RAIDS ON WORKERS

DESTROYING OUR RIGHTS

A COMPREHENSIVE ANALYSIS AND INVESTIGATION OF ICE RAIDS AND THEIR RAMIFICATIONS

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We reject the false choice between our safety and our ideals. Our Founding Fathers . . . drafted a charter to assure the rule of law and the rights of man. . . . Those ideals still light the world, and we will not give them up for expedience's sake.

President Barack Obama

On December 12, 2006, the Bush administration conducted massive worksite raids at six Swift & Company meatpacking plants in Colorado, Iowa, Minnesota, Nebraska, Texas, and Utah. My union, the United Food and Commercial Workers International Union (UFCW), represented workers at five of those plants at that time, and, today, we represent the workers at all six plants.

In a dramatic departure from our nation's ideals, our fundamental principles, and from the rule of law, thousands of workers at each plant were rounded up, detained, and criminalized for doing no more than reporting to work, no more than trying to earn a living and a better life for their families. Immigration and Customs Enforcement (ICE) agents handcuffed workers, denied their right to counsel, denied their right to meet with union representatives, and denied, finally, the basic human decency of allowing people to use the bathroom, call spouses, or notify schools and childcare centers where children were left waiting with no one able to tell them where their parents might be or when, if ever, they would see them again.

Out of an entire workforce of 12,000, ICE had obtained a federal criminal warrant identifying only 133 suspects of identity theft. The federal agents could have—as they did a week earlier at a Swift plant in Louisville, Kentucky—gone to the Human Resources office and asked that the identified suspects be pulled from the production line, so they could question and, if necessary, apprehend them. But the ICE warrant on December 12, 2006, was used less as an effective law enforcement tool and more as a way to grab headlines and stir hysteria around immigration and immigrants. As subsequent raids occurred, it became clear that our government's December 12 actions merely set the stage for ever-escalating ICE violations of the U.S. Constitution and the rule of law.

Shortly after the Swift raids, the UFCW held public hearings at which plant workers testified about the abuse they endured at the hands of ICE agents. They expressed profound bewilderment at how government agents could round up thousands of individuals and hold them against their will. They wanted to know why their rights had

been violated, not by some rogue extra-military band but by U.S. government agents. They wanted to know when it had become a crime to work and why workers were cast as criminals in the national spotlight. UFCW members wanted to know why—in the words of Korean War Veteran and Swift worker Darrell Harrington—the government was violating the Constitution he and other veterans had fought, and shed blood, to defend.

In response to these and other questions raised by UFCW members, the UFCW took two specific actions. We filed a class-action lawsuit in federal court to enjoin ICE from engaging in abusive and unconstitutional conduct. While we have every reason to believe that the UFCW will prevail in this suit, we continue to wait on a ruling in the case. We also founded a National Commission on ICE Misconduct and Violations of 4th Amendment Rights to examine evidence of ICE violations of constitutionally guaranteed rights and further explore the effects of ICE conduct on workers, their families, and communities.

The National Commission held five hearings in Washington, D.C.; Boston, Mass.; Atlanta, Ga.; Des Moines, Iowa; and Los Angeles, Calif. We heard from workers, community leaders, school officials, religious and elected leaders—including Cardinal Mahoney from the archdiocese of Los Angeles, Senator John Kerry and Representative John Lewis—psychologists, students, and immigration and legal experts.

Witness after witness came forward with accounts that together form a regretful chapter in our American experience. It is a chronicle of abdication and failure. A story of an administration abdicating responsibility to provide an orderly 21st century immigration policy for the expediency of an enforcement-only policy. A story of the failure to understand that immigration is not so much about immigrants as it is about who we are as a nation and the very foundation of our democratic process and principles.

In this report, you'll read about the human toll exacted by the Bush administration's enforcement-only policy. It includes the story of a young man, born in the United States and educated in Mexico, whose halting English subjected him first to searing ridicule, then intimidation, and, finally, threats of imprisonment. A mother separated from her diabetic child. A young high school student, born and raised in the United States, confronted by ICE agents who had burst through the front door of her mother's home, weapons drawn demanding answers to questions she knew nothing about, because her mother, also a U.S. citizen, had, at one time, worked at a poultry processing facility. A successful state and local program—years in development—bringing small-town Iowans together with common purpose destroyed by the fear, mistrust, and cultural division created in the wake of a raid. Frightened children. Racial profiling. Due process ignored. The rule of law, the Constitution tossed aside.

Now it is left to the American people to reconcile our ideals and fundamental principles on the question of immigration.

This Commission offers its report as an opening for a new American dialogue on immigration—a dialogue that doesn't limit itself to a discussion of immigrants, but one that examines immigration in the context of our national character—in the context of our national interest. That is, by necessity, a more complex conversation than one focused simply on who enters or leaves our country. Certainly, it involves border security, but it also involves trade relationships, workforce needs, family unification, worker rights and living standards, small-town and big-city Americans confronted with vast and unexpected economic and cultural changes, and the lives of an estimated 12 million undocumented individuals suspended on the edge of hope.

Americans are at a crossroads on the question of immigration. Our report provides a snapshot of the effects of a punitive, politically driven enforcement policy—a policy based on cynicism—a policy that breeds division, and pits neighbor against neighbor. A policy that in the final analysis fails to understand that, at its core, immigration is about workers—all workers, native-born and immigrant—their rights, protections, and opportunities to achieve the American Dream.

Now, with a new administration, we have an opportunity to take another course. For guidance, we must turn to our Constitution and the fundamental principles of our nation on this critical question. American democracy works because it is inclusive. If America is about anything, it is about civic participation—participation driven by hope and opportunity. This Commission is dedicated to achieving an immigration system that rests squarely on our ideals and the rule of law—one that conjoins our national interests with the hope and opportunity engendered by our democracy.

Joseph T. Hansen
Founding Chair

DECEMBER 12, 2006

AN INTRODUCTION

On December 12, 2006, Michael Graves awoke before dawn to begin his hour-plus drive from Waterloo to Marshalltown, Iowa. It was an unforgiving Iowa morning. The air was heavy, the winds harsh and the newscasters predicted afternoon snow.

It was a drive that Graves knew well. He had been making the commute from his home to the Swift Company (now JBS-Swift) plant where he has worked for more than two decades.

Graves, a former Iowa State Fair bench press champion with an easy smile and a welcoming demeanor, worked on the kill floor of the plant. It was hard work, but it paid well.

As Graves navigated his car past the still silent, sleepy neighborhoods, he could take pride in knowing that many of the families in the houses he passed would soon be enjoying a breakfast that featured pork products that came from his plant.

On this same morning, in motels surrounding Marshalltown, another group of individuals were beginning their day. They were agents from Immigration and Customs Enforcement (ICE), part of the Department of Homeland Security, and they, too, would soon be heading to the same Swift plant as Graves.

Where Graves and these agents paths crossed late that December morning initiated a new chapter in the Bush administration's stepped-up enforcement tactics on workplaces across the country.

The interaction between Graves and the ICE agents serves as an important flashpoint of the issues and concerns being raised about the way government agencies were attempting to enforce immigration law and whether they ignored basic American values in their zeal to look tough on enforcement. It also raises serious legal questions about ICE's enforcement strategy and how it adversely impacts U.S. citizens and those in our country legally.

For Graves, a lifelong Iowa resident, it was a day he will never forget and a day that made him and thousands of other innocent workers question the motives, the tactics of the U.S. government and the priorities of an agency run amok.

On that day, Graves, a U.S. citizen, was handcuffed, searched, ridiculed by armed ICE agents, deprived of food, water and the ability to contact his family to let them know what was happening.

In March of 2008, ICE Chief Julie Myers told a group of students at Harvard that she felt the raids at Swift that detained Graves were "righteous." Graves had a different take. He told the House Judiciary Committee on Immigration Citizenship, Refugees, Border Security, and International Law: "They just held me there for eight hours. No reason. No probable cause. It was like our plant was transformed into a prison or a detention center. I am a U.S. Citizen. I was born and raised in this country. And I was treated as a criminal on a normal day where I just got up and went to work."[1]

ICE has failed repeatedly to recognize the severity of its actions and its treatment of U.S. citizens during workplace raids. Pat Reilly, an ICE spokeswoman, told *The Washington Post* on Feb. 28, 2008: "I would imagine that some people may be detained beyond what they feel is reasonable. But it's subjective," she said. "What we're trying to do is get to the bottom of who has the right to be here and who might be posing as a U.S. citizen."

While Graves' experience was troubling, what is perhaps even more disturbing is that it was by no means an isolated incident. Stories of forced detention, racial profiling, devastated families, abandoned children and heavy-handed tactics by armed ICE agents were reported and graphically detailed by scores of workers at Swift plants.

The raid on Michael Graves' plant, which at the time was the largest raid in our nation's history, was part of a coordinated ICE enforcement action on six Swift & Company plants throughout America's heartland. The plants were located in Grand Island, Neb.; Greeley, Colo.; Hyrum, Utah; Marshalltown, Iowa; Cactus, Tex.; and Worthington, Minn. (At the time of the Swift raid, the United Food and Commercial Workers International Union (UFCW) represented workers at five of the plants. Today, all six plants are represented by the UFCW.)

It is the experiences of workers including U.S. citizens and legal residents who worked in these plants that led the UFCW to create the National Commission on ICE Misconduct and Violations of the Fourth Amendment Rights.

Upon its creation, the commissioners set out to achieve the following objectives:

- Conduct hearings on allegations of ICE abuse and misconduct in locations across the country;
- Hear from workers and their families on the impact of ICE raids;
- Hear testimony from community leaders, academics, constitutional experts, and the business community;

Michael Graves

- Inform the public and elected officials;
- Issue a report on this Commission's findings with a plan of action to protect workers' constitutional rights from any future abuse.

The Commission held regional hearings in key cities to investigate and explore the execution, implications and ramifications of workplace immigration enforcement on local communities. Though the Commission began with the charge to evaluate ICE misconduct during worksite raids, it was soon discovered that many illegal ICE practices grew into a troubling pattern that spread beyond the workplace into neighborhoods and homes.

Hearings were held in Washington, D.C.; Boston, Mass.; Des Moines, Iowa; Atlanta, Ga.; and Los Angeles, Calif. In total, the Commission heard the testimony of 59 witnesses, including workers and their families, elected officials, policy experts, psychologists, and religious and community leaders.

The Commission invited and sought testimony from the former head of ICE, Assistant Secretary Julie Myers, or a designee from the Department of Homeland Security. The Commission believed that the testimony would provide important information that would be valuable to its work and would help provide the public a better understanding of the agency's actions. According to a story published in the *Yale Daily News* on Friday, April 4, 2008, ICE told reporters that part of the reason that they would not appear before the Commission was, "It's quite common for people to greatly exaggerate concerns of humanitarian misconduct."

Because of ICE's repeated failure to address concerns by elected officials, humanitarian experts, immigration attorneys and worker advocates, the Commission felt it was critical to produce a report that documented the findings of each of its regional hearings and to use the analysis of these hearings as well as subsequent evidence and testimony submitted to the Commission to create a set of recommendations that could serve as a resource for elected officials and future Department of Homeland Security personnel.

At each hearing clear patterns began to emerge regarding the tactics used by ICE agents and how the procedures used by these officials were compromising individual and workers' rights.

The testimony revealed several disturbing patterns:

- U.S. citizens and legal residents detained for hours unable to leave even after establishing their status;
- A lack of coordination by ICE with state and local labor and child welfare agencies and law enforcement;
- Violations of the Fourth Amendment, which guards against unreasonable searches and seizures, and other constitutional violations;
- Repeated incidents of racial profiling and harassment;
- The human toll of immigration enforcement, including family separation and children left without proper care;
- Lasting psychological devastation of communities and families in the aftermath of workplace and community raids.

ICE'S SYSTEMIC ABUSE OF WORKERS

During his tenure as Secretary of the Department of Homeland Security, Michael Chertoff vowed to get tough on workplace enforcement. In an effort to assess the administration's new strategy, the Commission examined communities where raids occurred. The Commission witnessed first hand the ramifications of the administration's actions and the damage it often inflicted.

ICE often cast a wide net around workplaces and, in the process, ensnared U.S. citizens and legal residents as part of their enforcement efforts.

For example, during the raids at Swift, which the Commission analyzed during its Des Moines field hearing, ICE used 133 civil warrants as rationale to lock down the six workplaces, including the Marshalltown, Iowa, plant. Thousands of individuals employed at the plants were detained. That means that ICE had warrants for less than one percent of the workforce swept up as part of the raid. They, in turn, abused these workers further by limiting their ability to use the restroom, eat food, or use any telephones.

Through these raids, thousands of families have become victims of ICE's efforts to flex its muscles, and the result, as will be described herein, has been excessive force, millions of taxpayer dollars spent, and violations of workers' rights. The Commission also concluded that the ICE enforcement strategy has done little to address the wider issue of our nation's broken immigration system, and in many ways has instead exacerbated racial tensions and fueled discrimination.

". . . [raids] have caused dislocation and disruption in immigrant communities and victimized U.S. residents and citizens. The sweeping nature of these raids. . .has made it difficult for those arrested to secure basic due-process legal rights, including access to counsel."

Thomas Wenski,
Catholic Bishop of Orlando, Fla.

As Thomas Wenski, the Catholic bishop of Orlando, wrote in *The Washington Post*: ". . . these enforcement actions meet the political need to show government's law enforcement capabilities." But it is clear they have done little to address a dysfunctional immigration system. Wenski went on to note: "Instead, they have caused dislocation and disruption in immigrant communities and victimized U.S. residents and citizens. The sweeping nature of these raids—sometimes involving hundreds of law enforcement personnel with weapons—has made it difficult for those arrested to secure basic due-process legal rights, including access to counsel. Some families have been split up indefinitely."[2]

COMMUNITY DEVASTATION

What also became clear during the Commission's regional hearings and subsequent research is that lasting destruction and devastation to communities occurred in the wake of these enforcement actions, as well as persistent economic and psychological damage to families and children of the workers rounded up by these raids.

This was perhaps best summed up by the comments of Postville Mayor Bob Pernod, who told CNN that the raid of Agriprocessors turned his town "topsy turvy.... It makes a person feel kind of angry. It's been nothing but a freaky nightmare since May," when ICE raided the meatpacking facility in Postville.[3]

According to CNN, there's a seething anger toward Immigration and Customs Enforcement (ICE). "They had attacked this town with a military-style raid—brought in 900 immigration police to arrest 389 people. I mean, what is that other than a military raid on this town?" asked Father Paul Ouderkirk of St. Bridget's Church in Postville.[4]

These sentiments are not uncommon in areas where ICE raids occurred. The Commission heard similar testimony of deep and lasting damage to communities long after ICE agents had packed up and moved to their next target.

For example, Tom Renze, principal at Woodbury Elementary School in Marshalltown, Iowa, where the Swift raid occurred, said he believed the raid had a harmful effect on all of the students at his school—both immigrant and native-born.

"To me, they took a problem that needed a .22 caliber bullet and they dropped a nuclear bomb on us."

Aaron Goldsmith
Former Postville City Councilman

To better understand the impact these raids have had on workers, families and communities, our Commission analyzed the events that occurred on the day of the raid, often recreating the experiences through firsthand accounts and testimony.

From workers at Swift to the Michael Bianco factory in New Bedford, Mass., to homes surrounding Crider Poultry in Stillmore, Ga., to Micro Solutions Enterprises in Van Nuys, Calif., witnesses and victims bravely came forward to share their stories. In many cases, the Commission saw communities still reeling from ICE's actions long after the raids had taken place. Innocent victims and their families discussed deep and lasting psychological wounds from the raids on their workplaces, their families and their local communities.

One of those victims was Justeen Mancha, a teenager and **a U.S. citizen.** ICE agents raided her mother's mobile home searching for undocumented workers from the Crider Poultry plant. Justeen's mom, also a U.S. citizen, had worked at the plant in the past.

Mancha, who is a member of local agriculture clubs and raises show hogs, testified to the Commission that she was surprised to see the ICE agents in her home,

including one with his hand on a gun. "My heart just about bust out of my chest," she testified.[5]

After hearing about the way Mancha was treated by ICE agents, it is clear that these enforcement strategies have not only failed to restore credibility in the eyes of the American people, but have, in fact, created a climate of fear and have in certain cases rolled back racial progress in communities.

A WAY FORWARD

In recent years, the debate over immigration has grown exceedingly emotional, polarizing and, at times, it has run completely counter to our nation's best interests and our better instincts.

In remarks, former Department of Homeland Security Secretary Michael Chertoff stated that increased enforcement was part of an effort to "make a down payment on credibility with the American people."[6]

Our commission, through its investigations, has uncovered repeated examples of how stepped-up enforcement accomplished the opposite, raising serious questions about the agency's aggressive actions and the innocent victims who were unfairly and, in many cases, unlawfully targeted, interrogated, and detained by ICE and its agents. Debra Campbell, a U.S. citizen who was born and raised in Iowa, when asked how she would characterize the ICE raid on her Swift plant, said, "We were prisoners."[7]

The finding of this Commission is that the use of workplace raids in the absence of meaningful immigration and labor reform adversely affects all workers—native-born and immigrant workers alike.

In sectors such as meatpacking and processing, the combination of terrorized workers and unregulated employers fuels a race to the bottom—a race that gives employers the nod that it's okay to game our broken

"It's so sad and it hurts a lot to be targeted because we are Mexican," Mancha explained. "I thought maybe I should hang around a lot of white people so they wouldn't think I was illegal."

Justeen Mancha

Justeen Mancha

immigration system for their own advantage and that systematically undermines the wages and working conditions of all workers throughout the industry. In no place was this more evident than at Agriprocessors, where the company's owner, Aaron Rubashkin, and his son, Shalom Rubashkin, now face more than 9,000 charges of child labor violations.

What does America need? America needs immigration reform, not more raids. America needs a 21st century immigration system that recognizes and integrates the interconnections of jobs, labor law and protections, trade, finance, and border security—a system that promotes inclusion, not exclusion.

America needs an immigration system that regulates workforce requirements while restoring the rule of law in our workplaces and our immigration system. Workers need strong labor laws and enforcement that replace divide-and-conquer tactics with an even playing field.

America's workers need a federal government that will stop coddling bad-actor employers and start cracking down on abusive industry practices. All workers need an immigration system that enables them to labor in dignity, organize and collectively bargain, and pursue the American Dream. These principles must be at the forefront of our nation's economic recovery efforts.

What does this mean for the new administration and Congress? With clear vision and strong leadership by the new administration and Congress, we can reject the policies of the last eight years, and refocus our priorities by finally putting America's workers first.

We can help bring stability to the American economy and American families by reforming our labor and immigration laws—and we need to end immigration raids that terrorize communities and families but solve nothing.

The Commission looks forward to a country where undocumented workers can come out of the shadows and get right with the law, so that they can enjoy its protections in the workplace, and speak up when exploited. Where native-born workers see their job and earnings prospects strengthened because bottom-feeding employers are no longer given free reign to hire and abuse undocumented immigrants. Where all workers can speak up without fear and organize and bargain for decent working conditions.

Once we pass these reforms, all workers can be fully protected by our laws, fully enfranchised, and no longer vulnerable to the fear generated by unscrupulous employers and heavy-handed and ineffective immigration enforcement strategies.

Until Congress takes action on these urgent legislative priorities, however, in industries such as meatpacking, raids should be halted and targeted crackdowns should begin on abusive employers who undermine workers and undercut honest competitors.

AN HISTORIC OPPORTUNITY TO STRENGTHEN AMERICA

In writing this report, the Commission hopes to start a new dialogue about immigration, workers' rights and our core values as a nation. As we put pen to paper, we realized that the most powerful and effective voices were those who bore witness to the actions of ICE in their workplaces and communities.

Their eloquence and courage moved us. The ability of these workers—both immigrant and native-born—to move past their differences, to draw strength from their diversity, and to form a common bond in the workplace, should inspire us as a nation to follow their lead. We hope this report—and their stories—will help begin that process.

In the following chapters, we will document and analyze ICE actions in raids that occurred across the United States the last few years. The first chapter examines the massive ICE operation at Swift & Company meatpacking plants and its effect on workers and surrounding communities. In Chapters Two and Three, we explore the intersection of labor law and immigration law—and the challenges and problems that have arisen from the Bush administration's approach to these two critical areas of public policy. Chapter Four provides a legal analysis of the rights violated during the raids and the few remedies actually available to workers who were deprived their constitutional and statutory rights. Last, the Commission sets forth recommendations to improve workers' rights within the context of immigration enforcement, as well as providing a broad framework for approaching overall immigration reform.

Photo by Jonathan McIntosh

The ability of these workers—both immigrant and native-born—to move past their differences, to draw strength from their diversity, and to form a common bond in the workplace, should inspire us as a nation to follow their lead."

THE RAIDS AT SWIFT

ENFORCEMENT RUN AMOK

CHAPTER ONE

"I saw all of our civil rights taken away from us in the raid."

Darrell Harrington
Korean War Veteran and Swift Worker in Greeley, Colo.

My name is Darrell Harrington and I'm a Swift worker at the Greeley plant. I'm also a veteran. When I entered the service, I took an oath to uphold the Constitution of this country. During this raid, my rights [were] not only violated, but the rights of everybody in the plant. Yes, they held me against my will, they herded us down to the cafeteria like a bunch of cattle. They then separated us. They asked such questions as: "Where were you born? Where did you go to school? What is your parents' name?" The government already has that information because I held a security clearance and was investigated for the security clearance. What right did any member of our government have to totally disregard our wonderful document, the Constitution? They didn't.

On our way to a training room, after we were separated from the other group, we asked, "Can we get a drink of water?" We received an emphatic no. "Can we get something to eat?" An emphatic no. "Can we go the restroom?" The answer, an emphatic no. Finally, after four or five hours of being held that way, they started letting us go to the restroom, one at a time, but with an escort. Now that many people—how many of us are going to get to go to the restroom? You didn't.

I had many emotions that day. My first emotion was fear. The greatest thing on earth to control people is fear. I was not only afraid for myself, but if they were doing this to me in my workplace, were they now in my home? Were they taking my wife captive? I had no way of knowing. They would not allow me to communicate in any way with the outside world—in total disregard of all human dignity. My second emotion was anger. How dare an agency of our government totally disregard our Constitution? I had another emotion. I was ashamed. Ashamed that this could happen in this country, the one that I defended and swore to uphold the Constitution.[8]

The story of Darrell Harrington—law-abiding U.S. citizen, Korean war veteran, swept up in a massive immigration raid and effectively held prisoner by armed government agents—sounds like a story from a distant land, one that couldn't really have happened here in America—or could it? The answer, sadly, is yes: it can and it did happen here. Worse, the evidence presented to the Commission from across the country established beyond doubt that, as incredible as it may seem, what happened to Darrell Harrington was not an aberration. What happened to Darrell Harrington has happened to thousands of American workers who have done nothing more than show up for work.

In the guise of law enforcement, federal ICE agents have torn up our laws and shredded our Constitution—in our workplaces, in our neighborhoods, and even in our homes. In so doing, ICE has created a crisis for our nation: a crisis which threatens the freedom of each and every American, whether native or foreign-born.

A MASSIVE SHOW OF FORCE

Early on the morning of December 12, 2006, the feast day of Our Lady of Guadalupe and a holy day of special significance to Catholics of Mexican descent, ICE conducted a massive military-style raid on six Swift & Company meatpacking plants across the nation's heartland.[9] Hundreds of federal agents in riot gear, armed with assault weapons, descended upon plants in Cactus, Tex.; Greeley, Colo.; Grand Island, Neb.; Worthington, Minn.; Marshalltown, Iowa; and Hyrum, Utah. Officially, ICE was there to execute arrest warrants for a handful of named workers—less than one percent of the workforce—as well as to enforce search warrants to inspect Swift facilities. The sheer number of ICE agents on the scene, however, and the way the agents conducted the operation, belied that the execution of those warrants was the government's real purpose.

Rather, in a maneuver clearly designed to ramp up the numbers of arrests and capture the headlines on the evening news,[10] ICE rounded up thousands of workers—the vast majority of them U.S. citizens—and held them against their will for hours.

"It was a total lockdown," said Peter Schey, the executive director of the Center for Human Rights & Constitutional Law in Los Angeles.[11] By the day's end, ICE declared the raid to be the largest ever conducted, with 1,297 workers arrested. Only 274 of the arrestees, however, were charged with crimes. The rest were merely charged with so-called status violations—civil violations of immigration statutes.[12]

Sister Christine Feagan, director of Hispanic ministries at St. Mary's Catholic Church in Marshalltown, Iowa, arrived at the Marshalltown plant shortly after the raid there began. She described for the Commission what

"What they do in order to maximize the number of detentions and arrests . . . in comparison to the number of arrest warrants that they may have is they engage in a completely un-American, unconstitutional, illegal mass group detention of all workers in the facility. That's how they then are able to leverage fear, anxiety, panic among the workers. . . . The Constitution does not permit a group assessment. It does not permit detaining the innocent with a much smaller number of people who you think might be guilty."

