IMMIGRATION RAIDS: POSTVILLE AND BEYOND

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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IMMIGRATION RAIDS: POSTVILLE AND BEYOND

THURSDAY, JULY 24, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:04 a.m., in room 1310, Longworth House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Conyers, Lofgren, Jackson Lee, Sánchez, Gutierrez, Ellison, Smith, King, Gallegly, and Lungren.

Staff present: J. Traci Hong, Majority Counsel; Andrés Jimenez, Professional Staff Member; and George Fishman, Minority Counsel.

Ms. LOFGREN. This hearing of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will come to order.

The Chair, by unanimous consent, may adjourn this hearing at any time.

Before making my opening statement, I would like to make a couple of administrative comments.

First, I think there are more people in this room than I have every seen before, and so we are opening up an overflow room for those of you who would like to sit down—and I think, really, we have got too many people in here in terms of fire safety—and that overflow room is 2226 over in the Rayburn Building, and the hearing will be broadcast there. So if some people who are standing in the back could consider moving there, that would be quite terrific.

And also this hearing will be broadcast on Channel 2 of the House Television Network so people can also, if you are here on staff, will be able to watch it from your offices, and that might be more convenient as well.

I will just note that this is a serious hearing based on accounts that we have now received about the largest ICE raid in the history of the United States. It seems to me one of the hallmarks of our great country is that we do not treat people like livestock. Justice is not a commodity in America; it is personal.

And over 4 days in May at the Waterloo National Cattle Congress, each case was listed individually—the United States vs. a single person—and yet the information suggests that the people charged were rounded up, herded into a cattle arena, prodded down a cattle chute, coerced into guilty pleas and then to Federal prison.

This looks and feels like a cattle auction, not a criminal prosecution in the United States of America.

Our country was founded in opposition to the brutal practices of English tyrants. Our Western legal system is grounded on the firm belief that people in America have rights to due process. The crushing power of the states is constrained by the Constitution, which guarantees those rights.

So what happened at Waterloo? Seventeen defendants to one lawyer, group hearing, script telling lawyers what to say in court, limited time for lawyers to meet defendants even without the language barriers the lawyers faced. Kind of like a cattle auction.

The goal seems to have been that government would look tough on illegal immigration. But did our government follow the law, follow the Constitution and give meaningful due process?

We should also be concerned by the following: The raid and prosecutions may have interfered with ongoing investigations into serious labor-law violations, including allegations of child labor and abuse. The workers prosecuted by the government may have been able to assist in that investigation or may have been victims of the violations themselves.

Many of the workers apparently had no idea what a Social Security number or card even was. It may have been the employer tagging them with the number so it could hire them.

The Federal Government spent at least $4 million to put people through all of this.

What was accomplished? Well, it didn't help people like the person Representative Davis mentions in his testimony or the witness on one of our panels, who had her identity stolen. And why do I say that? No effort was made to punish the persons who truly meant to steal identities and use them to harm honest, hard-working Americans.

The American system of justice is designed to ensure that only those who commit crimes are convicted and to identify the truly egregious, intentional, harmful acts by criminals and punish them accordingly. Those who intend to steal identities don't walk away with just 5 months of prison time.

We spent more than $4 million interfering with a legitimate labor-violation investigation, violating the principle of individualized justice and locking up impoverished, uneducated workers trying to provide for their families without allowing them a chance to talk to a lawyer who has the time and skill to explain a complicated process to them.

This is a magnificent country we have. In this country our Constitution guarantees that a poor person of any race, of any ethnicity, whether here legally or not, has a right to due process and to be represented by a lawyer when the government tries to prosecute and put her in jail. And that representation is not a formality. It is a meaningful right that includes the appropriate amount of time and space for the tools needed to conduct substantive and qualitative representation. Only through individualized processes can we be sure that, at the end of every trial, justice has indeed been served.

I would now recognize our distinguished Ranking Member Steven King for his opening statement.

Mr. KING. Thank you, Madam Chair.

And I want to thank in advance the witnesses for agreeing to come here and testify, especially when it is Members, because you have busy schedules, and we also know that you go on the record on both sides of the microphone in this place, which is quite an interesting dynamic to be on the other side.

I wasn't present at the Agriprocessors Incorporated plant in Postville, on May 12, when 389 illegal immigrant workers were arrested and detained by ICE. Nor was I present during the prosecution of those workers a short while later.

But what I have heard from parties who were present is that the workers were in this country illegally. They used false identification documents and stolen Social Security numbers to get their job. They were provided competent criminal defense attorneys and interpreters during the prosecution process and were given a choice of pleading guilty or going to trial.

If this is the case, I see no reason for this hearing other than to try to lend credence to the arguments of those who want amnesty and believe that working illegally in the United States is a victimless crime. When an illegal immigrant gets a job in this country using the identification documents or Social Security number of another person, it is a crime, and the other person is the victim of that crime.

The FTC estimates that 8.3 million Americans were victims of identity fraud in the year 2005, and that number is on the rise. We will hear today from Mrs. Lora Costner. Both she and her husband had their identify stolen by illegal immigrants, and she will tell us how it ruined their lives.

With respect to Agriprocessors—the enforcement action—the allegations are that the illegal immigrant defendants somehow did not receive due process. But each defendant was provided a criminal defense attorney, and it was up to those defense attorneys to ensure due process. They were also provided interpreters.

According to one of the defense attorneys present, the client did get due process. According to a July 11, 2008, New York Times article, attorney Sarah Smith stated, "I think they understood what their options were. I tried to make it very clear." And according to the article, Mrs. Smith said she was convinced, after examining the prosecutor's evidence, that it was not in her client's best interest to go to trial. So a defense attorney, who was an advocate for her client, believed her clients made the right choice by accepting the plea agreements offered by the U.S. Attorney's Office.

For far too many years, employers have gotten the message that they can hire illegal immigrant workers with few or no consequences. ICE worksite enforcement actions, like the ones in the Postville, put these employers and the illegal workers themselves on notice that, if they chose to violate the law, they are subject to prosecution.

And listening to the gentlelady from California's opening statement about the defendants being coerced into guilty pleas, I think that is a presumption that I would—if we can hear that confirmed here today, I would be quite interested.

But if you have an attorney—if you come into the United States illegally, and you go to get a job, and you are breaking the law, and

then you are rounded up in an ICE raid, and this country and the taxpayers fund to the tune of $4 million your attorney and your interpreter, and then you plead guilty because it is in your best interest—and by the way, in a plea bargain agreement, as well—I mean, that is the equivalent of—this is on a far-higher scale for those of you who will choose to misinterpret my intent here.

But let us just say that law enforcement arrests someone on suspicion of murder, and they say, "Tell us where the body is, we will plea agreement that down, and we won't go for the death penalty." If that defendant tells where the body is, they get a plea agreement for a life sentence rather than a death penalty. That is not in proportion, obviously, but that illustrates for you what a plea agreement really is. And if they have to hand them a piece of paper so that they can answer in English in America, that is not what I call confusion.

So in group hearings, by the way, we are looking at 12 to 20 or more million people in the United States unlawfully, and I don't know how we process 12 to 20 million in an individual fashion. If you do it in group, they consent to that, I believe their rights were protected. I am willing to listen to the arguments to the contrary here today.

And I yield back the balance of my time.

Ms. LOFGREN. Gentleman's time has expired.

I would now invite the Chairman of the full Judiciary Committee for an opening statement if he wishes to give one.

Mr. CONYERS. Thank you, Madam Chair.

I am pleased that we are holding this hearing because it gives us a chance to revisit a very important subject.

We have the Ranking Member of the full Committee here, and we have Steve King, the personification of what we ought to do in sort of a get-tough mode with immigration policy, full-bore enforcement.

And we have a way of trying to figure out where we go from the Immigration Reform Act that we started out. It was supposed to be a big advancement forward, something happened in the Senate, and here we are.

So for me, I am looking for a way back to how we can get to the middle, Steve, if there is a middle way in this.

What is it that we can do to enforce the law—first of all, recreate the law, and we want to look at that. And, secondly, how do we enforce it? And these raids where in a way they were brutal, they were payback, they are gotcha and it seemed like there was something else going on besides being the biggest raid in history so far.

And so I am looking for this way that we can begin to examine what we can do besides deport 12 million or more people. I think we can figure that out.

But there is a lot of emotional attachment to this subject matter that brings us here today with this Committee.

First of all, in a downward-spiraling economy, we have a lot of people looking for somebody to blame, and there is nobody more eligible for blame than people who aren't qualified or legal citizens and that factors into this. I want to try to separate some of that out.

Mr. GALLEGLY. Would the gentleman yield?

Mr. CONYERS. Of course.

Mr. GALLEGLY. Mr. Chairman, I appreciate your comments. I would like to say that I don't think that we should be blaming legal, law-abiding citizens. And when we talk about having to deport 12 million or 20 million or whatever the magic number is, you were here in 1986 when we passed the Simpson-Mazzoli bill, better known as Amnesty or IRCA—Immigration Reform Act—and where we made between 4 and 5 million people that were illegal legal under the premise that this will never happen again because we have a safety valve called employer sanctions. The only problem is that we never enforce those employer sanctions.

I contend that we could solve a tremendous number of the problems with illegal immigration today without one border patrol agent. I think all we have to do—we don't have to deport anyone. If we enforce the laws under IRCA and subsequent laws in the 1995 act, as it relates to benefits, jobs and the overwhelming reason why people came here to start with, if we deny them access to the things that they are illegally entitled to, I think a large number will self-deport.

Then when we find that we have unmet domestic needs for certain things—the whole premise of our immigration policy is based on assimilation and bringing people here from countries all over the world to fill jobs and make America a greater and strong place. But we do it under the rule of not—under the rule of law, not under the cover of darkness.

And I yield back.

Mr. CONYERS. Well, now that I have given you half of my opening statement time just——

Mr. GALLEGLY. [Off mike.]

Mr. CONYERS. No, but I want payback, though, even though it doesn't happen often. [Laughter.]

Now, Elton, here is—may I get an additional minute if I——

Ms. LOFGREN. Well, the Chairman is allocated an additional minute without objection.

Mr. CONYERS. Thank you.

Well, here is the problem, Elton. It was under the Administration that you advocated far more forcibly for than me and under a 12-year of Republican leadership in the House of Representatives that all these complaints arise from that you are telling me what we should have done.

Now I will yield you the rest of my 1 minute left.

Mr. GALLEGLY. I appreciate that. During that same period of time, we also had 8 years as a president—and really enforcing the laws of the land is not the legislative branch, it is the executive branch.

Ms. LOFGREN. The gentleman's time has expired, and we will now ask the Ranking Member of the full Committee——

Mr. GALLEGLY. Thank the gentleman for yielding.

Ms. LOFGREN [continuing]. If he would like to make a brief opening statement so that we can get to our witnesses.

Mr. SMITH. Thank you, Madam Chair.

I always appreciate the graciousness of the full Committee Chairman and his yielding to Members, as he just did.

Madam Chair, it seems to me that the more the Administration tries to do its job investigating companies who employ illegal immigrants and prosecuting employers and illegal immigrants who violate the laws against working in the U.S. illegally, the more they are criticized for enforcing the law. If Members of this Committee believe that illegal immigrants should be allowed to work, the appropriate response should be to repeal employer sanctions.

Of course, Americans expect that any law enforcement investigation and prosecution be conducted properly. As long as that goal is met, the prosecutions should continue unless the law is changed.

Today's hearing was prompted by allegations of a court interpreter, who is here to testify, that illegal immigrant defendants prosecuted in connection with the worksite enforcement action were not treated fairly. However, from the beginning, these detained workers, most of whom were charged with crimes related to identify theft, apparently were, in fact, treated fairly.

Sixty-two of them were almost immediately released from custody on humanitarian grounds. Immigration and Customs Enforcement and the Department of Justice provided the illegal workers with a clean and safe detention environment, and they had criminal defense counsel appointed to represent them—and interpreters—all at taxpayers' expense.

Today we will hear from DOJ and ICE, who will describe the procedures followed during the investigation and persecution—prosecution of 297 of the 389 people detained by ICE officials. Just because someone does not agree with the prosecution or does not like the fact that illegal workers are detained and placed and deportation procedures doesn't mean that such prosecutions are inhumane.

Instead of focusing on the rights of illegal immigrants who take jobs from American workers, we should focus on ways to protect the jobs of American workers. A report by the Center for Immigration Studies found that illegal immigrants are displacing Americans in the job market or depressing their wages significantly.

Black workers are disproportionately displaced by illegal workers. The Bureau of Labor Statistics found that in June nearly a third of all young Black adults were unemployed and many others are so discouraged that they have left the labor force. Unfortunately, if employers can hire an illegal employee at less cost than a legal employee without the risk of prosecution, they will hire the illegal immigrant, who will cost them less.

Enforcement is working. When illegal immigrants know they can no longer get jobs, they often leave the area, and most return home. After states like Arizona and Oklahoma enacted laws to crack down on employers who hire illegal immigrants, newspapers were filled with stories detailing how illegal immigrants were leaving the country. This is happening in communities across the U.S.

And communities benefit from ICE worksite enforcement actions. Last year, Georgia's Crider, Inc. lost over 600 illegal workers during an ICE worksite enforcement action, but the company increased wages $1.00 an hour and continues to fill positions with legal workers.

And after ICE arrested nearly 1,300 of its illegal workers, Swift & Company, a national meat-packing business, also raised wages

and found U.S. citizens and legal immigrants to hire from the surrounding areas. And they were disproportionately minorities.

Madam Chair, I expect today's hearing to show that procedures were in place to ensure proper treatment of illegal workers, then maybe we can start holding hearings that highlight the harmful impact of illegal immigrants on American workers.

And I will yield back.

Thank you.

Ms. LOFGREN. Gentleman yields back.

In the interest of time, other Members are invited to submit opening statements for the record.

Today we will hear from three panels of witnesses to help us consider the important issues before us.

The two panels following this first will focus in on the Postville issue and—but we have had ICE enforcement raids throughout the country, and Members have had an interest to talk about this general enforcement issue as it has affected their constituencies. And so we are quite honored to have four of our colleagues here today to offer their testimony and their perspectives on this phenomena in our Nation.

First, it is my pleasure to introduce Congressman Bruce Braley, who represents Iowa's 1st District. Congressman Braley attended Iowa State University and graduated from the University of Iowa School of Law in 1983. He has represented employees challenging dangerous company safety standards and has fought for people who lost their jobs due to corporate downsizing.

Congressman Braley serves on the House Committee on Transportation and Infrastructure, the Committee on Oversight and Government Reform and the Small Business Committee. He is also the chairman of the Small Business Subcommittee on Contracting and Technology and the vice chairman of the Subcommittee on Highways and Transit.

Congressman Braley is married to Carolyn Kalb, who lives with her and their children—Lisa, David and Paul—in Waterloo, Iowa.

So, Congressman Braley, we appreciate your being here today.

TESTIMONY OF THE HONORABLE BRUCE L. BRALEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. BRALEY. Thank you, Chairwoman Lofgren and Ranking Member King and Members of the Committee, for holding this important hearing today and for inviting me to testify.

I am very pleased that the Subcommittee is holding this hearing to examine what happened in the investigation, arrest, detention, conviction, incarceration and deportation of hundreds of undocumented workers at the Agriprocessors Inc. meat-packing plant in Postville, Iowa.

As the Chairwoman noted, I live in Waterloo, IA, which is the site of the National Cattle Congress—which we are very proud of—and I also happen to represent a portion of the town of Postville, although the plant itself is located in Congressman Latham's district.

I have been pressing for accountability and looking for answers into what happened before and during the raid at Agriprocessors, which is the world's largest kosher meat processor, since the May

12, 2008, raid of the plant. Even before the raid, in fact, in November of 2007, I have been questioning the conditions at the Agriprocessors plant. Unfortunately, I have received few good answers to my inquiries and just last week received conflicting information from the Department of Labor and ICE on their coordination before the raid.

The raid at Agriprocessors, in which they detained nearly 400 workers on immigration and criminal charges, has been touted as the largest enforcement action of its kind in U.S. history. There is no doubt that workers who violate the law need to be held accountable. Identity theft and fraudulent use of Social Security information are crimes, and crimes should be prosecuted.

However, while ICE has been effective in finding and detaining undocumented employees who may have broken the law, I am equally concerned that the employer, Agriprocessors, be fully investigated and prosecuted for any violations of the law on its part. The sheer number of arrests made by ICE during the May 12 raid raises serious questions about the company's knowledge of what was going on in its facility. Almost half of the entire workforce was detained by ICE officials, including a dozen minors, who are prohibited by Iowa labor law from working in a slaughterhouse in the first place.

The affidavit filed by Federal officials in support of this raid cited numerous allegations of questionable behavior by company officials, including under-the-table cash payments to undocumented employees and physical abuse. The Des Moines Register has reported that Agriprocessors has "a history of noncompliance with state and Federal regulations related to food safety, pollution and workplace safety at its Postville facility."

These allegations are serious and disturbing. I am pleased that the Department of Labor has confirmed that the Wage and Hour Division district office in Des Moines had begun an investigation of Agriprocessors earlier this year for possible violations of the Fair Labor Standards Act and that the department is working in cooperation with the U.S. Attorney and the State of Iowa to protect the rights of workers and properly enforce the law.

However, I am also concerned that this ICE raid may have had an impact on the ability of the Department of Labor to conduct a thorough and comprehensive investigation of the workplace itself. A letter I received from ICE last week said that, prior to the May 12 operation at the Agriprocessors facility, ICE fully coordinated its activities with other Federal agencies, including the Department of Labor.

This statement directly contradicts a letter I received from the Department of Labor on July 3, which said that, "The raid occurred without the prior knowledge or participation of the Wage and Hour Division" and that, "No advance notice was given to WHD or any other Department of Labor agency prior to the raid." In addition, the DOL letter states that the May 12 enforcement action "changes the complexion of WHD's investigation of Agriprocessors."

I am very concerned that there is conflicting information from these Federal agencies on whether ICE communicated with the DOL prior to the raid, and I intend to continue pushing for an-

swers about any communications between the agencies prior to the raid.

While upholding immigration law is important, so is ensuring workplace safety, and one should not come at the expense of the other. I sincerely hope that the lack of communication between ICE and DOL did not and does not lead to decreased safety for workers at the plant, although the evidence seems to indicate that that is precisely what is happening in Postville.

The situation at Agriprocessors is further evidence that our immigration system is broken. I believe that Congress needs to think boldly and act confidently for a change in order to fix it.

