liberties to affected individuals. This paper describes some of the government’s enforcement actions and a handful of government rules issued in 2007 affecting immigrant rights.

Raids. During the past year, thousands of immigrants were arrested in factories, meatpacking plants, and other workplaces by agents from Immigration and Customs Enforcement (ICE) in partnership with other agencies. As a preview to the year to come, ICE raided six meat processing plants owned by Swift & Company in December 2006. According to the *New York Times*, “Nearly 1,300 people — almost 10 percent of Swift’s work force — were taken away in what the government said was the largest but not the last assault on the underground immigrant economy.”¹ In January 2007, ICE arrested 10 workers at the “Pegasus Restaurant” in Chicago’s Greektown neighborhood² In March, immigration agents raided the New Bedford business of Michael Bianco, Inc., arresting hundreds of immigrant workers working on a Defense Department subcontract. In August, more than 160 immigrants were arrested following a raid of a food plant in Cincinnati, Ohio.³ The worksite enforcement activities by ICE were well publicized, and featured regularly on the ICE website.⁴

Beyond the workplace, several ICE-directed raids occurred under the “National Fugitive Operations Program” (or “NFOP”). The NFOP was established in 2002 with a mission “to eliminate the backlog of fugitives and ensure that the number of aliens deported equals the number of final orders of removal issued by the immigration courts in any given year.”⁵ This includes countless immigrants who may have never received a notice to appear in court at a scheduled time and as such, received a final order without knowledge or notice. Under this program, “Fugitive Operation Teams” are dispersed across the country to chase after, arrest and deport immigrants with outstanding removal orders. In fiscal year 2007, more than 30,000 immigrants were arrested under the NFOP.⁶ Reports from advocates and the press indicate that immigration agents or partnering police arrested and detained many immigrants without basic due process. Evidence further suggests that many were humiliated in front of their

¹http://www.nytimes.com/2006/12/18/opinion/18mon1.html?_r=1&pagewanted=print&oref=slogin

² <http://www.ice.gov/pi/news/newsreleases/articles/070110chicago.htm>

³ <http://www.ice.gov/pi/news/newsreleases/articles/070828cincinnati.htm>

⁴ <http://www.ice.gov/>

⁵ <http://www.ice.gov/pi/dro/nfop.htm>

⁶ http://www.dhs.gov/xnews/speeches/sp_1197513975365.shtm

spouses and children. The government's ability to label any immigrant with a removal order as a "fugitive" and prioritize their removal through raids without rights is deeply troubling.⁷

Furthermore, many arrests were "collateral," meaning that authorities entered a home searching for X, and without cause arrested Y. Take the example of a man from Kansas who came home from work, parked his car on the street, and headed up to his house. Officers were on the porch of the house next door. The officers approached him, asked him questions and used inappropriate physical force. They were looking for the person next door, but the police and ICE took the neighbor instead. That he was questioned when the officers were not looking for him or even at his house lends itself to an interpretation of ethnic profiling.

Detention. In 2000, ICE (then Immigration and Naturalization Service) adopted a series of detention "standards" that they are required to follow with respect to immigrants in their custody. For years, advocates have documented serious violations of the standards at facilities across the country—2007 was no exception. Unlike most people held in a detention facility, immigration detainees are not afforded the right to government-appointed counsel. Consequently, the ICE detention standards serve as a minimum safeguard to ensure that immigrants are receiving fair and humane treatment. A notable step in the right direction, the government engaged in modest oversight over the past year. In December 2006, the Department of Homeland Security's Inspector General (IG) issued a report on five detention centers holding immigrants and found "instances of non-compliance" with the standards regarding medical care, general conditions of confinement, and reporting of abuses, among others. In response to a flurry of press on medical maltreatment and deaths of immigrants while in ICE custody, the House Subcommittee on Immigration also held a related oversight hearing in early October 2007. As expressed by one surviving patient-detainee at the hearing, "I had to be here today because I am not the only one who didn't get medical care I needed. It was routine for detainees to have to wait weeks or months to get even basic care. Who knows how many tragic endings can be avoided if ICE will only remember that regardless of why a person is in detention and regardless of where they will end up, they are still human and deserve basic, humane, medical care."⁸