Peter Schey
Executive Director for the Center for Human Rights & Constitutional Law

she saw: armed ICE agents were stationed on the roof of the plant, "watching vigilantly so that no one could leave the immediate grounds without being detected."[13] Additional agents were positioned at the gatehouse.

According to witness testimony at the Commission hearing in Des Moines, there were, perhaps, 100 people standing at the fence in front of the plant. Many were people who had family members—spouses, parents, sons or daughters—who were working the first shift and others, neighbors or second-shift workers. "[They] were upset and many were crying since they had no solid information, only that immigration agents were in the plant, the lines had been shut down, and that it was serious. . . [T]here was a certain panic outside, too, because of the uncertainty and lack of communication, as well as the fact that many of these people had never experienced anything like this before.[14] No one was allowed to go in and no information was coming out." [15]

Sister Christine said she approached the ICE agents at the gate to ask for information for the families. But agents simply handed her a sheet of paper with a phone number, an 800 number, to call for information on family members, although the number, obviously, would not be up and running for some time. The information was in English and there were maybe 25 or 30 copies, so she went back to her office and made more copies, but in Spanish. And then went back to the plant and distributed the copies to the people who were outside.

While Sister Christine and family members held a vigil outside, inside workers were caught in a frightening, military-style assault. Instead of searching out any of the 133 individuals named on the arrest warrants, heavily armed ICE agents fanned out through each of the affected plants, sealed the exits, and ordered all the workers into lines where they were patted down and searched for weapons. After the weapons search, witnesses testified to the Commission that ICE agents herded workers en masse into the plant cafeterias or other holding areas and divided them by race and national origin. ICE agents prohibited workers from leaving the area, and forbade them from using their cell phones or otherwise communicating with the outside world.[16] Many people were denied food or water or the right to use the bathroom and some were handcuffed. ICE failed to advise anyone of their legal rights and allowed no one access to legal representation at the raid site though attorneys were right outside, available and willing to assist. **The reality of the workers' captivity was driven home when ICE fired shots after someone attempted to leave the Greeley plant.**

The overwhelming majority of those held that day were U.S. citizens. Regardless of the plant they were from, their accounts of what they endured at the hands of ICE were remarkably similar: ICE followed much the same "game plan" at each location. Pasqual Talamantes, a U.S. citizen employed at the Grand Island, Neb., Swift plant, described his ordeal to the Commission: "I was held for six hours. No water, no food. I asked [the agent] to please hurry the process. My children were in school, and it was getting very late. He told me they were federal agents, that they had all the authority to hold me that they were going to make sure they investigated me thoroughly."[17]

Finally, another agent came to look into Talamantes' case and within a matter of seconds confirmed that

"ICE is not above the law and what they did to us was unjust and violated our rights and there should be something done about that."

Micheal Graves
Swift Worker

he was an American citizen. "I was just astounded," said Talamantes. "I had been held for so long and it only took this . . . agent a matter of seconds to clear and verify that I was, in fact, an American citizen." [18]

Michael Graves recounted the mistreatment he suffered at the hands of ICE at the Marshalltown plant. When he got to work that morning, he said, he was instructed to go to the cafeteria.

> *[M]e and two other coworkers . . . [were] going our normal route to the cafeteria. . . ICE agents that [were] heavily armed met us at the door and asked us where we [were] going. We told him we were going to the cafeteria as we were instructed to go. He asked us, did we have any weapons on us and did I have any identification? I told him I had [my identification] in my locker. He told us to get against the wall and handcuffed us from behind.*
>
> *So then he escorted us to the locker room . . . and asked me where my locker was . . . he took me to my locker and asked me for my combination. . . . I gave him my combination, he opened my locker and he asked me, did I have any weapons in my locker? And I said no, I don't have any weapons. So he searched my locker, he went through my clothes and my equipment and everything and found no weapons. He asked me, where's my identification? I told him it was in my pants pocket. So he went in my pants pocket, pulled out my identification, and questioned me about [it.] He asked me where I was living and I told him I was living in Waterloo, Iowa. And he questioned me, why was I working in Marshalltown? I said, well, this is the place I wanted to work and I've been working here, at that time, for 20 years.*
>
> *[H]e questioned me about my status as a U.S. citizen and I said my mother and father were born and raised in Mississippi. He questioned me about that and asked me, did I know my route to Mississippi? And I said no, but I can find my way there because I had been there a lot of times with my parents. He looked at my I.D. again, told me to sit down with my hands behind my back, still handcuffed.*[19]

Graves described how he was forced to sit in that position—hands cuffed behind his back—for over an hour. Agents then escorted him to the cafeteria—still in handcuffs—refusing his request to use the restroom. There, Graves said, agents were guarding all the exits and entrances to the cafeteria, and had cut off food, water, and phone use for the workers. After some time, he was moved again; he could see heavily armed ICE agents patrolling the perimeter of the plant. ICE continued to hold him and his coworkers while they "processed" the workers, still without food or water and forbidden to use their phones. Graves was finally released—after eight hours of captivity—and told to "go home."[20]

THE LONGEST DAY

U.S. citizen Melissa Broekemeier worked at the Swift plant in Marshalltown for more than eight years. "The longest day I ever worked," she told Commissioners, "was on December 12, 2006, except I didn't work long."[21] She described her experience on the day of the Swift raid this way:

> *I, like all my coworkers that went to work that day . . . did our job, then we were instructed by our supervisors to finish up…and report to the cafeteria, where we were inspected, and our private lives were scrutinized (by ICE agents) as if we were illegal convicts. We were . . . held in detention without cause for about six hours, maybe a little longer. . . . The power that runs our machines should have been shut off first, but it was not. It was not shut off until after we were held in detention. The Federal government jeopardized our safety and health without care. We were overlooked. We were ignored. We were treated like criminals. We were not free to leave. We were not free. What an insult to me. What an insult to my coworkers. I am not a criminal. All I did was punch in and go to work.*[22]

Debra Campbell, a co-worker of Broekemeier in the Marshalltown plant and a 19-year Swift employee, also testified about her experience on the day of the raid. Armed ICE agents ordered Campbell into the plant cafeteria where she and fellow employees were subjected to questioning by the agents about their identity. Agents sat across from the workers, she said, and interrogated them about their personal lives, such as where they were born, where they went to school, and their mothers' maiden names.[23] Even after ICE agents were certain of people's identity, and had confirmed their citizenship, workers were moved to holding areas where they were locked up for over six hours. "My group," explained Campbell, "was then walked around the plant to an out-building where we spent the rest of the working day. We were not free to leave."[24]

Armed ICE agents "drove around in their cars making sure we weren't going to run over that fence," Broekemeier added. "I mean, holy smokes, we might want to go home." While the agents guarded the holding area and forbade workers to leave, she said, the agents never came back inside the holding area for the six hours or more the citizen workers were held. "They didn't see what went on in the inside," she said. "We had people rolling on the floor hungry, upset and distressed."[25]

RACIAL PROFILING

The Commission heard repeated testimony suggesting racial profiling in the conduct of the Swift raids. Witnesses testified that workers who appeared to be of Latino national origin or minorities were singled out by ICE and subjected to even greater scrutiny. According to John Bowen, General Counsel for UFCW Local 7, headquartered in Colorado, race was, almost without question, the sole criteria for harsher interrogations and treatment to which certain workers were subjected at the Greeley plant.[26]

Testimony from the other plants demonstrated a similar pattern. Fidencio Sandoval, an American citizen and Swift worker at the Grand Island, Neb., plant, recounted for the Commission what he went through the day of the raid and how he was treated differently by ICE agents because he appeared to be Latino: "When they said all the U.S. citizens come over to this place, I went up there and I stood right by my boss. My boss showed his driver's license and then he was free to go. I showed my driver's license and my voting registration card and that was not enough. He [the ICE agent] said, no, you need either your passport or citizenship certificate."[27]

Sandoval took out his cell phone to call his wife, who also worked at the plant, but the agent flipped the phone shut and ordered him to put it away. Sandoval told the agent, "I think I have the right to make a phone call," but the agent replied, "You will make your phone call when we say you can make your phone call."

When Sandoval's cell phone rang a short time later, the ICE agent threatened to handcuff him if he didn't put his phone away. Later, Sandoval asked permission to join his wife, who was being held by ICE in another area of the plant. Again, the ICE agent refused his request, telling him, "You are not going to move from here until I say you can."[28]

Later, he asked a different ICE agent what would happen to him and his wife because they didn't have their documents with them at the plant. The agent inquired whether he had a relative who could bring his documents, and when he said yes, the agent allowed him to call his sister. Sandoval explained to the Commission how he was finally released: "So then I called my . . . sister and then I asked her to break the window from my kitchen and go straight to my closet and get my citizen certificate."[29]

Other workers, however, were not as fortunate. Those who did not have a way to prove their citizenship, Sandoval explained, were arrested and taken into detention at Camp Dodge—a military base in Johnston, Iowa, run by the Iowa National Guard—located nearly 300 miles from their work and homes in Nebraska. After his release, Sandoval said, he volunteered to drive from Nebraska to Iowa to pick up co-workers—American citizens—who had eventually "proven to be legal" and who ICE then "put out on the street without . . . money or no way to get back home" to their families.[30]

Manuel Verdinez was one of those U.S. citizen workers from the Marshalltown, Iowa, plant who was detained, arrested, handcuffed, and taken into custody. The following account is his declaration describing his ordeal:

> *I said I was a U.S. citizen, and then the [ICE] agent started scratching my ID. The agent . . . said they could not find my status. They put plastic cuffs around my wrists and put all of my belongings into a plastic bag.*

Then they moved me onto a bus outside with 25 other people on it. I kept trying to tell the agents where I got my citizenship, but the agents would not believe me because they said my social security number did not match with a citizen's.[31]

After 12 hours in detention, Verdinez described how he was released:

[T]hey found my record . . . and said they had made a mistake. Then [the ICE agent] finally took off my handcuffs . . . [t]hey called a cab for me and I had to pay $90 for the cab ride back. I was not allowed to leave that place until 8 p.m. I was detained by the ICE agents for more than 12 hours. During that time I was not able to move around anywhere without permission from ICE agents. . . . I had even been handcuffed for about 9 hours. I had done nothing wrong that would give . . . ICE agents any reason to believe I had done anything wrong, or that I deserved to be handcuffed.[32]

FAMILY AND COMMUNITY RESPONSE

In some cases, those who were detained were asked by ICE whether they had children, but, according to Sister Feagan from Marshalltown: "[They] were not told that one of the parents would be allowed to remain to care for them. So many parents were afraid to say 'yes' because they feared their children would be taken away from them and placed in foster care."[33]

As a result, a number of children were separated from their parents, and left in the care of babysitters, neighbors, or with extended family. As the day wore on, Sister Feagan explained, the fear amongst those waiting outside grew. By mid-afternoon, some workers came out of the plant in handcuffs and were put on buses. Because the windows were tinted, no one was sure who was on the buses or who would be released.

Many of the Swift workers who testified before the Commission described the fear and disbelief they felt as the raid was unfolding. Sonia Mendoza, an American-born citizen who worked at the Swift plant in Cactus, Tex., put it this way: "On December 12, it was the most horrifying day that I have encountered ever in my life. . . . That morning, I got up like a regular day . . . and went to work . . . We get out there and we see these people with ski masks and machine guns and . . . it's terrifying."[34]

The Commission heard repeated testimony about the fear and trepidation by witnesses who were affected by ICE raids in their workplaces. "I couldn't believe that it was happening," Melissa Broekemeir testified, adding that she felt like a prisoner. "I kept thinking about the stuff you see on TV: about Germany, World War II, the prisoners that were detained, not knowing what was going on, what was going to happen."[35]

Alicia Claypool, Chair of the Iowa Civil Rights Commission, told Commissioners she had similar thoughts when she saw footage of the raids and learned what had occurred: "[M]y first reaction when I saw the raid at Marshalltown is, this is happening in the United States? And I did have visions of what I've seen in the movies and read about in history, in terms of Germany during World War II. I couldn't believe this was happening in my country."[36]

The day after the raid, Reverend Barbara Dinnen, a United Methodist minister from Des Moines, Iowa, testified that she and another pastor went to Camp Dodge, where hundreds of Swift workers from Marshalltown, Grand Island, and Greeley were being held under guard. She went to visit the detainees, she

said, because of the "palpable fear" generated by the raid and because she wanted to give the workers pamphlets explaining their basic legal rights. When she got to the base, however, she was denied access. "[W]hen we went up to visit," Rev. Dinnen explained, "we were told there will be no one visiting detainees. The words were: *'they will have no visitors, no lawyers, no clergy, no one.'*"

Reverend Dinnen added:

> *Now, the fact that this was a military base added a surreal effect. We were in the United States where civil liberties are valued—protected by our Constitution, and it's not a country that is ruled by military dictatorships or where people might anticipate this, but these folks were inside a military compound and could not receive general counsel by lawyers or clergy. I couldn't believe what was happening. I couldn't believe it.*[37]

Representative Mark Smith, who represents the people of Marshalltown in the Iowa State House, echoed Reverend Dinnen's shock at being denied access to Swift workers at Camp Dodge—workers charged only with civil violations of the law: "I have been a social worker here in the state of Iowa for 34 years. During those years, I have met with a number of offenders . . . people who have committed very egregious crimes . . . and in that time . . . [this is] the only time in those 34 years that I can remember people were denied access to their faith leaders."[38]

Two days after the raid, a notice was finally posted at the guard house at Camp Dodge stating that lawyers and clergy would be allowed to visit for an hour. But that belated and grudging offer, Reverend Dinnen said, "didn't do any good for the people who had already been shipped off to we-don't-know-where, because all through the night the buses were waiting and people were leaving."[39]

According to Des Moines attorney Sonia Konrad Parras, the Swift raid was different from other raids conducted by ICE in the past. "[T]his time," she said, "the rules of the game had changed. ICE made sure that people were uprooted and moved out of Iowa quickly, some of them within 24 hours of their arrests and detention." As Parras stood in the parking lot of Camp Dodge, waiting to get in to see her clients, she "could see the buses leaving full of people." By the time she and her colleagues were ultimately allowed into the camp, ICE had already moved many of the detainees to Atlanta or Texas, far away from contact with their families and attorneys: "a pretty effective tactic," she pointed out, "to break the spirit of a person to ensure that they signed a stipulated order of deportation," a device used by ICE whereby individuals waive their legal rights so as to speed up their deportation. "The legal community was denied access to the military facility, even to talk to our own clients."[40]

Similarly, Attorney John Bowen testified that workers from Colorado were transferred to several different

Photo by Bill Burke 2008

"While it's been over a year [since the raid], it will be a mark in my life forever."

Pasqual Talamantes
Swift Worker

locations in a deliberate effort to make it difficult for family or counsel to find them. At least 75 people from the Greeley plant were shipped to Texas the first day, he said.

Many of the Greeley workers who were sent to Texas, without access to family or counsel, "spoke only [languages] indigenous to their region," he said, "and were unable to understand documents that were presented to them in Spanish and unable to understand any information provided to them in English." By midnight, the night of the raid, some workers had already been deported and were in Mexico.[41]

While in detention, workers—accused only of civil infractions of the law—were required to wear plastic handcuffs, had food thrown to them, and were refused the right to bathe or change clothes for several days at a time. Many languished in detention centers for a month or more, waiting for a hearing before an immigration judge, a hearing that was required by law to be afforded to them within 48 hours of their seizure.[42]

Families, too, waited anxiously, many with no information about where their loved ones had been taken. According to Reverend Dinnen, approximately half of the detained workers were still unaccounted for a full week after the raid. "They were 'desaparecidos'—disappeared," she said. Explaining that many of the workers and their families were from El Salvador or Guatemala, Reverend Dinnen commented, "[in] those countries that have been through the civil wars, desaparecido for one week doesn't mean anything good. And again, I thought, how can this be? I'm in the United States?[43] Reverend Dinnen told the Commissioners that as she has heard more and more stories of the mistreatment and abuses suffered by Swift workers at the hands of ICE:

> *I can no longer . . . say . . . with confidence, 'It will be okay. You're in the United States, your basic civil rights will be honored.' I don't know how I can say that when one government body can do this with other government bodies not knowing anything about it. It would appear that ICE makes (its) own rules and enforces them in their own ways, no matter what our Constitution says, and that should not be.*[44]

EXAMINING RAIDS ACROSS THE NATION

The Swift raids deprived thousands of workers the right to be free from unlawful stops, searches, and arrests and the liberty to work free from harassment and discrimination. The ICE raids taught the Swift workers, their families and surrounding community members a frightening lesson that citizens and non-citizens alike are vulnerable in the face of the improper use of enforcement.

At subsequent Commission hearings, it became clear that tactics used by ICE at Swift were not unique. In fact, they were standard operating procedure, and became part of a disturbing pattern of overzealous enforcement efforts. Despite vigorous media attention and documentation by advocacy organizations and elected officials, little was done to rectify the problems. The Bush administration continued to execute raids till the last days of its term, compounding the problems that were exposed during the Swift raids.

ICE RAIDS

THE LASTING DEVASTATION TO FAMILIES AND COMMUNITIES

CHAPTER TWO

"In my 20 years of professional practice, I have never felt a more challenging and disheartening situation than providing volunteer mental health relief services to the victims of the violent raid that took place at the Michael Bianco factory [where workers make backpacks and vests for the Department of Defense] in New Bedford, Mass., on March 6, 2007."

Dr. Amaro Laria,
Director of the Latino Mental Health Program

The day before I went to work [at Michael Bianco], my son, my little son, was very sick. But I felt obligated to go to work because I hadn't asked for permission prior to bring my son to the clinic. But, as it turned out, I never returned home that day because I was detained by immigration.

That day immigration came about 8:15 that morning and I was very frightened. And at first the immigration agents asked me where I came from and I told them I was from Guatemala. And one of the [agents] told me I had no right to be here in the United States. And they told me to get up from my chair and to put my hands behind my back. At this moment I let them know and I urged them to let me go, because I had a very sick child. But they said, well, first you have to go through an interview, but then we'll let you go.

But I insisted I wanted to be let go because my child was very sick. But they told me that if your child is in the United States, then nothing bad would happen to him. And I said, he's not protected because he's not under medical care. And then . . . after that they let me know that I had to go to a military barrack. And when I was in the military barrack, they denied me the right to make a phone call to find out about my son. But they told me that it would be worse for me if I continued to insist that I wanted to contact my son, that it was, you know, much like a threat.

And they continued to deny me the right to be able to speak . . . to my son and at that point they had said . . . that they would take away my son. And then I asked them how long is it that I would be staying there. And they said, well, if you're going to be here from one month to a whole year, then my child would be under their authority. And I told them that they had no right to do that. That . . . was my son and that they had no right to keep me away from my son.

Juana Garcia

I saw there were 25 women that were also in the barracks. And they told me those were the mothers that had infant children. And they said, if you could give us some proof that you were lactating, . . . we could put you in that group. And I told them that although I'm not breastfeeding . . . my son has asthma and that he needed to be in my care. And then they asked me how old my son was and I said he was two years old and they said, well, that doesn't matter, he's old enough to be separated from his mother—away from this mother.[45]

Juana Garcia

Worker at the Michael Bianco Factory in New Bedford, Mass.

Juana's story was just one of many that demonstrated to the Commission that the ICE raids had a long-lasting and damaging impact on families, children, workers and communities. Other testimony brought to light that:

- Children were separated from their parents and left unattended at schools, daycares and with babysitters;
- Victims and their families developed serious psychological, emotional and in some cases physical trauma;
- Community destruction;
- Latinos or individuals perceived to be of Latin American descent faced increased discrimination and racial profiling.

This section documents, based on Commision testimony, the impact that immigration raids have had on children, families and communities, including family separation, negative mental and psychological effects, community building and civic integration damage, school disruption, and increased discrimination and racial profiling.

IMPACT ON CHILDREN AND FAMILIES

The separation of families, and specifically the collateral damage to children, has been one of the tragic consequences of the Bush administration's stepped-up enforcement efforts.

According to Rosa Maria Castañeda, research associate with the Urban Institute and author of *"Paying the Price: The Impact of Immigration Raids on American Children,"* most of the children adversely affected by raids were U.S. citizens and most were very young—about two-thirds were under 10 and about one-third were under age five.[46] Castañeda told the Commission, "Raids inevitably affect children . . .

"Regardless of how we feel about U.S. immigration policy, as a society we hold dear the health and well being of our children, of all our children. No child in America should be kept up all night worrying that her parents will be taken away. No child should leave for school not knowing if his parents will be home when he returns."

Dr. Amaro Laria
Harvard Medical School

Dr. Amaro Laria (right) Testifying

literally millions of children are at risk and in large part these are U.S. citizen children and the youngest and the most vulnerable."[47]

In all three sites studied, Castañeda noted: "families and relatives scramble[d] to rearrange care, children spent at least one night without a parent, often in the care of a relative or non-relative babysitter, in some cases neighbors and in some cases even landlords; some children were cared for by extended families for weeks and months." Families directly affected by the raid also suffer economic hardship and financial instability, which according to Castañeda create conditions detrimental to children's development.[48] For example, if the primary breadwinner of the family is removed then the family is forced to depend on assistance from churches or other community groups and over time results in parents losing their homes, having their utilities shut off or experiencing food insecurity. In many cases, families are left with no choice but to move in together resulting in crowded housing.

SERIOUS EMOTIONAL AND MENTAL HEALTH PROBLEMS

Some of the most heart-wrenching stories revealed during the hearings involved the emotional and psychological impact of the raids on workers, children, and their families. At each of the five hearings, the Commission heard testimony from workers and service providers about the trauma that the raids caused. Rocío Gomez, a U.S. citizen mother and member of the Jovenes Latinos Cuentan of Marshalltown, Iowa, testified that following the Swift raid at the Marshalltown, Iowa, plant, "Latino people were hiring other people to go to the grocery store for them because they were too scared to leave their home."[49] For many of the Central American immigrants, the military-style raids brought back traumatic memories of war in their home countries.[50]

Some of the most poignant stories came from children. Diego and Maria, two sibling high school students from Marshalltown, testified about their mother's arrest at the Swift plant. Their mother was detained for two days and during that time they were responsible for caring for their younger siblings, ages five and three.

Maria stated: "At night, I had to do the hardest thing in the world, explain to a three-year-old and a five-year-old what was happening and why their mother wasn't coming home. They looked at me with their eyes filled with tears. I felt the same way, so helpless and alone. . . . Many kids are scared of the boogieman, but [my siblings are] afraid of ICE."[51]

Both Diego and Maria expressed the emotional upheaval they felt on the day of the Swift raid and how it affected their friends, family and school. Diego testified, "when I woke [on the day of the raid] it was like a nightmare. My sister came in crying and told me that there was a raid at the Swift plant."[52] Diego and Maria knew they had family working at the Swift plant and that they had some family members who were undocumented. When Diego got to school that day "there was crying and despair" and the parking lot was half empty. "There was a lot of people that didn't go to school that day." Diego went home after lunch when he learned that his uncle had been detained. "[A]t that time I had no idea what happened to my mother," he said.[53]

Maria told the Commission that when she learned of the raid at Swift where her mother worked, "I froze and I felt like I couldn't breathe. . . . I felt so much hate and sorrow in my heart, a feeling that I had never felt before."[54] However, because she was responsible for her younger siblings, she remained composed and took her siblings to school, and then she and her brother went to class. She continued: "I ran into one of my teachers. She didn't know what was happening, but as I told her, I fell apart, the same feelings came back and I couldn't breathe, and she hugged me and said it would be okay, but I kept saying that it wasn't okay."[55]

The psychological and emotional trauma following the raids will undoubtedly leave lasting wounds for these children and families. According to Dr. Amaro Laria, director of the Latino Mental Health Program at Massachusetts School of Professional Psychology and faculty of the psychiatry department at Harvard Medical School, "[O]ne of the most well-established facts in mental health is that abrupt separation of children from their parents, particularly their mothers, are among the most severely traumatic experiences that a child can undergo."[56]

Dr. Laria, who provided mental health relief services to the victims of the Michael Bianco raid in New Bedford, Mass., stated that in the case of the raid, the "traumatic separations [were] perpetrated and sanctioned by our nation's law enforcement agencies, ironically in the name of protecting citizens, . . . creat[ing] deep feelings of anger, powerlessness and frustration."[57] In Dr. Laria's opinion, ICE had engaged in terrorism against these families and children.