As I learned this year on my trip to the border in Mexico, we need to invest in technology, infrastructure and personnel to secure our border. We need to debate the feasibility of an effective and affordable employment-verification system, and we need to agree on what to do with undocumented immigrants who are already here.

We also need to ensure that the appropriate agencies are fully coordinating with each other and that employers like Agriprocessors, who break our immigration laws, are thoroughly investigated and prosecuted to the full extent of the law.

Unfortunately, under current Administration, the prosecution of employers who violated immigration law has plummeted. In 2004, only 4 employers faced sanction for hiring undocumented workers out of more than 9 million employers in the United States, and that record has only improved slightly in recent years.

The Federal Government must demonstrate a commitment to enforcing the law against corporations who profit by looking the other way when immigration, workplace safety, child labor, environmental and food-safety laws are being broken. Unless we enforce our laws equally against both employees and employers who break the law, we will continue to have a serious immigration problem here in this country.

Thank you.

[The prepared statement of Mr. Braley follows:]

PREPARED STATEMENT OF THE HONORABLE BRUCE L. BRALEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

BRUCE L. BRALEY
1st District, Iowa

TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
Vice-Chairman, Highways and Transit Subcommittee

OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

SMALL BUSINESS COMMITTEE
Chairman, Contracting and Technology Subcommittee

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Statement of Congressman Bruce Braley
House Judiciary Committee
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law
July 24, 2008

Thank you, Chairwoman Lofgren, Ranking Member King, and members of the Subcommittee, for holding this important hearing today and for inviting me to testify. I'm very pleased that the Subcommittee is holding this hearing to examine what happened in the investigation, arrest, detention, conviction, incarceration, and deportation of hundreds of undocumented workers at the Agriprocessors, Inc. meatpacking plant in Postville, Iowa.

I've been pressing for accountability and looking for answers about what happened before and during the raid at Agriprocessors – the world's largest kosher meat processor – since the May 12th, 2008 raid of the plant. Even before the raid, in fact since November 2007, I've been questioning conditions at the Agriprocessors plant. Unfortunately, I've received few good answers to my inquiries, and just last week received conflicting information from the Department of Labor (DOL) and Immigration and Customs Enforcement (ICE) on their coordination before the raid.

The raid at Agriprocessors, in which ICE officials detained nearly 400 workers on immigration and criminal charges, is the largest enforcement action of its kind in U.S. history. There is no doubt that workers who violate the law need

to be held accountable. Identity theft and fraudulent use of Social Security information are crimes, and crimes should be prosecuted.

However, while ICE has been effective in finding and detaining undocumented employees who may have broken the law, I'm equally concerned that the employer, Agriprocessors, be fully investigated and prosecuted for any violations of the law. The sheer number of arrests made by ICE during the May 12th raid raises serious questions about the company's knowledge of what was going on in its facility. Almost half of Agriprocessors' entire workforce was detained by ICE officials – including a dozen minors, who are prohibited by Iowa labor law from working in a slaughterhouse in the first place. The affidavit filed by federal officials cited numerous allegations of questionable behavior by company officials, including under-the-table cash payments to undocumented employees and physical abuse. The *Des Moines Register* has reported that Agriprocessors has a "history of noncompliance with state and federal regulations related to food safety, pollution and workplace safety at its Postville facility...."

These allegations are serious and disturbing. I'm pleased that the Department of Labor has indicated that the Wage and Hour Division District Office in Des Moines began an investigation of Agriprocessors earlier this year for possible violations of the Fair Labor Standards Act, and that the Department is working in cooperation with the U.S. Attorney and the State of Iowa to protect the rights of workers and properly enforce the law. However, I'm also concerned

that the ICE raid may have had an impact on the ability of the Department to conduct a thorough and comprehensive investigation.

A letter I received from ICE last week said that "prior to the May 12, 2008, operation at the Agriprocessors facility, ICE fully coordinated its activities with other Federal agencies, including the Department of Labor (DOL)." This statement directly contradicts a letter I received from the DOL on July 3rd, which said that the "raid occurred without the prior knowledge or participation" of the Wage and Hour Division (WHD), and that, "no advance notice was given to WHD or any other DOL agency prior to the raid." In addition, the DOL letter states that the May 12th enforcement action "changes the complexion of WHD's investigation."

I'm very concerned that there is conflicting information from the agencies on whether ICE communicated with DOL prior to the Agriprocessors raid, and I intend to continue pushing for answers about any communications between the agencies prior to the raid. While upholding immigration law is important, so is ensuring workplace safety, and one should not have to come at the expense of the other. I sincerely hope that the lack of communication between ICE and DOL did not and does not lead to decreased safety for workers at the plant.

The situation at Agriprocessors is further evidence that our immigration system is broken. I believe that Congress needs to think boldly and act confidently for a change in order to fix it. As I learned this year on my trip to our border with Mexico, we need to invest in the technology and personnel to secure our border. We need to debate the feasibility of an effective and affordable

employment verification system, and we need to agree on what to do with the undocumented immigrants who are already here. We also need to ensure that the appropriate agencies are fully coordinating with each other, and that employers like Agriprocessors who break our immigration laws are thoroughly investigated and prosecuted to the full extent of the law.

Unfortunately, under the current Administration, the prosecution of employers who've violated immigration laws has plummeted. In 2004, only four employers faced sanctions for hiring undocumented workers – out of more than 9 million employers in the United States. The record has improved only slightly in recent years.

The federal government must demonstrate a commitment to enforcing the law against corporations who profit by looking the other way when immigration, workplace safety, child labor, environmental, and food safety laws have been broken. Unless we enforce our laws equally against both employees and employers who break the law, we will continue to have a serious problem with illegal immigration in this country.

You can be assured that I'll continue to press for answers on the Agriprocessors raid, and continue to press for the employers to be held accountable for any violations of the law. Thank you again for allowing me to testify before the Subcommittee today, and thank you for your efforts to ensure oversight and accountability through this hearing.

Ms. LOFGREN. Thank you very much, Congressman.

Next, I would like to introduce our colleague Congresswoman Sheila Jackson Lee, who represents the 18th District of Texas.

Congresswoman Jackson Lee chairs the Homeland Security Subcommittee on Transportation, Security and Infrastructure Protection and serves on the Judiciary and the Foreign Affairs Committee and, in fact, is a Member of our Subcommittee. She is a leader in the immigration debate and is also the author of H.R. 750, the "Save America Comprehensive Immigration Act of 2007."

Congresswoman Jackson Lee received her bachelor's degree with honors from Yale University and her Juris Doctor degree from the University of Virginia.

Before her election to Congress in 1994, she served on the Houston City Council and was an associate municipal court judge.

Congresswoman Jackson Lee is married to Dr. Elwyn C. Lee, and they have two children: Erica, a graduate of the University of North Carolina and Duke University, and Jason, a 3rd-year student at Harvard University.

Welcome, Congresswoman Jackson Lee, for your statement.

TESTIMONY OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Ms. JACKSON LEE. Thank you very much, Madam Chairwoman and to the Ranking Member.

And my son will not let me rest without saying he has graduated, and I want to——

Ms. LOFGREN. Oh, I was misadvised. Congratulations to you and your proud family.

Ms. JACKSON LEE. Only because you have to deal with young children.

But let me thank you very much and thank the Chairman of the full Committee and the Ranking Member of the Committee as well.

I do want to acknowledge, Madam Chairwoman, that the basis of this Committee is that we adhere to the law, and I thank you for your leadership on this. We recognize that this is a Nation of laws, but we also recognize that it is a Nation of immigrants as well.

The Committee memorandum notes that we started with 15 ICE teams in 2005 and we now are looking to 104 in 2008. Committee memorandum also indicates that we had a deportation rate in 2002 by these ICE raids of 485 and now we are up to 4,000.

And I think what it says is that—the question is whether or not these are the appropriate methods that can really get us to the question of law enforcement and the issue of comprehensive immigration reform. It seems that it cannot.

And so I raise the points regarding the issues that have occurred in Houston, Texas, in particular Shipley Do-Nuts, which is a family-owned chain that has been catapulted into a highly controversial debate when Federal agents raided the company's Houston headquarters and arrested 20 suspected undocumented immigrants employed at the facility.

On Wednesday, April 17, 2008, Immigration and Customs Enforcement agents in a caravan of 50 vehicles, detention vans and an ambulance, swarmed Shipley's office and warehouse complex on

North Main Street at 5 a.m. A government helicopter circled overhead as the Shipley workers were led away in handcuffs to face civil charges of being in the country illegally.

The Houston raid took place at the same time ICE raids conducted—ICE agents conducted raids of chicken-processing plants in Texas, Arkansas, Florida, West Virginia and Tennessee. Apparently, the Administration believes that this is the method toward comprehensive immigration reform.

I believe that these raids are the pathway to potential violence, the arresting of minors and pregnant women, and their wrong-headed and misdirected approach to go forward on the idea of ensuring border security and the security of all Americans.

In essence, we are shutting down small businesses, restaurants, construction sites, not because we believe that the workers that are there are the only workers. We are very much supportive of the working of American people. But if you listen to the small businesses and construction companies and restaurants across America—and processing plants—this is, as I indicated, wrong-headed.

Shipley Do-Nuts had its share of problems. Its own employee filed a discrimination lawsuit. It was a place that was well known. Individuals could have been arrested in a far different manner, but the ICE agents chose to use a cowboy-style ICE raid.

After the raid in the Shipley Do-Nuts in Houston, Action Rags USA was raided. Approximately 70 percent of the 166 detained workers—about 116 workers—were women, including 8 pregnant women, in the Action Rags USA plant raid on June 25, 2008. Many of those workers were detained by ICE, though at least 73 have been released for humanitarian reasons, and some were documented individuals.

The vast majority of these women were caring for children and had families. It is shocking to imagine that, on that fateful day, many children returned home to empty homes and apartments wondering where their mothers would be. Equally appalling, the pregnant workers were subject to stress and anxiety of arrest and detention when their own health and well-being is critical to the health and development of their baby.

The chaos and fear of the aftermath of the raid caused injuries. Four women sustained injuries that required immediate medical attention, including one women that required an immediate life flight by helicopter to a nearby hospital, as she was so fearful of the raid and the ensuing chaos that she climbed on a stack of wooden pallets and fell 20 feet to the ground.

The detainees in both raids were of Mexican and Central American decent. The raid on Action Rags USA resulted in detention of 138 Mexican, 12 Honduran, 8 Guatemalan and 8 Salvadoran.

The Shipley Do-Nuts raid resulted in the detention of men from Mexico, Honduras, Nicaragua and El Salvador.

In both raids, youth were detained. The Shipley Do-Nuts raid resulted in detention of one youth, who was placed in the care of Catholic charities and allowed to attend school until ICE could secure deportation papers.

Two youths were detained in the raid on Action Rags USA. One of the youths, a rising high school senior, worked at Action Rags USA as a summer job and had only been employed from 1 week

prior to the raid and was also under the Dream Act legislation. He is now awaiting deportation and will be deported before he is able to achieve his high dream of a high school degree.

Assistant U.S. Attorney Doug Davis said the fact that 85 percent of company workers of the plant were undocumented was suspicion to show a conspiracy fraud. U.S. Magistrate Frances Stacy ruled there was evidence to support Federal conspiracy charges against the owner and three managers, saying that they knew undocumented workers were hired, but it has been proven that the owner had been at the plant only 1 hour and 57 minutes. Valerie Rodriguez, 34 years old, was described by government officials as a company resource manager; however, it was reported that Ms. Rodriguez was nothing more than a secretary.

In conclusion, Madam Chairwoman, let me simply say that this gives a litany of false starts, raid-like activities that create the potential for violence. It does not speak to the issue of comprehensive immigration reform, which my legislation speaks to, which provides for additional detention space, increased border patrol agents, enhancing border patrol training, establish immigration, customs and agriculture inspector occupations, reestablish the border patrol antismuggling unit and establish criminal investigator occupations within the Department of Homeland Security, increase border patrol agent investigator and other types of aspects that can bring about real comprehensive immigration reform.

This is a dangerous approach, it is a sad approach, it is an unworkable, and I hope that we will ask the president of the United States to take the bully pulpit and lead us toward comprehensive immigration reform.

I thank the gentlewoman.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I would like to thank Chairwoman Zoe Lofgren from California and Ranking Member Steve King from Iowa for holding this very important hearing on the recent immigration raids in Houston, Texas and across this great nation. Chairwoman Lofgren has continued to bring relevant and timely hearings and continues to work for comprehensive immigration reform. For this she should be applauded.

As a senior Member of the House Judiciary Committee and the former Ranking Member of the House Subcommittee on Immigration, it is of the utmost importance that we thoroughly investigate the raids that took place at Shipley Do-Nuts and Action Rags USA by ICE officials. Both of these raids occurred in my district of Houston, Texas.

I. SHIPLEY DO-NUTS

Shipley Do-Nuts is a family-owned chain that has been catapulted into a highly controversial debate when federal agents raided the company's Houston headquarters and arrested 20 suspected illegal immigrants employed at the facility.

On Wednesday, April 17, 2008, Immigration and Customs Enforcement (ICE) agents—in a caravan of 50 vehicles, detention vans and an ambulance—swarmed Shipley's office and warehouse complex on North Main Street at 5 a.m. A government helicopter circled overhead as the Shipley workers were led away in handcuffs to face civil charges of being in the country illegally.

The Houston raid took place at the same time ICE agents conducted raids of chicken processing plants in East Texas, Arkansas, Florida, West Virginia, and Tennessee. In all, 290 workers were arrested during raids at Texas-based Pilgrims Pride plants on suspicion of identify theft, document fraud and immigration violations, the agency said.

ICE officials have released few details of the Shipley investigation, saying only that it would continue. The undocumented workers arrested Wednesday face deportation.

The Shipley raid centered on its 140,000-square-foot warehouse, processing plants and office complex. It is part of a four-block compound the company operates at 5200 North Main, where doughnut mix and other fillings are made for many of the 86 Houston-area locations.

The site includes at least five trailers and 14 small homes. The neatly maintained properties sit behind cyclone and barbed-wire fencing used by some Shipley employees.

The people caught in this raid were hard working people. ICE should make certain that minors were not caught in this raid. And, if minors were caught, ICE should ensure that these minors are returned safely to their families.

Shipley Do-Nuts has been the subject of recent discrimination lawsuits. Recently, in 2006, 15 workers filed a discrimination lawsuit against the company, seeking damages for allegedly enduring daily slurs, such as "wetback" and "mojado" while working at the company's warehouse. Most of the allegations were filed against a former plant manager, Jimmy Rivera, and two supervisors. The company settled the lawsuit with the workers in February. The settlement terms are confidential.

If Shipley Do-Nuts was hiring illegal immigrants it has a duty to abide by the immigration laws. If Shipley is to blame, then we must work to ensure that Shipley adheres to the law or faces stiff penalties.

II. ACTION RAGS USA

Within weeks of the Shipley Do-Nuts raid, on June 25, 2008, ICE agents raided the Action Rags USA plant in Houston. In all, 166 of the 192 workers at the plant were undocumented.

Approximately 70 percent of the 166 detained workers, about 116 workers, were women including eight pregnant women. Many of those workers were detained by ICE, though at least 73 have been released for humanitarian reasons. The vast majority of these women were caring for children and had families. It is shocking to imagine that on that fateful day, many children returned home to empty homes and apartments wondering when their mothers would return. Equally appalling, the pregnant workers were subject to the stress and anxiety of arrest and detention when their own health and well being is critical to the health and development of their baby.

The chaos and fear in the aftermath of raids did cause injuries. Four women sustained injuries that required immediate medical attention, including one woman that required an immediate "life flight" by helicopter to a nearby hospital as she was so fearful of the raid and the ensuing chaos that she climbed on a stack of wooden pallets and fell 20 feet to the ground.

The detainees in both raids were of Mexican and Central-American descent. The raid on Action Rags USA resulted in the detention of 138 Mexican, 12 Honduran, 8 Guatemalan, and 8 El Salvadoran workers. The Shipley Donuts raid resulted in the detention of men from Mexico, Honduras, Nicaragua, and El Salvador.

In both raids, youths were detained. The Shipley Donuts Raid resulted in the detention of one youth who was placed in the care of Catholic Charities and allowed to attend school until ICE could secure deportation papers. He was subsequently deported before finishing the school year.

Two youths were detained in the raid on Action Rags USA. One of the youths, a rising senior in high school, worked at Action Rags USA as a summer job and had only been employed for one week prior to the Raid. He is now awaiting deportation and will be deported before he is able to achieve his dream of a high school degree. Assistant U.S. Attorney Doug Davis said the fact that 85 percent of company workers at the plant were undocumented was sufficient to show a conspiracy existed. U.S. Magistrate Frances Stacy ruled there was evidence to support federal conspiracy charges that Mabarik Kahlon, 45, owner of Action Rags USA, and three managers knew undocumented workers were hired and they had presented false work documents.

Four government informants, three who were paid a total of $13,200 along with immigration benefits will be a key part of the case. The three paid informants were illegal immigrants planted at Action Rags USA by ICE agents. Because the paid informants were given cash money and documents allowing them to legally stay and work in the country, there is a strong incentive for anybody to say what the agents want them to say.

The ICE surveillance reports documented only one hour and 57 minutes in which Mr. Kahlon was at the plant. Mr. Kahlon is the owner of several vitamin supple-

ment companies, and may not have been actively managing daily operations at Action Rags USA.

Among the persons arrested at Action Rags USA was 34 year old, Valerie Rodriguez, described by government officials as the company's resource manager. It was reported that Ms. Rodriguez was nothing more than a secretary.

Both Mr. Kahlon and Ms. Rodriguez were released last week from custody after posting bond. The judge denied bail for Cirila Barron, 38, one of two illegal immigrants ICE documents describe as company managers at the plant.

Another undocumented worker, Mayra Herrera-Gutierrez, 32, was denied bail. She was arrested for allegedly being an illegal alien and working as a warehouse supervisor. There is evidence, however, that she did not have the authority to hire and fire workers.

As members of the House Judiciary Subcommittee on Immigration, we exercise oversight of ICE's actions. Shipley Do-Nuts is a family-owned and operated business with a 72-year history in the Houston area, and 190 stores in several states.

I am concerned for the well-being of the employees that are being detained and their families. I am concerned that the detainees be treated fairly and are not denied counsel or their basic human and civil rights. Lastly, I am concerned that these raids have disproportionately focused upon the undocumented employees and the employers largely have been left unharmed from these raids. I believe that it is an injustice in the immigration system that the "crackdown" has been directed at the "undocumented" workers who are working to support themselves and their families.