The Grand Plan. In August 2007, the Homeland Security Secretary Michael Chertoff and Commerce Secretary Carlos Gutierrez announced a series of immigration "reforms" that included increases to border personnel and detention bedspace; Social Security "no-match" letter enforcement rules against U.S. employers and immigrant workers; novel regulatory changes to limit an immigrant's access to court, and other changes. As to the latter, the Administration purported that "Illegal immigrants who settle their cases by agreeing to voluntarily depart sometimes then gain extra time inside the United States by filing a procedural motion to reopen the case. New regulations will clarify that filing such a motion will terminate the voluntary departure status and make the alien subject to the order of removal. ..."⁹ The proposed rule was issued by the Department of Justice's Executive Office for Immigration Review in November 2007.¹⁰

⁷ See also, National Council of La Raza, *Paying the Price: The Impact of Immigration Raids on America's Children*, October 31, 2007 <http://www.nclr.org/content/publications/detail/49166/>

⁸ <http://judiciary.house.gov/media/pdfs/Castaneda071004.pdf>

⁹ http://www.dhs.gov/xnews/releases/pr_1186757867585.shtm

¹⁰ A copy of the rule can be found at:

http://www.usdoj.gov/eoir/vll/fedreg/2006_2007/EOIR113007.pdf

The related issue of "Whether the filing of a motion to reopen removal proceedings automatically tolls the period within which an alien must depart the United States under an order granting voluntary departure" was granted certiorari by the Supreme Court:

http://www.aif.org/lac/supremecourt_112806.shtml

Also in November, the Department of Homeland Security published a rule to limit the ability of immigrants to make short term visits to the United States who are inadmissible solely because they are afflicted with HIV. The rule identifies a series of conditions and requirements an applicant must show to obtain a waiver, many of which are onerous.¹¹

Some of the Administration's reforms were discussed in Secretary Chertoff's "State of Immigration" remarks in November. Highlighting immigration accomplishments by DHS for 2007, Secretary Chertoff cited the birth of 23 new fugitive operations teams, arrests of more than 30,000 "fugitives," and arrests of 3,500 "illegal alien gang members."¹²

Punitive Post 9-11 Policies. Many of the "national security" policies targeting immigrants after September 11, 2001 were criticized by Members of Congress, judges, advocates and the Department of Justice's own Inspector General.¹³ Some of these policies, including the "NSEERS" or "special registration" of immigrants from certain countries and prolonged detention without charge or notice, remain "on the books" and have a lingering and punitive impact on thousands of immigrants, many of whom have U.S. citizen family members, long employment histories, and green card applications pending at USCIS.

Damage Control. In November, ICE released a few memos regarding the standards officers should follow when "enforcing" the immigration laws against individuals. In response to the fallout from the raids in New Bedford, Massachusetts, ICE issued guidelines for assessing humanitarian needs during large-scale worksite raids, identifying sole care givers, those with serious medical conditions that require special attention, pregnant women, nursing mothers, and others.¹⁴ Also in November, ICE issued guidelines for how officers should treat "nursing mothers" during the course of an enforcement action, triggered by an immigration raid in Ohio in which agents dragged away a mother who was breastfeeding her infant at the moment agents barged in to her home.¹⁵

Conclusion. A handful of efforts by ICE to inject humanity into the United States immigration system cannot rationalize a regime of enforcement without reform. Congress and the Courts must consider broader policy changes like placement of the detention standards into regulations and basic due process protections for immigrants. Also critical is rigorous oversight by Congress and the Department of Homeland Security's own watchdogs. Of course, until we reform our immigration system and put it back on a legal footing, all of ICE's efforts are ultimately futile or a drop in the bucket, at best.

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¹¹ Proposed Rule: <http://tinyurl.com/2umztg>

Fact Sheet from Immigration Equality at:

<http://www.immigrationequality.org/template2.php?pageid=1129>

Comments from NGOs (including the Forum) are publicly available at:

<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=USCBP-2007-0084>

¹² http://www.dhs.gov/xnews/speeches/sp_1197513975365.shtm

¹³ <http://www.usdoj.gov/oig/special/0306/full.pdf>

¹⁴ A related press release and copy of the guidance can be found at:

http://kenedy.senate.gov/newsroom/press_release.cfm?id=0f91969e-96eb-4ab1-832b-2cf42451b587

¹⁵ <http://bibdaily.com/pdfs/AS%20MYERS%20MEMO%20RE%20PROSECUTORIAL%20AND%20CUSTODY%20DISCRETION.pdf>