Dr. Laria provided the Commission with examples of young children he treated and the symptoms they exhibited that were remarkably similar to findings by the Urban Institute in its study.[58] Using pseudonyms, he told the story of Mariselles, a 7-year-old girl from Guatemala whom he interviewed in a church basement while she sat next to her father:

> *She displayed symptoms typical of post-traumatic stress disorder, including severe anxiety, guardedness, hyper-vigilance and irritability. Her father reported that she was losing weight and having severe insomnia and violent nightmares every night since she was separated from her mother. . . . She was clearly depressed, lethargic, lacking the liveliness that one expects to see in a child her age. Instead she spoke to me with a terrified look . . .* [59]

Another young girl, Deanna, told Dr. Laria "she wanted to kill herself because her mother had abandoned her."[60] Dr. Laria also testified about a girl who called 911 looking for her mother and a young desperate father who, after his wife had been imprisoned, had to rush their infant daughter to the emergency room with severe dehydration because she hadn't been breast fed for days.[61]

According to Dr. Joseph Cervantes, president of the National Latina/o Psychological Association, in most cases children showed severe anxiety, severe depression and post-traumatic stress disorder in the wake of the ICE raids.[62]

SCHOOL DISRUPTION

Even children not directly affected by the raids—those whose parents had not been arrested—also suffered. Dr. Tom Renze, principal at Woodbury Elementary School in Marshalltown, Iowa, testified at the Des Moines hearing that:

> *[T]he day's incidents also affected children whose parents did not work at Swift and who were not immigrants. For example, at the end of the day, I received a communication from one parent stating that her child had been very upset by the incidents of the day and indicating that she thought we should have protected the children from all the commotion and the anxiety, but we had no forewarning, and there was no way, in my judgment, that we could have not had the children know that something was happening.*[63]

Renze went on to describe what occurred on the morning of the raid:

> *By 7:50, [after people began hearing that a raid was occurring] we already had parents coming to school, taking their children with them. By the time that classes began at 8:30, parents and other adults were at the office to take children. This continued throughout most of the day. I don't think there ever was a time when there were not parents or other adults waiting to pick up a child until late in the afternoon.*[64]

"[I]t was like a bomb had hit our school."

Dr. Tom Renze
Principal of Woodbury Elementary, Marshalltown, Iowa

Not surprisingly, the raid also negatively affected school attendance,[65] and according to Principal Renze, parents, children, and teachers were anxious, tense and there was a sense of panic.

Woodbury Elementary was forced to deal with a crisis situation at school that it was not prepared for due to lack of notice. Dr. Renze and his staff's main concern on that day was making sure that children were being released to the appropriate person for purposes of child safety. When the adult who came to pick up a child was a parent or was listed on the school's approved-emergency list, releasing the child was not a problem. But, in the cases where a relative or family friend arrived to pick up the child because the parent had been detained, the school was placed in the difficult situation of having to make phone calls in order to determine and ensure that children were being released to the appropriate person.

Diego (left) and Maria (right) testifying at Des Moines hearing

According to Dr. Renze: "The events of the day were very disruptive to the children's normal classroom routine, and that was for all children. Throughout the day, we had staff members going from the office to the classrooms to get children because someone was there to pick them up."[66] The teachers could not give the children who were being picked up information about why they were leaving and the school had very little information to share with other students and staff. Children did not know why they were leaving and teachers did not know if they would ever see their students again.[67] Dr. Renze also had to contact the police chief to ensure that ICE officers would not come to the school.[68]

Dr. Renze recalled calling a staff meeting at the end of the day where he described the day of the raid in the following way: "People were just totally stunned at what happened. It was traumatic for children. It was traumatic for teachers . . . ."[69] In sum, "[t]he day's incident affected these children emotionally and affected their learning," said Dr. Renze. Children were frightened. Now, nearly two years after the raid, Dr. Renze and his staff at Woodbury Elementary still have children who are fearful that they will have to leave.

DESTROYING AND ENDANGERING COMMUNITIES

ICE raids and the increased use of overzealous enforcement caused permanent damage to and major setbacks for many communities.

In Iowa, several successful initiatives had been developed to ensure the integration of immigrants into the fabric of the communities where they resided. State Representative Mark Smith of Iowa testified before the Commission about a Diversity Committee created in Marshalltown to help address many of the issues of anger and confusion resulting from the changing demographics. Much progress toward integration and healing had taken place under that program and the state-sponsored New Iowans program.[70] But the ICE raid wiped out much of the progress that had been made. Sister Christine Feagan noted that: "The raid had a negative effect in our community at Marshalltown in that we were beginning to be a more integrated community appreciative of our diversity." In addition, the raid gave some members of the community "a justification for discriminating against all immigrants, documented or not," Feagan added.[71]

Immigration raids have endangered communities in other ways. First, increased enforcement and high-profile military-style raids have resulted in a reluctance by some members of the immigrant community to report abuse or crime to the police, for fear of being turned over to ICE, resulting in a less safe community at large.[72]

Mayor John DeStefano of New Haven, Conn., told the Commission that ICE "undermined the relationship of trust and openness that must exist between local police and citizens to ensure a civil society."[73] DeStafano's comment reflects a formal statement by the Major Cities Chiefs addressing the same concerns.

ICE's failure to notify local agencies about the raids additionally put communities at risk. Mayor DeStefano noted: "[I]t makes sense if you're entering homes in a community, you coordinate with the local police to determine if there is any reason of any level of activity in that residence or that address that may cause you concern and affect your choice and the manner in which you enter the location."[74]

ENORMOUS COST OF RAIDS

The raid at the Agriprocessors plant in Postville, Iowa, exposed the enormous costs of raids to communities and taxpayers. According to the *Des Moines Register*, the raid at Agriprocessors set taxpayers back $5.2 million. That means it cost taxpayers an average of $13,396 for each of the 389 undocumented immigrants taken into custody.[75]

However, the $5.2 million—disclosed through a Freedom of Information Act request of ICE—is only what ICE spent. That doesn't include the cost of criminal trials against the workers charged with ID crimes, indigent defense, and prison. According to an editorial in the *Des Moines Register*, "Prison costs alone ran $590,000 a month as of mid-summer" of 2008.[76]

As America's Voice, an organization working to pass common-sense immigration reform, pointed out: "If it cost $13,396 to arrest each undocumented worker in the United States, and estimates are that there are at least 11.5 million people who fit that definition, then you, I, and the rest of American taxpayers could be looking at forking over $154 billion to ICE alone."[77]

ICE RAID COSTS

OPERATION CEDAR VALLEY JUNCTION (AGRIPROCESSORS RAID)	EXPENDITURES	DESCRIPTION
Office of Investigations (OI)	$ 1,578,004	TDY Cost 750 OI Personnel
	$ 60,117	Transportation of Equipment, etc.
	$ 268,483	Lease of Facility and Modspace Trailers
	$ 744,747	Leased Services (Security Work Authorization with FPS, Electrician)
	$ 65,389	Supplies (Electrical, Office, Operational, ID, Custody)
	$ 74,481	Misc. Equipment (Computer switch)
	$ 12,044	Document Exploitation (DocEx), Under Cover
OI Total	**$ 2,803,265***	
Office of Detention & Removal (DRO)	$ 495,697	TDY Cost 281 DRO Personnel
	$ 1,905,750	Leased Services, Kbr, Shower Trailers, Latrines, Detainment, Processing, Physical Security, Detainee Meals
	$ 40,195	Supplies (Cuffs/Custody, Property)
DRO Total	**$ 2,441,642****	
TOTAL	**$ 5,244,907**	

** These are the known OI costs as of October 1, 2008. This investigation is still ongoing and incurring additional expenses.*
*** These are the known DRO costs as of October 6, 2008. This investigation is still ongoing and incurring additional expenses.*

INCREASED DISCRIMINATION AND RACIAL PROFILING

The raids and increased enforcement also poisoned communities by spawning scores of state and local anti-immigrant laws and ordinances, unlawfully targeting Latinos, and creating increased discrimination.

Witnesses from Rhode Island, Tennessee, and Georgia reported on the surge in anti-immigrant ordinances that sought to criminalize immigrants by selectively enforcing certain types of offenses and arresting undocumented immigrants for minor offenses, such as fishing without a license.[78]

Sam Zamarippa, president of the Board of Directors of the Georgia Association of Latino Elected Officials (GALEO) and a former state senator, testified about the many anti-immigrant state legislative proposals and local ordinances that not only sought to punish immigrants but would also have the state enforce federal immigration law, which it is not well-equipped to handle.

Photo Aryn H. Nichols / Inspire(d) Media 2008

The increased racial profiling and selective enforcement is also evident in the manner in which local police enforce immigration law through 287(g) agreements.

Section 287(g) of the Immigration and Nationality Act delegates to state and local law enforcement officers the power to enforce federal immigration law. Under this program, state and local law enforcement agencies enter into formal agreements with the DHS "to detain and process" unauthorized individuals "who may pose a criminal threat to community or security threat to the United States."[79] **The program requires that the participating local officers undergo trainings and that a local ICE "Special Agent in Charge" oversees any actions taken by local law enforcement under the 287(g) program.** In 2007, ICE trained 426 local state officers under the 287(g) program and had 29 state and local authorities participating in 287(g).[80] The number of local police that have entered into 287(g) agreements has increased exponentially in the last few years irrespective of staunch public criticism.[81] In the meantime, ICE may have been conducting initial training under 287(g), but it essentially ignored its oversight responsibility.

In Nashville, Tenn., a police officer pulled over Juana Villegas, a nine-month pregnant woman and immigrant from Mexico, for a routine traffic violation.[82] The arrest was made pursuant to a 287(g) agreement and resulted in Mrs. Villegas' detention in county jail.

According to the *New York Times*, Mrs. Villegas went into labor and delivered her baby with a "sheriff's officer standing guard in her hospital room, where one of her feet was cuffed to the bed most of the time."[83] County police prohibited her from seeing or speaking with her husband.

After giving birth and being released from the hospital, she was taken back to jail and separated from her nursing infant for two days, resulting in the baby developing jaundice and Mrs. Villegas contracting a breast infection because county jail officials prohibited her from taking a breast pump into jail.

During the hearing process, the Commission heard about Latinos being pulled over for minor traffic violations and arrested pursuant to 287(g) agreements—like Juana Villegas in Nashville.

According to Sam Zamarripa of GALEO, the state enforcement of immigration law in Georgia and particularly in Cobb County "has created an arbitrary and capricious application of the rule of law."[84] Attorney Jaime Hernan presented statistics on the types of arrests being committed in Cobb County, Ga., under the County's 287(g) agreement. Most arrests conducted under 287(g) in Cobb County were for the offense of driving without a license, hardly the serious crime or threat to national security that 287(g) agreements were initially meant for.[85] The Commission heard similar testimony about pretextual stops and arrests for minor traffic infractions in Arizona.

Zamarippa noted that "there is an overriding presumption that all immigrants are essentially guilty. . . . a public view that it is open season on immigrants. Anything goes in this wild West anarchy. This is . . . why the misconduct is so pervasive within our law enforcement community, including ICE."[86]

ICE ENFORCEMENT'S ADVERSE CONSEQUENCES

These enforcement programs not only result in racial profiling and increased discrimination, but also hurt local communities in other ways. Stephen Fotopoulos, policy director with the Tennessee Immigrant and Refugee Rights Coalition, stated that the delegation of immigration law enforcement to local police in Davis County and Nashville harms the community and is expensive for local governments.[87]

Today, communities continue to heal wounds left by the ICE raids. Broken families continue to struggle. Children continue to wake fearful in the middle of the night.

Small towns remain economically devastated—small businesses and restaurants abandoned, service jobs gone. The ICE raids frustrated local governments and exacerbated community challenges to integrate immigrant and local residents and fight discrimination. In some localities, the raids spurred a wave of discriminatory enforcement tactics, anti-immigrant ordinances, and other violations of people's rights.

ICE RAIDS

PERPETUATING VIOLATIONS OF WORKER RIGHTS

CHAPTER THREE

"This is enforcement run amok."

New York Times
August 1, 2008

On the west bank of the Mississippi River in New Orleans, there is an apartment complex called Audubon Pointe Apartment Complex. During [Hurricane] Katrina portions of the . . . roof were ripped off [by] rains and winds [that] damaged the interiors of the apartments.

After Katrina, New Orleans experienced a huge influx of immigrants to our communities. And approximately 50 of these workers found their way to the Audubon Pointe Apartment Complex.

They were given housing in these damaged apartments as condition of their employment. And they were expected to fix the broken windows and clean up the mold that had crept up the walls. These workers came here because they had hoped to rebuild the city and because they had hoped to make money for their families. But this hope quickly turned to fear as Audubon Pointe ceased to pay them not only their overtime wages that they never received, but also minimum wages. Some workers with whom we spoke had not been paid for 16 weeks in a row. Hunger and humiliation set in as some of these workers were forced to look for food in the garbage cans of the tenants of Audubon Pointe Complex.

[The workers] made repeated demands for their wages. They went on strikes. They asked their employers when they were going to get paid. They were not met with paychecks; instead, they were met with threats of calls to immigration, threats of calls to local police if they did not get back to work immediately. They were threatened [with being] evicted from their employer-provided housing if they did not return to work immediately.

The Pro Bono Project of New Orleans became involved when a group of approximately 30 workers came to a weekly wage clinic that we have at a local resource center in town. [A] demand letter and a draft complaint under the Fair Labor Standards Act was drafted and it was sent to the employer on February 22, 2008. Five days later on February 27, 2008, Immigrations and Customs Enforcement (ICE) showed up at the workplace, five days after the demand had been received by the employer.[88]

Vanessa Spinazola
Attorney, Pro Bono Project of New Orleans

U.S. labor and employment laws—including wage and hour laws, health and safety laws, workplace nondiscrimination laws, and laws that protect workers' right to unionize—apply to all workers, regardless of immigration status. Nevertheless, low-wage immigrant workers—undocumented and authorized alike—are regularly intimidated by employers and prevented from exercising workplace rights.[89] Employers often do not pay workers at minimum wage or the overtime pay they earn. They force workers to work in dangerous and hazardous conditions, and discourage them from joining labor unions, taking advantage of the worker's unfamiliarity with U.S. employment rights.[90]

Over the course of the Commission hearings, testimony revealed patterns of conduct both by ICE and unscrupulous employers that ultimately exacerbated abusive employer practices. The first pattern involves an already abusive workplace whereby employers game immigration laws by using them as a retaliatory tool against workers when they assert their rights—including the right to form a union. This retaliation includes, among other measures, firing, spying on, coercing and intimidating workers in order to spread fear and suppress the exercise of rights in the workplace. The second stems from ICE immigration enforcement programs, including raids, which effectively compound an employer's abusive practices by interfering with existing labor disputes or failing to address coexisting labor violations by an employer.

[O]n March 6th of [2007], of all the dangers that were lurking in America—because of our broken immigration system—of all the threats being assessed by the Department of Homeland Security and the FBI, apparently, on that day, none were more insidious or challenging to us, or more menacing, than several hundred people, mostly women, in New Bedford who were making backpacks for the U.S. Army.[91]

Senator John Kerry

In effect, this ICE practice allows employers to continue gaming the system: unauthorized immigrant workers are hired, subjected to exploitative working conditions, and then arrested and/or deported when they protest those conditions. Workers suffer for the employer's own illegal activities, while the companies that hired them are emboldened to start the cycle anew.

AN EROSION OF WORKERS' RIGHTS: MICHAEL BIANCO, INC., BOSTON, MASS.

On March 6, 2007, "the government instilled terror in 500 workers who got up and went to work on a frigid morning," Reverend Mark Fallon said, describing for the Commission the dramatic, early morning ICE raid on the Michael Bianco, Inc. (MBI) factory in New Bedford, Mass., where workers made backpacks for the U.S. Government.[92]

Ostensibly there to arrest the MBI owners and plant managers for exploiting immigrant workers, ICE showed up with hundreds of armed agents. In a highly militarized action, ICE entered the plant, sealed the exits, rounded up the workers, and handcuffed them for interrogations. Police roadblocks were set up outside the plant. A helicopter buzzed the plant, sending shockwaves through a workforce comprised largely of immigrants who, as children, had fled civil wars in Central America.[93] By the day's end, 361 workers were taken into detention by ICE.[94] Significantly, all of those detained were detained for civil—not criminal—violations of the law.

United States Senator John Kerry, who spoke to the Commission in Boston, described the massive presence of ICE agents as "stunning," given the agency's stated purpose of arresting the owner and manager who were "preying on the immigrant workforce."[95] As Senator Kerry put it:

> *Five-hundred armed agents for five people, ostensibly. But as you read through the press release you eventually get to this line, 'hundreds of MBI employees will be interviewed to determine their alienage and immigration status.' So I interpret from that then most of the armed agents involved in the raid were actually there to conduct interviews—but that's kind of ridiculous…because, you know, most of us understand what the word 'interview' means. It means talking to somebody. It means having a conversation. Possibly ICE on that day had a different dictionary and they interpreted it differently, because this is how they conducted an interview:*
>
> *They sent armed federal agents to [a] workplace, they handcuffed and manacled their interviewees, loaded many of those interview subjects onto buses, drove them a hundred miles away to a military base, denied those interviewees access to legal counsel or translation services so they could actually be understood and didn't let the interviewees make arrangements so that their families knew where they were. Flew those interviewees across the country to detention centers and refused to release any information on their health, well-being or location. And then it was supposedly ready to begin its 'interviews.'*[96]

In few cases reviewed by the Commission did immigration enforcement more clearly neglect blatant labor violations and the workers' potential labor and immigration remedies related to their working conditions than at the MBI facility in New Bedford, Mass.

ICE knew that MBI, which held more than $92 million in government and military contracts as of 2006, was

subjecting its workforce to exploitative and abusive working conditions.[97] In an ICE press release, the agency described MBI as an employer that actively sought out unauthorized immigrant workers because they "are more desperate to find employment, and are, thus, more likely to endure working" in deplorable conditions.[98] The abusive workplace conditions cited by ICE included:

> *docking pay by 15 minutes for every minute an employee is late; fining employees $20 for spending more than 2 minutes in the restroom and firing for a subsequent infraction; providing one roll of toilet paper per restroom stall per day, typically resulting in absence of toilet paper after only 40 minutes each day; fining employees $20 for leaving work area before break bell sounds; and fining employees $20 for talking while working and firing for a subsequent infraction.*[99]

ICE agents, ignoring the agency's own knowledge of the egregious workplace conditions at MBI, raided the facility and arrested 361 workers without coordinating their efforts with labor investigators or state welfare agencies. Workers who were victims of the employers' unscrupulous practices and, therefore, eligible for labor and immigration remedies were jailed or deported, ending any opportunity for redress.

By the time investigators from the Department of Labor's Occupation Safety and Health Administration (OSHA) reached the plant one week later, many of the immigrant workers who suffered under the company's workplace policies had already been sent to detention centers outside the state. OSHA eventually issued 15 citations for "serious violations of workplace health and safety standards" and proposed fines of $45,000.[100] OSHA's Acting Area Director for Southeastern Massachusetts said that if these serious violations were left uncorrected by MBI, employees would be exposed "to the hazards of lacerations, amputations, burns, electrocution, eye and face injuries, and to being caught in moving machine parts or struck by machinery."[101]

Forcing immigrant employees to work in dramatically unsafe working conditions was only one piece of MBI's exploitation of its workforce. To avoid paying workers the legally mandated overtime wages they were due, MBI created a shell company called Front Line Defense.[102] An employee would work a day shift at MBI and then be required to clock in and clock out as an employee of Front Line Defense for an additional evening shift. Workers were not paid overtime and not paid for the time spent waiting to clock in and clock out. In a federal class-action lawsuit filed by nearly 500 current and former MBI employees just two months after the ICE raid, workers alleged that they regularly worked 16 hour days—up to 80 hours a week—and were not paid overtime. Workers were also regularly docked pay or not paid for all hours worked.[103]

Rather than notifying and coordinating with the proper agencies to ensure the preservation of workers' rights, ICE raided the factory, arrested hundreds of workers, placed them in shackles, detained them in Fort Devens away from family and access to legal counsel, then transferred many to Texas where they were ultimately deported. The workplace abuses went on while the federal government did nothing to protect these workers.

WORKPLACE VIOLATIONS IGNORED

It is clear in the MBI case that ICE did not coordinate with the proper authorities in conducting its raid on that plant. It is also clear that ICE rarely coordinated its investigations with the Department of Labor or Department of Justice effectively so that witnesses could be identified before being detained, or so that investigations of other non-immigration-related employer violations could be pursued in a timely manner.

In other enforcement actions, ICE went far beyond failing to coordinate its investigation with other agencies—it violated its own internal guidelines by actively interfering in a labor dispute. The legacy Immigration and Naturalization Service recognized the potential risk that enforcing immigration laws in workplaces had on interfering with labor disputes in the workplace, so they issued internal guidelines under Operating Instruction 287.3a (OI) (applicable to ICE Agents under Special Agent Field Manual 33.14(h)),[104] directing agents to take certain steps before becoming involved in workplaces where their actions might interfere with:

> *the rights of employees to form, join, or assist labor organizations or to exercise their rights not to do so; to be paid minimum wage and overtime; to have safe work places; to receive compensation for work-related injuries; to be free from discrimination based on race, gender, age, national origin, religion, handicap; or to retaliate against employees for seeking to vindicate these rights.*[105]

"This is enforcement run amok."

New York Times, August 1, 2008

Raids in which ICE interferes with an ongoing labor dispute are much more likely to punish workers than to discourage employers from recruiting and employing unauthorized workers.

The Commission heard from numerous witnesses regarding the ICE propensity not only to ignore its own operating instructions, but to repeatedly enter workplaces with knowledge of an employer's egregious labor, and sometimes criminal, violations against workers, deliberately focusing its actions on the workers rather than the real culprits—the employers. This kind of workplace enforcement by ICE sends the message to workers not to assert their workplace rights. It further sends the message that the employer's violations would be ignored once immigration authorities arrived, while workers would be arrested and unable to ever receive the remedies they deserved.

Other workplace immigration enforcement programs that have also adversely impacted union elections and workers' attempts to challenge workplace violations, even when not orchestrated by employers, include audits of employer I-9 forms, use of the Social Security Administration's no-match letter system, E-Verify—a voluntary electronic employment verification system, and participation in programs like the ICE Mutual Agreement between Government and Employers (IMAGE).

GAMING THE IMMIGRATION SYSTEM: AGRIPROCESSORS, POSTVILLE, IOWA

Perhaps one of the most widely reported stories of 2008 was the case of Agriprocessors, Inc., once the nation's largest kosher slaughterhouse.

The unfolding saga of this company's demise can be viewed as a case study of how a failed immigration system fuels workplace abuses, stifles workers' ability to organize, and creates a climate of fear and trepidation amongst workers. For those looking at the interconnections of immigration issues and the workplace, Agriprocessors is the poster child for how companies often use our nation's broken immigration system to violate workers' rights and to drive down working conditions. The case of Agriprocessors also demonstrates how ICE enforcement exacerbates the employer's actions by targeting the workers who were victims of the violations rather than the employer who perpetrated them. ICE's failure to coordinate the May 12, 2008, raid at Agriprocessors with labor investigators and other government welfare agencies, even when it had clear knowledge of the egregious workplace conditions employees were working under, further illustrates the devastating impact ICE raids have on workers and their ability to assert their rights.

The examples of rampant worker abuse and mistreatment at Agriprocessors are heart-wrenching. Conditions at the company were often compared to those described in Upton Sinclair's seminal work, *The Jungle*. Stories of sexual exploitation, of exhausted children as young as 13 wielding knives on the kill floor, and of physical abuse were widely reported by news organizations.

According to the *New York Times*, "A young man said in an affidavit that he started [working] at 16, in 17-hour shifts, six days a week." The article quotes him: "I was very sad, and I felt like a slave."[106] Declarations by past Agriprocessors workers submitted to the Commission were replete with stories of women and girls being harassed at work for refusing the sexual advances of male supervisors as well as accounts of workers subjected to verbal and, at times, physical abuse. The affidavit ICE used to obtain its arrest warrants confirmed the worker accounts submitted in their statements.[107]

Supervisors reportedly called employees—mostly from Guatemala and El Salvador—names, threw meat at them and exhibited violent behavior.[108] One of the supervisors duct-taped the eyes of a worker and hit him with a meat hook.[109] The worker did not report the incident for fear that his job could be jeopardized.[110] Workers were often physically assaulted, hit, pushed and battered when supervisors did not approve of the way in which workers were moving meat or because workers were allegedly not working fast enough.[111] According to workers in the Agriproccessors plant, the supervisors constantly screamed at workers, pressuring them to work faster.[112] The work was hard and if workers asked to rest, supervisors would scream and threaten to fire them. Workers overwhelmingly reported that they felt terrorized at work and were afraid to leave. An underage worker, Elmer L., said:

> *he was clearing cow innards from the slaughter floor last Aug. 26 when a supervisor he described as a rabbi began yelling at him, then kicked him from behind. The blow caused a freshly-sharpened knife to fly up and cut his elbow. He was sent to a hospital where doctors closed the laceration with eight stitches. But he said that when he returned, his elbow still stinging . . . his supervisor ordered him back to work. The next day, as he was lifting a cow's tongue, the stitches ruptured . . . the wound bled again.*[113]

Elmer was given a bandage and forced to return to work.[114]

Wage and hour violations were also prevalent at Agriprocessors. The violations included unpaid wages for hours worked, failure to pay overtime, unlawful deduction of wages, and a frequent failure to provide workers with rest periods. To support its allegation of exploitation and harboring undocumented workers, the ICE affidavit referenced a lawsuit filed in March 2007. Twenty Agriprocessors workers filed a federal class-action lawsuit against Agriprocessors seeking unpaid wages for time spent preparing for and cleaning up after work.[115] The wage and hour violations, however, remained pervasive in the plant. One worker reported that during the five years that she worked for Agriprocessors that she worked an average of 102 hours per week but was only paid for 40 hours at a regular rate and 22 hours at an overtime rate—leaving her with 40 hours of unpaid wages.[116]

ICE further victimized workers and delayed criminalizing the actual culprits—the employers, who continued operating the plant for another six months. The ICE raid on Agriprocessors exacerbated the abuse workers had suffered there for years through ICE's unwillingness to cooperate with or inform other agencies of their impending actions—a pattern which has played out in other enforcement actions the Commission reviewed.