These raids demonstrate that Congress must pass comprehensive immigration reform. I have long advocated for comprehensive immigration reform. Indeed, in December 2007, I introduced, HR 750, Save America Comprehensive Immigration Act of 2007. This bill would provide for comprehensive immigration reform.

Importantly, the bill authorizes DHS to adjust the status of aliens who would otherwise be inadmissible (due to unlawful presence, document fraud, or other specified grounds of inadmissibility) if such aliens have been in the United States for at least five years and meet other requirements. Additionally, it authorizes the emergency deployment of Border Patrol agents to a requesting border state.

The bill also directs DHS to: (1) provide for additional detention space for illegal aliens; (2) increase Border Patrol agents, airport and land border immigration inspectors, immigration enforcement officers, and fraud and document fraud investigators; (3) enhance Border Patrol training and operational facilities; (4) establish immigration, customs, and agriculture inspector occupations within the Bureau of Customs and Border Protection; (5) reestablish the Border Patrol anti-smuggling unit; (6) establish criminal investigator occupations within the Department of Homeland Security (DHS); (7) increase Border Patrol agent and investigator pay; (8) require foreign language training for appropriate DHS employees; and (9) establish the Fraudulent Documents Task Force.

This bill also sets forth unfair immigration-related employment practices. Additionally the bill requires petitioners for nonimmigrant labor to describe their efforts to recruit lawful permanent residents or U.S. citizens.

As these investigations move forward I will make sure that all issues are addressed surrounding this raid. This raid demonstrates the importance of immigration reform. As members of Congress, let us work together to resolve this matter and ensure that everyone's rights are protected!

Ms. LOFGREN. Thank you, Congresswoman.

Next, I am pleased to introduce my colleague from California Congresswoman Lynn Woolsey.

Congresswoman Woolsey is currently serving her eighth term as the representative of California's beautiful 6th District, which includes all of Marin and most of Sonoma County.

As the Chairwoman of the Education and Labor's Workforce Protection Subcommittee, she held a hearing earlier this year on how immigration raids at workplaces impact children, families and communities. Congresswoman Woolsey is also co-chair of the Congressional Progressive Caucus, and we are pleased to hear her testimony today.

TESTIMONY OF THE HONORABLE LYNN C. WOOLSEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. WOOLSEY. Thank you very much.

Chairwoman Lofgren, Ranking Member King, Committee Members, thank you for the opportunity to testify at today's hearing.

Congress has to play and does play a very important role in ensuring that Immigration and Customs Enforcement—ICE—raids are conducted humanely and consistent with protecting the human needs of families and children, and I commend the Subcommittee for this hearing and for your continued oversight.

The manner in which ICE raids are carried out can be as important as when and where they take place. Unfortunately, ICE's practice in my district have been neither humane nor protective. Agents arrested parents right in front of their children, creating widespread panic and resulting in 50 to 60 students leaving school for weeks at a time.

Despite the fact that nearly two-thirds of children with undocumented parents are U.S. citizens, ICE has not developed a consistent and comprehensive policy for dealing with children. In fact, ICE's increasing reliance on home raids, which are not covered by ICE's guidelines for humanely conducting workplace raids, means that children are often left unprotected.

During home raids in my district conducted in March of 2007, some parents sent their children to school because they believed they weren't safe at home. One little girl was told by her mother to pack some essentials in her backpack and leave it by the door. Then, if, when the girl returned from school, she found that ICE had taken her mother, the little girl was instructed to take the backpack and to go to her aunt's home. Imagine—imagine what this child was thinking as she left for school. Imagine what she felt when she was sitting in the classroom. Try to imagine that little girl.

There is more, Madam Chair.

Earlier this year, ICE agents stopped a father in my district walking his daughter to school at Bahia Vista Elementary School in San Rafael, California. The father did not speak English. So ICE agents asked the young girl, who was not 8 years old, to translate for him as ICE questioned her dad about his immigration status. ICE later took this girl's father away. Imagine how that child felt.

On May 20, as Chairwoman Lofgren told you, as the Chair of the House Workforce Protection Subcommittee, I held a hearing on how ICE workplace raids have impacted children and local communities. At this hearing, a constituent of mine, Kathryn Gibney, principal at the San Pedro Elementary School in San Rafael, testified about how school officials cared for frightened students during last year's raid and rode the buses to make sure students didn't return home to empty houses.

Two days after the recent Subcommittee hearing, ICE agents launched another raid in San Rafael. They say it was not retribution. Ms. Gibney's school was again one of the schools most impacted by the raid. ICE vans parked near school bus stops, terrifying children as they left their parents and boarded the school buses. That day, absentee rates at the schools increased dramati-

cally. One of the schools canceled its open house plan for that evening out of fear for the safety of parents and students.

Madam Chairwoman, Members of this wonderful Committee, there are no more effective and humane ways to enforce our immigration—are there are no effective and humane ways to enforce our immigration laws other than through the raids that terrify children and communities?

Senator Ted Kennedy and I have each sent letters to the Department of Homeland Security discussing the need for a more comprehensive policy to address the needs of children impacted by ICE raids. I ask to submit these letters to the Committee.

Ms. LOFGREN. Without objection, they will be made part of the record.

[See Appendix.]

Ms. WOOLSEY. And I need to tell you that neither of us has received a response from ICE.

We can no longer, Committee, wait to address the impacts these raids are having on families and children, many of whom are in the U.S. legally, many of whom are U.S. citizens. It is unacceptable that home raids for children are more likely to be impacted do not have a strong protection for children nor are they covered by the guidelines for humanely conducting ICE raids. Who, if not children, deserve humane treatment?

Thank you very much.

[The prepared statement of Ms. Woolsey follows:]

PREPARED STATEMENT OF THE HONORABLE LYNN C. WOOLSEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Chairwoman Lofgren, thank you for the opportunity to testify at today's hearing. Congress has a necessary role in making sure that Immigration and Customs Enforcement (ICE) raids are conducted humanely and consistent with protecting the needs of families and children, and I commend the Subcommittee for its continued oversight.

The manner in which ICE raids are carried out can be as important as when and where they take place. Unfortunately, ICE's practices in my District have been neither humane nor protective. Agents arrested parents right in front of their children, creating widespread panic and resulting in 50 to 60 students leaving school for weeks at a time. Despite the fact that nearly two thirds of children with undocumented parents are U.S. citizens, ICE has not developed a consistent and comprehensive policy for dealing with children. In fact, ICE's increasingly reliance on home raids, which are not covered by ICE's guidelines for humanely conducting workplace raids, means that children are often left unprotected.

During home raids conducted in March 2007, some parents sent their children to school because they believed they weren't safe at home. One little girl was told by her mother to pack some essentials in her backpack and leave it by the door. If she found ICE had taken her mother when she returned from school, the little girl was to take the backpack and go to her aunt's house. Imagine what this child was thinking as she left for school.

Earlier this year, ICE agents stopped a father walking his daughter to school at Bahia Vista Elementary School in San Rafael, California. Her father did not speak English, and ICE agents asked the young girl, not more than eight years old, to translate for him ICE's questions about his immigration status. ICE later took this girl's father away.

On May 20, 2008, I chaired a hearing in the House Workforce Protections Subcommittee on how ICE workplace raids have impacted children and local communities. At this hearing, a constituent of mine, Katherine Gibney, the Principal at the San Pedro Elementary School in San Rafael, testified about how school officials cared for frightened students during last year's raids and rode the buses to make sure students didn't return to empty homes.

Two days after the Subcommittee hearing, ICE agents launched another raid in San Rafael. Ms. Gibney's school was, again, one of the schools most impacted by the

raids. ICE vans parked near school bus stops terrified children as they left their parents and boarded their school buses. Absentee rates at the schools increased dramatically. One of the schools canceled its Open House planned for that night out of fear for the safety of parents and students.

Madame Chairwoman, there are more effective and humane ways to enforce our immigration laws than through raids that terrify communities. Chairman Edward Kennedy and I have each sent letters to the Department of Homeland Security discussing the need for a comprehensive policy to address the needs of children impacted by ICE raids, and I ask to submit these letters for the record. Both of the letters are awaiting a response. We can no longer wait to address the impact these raids are having on families and children, many of whom are in the U.S. legally and many of whom are U.S. citizens. It's unacceptable that home raids, where children are most likely to be impacted, do not have strong protections for children.

Ms. LOFGREN. Thank you very much, Congresswoman.

Finally, I would like to introduce Congressman David Davis. Congressman Davis represents the 1st Congressional District of Tennessee that includes the 12 upper east Tennessee counties.

He serves on the House Committee on Education and Labor. He is the Ranking Member on the Small Business Committee's Subcommittee on Contracting and Technology, and he and I serve together on the House Homeland Security Committee.

And we are very pleased to have you here to give us your testimony, Congressman Davis.

TESTIMONY OF THE HONORABLE DAVID DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. DAVIS. Thank you, Madam Chairwoman, Ranking Member, and Members of the Committee.

I appreciate the opportunity to testify before this Committee on the effects illegal immigration has on communities in Northeast Tennessee.

Also, thank you for your interest in the story of Lora Costner, a constituent of the 1st Congressional District of Tennessee and a resident of Cocke County, who will testify here today.

Illegal immigration places a heavy burden on our country and on our taxpayers. No more a problem limited to the counties along our borders, even Appalachia must face the threat to our economy. Families in Cocke County directly suffer from the effects of illegal immigration and our government's inability to enforce our laws. I encourage this Committee to take Ms. Costner's story of identify theft by an illegal immigrant as an indication of just one of the many damaging effects of lack of immigration enforcement.

Many immigrants come to Hamblen County to work in the poultry-processing industry. Much like the raid in Iowa generated this hearing, the parent company of Hamblen County's plant operation in Cincinnati, Ohio, and their Chicago headquarters were subject to ICE raids. The illegal immigrant who stole Ms. Costner's identity used the information to gain employment at the Morristown poultry plant.

This hearing asks how we move forward with our immigration policy in light of these raids and the poultry industry.

One of the best tools the Department of Homeland Security has to enforce our immigration laws is the 287(g) program. This program allows local law enforcement agencies to partner with ICE on illegal immigration matters. ICE trains local law enforcement in

immigration law, and the local agency is given the authority to enforce those laws.

Metro Nashville Davidson County, Tennessee, has been operating under a 287(g) agreement for some time now. The Nashville community has seen the benefits of the local law partner shift through improvement in enforcement of our immigration laws.

You would be hard pressed to find a community who would benefit more from such a partnership than Hamblen County and Morristown, Tennessee. According to the University of Tennessee study, Hamblen County has one of the fastest-growing immigrant populations in the Nation. Hamblen County schools, hospitals, roads and housing agencies are unable to keep up with the trend.

The Hamblen County jail is overrun with citizens of other countries with no U.S. immigration status. These individuals are in Hamblen County illegally. If our immigration laws were enforced, these individuals would be removed to their country of origin and barred from reentry into the United States.

Unfortunately, the Hamblen County Sheriff lacks the authority to enforce these laws. Hamblen County approached ICE to participate in the 287(g) program. Citing lack of resources and manpower, ICE could not agree to the partnership. It is imperative that this Congress expand the 287(g) program to allow any willing community to participate.

I am privileged to serve on the House Committee on Homeland Security with oversight of the department and the Immigration and Customs Enforcement Agency. In 2007, the Committee took up legislation reauthorizing the DHS. I offered an amendment in the Committee expanding this program that fell for a lack of a majority on a 15-15 tie. The House Rules Committee, by a vote of 8 to 4, refused to make this same amendment and order when the bill moved to the House floor. I have introduced this bipartisan amendment as a stand-along legislation that has been referred to this Committee.

Also referred to this Committee is Congressman Shuler's SAVE Act. This legislation would authorize increases to all programs related to enforcement of our immigration law. One-hundred-and-ninety Members of Congress have signed the discharge petition to bring Congressman Shuler's legislation to the floor. I would encourage action on this bill.

Finally, this Congress must again take up legislation reauthorizing the Department of Homeland Security, giving guidance to ICE on immigration policy and law enforcement.

Thank you again for the opportunity to testify here today, and I will look forward to the testimony of Ms. Costner as well.

I yield back.

[The prepared statement of Mr. Davis follows:]

PREPARED STATEMENT OF THE HONORABLE DAVID DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

I appreciate the opportunity to testify before this Committee on the effects illegal immigration has on communities in East Tennessee. I also thank you for your interest in the story of Lora Costner, a constituent of the First Congressional District of Tennessee and resident of Cocke County who will also testify here today.

Illegal immigration places a heavy burden on our country and our taxpayers. No more a problem limited to those counties along our borders; even Appalachia must face this threat to our economy. Families in Cocke County directly suffer from the

effects of illegal immigration and our government's inability to enforce our laws. I encourage this Committee to take Ms. Costner's story of identity theft by an illegal immigrant as a indication of just one of the many damaging effects of lack of immigration enforcement.

Many immigrants come to Hamblen County to work in the poultry processing industry. Much like the raid in Iowa generating this hearing, the parent company of the Hamblen County plant's operation in Cincinnati, Ohio and their Chicago headquarters were subject to ICE raids. The illegal immigrant who stole Ms. Costner's identity used that information to gain employment at the Morristown poultry plant.

This hearing asks how we move forward with our immigration policy in light of these raids on the poultry industry. One of the best tools the Department of Homeland Security has to enforce our immigration laws is the 287(g) program. This program allows local law enforcement agencies to partner with ICE on illegal immigration matters. ICE trains local law enforcement in immigration law and the local agency is given authority to enforce those laws. Metro Nashville/Davidson county Tennessee has been operating under a 287(g) agreement for some time now. The Nashville community has seen the benefits of the federal/local partnership through improved enforcement of our immigration laws.

You would be hard pressed to find a community who would benefit more from such a partnership than Hamblen County and Morristown, Tennessee. According to a University of Tennessee study, Hamblen County has one of the fastest-growing immigrant populations in the nation, Hamblen County's schools, hospitals, roads, and housing agencies are unable to keep up with the trend. The Hamblen County jail is overrun with citizens of other countries with no U.S. immigration status.

These individuals are in Hamblen County illegally. If our immigration laws were enforced these individuals would be removed to their country of origin and barred from re-entry into the United States. Unfortunately the Hamblen County Sherriff lacks the authority to enforce these laws.

Hamblen County approached ICE to participate in the 287(g) program. Citing lack of resources and manpower, ICE could not agree to the partnership. It is imperative this Congress expand the 287(g) program to allow any willing community to participate.

I am privileged to serve on the House Committee on Homeland Security with oversight of the Department and the Immigration and Customs Enforcement Agency. In 2007 the Committee took up legislation reauthorizing DHS. I offered an amendment in Committee expanding this program that failed for lack of majority on a 15–15 tie. The House Rules Committee by a vote of 8–4 refused to make this same amendment in order when the bill moved to the House floor. I have introduced the amendment as standalone legislation that has been referred to this Committee.

Also referred to this Committee is Congressman Shuler's SAVE Act. This legislation would authorize increases to all programs related to enforcement of our immigration laws. 190 Members of Congress have signed the discharge petition to bring Congressman Shuler's legislation to the floor. I would encourage action on this bill.

Finally, this Congress must again take up legislation reauthorizing the Department of Homeland Security giving guidance to ICE on immigration policy and law enforcement.

Thank you again for the opportunity to testify here today and I look forward to the testimony of Ms. Costner.

Ms. LOFGREN. Thank you very much, Mr. Davis.

And thanks to all four of our colleagues. We do understand that Members have multiple hearings and markups going on. We hope to ask you questions, but if you are called to another hearing, we understand because we have all been in that spot, and just let us know if that happens to you.

We will begin our questioning at this point, and I will lead off.

Congressman Braley, this is basically your hometown where all of this happened, and I am interested in—in the case of the Postville raid, it is—well, I have got the letters, I mean, from ICE and Department of Labor, and they just say diametrically different things. ICE says that the DOL knew about the raid, and DOL says no they didn't.

And so it appears—and as a matter of fact we have that reaffirmed verbally by DOL today that they knew nothing about this.

So what happens to the DOL investigation into the labor violations that may have been present at the Agriprocessors plant? It seems to me that, if we have prosecuted the individuals—the workers—who were there, they are in jail or in prison, and then they are going to be deported, how can they be witnesses to—on—I assume—the case that was to be brought against the employer?

Are you concerned that this action has jeopardized the DOL investigation and possible prosecution of the labor-law violations that have been alleged?

Mr. BRALEY. Well, yes, I am. That is one the reasons I have been asking for these answers.

And just for the record, while the hearing has been proceeding, I just received word from my office that we have been informed that a fax was received from the Department of Labor's Office of Inspector General, which confirmed they were given verbal notice—the OIG of the Department of Labor—prior to the May 12 raid and encouraged to be present—just the OIG, not the Wage and Hour Division—and they were specifically instructed not to inform the Wage and Hour Division that the raid was pending.

And the reason I am concerned is because, given the short amount of incarceration periods under the plea agreement, given the fact the deportations are scheduled to occur as soon as those short sentence are completed, and given the language barrier for many of the key witnesses to these workplace safety violations, it seems to me it is going to be very difficult for the Department of Labor investigation to get the best evidence possible.

And when you look at the history of workplace safety violations at this company and the fact that after certain agreements have been entered into, there have been repeat violations discovered by the Iowa Department of Labor of the very conditions that were supposed to be mitigated, I have very strong concerns about the impact of the ongoing investigation. And when you add that to the child-labor issues, then it is a very serious concern.

Ms. LOFGREN. We will find out later from other witnesses perhaps, but we don't know how many of the employees have been deported so far and whether there has been an effort to maintain their presence in the United States as material witnesses to this other investigation.

I know that you have been trying to do the best thing for your constituents. Have you been advised about that?

Mr. BRALEY. Well, most of the information I get, quite frankly, comes from news reports. Senator Grassley and I both were aware of what was going on at the Cattle Congress before the raid was carried out. We were informed that there was a training exercise involving ICE and other Federal agencies and received no prior notice of what was going on.

But one of the things we do know is that there has been a report that nine people have been deported under contract with a private plane service, and we know that there are many people being housed or incarcerated right now in county jails and in Federal detention facilities in Iowa and other Midwestern states. So the very nature of how the incarceration is being carried out makes it difficult to find witnesses in a central location as they would be if they were in the workplace.