A RECORD OF FAILURE

In the case of Agriprocessors, ICE violated its own operating instructions by conducting the raid even after they had received notification from the United Food and Commercial Workers International Union that a Department of Labor and Iowa labor investigation was pending and that "any potential ICE action could not only have a chilling effect over the existing workforce… but… could also result in employees leaving the plant, thereby interfering with the DOL's investigation."[117] Serious issues have also been raised about a lack of coordination between the Department of Homeland Security and the respective labor agencies engaged in investigating the widespread child-labor allegations and wage and hour violations.

News reports and congressional inquiries make clear that ICE officials did not adequately inform other agencies, leaving them scrambling to find key witnesses after the raid. This fact is especially illustrated in correspondence between then Assistant Secretary of ICE, Julie Meyers, and Congressman Bruce Braley, who represents Iowa's 1st Congressional District. Responding to Meyers, Congressman Braley stated, "Your response states… 'prior to the May 12, 2008, operations at the Agriprocessors facility, ICE fully coordinated its activities with other federal agencies, including the Department of Labor (DOL).' This statement directly contradicts the response [I] received to the same letter from the Department of Labor…[where] Wage and Hour Division… said that, 'The raid occurred without the prior knowledge or participation of WHD' and that 'no advance notice was given to WHD or any other DOL agency prior to the raid.'"[118]

The labor violations were so dire that in October 2008, Agriprocessors was fined nearly $10 million in civil penalties for state wage and hour violations.[119]

AUDUBON POINTE APARTMENT COMPLEX, NEW ORLEANS, LOUISIANA

The openness with which some employers manipulate the federal agencies charged with enforcing immigration law is particularly disconcerting. In the case of the Audubon Pointe Apartment Complex, immigrant workers were owed 15 weeks of unpaid wages for cleaning the buildings in the aftermath of Hurricane Katrina. Their working conditions were egregious. They were forced to work long hours, live in crowded, moldy apartments, and were even at one point forced to find food in the garbage cans of other tenants after not being paid for weeks on end. After the workers went on strike, the employer changed the locks on their apartments and evicted them without giving them an opportunity to retrieve their belongings. The employer regularly threatened to call immigration authorities in response to the workers' demands for their pay. Just five days after a pro bono attorney sent a letter to Audubon management demanding that the workers be paid for hours worked, ICE raided the apartment complex. Agents arrived at the exact time and place that the immigrant workers were required to check in for the day, and arrested seven of the workers who had sought back pay.

The arrested workers were incarcerated in the Orleans Parish prison for several weeks. Vanessa Spinazola, an attorney with the Pro Bono Project in New Orleans, told the Commissioners that three of the workers were released on a monetary bond, two were deported to

Honduras, and one, who could not afford the bond, remained in prison at the time of the Commission hearing.[120] As has been the case with many raids conducted by ICE, none of these workers had committed crimes, and the employer was not charged with anything or held liable for its abuse of the workers.

ICE COMPOUNDS WORKER RIGHTS VIOLATIONS: FRESH DIRECT GROCERS, NEW YORK, NY

The manipulation of immigration law to chill federally protected workplace rights was also prevalent at the Fresh Direct Grocers (FDG) grocery chain in New York City. With full knowledge that approximately 900 workers employed at the internet-grocer's warehouse were scheduled to participate in a National Labor Relations Board-governed union election in just two weeks, ICE agents launched an audit of the company's I-9 forms. In the name of compliance with the audit, FDG managers proceeded to unlawfully demand that some workers produce additional work authorization documents, and used the I-9 audit as leverage to dissuade the workers from supporting the union and even falsely told workers that immigration agents were outside the workplace.

The United Food and Commercial Workers International Union (UFCW) contacted ICE to request that, in compliance with the agency's own internal guidance, its agents postpone the audit until after the labor dispute had been resolved; that request was denied. Authorized and unauthorized immigrant workers alike saw the audit as a workplace immigration enforcement tool related to the election and, fearing further investigations should they associate themselves with Fresh Direct or the union, left their employment at Fresh Direct or, in the case of those who stayed, refused to vote for the representation they had openly supported just weeks before.

ICE ENFORCEMENT SHOULD NOT BE AT THE EXPENSE OF WORKER RIGHTS

On a number of occasions, and in a number of distinct manners, ICE actions interfered with ongoing labor disputes, chilled federally-protected workplace rights, and violated internal agency guidelines.

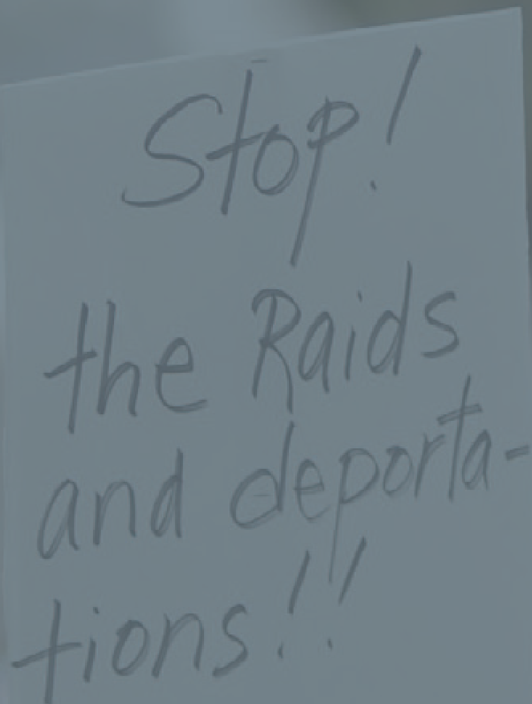
The Commission recognizes that immigration laws must be enforced. What is in dispute is the effectiveness of workplace immigration raids, their cost to taxpayers and what they have actually accomplished with regard to the Bush administration's efforts to substitute enforcement-only policies in place of a coherent immigration system.

Immigration enforcement should not come at the expense of workers' rights or subjugate workers to abusive employment practices.

ICE

A LEGAL ANALYSIS OF ICE ENFORCEMENT ACTIONS

CHAPTER FOUR



"What right did any member of our government have to totally disregard our wonderful document, the Constitution? They didn't."

Darrell Harrington,
Swift Worker, Greeley, Colo.

Photo by Brittney Bush Bollay

A full appreciation of the misconduct committed by ICE during immigration raids necessitates a basic understanding of the laws governing law enforcement agents' authority to conduct immigration investigations, but also, importantly, an individual's protections available during encounters with any law enforcement agent.

The starting point is the U.S. Constitution—the supreme law of the land which protects all persons living in the United States regardless of immigration status. This chapter will explore the constitutional protections afforded to persons affected by ICE raids and also the legal authority regarding ICE agent conduct and internal agency guidelines designed to hold agents to a professional standard, all within the context of the workplace raids, home raids and local law enforcement programs the Commission considered throughout the five hearings.

To provide a clearer picture of the legal issues that have been raised during ICE raids, the Commission sought the input of Michael Wishnie, one of this country's premier constitutional experts. A full copy of his analysis is included in the report appendix, but excerpts can be found in yellow throughout this chapter.

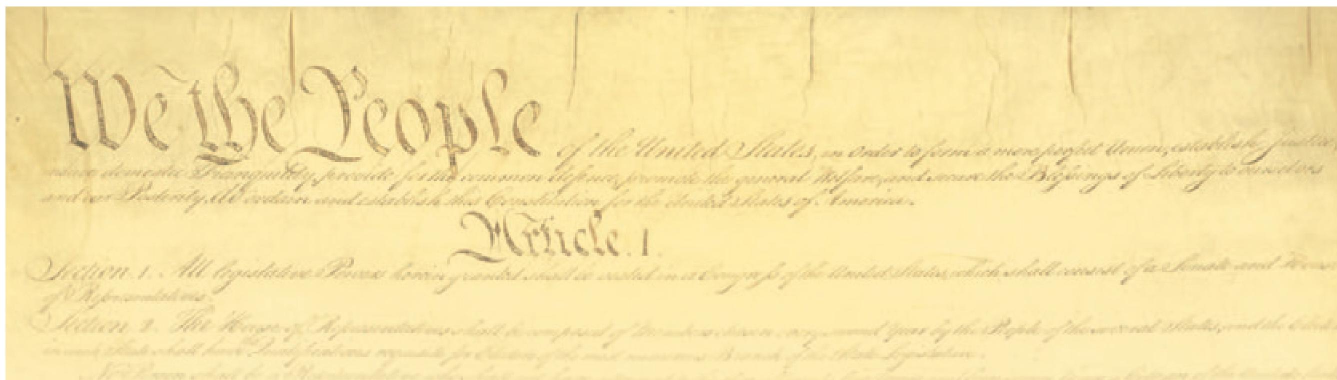
PROTECTION AGAINST UNLAWFUL SEARCHES AND SEIZURES

Darrell Harrington and other workers who were victims of the Swift & Co. immigration raid on December 12, 2006, all told nearly identical stories about their experiences. Armed ICE agents stormed the plants, sealed exits and prohibited workers from leaving enclosed areas. Many workers, including U.S. citizens and lawful residents, were handcuffed and held for hours without food, water, or access to the restrooms.

The Immigration and Nationality Act ("INA" or "the Act") authorizes ICE officers to stop and question individuals "only for the purpose of determining whether he or she has a right to remain in the U.S."[121] Jeanne Butterfield, executive director of the American Immigration Lawyers' Association (AILA), testified to the Commission during its first hearing in Washington, D.C.:

> *Section 287 [of the INA] outlines and defines the powers of immigration officers . . . . [such as] the right to interrogate, [and] the right to make arrests for felonies which have been committed if there's a reason to believe the person is guilty and if the likelihood is that the person will or can escape before a warrant can be obtained.*[122]

The Fourth Amendment of the U.S. Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." This limits the manner in which ICE may exercise its authority even under the INA.



The Fourth Amendment's Protection Against Unreasonable Searches & Seizures

The Fourth Amendment[123] protection against "unreasonable" searches and seizures is probably the constitutional provision most often implicated in immigration raids. The scope of its protection depends greatly on the factual circumstances of the encounter between the ICE agent(s) and the suspected immigrant, but no matter the situation, the Fourth Amendment constrains ICE raids in a number of significant ways.

The protection against unreasonable searches and seizures remains robust in any interaction between a private individual and law enforcement officials—including during immigration raids. The crux of the Fourth Amendment's protections during an immigration raid in a workplace, on the street, or anywhere else that is outside of a private home, is that in order to restrict an individual's freedom of movement to any degree unless the individual consents to the interaction, ICE agents must have some modicum of reasonable, individualized suspicion that the person they wish to "seize" is not just a foreign national, but also in this country without legal authorization. ICE agents are empowered by statute to make an arrest pursuant to warrant,[124] and they may also make "warrantless" arrests—but only subject to the requirements of the Fourth Amendment and to those additional obligations imposed by statute or regulation.

Fourth Amendment jurisprudence distinguishes two kinds of "seizures": a full-blown arrest and a brief "investigatory stop." Because an arrest is more invasive than a temporary stop, evidence necessary for the former is greater than for the latter. Thus, as in criminal law, to arrest a suspected unauthorized immigrant requires "probable cause"[125] —defined roughly as a situation whereby the agents have enough reliable information that a reasonably prudent person would believe that the suspect has violated an immigration law.[126] Importantly, this standard must be met before the arrest takes place; ***if an ICE agent makes an arrest without sufficient probable cause, that arrest is constitutionally invalid no matter what evidence of illegality the agent discovers after the fact.***[127] Further, even if ICE agents have probable

cause for the arrest of a suspected unauthorized immigrant, federal immigration law imposes an additional requirement on the agents before they make a warrantless arrest: they must have probable cause that the person "is likely to escape before a warrant can be obtained for his arrest."[128] A warrantless arrest not meeting both probable cause requirements would be ultra vires and, as such, unconstitutional.

The Fourth Amendment bars ICE agents from making even a temporary stop of a particular person without an individualized basis and what is termed "reasonable suspicion." The Supreme Court has recognized a type of "seizure" that, while not involving a formal arrest, requires "reasonable suspicion." Mere questioning about one's identity or a request to produce identification "does not, by itself, constitute a Fourth Amendment seizure."[129] However, "if, in view of all of the circumstances surrounding the incident, ***a reasonable person would have believed that he was not free to leave," then that person has "been seized within the meaning of the Fourth Amendment."***[130]

Importantly, there is no requirement that individuals actually ask or attempt to leave to be considered "seized": "[e]xamples of circumstances that might indicate a seizure, even where the person did not attempt to leave," according to the seminal Supreme Court case regarding immigration enforcement in the workplace, *INS v. Delgado*, include "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person…, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled."[131]

In order to justify seizing anyone for detentive interrogation, an ICE agent must be aware of "specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion"[132] that the individual is a foreign national present in the country without authorization. As with a formal arrest, the agent must have reasonable suspicion of unlawful immigration status before making a seizure.[133] Determining the presence of reasonable suspicion is a fact-intensive inquiry, making case law particularly important in demarcating what is and is not constitutional. In 1975, the Supreme Court explained that, while race alone is not enough to constitute reasonable suspicion, "Mexican appearance is a relevant factor."[134] However, given demographic changes since then—Latinos are now the nation's largest minority group—race is arguably no longer a proper factor in any reasonable suspicion analysis.[135]

Particularly relevant to the issue of immigration raids is the requirement that when ICE agents detain a group of people—be it a group of five or 500—the Fourth Amendment requires that the agents have articulable, "objective facts providing [them] with a reasonable suspicion that each questioned person, so detained, is an alien illegally in this country."[136] The nation's constitutional tradition has long rejected "guilt by association" as a legitimate basis for law enforcement. Thus, even when immigration agents have reasonable suspicion that *some* of the individuals within the group are unlawfully present aliens, seizing everyone would constitute a violation of the Fourth Amendment rights of all those for whom they lack reasonable suspicion.[137]

UNLAWFUL WORKPLACE ACTIONS

According to testimony presented to the Commission about workplace raids, ICE possessed information about a handful of workers who were suspected of unlawful presence in the U.S. and executed warrants only for those workers.

Under the Bush administration's enforcement approach, however, ICE agents used the individual warrants and administrative warrants as a basis to question and in most cases detain every single individual in the workplace without individualized reasonable suspicion of most workers.

During the raid at Micro Solutions Enterprises (MSE) on February 7, 2008, in Van Nuys, California, ICE had eight criminal arrest warrants when it raided the plant. Instead of questioning each of the eight workers individually to determine if the person had the right to remain in the U.S., ICE detained all 800 workers at the facility.[138]

During the March 6, 2007, raid of Michael Bianco Inc. (MBI) in Massachusetts, ICE had arrest warrants for five individuals—the owner, three managers, and an individual that provided false documents to workers—but no arrest warrants for individual workers suspected of being in the country unlawfully.

Instead of simply executing the five warrants, approximately 500 ICE agents swarmed MBI, blocked exits and detained 500 workers without cause and without individual reasonable suspicion. All of the workers were prohibited from leaving the worksite and held until every worker was questioned about their immigration status. Like the raids at the Swift Company plants just four months before, workers were detained for hours.

According to Reverend Mark Fallon, who worked with the raid victims and their families immediately following the MBI raids, "while processing was going on, [workers] did not have access to meds, to their own lunch, to food and water."[139] Moreover, not a single ICE agent was able to communicate in the language of many of the affected workers. "[H]alf of the detainees and the majority of women spoke Quiche Mayan as their first language," Fallon testified to the Commission at the hearing in Boston that ICE questioned workers only in the Spanish and Portuguese languages.[140] Given the inability of ICE agents to effectively communicate with the workers, it is highly unlikely that ICE had individualized reasonable suspicion or probable cause to arrest and detain all 500 workers at the MBI factory.

Commission testimony clearly demonstrated a pattern of ICE conduct in which workers were not free to leave until they had satisfied the ICE agents, regardless of their responses to ICE inquiries or affirmative statements regarding their right to be in the U.S. Still others were not free to leave even after proving their lawful presence to ICE's satisfaction.

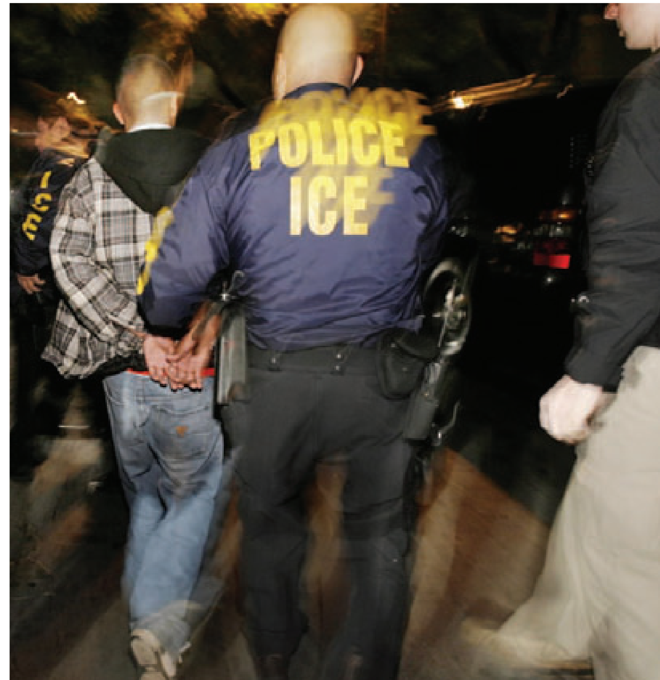
Swift Company worker, Darrell Harrington from Greeley, Colo., expressed that "[ICE agents] held me against my will, they herded us down to the cafeteria like a bunch of cattle."[141] By most accounts, Swift workers were detained from as early as 6:00 a.m. until the mid-to-late afternoon on December 12, 2006, without any cause whatsoever.[142] Pasqual Talamantes from Grand Island,

Neb., was held for six hours without food or water.[143] Melissa Broekemeier from the Swift Company plant in Marshalltown, Iowa, said she and her co-workers "were treated like criminals" and "were not free to leave," even though they were native-born U.S. citizens.[144]

Commission witnesses repeatedly described armed agents, many of them with their hands on their gun holsters, and every single door inside the plant blocked by ICE agents. Not only were workers not free to leave, but workers who tried to even walk to different parts of the same room were told by ICE agents to go back and sit down. Even after ICE agents had finished questioning the workers and confirmed that they were U.S. citizens, the majority of workers at the Swift plants were detained further.

Rather than follow the rule of the American justice system that an individual is innocent until proven guilty, ICE agents detained workers until they could prove their identities to the agents' satisfaction. Furthermore, ICE agents continued to detain workers unlawfully even after they had demonstrated their lawful presence in the country. From the testimony provided to the Commission, ICE's consistent lack of articulable facts or individualized suspicion that anyone had conducted unlawful activity to justify detaining the workers, constituted a clear violation of those workers' Fourth Amendment rights.

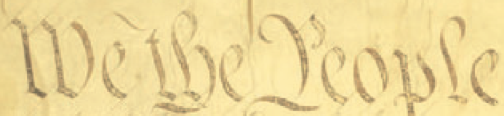
Even if ICE insists that its policies do not condone such unlawful behavior, their practices proved otherwise, and witness after witness confirmed this.[145]



UNLAWFUL ENTRY OF HOMES

Though workplace raids were the catalyst to the formation of the Commission, testimony from witnesses throughout the country soon revealed that the aftermath of some workplace raids led to raids inside homes, often infiltrating entire communities.

Home raids, like workplaces, are subject to Fourth Amendment constitutional limitations. Unlike workplaces, however, the Constitution offers special privacy protections against home incursions, since they embody the most sacred individual privacy.



Entry of the Home

In regards to enforcement activity at private homes, the Fourth Amendment requires that—absent exigent circumstances generally inapplicable in immigration raids—in order to enter a home, ICE agents must have either a warrant signed by a neutral magistrate or the consent of the home's occupants.[146] As a factual matter, a minority of the arrests effectuated by ICE are pursuant to judicially-issued warrants. Instead, what ICE agents generally carry in "fugitive operations" are "warrants of removal." Although these are ostensibly "warrants," they are not the kind contemplated by the Fourth Amendment; instead, they are purely administrative in nature, which ICE, pursuant to regulation,[147] literally writes for itself. The regulations governing warrants of removal do not require probable cause, nor do they contemplate any role for a neutral and detached magistrate; therefore, as ICE itself acknowledges, these administrative warrants do not authorize the entry of dwellings, even if the agents know the individual is inside a particular home.[148]

Therefore, in making arrests in homes, ICE agents must rely on the voluntary and *affirmative* consent of an adult in control of the premises. Mere failure to object to entry does not constitute consent.[149] Nor is consent considered voluntary if agents obtain it through coercion or threats—be they expressed or implied—or through a false claim of authority to enter (i.e., by claiming or implying that an administrative warrant authorizes entry).[150] And although agents are not required to inform occupants that they have the right to refuse entry, failure to do so is a factor in determining voluntariness of the consent,[151] as is the number of agents present; whether they are conspicuously armed; their tone of voice and language used; and the time of day.[152] In addition to evaluating the behavior of ICE agents, in determining whether consent to enter was properly obtained, courts will also consider characteristics of the individual alleged to have given consent. Evidence of language barriers, and even cultural differences weigh against any ICE claim that voluntary consent exists.[153] Finally, consent must be obtained from an individual that the ICE agents reasonably believe has the authority to give it.[154]

Even in those rare instances that ICE agents do have an arrest warrant that complies with the Fourth Amendment,[155] they do not automatically have the right to enter a home without consent; instead, the warrant must list the specific address and explicitly authorize entry therein; moreover, the agents must have a reasonable belief that the individual is actually present.[156] Entry without consent or an arrest warrant are clear violations of the Constitution's Fourth Amendment.

Though the law is clear regarding ICE agent's limited authority to enter homes, testimony revealed to the Commission that ICE follows a pattern and practice of entering homes without warrants or individual consent, contrary to the Constitution's mandates. U.S.-born high school senior Justeen Mancha described to the Commission in Atlanta, Ga., how ICE agents had broken into her home.

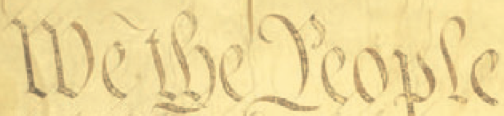
Mancha was in the restroom getting ready for school when she heard noises coming from her living room. When she came out of the restroom, seven to eight ICE agents, without a warrant and without notice of entry into Mancha's home, confronted her and demanded she tell them the location of her mother, who is a U.S. citizen. With the ICE agents' hands on their guns and telling her they were in search of "Mexicans—illegals," Mancha was speechless, traumatized, and has since had trouble trusting law enforcement figures in her community.[157]

The Commission heard similar testimony about ICE raids in the communities of New Haven and Springfield, Conn. Mayor John DeStefano Jr. of New Haven painted a troubling picture to the Commission of ICE agents entering homes, removing mothers carrying their babies out of their homes, removing some people from right out of the shower and others who were sleeping in their beds. The agents entered homes with guns drawn as if apprehending wanted murderers rather than potential administrative immigration law violators. And in all residences where ICE entered the homes, "officers did not show any warrants before entering" nor did they "request permission," but rather "pushed their way in."[158] The mayor also shared with the Commissioners an e-mail communication from one ICE agent to another requesting participation in the raids by saying "we have 18 addresses, so it should be a fun time, let me know if you guys can play."[159]

UNLAWFUL RACIAL PROFILING DURING RAIDS AND ENFORCEMENT OF SECTION 287(G) AGREEMENTS

Another troubling practice utilized by ICE agents during investigative activities involves ICE's reliance on race and ethnicity in singling out workers or residents during raids.

This was especially apparent with regard to ICE's 287(g) programs, whereby ICE grants state and local law enforcement officers with the authority to enforce federal immigration laws. Immigration agents undoubtedly have the authority to question individuals regarding their immigration status, but in the absence of individual consent to the questioning, the Fourth[160] and Fifth[161] Amendments prohibit the use of race or ethnicity alone to muster the reasonable suspicion or probable cause needed to temporarily seize someone for questioning or to arrest someone.



The Fifth Amendment's Due Process Protections

"Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments."[162] Due process has both a procedural and substantive component.

First, the Due Process Clause of the Fifth Amendment[163] contains the same promise of equal protection of the laws as to the federal government that the Fourteenth Amendment[164] provides as to state and local governments. Therefore, racial profiling or otherwise targeting individuals for interrogation and/or arrest during an immigration raid solely or predominately because of their race constitutes a violation of their due process rights.[165]

The Fifth Amendment also prohibits law enforcement officials from coercing suspects or detainees into making statements that are not knowing and voluntary. Misinforming suspected or known immigrants about their procedural rights,[166] such as by telling them that they must sign documents that they do not understand or that have not been translated into a language they can read;[167] ignoring or refusing requests to speak with an attorney;[168] or by subjecting them to prolonged interrogation,[169] all constitute due process violations. In regards to custodial interrogation, if law enforcement agents are seeking information to be used in a criminal proceeding, they must advise subjects of the interrogation of their *Miranda* rights and stop the interrogation the instant the person requests an attorney to be present—no matter if the person is a criminal suspect, witness, or merely a source of information.[170] If the person executes a waiver of her *Miranda* rights, agents nevertheless must ensure that the waiver is both knowing and intelligent; again, this means that, at a minimum, agents must explain to the person her rights in a language that she understands.[171]

During workplaces raids, ICE routinely divided workers by national origin or citizenship status. For example, an ICE agent would announce that U.S. citizens or residents should stand on one side, and everyone else on another, or Puerto Ricans on one side, or any other number of arbitrary categories developed through ICE's investigations.

These country-specific, immigration-specific questions were apparently designed to bypass the individualized determinations and reasonable basis necessary for ICE agents to comply with the Constitution. In reality these categories forced people to declare their national origin and ICE would subsequently treat people differently based on where they grouped themselves. Individuals

who refused to participate in the process, or who did not consent to the process, were presumed by ICE to be unlawfully present in the country, in essence limiting workers' opportunity to withhold consent from interacting with the agents. Instead, the workers were forced to participate and follow instructions. These tactics violated the individuals' civil liberties and Constitutional protections.

The execution of 287(g) agreements between ICE and local law enforcement agencies involved the deceptive justifications for racial profiling practices in conflict with the Fourth and Fourteenth Amendments of the Constitution and other federal statutes in the name of immigration enforcement.[172]

Under 287(g), police officers may question and detain individuals on immigration violations only incident to a lawful arrest during the course of the officers' normal duties.[173] Testimony at the hearings in Atlanta, Ga., and in Los Angeles, Calif., revealed however that 287(g) agreements and anti-immigrant rhetoric has resulted in Latinos being targeted by law enforcement for simply "LWL: Living While Latino."[174]

According to a national survey of Latinos conducted by the Pew Hispanic Center, "one in ten Latino adults—U.S. citizens and immigrants alike—reported that in the past year the police or other authorities have stopped them to ask about their immigration status."[175] The execution of 287(g) agreements has only further validated this unfounded behavior by law enforcement agents. Stephen Fotopulous, policy director with the Tennessee Immigrant and Refugee Rights Coalition, told the Commission about a series of trailer park raids in Murray County in Tennessee. Fotoplous explained that the Murray County Sheriff under the pretext of executing a criminal warrant, conducted a series of five raids and detained more than 40 people, including U.S. citizens. He testified, "The sheriff entered homes in Latino communities without even reasonable suspicion that the residents were unlawfully present in the United States and definitely not in the course of the officers' normal duties."[176] Testimony also uncovered an absence of oversight by ICE over local law enforcement or their actions.[177]

One of the most notorious examples of Fifth and Fourteenth Amendment due process violations has occurred in Maricopa County, Arizona, under the direction of Sheriff Joe Arpaio. His abuse of the powers granted to local law enforcement by the 287(g) program has resulted in widespread racial profiling.

The Mexican American Legal Defense and Education Fund (MALDEF) has been working with the communities targeted by Sheriff Arpaio's actions to file a lawsuit[178] against the Sheriff. MALDEF reported to the Commission that the Sheriff and his officers have reportedly detained and arrested individuals perceived to be Latino without reasonable suspicion or probable cause that the individuals have violated any laws,[179] including immigration or criminal laws. Sheriff Arpaio and his deputies also utilize routine traffic stops solely as a pretext to question Latinos about their immigration status.[180] All of these actions conflict with the provisions of 287(g) that prohibit local police from "randomly ask[ing] for a person's immigration status or conducting immigration raids, let alone offend the Constitutional protections of the Sheriff's targets."[181]

At the Los Angeles hearing, the Commission heard heartbreaking testimony from the brother of a United States citizen who was unlawfully and erroneously deported to Mexico by local law enforcement agents acting under the authority of a 287(g) agreement.

Peter Guzman, a U.S. citizen born and raised in Los Angeles County and severely mentally disabled, was unlawfully deported to Mexico despite the inability of ICE agents and local law enforcement to properly assess Mr. Guzman's citizenship status.

According to Ahilan Arulanantham, Director of Immigrants Rights and National Security, with the ACLU—Southern California—"racial profiling had much to do with the manner in which the local custody assistants assessed whether or not Mr. Guzman was a U.S. citizen. In fact, Mr. Guzman had a previous criminal record that clearly indicated he was a U.S. citizen, yet he was questioned by local officers until he gave the officers the alleged response that he was 'Mexican' and based on this statement, Mr. Guzman was unlawfully deported."[182] Mr. Guzman lived homeless in Mexico for several months until he was able to find his way back to the U.S./Mexico border and was eventually returned to the U.S. by ICE.[183]

FAILURE TO PROVIDE PROCEDURAL DUE PROCESS PROTECTIONS

The Fifth Amendment guarantees procedural due process to all persons. ICE practices during workplace raids denied due process to workers. ICE's unconstitutional practices included: denial of the right to counsel through transfers to distant detention centers far from counsel and families, denial of the right to counsel through prohibition of telephone calls, and denial of the right to a hearing through the coercion of workers into signing agreements for so-called "voluntary departure" or "stipulated removals."[184]

After a person is detained and placed in formal proceedings, ICE agents are required by law to: (1) advise the person of the reasons for the arrest; (2) advise of the right to be represented at no expense to the government; (3) provide a list of the available free legal organizations and attorneys that are local in the district where the hearing will be held; and (4) advise that any statement made may be used against her in a subsequent proceeding.[185] Yet, in many cases, detained workers were not allowed to talk to attorneys and most detainees did not understand their rights.

After the MBI raid in New Bedford, Mass., more than 200 of the detained workers were transferred by airplane to a detention facility in Texas. They were not allowed to call attorneys and were interrogated for hours without lawyers. According to John Wilshire Carrerra, an attorney with Greater Boston Legal Services, "from the moment they were picked up at the factory, until they were put on the planes, they were constantly being asked questions. . . . they weren't allowed to talk to their attorney to prepare . . . . They were asked questions over and over again" as they were being processed.[186] "Workers were not advised of their rights or [given] a list of legal assistance as required by the regulations."[187]

Similarly, after the Swift raid, hundreds of detained workers were transferred to Camp Dodge, a military base in Iowa, from plants in Grand Island, Neb.; Greely, Colo.; and Marshalltown, Iowa.[188] Lawyers were not allowed into the military base to visit detainees.

According to Sonia Parras Konrad, an attorney with the ASISTA Immigration Technical Assistance Project (ASISTA), "the legal community was denied access to the military facility, even to talk to our own clients" after the Swift raids.[189]

Not only did ICE agents refuse attorneys access to detainees, but in some cases ICE gave false information to lawyers, assuring lawyers that they would be allowed to see their clients once ICE agents had completed processing, only to find out later that detainees were actually being transferred to other out of state facilities without notifying attorneys.[190]

After the February 7, 2008, MSE raid in Van Nuys, Calif., ICE similarly prevented workers from being represented by lawyers. Ahilan Arulanantham, an attorney with the ACLU-SC, told the Commission: "During post-arrest interviews at ICE offices, ICE officers stopped attorneys from representing workers and refused attorneys from representing individuals in post-arrest interviews with ICE"[191] which made workers feel compelled to answer post-arrest questions. ICE did not allow attorneys to be present until after the ACLU-SC, the National Immigration Law Center and the National Lawyers Guild filed a lawsuit challenging ICE's denial of access to lawyers in federal court in Los Angeles, which ICE settled out of court.

Unlike civil immigration charges, the Sixth Amendment of the U.S. constitution guarantees to individuals charged with a crime competent legal counsel at the government's expense.[192] Yet even though workers were charged with aggravated identity theft—a much more serious charge normally reserved for "the kind of predator who steals identities to empty bank accounts"[193]—after the raid at Agriprocessors, Inc., workers were not afforded with appropriate legal counsel regarding the charges they were facing and potential consequences in their criminal proceedings. Professor Erik Camayd, an interpreter present during many of the criminal proceedings wrote in an essay:

> *His case was complicated; it needed research in immigration law, a change in the Plea Agreement, and above all, more time. There were other similar cases in court that week. I remember reading that immigration lawyers were alarmed that the detainees were being rushed into a plea without adequate consultation on the immigration consequences. Even the criminal defense attorneys had limited opportunity to meet with clients. . . . In addition, criminal attorneys are not familiar with immigration work and vice versa, but had to make do since immigration lawyers were denied access to these 'criminal' proceedings.*[194]

According to legal experts, many of the workers charged criminally after the Agriprocessors raid were "in fact not guilty" of the crimes of aggravated identity theft and Social Security fraud.[195] Professor Camayd stated:

> *'Knowingly' and 'intent' are necessary elements of the charges, but most of the clients we interviewed did not even know what a Social Security number was or what purpose it served. This worker simply had papers filled out for him at the plant, since he could not read or write Spanish, let alone English.*[196]

In employing this aggressive legal strategy, hundreds of cases were rammed through the system, with defendants hustled through mass hearings. A single lawyer often represented as many as 17 clients and had only about a half hour to meet with a client.

In addition to the sheer size and speed with which cases were conducted, legal experts also raised serious questions about the close coordination between the federal court in Iowa and the prosecutors who brought the charges, including the use of scripts, which critics described as a means to derive quick guilty pleas.

Rockne Cole, an attorney who represented workers at Agriprocessors before resigning after he became convinced that the hearings had been designed to produce guilty pleas, sent a letter to Congress. He wrote, "What I found most astonishing is that apparently Chief Judge Read (who was presiding over the Apriprocessors cases) had already ratified these deals prior to one lawyer even talking to his or her client."[197]

Throughout the immigration raids across the country, ICE's respect for detainee rights was often conditioned upon the ability of someone to file a lawsuit and pressure the government to settle and recognize those preexisting rights.

Another procedural due process issue that arose involved ICE's unwillingness to provide qualified interpreters to detained workers, limiting their understanding of the charges filed against them or their preparation of potential defenses to the charges. This was the case after the Agriprocessors raid, where indigenous workers—natives of Guatemala—were not afforded qualified interpreters who spoke their native language. Instead, ICE provided Spanish language interpretation, which according to interpreter Professor Camayd, many of the workers did not read or speak.[198]

The same situation occurred after and during the MBI raid where ICE failed to provide interpreters to the workers, many of whom were Quiche speaking and did not speak Spanish.[199] This resulted in workers unknowingly agreeing to stipulated orders of removal.

Under the Immigration and Nationality Act, a person can agree to a stipulated order of removal, otherwise a deportation that constitutes a "conclusive determination" of removability. In stipulating to the order of removal, the person waives any right to a hearing before a judge. Like with consent, a waiver of rights must be knowing and voluntary to satisfy Fifth Amendment protections. In these raids, ICE engaged in coercive tactics, such as limiting access to interpreters and defense attorneys as well as providing false information, resulting in hundreds of workers signing stipulated orders of removal without fully understanding consequences.

The workers arrested in the MBI raid, for example, told lawyers that they did not understand their rights, and they wanted to remain in the U.S. to litigate their immigration cases. ICE agents told workers, however, that they would be detained for a long time and would never be able to leave.[200] After being transferred to Texas with limited access to their attorneys, the workers felt they had no choice but to accept the stipulated orders of removal or remain detained indefinitely.[201]

VIOLATIONS OF INTERNAL AGENCY GUIDELINES

Violations of ICE's internal agency guidelines can also constitute a violation of the Fifth Amendment's due process protections,[202] and Commission testimony clearly demonstrates that many important ICE policies were not implemented in practice.[203]

For example, ICE is required to provide notice to state and local government and law enforcement agencies of enforcement actions for purposes of security such as traffic control and enforcing state or local laws.[204] Testimony from state and local leaders revealed however that before a number of raids, ICE never notified the appropriate agencies of the impending action.[205]According to former Iowa Governor Tom Vilsack, who currently serves as Secretary of Agriculture, ICE provided inadequate and little notice to city, county, and state officials or to the National Guard when the Swift raid was conducted in Iowa.[206] Vilsack, who was the governor of Iowa at the time of the 2006 Swift raids, was informed by National Guard officials that they received "little notice that Camp Dodge was going to be turned into a detention center" despite agency guidelines.[207]

Another agency guideline requires that ICE communicate with and provide accurate information to members of the public or friends and family seeking information about detainees or ongoing raids. Again, ICE failed in both of those duties. During the workplace raids, ICE publicized a telephone number where family members could call to obtain information about detained friends and family, but in many of the raids, the publicized phone number did not function. Sister Christine Feagan, director of the Hispanic Ministry at St. Mary's Church, explained at the hearing in Des Moines, Iowa, that after the raid at the Iowa Swift plant:

> *[n]o one was allowed to go in and no information was coming out. . . . [The ICE agents] simply handed me a sheet of paper with a phone number to call, an 800 number, for information on family members, although, the number, obviously, would not be up and running for some time.*[208]

The Commission heard similar accounts in Los Angeles, following the raid of the Micro Solutions printer cartridge factory in Van Nuys, California.[209] Furthermore, once transferred out of state, it was nearly impossible for family members to learn the whereabouts of their loved ones.[210]

Based on the accounts of the ICE raids presented before the Commission, as well as constitutional provisions and Supreme Court decisions, it is clear ICE violated constitutional and other legal standards.

CONCLUSION

COMMISSION RECOMMENDATIONS FOR EFFECTIVE ENFORCEMENT WITHIN A WORKABLE IMMIGRATION SYSTEM

"We are a nation of laws and we need to make sure that all people are treated with dignity and fairness."

Timothy P. Murray,
Massachusetts Lieutenant Governor

Photo by U.S. Dept. of Homeland Security.

As Lieutenant Governor Timothy P. Murray of Massachusetts said to the Commission: "We are a nation of laws and we need to make sure that all people are treated with dignity and fairness."[211]

Testimony taken by the Commission across the country show repeated incidents where ICE agents have acted with evident disregard of our nation's laws and Constitution. ICE has repeatedly defied Constitutional protections, including the right to be free from unlawful searches and seizures, the right to speak with an attorney, and protections from discrimination. An individual's immigration status or color of skin does not justify bending the fundamentals of our nation's Constitution and our core values. And as the civil liberties of immigrants come under attack, this becomes as Janice Mathis, general counsel from Rainbow Push and Vice President of the Citizen Education Fund so eloquently stated, "a civil rights fight."[212]

Law enforcement agents must consistently uphold the rights of individuals at every juncture of enforcement. Although ICE issued guidelines and policies for its agents and deputized officers under the 287(g) program, the Commission heard repeated stories of ICE agents acting with unchecked authority. Many of their actions went beyond the scope of ICE's guidelines and policies. For example, in emails sent before a series of home raids in New Haven, Conn., ICE agents described the raids as "a fun time" and invited the other agents to "come play."[213] Breaking into someone's home, waking them from their sleep, and tearing them from their family, to interrogate, detain, and possibly deport is no game. Limiting a worker's freedoms, subjecting them to prolonged detention without cause, and verbal and physical abuse in their workplace is no laughing matter. ICE and any other law enforcement agents mandated to enforce immigration laws must diligently comply with Constitutional, statutory and regulatory provisions to protect the rights of all individuals.

Raids in homes, in neighborhoods, and at work have led communities, both documented and undocumented, to fear for their safety and shy away from reporting crimes to police.

For many, gone is a sense of privacy and freedom in their homes and the motivation to labor for the development of our nation's economy.

Senator John Kerry summarized the issue to the Commission by stating that "we have to enforce the law… but… we can do it with the values of our country on display, in a way that meets a much, much higher standard."[214]

COMMISSION RECOMMENDATIONS FOR REFORMING IMMIGRATION ENFORCEMENT ACTIONS

The Bush administration's heavy-handed enforcement activity has devastated workers, families, and communities. Workplace raids, "fugitive" sweeps, and newly-deputized local police departments have ensnared thousands of citizens and immigrants, many in our country legally. We believe that the Obama administration has set an important tone for reform through his comments and appointments, and we look forward to working closely with the administration to implement the recommendations below:

Execute ICE Enforcement strategy as laid out by DHS Secretary Janet Napolitano consistent with the following principals:

- Target enforcement at criminal employers who abuse the immigration system and exploit an undocumented workforce;
- Coordinate enforcement with DOL to protect workers and preserve their rights before any possible immigration detention or processing;
- Treat workers and their families with respect so they will be more inclined to assist in the prosecution of criminal employers, and to build trust between law enforcement and the community.

To the extent that ICE continues to target immigrants at their workplaces, it should do so only after having identified these workers as being in violation of the law and having gone through all procedures to obtain an arrest warrant. Such arrests should, in turn, be conducted so as to minimize the disruption to the worksite. It should not be necessary for ICE to show up at a worksite, home, neighborhood, or other location en masse and fully armed.

More vigorous oversight over ICE's activities.

- In addition to its regular oversight role, Congress should create a new Ombudsman office for ICE and provide adequate funding for it to receive and investigate reports of abusive procedures. The Ombudsman must have the authority to punish DHS agents and issue recommendations upon finding abusive practices;
- DHS should cease entering into any more 287(g) agreements with local and state police departments until it is able to fully evaluate the programs. Specific agreements that have yielded significant complaints should be suspended immediately until the evaluation is complete and a course of action is decided upon.

Arrests of U.S. citizens, deprivation of prescription drugs and other medical care, and separation of newborns from nursing mothers are just some of the abuses that have taken place during the ICE enforcement surge. ICE needs strong oversight to hold its agents accountable for such misconduct. While Congress can supervise the agency through its regular oversight hearings, it should also set up more consistent mechanisms to monitor ICE conduct. An Ombudsman would offer affected communities a place to submit reports of misconduct. The Ombudsman should have the authority to fully

investigate such reports and to hold accountable those individuals and offices responsible.

In the spirit of accountability, the Commission also recommends DHS conduct a comprehensive review of 287(g) agreements with local and state police agencies, their relative effectiveness given the stated goals, the capacity of ICE Special Agents in Charge to oversee the agreements, and their impact on police behavior toward immigrant communities especially without adequate ICE supervision. Given the findings of the review, ICE should restructure any partnerships it enters into with local law enforcement so that expectations and lines are drawn, proper roles established and adequate authority for the ICE Ombudsman established to similarly investigate and discipline local law enforcement officials acting under 287(g) authority.

Vigorous enforcement of labor law

- The Department of Labor should vigorously and consistently enforce labor laws to provide a disincentive for employers to recruit undocumented workers;
- DHS and DOL should establish procedures to ensure that ICE operations will not interfere with DOL investigations of workplace abuses, and will cease if interference is possible;
- DHS, Executive Office of Immigration Review (EOIR), and DOL should coordinate to provide remedies and immigration benefits to eligible detainees including stays of removal for detainees who could be witnesses, and work authorization for any witnesses, even if they may have already applied for such relief or other forms of relief (such as S, T, or U visas). Workers should feel safe and their privacy secure to report workplace violations without immigration repercussions.

Workplace enforcement, whether immigration- or labor -related, should focus on abusive employers, rather than the workers who are victims of employer exploitation. The most important way to ensure that workers' rights are protected at the workplace and during investigations, however, is to grant workers legal immigration status. DHS should readily make available to any such workers who can help with labor abuse investigations any applicable form of immigration relief, which could include temporary visas such as the U visa for crime victims, the T visa for trafficking victims, humanitarian parole, or deferred action.

Coordinated humanitarian efforts

- Congress should provide funding for community organizations (including schools, faith communities, and not-for-profit agencies) to coordinate social services for families affected by ICE enforcement activity;
- EOIR should require that immigration judges use their discretion in making custody, bond, and relief decisions, and grant such relief unless the individual poses any significant threat to the community or public safety.

ICE enforcement activities affect more than just the targeted immigrants themselves. Tens of thousands of children have been torn from a parent who in many cases is the sole breadwinner for the entire family. DHS should [address] the needs of the families and communities devastated by immigration raids by working with local community organizations to ensure that family members of arrestees get necessary food, shelter, medical attention, and other assistance. Institutions such as schools, churches, health clinics, social service agencies, and local government offices can provide a base for coordinated responses to those needs.

Immigration courts also have an important role in keeping families together. Immigration judges should reassert their discretion (when legally possible) to release detainees who pose no threat to the community and no flight risk, especially when alternative decisions can adversely impact the detainee's spouse or children.

Legal oversight and reforms

- DHS should establish a system to screen immigrant subjects of enforcement activity for forms of relief (including U visas) for which they may be eligible and also make liberal use of deferrals and parole;
- Immigrant respondents should be held in the state where they reside for a minimum period so that they have time to consult with family members and immigration counsel before being transferred to an out-of-state detention facility;
- Congress should bar immigration courts from accepting any stipulated order or voluntary departure agreement unless
    - *The immigrant respondent has had meaningful access to information in her own language, including translated written materials and interpretation services;*
    - *The immigrant respondent has had a real opportunity to seek and consult with immigration counsel.*

In its rush to boost its removal numbers, it appears that the Bush administration put expediency above justice and fairness. Immigrant detainees with pending family petitions, viable asylum claims, or other potential forms of relief have been jammed through immigration court without a fair opportunity to fully explore their options. In many cases, detainees do not even understand what is happening in court proceedings due to language barriers. The Postville raid showed the lengths to which DHS has gone: federal prosecutors used the criminal court system and the dubious threat of two-year prison sentences to pressure detainees into agreeing to five-month criminal sentences and removal.

DHS must also ensure that any agreements it reaches with detainees are fairly obtained, meaning at the minimum that the detainees fully understand the proceedings they are going through and the options before them. To ensure fairness, EOIR should bar acceptance of any stipulated order, voluntary departure, or other agreement unless the detainees have access to the language resources that they need to understand the proceedings, and if available or requested, the legal counsel they need to thoroughly review their cases and to comprehend the choices they must make and the consequences of those choices.

Comprehensive and pragmatic solutions to overhaul immigration system

The current system is broken and needs to be fixed, and the problem of uncontrolled immigration cannot be resolved piecemeal. The only way to resolve the problem is through comprehensive reform that includes the following elements:

Earned Legalization—bring the 12 million undocumented immigrants out of the shadows by creating a real pathway to an earned legalization. Immigrants who have established themselves in their communities, who have otherwise not broken the law, should be able to earn legal status using a rational, reasonable and accessible process, which could include community service.

Family Unification—a major source of undocumented immigrants are family members seeking to be united with their loved ones. Elimination of the family visa backlog and an increased number of visas to reunite families will stem this source of undocumented immigrants and uphold the family values as the cornerstone of our immigration policy. The federal government should reduce the long administrative backlog that exists in processing legal permanent resident visas.

Secure Borders—securing our borders and supporting law enforcement is a critical part of immigration reform. Enforcement efforts should include "smart border" measures that combine personnel, equipment, and technology to reduce illegal immigration; efficient processing and fair proceedings; strategies that focus on detecting and deterring terrorists, cracking down on criminal smugglers, and employers that break the law. An enforcement-only policy does not work.

Employer Sanctions—the current employer sanction practice is defunct, ineffective, and has ultimately failed. A worker's employment authorization should be verified through an independent third party not connected to an employer. In addition, employers who abuse the employment verification system to recruit, hire, or exploit undocumented workers, produce fraudulent documents, retaliate against workers who exercise their labor rights, or evade the payment of taxes must be punished with significant penalties and fines.

Due Process Protections—we are a nation of laws and cherish our civil rights.

Immigrant Integration—successful immigration reform must promote immigrant integration in our country by learning our language, culture, and laws. The federal government should support state and local governments' efforts to help integrate new Americans into our communities. Expediting the processing of citizenship applications, and eliminating the family visa backlogs will be necessary components to achieve full integration of immigrants into our society.

Bilateral Partnerships with Immigrant Producing Countries—the long-term solution to uncontrolled immigration is to stop promoting failed globalization policies and encourage real economic development so that workers in immigrant producing countries don't have to leave their native country in order to support themselves and their families. U.S international policies have consisted of unfair trade agreements that hurt workers. A new fair trade and globalization model that uplifts all workers, labor rights and unions across the globe is needed to empower workers in both sending and receiving countries.

Future Flow of Immigrant Workers—a blue ribbon commission should be created to study how to establish future flow levels and mechanisms for adjusting those levels. This commission must address much needed modifications of current guest-worker programs to ensure that permanent jobs are not turned into temporary jobs with minimal labor protections, low wages and little or no benefits to workers. The blue ribbon commission should develop strict requirements for: compliance with labor standards, portability of visas so that workers may change jobs, and the right to join unions and have full labor and civil rights protections.