Ms. LOFGREN. I will just—before turning this over to the Ranking Member—note that it is disturbing to hear that ICE notified the IG of the Department of Labor. That tells me they knew that there was an ongoing Department of Labor investigation about violations, including child labor, at this plant. But to tell the IG and not the Wage and Hour Division insured that there would not be a presence there, and it is almost as if ICE intended to disrupt the investigation—and potentially prosecution—of this company for violations of the law.

You know, when we enforce the law as a government, we are also required to live by the law. And I wonder in this case whether that is really what occurred here or whether there was an active involvement to really cover up and prevent the enforcement of the labor laws on the part of the Department of the Homeland Security. It is a very disturbing piece of information.

My time has expired.

I would now turn to the Ranking Member for whatever questions he may have.

Mr. KING. Thank you, Madam Chair.

And I thank all the witnesses.

And, you know, Iowa's not used to being in the spotlight, not for natural disasters and not for immigration issues, but those things have emerged in the last few years. And so I would just turn to my colleague, who is a member, of course, of the Iowa delegation, and say, first off, I agree with you on the principle that you emphasized here that we need to enforce the law against employers as well. And I am curious about how we will get there and get that done.

I would point out that the point was made earlier today that we do pass the laws here, as the Chairman of the full Committee said, and we review them, but in the end, it is the executive branch that enforces the law, and I have been in the business over the last 5½ years of seeking to encourage them to do so.

I don't know that this hearing encourages enforcement of the law. I think it actually works in a counterproductive fashion because the tone has to be intimidating to the ICE workers.

But I take this point is that one of the thing that ICE was concerned about, I believe, and—is that their communications with the Department of Labor might have provided a leak that could have warned the plant that there was a raid.

And so I would suggest we have two things going on. One is we are concerned that this kind of information will leak out to perhaps local officials who would then tip off the plant or maybe another department of the government.

We have another problem. The Social Security Administration doesn't know what the Department of Homeland Security is doing and neither do other departments of government, like a company that has divisions that don't communicate with each other.

So I would ask you if—I mean, I have proposed a piece of policy, Mr. Braley, that recognizes this: That I think, when an employer knowingly and willfully hires illegals, that they should not be able to deduct the wages that they pay or the benefits they pay from their income tax. And I believe we can allow them to protect themselves and give them safe harbor if we let them use E-Verify.

And then we should allow the IRS to come in, when their normal audit, run the Social Security numbers of those employees through the E-Verify. If the employer knew or should have known that they were illegal, they should then be denied deductibility of those expenses. And I would ask you if you agree if that would be a way that we could add to a way we could enforce the law?

Mr. BRALEY. Well, I think we certainly need to have much stricter enforcement sanctions against employers who knowingly violate the law. And this employer is a perfect example of that because——

Mr. KING. Would you allow them to deduct the wages that they paid to illegals?

Mr. BRALEY. It is one of those issues that we have to be looking and talking about because, in this case, many of the workers were denied checks that they had earned because they had been deported and weren't available, and that is one of the things the Wage and Hour Division had to get involved in.

And in this particular case, this employer was involved in a labor dispute in 2000 in its Brooklyn, New York, facility and tried——

Ms. LOFGREN. Let our colleague answer, if you would——

Mr. KING. I just think he misunderstood my question. He is on the other side of my question, and I want to make sure our time is used in a fashion here that is prudent.

But I yield the gentleman. I can restate the question if I need.

Ms. LOFGREN. The gentleman will proceed.

Mr. BRALEY. I think that there are a host of different enforcement actions, including the one you are proposing, that need to be considered as a way of getting the point across to employers who are exploiting workers for their profit, yes.

Mr. KING. I thank you very much for that response. And it is a direct one, and that is the way we talk in the Midwest, just nice and directly.

So in another direct fashion here, as I review your testimony and you reference undocumented workers, and I would ask you directly, those who have pled guilty and—of which, by the way, of those who were rounded up in that raid, 62 were released for humanitarian reasons so they had children to take care of, and so I wanted to make that point.

But of those who have pled guilty then—do they then transition from undocumented workers into illegal aliens or criminal aliens?

Mr. BRALEY. Well, once they have pled guilty to a charge after due process, they become identified however the law classifies them, yes.

Mr. KING. Which would be illegal aliens or criminal aliens depending on the case of the conviction?

Mr. BRALEY. Well, to me a criminal is a criminal no matter what their naturalization status is. If you plead guilty to a criminal offense in this country, then you are deemed to have been convicted of a criminal offense.

Mr. KING. And then they are criminals?

Mr. BRALEY. Yes.

Mr. KING. I thank you, Mr. Braley.

And I turn to Mr. Davis, and I know that, coming in out of this from Tennessee you advocated strongly for a 287(g) program. You have been blunted at every effort to do that. I encourage you to

keep trying and I—the resources—local law enforcement and their cooperation are in short supply. What is your sense when you promote 287(g)? Is there pushback?

Mr. DAVIS. There is not pushback at the local level. There is not pushback at the state level. There is pushback at the Federal level, most of my colleagues, unfortunately.

I can tell you, though, this is a bipartisan approach. When I introduced legislation to bring the amendment to the floor, the first thing I did is reached across the aisle, had one of my fellow Members who is a Democrat on the Homeland Security Committee introduce the legislation with me. So I am trying to not make this a partisan issue. Trying to make this an American issue.

I can tell you—this is coming directly from the sheriff of Hamblen County and from the chief of police in the city of Morristown—they want some help. The odds of finding a Federal agent on street corners across America are very slim. The odds of finding a member of a sheriff's department or a police department in local communities are there, they are high, they know what is going on in their local communities, and I would encourage us to use our local law enforcement.

Ms. LOFGREN. The gentleman's time has expired. And we have been notified that we will have a series of votes sometime in the next half hour so we will lose this panel, no doubt, at that vote time. I am going to ask people to be as brief as they can.

And Mr. Conyers, the Chair of the full Committee, is invited to ask any questions he may have of our colleagues.

Mr. CONYERS. Well, one thing is clear, that we don't have much cooperation between the organizations in the government, between Homeland Security, between the Department of Labor and others. And I guess that works to everybody's detriment.

There was in 1982 a memorandum of understanding between the Immigration and the Wage and Hour Division that was signed to mandate cooperation and notification. And so that apparently isn't working too well, and we need to do a little bit more about it.

But over and above that, there is a spirit of meanness that seems to underheard this massive raid that went on in the congressman's area, and I am trying to figure out if there are ways that we and Judiciary can, first of all, get more cooperation and understand what the process is. I mean, this was a fantastically expensive undertaking, and it may have blown the Wage and Hour issue that the Labor Department may be taking up if you have deported these folks out of the country.

Is that the case? Do I understand this right? I will ask our distinguished witnesses here.

Mr. BRALEY. Well, Mr. Chairman, that remains to be seen, and that is why I am continuing to push for further clarification from Department of Labor, from the Justice Department and from ICE.

And one of the concerns that I raised, based upon the history of labor violations and workplace safety violations at this employer, is because we know that building a case against employers according to the Department of Justice takes time, and that is why they apparently have not issued any indictments against the owners of this company and others in key management positions. That is the response we are getting, that the investigation is billed.

And the same thing is true in a workplace safety investigation. And if you remove key witnesses who may have information about violations, it could definitely compromise the outcome.

Ms. JACKSON LEE. Chairman, if I might, the question you asked, whether this is an effective manner of immigration reform of enforcement, we see that we have gotten only 4,000 of those deported out of the ICE raids that have occurred and now with 114—and they are particularly mean.

The two individuals in Texas who were citizens were surrounded at their homes in the early morning. They were taken to a detention center. Their families were told that they could be bonded out. They are grounded in the community. They are not flight risks. They never got bonded out, and they were brought the next morning with cameras, with leg irons, with waist irons and cameras and a great display.

This is, I believe, ineffective and pricey as it relates to ICE duties, and what happens is criminal undocumented aliens who wind up creating tragedy, are going uncaptured, and I think that is where our efforts should be along with comprehensive immigration reform.

Mr. CONYERS. Well, I am not enamored by my friend Steve King telling me how many people took a plea. Those of us with experience in the criminal justice system, you can end up taking a plea, when you are faced with either 6 months or you get the maximum, buddy, take your choice, and you have got a language problem, maybe, to boot, you have appointed counsel, interpreters—we don't know where they are. Some of the language problems even go beyond Hispanic. There were some people with Indian and Hispanic backgrounds. So I don't feel that that is some determination of guilt at all under those circumstances.

Do you agree with that, Steve?

Mr. KING. No, I don't, Mr. Chairman.

Mr. CONYERS. I didn't think you would. [Laughter.]

Ms. LOFGREN. The Chairman's time has expired.

We would now turn to the Ranking Member of the full Committee, Mr. Smith, for any questions he may have for our colleagues.

Mr. SMITH. Thank you, Madam Chair.

I really have just three very brief questions that I hope can be answered yes or no.

And, Congressman Davis, let me start with you and work across the panel.

The first is do you think employers should check to see whether new employees can legally work in the U.S. or not?

Mr. DAVIS. Absolutely. That is the only way we can deal with this is internally and on the borders.

Mr. SMITH. Okay.

Congressman Woolsey?

Ms. WOOLSEY. Well, yes. Except I think it is up to us to make sure that the information they gather is accurate. I mean, we have a system that can't even get people through Immigration and get two people in one family so how——

Mr. SMITH. I agree——

Ms. WOOLSEY. It does no good to give false information to the employer.

Mr. SMITH. Okay.

Congresswoman Jackson Lee?

Ms. JACKSON LEE. Yes, Mr. Ranking Member. But I also want you to know that the owners of, in particular, Rags USA, checked the documents that they were given, used the system that was in place and got no pushback on the documentation. We need to fix a broken system.

Mr. SMITH. Congressman Braley?

Mr. BRALEY. I would agree with the remarks of my colleagues.

Mr. SMITH. All three?

Mr. BRALEY. Yes.

Mr. SMITH. Okay.

Next question is this: Do you think illegal immigrants—start again with Congressman Davis. Do you think illegal immigrants take jobs away from American workers or depress their wages because of competition?

Mr. DAVIS. Yes, I do.

Mr. SMITH. Congresswoman Woolsey?

Ms. WOOLSEY. I don't believe they take jobs away because in my district, for example, they take jobs that other people will not do. But I think wages become depressed when we don't have labor laws that cover our low-paying workers.

Mr. SMITH. Okay. Thank you.

Congresswoman?

Ms. JACKSON LEE. I think if you ask the construction industry and the restaurant industry and a lot of other industries, they are in essence being shut down because of their lack of work to the agricultural industry.

I think we have a commitment—an obligation—to hire America first, but at the same time, I think we have a commitment to provide an employment stream, if you will, legally with comprehensive immigration reform for all those industries that have come to the Congress and say they are suffering.

Mr. SMITH. Congressman Braley?

Mr. BRALEY. I think I would give a qualified yes in that, as a general principle, it is true, but that you also have differences in growth populations among states and differences in job opportunities. You have a state like Iowa, which Mr. King and I represent, there were four casts that were going to have a labor shortage in the future because of the baby boomers retiring and so we are looking at workplace needs, and that is why a state like Iowa historically has depended upon immigrant populations to meet its labor needs. We have to look at comprehensive reform so that we can make sure we are bringing the workers in we need to fill those.

Mr. SMITH. Thank you.

Congresswoman Jackson Lee actually anticipated my next question, which is this—and I will start on the right again—do you think American employers should hire American workers before they hire foreign workers?

Mr. DAVIS. Yes, no doubt.

Mr. SMITH. Okay.

Congresswoman Woolsey?

Ms. WOOLSEY. Yes, if there is available American workers.

Mr. SMITH. I understand and I assume that they would be available. Yes.

Congresswoman?

Ms. JACKSON LEE. Mr. Ranking Member, as you well know, we worked on this issue absolutely, and we should reach out to populations here in the United States and at the same time, however, provide the comprehensive immigration reform to provide the streams of labor that we need in this country.

Mr. SMITH. Thank you.

Congressman?

Mr. BRALEY. I would agree with those remarks.

Mr. SMITH. Okay.

Thank you, Madam Chair.

Actually, I will yield the balance of my time to the gentleman from California, Mr. Gallegly, because I think we are getting ready for a vote.

Mr. GALLEGLY. Thanks very much, Mr. Chairman.

Ms. Jackson Lee, later today we are going to hear from a person who is trying to get her life back together after her identity was stolen by an illegal immigrant. What would you say to our own citizens who have been rightfully prosecuted for identity theft and given strong prison sentences if we were to give amnesty to illegal immigrations for the same act?

Ms. JACKSON LEE. Well, I don't think anyone who has perpetrated a crime should be relieved of the responsibility. So I believe, in fact, with you, Mr. Gallegly, that I would much prefer ICE enforcement agents going after direct criminal action——

Mr. GALLEGLY. So you believe that illegals should be prosecuted——

Ms. JACKSON LEE. Direct criminal actions by undocumented, not mistaken. On the other hand, I think they are wasting time by raids that generate no relief.

I would like to have the individual who created the tragedy in San Francisco arrested. The individual who, unfortunately, killed an officer in Houston arrested. I don't think we are getting to that direction by these raids.

Mr. GALLEGLY. One last question to you, Ms. Jackson Lee.

You stated very appropriately—and I think articulately—that you believe we are a Nation of laws and we should continue to focus on being a Nation of laws, and your concerns towards—and I don't mean to be paraphrasing—some of the means of deportation has been done in an inhumane way and subjecting children and innocent people to harm; is that not correct? It is something—yes or no—it is something to that effect?

Ms. JACKSON LEE. They have been roughshod raids, yes, sir.

Mr. GALLEGLY. Okay. Okay. Let me ask you this: Would a more humane way be—we currently have a database of over 10.5 million people that are working in this country with an illegal Social Security card. Would it not be more humane to send a notice to the employer—by the way, the employer has the name, address, phone number and shoe size of the employee, as does the Social Security service of the employer and the employee.

Should we not be sending a notice to the employer to either clarify that they have the right number or terminate that person immediately without an officer going out there to do it, if they don't, $1,000 a day fine until they do, and then at the same time the employer that has been terminated must do E-Verify before he could get a job somewhere else? That being the case, we would probably have 90 percent of the illegal immigration problem solved except for those that are working underground. And then we could go to work and find out what the unmet domestic need is and find a legal way to do it.

But would you agree that that would be a very humane way to do it, send letters out and enforce the law under the employer-sanction provision of the 1986 IRCA law?

Ms. JACKSON LEE. I think most employers, Mr. Gallegly, would agree with you, a consistency in documentation. In fact, when I spoke to these owners, they said they thought they were following E-Verify, they though there was a process. At the same time, we have a pending comprehensive immigration bill, and I do think we need to find a way to address this question in that manner as well.

Mr. GALLEGLY. With all due respect, I have to respectfully disagree that most employers do not believe that, or they would be using an E-Verify program that is 10 times simpler to use, if not 100 times simpler, than the I-9 form that takes a 21-page booklet to fill out. It is an "I don't know and I don't want to know because, if I know, I am going to lose 90 percent of my employees."

I yield back.

Ms. JACKSON LEE. Employers that I spoke to said they would like to use it.

Ms. LOFGREN. Just FYI, through misunderstanding, the gentleman was given 5 minutes by the clerk, when you yielded, so if you want to take the remainder of your time, you should do so.

You are through. Okay.

Mr. GALLEGLY. [Off mike.]

Ms. LOFGREN. Okay. Very good.

I will turn now to our colleague, Mr. Gutierrez.

Mr. GUTIERREZ. First of all, I want to thank the gentlelady Chairwoman for conducting this hearing. As she knows, we have been working closely together. We will be visiting Postville this Saturday with other members of the Hispanic Congressional Caucus because we think it is important to go and examine all of the different aspects of this raid, including the human tragedy, which has befallen Postville.

So I would like to thank everyone for their testimony and all of my colleagues for coming this morning.

And I would like to say that, as we have this debate, for those of you who aren't on the Judiciary Committee, you can see part of the debate that we have here. I find it interesting that my colleague Mr. Braley was asked whether or not there should be an IRS sanction against an employer who has wages. It is interesting when the other side says—one side's "Criminal. Send them to jail," and other side, "Let us do an accounting procedure. An IRS thing. Don't let them deduct it from the taxes."

Other people get ripped asunder from their children, from their spouses. The employer, give them an IRS thing that they can't

make a deduction. That is pretty simple, but it doesn't surprise me because it is very clear to me that the undocumented workers don't have the kind of power and influence. They obviously don't have political action committee. They don't make campaign contributions. They are not in a position of power, as many great Agriprocessors are in a position of power, to influence the debate that we have here in Congress. So it really doesn't surprise me.

But I think that we have to have a real discussion.

Mr. Braley, do you know anything about the cost of this? Have you looked into the cost of this raid at Postville?

Mr. BRALEY. Absolutely. One of the biggest issues in immigration reform is what it is going to cost to carry out the planned deportation that was under consideration of anyone in this country illegally.

And because this Postville raid has been represented as the largest single-site immigration raid in U.S. history, I have requested from all related Federal agencies to provide me with a complete accounting of the cost of the investigation, the apprehension, the detention, the prosecution, and the incarceration associated with this one single raid of 400 employees in the workplace. I have received nothing in response to that.

But I have also asked for similar information about the Swift raids that were carried out in Marshalltown, Iowa, just a year and a half ago. I think it will give us all some insight into what we are talking about when we are looking at the problem that everyone has been talking about on the panel.

Mr. GUTIERREZ. There have been estimates given of upwards of $40 billion to begin this process, not to totally complete the process but to begin the process.

But if the congressman were ever to receive that information and—I am sure the Members of this Committee would be very, very appreciative to him for getting us that information because I think it goes kind of to the crux of the matter here.

We have—Homeland Security and I—and I know that the Chairwoman sat across the street from Mr. Chertoff, and he negotiated with us because he said to us, "Our immigration system is broken." That is what he said to me. That is what he said to Members of Congress, as he, the secretary of Homeland Security came down here to negotiate with us a comprehensive immigration reform. He said it is broken; it is bad.

His boss, the president of the United States, said publicly the system is broken and people are being denied basic human rights, they are being exploited, we need to bring them out of the shadows, we need to bring them into the light of day. This is the president of the United States, who, through his ambassador, Secretary Chertoff, came to me and other Members of this Committee and Members of Congress and spent nearly 6 months negotiating—or attempting to negotiate—a comprehensive——

So what I find so astonishing about this is they say one thing and then they do the other. They take most of their capacity of Homeland Security, which I thought was to protect us against terrorists, smugglers, drug dealers, people who are going to do harm to me, my family and my community, and you know what they do? They hoodwink us. Because now, as the minority so clearly stated

as they asked you "Are they criminals?" Yeah, technically they are criminals now because here is the plea agreement—I want to follow up with the Chairman—here is the plea agreement. This is what they had to plead to because of criminals.