APPENDIX

The Constitutional Law of Immigration Enforcement

Justin Cox and Michael J. Wishnie***

Immigration agents, like all other federal law enforcement officials, may act only as empowered by Congress, and are always subject to the Constitution and laws of the United States. Immigration enforcement has increased dramatically in the nearly two years since the collapse of bipartisan congressional negotiations on comprehensive immigration reform, carried out primarily by a component of the U.S. Department of Homeland Security, the Bureau of Immigration and Customs Enforcement ("ICE"). With an annual budget of more than $5 billion, and more than 15,000 employees, ICE is the largest law enforcement agency in the United States. In addition, in some operations ICE has received the assistance of state or local law enforcement officials. Yet until recently, the conduct of immigration agents has received far less scrutiny from the the public, Congress, the media, and the courts than that of other federal law enforcement agents.

In the past two years, many of ICE's large-scale enforcement operations, or "raids," have prompted intense local and national criticism. This criticism has included detailed allegations of excessive force, racial profiling, entry of private homes without warrants or consent, arrests without probable cause, coercive questioning, degrading and inhumane treatment of arrestees, denial of the right to counsel, and politically-motivated retaliation against local communities. Local and national elected officials, police officials and organizations, the media, human rights and religious organizations, and community-based groups have questioned the training, supervision, and oversight of immigration operations as their conduct. In the face of the massive expansion of immigration enforcement generally, and the avalanche of condemnation of specific operations that has followed, it is useful briefly to review the constitutional law of immigration raids.

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I. The Fourth Amendment's Protection Against Unreasonable Searches and Seizures

The Fourth Amendment[215] protection against "unreasonable" searches and seizures is probably the constitutional provision most often implicated in immigration raids. The scope of its protection depends greatly on the factual circumstances of the encounter between the ICE agent(s) and the suspected immigrant, but no matter the situation, the Fourth Amendment constrains ICE raids in a number of significant ways.

A. Entry of the Home

In regards to enforcement activity at private homes, the Fourth Amendment requires that—absent exigent circumstances generally inapplicable in immigration raids—in order to enter a home, ICE agents must have either a warrant signed by a neutral magistrate or the consent of the home's occupants.[216] As a factual matter, a minority of the arrests effectuated by ICE are pursuant to judicially-issued warrants. Instead, what ICE agents generally carry in "fugitive operations" are "warrants of removal." Although these are ostensibly "warrants," they are not the kind contemplated by the Fourth Amendment; instead, they are purely administrative in nature, which ICE, pursuant to regulation,[217] literally writes for itself. The regulations governing warrants of removal do not require probable cause, nor do they contemplate any role for a neutral and detached magistrate; therefore, as ICE itself acknowledges, these administrative warrants do not authorize the entry of dwellings, even if the agents know the individual is inside a particular home.[218]

Therefore, in making arrests in homes, ICE agents must rely on the voluntary and affirmative consent of an adult in control of the premises. Mere failure to object to entry does not constitute consent.[219] Nor is consent considered voluntary if agents obtain it through coercion or threats—be they express or implied—or through a false claim of authority to enter (i.e., by claiming or implying that an administrative warrant authorizes entry).[220] The burden of proving consent to enter a home is always on the government.[221] And although agents are not required to inform occupants that they have the right to refuse entry, failure to do so is a factor in determining voluntariness of the consent,[222] as is the number of agents present, whether they are conspicuously armed, their tone of voice and language used, and the time of day.[223] In addition to evaluating the behavior of ICE agents, in determining whether consent to enter was properly obtained, courts will also consider characteristics of the individual alleged to have given consent. Evidence of low intelligence, minimal schooling, language barriers, and even cultural differences weigh against any ICE claim that voluntary consent exists.[224] Finally, consent must be obtained from an individual that the ICE agents reasonably believe has the authority to give it.[225]

Even in those rare instances that ICE agents do have an arrest warrant that complies with the Fourth Amendment,[226] they do not automatically have the right to enter a home without consent; instead, the warrant must list the specific address and explicit authority to enter therein; moreover, the agents must have a reasonable belief that the individual is actually present.[227]

B. Warrantless Arrests

While the private home merits special protection under the Fourth Amendment, the protection against unreasonable searches and seizures remains robust in any interaction between a private individual and law enforcement officials—including during immigration raids. The crux of the Fourth Amendment's protections during an immigration raid in a workplace, on the street, or anywhere else that is outside of a private home, is that in order to restrict an individual's freedom of movement to any degree, ICE agents must have some modicum of reasonable, individualized suspicion that the person they wish to "seize" is not just a foreign national, but also in this country without legal authorization. ICE agents are empowered by statute to make an arrest pursuant to warrant,[228] and they may also make "warrantless" arrests—but only subject to the requirements of the Fourth Amendment and to those additional obligations imposed by statute or regulation.

Fourth Amendment jurisprudence distinguishes two kinds of "seizures": a full-blown arrest and a brief "investigatory stop." Because an arrest is more invasive than a temporary stop, the courts have concluded that the quantum of evidence necessary for the former is greater than for the latter. Thus, as in criminal law, to arrest a suspected unauthorized immigrant requires "probable cause"[229]—defined roughly as a situation whereby the agents have enough reliable information that a reasonably prudent person would believe that the suspect has violated an immigration law.[230] Importantly, this standard must be met before the arrest takes place; if an ICE agent makes an arrest without sufficient probable cause, that arrest is constitutionally invalid no matter what evidence of illegality the agent discovers after the fact.[231] Further, even if ICE agents have probable cause for the arrest of a suspected unauthorized immigrant, federal immigration law imposes an additional requirement on the agents before they make a warrantless arrest: they must have probable cause that the person "is likely to escape before a warrant can be obtained for his arrest."[232] A warrantless arrest not meeting both probable cause requirements would be ultra vires and, as such, unconstitutional.

The quantum of evidence necessary for a temporary stop is lower than that for an arrest. Nevertheless, the Fourth Amendment bars ICE agents from making even a temporary stop of a particular person without an individualized basis and what is termed "reasonable suspicion." Since the 1960s,[233] the Supreme Court has recognized a type of "seizure" that, while not involving a formal arrest, still results in some restriction of liberty, and therefore requires only "reasonable suspicion." Known by many names—brief detentions, "Terry stops," investigatory stops—these seizures are more easily defined in the negative. The Supreme Court has made clear that not every interaction with law enforcement involves a "seizure."[234] For example, mere questioning about one's identity or a request to produce identification "does not, by itself, constitute a Fourth Amendment seizure."[235] However, "if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave," then that person has "been seized within the meaning of the Fourth Amendment."[236]

Importantly, there is no requirement that individuals actually ask or attempt to leave to be considered "seized": "[e]xamples of circumstances that might indicate a seizure, even where the person did not attempt to leave," according to the Supreme Court, include "the threatening presence of several officers, the display of a weapon by an officer,

some physical touching of the person…, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled."[237] As with entry into a home, the burden of proving that an encounter was consensual, and not the product of "detentive" interrogation, is on the government,[238] and the personal characteristics of the subject—such as intelligence, education, and language ability—are relevant to that determination.[239]

In order to justify seizing anyone for detentive interrogation, an ICE agent must be aware of "specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion"[240] that the individual is a foreign national present in the country without authorization. As with a formal arrest, the agent must have reasonable suspicion of unlawful immigration status before making a seizure.[241] Determining the presence of reasonable suspicion is a fact-intensive inquiry, making case law particularly important in demarcating what is and is not constitutional. The Supreme Court has identified a number of factors that may give rise to reasonable suspicion, including proximity to the border,[242] suspicious behavior,[243] limited English proficiency,[244] and knowledge "that a particular location or route is used predominantly for illegal purposes."[245] In 1975, the Court also explained that, while race alone is not enough to constitute reasonable suspicion, "Mexican appearance is a relevant factor."[246] However, given demographic changes since then—Latinos are now the nation's largest minority group—race is arguably no longer a proper factor in any reasonable suspicion analysis.[247]

Particularly relevant to the issue of immigration raids is the requirement that when ICE agents detain a group of people—be it a group of five or 500—the Fourth Amendment requires that the agents have articulable, "objective facts providing [them] with a reasonable suspicion that each questioned person, so detained, is an alien illegally in this country."[248] The nation's constitutional tradition has long rejected "guilt by association" as a legitimate basis for law enforcement. Thus, even when immigration agents have reasonable suspicion that some of the individuals within the group are unlawfully present aliens, seizing everyone would constitute a violation of the Fourth Amendment rights of all those for whom they lack reasonable suspicion.[249]

C. The Fourth Amendment and Preemption

In addition to constraining ICE agents in the exercise of their statutory authority to enforce federal immigration law, the Fourth Amendment—in conjunction with the Supremacy Clause[250]—plays a far more categorical role in regards to state and local enforcement of immigration law, prohibiting it in all but the narrowest of circumstances. The paradigmatic "unreasonable" seizure is one for which the government lacks the authority to effectuate. In other words, an immigration stop or arrest by a federal, state, or local official not authorized to enforce immigration laws is, by definition, "unreasonable" and violative of the Constitution.[251]

The authority to regulate immigration has long been recognized as "exclusively a federal power," such that when Congress legislates on immigration—as it has with the Immigration and Naturalization Act—it has entirely and "unquestionably" occupied the field, preempting any state and local efforts on the topic.[252]

In the INA, Congress has explicitly authorized sub-federal enforcement of just two provisions of immigration law, both of them criminal.[253] There are no analogous grants of general enforcement power for civil violations of immigration law, though there are two procedures whereby individual police officers can be deputized to make civil immigration arrests.[254] Except for those specific officers who have been deputized, state and local law enforcement officers can constitutionally enforce only the two criminal provisions of the INA that Congress has so authorized, and any attempts to go beyond that point are ultra vires and patently unreasonable under the Constitution.[255]

II. The Fifth Amendment's Due Process Protections

"Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments."[256] Due process has both a procedural and substantive component. In regards to immigration raids, the due process clause protects immigrants (and those suspected of being immigrants) from arbitrary governmental action both in its execution and aftermath.

First, the Due Process Clause of the Fifth Amendment[257] contains the same promise of equal protection of the laws as to the federal government that the Fourteenth Amendment[258] provides as to state and local governments. Therefore, racial profiling or otherwise targeting individuals for interrogation and/or arrest during an immigration raid solely or predominately because of their race constitutes a violation of their due process rights.[259]

The Fifth Amendment also prohibits law enforcement officials from coercing suspects or detainees into making statements that are not knowing and voluntary. Misinforming suspected or known immigrants about their procedural rights,[260] such as by telling them that they must sign documents that they do not understand or that have not been translated into a language they can read;[261] ignoring or refusing requests to speak with an attorney;[262] or by subjecting them to prolonged interrogation,[263] all constitute due process violations. In regards to custodial interrogation, if law enforcement agents are seeking information to be used in a criminal proceeding, they must advise subjects of the interrogation of their *Miranda* rights and stop the interrogation the instant the person requests an attorney to be present—no matter if the person is a criminal suspect, witness, or merely a source of information.[264] If the person executes a waiver of her *Miranda* rights, agents nevertheless must ensure that the waiver is both knowing and intelligent; again, this means that, at a minimum, agents must explained to the person her rights in a language that she understands.[265]

ICE also must respect the Fifth Amendment rights to counsel of individuals in civil removal proceedings.[266] Violations of this right would include, for example, refusing an arrestee's request to communicate with counsel, or transferring detainees to detention centers far from retained counsel so as to impair the attorney-client relationship.[267] Similarly, transferring detainees in order to discourage them from exercising their rights by separating them from family and social networks—or even just denying them use of the telephone for an unreasonable period of time[268]—is also the type of arbitrary governmental action prohibited by the Fifth Amendment.[269]

III. Invidious ICE Intent

In addition to constraining how immigration raids are carried out, the Constitution also limits the reasons why ICE may initiate a particular raid in the first place. In short, the motivations for planning or executing a raid are relevant to its lawfulness, and the presence of invidious ICE intent will render certain otherwise-lawful ICE enforcement unconstitutional.

For example, all governmental actors are prohibited from retaliating against any individual or entity from exercising rights protected by the First Amendment, including freedom of speech and association.[270] Therefore, if a particular raid—or even just its location, timing, or targets—is motivated or substantially caused by the exercise of free speech (for example, protesting a government action or advocacy for a particular policy[271]), it would be a direct violation of the First Amendment. Similarly, targeting individuals for their affiliation with a particular organization or entity would violate rights to free association.[272] The Constitution simply does not permit punishing individuals or organizations for exercising rights guaranteed to them therein.

One important application of this anti-retaliation principle concerns ICE worksite raids in the midst of a labor dispute. Union organizing activity is protected by, and implicates core values of, the First Amendment,[273] as well as the Thirteenth Amendment prohibition on involuntary servitude.[274] This constitutional principle is reflected in ICE's own internal guidelines, which preclude worksite raids during labor disputes, unless heightened procedures are followed.[275] These guidelines are mandatory, and violations by ICE agents result in termination of removal proceedings.[276] Thus, ICE may not generally conduct a worksite raid during a labor dispute, and may never do so at the behest of an employer who seeks to retaliate against its organizing workers.

Second, these constitutional anti-retaliation principles forbid ICE from conducting enforcement operations so as to retaliate against the residents of municipalities of whose local policies ICE disapproves.[277] Thus, for instance, ICE may not target residents of a city or town that adopts a confidentiality policy regarding immigration status information, or a police policy of non-cooperation in immigration enforcement. In addition to violating the First Amendment speech rights of residents and the municipalities themselves, such targeted ICE enforcement, motivated by an impermissible intent to retaliate against particular local communities, also violates the Tenth Amendment.[278] This is because the Tenth Amendment shields "core" local government functions from federal intervention. As a result, the federal government, through ICE, cannot target a municipality for enacting lawful policies that fulfill core local government functions (such as public health and safety), no matter how strongly federal immigration officials may disapprove of such lawful policies. [279]

Conclusion

Congress has granted immigration agents substantial power to stop, interrogate, and arrest persons believed to be present in violation of the immigration statutes. No different from the authority granted other federal law enforcement officials, however, the exercise of immigration enforcement powers are constrained by law, including most importantly the Constitution itself.

Commission Membership

The Commission's founding National Chairman, United Food and Commercial Workers International Union President Joseph T. Hansen, invited leading immigration experts, academics, and community leaders interested in the Commission's work to serve.

FOUNDING NATIONAL CHAIR

JOE HANSEN

PRESIDENT, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW)

Joe Hansen is one of today's most preeminent union leaders. His efforts are helping revitalize the labor movement to meet the challenges of the global economy. And his leadership is bringing new hope and opportunity for workers and their families to improve their living standards. President Hansen became a union activist while working as a meat cutter for 11 years in Milwaukee.

Today, he is the International President of the UFCW, a 1.3 million-member labor organization. In addition, Hansen is President of Union Network International—a global union, uniting 15 million workers in 120 countries.

He also is a leader of the the Change to Win (CtW) federation, where he chairs the CtW Immigration Task Force. In that role, he recently negotiated the joint CtW and AFL-CIO unity framework for comprehensive immigration reform.

In 2005, the U.S. Congress named President Hansen to the 14-member Citizens' Health Care Working Group. The panel is charged with bringing the American people together to confront the health care crisis and facilitating the direct communication of their views and concerns to lawmakers so that Congress can initiate comprehensive, national health care reform. He was the only union leader serving on the panel that includes esteemed health care providers and advocates, economists, and other leaders.

President Hansen's focus has always been on activating and empowering union members. He was a leader in responding to important demographic shifts in the U.S. food industry, where women, African-Americans, and a new wave of immigrants were transforming the workforce. Faced with this change, Joe Hansen implemented major innovations within the UFCW and challenged the union movement as a whole to respond with programs to better serve those workers and open the doors of union leadership to that new workforce.

At the core of Joe Hansen's leadership are the beliefs and resolve he demonstrated as a young volunteer organizer—that engaged workers not only build a better future for their families, but also provide the productivity and efficiency that build strong communities and successful companies.

JUDGE DENNIS HAYASHI

ALAMEDA COUNTY SUPERIOR JUDGE, FORMER DIRECTOR, THE JAPANESE AMERICAN CITIZENS LEAGUE

Dennis Hayashi has had a lifelong commitment to public service, providing leadership in the legal community for over 30 years. Currently, he is serving as Alameda County Superior Judge in California.

Throughout his career, Judge Hayashi has worked to ensure fairness and the delivery of justice under the law. Appointed by President Clinton in 1993, he served as the Director of the Office for Civil Rights in the U.S. Department of Health and Human Services. Overseeing its headquarters in Washington, DC, as well as 10 regional Civil Rights Offices, he ensured the enforcement of laws such as the Age Discrimination Act, Americans with Disabilities Act, and Title VI of the Civil Rights Act.

Prior to that Judge Hayashi served as the Director of the California Department of Fair Employment and Housing, the largest state civil rights agency in the country. There he led the Department's efforts to protect and safeguard the civil rights of all Californians, enforcing the Fair Employment and Housing Act, the Unruh Act, and the Ralph Act, which addresses acts of hate violence. In 2005, he was elected to the Board of AC Transit, the third largest bus system in the country, where he worked to ensure affordable transportation to all residents of Alameda County.

While an attorney for more than ten years with the Asian Law Caucus, Judge Hayashi served as co-counsel in the famed case that successfully challenged and overturned Fred Korematsu's World War II conviction for refusing to report to a Japanese American internment camp.

SAMUEL "BILLY" KYLES

REVEREND, MONUMENTAL BAPTIST CHURCH, MEMPHIS, TENNESSEE

A native of Mississippi and a leader in the civil rights movement, Rev. Kyles was an instrumental figure in the movement that changed the conscience of our country. He has served as pastor of the Monumental Baptist Church in Memphis, Tenn., since 1959.

After Memphis sanitation workers went on strike in 1968 due to low wages and inhumane working conditions, Rev. Kyles helped to form and lead the effort to gain community support for the striking workers—an endeavor that involved working with Rev. Dr. Martin Luther King, Jr.

Rev. Kyles has maintained his involvement with civil rights work since the 1960s, and is a founding member of the National Board of People United to Save Humanity (PUSH), the Executive Director of Rainbow-PUSH-Memphis and Executive Producer of Rainbow-PUSH WLOK Radio. He was appointed by President Clinton to serve on the Advisory Committee on Religious Freedom Abroad. He has been the recipient of numerous honors and awards, including the Tennessee Living Legend Award.

MARIA ELENA DURAZO

EXECUTIVE SECRETARY—TREASURER
LOS ANGELES COUNTY FEDERATION OF LABOR—AFL-CIO

María Elena Durazo is the Executive Secretary-Treasurer for Los Angeles County Federation of Labor – AFL-CIO. The Federation represents over 800,000 workers.

Before leading the Federation, Ms. Durazo was President of UNITE-HERE Local 11.

In July 1996, she became the first Latina elected to the Executive Board of HERE International Union. Her election to the Executive Board was followed by her 2001 election as General Vice-President of HERE International. In 2003, Ms. Durazo became National Director of the Immigrant Workers' Freedom Ride, a national mobilization campaign initiated by HERE International to address the nation's immigration laws.

In 2004 she became Executive Vice President of the newly formed UNITE-HERE International. In that role she represented a diverse membership, comprised largely of immigrants and including high percentages of African-American, Latino, and Asian-American workers in sectors such as: apparel, textile, industrial laundries, hotels, casinos, foodservice, airport concessions, and restaurants.

Ms. Durazo has served on numerous commissions and organizations in Southern California.

BILL ONG HING

PROFESSOR OF LAW AND ASIAN AMERICAN STUDIES,
AUTHOR

Bill Ong Hing is a Professor of Law at the University of California, Davis. He teaches Immigration Policy, Judicial Process, Negotiations, Public Service Strategies, Asian American History, and directs the law school clinical program.

Throughout his career, he has pursued social justice by combining community work, litigation, and scholarship. Professor Hing is the author of numerous academic and practice-oriented books and articles on immigration policy and race relations. Professor Hing's books include Deporting Our Souls—Values, Morality, and Immigration Policy (Cambridge Univ. Press 2006), To Be An American, Cultural Pluralism and the Rhetoric of Assimilation (NYU Press 1997), Defining America Through Immigration Policy (Temple Univ. Press 2004), Making and Remaking Asian America Through Immigration Policy (Stanford Press 1993), Handling Immigration Cases (Aspen Publishers 1995), and Immigration and the Law—a Dictionary (ABC-CLIO 1999).

His newest book is Ethical Borders—NAFTA, Globalization and Mexican Migration (forthcoming, Temple Univ. Press 2009). Professor Hing was also co-counsel in the precedent-setting Supreme Court asylum case, INS v. Cardoza-Fonseca (1987). He is the founder of, and continues to volunteer as General Counsel for, the Immigrant Legal Resource Center in San Francisco. Professor Hing is on the board of directors of the Asian Law Caucus and the Asian American Justice Center.

SUSAN GZESH

DIRECTOR, HUMAN RIGHTS PROGRAM, UNIVERSITY OF CHICAGO

Since 2001, Susan Gzesh has been Senior Lecturer and Director of the Human Rights Program at the University of Chicago. She teaches courses on contemporary issues in human rights, the rights of aliens and citizens, and human rights in Mexico. Her research interests include human rights and migration policy, with particular emphasis on the North American corridor.

From 1977 until the mid-1990s, Dr. Gzesh worked as an attorney in private practice, in federally-funded legal services, and with the Chicago Lawyers' Committee for Civil Rights. From 1996 to 2001 she co-directed the Regional Network of Civil Organizations for Migration, an international civil society coalition which advocated for the human rights of migrants with governments in the North American corridor.

She is a non-resident Fellow of the Migration Policy Institute and is on the Boards of Directors of the Red Internacional de Migracion y Desarrollo and Kartemquin Films. She is on the Advisory Boards of the Illinois State New Americans Task Force, the Public Square of the Illinois Humanities Council, and the Mexico City-based NGO PRODESC.

Dr. Gzesh consults with philanthropic foundations, international organizations, and the government of Mexico. She lectures on migration and human rights before academic and community audiences in the U.S. and Mexico. Her most recent article (on reconceptualizing forced migration) appears in the current edition of Migracion y Desarrollo. Her college education was supported by a scholarship from the Chicago Teachers Union and, while a legal services attorney, she was a member of the United Auto Workers.

OSCAR CHACÓN

PRESIDENT, SALVADORAN AMERICAN NATIONAL NETWORK

Oscar A. Chacón serves currently as Executive Director of the National Alliance of Latin American & Caribbean Communities (NALACC), an umbrella of immigrant-led organizations from around the country dedicated to improving the quality of life of Latino immigrant communities in the U.S., as well as of peoples throughout Latin America. Until December 2007 he served as director of Enlaces América, a project of the Chicago-based Heartland Alliance for Human Needs and Human Rights.

Mr. Chacon served for most of the 1990's as executive director of Centro Presente, Inc, in Cambridge, Mass., a community based organization dedicated to the empowerment of Latino immigrants throughout Massachusetts. He is a frequent lecturer at national and international conferences on issues such as migration, global economics, and immigrant integration. He is also a media spokesperson on Latino community issues in the U.S.

In recent years, he has been associated with key policy analysis and policy advocacy process, including the Task Force on Immigration Policy and America's Future, the World Social Forum on Migration, the Global Forum on Migration and Development, and the First Latin American Migrant's Summit.

GOVERNOR TOM VILSACK

U.S. SECRETARY OF AGRICULTURE

Tom Vilsack was sworn in as the 30th Secretary of the U.S. Department of Agriculture (USDA) on January 21, 2009. Appointed by President Barack Obama, Vilsack received unanimous support for his confirmation by the U.S. Senate.

Secretary Vilsack has served in the public sector at nearly every level of government, beginning as mayor of Mt. Pleasant, Iowa, in 1987, and then as state senator in 1992. In 1998, he was the first Democrat elected Governor of Iowa in more than 30 years, an office he held for two terms.

As Governor, he created the Iowa Food Policy Council to advance local food systems, enhance family farm profitability, and combat hunger and malnutrition. He led trade missions to foreign countries to market agricultural products and attended the Seattle meeting of the World Trade Organization (WTO) to push for expanded agricultural trade negotiations. In addition, he worked to support independent farmers and ranchers by enacting livestock market reform and mandatory price reporting legislation in 1999. His leadership and vision were also instrumental in transforming Iowa to an energy state.

In addition to serving on the National Governors Association Executive Committee, Sec. Vilsack also served as chair of the Governors Ethanol Coalition, chair of the Democratic Governors Association, and founding member and chair of the Governors Biotechnology Partnership.

Throughout his public service, Sec. Vilsack has pursued an agenda dedicated to the principles of opportunity, responsibility, and security. He is recognized as an innovator on children's issues and education, economic and healthcare policy, and efforts to make government more efficient and accessible. He developed aggressive early childhood programs, reduced class sizes, created a first-in-the-nation salary initiative to improve teacher quality and student achievement, and enacted a more rigorous high school curriculum. His leadership also led to Iowa becoming a national leader in health insurance coverage, with more than 90 percent of children covered.