They said, "If you plead guilty to the charge of knowingly using a false Social Security number, the government will withdraw the heavier charge of aggravated identity theft, and you will serve 5 months in jail, be deported without a hearing, and placed on a supervised release for 3 years." Okay.

But what if you don't? "If you plead not guilty, you could wait 6 to 8 months"—that is 3 months more than we are offering you—"without right to bail"—because you are immigration detained. "If you win at trial, you will still be deported—waiting longer in jail than if you plead guilty, and you would also risk receiving at trial the 2-year minimum sentence."

I mean, this is what this is really about. What our government did in Postville to people who were working is that they charged them with aggravated identity theft, which means they must have knowingly, with premeditation taken that identity to do what? Commit a serious crime.

Ms. LOFGREN. The——

Mr. GUTIERREZ. What crime did they commit? They applied for a job. That, the last time I checked, is not an aggravated felony.

And so I think—and I am—I think that that is really the crux of the matter here is are we safer today

Ms. LOFGREN. The——

Mr. GUTIERREZ [continuing]. Because they locked up 300 people——

Ms. LOFGREN. The gentleman's time——

Mr. GUTIERREZ [continuing]. In Postville? I think not. I don't feel safer. As a matter of fact——

Ms. LOFGREN. The gentleman's time——

Mr. GUTIERREZ [continuing]. I feel ashamed of the Nation.

Ms. LOFGREN. The gentleman's time has expired, and we have just gotten, I think, our—is it the 10-minute notice? All right.

Then we will take 5 minutes for Mr. Lungren, and I think we probably will not be able to get to our remaining two Members, but we will return after the vote.

Mr. Lungren?

Mr. LUNGREN. Thank you very much, Madam Chair.

This is a most interesting hearing. Having been here in 1986 as the Ranking Republican on immigration and having obtained the Republican votes to have the largest single legalization in the history of this Nation, I also recall we coupled it with, for the first time, employer sanctions, of which I was one of the authors.

And the complaint has been since that time that neither Republican nor Democratic administration had enforced it nor did they do anything about going to worksites to check on it. And so now this Administration, finally, in the last couple years of their Administration, is beginning to do that, and it seems to me the tenor of many of the comments is that they should not have done that.

Mr. Braley, it has been stated—or you said that you have worked on the problem of corporate downsizing resulting in loss of jobs for employees——

Mr. BRALEY. Yes.

Mr. LUNGREN [continuing]. For which I congratulate you.

One of the things, it seems to me, it is important for us to do—and I ask if you would agree—is to deal with the issue of illegal immigration because in some cases it results in the loss of jobs to Americans. Do you agree with that?

Mr. BRALEY. In some cases I believe it does.

Mr. LUNGREN. And, Ms. Jackson Lee, one of the things I was surprised at hearing you say is that in the construction—I believe that you said it—or maybe Ms. Woolsey said—in the construction trade we have the need for foreign workers. When we passed the bill in 1986, the presence of illegal immigrants in the construction trade was virtually nil. And now it is more than that, some would say substantial.

And at that time I expressed a concern about the high rate of unemployment with African-American males age 17 to 35. And it seemed to me that we as a country could not use as an excuse that we couldn't find Americans, particularly African-American males age 17 to—to 35, to work in the construction industry, and yet we have a worse situation now. It is not like agriculture, where it is distant from where people live.

And do you disbelieve that there is any negative impact on the African-American male community for the presence of illegal immigrants in the workforce in construction around our country?

Ms. JACKSON LEE. Let me clarify my point. I did not say that they were needed, what I said was those industries are being shut down because of the census in the population in those industries, including restaurants and the construction industry.

I will use as my reference your Ranking Member Mr. Smith. We have been leading on the issue in years past on ensuring the reach to the African-American community on a number of issues, including technology. But as we speak, in the city of Houston, I am leading on an effort to hire African-American young men on construction sites. Of course, I am an equal-opportunity person, who believes that all people should have the opportunity to work, but we are doing it to reach out to them.

My point is is that these industries, as my good friend Mr. Braley said, are suffering from demographics and census, and, therefore, their work is being stopped. We need to find a comprehensive reform system, Mr. Lungren, so that we can hire Americans first, we can outreach to American workers and at the same time we can provide a pathway to citizenship.

Mr. LUNGREN. Okay. Do I understand it correctly that you object to the raids, per se, or you object to raids that are in the spirit of meanness, that are cowboy style, that are roughshod raids, that are dangerous, unworkable and sad?

Ms. JACKSON LEE. First of all, let me say that I have a great deal of respect for the enforcement officers across America. They are working very hard. They have my support.

But, yes, I believe that we get little value out of these raids. I think we get more drama. We don't get comprehensive immigration reform, we don't get the illegal, violent——

Mr. LUNGREN. Well, I am not suggesting what do you get.

Ms. JACKSON LEE [continuing]. Off of the street and——

Mr. LUNGREN. I am not suggesting——

Ms. JACKSON LEE [continuing]. An effective approach.

Mr. LUNGREN. I am not suggesting you get comprehensive immigration reform from raids, but the raids are aimed at going after illegal immigrants who have jobs to which they are not entitled or are using false identification, which then impacts other people in this country. And wouldn't you—well, let me ask you this: Would you suggest we stop doing the raids?

Ms. JACKSON LEE. Well, let me say this: In speaking to employers who have had experience of today and then 5 years out, ICE agents used to come to the site—you can't move a big factory—they used to go through the individuals and be able to both enforce against the employer——

Ms. LOFGREN. The gentleman's time has expired.

Ms. JACKSON LEE [continuing]. Were illegal. All I would say is that it is an ineffective approach of doing what we want to do.

Ms. LOFGREN. The gentleman's time has expired.

We will be in recess for this set of votes.

Mr. Braley, do you have something you need to——

Mr. BRALEY. Before the record is closed, I do have a copy of the fax that I mentioned earlier, and I would just offer——

Ms. LOFGREN. Without objection, that will be made part of the record.

[The material referred to follows:]

07/24/08 10:02 FAX 202 693 5114 DOL-INSPEC GEN 001

U. S. Department of Labor
Office of Inspector General

Office of Legal Services

200 Constitution Avenue, NW
Room S-5506
Washington, DC 20210
Facsimile 202-693-7020
Phone 202-693-5116

FACSIMILE COVER SHEET

Date: July 24, 2008

To: Office of Rep. Bruce Braley
Fax Number: 225-6666
Att: Mike Goodman

From: Susan Carnohan
693-5238

Page(s) to Follow: (1)

COMMENTS:

Labor Inspector General's response to July 18, 2008 correspondence

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210

JUL 24 2008

The Honorable Bruce Braley
House of Representatives
Washington, D.C. 20515

Dear Representative Braley:

This is in response to your July 18 correspondence requesting information regarding a worksite enforcement action at the Agriprocessors facility in Postville, Iowa executed by the Federal Immigration and Customs Enforcement Agency (ICE) on May 12, 2008.

The Office of Inspector General (OIG) has been working with ICE as part of a joint investigation which is being directed by the U.S. Attorney's Office. Potential criminal labor-related violations by the employer, Agriprocessors, are the focus of my office's investigation. As federal law enforcement partners in this investigation, my office and ICE communicate frequently, and in early May 2008, the Labor OIG was informed of the planned May 12 action. This communication was verbal and therefore, there is no transcript or other written record of this communication.

Labor OIG agents were present at the Agriprocessors facility during the May 12 operation to help execute a search warrant issued to the employer. At the request of the U.S. Attorney's Office, my office did not inform any other Labor agencies including the Wage and Hour Division Office, about the May 12 action. We should note that as a general practice my office would not inform other Labor Department agencies, including the Wage and Hour Division, of ongoing criminal investigations unless permitted or instructed to do so by the U.S. Attorney's Office.

Please contact me if you have any additional questions. Alternatively, your staff may contact Nancy Ruiz de Gamboa, Assistant Inspector General for Management and Policy, at (202) 693-5100. You may also wish to contact the U.S. Attorney's Office for further information related to this matter.

Sincerely,

Daniel R. Petrole
for Gordon S. Heddell
Inspector General

Ms. LOFGREN. We have four votes so we will not be back probably before 1 o'clock. We will begin with our second panel at 1 o'clock. I think there is a cafeteria in the basement of this building if someone wants to get a bite or a cup of coffee.

[Recess.]

Ms. LOFGREN. The Subcommittee will be coming to order in a minute.

As we reassemble here, I did want to mention something I neglected to say this morning, which is how appreciative we are to the House Administration Committee and their staff. The room that we ordinarily use is taken for another hearing in the Judiciary Committee, and the House Administration Committee was kind enough to make this hearing room available to us, and they have really gone the extra mile with our Judiciary staff to accommodate us, and we are very appreciative of that.

And I am on the House Administration Committee, so this is not a new room to me, but it is an ornate room, and luckily we don't have all the standers here for our second panel, who I would like to introduce now.

I am pleased to welcome two witnesses. The first is Senior Associate Deputy Attorney General Deborah Rhodes. Ms. Rhodes assists the deputy attorney general on a variety of criminal and other issues. She is also the United States attorney for the Southern District of Alabama, where she oversees all Federal criminal and civil litigation in an office of approximately 50 professional staff.

Ms. Rhodes was formerly counselor to the assistant attorney general for the Criminal Division of the United States Department of Justice. She also supervised the Office of Policy and Legislation and was the department's liaison to the American Bar Association Criminal Justice section.

She graduated with honors from Rutgers Law School in Camden, New Jersey, where she was editor-in-chief of the Rutgers Law Journal, and she graduated with high honors from Wheaton College Illinois, and I found out this morning, when we said hello, that she is also a—originally a fellow Californian.

So we welcome you today.

I am also pleased to introduce Marcy Forman. Ms. Forman is director of the Office of Investigations for the U.S. Immigration and Customs Service, otherwise known as ICE. As director, Ms. Forman oversees the largest investigative arm of the Department of Homeland Security with more than 7,000 employees and 178 other field offices throughout the United States.

Ms. Forman is responsible for the policy, planning, management and operations conducted under five major investigative program divisions within the Office of Investigations.

Ms. Forman holds a Masters of Science degree in management from National-Louis University, a Bachelor of Science degree from American University and has completed the Senior Executive Fellowship Program at Harvard University.

She is a 2007 recipient of the Secretary of Homeland Security Silver Medal for her leadership and dedication in leading ICE's enforcement efforts.

Your full written statements will be made part of the record. We ask that you summarize your statement in 5 minutes.

And this morning—it is very difficult to keep one's colleagues within 5 minutes, but we are going to ask the witnesses, as much as possible, to stay within the 5 minutes' time because we have another panel after you.

And the little machine on the table, when it turns orange, that means you have got 1 minute left, and when it turns red, it means—and it always comes a surprise—your 5 minutes are up so we would ask that you please conclude at that point.

And we will begin, Ms. Rhodes, with your testimony.

TESTIMONY OF DEBORAH RHODES, SENIOR ASSOCIATE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Ms. RHODES. Thank you.

Good afternoon, Chairwoman Lofgren, Ranking Member King and Members of the Subcommittee. I am pleased to be here today to discuss the Justice Department's role at Agriprocessors in Iowa.

Worksite enforcement is an important part of our immigration strategy, and I can assure you that the department and our U.S. attorneys in the field are fully committed to ensuring that we pursue it in a manner that protects every defendant's constitutional rights.

The integrity of a nation's borders and its immigration laws are fundamental to any nation's security. For this reason, the attorney general has identified immigration enforcement as one of the department's priorities.

Immigration policy is comprehensive. We enforce many statutes in a variety of contexts, including the borders, interior space and worksites. In my written comments, I have mentioned recent cases against violent organizations, smuggling and trafficking humans, employers and corporations who knowingly hire illegal workers and those who provide false identity documents to others, like the charges that are currently pending against two supervisors at Agriprocessors, where the investigation is ongoing.

We also prosecute those who use false immigration or Social Security documents, identities that are often stolen from real people to circumvent immigration laws. In fact, these prosecutions often help investigators to work up the chain and obtain evidence from the witnesses who can testify directly against the document vendors, employers and corporations.

Our efforts have been successful. During the first 8 months of this fiscal year, immigration prosecutions along the Southwest border increased by 19 percent. At the same time, apprehensions along the Southwest border decreased by 21 percent. This is a remarkable change in both directions in a short period of time. And apprehensions aren't down in just isolated areas. They are down in each one of the Southwest border districts.

We believe that this is further evidence that our success is due to a comprehensive immigration enforcement strategy, which builds upon itself and incorporates each of the efforts described above.

The U.S. Attorney's Office and ICE work closely together to ensure that worksite enforcement actions are conducted in a manner that carefully safeguards constitutional rights and treats each person fairly and with respect. This was also true in Iowa, where ex-

traordinary precautions were taken. My written statement describes those efforts in detail, but I will mention a few key points here.

Every defendant was appointed experienced and capable criminal defense counsel to advise them concerning their case. Defense counsel, assisted by a court-certified interpreter, typically had the opportunity to meet with the defendant both before the first court appearance and immediately afterwards. This is earlier than happens in the ordinary case since counsel is usually not appointed until the first court appearance.

Consulate officers from the defendants' countries were also present to advise their citizens.

Defense counsel could, of course, continue to meet defendants after they were transferred to other facilities.

Defendants who were charged with the same offense were assigned to the same counsel and housed together to the greatest extent possible in order to facilitate meetings with defense counsel. Defense counsel were free to meet with their clients as they saw best.

Defendants represented by immigration counsel also had the benefit of their advice prior to any plea. The immigration counsel consulted with the criminal defense counsel, and defense counsel, in fact, raised immigration concerns in several cases based upon specific facts.

Defense was provided with all of the necessary and appropriate discovery material at the earliest time. In most cases this was prior to the first court appearance. Again, this is earlier than the normal procedures.

The discovery package included the charges, a copy of the evidence supporting the charges and other relevant materials. The package also included a proposed written plea agreement and the relevant court documents for entering that plea. The plea and court documents were translated into Spanish.

All of the files were based upon the evidence, the law and the sound discretion of career prosecutors in the U.S Attorney's Office. Because the defendants, most of them, had stolen real identities, they were charged with aggravated identity theft.

The plea offer gave them the opportunity to plead only to the lesser charge. In exchange, they agreed to stipulate to the removal, which ordinarily follows a felony conviction, and exceptions were made in this—on case-by-case basis based upon individualized facts. They also agreed to cooperate with the government, which was a key part of the agreement.

The defendants pled guilty before a Federal judge on the record in open court with the public present and with the advice and consent of counsel. They went through a long plea policy, the same one that is used in ordinary cases, where each defendant was questioned at length, as was defense counsel. They admitted that they understood everything about the charges, penalties, plea agreements and sentence, in addition to many other things detailed in my written statement.

The court asked counsel if there was any reason the plea should not be accepted, and no one objected. Defense counsel and the court both had an obligation to object if the plea was unsound.

No constitutional corners were cut. While the scope of the criminal activity in this case presented unusual challenges, the defendants' constitutional rights were carefully protected and exercised throughout.

Ms. LOFGREN. Ms. Rhodes, your time has expired. If you could wrap up, that would be helpful.

Ms. RHODES. There is no reason to conclude that either the Federal judges or the defense counsel, who had an independent role in these proceedings, abdicated their role, much less than both of them did.

[The prepared statement of Ms. Rhodes follows:]

PREPARED STATEMENT OF DEBORAH J. RHODES

Department of Justice

STATEMENT OF

DEBORAH J. RHODES
SENIOR ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

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

HEARING ENTITLED

"IMMIGRATION RAIDS: POSTVILLE AND BEYOND"

PRESENTED

JULY 24, 2008

Good morning Chairman Lofgren, Ranking Member King, and Members of the Subcommittee. I am pleased to appear before you today to discuss the Justice Department's role and perspective regarding the enforcement action at the Agriprocessors plant in Postville, Iowa. Worksite enforcement is an important prong in our comprehensive immigration enforcement strategy, and I can assure you that the Department and our U.S. Attorneys in the field are fully committed to ensuring that the process employed comports with constitutional protections. Because this involves an ongoing investigation being directed by the U.S. Attorney's Office for the Northern District of Iowa and the Department of Homeland Security's United States Immigration and Customs Enforcement (ICE), I may be unable to answer questions relating to the pending matter. However, I will do what I can to assist this Subcommittee's understanding of the process that was employed.

Immigration Enforcement

Before discussing Agriprocessors, I believe it would be helpful to discuss immigration enforcement generally, which will set this operation in context. Let me begin with what I am sure is already obvious: The integrity of a nation's borders and of its immigration laws – to control who and what comes into and out of the country – is fundamental to any nation's security, including our own. That is why Congress has passed numerous Acts related to border security, immigration and worksite enforcement. For the same reason, the Attorney General has identified immigration enforcement as one of the Department's priorities.

Our immigration enforcement policy is comprehensive in scope. We prosecute violent smuggling organizations, like the recent cases in Arizona, where a defendant was sentenced to 20 years for holding 76 aliens hostage and using an assault rifle to intimidate and control them while

they were held in three small bedrooms with little food and water; and in San Diego where the kingpin of an organization that smuggled hundreds of people across the border was sentenced to 17 ½ years. We prosecute human trafficking organizations, like the one in Texas where eight defendants received sentences of up to 15 years and were ordered to pay $1.7 million to the 120 women who were the victims of their labor and sex trafficking ring. We prosecute employers and corporations who knowingly hire illegal workers, like the recent cases in Connecticut involving a donut franchise and in Arizona involving the foreman of a drywall company. We prosecute those who help others obtain false immigration documents, like the charges currently pending against two supervisors at Agriprocessors. And we prosecute those who use false immigration or Social Security documents – identities that are often stolen from real people – to circumvent the immigration laws. Indeed, such prosecutions may allow investigators to work up the chain and obtain evidence from witnesses who can testify against the document vendors, the employers, and the corporations.

Earlier this year, we increased civil fines imposed on employers who knowingly hire illegal immigrants by 25 percent, the maximum allowed by law and the first such increase since 1999. Just a few weeks ago, in Las Vegas we announced guilty pleas in a case involving a fast food franchise and two corporate executives on immigration charges. The company agreed to pay a $1 million fine for encouraging illegal aliens to reside in the United States.

In addition to these important felony prosecutions, we have undertaken programs like Operation Streamline to increase misdemeanor prosecutions along the Southwest Border and Congress has appropriated $22 million dollars to be used toward that effort. We are grateful for this assistance and are currently using those funds to hire 64 new prosecutors and approximately

100 new deputies and other personnel for the U.S. Marshals to handle the increased cases – both misdemeanor and felony – along the Southwest Border.

Already, our efforts are showing results. During the first eight months of Fiscal Year (FY) 2008, immigration prosecutions along the Southwest Border increased by 19 percent over FY 2007. At the same time, apprehensions along the Southwest Border have decreased by 21 percent over FY 2007. This is a remarkable change – in both directions – in a short period of time. It suggests that immigration prosecutions, both in the border and interior States, as well as actions the Department of Homeland Security has taken, are having a deterrent effect on illegal immigration. Further, apprehensions are down, not in isolated areas, but in *each* one of the Southwest border districts. We believe this drop is further evidence that our success is due to a comprehensive immigration strategy, which builds upon itself and incorporates each of the efforts described above.

Agriprocessors

Investigation. The investigation in Postville, Iowa, which involved large scale document fraud and identity theft, is one of our most recent worksite enforcement operations. As you are aware, it was conducted by the local agents of ICE in coordination with the U.S. Attorney's Office for the Northern District of Iowa as well as other Federal agencies. Agriprocessors, a kosher meat processing complex, is the largest employer in Postville. For a period of several years, ICE had obtained information through a variety of means that Agriprocessors was hiring illegal aliens with fraudulent identification documents. Through interviews, documents, and the use of informants, ICE developed information indicating that the vast majority of Agriprocessor's thousand-plus workers were illegal immigrants and, further, that over 70 percent

were using fraudulent Social Security documents with stolen or fictitious identities. The information also indicated that the hiring was done with knowledge of the unlawful status and fraudulent documents

On May 12, 2008, ICE agents entered the Agriprocessors plant with a criminal search warrant for evidence relating to identity theft, fraudulent use of Social Security numbers, and other crimes, and with a civil search warrant for people illegally in the United States. During the search, the U.S. Department of Agriculture was present to address any health issues that might arise due to the meat processing. The U.S. Public Health Service was present to assist in determining workers who should be released for humanitarian reasons. A paramedic was on site to address any medical issues. The workers had access to restrooms and water and were provided a box lunch.

Ultimately, of the 389 people who were detained at the plant, approximately 306 were detained on criminal charges. Most of these people were using false Social Security or immigration cards belonging to other people. Since then, charges have been brought against two plant supervisors for aiding and abetting the fraudulent possession of a false resident alien card; and one of them was also charged with aggravated identity theft. Charges are also pending against a third person who currently is a fugitive. Significantly, the affidavits setting forth the factual basis for the underlying complaints include information provided by the illegal workers. I can assure you that this investigation is active and ongoing and that investigative leads will be pursued; however, for legal and ethical reasons, I am precluded from discussing it any further.

Booking. ICE transported the more than 300 detainees to a fairground in Waterloo, about two hours away, because the local court facilities could not accommodate the number of people. The fairground was selected because it had large public buildings, such as an auditorium, exhibition hall and ballroom, which ICE had built out to be used for booking and temporary detention. It was also used for the court appearances. A large auditorium was filled with processing stations for fingerprinting, photographing, etc. Each person was individually advised of his/her Miranda rights in Spanish, orally and in writing, before being interviewed regarding any criminal charges. Those who were not being processed were in another building which had been built out as a detention center with cots and a recreation space. The detainees had access to phones. Hot meals were served by a local caterer. Public health officials were on site. The atmosphere was calm and orderly.

Immigration Counsel. On the day the search warrants were executed, ICE officials notified various non-governmental organizations about the operation. The next day, a number of immigration attorneys came to the temporary detention facility with a list of names of potential clients. Many of the names on the lists were aliases, complicating and delaying the process of linking them with their clients, or were not in custody at all. While the immigration lawyers waited to see their clients, lawyers from ICE's Office of the Principal Legal Advisor and a member of the U.S. Attorney's Office advised them that the detainees would likely be charged criminally. The immigration lawyers were afforded the opportunity to meet with these individuals after they were located, and began meeting with them towards the end of the day. One immigration lawyer met with his client(s) that night and, the others met with their clients beginning on the next day. Thus, they were able to advise their clients before any guilty pleas were entered.

Defense Counsel and Discovery. Typically defense counsel is appointed to represent the defendant at the first court appearance; consequently, there is no opportunity to meet with defense counsel beforehand, to discuss the charges or to review the discovery materials. Here, however, most of the detainees began meeting with defense lawyers and receive their discovery materials before their first court appearance. Each of the defense lawyers was accompanied by a court certified interpreter.

Approximately 18 defense counsel were present at the fairgrounds to meet with the detainees. The attorneys had been briefed about the operation on the day of the search warrant. They were advised of the investigation, the potential charges, and the offer to plead to a lesser charge and sentence. The attorneys were provided a file for each defendant they represented that included the charges, the defendant's statement (if any), copies of the false documentation, the search warrant, other relevant discovery, a proposed written plea agreement, and relevant court documents. The plea agreement and relevant court documents were translated into Spanish. In most cases, this material was provided prior to the first appearance, which is earlier than the normal practice. Defendants who were charged with the same offense and offered the same plea agreement typically were arranged in groups of 10. This enabled the defense attorney (accompanied by an interpreter) to explain the common information to a group of similarly situated clients. Counsel were also free to meet with clients individually. The attorneys met with their clients in rooms specially built for this purpose and furnished with tables and chairs. After the first court appearance, many detainees had the opportunity to meet with their counsel again. Then they were transported to local jails where they were free to meet with defense counsel. Two additional attorneys assisted with advising the defendants at the local jails.

Consul and Congressional Staff. Representatives of the detainees' consulates were notified and were on site to meet with and advise their citizens. After touring the grounds, the Guatemalan consulate said he saw no evidence of human or civil rights violations and was encouraged by the tour. Congressional staff members for Congressman Braley and for Senators Grassley and Harkin also toured the facility.

Identity Theft and Immigration Charges. Most – but not all – of the 306 workers faced charges of aggravated identity theft because they were using immigration or Social Security cards with a number belonging to somebody else. These were not victimless crimes; there were real people whose identities were stolen. The Federal Trade Commission estimates that since 2005, 8.3 million Americans have been victims of identity theft. Even in cases in which an identity theft victim does not suffer out-of-pocket losses, significant time and frustration can be spent in re-securing one's personally identifying information. Identity theft strikes at one's sense of security and privacy. Post 9/11, we also recognize that identity theft poses a security risk to all of us. Because of the concern for identity theft, the harm it causes to individuals and the risk to our security as a nation, Congress has mandated a two-year or five-year sentence for anyone who knowingly transfers, possesses or uses the identification of another person in relation to certain specified felonies. *See* 18 U.S.C. § 1028A. Various immigration and Social Security offenses are included in the list of specified felonies that warrant a two-year sentence. This penalty is provided in addition to any sentence for the underlying immigration or Social Security offense. For example, the sentence could be five months for the underlying offense and two additional years for aggravated identity theft.

In this case, the U.S. Attorney's Office offered the defendants the opportunity to plead guilty only to the underlying offense and to have the more serious identity theft charge dismissed. In exchange for the benefit of pleading to the lesser charge and receiving a lighter sentence, the defendants agreed, upon the advice of counsel, to cooperate with the Government in the ongoing investigation, waive appeal and stipulate to a deportation order, pursuant to a standard plea agreement. Each of the defendants had the advice of experienced and capable defense counsel prior to making any decision. Plea agreements like this one are often used because they promote judicial and governmental economy and are a common and even essential part of the criminal justice system. At the same time, these agreements also benefit defendants by allowing them to plead to a vastly reduced charge, spend less time in custody and be rewarded for their cooperation and for accepting responsibility for their misconduct.

Court Hearings.

All of the court hearings were open to the public and were attended by the defendants' friends and families as well as the media. As is the normal course, in the first court appearance the magistrate or district court judges advised defendants of the charges against them, their rights under the Constitution, formally appointed a lawyer, and set a date for a status hearing.

The defendants were given seven days from the date of their first appearance to consider whether or not they wanted to take advantage of the five-month or other plea offer. During that time, the U.S. Marshals Service sought to house together those defendants represented by the same counsel and facing the same charges in order to facilitate group and individual meetings with counsel. Although counsel had seven days from the date of the first court appearance to consult with their clients concerning the plea agreement, in most cases defense counsel returned

the signed plea agreements much earlier. Indeed, after consulting with counsel, all of the defendants facing criminal charges decided to plead guilty.

Defendants appeared before a federal magistrate or district court judge to plead guilty. During the plea hearing, the magistrate judge engaged in a lengthy colloquy, typically with a group of approximately 10 defendants who were each pleading guilty to the same charge. The court addressed the defendants, often individually, throughout the course of the hearing and, as is the normal course and is required, determined that *each individual defendant*: had a copy of the charges in the Information, waived indictment, wanted to plead guilty, consented to a pleading before a magistrate, had the mental capacity to understand what was happening during the proceedings, was satisfied with the representation of defense counsel, understood his/her constitutional rights and wanted to waive those rights, had a copy of the plea agreement in court, had signed the plea agreement, had reviewed the plea agreement with his/her attorney before signing it, understood all of the terms in the plea agreement, agreed to be bound by the terms of the plea agreement, agreed that the factual allegations establishing guilt were true and accurate, understood the penalties for the charge, understood the penalty provided in the plea agreement, had waived a right to appeal, and was entering the plea voluntarily.

Further, the court specifically asked each defense counsel: whether defendant had waived the right to indictment, whether counsel had any reason to believe that their client was not competent to enter a guilty plea at that time, whether counsel believed that their client understood the elements of the charges, whether counsel believed there was a factual basis for the guilty plea to the charges, whether counsel knew of any possible defense that had not been considered and discussed with the client, whether counsel believed that the client was pleading

voluntarily, whether counsel knew of any legal reason why the plea should not be accepted, and whether counsel knew of anything that the court had omitted which could affect the validity of the plea.

Only after receiving answers to all of these questions from both the defendant and the defense attorney did the court accept the defendant's guilty plea.

Those defendants who pled guilty before a magistrate judge then appeared before a federal district court judge. The district court judge also addressed each defendant individually and confirmed that he/she recalled pleading guilty to the charge, knew the maximum penalty, understood that he/she was about to be sentenced, and still admitted to being guilty of the crime. The defendant was also provided an opportunity to address the court before sentencing. Only then did the court accept the guilty plea and sentence the defendant.

Ultimately, 271 defendants were sentenced to five months in prison and three years of supervised release: 233 for use of false identification to obtain employment after admitting the use of an actual person's identity; 30 for false use of Social Security number or card after admitting the use of an actual person's Social Security number; eight for illegal reentry to the United States. Two defendants were sentenced to 12 months and a day in prison and three years of supervised release for use of false identification to obtain employment after admitting the use of an actual person's identity. Nearly all of the defendants sentenced to serve time had admitted using identification information that belonged to other people. These were not victimless crimes.

Twenty-seven defendants were sentenced to five years of probation for use of false identification or Social Security number/card that did not belong to an actual person or for illegal reentry.

Those who enter this country, even to work, must do so lawfully, under their true name, and without using someone else's Social Security number. While the sheer number of illegal aliens in this unusual case presented challenges that we do not often face, we believe that the defendants' constitutional rights were carefully protected and exercised throughout the operation and that each defendant was treated fairly and with respect and dignity. These rights were not only taken into consideration by the Government's lawyers and ICE in the planning and execution of the operation, they were also safeguarded by defense counsel, immigration lawyers, consulate officials, magistrate judges, and district judges throughout the process.

Thank you again for the opportunity to testify here today, and I will be happy to answer any questions that I can.

Ms. LOFGREN. Thank you very much.

Ms. Forman, we would welcome your 5 minutes of testimony.

TESTIMONY OF MARCY FORMAN, DIRECTOR OF INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Ms. FORMAN. Good afternoon, Chairwoman Lofgren, Ranking Member King and distinguished Members of the Subcommittee. It is my pleasure to appear before you today to discuss ICE's law enforcement operation, in particular our worksite enforcement operation.

ICE is first and foremost a Federal law enforcement agency with the mandate of protecting national security and public safety by enforcing the Nation's immigration and customs laws. Our agents and officers perform the mission lawfully, professionally and compassionately. We take extraordinary steps to identify, document and appropriately address humanitarian concerns of all those we encounter during law enforcement operations and, in particular, during our worksite enforcement operations.

While I am here today to specifically address many of the steps that ICE agents take when planning a large enforcement operation, it is important to note that the enforcement operations are just a small part of the overall investigation. ICE worksite enforcement investigations target employers who adopt a business model of employing and exploiting undocumented workers. Our investigations identify employers who hire large numbers of undocumented aliens, often representing a substantial percentage of the employers' workforce.

Our responsibility is to enforce the immigration laws, and that means arresting undocumented aliens, the employers, the document vendors, and any other individuals revealed by our investigation who have engaged in criminal activity. ICE has worked with Members of Congress and their staffs to develop worksite enforcement guidelines. The office is used when developing their operational plan. These guidelines were developed to ensure that parents who have been arrested and who have unattended minors or family members with disabilities or health concerns are identified at the earliest point possible.

Within the law enforcement community, the consideration ICE gives to identifying and resolving personal family issues is unparalleled and unique. For example, during a large worksite enforcement operation, ICE coordinates with the Division of Immigration Health Services—DIHS—to provide a sufficient number of healthcare providers to assess the medical and humanitarian needs of arrestees. DIHS personnel are given prompt access to all arrestees under safe and humane conditions on the day of the action.

When appropriate, ICE coordinates with state and local social-service agencies to assist with humanitarian screening. Operational security concerns sometimes dictate that this coordination cannot occur in advance of an operation. Even then, however, ICE will actively contact the local social-service agencies and local nongovernmental organizations to advise them of the operation once it was underway to request their assistance in identifying and sharing information on any humanitarian issues that come to their attention. ICE evaluates these issues against other standard considerations,

and detention decisions, such as the arrestee's criminal record, immigration history and other relevant factors.

During our May 12 operation at Agriprocessors in Postville, Iowa, ICE agents executed criminal and civil search warrants at the company, resulting in the seizure of boxes of evidence and the arrest of 389 undocumented alien workers.

Extraordinary care was taken to determine if any of the arrestees were sole caregivers or raised other humanitarian concerns. This process involved the direct questioning of all arrestees on the day of the enforcement operation by ICE personnel, as well as interviews with DIHS representatives. Detainees were questioned no less than three times about humanitarian issues, such as child custody or serious medical concerns. ICE arranged to have DIHS professionals at the arrest site to immediately determine the need and status of any children affected by the operation.

Through this comprehensive effort, 62 of those arrested were placed into removal proceedings and then released for humanitarian purposes while their removal proceedings continued. Most were released from the arrest site in the course of the operation.

Worksite enforcement operations are not poorly planned, haphazard incidents. They are professional law enforcement operations conducted by a professional law enforcement agency, whose primary mission is the enforcement of the laws of the United States and the protection of the American people.

While planning for the operation in Postville, I spent several months coordinating the investigation and operation with our Federal partners, such as the United States Attorney's Office, the U.S. Marshal Service, the U.S. Department of Labor Office of the Inspector General, U.S. Postal Inspection Service and others.

ICE will continue to faithfully enforce the Nation's immigration laws using all the tools and assets at our disposal. By utilizing all our authorities to pursue aggressive enforcement and the training offered with the ICE Mutual Agreement between Government and Employers—or IMAGE—program, ICE is establishing a culture of immigration compliance in America and reducing the magnet of illegal employment.

On behalf of the men and women of ICE, who serve this Nation by enforcing the Nation's immigration and customs laws, I would like to thank you for your continued support. These men and women have a difficult and oftentimes controversial job to do in often dangerous circumstances, but they strive always to do their essential work as consummate professionals.

Thank you for the opportunity to testify today, and I look forward to answering any questions.

[The prepared statement of Ms. Forman follows:]

PREPARED STATEMENT OF MARCY M. FORMAN

Statement of Marcy M. Forman
Director, Office of Investigations
U.S. Immigration and Customs Enforcement

Before
The House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law

For a hearing regarding:
"Immigration Raids: Postville and Beyond"

INTRODUCTION

Good morning Chairwoman Lofgren, Ranking Member King and distinguished Members of the Subcommittee. It is my pleasure to appear before you today to discuss U.S. Immigration and Customs Enforcement (ICE) law enforcement operations, in particular our worksite enforcement operations.

ICE is first and foremost a federal law enforcement agency with the mandate of protecting national security and public safety by enforcing the nation's immigration and customs laws. Our agents and officers perform this mission lawfully, professionally, and compassionately. We take extraordinary steps to identify, document, and appropriately address humanitarian concerns of all those we encounter during law enforcement operations and in particular during our worksite enforcement operations. In planning enforcement operations, ICE agents specifically plan for the possibility that individuals who are encountered and arrested may be a sole care-giver, or one whose family would bear an undue hardship if he or she were detained.

While I am here today to specifically address many of the steps that ICE agents take when planning a large enforcement operation, it is important to note that the enforcement operations are just a small part of the overall investigation. ICE worksite enforcement investigations target employers who adopt a business model of employing and exploiting undocumented workers. Our investigations identify employers who hire large numbers of undocumented aliens, often representing a substantial percentage of the employer's workforce. Our responsibility is to enforce the immigration laws, and that means arresting undocumented aliens, the employers, the document vendors and any other individuals revealed by our investigation to have engaged in criminal activity.

When planning worksite enforcement operations, ICE sets out parameters that maintain the integrity of operational objectives of enforcing the law while also addressing humanitarian issues that may arise. ICE has worked with Members of Congress and their staffs to develop worksite enforcement guidelines that field offices use when developing their operation plans. These guidelines were developed to ensure that parents who have been arrested and who have unattended minors or family members with disabilities or health concerns are identified at the earliest point possible. ICE takes this responsibility very seriously, and humanitarian factors are carefully taken into account when ICE makes custody decisions.

Within the law enforcement community, the consideration ICE gives to identifying and resolving personal family issues is unparalleled and unique in law enforcement. For

example, during large worksite enforcement operations, ICE coordinates with the Division of Immigration Health Services (DIHS) to provide a sufficient number of health care providers to assess the medical and humanitarian needs of arrestees. DIHS personnel are given prompt access to all arrestees under safe and humane conditions on the day of the action.