MARY BAUER

DIRECTOR, IMMIGRANT JUSTICE PROJECT, SOUTHERN POVERTY CENTER

Mary Bauer directs the Southern Poverty Law Center's Immigrant Justice Project, established in 2004 to address the unique legal needs of farmworkers and other low-wage immigrant workers, who are particularly vulnerable to workplace abuse. Prior to the establishment of Immigrant Justice Project, there was no entity providing legal representation to most immigrant workers in the South.

Ms. Bauer has been a dedicated advocate for stronger federal enforcement of worker protection laws. Under her leadership, the Immigrant Justice Project has successfully brought suit on behalf of underpaid forestry and farm workers. She is the author of a highly-regarded report on guestworker programs in the United States, entitled Close to Slavery, published 2007. She has been called to testify before Congress on several occasions about abuses suffered by workers under the H-2B guestworker program and about abuses in the tomato industry in Florida.

In addition, she is counsel in a lawsuit challenging the ICE raids, which occurred in and around Stillmore, Ga. in September of 2006.

WILLIAM E. SPRIGGS

PROFESSOR AND CHAIR, DEPARTMENT OF ECONOMICS, HOWARD UNIVERSITY

Professor William Spriggs has served as Chair of the Department and professor of Economics at Howard University since 2005. He is expected to be nominated by President Obama to the key administration post of Assistant Secretary for Policy at the Department of Labor.

Formerly a senior fellow at the Economic Policy Institute, Professor Spriggs currently serves as chair of the Independent Health Care Trust for UAW Retirees of Ford Motor Company, and is on the board of the Retiree Health Administration Corporation, which administers the health care trusts for UAW retirees of Ford and General Motors.

Beginning in January 2007, he became a Senior Fellow with the Community Service Society of New York, where he helps with Working for Change, a public policy forum held on Capitol Hill on the problems of young, low-income workers and their families. He became Chair of the UAW Retirees of the Dana Corporation Health and Welfare Trust, an organization that administers the health and disability trusts for UAW retirees of the Dana Corporation. He also serves as Vice Chair of the Board of the Congressional Black Caucus Political Education and Leadership Institute.

From 1988 to 2004, he was Executive Director of the National Urban League's Institute for Opportunity and Equality, where among other duties he was editor of the State of Black America 1999, and led research on pay equity that won the National Urban League the 2001 Winn Newman Award from the National Committee on Pay Equity.

A member of the National Academy of Social Insurance, Professor Spriggs was the co-chair of the 2003 NASI conference that produced the volume, *Strengthening Community: Social Insurance in a Diverse America*. In 2004, with several of his Washington-based civil rights advocate colleagues, he was also awarded the Congressional Black Caucus Chairman's Award.

Professor Spriggs held various positions in government service during the Clinton administration: in 1993 and 1994, he led the staff of the National Commission for Employment Policy, and in 1997 and 1998, he worked at the Department of Commerce, where he worked on the federal response to the Adarand v. Pena decision, crafting the guidelines for the federal Small Disadvantage Business program that successfully addressed the Courts' concerns in the Adarand case, and at the Small Business Administration.

In 2006, he was elected a fellow of the National Academy of Public Administration. Professor Spriggs serves on the boards of the National Employment Law Project, the National Committee for the Preservation of Social Security and Medicare, and the National Advisory Council of Corporate Voices for Working Families.

FOOTNOTES

[1] Testimony of Mike Graves before the House of Representatives Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, February 13, 2008

[2] Thomas Wenski, "Hitting a Wall on Immigration," *Washington Post*, Oct. 20, 2008. http://www.washingtonpost.com/wp-dyn/content/article/2008/10/19/AR2008101901330.html, (last seen on Mar. 20, 2009).

[3] Wayne Drash, "Mayor: Feds Turned My Town 'Topsy Turvy,'" CNN.COM, Oct. 14, 2008, http://www.cnn.com/2008/US/10/14/postville.raid/index.html, (last seen on Mar. 20, 2009).

[4] Id.

[5] Justeen Mancha, Atlanta Hearing.

[6] "Remarks by Homeland Security Secretary Michael Chertoff on 2007 Achievements and 2008 Priorities," Department of Homeland Security Press Release, December 12, 2007, http://www.dhs.gov/xnews/speeches/sp_1197513975365.shtm, (last seen on Mar. 20, 2009).

[7] Debra Campbell, Des Moines Hearing.

[8] Darrell Harrington, Des Moines Hearing.

[9] Swift is one of the nation's largest processors of pork and beef.

[10] ICE alerted the local media in at least the Greeley, Colo., area the night before the raids, telling them that they should be at the plant in the morning. Des Moines Hearing.

[11] Peter Schey, Commission Hearing, Washington, D.C., February 25, 2008.

[12] *See* ICE Fact Sheet, "Worksite Enforcement: Operation Wagon Train," March 1, 2007, http://www.ice.gove/pi/news/factsheets/wse_ou_070301.htm.

[13] Sister Christine Feagan, Des Moines Hearing.

[14] Dr. Tom Renze, Principal of Woodbury Elementary School in Marshalltown, also described a "sense of panic" among family members the morning of the raid. While students normally begin arriving around 7:30 or 7:45 a.m., he said, by 7:50 a.m., parents were coming back to the school to pull their children out. Parents or other adults continued to come for their children throughout the day. Des Moines Hearing.

[15] Darrell Harrington's wife, Amelda Harrington, called the plant when she learned of the raid from a neighbor and was not only refused any information about what was occurring but was also threatened with arrest if she persisted in her inquiries. Turning on the television, she said, she saw an ICE agent "on the roof . . . dressed in black; he did have a gun." The first thing that came to her mind, she told the Commission, was "was I going to see my husband that night? When would I see him? Where was he? . . . I [didn't] know what was going to happen." Des Moines Hearing.

[16] Peter Schey, Washington, D.C. Hearing.

[17] Pasqual Talamantes, Washington, D.C. Hearing.

[18] Id.

[19] Michael Graves, Commission Hearing, Atlanta, Ga., June 24, 2008.

[20] Id.

[21] Melissa Broekemeier, Des Moines Hearing.

[22] Id.

[23] Debra Campbell, Des Moines Hearing.

[24] Id.

[25] Melissa Broekemeier, Des Moines Hearing.

[26] Attorney John Bowen, Des Moines Hearing.

[27] Fidencio Sandoval, Commission Hearing, Boston, Mass., April, 29, 2008.

[28] Id.

[29] Id.

[30] Id.

[31] Manuel Verdinez, Written Declaration to the Commission.

[32] Id.

[33] Later, when attorneys finally were granted access to some of these mothers held at Camp Dodge, ICE agents would accuse the women of lying when their lawyers sought their supervised release so they could be reunited with their children, saying the women already had their chance to tell them if they had minor children at home. Sister Christine Feagan, Des Moines Hearing.

[34] Sonia Mendoza, Des Moines Hearing.

[35] Melissa Broekemeir, Des Moines Hearing.

[36] Alicia Claypool, Des Moines Hearing.

[37] Reverend Barbara Dinnen, Des Moines Hearing.

[38] Representative Mark Smith, Des Moines Hearing.

[39] Reverend Barbara Dinnen, Des Moines Hearing.

[40] Sonia Konrad Parras, Des Moines Hearing.

[41] Attorney John Bowen, Des Moines Hearing.

[42] Id.

[43] Reverend Barbara Dinnen, Des Moines Hearing.

[44] Id.

[45] Juana Garcia, Boston Hearing.

[46] According to Castañeda, "nationally there are about 5 million children with undocumented parents in the U.S., two-thirds are U.S. citizens and a similar share are age 10 or under." Rosa Maria Castañeda, Atlanta Hearing.

[47] Id.

[48] Id.

[49] Rocío Gomez, Des Moines Hearing.

[50] *See* Wilshire Carrera, Boston Hearing.

[51] Maria García, Des Moines Hearing.

[52] Diego García, Des Moines Hearing.

[53] Id.

[54] Maria Garcia, Des Moines Hearing.

[55] Id.

[56] Dr. Amaro Laria, Boston Hearing.

[57] Id.

[58] Rosa Castañeda told the Commission that they found the following mental health symptoms in their three site study: "Nearly all of the children in the families I interviewed exhibited some behavioral changes ranging from kids newly showing newly aggressive behaviors, changed sleep patterns and appetites, some kids show exaggerated mood swings and some became distant or restless or clingy. A combination of family separation with the broken attachment to the parent . . . caused some more serious emotional and mental health problems for some children. . . ." The symptoms included: depression, post-traumatic stress disorder, separation anxiety disorders, in some instances suicidal thoughts, and social isolation due to families hiding in their homes and basements. Rosa Castañeda, Atlanta Hearing.

[59] Dr. Amaro Laria, Boston Hearing.

[60] Id.

[61] Id.

[62] At the Los Angeles hearing, Dr. Joseph M. Cervantes, Ph.D., Professor, Department of Counseling California State University, Fullerton, and President of the National Latina/o Psychological Association, and Chair of the American Psychological Association's Committee On Ethnic and Minority Affairs, testified similarly before the Commission at the Los Angeles hearing about the mental and physical symptoms that children exhibit as a result of these immigration raids. *See* Joseph M. Cervantes, Ph.D., Los Angeles Hearing.

[63] Dr. Tom Renze, Des Moines Hearing.

[64] Id.

[65] Dr. Tom Renze told the Commission that on December 12, 2006, the school enrollment at Woodbury Elementary was 324 students. On the morning of the raid, the school began with the attendance of 83%, which was far below normal. Dr. Renze said that he believed the attendance started off low because many parents learned about the Swift raid before school began and kept their children home. By the end of the day, attendance was at 78%. Dr. Tom Renze, Des Moines Hearing.

[66] Dr. Tom Renze, Des Moines Hearing.

[67] Marshalltown high school students Diego and Maria Garcia testified similarly about the disruption in school on the day of the raid. Diego said: "After first period, every couple of minutes cell phones went off and people were saying that their parents or mom and dad got caught, and I saw them leave the school to find out what happened to their families." Diego Garcia, Des

Moines Hearing. Diego's little sister witnessed the same things at her elementary school: "people crying, despair and teachers not knowing what to do." Maria Garcia, Des Moines Hearing.

68 Dr. Tom Renze, Des Moines Hearing.

69 Id.

70 Sponsored by former Governor Tom Vilsack, the "New Iowan Centers" proved to be extremely helpful in promoting new integration of immigrants and Iowans into the state. Governor Tom Vilsack, Des Moines Hearing.

71 Sister Christine Feagan, Des Moines Hearing.

72 Jorge Avellanada, Boston Hearing.

73 Mayor John De Stefano, Boston Hearing.

74 Id.

75 William Petroski, "Taxpayers Costs Top $5 Million for May Raid at Postville," *Des Moines Register*, Oct. 15, 2008.

76 "Editorial: Lead Nation to Consensus on Immigration," *Des Moines Register*, Oct. 14, 2008

77 Frank Sharry, "What's Another $154 Billion," *America's Voice*, October 14, 2008.

78 *See* testimony of Fred Ordonez, Director of Advocacy and Government Relations at Progresso Latino, Central Falls, Rhode Island, Boston Hearing.

79 Statement of Julie L. Myers, ICE Before House Appropriations Committee Subcommittee on Homeland Security (March 27, 2007) at p.15.

80 For a list of local authorities participating in the 287(g) program, see ICE's Fiscal Year 2007 Annual Report, available at www.ice.gov. *See also* Id.

81 According to ICE: "As of September 30, 2007, 29 state and local authorities had entered into 287(g) agreements with ICE to train officers in limited immigration enforcement duties." *See* ICE Fiscal Year 2007 Annual Report at p.27. By contrast, as of August 18, 2008, ICE reported "63 active 287(g) MOA's [with] [m]ore than 840 officers hav[ing] been trained and certified through the 287(g) program." *See* ICE Fact Sheet, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,* (August 18, 2008), supra.

82 Julia Preston, "Immigrant, Pregnant, Is Jailed Under Pact," *The New York Times*, July 20, 2008.

83 Id.

84 Sam Zamarripa, Atlanta Hearing.

85 The minor traffic violations identified in the GLAHR report included: speeding, no lights, broken headlights, low lights, tinted windows, running stop light, running stop sign, running yellow light, no license plate, expired tag, improper lane change, no seatbelt, not using signal lights, broken brake lights, broken windshield, no license plate light, broken taillights, no matching plate.

86 Sam Zamarripa, Atlanta Hearing.

87 Mr. Fotopolous told the Commission: "In Nashville there are 12 dedicated sheriff's deputies who get paid $683,00 a year. . . . Those deputies are not out doing something else to keep the community safe. For the first 48 hours after detainees are eligible for release, they are kept in Davidson County jail until they are switched over to ICE custody. For those 48 hours, Davidson County is not reimbursed for that expense. So that is upwards of $375,000 a year, if you say 3,000 detainees, two days, $61 a day." Davidson County itself estimated a cost of half a million dollars to house the detainees with ICE holds that would have normally been released at the close of their criminal case. Stephen Fotopolous, Atlanta Hearing.

88 Vanessa Spinazola, Atlanta Hearing.

89 *See generally,* Rebecca Smith, *Human Rights at Home: Human Rights As An Organizing and Legal Tool in Low-Wage Worker Communities*, Stanford Journal of Civil Rights & Civil Liberties (August 2007); National Immigration Law Center, *Overview of Key Issues Facing Low-Wage Immigrant Workers,* (December 2007), http://www.nilc.org/immsemplymnt/emp_issues_ovrvw_2007-11-20.pdf; Tyler Moran, National Immigration Law Center, Testimony Before the Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, Hearing on Proposals for Improving the Electronic Employment Verification and Worksite Enforcement System (April 26, 2007), *http://www.nilc.org/immsemplymnt/cir/eevs_testimony_nilc_7002-05-03.pdf, citing* Jenny Schulz, *Grappling with a Meaty Issue: IIRIRA's Effect on Immigrants in the Meatpacking Industry,* 2 J. Gender Race & Just. 137, 145-46, 1998; Stephanie E. Tanger, *Enforcing Corporate Responsibility for Violations of Workplace Immigration Laws: The Case of Meatpacking*, Harvard Latino Law Review, Vol. 9, 2006, http://www.law.harvard.edu/students/org/llr/vol9/tanger.pdf; *see also* Rebecca Smith and Catherine Ruckelshaus, *Immigration Reform: Balancing Enforcement and Integration: Article: Solutions, Not Scapegoats: Abating Sweatshop Conditions For All Low-Wage Workers As A Centerpiece of Immigration Reform,* 10 N.Y.U. J. Legis. & Pub. Pol'y 555 (2006/2007).

90 Id.

91 Senator John Kerry, Boston Hearing.

92 Reverend Mark Fallon, Boston Hearing.

93 According to John Wilshire Carerra, an attorney with Greater Boston Legal Services, many of the MBI workers in fact had "very, very strong asylum cases." The government, Carerra said, "took the position at the very beginning that these individuals didn't have. . . any rights." But "that's not true," he said. "Many of these individuals have rights [to be present in the U.S.]." Boston Hearing.

94 The final count was 360 workers plus one brother. *See* Commission Hearing Transcript for story of 17-year-old worker released to his brother, and his brother was consequently taken into custody.

95 Senator John Kerry, Boston Hearing.

96 Id.

97 Aimee Molloy, *Placating the GOP base or protecting the workplace?* (July 27, 2007), http://www.salon.com/news/feature/2007/07/27/ice_raid/print.html.

98 ICE News Releases, "New Bedford Manufacturer and Managers Arrested on Charges of Conspiring, ICE to Process Hundreds for Removal" (March 6, 2007), http://www.ice.gov/pi/news/newsreleases/articles/070306boston.htm.

99 Id.

100 U.S. DOL News Release, *U.S. Labor Department's OSHA issues 15 serious citations to Michael Bianco, Inc. following safety and health inspections* (July 5, 2007).

101 Id.

102 "Workers sue Michael Bianco, Inc. for overtime wages," *South Coast Today*, May 16, 2007.

103 *Flor Chach, et al. v. Michael Bianco, Inc., et al.,* Civil Action No. 07-10915 RGS, Class and Collective Action Amended Complaint

104 The questions that should be asked include: 1) the names of the informant(s); 2) whether there is a labor dispute in progress at the worksite; 3) whether they are or were employed at the worksite in question (or by a union representing workers at the worksite; 4) whether they are or were employed at the worksite in question (or by a union representing workers at the worksite); and 5) if applicable, whether they are or were employed in a supervisory or managerial capacity or related to anyone who is. Agents are also asked to obtain information as to whether the complainants have raised complaints or grievances about hours or working conditions, discriminatory practices, or about union representation actions, or whether they have filed workers' compensation claims. *See* INS OI 287.3a *redesignated* as 33.14(h) of the Special Agent Field Manual (SAFM) as of Apr. 28, 2000; *see also* NILC, I*ssue Brief: Immigration Enforcement During Labor Disputes.*

105 *See* Revised Operations Instruction 287.3a, Questioning Persons During a Labor Dispute, (rev. 12/04/1996).

106 "'The Jungle,' Again," *The New York Times*, Aug. 1, 2008, http://www.nytimes.com/2008/08/01/opinion/01fri1.html (last seen on Mar. 20, 2009).

107 *See* Written Affidavits on file with the Commission.

108 Written Affidavit on file with the Commission.

109 Id.

110 Id.

111 Id.

112 Written Declaration of Agriprocessors workers on file with the Commission.

113 Preston, *After Iowa Raid, Immigrants Fuel Labor Inquiries*, supra n. X

114 Id.

115 Id. (According to the ICE affidavit, the lawsuit was settled out of court).

116 Declarations of Agriprocessors workers on file with the Commission (Declaration of Alma).

117 Letter from Mark Lauritsen, UFCW, to Special Agent in Charge, dated May 1, 2008.

118 Letter from Congressman Bruce Braley to Assistant Secretary Julie Meyers, dated July 17, 2008.

119 Julia Preston, "Meatpacker Is Fined Nearly $10 Million," *The New York Times*, Oct. 29, 2008, http://www.

nytimes.com/2008/10/30/us/30fine.html (last seen on Mar. 20, 2009).

120 Atlanta Hearing.

121 8 U.S.C. §1357(a).

122 Jeanne Butterfield, Washington, D.C. Hearing.

123 "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST., amend. IV.

124 See note 12, *supra.*

125 *See* INA § 287(a)(2), 8 U.S.C. § 1357(a)(2).

126 *Cf. Golino v. City of New Haven*, 950 F.2d 864, 870 (2d Cir. 1991).

127 *See Beck v. Ohio*, 379 U.S. 89, 90 (1964). *See also Caldarola v. Calabrese,* 298 F.3d 156, 162 (2d Cir. 2002).

128 INA § 287(a)(2), 8 U.S.C. § 1357(a)(2). Although INA § 287(a)(2) uses the words "reason to believe" instead of "probable cause," the two are legally indistinguishable. *See, e.g., United States v. Sanchez*, 635 F.2d 47, 63 n.13 (2d Cir. 1980) ("As used in section 287, 'reason to believe' is the equivalent of probable cause"); *Ojeda-Vinales v. INS*, 523 F.2d 286, 287 (2d Cir. 1975) (holding that "reason to believe" is equal to "probable cause").

129 *Delgado*, 466 U.S. at 216 (*citing Florida v. Royer*, 460 U.S. 491 (1983) (plurality opinion)).

130 *Id*. at 215 (*quoting Terry v. Ohio*, 392 U.S. 1, 19, n.16 (1968)).

131 *Id. See also INS v. Delgado*, 466 U.S. 210, 215 ("Only when the officer, by means of physical force or show of authority, has restrained the liberty of a citizen may we conclude that a seizure has occurred.") (*quoting Terry v. Ohio*, 392 U.S. 1, 19, n.16). *But see Marquez v. Kiley*, 436 F. Supp. at 113-14.

132 *United States v. Brignon-Ponce*, 422 U.S. 873, 884 (1975).

133 Id. at 881-82. *See also Ramirez v. Webb*, 599 F. Supp. 1278, 1284 (W.D. Mich. 1984) ("It would appear that [the officer] believes he can stop a vehicle and *then* discover reasonable articulable facts for doing so, based on closer observation and interrogation. That is not the case law or the constitutional principle. The reasonable articulable facts must *precede* the stop.").

134 *Brignoni-Ponce*, 422 U.S. at 887.

135 *Cf. Manzo-Jurado,* 457 F.3d at 935 ("[I]n regions heavily populated by Hispanics, an individual's apparent Hispanic ethnicity is not a relevant factor in the reasonable suspicion calculus.") (citing *United States v. Montero-Camargo*, 208 F.3d 1122, 1132 (9th Cir. 2000)).

136 *Benitez-Mendez v. INS*, 760 F.2d 907, 909 (9th Cir. 1983) (emphasis added).

137 *See United States v. Manzo-Jurado*, 457 F.3d 928, 939-40 (9th Cir. 2006); *Sandoval-Rubio v. INS*, 246 F.3d 676 (9th Cir. 2000); *Martinez v. Nygaard*, 831 F.2d 822, 827 (9th Cir. 1987); *La Duke v. Nelson*, 762 F.2d 1318, 1321 (9th Cir. 1985); *Benitez-Mendez v. INS,* 760 F.2d 907, 909 (9th Cir. 1983); *International Ladies' Garment Workers' Union v. Sureck*, 681 F.2d 624, 638 (9th Cir. 1982), *rev'd on other grounds sub nom., INS v. Delgado*, 466 U.S. 210 (1984); *Gallegos v. Haggerty*, 689 F. Supp. 93, 103 (N.D.N.Y. 1988); *International Molders' & Allied Workers' Local Union 164 v. Nelson*, 643 F. Supp. 884 (N.D. Calif. 1986), *modified on appeal*, 799 F.2d 547 (9th Cir. 1986); *Mendoza v. INS*, 559 F. Supp. 842, 848 (W.D. Tex. 1982); *Marquez v. Kiley*, 436 F. Supp. 100, 112 (S.D.N.Y. 1977); *Illinois Migrant Council v. Pilliod*, 398 F. Supp. 882 (N.D. Ill. 1975), *modified on appeal*, 548 F.2d 715 (7th Cir. 1977).

138 *See* Affidavits of MSE workers attached to Motion to Suppress in Immigration proceedings, on file with the Commission.

139 Rev. Mark Fallon, Boston Hearing.

140 Id.

141 Darrel Harrington, Des Moines Hearing.

142 *See* Chapter One.

143 Pasqual Talamantes, Washington Hearing.

144 Melissa Broehemeir, Des Moines Hearing; *see also* Debra Campbell, Des Moines Hearing (stating that workers "were not free to leave").

145 Although ICE has made an effort to implement some internal rules to further guide ICE agent behavior in the field, particularly with the humanitarian guidelines developed after heavy public critique of the MBI raids which left hundreds of children without their parents, it is still unclear how consistent the rules are applied. The guidelines require ICE agents to identify people for release from detention including nursing mothers and sole caregivers, but the rules' effectiveness is questionable given that they only apply to raids that target more than 150 people.

146 *See, e.g., Welsh v. Wisconsin*, 466 U.S. 740, 748-49 (1984) ("It is axiomatic that the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'"); *Payton v. New York*, 445 U.S. 573, 586 (1980) ("It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable."); *id*. at 589-90 ("At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."); *Loria v. Gorman*, 306 F.3d 1271, 1284 (2d Cir. 2002) ("Subsequent holdings have reiterated that principle and made clear that any physical invasion of the structure of the home, by even a fraction of an inch, is too much to be tolerated.").

147 See 8 C.F.R. § 287.5(e) (describing administrative warrant).

148 "A warrant of removal is administrative in nature and does not grant the same authority to enter dwellings as a judicially approved search or arrest warrant." *Letter of DHS Secretary Michael Chertoff to Senator Christopher Dodd* (June 14, 2007).

149 *See, e.g., Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012 (9th Cir. 2008); *United States v. Albrektsen*, 151 F.3d 951, 955 (9th Cir. 1998) (holding that a suspect moving aside to avoid physical contact with entering officers is insufficient to establish implied consent); *United States v. Baggatts,* 646 F. Supp. 589, 591 (D.D.C. 1986).

150 *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *Bumper v. North Carolina*, 391 U.S. 543 (1968) (officer's claim or show of authority); *LaDuke v. Nelson*, 762 F.2d 1318, 1329 (9th Cir. 1985).

151 *United States v. Ritter,* 752 F.2d 435 (9th Cir. 1985).

152 *See, e.g., LaDuke v. Nelson*, 762 F.2d at 1329 (time of day—here, early morning and late evening—is relevant factor in voluntariness analysis).

153 *Id*. (consent to search of migrant farm housing held not voluntary where INS officers failed to advise occupants of right to refuse consent; where occupants had inherent fear of uniformed officers and were of limited education and linguistic ability; and where searches occurred in early morning or late evening).

154 *Abdella v. O'Toole*, 343 F. Supp. 2d 129, 135 (D. Conn. 2004).