When appropriate, ICE coordinates with State and local social service agencies to assist with humanitarian screening. Operational security concerns sometimes dictate that this coordination cannot occur in advance of an operation. Even then, however, ICE proactively contacts the local social service agencies and local non-governmental organizations to advise them of the operation once it's underway, to request their assistance in identifying and sharing information on any humanitarian issues that come to their attention. We provide these groups with contact information for an ICE representative who will immediately address any issues not previously identified by ICE. ICE is very proud of the humanitarian efforts we take during worksite enforcement operations and we welcome the assistance of anyone who can help us to avoid the effects of the operation on those who are not involved with the enforcement operation.

Typically, in an effort to provide reliable and timely information to family and friends, regarding an arrestee's custody status and detention location during large-scale operations, ICE has taken the unprecedented step of establishing a dedicated 24-hour toll-free information hotline.

When making a custody determination, ICE considers any humanitarian issues identified by our agents, the DIHS, or social service agencies. ICE evaluates these issues against other standard considerations in detention decisions such as the arrestee's criminal record, immigration history, and other relevant factors. Generally, aliens who are ordered detained by ICE can seek a bond re-determination hearing before an Immigration Judge who has authority to review and modify ICE's detention decisions. ICE also makes every effort to avoid transferring detainees out of the area where they are arrested, but this is not always possible due to the limitations of detention locations.

We used a humanitarian plan similar to that described above, during our May 12, 2008, operation at AGRIPROCESSORS INC. in Postville, Iowa. Agents executed criminal and civil search warrants at the company resulting in the seizure of boxes of evidence and the arrest of 389 undocumented alien workers including 290 Guatemalan nationals, 93 Mexican nationals, 2 Israeli nationals, and 4 Ukrainian nationals.

In this recent operation, as in all ICE law enforcement operations, extraordinary care was taken to determine if any arrestees were sole caregivers or raised other humanitarian concerns. This process involved the direct questioning of all arrestees on the day of the enforcement operation by ICE personnel as well as interviews with DIHS representatives. Detainees were questioned no less than three times about humanitarian issues such as child custody or serious medical concerns. ICE arranged to have DIHS professionals at the arrest site to immediately determine the needs and status of any children affected by the operation. Through this comprehensive effort, 62 of those arrested were placed into

removal proceedings and then released for humanitarian purposes while their removal proceedings continue. Most were released from the arrest site in the course of the operation itself.

Worksite enforcement operations are not poorly planned, haphazard incidents. They are professional law enforcement operations conducted by a professional law enforcement agency whose primary mission is the enforcement of the laws of the United States and the protection of the American people. For example, when planning for the operation in Postville, ICE spent several months coordinating the investigation and operation with our federal partners such as the United States Attorney's Office, the U.S. Marshals Service, the Division of Immigration Health Services, the U.S. Department of Labor Office of the Inspector General, the U.S. Postal Inspection Service, the U.S. Department of Agriculture Office of the Inspector General, and others.

During the enforcement of all laws, like other law enforcement agencies, ICE encounters United States citizens and work-authorized aliens, in addition to undocumented aliens. While there is no one-size fits all when it comes to planning a law enforcement operation; we strive to minimize the disruption and inconvenience to innocent individuals.

ICE does take and will continue to take great care with respect to the humanitarian concerns of undocumented aliens who are taken into custody during law enforcement operations, and ICE exercises discretion to forgo custody when, and if, the exercise of such discretion is appropriate. We will also continue to faithfully enforce this nation's

immigration laws using all the tools and assets at our disposal. By utilizing all our authorities to pursue aggressive enforcement, and the training offered with the ICE Mutual Agreement between Government and Employers, or IMAGE program, ICE is establishing a culture of immigration compliance in America and reducing the magnet of illegal employment.

CONCLUSION

On behalf of the men and women of ICE who serve this nation by enforcing the nation's immigration and customs laws, I would like to thank you for your continued support. These men and women have a difficult and often times controversial job to do in often dangerous circumstances, but they strive always to do their essential work as consummate professionals. Thank you for the opportunity to testify here today. I look forward to answering your questions.

Ms. LOFGREN. Thank you for that testimony.

Now we will begin our questions.

Would you like to proceed?

Mr. KING. Thank you, Madam Chair.

I want to thank the witnesses for your testimony, and I think perhaps where I would start with this would be—if I direct my first question to Ms. Rhodes—with regard to what the rights might be.

Is a judge—when a judge is presented with a plea agreement, is a judge free to reject the plea agreement if he believes due process has not been followed?

Ms. RHODES. Yes, they are. In fact, judges are required to do so if they find that the defendant is not competent, doesn't understand the charges, the penalties, understand the terms of the plea agreement. The judge specifically asks the defendant if he is satisfied with the representation of counsel, if he understands his constitutional rights, if he wants to waive them, if he wants to plead guilty. The defendant is explicitly asked under oath whether or not the factual basis supporting the guilty plea is true and correct. The defendant is asked whether he is under any coercion or whether the plea is voluntarily.

That is just part of the list. There is a lengthy colloquy, and the judges, in my experience—I am a career prosecutor. Judges, in my experience, take their roles very seriously, as do defense counsel. It is an adversary system. Defendants represent their clients zealously. And defendants are also asked questions all through the colloquy—defense counsel—excuse me—are also asked questions all through the colloquy to ensure that they also believe that the plea is appropriate.

Mr. KING. And if I could follow up on that a little bit and ask how has that colloquy been compiled? Is it a history of case law that is given more and more questions to make sure that the alleged criminal has been—have received their justice, or is it some scholar that sat back and wrote up the colloquy?

Ms. RHODES. The requirements are set forth in Rule 11 of the Criminal Rules of Procedure, which govern what must be covered in order to have a valid guilty plea.

In addition, it is my experience that most judges have a form or a script on their desk, which they use as a checklist, and they go through all of the questions, they are very detailed, and in that way they make sure that they don't miss a single one. Sometimes it is also the case that judges give that script to counsel so that both the government counsel and defendant—the defense counsel can follow along the script and ensure that each and every question is asked and that satisfactory answers are given——

Mr. KING. Well, then would highly intelligent and very skilled immigration lawyers, like the Chair of this Committee, be looking for those omissions?

Ms. RHODES. I can't speak for the Chair of this Committee, but I am sure that lawyers would be looking for omissions.

Mr. KING. And are you aware that they have discovered omissions in that colloquy?

Ms. RHODES. I am not aware of that.

Mr. KING. And I don't know that this Committee is going to hear any testimony that would allege such a thing.

But there has been an allegation made in the—by the previous—I will say implications—in the previous series of witnesses about the Department of Labor not being informed of the ICE raids, and I would just ask if you are comfortable speaking to that issue?

Ms. RHODES. I can speak to it initially, and then I would suggest that ICE is in a position to address that.

But my understanding is that ICE did coordinate—and the U.S. Attorney's Office always coordinates with the investigating agencies as well—but they did coordinate with the Department of Labor, both through OIG, who was present at the site, and through both state and Federal labor departments that were located in Iowa.

And I will give——

Mr. KING. I will be happy to hear from Ms——

I am going to come back to you on that answer to that question, Ms. Forman, because I have just one more follow up——

Ms. RHODES. Okay.

Mr. KING [continuing]. For Ms. Rhodes.

And that is do you have numbers that can give us—this Committee—some sense of how many victims of identity theft were associated with the workers arrested at Agriprocessors?

Ms. RHODES. Yes, I do. There were—of those who were criminally prosecuted to this point, there is approximately 306. The vast majority of those—hundreds—had the identities of real people. So there were hundreds and hundreds of real victims in this case.

The investigation actually showed about twice as many as that, but not all of those people were apprehended. But approximately—well, more than 70 percent of the workers who were both illegal and had Social Security numbers that didn't match. There were hundreds that real people, and there were hundreds of victims.

Mr. KING. And, quickly, why are not company officials—senior company officials—charged immediately?

Ms. RHODES. The investigation is ongoing. I can assure you it is being pursued. Two supervisors were indicted last week and will continue.

Mr. KING. Thank you.

And I realize, Madam Chair I am out of time. I wonder if I might——

Ms. LOFGREN. We may have a second—we may have a second round.

Mr. KING. Just for the opportunity to allow to Ms. Forman to respond to the question?

Ms. LOFGREN. Oh, all right.

Mr. KING. The lingering question?

Ms. LOFGREN. All right.

Mr. KING. I thank you.

And if I need to restate that, was the Department of Labor informed?

Ms. FORMAN. Yes, they were in April of 2008.

Mr. KING. Thank you very much.

Thank you, Madam Chair.

I yield back.

Ms. LOFGREN. Gentleman's time has expired.

I would note that the Committee asked the U.S. attorney in Iowa Mr. Dummermuth to attend this hearing, and the Department of Justice sent you instead, and it is nice to see you here. But were you at—did you participate in these trials?

Ms. RHODES. No, I didn't.

Ms. LOFGREN. You weren't there?

Ms. RHODES. No. But I have spent hours on the phone with——

Ms. LOFGREN. No. I just have a simple question. You weren't there——

Ms. RHODES. No, I wasn't.

Ms. LOFGREN [continuing]. And I don't blame you, but I think it is disappointing that the department wouldn't send the U.S. attorney who was there, who we asked to attend, and I will just note that for the record.

I would like—and it may be that you don't know this information. If so, I would like you to get it.

But I would like to know what information was provided by the Department of Justice, Department of Labor, Department of Homeland Security—any or all of them—to the Federal court in Iowa. This was planned for a long time. When was the connection made with the court, and what measures were taken to ensure that the court's view of the cases would not be affected and that judicial neutrality would not be compromised?

Ms. RHODES. My understanding—primarily for logistical reasons. That is not unusual. If there is going to be an enforcement operation that is going to bring a large number of cases to the court, it is not uncommon to give the court a head's up on that.

Ms. LOFGREN. So Judge Reade would have been contacted in advance? I am not making a value judgment, I am just trying to find out what happened.

Ms. RHODES. That is correct.

Ms. LOFGREN. Now, we were—there have been accounts—and I don't know if they are accurate—that the U.S. District Courts for the Northern District of Iowa—Judge Reade—personally called defense lawyers asking them for favors and warning them not to tell anyone and then inviting them to attend a meeting in Cedar Rapids with other defense lawyers to take on the representation. Did anyone at DOJ ask Judge Reade to do this? Do you know if that report is accurate?

Ms. RHODES. I know that defense counsel were contacted somewhat in advance, at least some of them were.

Ms. LOFGREN. By Judge Reade?

Ms. RHODES. That is my understanding. I don't have all the details.

Ms. LOFGREN. Given the number of individuals apprehended in this raid, I am curious of who picked the ratio of the number of defendants to lawyer? You know, ordinarily, one has—you know, you are charged with a crime, you have your lawyer to represent you. But these were bunches of defendants with a single lawyer. What guided you on the ratio? Do you know what the——

Ms. RHODES. I don't know who selected that ratio——

Ms. LOFGREN. Was it the judge, do you think?

Ms. RHODES. I don't know. I do know that she contacted the lawyers to keep the date available. I don't——

Ms. LOFGREN. I am sorry.

Ms. RHODES. It is not uncommon in immigration cases——

Ms. LOFGREN. Well, these were prosecution of crime, though. These were not immigration cases.

Ms. RHODES. Excuse me. It is not uncommon in immigration—criminal immigration cases to have a defense lawyer represent most——

Ms. LOFGREN. But this was not a prosecution for a criminal immigration matter. It was an identity theft prosecution.

Ms. RHODES. The pleas that were actually conducted were not on identity theft. They were on other documents so it was a violation——

Ms. LOFGREN. Right. That was the plea, but the——

Ms. RHODES. That is correct. My point is simply this, not to quibble over the charges but to simply say in these kinds of cases it is not uncommon to have defense lawyers represent multiple clients.

Ms. LOFGREN. Let me ask you, in terms of the—during the raid, it has been reported—I don't know if it is true—that the ICE officers arrested and interviewed each of the arrested workers before they had access to criminal defense counsel. Were they Mirandized, and, also, was any of the information obtained in those interviews used in the prosecution—the later criminal prosecution?

Ms. RHODES. They were Mirandized.

Ms. LOFGREN. By the ICE interviewers?

Ms. RHODES. Yes.

Ms. LOFGREN. Did the decision to threaten the workers with aggravated identity theft charges that would require prison time of mandatory minimum of 2 years come from main Department of Justice, or was the final decision made in the U.S. Attorney's Office, and is this a new policy at DOJ?

Ms. RHODES. You know, all of the charging decisions were made by the career prosecutors in the local office.

Ms. LOFGREN. So DOJ didn't have anything to do with it? The main office?

Ms. RHODES. DOJ was consulted because of the size of the operation and to ensure that all constitutional protections would be afforded. It was also consulted because it was a fast-track operation and——

Ms. LOFGREN. Well, let me be more precise on my question.

The decision to charge them with a criminal offense, as opposed to what has often been the case to administratively process and deport these individuals, was that a DOJ——

Ms. RHODES. That was——

Ms. LOFGREN [continuing]. Main——

Ms. RHODES [continuing]. Made by the career prosecutors in Iowa, and it was made primarily for two reasons: in order to obtain cooperation and also because there was a case that they were——

Ms. LOFGREN. Cooperation in what?

Ms. RHODES. Because a part of every one of the plea agreements was that they would continue to cooperate in the government's ongoing investigation.

Ms. LOFGREN. But aren't they going to be deported? They are not going to be here to cooperate with you.

Ms. RHODES. They are here for the next 5 months, and there is a case where—a case in the district of Nebraska, which is the same circuit, which dismissed a case against a corporation precisely because the workers were no longer available——

Ms. LOFGREN. So it may be the government's intention that I am to keep these individuals here past their sentence as material witnesses to the ongoing—is that what you are telling me?

Ms. RHODES. I can't speak to that, but I can say that the investigation is ongoing and that cooperation was a key component to the criminal plea agreements.

Ms. LOFGREN. But let me ask a final question because my time is expiring. But were any of the defendants notified of their right to contact their consular officers, as required under the Vienna Treaty?

Ms. RHODES. Members of the consulate from all of the countries were present on location.

Ms. LOFGREN. Okay. So they were all there.

I am going to turn now to Mr. Gutierrez for his 5 minutes, and as I mentioned earlier, we may have a second round of questions since there aren't that many Members here and we have lots of issues and material that we would like to learn about.

Mr. GUTIERREZ. Thank you very much.

I would like to ask Ms. Rhodes, is this—I am going to read something, and tell me whether it is true or not.

"If you plead guilty to the charge of knowingly using a false Social Security number, the government will withdraw the heavier charge of aggravated identity theft, and you will receive a term of 5 months in jail, be deported without a hearing, and placed on supervised release for 3 years. If you plead not guilty, you could wait 6 to 8 months for a trial without right to bail since you are an immigration detainer. If you win at trial, you will still be deported and could wind up waiting longer in jail than if you plead guilty. You would also risk losing at trial and receiving a 2-year minimum sentence before being deported."

Is this is a copy of the interpretation of what was asked to be interpreted to the 300-and-some-odd detainees. Is that an accurate interpretation?

Ms. RHODES. Well, I understand that that was the interpreter's rendition of what the choices were. What I would say is——

Mr. GUTIERREZ. Could you give—I am the detainee.

Ms. RHODES. Right.

Mr. GUTIERREZ. Tell me. Give me the plea agreement.

Ms. RHODES. That they could—that they were charged with two offenses originally. They were charged with the underlying document offense because they had a false document. They were also charged with aggravated identity theft because the documents belonged to real people, and each one of the people who pled guilty admitted to that. And so, yes, those were the two choices that they faced.

Mr. GUTIERREZ. And if I go to—so but I was offered a lesser of two charges?

Ms. RHODES. Right.

Mr. GUTIERREZ. Okay. And if I didn't accept the lesser of two charges, then I would be—wait in jail 6 to 8 months, possibly for

a trial, and then the minimum, if I am convicted, is 2 years under the aggravated identity theft?

Ms. RHODES. They can go to trial, and they can fight the offense and take whatever verdict the jury gave them.

Mr. GUTIERREZ. But you did tell them they would be deported nonetheless whether they win or lose?

Ms. RHODES. Well, that wasn't—as I understand that, that wasn't a conversation the government——

Mr. GUTIERREZ. Well, you know what, then, you see, there is a big flaw here because if the interpreter—who hired the interpreter?

Ms. RHODES. The interpreter was arranged by the court. There were——

Mr. GUTIERREZ. By the court. So this is an officer of the court.

Ms. RHODES. That is correct. But they are interpreting what the defense counsel is saying to the client.

Mr. GUTIERREZ. Okay. So then we have—okay. So we still have a problem. We still have a problem with this proceeding because, if I am the detainee and the interpreter is there—and the interpreter is pretty knowledgeable because these interpreters, this isn't their first trial. Many of these interpreters have gone through hundreds of trials; isn't that true?

Ms. RHODES. And so have the defense counsel.

Mr. GUTIERREZ. And so have the defense attorneys. Good. So we have defense attorneys who know what they are doing—according to you, your testimony—and interpreters who know what they are doing.

So if the interpreter is telling us that this is what he was asked to interpret, we have a problem here because that is not your—that is not what you are offering; right?

You are contesting that this interpretation—right—is what was the offer to the detainee.

Ms. RHODES. No. I think it was consistent. They would have——

Mr. GUTIERREZ. It was consistent. So basically what you have done—now, did you make the decision to charge them—the Department of Justice—or did Homeland Security make the decision to charge them with aggravated identity theft?

Ms. RHODES. The charging decisions were made by the career prosecutors in the office in Iowa.

Mr. GUTIERREZ. From the Department of Justice?

Ms. RHODES. Yes.

Mr. GUTIERREZ. They are the ones that made the decision.

Was there any information given from Homeland Security that well over 100 of the Social Security numbers really didn't match to anyone.

Ms. RHODES. No. For everybody who pled guilty, Social Security confirmed that the Social Security number did in fact belong to a real person.

Mr. GUTIERREZ. Okay. Did in fact belong to a real person.

Ms. RHODES. That is correct.

Mr. GUTIERREZ. So were there any in the underlying indictment or charges that you made to the 400—were there any Social Security numbers that didn't belong to anybody? That really weren't useful Social Security numbers?

Ms. RHODES. There were some that——

Mr. GUTIERREZ. There were some?

Ms. RHODES. Yes.

Mr. GUTIERREZ. Okay. So what you did is you carefully went back—now, when—you said there were two charges; right? Could you explain the two charges? There was aggravated identity theft, and what was the other one?

Ms. RHODES. Whatever they were charged with as an underlying crime. For some it was submitting a false document to obtain employment. For some it was having a false immigration document. There were a few underlying charges that were used.