155 "An arrest warrant that complies with the Fourth Amendment has four essential attributes. It must: (1) be supported by probable cause; (2) be issued upon a probable cause determination based on oath, affirmation, or sworn testimony setting forth the underlying facts and circumstances giving rise to probable cause; (3) describe the persons or things to be seized with particularity; and (4) be issued by a neutral and detached magistrate." *See Milner v. Duncklee*, 460 F. Supp. 2d 360, 369 (D. Conn. 2006).

156 *See, e.g., United States v. Terry*, 702 F.2d 299, 319 (2d Cir. 1983), *cert. denied*, 461 U.S. 931 (1983).

157 Justeen Mancha, Atlanta Hearing.

158 Mayor John DeStefano Jr., Boston Hearing.

159 Id.

160 *See for e.g., Murillo v. Musegades*, 809 F.Supp. 487, 499 (W.D. Tex. 1992)("A search or seizure will never be considered reasonable if the officer stops the vehicle solely because of the Mexican ancestry of the occupant.").

161 *See also* Cox and Wishnie, *The Constitutional Law of Immigration Enforcement*, supra at 6-7 (commenting that the Fifth Amendment applies to the federal government, while the Fourteenth amendment applies to state and local governments).

162 *Plyler v. Doe*, 457 U.S. 202, 210 (1982). *See also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Shaughnessy v. Mezei*, 345 U.S. 206, 212 (1953); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

163 "No person shall . . . be deprived of life,

liberty, or property, without due process of law. . . ." U.S. CONST. amend. V.

[164] "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST., amend. XIV, § 1.

[165] *See, e.g., Plyler*, 457 U.S. at 210 ("[W]e have clearly held that the Fifth Amendment protects aliens whose presence in this country is unlawful from invidious discrimination by the Federal Government."); *Wong v. Warden*, 999 F. Supp 287, 290 (N.D.N.Y 1998) ("discrimination based upon race is so unjustifiable that it violates the broad liberty interest protected by the due process clause of the Fifth Amendment, similar to the manner in which such discrimination violates the equal protection clause of the Fourteenth Amendment."); *Matter of Toro*, 17 I. & N.Dec. 340 (BIA 1980). As explained in Part I, *supra*, an ICE arrest or even brief detention based solely or predominately on race also violates the Fourth Amendment. Further, even a non-detentive interrogation based on race violates equal protection.

[166] *See, e.g., Navia-Duran v. INS*, 568 F.2d 803, 810 (1st Cir. 1977) ("It appears to us that the agent actively misinformed the appellant and that her statement emanated from fear, ignorance, and agency-cultivated miscomprehension of her rights…Isolated from her friends, inexperienced in American justice, taken from her home to a strange office late at night, Ms. Navia-Duran cannot be said to have spoken freely and voluntarily when she admitted her alienage.").

[167] *See, e.g., Campaneria v. Reid*, 891 F.2d 1014, 1020 (2d Cir. 1989); *United States v. Jaswal*, 47 F. 3d 539, 542 (2d Cir. 1995).

[168] *See, e.g., Matter of Garcia*, 17 I. & N.Dec. 319, 320 (BIA 1980).

[169] *See, e.g., Magallanes-Damian v. INS*, 783 F.2d 931 (9th Cir. 1986).

[170] *See Stansbury v. California*, 511 U.S. 318, 324 (1994).

[171] *See, e.g., Moran v. Burbine*, 475 U.S. 412, 421 (1986).

[172] As discussed above, the Fourteenth Amendment applies to states and local government actors. Unlawful discrimination and racial profiling by state actors also violate 42 U.S.C. § 1983.

[173] Id.

[174] Immigration Policy Center, "U.S. Latinos Slammed by Immigration Debate Gone Ugly," Oct. 9, 2008, www.immigrationpolicy.org, see also Angela Kelley, "One in Ten Latinos Asked for Papers for LWL: Living While Latino," posted Sept. 24, 2008, available at: http://www.huffingtonpost.com/angela-kelley/one-in-ten-latinos-asked_b_129053.html, last visited 10/13/2008.

[175] Id.

[176] Transcript of Commission Hearing in Atlanta, Ga., p. 39.

[177] Northwest Arkansas was another site of systemic racial profiling under the guise of a 287(g) program. See Transcript of hearing, testimony of Jim Miranda, at the Commission hearing in Atlanta, Ga.. See Transcript at 84 regarding racial profiling under 287(g) agreements in Cobb County, Ga. as well as in Hall County, Whitfield County and just recently Gwinnet County.

[178] A lawsuit against Sheriff Arpaio and Maricopa County was eventually filed.

[179] *See* Manuel de Jesus Ortega, et al. v. Joseph M. Arpaio, et al., Case No. CV 07-02513-PHX-MHM, *supra; see also* Stephen Lemons, "Guadalupe made it clear that Joe Arpaio's attacking anyone with brown skin," Phoenix New Times, May 29, 2008, http://www.phoenixnewtimes.com/content/printVersion/793990, last visited 10/8/2008; Stephen Lemons, "The Bird tackles AZ's new immigration czar, Matthew Allen, while Guadalupe revolts against the MCSO's iron grip," April 10, 2008, http://www.phoenixnewtimes.com/content/printVersion/753014, last visited 10/8/2008.

[180] *See* Testimony of Kristina Campbell, Staff Attorney with MALDEF, Chapter One, *supra, see also* Manuel de Jesus Ortega Melendres, et al. v. Joseph M. Arpaio, et al., *supra*.

[181] *See* Id.; *see also* ICE Fact Sheet, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, September 24, 2007, http://www.ice.gov/pi/news/factsheets/factsheet287gprogover.htm.

[182] Interview of Ahilan Arunanantham, Director of Immigrants Rights and National Security, ACLU-SC, by Monica Guizar, July 20, 2008.

[183] ACLU-SC filed a lawsuit against DHS and ICE seeking damages for the unlawful deportation of Mr. Guzman, based solely on unlawful racial profiling. *Peter Guzman and Maria Carbajal v. United States of America*; et al., Case No. CV08-01327 GHK (SSx), Filed February 27, 2008 (C.D. Cal.), on file with the Commission.

[184] *See* Cox and Wishnie, *The Constitutional Law of Immigration enforcement, supra* at 8.

[185] 8 C.F.R. §287.3(c).

[186] John Wilshire Carrera, Boston Hearing.

[187] Reverend Rebecca Dinnen, Des Moines Hearing (stating, "[B]ut no legal information was gotten into these folks, not even those pamphlets, which we were trying to get them, which basically said, don't sign anything until you get a lawyer").

[188] Id.

[189] Sonia Parras Konrad, Des Moines Hearing.

[190] Id.

[191] *See NLG v. Chertoff*, Complaint for TRO and Interview by Monica Guizar with Ahilan Arulanantham, ACLU-SC (7/29/08).

[192] The Sixth Amendment provides: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defense.

[193] "Editorial: 'The Jungle', Again," *The New York Times*, Aug. 01, 2008, http://www.nytimes.com/2008/08/01/opinion/01fri1.html?ref=opinion, Last seen Mar. 20, 2009.

[194] "Interpreting after the Largest ICE Raid in US History: A Personal Account," by Erik Camayd-Freixas, Ph.D., Florida International University (June 13, 2008) at p.7.

[195] *See* Statement of David Wolfe Leopold on behalf of the American Immigration Lawyers Association, Before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Committee on Judiciary, U.S. House of Representatives, Hearing on the Arrest, Prosecution, and Conviction of Undocumented Workers in Postville, Iowa from May 12 to 22, 2008 (July 24, 2008).

[196] Erik Camayd-Freixas, Ph.D. essay at 6.

[197] Letter from Rockne Cole to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Committee on Judiciary, U.S. House of Representatives, Hearing on the Arrest, Prosecution, and Conviction of Undocumented Workers in Postville, Iowa from May 12 to 22, 2008.

[198] Erik Camayd-Freixas, Ph.D. essay at 6.

[199] John Wilshire Carrera, Boston Hearing.

[200] Id.

[201] Id.

[202] *Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Bridges v. Wixon*, 326 U.S. 135 (1945); *Singh v. DOJ*, 461 F.3d 290, 295-97 (2d Cir. 2006).

[203] *See for eg.*, Michael Pearson Memo, "Worksite Enforcement Policies, dated October 20, 1999, of the former Immigration and Naturalization Service (INS), on file with the author. This memorandum governs policies that govern the manner in which worksite enforcement operations are to be conducted. *See also*, Guidelines for Identifying Humanitarian Concerns in Worksite Enforcement Operations, on file with the Commission; *and* Questioning Persons During Labor Disputes, former Operating Instruction 287.3, *supra* Chapter Two.

[204] *See* Memorandum, Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, Worksite Enforcement Policies, U.S. Department of Justice, Immigration and Naturalization Service (Oct. 20, 1999).

[205] Mayor John DeStefano, Boston Hearing.

[206] Tom Vilsack, Des Moines Hearing.

[207] Id.

[208] Sister Christine Feagan, Des Moines Hearing.

[209] *See* NILC's *THE LOS ANGELES RAPID RESPONSE NETWORK, How Advocates Prepared for and What They Learned from the Recent Workplace Raid in Van Nuys, supra.*

[210] Testimony of Rev. Dinnen, Des Moines, Iowa hearing,

Tr. at 84: "Their family didn't know where they were anymore than our families didn't know where they went to after they left."

[211] Lt. Governor Timothy P. Murray, Boston Hearing.

[212] Janice Mathis, Atlanta Hearing.

[213] Mayor John DeStefano Jr., Boston Hearing.

[214] Senator John Kerry, Boston Hearing.

[215] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST., amend. IV.

[216] *See, e.g., Welsh v. Wisconsin*, 466 U.S. 740, 748-49 (1984) ("It is axiomatic that the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'"); *Payton v. New York*, 445 U.S. 573, 586 (1980) ("It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable."); *id*. at 589-90 ("At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."); *Loria v. Gorman*, 306 F.3d 1271, 1284 (2d Cir. 2002) ("Subsequent holdings have reiterated that principle and made clear that any physical invasion of the structure of the home, by even a fraction of an inch, is too much to be tolerated.").

[217] *See* 8 C.F.R. § 287.5(e) (describing administrative warrant).

[218] "A warrant of removal is administrative in nature and does not grant the same authority to enter dwellings as a judicially approved search or arrest warrant." *Letter of DHS Secretary Michael Chertoff to Senator Christopher Dodd* (June 14, 2007).

[219] *See, e.g., Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012 (9th Cir. 2008); *United States v. Albrektsen*, 151 F.3d 951, 955 (9th Cir. 1998) (holding that a suspect moving aside to avoid physical contact with entering officers is insufficient to establish implied consent); *United States v. Baggatts*, 646 F. Supp. 589, 591 (D.D.C. 1986).

[220] *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *Bumper v. North Carolina*, 391 U.S. 543 (1968) (officer's claim or show of authority); *LaDuke v. Nelson*, 762 F.2d 1318, 1329 (9th Cir. 1985).

[221] *See, e.g., Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990); *Steagald v. United States*, 451 U.S. 204, 211 (1981); *United States v. Matlock*, 415 U.S. 164, 169-71 (1974).

[222] *United States v. Ritter*, 752 F.2d 435 (9th Cir. 1985).

[223] *See, e.g., LaDuke v. Nelson,* 762 F.2d at 1329 (time of day—here, early morning and late evening—is relevant factor in voluntariness analysis).

[224] *Id*. (consent to search of migrant farm housing held not voluntary where INS officers failed to advise occupants of right to refuse consent; where occupants had inherent fear of uniformed officers and were of limited education and linguistic ability; and where searches occurred in early morning or late evening).

[225] *Abdella v. O'Toole*, 343 F.Supp. 2d 129, 135 (D. Conn. 2004).

[226] "An arrest warrant that complies with the Fourth Amendment has four essential attributes. It must: (1) be supported by probable cause; (2) be issued upon a probable cause determination based on oath, affirmation, or sworn testimony setting forth the underlying facts and circumstances giving rise to probable cause; (3) describe the persons or things to be seized with particularity; and (4) be issued by a neutral and detached magistrate." *See Milner v. Duncklee*, 460 F. Supp. 2d 360, 369 (D. Conn. 2006).

[227] *See, e.g., United States v. Terry,* 702 F.2d 299, 319 (2d Cir. 1983), *cert. denied,* 461 U.S. 931 (1983).

[228] See note 12, *supra*.

[229] See INA § 287(a)(2), 8 U.S.C. § 1357(a)(2).

[230] *Cf. Golino v. City of New Haven*, 950 F.2d 864, 870 (2d Cir. 1991).

[231] *See Beck v. Ohio*, 379 U.S. 89, 90 (1964). *See also Caldarola v. Calabrese*, 298 F.3d 156, 162 (2d Cir. 2002).

[232] INA § 287(a)(2), 8 U.S.C. § 1357(a)(2). Although INA § 287(a)(2) uses the words "reason to believe" instead of "probable cause," the two are legally indistinguishable. *See, e.g., United States v. Sanchez*, 635 F.2d 47, 63 n.13 (2d Cir. 1980) ("As used in section 287, 'reason to believe' is the equivalent of probable cause"); *Ojeda-Vinales v. INS*, 523 F.2d 286, 287 (2d Cir. 1975) (holding that "reason to believe" is equal to "probable cause").

[233] *See Terry v. Ohio*, 392 U.S. 1 (1968).

[234] *See United States v. Delgado*, 466 U.S. 210, 215 (1980) ("[N]ot all personal intercourse between policemen and citizens involves seizures of persons."). *But see Marquez v. Kiley,* 436 F. Supp. 100, 113-14 (S.D.N.Y. 1977) ("It is in the nature of an oxymoron to speak of 'casual' inquiry between a government official, armed with a badge and a gun and charged with enforcing the nation's immigration laws, and a person suspected of alienage. . . . For a constitutional rule in these matters to depend on the 'voluntary cooperation' of the suspect is to impose a gloss upon real life.").

[235] *Delgado*, 466 U.S. at 216 (*citing Florida v. Royer*, 460 U.S. 491 (1983) (plurality opinion)).

[236] *Id*. at 215 (*quoting Terry v. Ohio*, 392 U.S. 1, 19, n.16 (1968)).

[237] *Id. See also United States v. Delgado*, 466 U.S. 210, 215 ("Only when the officer, by means of physical force or show of authority, has restrained the liberty of a citizen may we conclude that a seizure has occurred.") (*quoting Terry v. Ohio*, 392 U.S. 1, 19, n.16). *But see Marquez v. Kiley*, 436 F. Supp. at 113-14.

[238] Id. at 577.

[239] *See, e.g., Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *Bumper v. North Carolina*, 391 U.S. 543 (1968); *LaDuke v. Nelson*, 762 F.2d 1318, 1329 (9th Cir. 1985); *Commonwealth v. Angivoni*, 417 N.E.2d 422 (Mass. 1981).

[240] *United States v. Brignon-Ponce*, 422 U.S. 873, 884 (1975).

[241] *Id.* at 881-82. *See also Ramirez v. Webb*, 599 F. Supp. 1278, 1284 (W.D. Mich. 1984) ("It would appear that [the officer] believes he can stop a vehicle and then discover reasonable articulable facts for doing so, based on closer observation and interrogation. That is not the case law or the constitutional principle. The reasonable articulable facts must *precede* the stop.").

[242] *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).

[243] *Id*.

[244] *United States v. Manzo-Jurado*, 457 F.3d 928, 936-37 (9th Cir. 2006).

[245] Id. at 936.

[246] *Brignoni-Ponce*, 422 U.S. at 887.

[247] *Cf. Manzo-Jurado*, 457 F.3d at 935 ("[I]n regions heavily populated by Hispanics, an individual's apparent Hispanic ethnicity is not a relevant factor in the reasonable suspicion calculus.") (*citing United States v. Montero-Camargo*, 208 F.3d 1122, 1132 (9th Cir. 2000)).

[248] *Benitez-Mendez v. INS*, 760 F.2d 907, 909 (9th Cir. 1983) (emphasis added).

[249] *See United States v. Manzo-Jurado*, 457 F.3d 928, 939-40 (9th Cir. 2006); *Sandoval-Rubio v. INS*, 246 F.3d 676 (9th Cir. 2000); *Martinez v. Nygaard*, 831 F.2d 822, 827 (9th Cir. 1987); *La Duke v. Nelson*, 762 F.2d 1318, 1321 (9th Cir. 1985); *Benitez-Mendez v. INS*, 760 F.2d 907, 909 (9th Cir. 1983); *International Ladies' Garment Workers' Union v. Sureck*, 681 F.2d 624, 638 (9th Cir. 1982), *rev'd on other grounds sub nom., INS v. Delgado*, 466 U.S. 210 (1984); *Gallegos v. Haggerty*, 689 F. Supp. 93, 103 (N.D.N.Y. 1988); *International Molders' & Allied Workers' Local Union 164 v. Nelson*, 643 F. Supp. 884 (N.D. Calif. 1986), *modified on appeal*, 799 F.2d 547 (9th Cir. 1986); *Mendoza v. INS*, 559 F. Supp. 842, 848 (W.D. Tex. 1982); *Marquez v. Kiley*, 436 F. Supp. 100, 112 (S.D.N.Y. 1977); *Illinois Migrant Council v. Pilliod*, 398 F. Supp. 882 (N.D. Ill. 1975), *modified on appeal*, 548 F.2d 715 (7th Cir. 1977).

[250] U.S. CONST., Art. VI, cl. 2.

[251] *See, e.g. United States v. Urrieta*, 520 F.3d 569, 574 (6th Cir. 2008) (noting that under immigration statutes, " local law enforcement officers cannot enforce completed violations of civil immigration law (i.e., illegal presence) unless specifically authorized to do so by the Attorney General under special conditions that are not applicable in the present case").

[252] *De Canas v. Bica*, 424 U.S. 351, 354 (1976). *See also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he authority to control immigration is . . . vested solely in the Federal Government, rather than the States."); *Fong Yue Ting v. United States*, 149 U.S.

698, 713 (1893) ("The power to exclude or to expel aliens . . . is vested in the political departments of the government").

[253] *See* 8 U.S.C. § 1324(c) (regarding smuggling, transporting, or harboring certain aliens); 8 U.S.C. § 1252c(a) (regarding illegally re-entering the United States after having been previously convicted of a felony and deported or left the United States after such conviction).

[254] *See* 8 U.S.C. § 1103(a)(10) (providing that local officials may make civil immigration arrests if the U.S. Attorney General certifies that there has been a "mass influx" of aliens and authorizes local law enforcement officials to exercise immigration arrest powers); 8 U.S.C. § 1357(g) (authorizing the Attorney General to enter into memorandums of understanding with local authorities whereby the latter are trained and authorized to enforce civil immigration law generally).

[255] *See, e.g., Gonzales v. City of Peoria*, 722 F.2d 468, 474-475 (9th Cir. 1983) ("the civil provisions of the Act . . . constitute such a pervasive regulatory scheme, as would be consistent with the exclusive federal power over immigration."); *League of United Latin American Citizens v. Wilson,* 908 F.Supp. 755, 770 (C.D. Cal. 1995) ("[S]tate agents are unqualified – and also unauthorized – to make independent determinations of immigration status."). *See also Villas at Parkside Partners v. City of Farmers Branch*, ___ F.Supp.2d ___, 2008 WL 2201980 (N.D. Tex. May 18, 2008) (granting permanent injunction and holding that enforcement of immigration law by local law enforcement in the absence of an agreement under INA § 287(g) is preempted).

[256] *Plyler v. Doe*, 457 U.S. 202, 210 (1982). *See also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Shaughnessy v. Mezei*, 345 U.S. 206, 212 (1953); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

[257] "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ." U.S. CONST. amend. V.

[258] "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST., amend. XIV, § 1.

[259] *See, e.g., Plyler*, 457 U.S. at 210 ("[W]e have clearly held that the Fifth Amendment protects aliens whose presence in this country is unlawful from invidious discrimination by the Federal Government."); *Wong v. Warden*, 999 F. Supp 287, 290 (N.D.N.Y 1998) ("discrimination based upon race is so unjustifiable that it violates the broad liberty interest protected by the due process clause of the Fifth Amendment, similar to the manner in which such discrimination violates the equal protection clause of the Fourteenth Amendment."); *Matter of Toro*, 17 I. & N.Dec. 340 (BIA 1980). As explained in Part I, *supra*, an ICE arrest or even brief detention based solely or predominately on race also violates the Fourth Amendment. Further, even a non-detentive interrogation based on race violates equal protection.

[260] *See, e.g., Navia-Duran v. INS*, 568 F.2d 803, 810 (1st Cir. 1977) ("It appears to us that the agent actively misinformed the appellant and that her statement emanated from fear, ignorance, and agency-cultivated miscomprehension of her rights...Isolated from her friends, inexperienced in American justice, taken from her home to a strange office late at night, Ms. Navia-Duran cannot be said to have spoken freely and voluntarily when she admitted her alienage.").

[261] *See, e.g., Campaneria v. Reid*, 891 F.2d 1014, 1020 (2d Cir. 1989); *United States v. Jaswal*, 47 F. 3d 539, 542 (2d Cir. 1995).

[262] *See, e.g., Matter of Garcia*, 17 I. & N.Dec. 319, 320 (BIA 1980).

[263] *See, e.g., Magallanes-Damian v. INS*, 783 F.2d 931 (9th Cir. 1986).

[264] *See Stansbury v. California*, 511 U.S. 318, 324 (1994).

[265] *See, e.g., Moran v. Burbine*, 475 U.S. 412, 421 (1986).

[266] *See, e.g., Rios-Berrios v. Immigration & Naturalization Service*, 776 F.2d 859, 862 (9th Cir. 1985) ("[D]ue process mandates that he is entitled to counsel of his own choice at his own expense under terms of the Immigration and Nationality Act. Section 292 of the Act, 8 U.S.C. § 1362, makes that privilege explicit."). Since removal proceedings are not criminal, there is no Sixth Amendment right to counsel at government expense. *See id*.

[267] *See, e.g., Aguilar v. ICE*, 510 F.3d 1 (1st Cir. 2007).

[268] *See, e.g., Degbuji v. Middlesex County*, 169 Fed. Appx. 677, 682 (3d Cir. 2006).

[269] *Cf. v.* ICE, 510 F.3d 1 (1st Cir. 2007); *Navia-Duran v. INS*, 568 F.2d 803, 810 (1st Cir. 1977).

[270] *Hartman v. Moore*, 126 S. Ct. 1695, 1703 (2006).

[271] *See Buckley v. Valeo*, 424 U.S. 1, 48 (1976) ("[T] he First Amendment right to 'speak one's mind... on all public institutions'" includes the right to engage in "'vigorous advocacy' no less than 'abstract discussion.'") (citations omitted).

[272] *See, e.g., NAACP v. Alabama ex. rel. Patterson*, 357 U.S. 449, 460 (1958) ("Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly.")

[273] *Thomas v. Collins*, 323 U.S. 516, 534 (1945) (holding that union organizing implicates speech and assembly rights); *Howard Gault Co. v. Texas Rural Legal Aid, Inc.*, 848 F.2d 544, 567 (5th Cir. 1988) (same).

[274] James Gray Pope, *The Thirteenth Amendment Versus the Commerce Clause: Labor and the Shaping of American Constitutional Law*, 1921-1957, 102 COLUM. L. REV. 1 (2002) (reviewing Thirteenth Amendment arguments pressed by labor advocates in development of Norris-LaGuardia and Wagner Acts); *see also* William E. Forbath, LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT 136 (1991) (describing "labor jurisprudence" that "drew on the . . . thirteenth amendment[]"); Lea S. Vandervelde, *The Labor Vision of the Thirteenth Amendment*, 138 U.PA. L.REV. 437 (1989).

[275] INS Operations Instruction 287.3a (Dec. 1996) (restricting immigration raids during labor dispute), *redesignated* as § 33.14(h) of the INS Special Agent's Field Manual (Apr. 2000), *reprinted in* 74 INTERP. RELEASES 199 (Jan. 20, 1997).

[276] *See, e.g., In re: Herrera-Priego*, U.S. D.O.J. EOIR (Lamb, I.J., July 10, 2003) (terminating proceedings based on INS raid during worksite dispute, where raid undertaken at request of retaliating employer, in violation of INS Operations Instruction 287.3a), available at http://www.lexisnexis.com/practiceareas/immigration/pdfsweb428.pdf.

[277] *See, e.g., County of Suffolk v. Long Island Lighting Co.*, 710 F.Supp. 1387, 1390 (E.D.N.Y. 1989) ("[A] municipal corporation . . . is protected under the First Amendment in the same manner as an individual.").

[278] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

[279] *See e.g., Printz v. United States*, 521 U.S. 898, 932 (1997) ("[When it is the] *object* of [a] law to direct the functioning of the state [government], and hence to compromise the structural framework of dual sovereignty, [] a 'balancing' analysis is inappropriate. It is the very principle of separate state sovereignty that such a law offends, and no comparative assessment of the various interests can overcome that fundamental defect."); *United States v. Lopez*, 514 U.S. 549, 564 (1995) ("States historically have been sovereign in the areas of criminal law enforcement"); *Gregory v. Ashcroft*, 501 U.S. 452, 462 (1991) (function and organization of local government is central to local sovereignty)