And let me correct if I misspoke. It wasn't 100 percent of the 306 people that had a real person's identity. It was the vast majority. There were a few that——

Mr. GUTIERREZ. Okay. Okay. So it wasn't 100—so then these people basically lied to the court when they admitted to knowingly—right?—having a false identity since I cannot knowingly have a false identity to an identity that I created myself.

Ms. RHODES. Well, no. Then they would have—they would not have pled to that.

Mr. GUTIERREZ. But you said that some of them didn't have a——

Ms. RHODES. Right. But——

Mr. GUTIERREZ [continuing]. Social security number. I mean, I would ask the court reporter to repeat what you said, but you just stated that some of them did not have a Social Security number which indeed was being used by someone.

Ms. RHODES. Right. It was a Social Security number not being used by somebody, but the charges would have been—they would not—those people would not have been asked to admit something false.

Mr. GUTIERREZ. Well, you know, we have—my 5 minutes are up, but what I gathered was—from your testimony—that there were some people. First, you corrected yourself twice.

Ms. LOFGREN. The gentleman's time has expired.

We will have one more round of questions so that we can get any additional pieces of information that we wish to get.

And I will turn now to Mr. King.

Mr. KING. Thank you, Madam Chair.

To start this off, I was actually waiting for Mr. Gutierrez to come back so he could hear from me directly and understand my position.

My position was represented to this panel inaccurately. It has been consistently for enforcement of immigration laws, against those who cross the border illegally, against those who willfully overstay their visas, against those who hire people who are unlawful, where it is proven unlawful to work in the United States, and I don't believe that the gentleman from Illinois can come up with a logical enforcement bill, and I am not a co-sponsor of.

It isn't fining employers that I am after. I am after bringing the departments of the Federal Government together and working in cooperation so that we can effectively assist ICE and the other agencies in enforcing immigration law. That is my stand, and that is my position, and it is unusual—and I apologize to the people that are here to testify today who do not always see the activities

of this Committee. It is unusual to see a Member of Congress misrepresent a position of another Member of Congress, especially on the same panel, especially when we are working together on a day-by-day basis and there should be no misunderstanding. In fact, I don't believe there was one.

So I turn to Ms. Rhodes, and I would ask you the question that why is the U.S. attorney for the Northern District of Iowa not here to testify today?

Ms. RHODES. It was decided that I would be here to testify and that I was involved in reviewing the fast-track program itself. I have reviewed all of the underlying documents relating to these charges and I do have an understanding of not only this case but some others.

Mr. KING. I am fully convinced of that. But isn't it also true that he is conducting further investigations and it is policy not to—for a U.S. attorney not to come testify before Congress if there is an ongoing investigation that he is heading up and that—I don't know of exceptions, and do you know of any exceptions?

Ms. RHODES. That is right.

Mr. KING. No exceptions. Then I think that clarifies why Mr. Dummermuth isn't here today.

Then I would turn to Ms. Forman. And can you first—can you tell us why Agriprocessors was targeted for worksite enforcement? What were the original indicators?

Ms. FORMAN. ICE received information from very reliable sources that Agriprocessors was—had hired a number of illegal aliens and had built their workforce, they were an egregious violator in terms of hiring large numbers of illegal aliens.

Mr. KING. And, you know, you are going—you probably have reviewed the testimony of one of the interpreters, Mr. Camayd-Freixas. And I first ask you, have you reviewed his written testimony?

Ms. FORMAN. Yes, I have.

Mr. KING. And so, as an opportunity to answer the charges that we are—this Committee is going to hear, how would you compare your holding area? He compared it to a concentration camp. How would you describe it?

Ms. FORMAN. Well, first, personally and professionally, I find that quite offensive. Being of Jewish faith, I equate concentration camps to the murder of over 6 million Jews and other individuals.

ICE is a professional law enforcement agency. Our detention centers have to meet certain standards, and the one that was put together in—in Iowa was one that I would—that was first rate. It had pods, it was full of beds, there were foods, there were meals, there was television, there was recreation centers. Most concentration camps that I have become aware of don't possess those items.

Mr. KING. Would it be possible to—to bring enforcement against employers without identifying illegal employees whom they had hired? Is it possible to bring a prosecution—a successful prosecution and conviction? I will go first to Ms. Forman—if I have time, back to Ms. Rhodes—but would it be possible to do so without—without first identifying illegal workers and prosecuting them so you have got those facts to work with?

Ms. FORMAN. Certainly, illegal aliens are a key component of any illegal worksite operation. However, I mean, there are different methodologies to work these types of cases, and oftentimes you can't start from the top down. You have to work your way up in investigations——

Mr. KING. If I could quickly then—excuse me—go to Ms. Rhodes.

Do you know of any circumstances by which we could successfully get convictions on employers if we didn't have the—if we didn't have the evidence of the illegal employees.

Ms. RHODES. Certainly we have to have evidence that illegals were hired.

Mr. KING. Thank you. I think that makes my point, and I thank the witnesses.

And I yield back the balance of my time.

Ms. LOFGREN. The gentleman yields back.

I am curious, do you know whether any of the people who were—who pled guilty have been deported yet, or are they all—they are currently in the United States?

Ms. RHODES. I think ICE could probably speak more accurately to that.

Ms. LOFGREN. Do you know?

Ms. FORMAN. There are over 200 individuals who currently are in still Federal custody. There have been approximately 30 that have been deported thus far. Ten are still in detention.

Ms. LOFGREN. So 30 of them have been deported already?

Ms. FORMAN. To the best of my knowledge, yes.

Ms. LOFGREN. So I guess that makes me question how we are going to proceed on the prosecution of the potential labor violations without the witnesses. It is pretty clear that ICE is—you know, and that is provided for in law. I don't quarrel with that. But once a person has finished serving their criminal sentence, they are deportable and we are deporting our witnesses. So I think the concerns about destroying this case in terms of the employer's misconduct are well founded.

I am interested, Ms Rhodes, on the approach in this case. A common practice—well, let me just ask this. Well, oftentimes defendants—or in this case criminals—will be offered a sentence reduction for producing substantial assistance in the prosecution of others. Is that envisioned in these cases?

Ms. RHODES. Yes. In fact, that was the whole reason for having that term in the plea agreement, so that the government could then find out who would be the best witnesses. And there are a number of ways of preserving their testimony in any criminal proceedings should one be necessary.

Ms. LOFGREN. But the plea agreement itself—item 6, last sentence—says, "Due to the government's agreement to a substantially reduced sentence, defendants shall have no expectation of any additional sentence reductions or substantial assistance."

So wouldn't—really, you have lost your leverage once you have got the person, they have pled guilty—this is really backwards from the way these things are usually done, isn't it?

Ms. RHODES. It is not the way it is usually done, but that is the way it was done here, and there will be no additional benefit. The benefit was given upfront.

Ms. LOFGREN. So the opportunity used—5(k) in the sentencing guidelines—is really out the window?

Ms. RHODES. Well, it wasn't 5(k), it was charge bargaining in this case.

Ms. LOFGREN. Okay.

Ms. RHODES. Charges reduced.

Ms. LOFGREN. Let me ask, in terms of access to immigration lawyers, was there an effort made, when the defense counsel were secured, to find people who knew anything about immigration law so they could understand the interplay between the two bodies of law, the criminal law defense and the immigration law?

Ms. RHODES. Well, in fact, several immigration lawyers showed up at the site and were given access, actually, before criminal charges were brought in many cases. They were given access even during the booking process.

Ms. LOFGREN. So there were several immigration lawyers and how many individuals?

Ms. RHODES. Well, there were 300, but there were joint meetings held between the immigration lawyers and the defense counsel, and as a result of those meetings and information that was exchanged, some of the defense lawyers did bring immigration issues to the attention of the prosecutors.

Ms. LOFGREN. Let me ask in terms of, again, the immigration benefits. I understand most of these individuals, at least from the press reports, were from Guatemala, which has a very checkered human rights record. Was there screening by the department to identify whether any of these individuals had been victims of torture or might have a claim to asylum based on the situation in Guatemala?

Ms. RHODES. I think—I can answer——

Ms. LOFGREN. Do you know the answer, Ms. Forman?

Ms. FORMAN. I am not aware of that coming up, no.

Ms. RHODES. No one did claim asylum. I do know that.

Ms. LOFGREN. Well, they ordinarily—you know, not well educated, Guatemalan meat cutters might not really be aware of the law of political asylum.

Ms. RHODES. Right. But they had lawyers who were consulting with immigration lawyers.

Ms. LOFGREN. Well, that is—we received reports that immigration lawyers who came forward were actually turned away. But I will explore that with the immigration lawyers that are on the next panel.

Let me ask you this: How did you know in advance who to give a charge reduction to in exchange for their cooperation?

Ms. RHODES. It was given to everybody upfront so that we would have the opportunity to later find out who would be the best witnesses.

Ms. LOFGREN. That is kind of a pig in a poke, isn't it?

Ms. RHODES. Well, it was a risk we took.

Ms. LOFGREN. You know, I want to get on to the next panel so I am not going to go any further, but I think certainly there are a number of issues that are posed here for me.

I would just also note that the—in terms of the prosecution of low-level misdemeanor immigration violations—you mentioned the

Southwest border—we had testimony in the Administrative Law Subcommittee just a few weeks ago that, although there has been substantial increases, that came at a cost of a 40 percent reduction in organized-crime prosecutions in the same area. So, you know, we are prosecuting the busboys and the nannies, but the drug cartels are no longer having to worry.

My time has expired.

Let me turn to Mr. Gutierrez to see if he has additional questions.

Mr. GUTIERREZ. Sure. Thank you very much.

Yes, you said in order to obtain the cooperation of the detainees you did what, Ms. Rhodes?

Ms. RHODES. They were offered—part of the plea agreement was that every detainee was offered a cooperation term, which means that they would cooperate in the government's ongoing investigation.

Mr. GUTIERREZ. Let me ask you, so you say that the lawyers there made the decision at that moment to pursue the indictment for aggravated identity theft, that these were lawyers in Iowa.

Ms. RHODES. That is correct.

Mr. GUTIERREZ. They made the decision. Is that usually the way it works? I thought there was like a chain of command?

Ms. RHODES. No. Individual decisions on charging are left to the district. In this particular case, what was approved by the department was the fast-track program itself, which meant that they presented to us that they were planning on doing a large-scale operation and that they wanted to do it under the fast-track. The point——

Mr. GUTIERREZ. Who wanted to do it under the fast-track, the lawyers from ICE, or the lawyers from DOJ?

Ms. RHODES. It is the career DOJ lawyers——

Mr. GUTIERREZ. Okay. The career DOJ lawyers.

Ms. RHODES [continuing]. Who present this. The benefit is it allows—it benefits the community because it allows for a large law enforcement operation to take out a large number of criminal defendants all at once. It does it in a way that doesn't flood the courts. It does it more efficiently, and the defendants receive the benefit of that by getting a drastically reduced sentence.

Mr. GUTIERREZ. They get a reduction to——

Ms. RHODES. Those programs exist permanently in many districts, and they also can be done on a case-by-case basis——

Mr. GUTIERREZ. Let me ask you something. If this is the first time this was ever done, Postville's precedent setting?

Ms. RHODES. Pardon me?

Mr. GUTIERREZ. This had never been done before, this fast-tracking?

Ms. RHODES. No. Fast-tracks in worksite enforcements have been done before.

Mr. GUTIERREZ. And at this scale?

Ms. RHODES. I am not aware of anything at this precise scale, nor am I aware——

Mr. GUTIERREZ. Would you—I don't expect that you have the information. Could you give to the Committee when this was first done? Because it is new to me, and it is new to many Members of

this Committee and I know some of the Members of Congress, which are the ones, in the end, that establish the immigration policies for this Nation. I mean, there should be some coordination between what we do here and the laws we enact and what you carry out at the executive branch of the government, especially the judicial branch of government.

So could you please afford the Committee at some point in the very near future when you first began this fast-tracking, what the first case was, so that we could have some history of when this began? Because it is kind of new to me in terms of what gets done.

Because, when you charged the people, you charged them with not knowingly using a false Social Security number, but you really charge them with aggravated identity theft—right?—and then you let them cop a plea for the lesser of the two charges?

Ms. RHODES. Right. I believe the charges were with both, and then the greater charge was dismissed.

Mr. GUTIERREZ. And then the greater charge was dismissed.

So let me ask you, if I am a detainee, do I have a right to bail? Any one of the 300 detainees, was there a right to bail?

Could I have a reasonable right to bail in getting out of jail while my——

Ms. RHODES. On——

Mr. GUTIERREZ [continuing]. If I say no?

Ms. RHODES. Well, there is a—you might have a criminal right to bail, but the fact of the matter is you are going to be detained by ICE for being here illegally.

Mr. GUTIERREZ. Very good. So there is no right to bail. I mean, they are basically in jail regardless. I can't get out of jail.

So if I have children I have to attend to and a spouse I have to attend to—things that I am sure your prosecutors were knowledgeable of—that these people had—I mean, the attorneys must have communicated the guy has a—if he didn't, then the attorney did a terrible job. The guy has a wife, the woman has children, spouse, people who rely on them. I mean, these are immigrants that are coming to the United States.

Ms. RHODES. Yes. That was the basis of the humanitarian relief used.

Mr. GUTIERREZ. That was the basis for the humanitarian. But yet you did have someone who might have had relief who didn't take relief because his wife is an American citizen and he has American citizen children, and yet he took the plea agreement also. So——

Ms. RHODES. Some of those were also allowed relief on some of the terms.

Mr. GUTIERREZ. Well, some of them but not all of them. Not all of them.

Ms. RHODES. It was made on a case-by-case——

Mr. GUTIERREZ. Because the way you paint the picture is, "Oh, we did this for the good of the detainees. We offered them an opportunity to kind of walk away." When indeed, most of the time that is not what happened. Most of the time what happens is they are detained and they are deported. Those are the statistics that we get from ICE. They detain people; they deport them.

This was a very different situation and the manner in which it was conducted at Postville because the statistics don't lie. You basically said to them—and I know you want to tell us that you were offering them a deal of a lifetime, but it really wasn't much of a deal. You charged them with a felony that had a 2-year minimum. You thereby tied the hands of the judge. He had to sentence them to 2 years if they were found guilty. They had to stay in jail. They were afforded an opportunity to stay in jail for 6 to 8 months, wait for a trial, when indeed you said to them, "Well, we will give you 5 months."

Ms. LOFGREN. The gentleman's time has expired.

Mr. GUTIERREZ. Because from my point of view—and I will wrap it up—it is just—if you are going to charge somebody with something, charge them knowingly and with the intent. You did not have one complaint of identity theft against any of the people at this Agriprocessors plant, not one complaint of identity theft.

Ms. LOFGREN. The gentleman's time has expired.

I recognize the gentlelady from Texas Ms. Jackson Lee for 5 minutes.

Ms. JACKSON LEE. Thank you, Madam Chair, and I want to again thank you and the Ranking Member for, I think, what is a very important hearing.

Let me thank Ms. Rhodes and Ms. Forman for their service as well, and allow me to again reemphasize the respect I have for law enforcement and ICE agents, in particular the station in Houston, that has made as best an effort as they could to be as communicative and as sensitive to our concerns—our humanitarian concerns and also the concerns our office has expressed what we think are ineffective approaches to our situation.

To that end, I would like to ask Ms. Forman to bring this back in writing—my colleague mentioned it for Postville, but I want a report on the Shipley Do-Nuts arrests and U.S. Rags—or Rags USA as relates to the number of people arrested, the number of people released, the number of people in detention as we speak, the status of the investigation and the status of the prosecution and the cost. And I also want to know the—any efforts to increase the staffing in the Houston office for ICE agents.

Ms. Rhodes, let me—and I know you might not have that at your fingertips so if I can have that in writing. If you have it, you might want to comment.

But let me—Ms. Rhodes, are you aware of the pending legislation—have you had a chance to at least have summaries of the kinds of legislative initiatives, like comprehensive immigration reform or some aspects of the legislation that has to do with felonies?

Ms. RHODES. I am sorry. I am not familiar with the details of the legislation that is pending.

Ms. JACKSON LEE. Do you have a sense that the thrust of the legislation is that people who are convicted of felon are deported, in essence, permanently? Are you familiar with that approach that someone who is a convicted felon would not be able to access what has been called access to citizenship?

Ms. RHODES. I know that typically those convicted of felonies are deported.

Ms. JACKSON LEE. Right. So what we have here in Postville, for example, what is typically a civil or a pathway for someone to be deported and possibly stay out of the country for 10 years, the psychic may have been by those lawyers on the ground that, if these individuals are convicted of felony charges, then whatever approach we may take in moving forward on immigration reform, they would be forever barred from coming back to the United Sates?

Ms. RHODES. I don't know whether or not they would be forever barred.

Ms. JACKSON LEE. But they certainly would have a far more difficult time. I think they would be forever barred. I don't think there is a pathway for felons to come back in the United States.

Ms. RHODES. They are permanently barred.

Ms. JACKSON LEE. They are permanently barred. So do you have any indication that that was the approach that these lawyers were taking?

Ms. RHODES. No, I don't. I know that felonies are graded. Some you can apply for readmission after 10 years, some after 15 years, some are——

Ms. JACKSON LEE. But if you have a young child and a spouse here, certainly it would be a far more difficult hurdle to overcome; is that not correct?

Ms. RHODES. That is correct.

Ms. JACKSON LEE. And to your knowledge—I know that they were charged with identity theft—and I abhor identity theft—but to your knowledge, short of that creative thinking at that time—to your knowledge—or at least these individuals were at first approached by the law because they were undocumented?

Ms. RHODES. No, that is not correct. It is because of the widespread identity theft. What had happened was Agriprocessors is the largest employer in this town.

Ms. JACKSON LEE. So you looked——

Ms. RHODES. They had over 70 percent that were illegal, and as the investigation progressed, it became clear that they were also over 70 percent having Social Security numbers belonging to somebody else.

Ms. JACKSON LEE. And was that contributed to by the employers? Were they part—was the allegation that they were part of the conspiracy?

Ms. RHODES. I would say this: It was a large percentage of the——

Ms. JACKSON LEE. Okay. So, therefore, the culprits were involved were also the employers as well, and these individuals received, in essence, a benefit, but they were there to work. Is that my understanding?

Ms. RHODES. They were there to work, and two of the supervisors who helped them get the false documents have been indicted.

Ms. JACKSON LEE. All right.

Let me move quickly to Ms. Forman.

The scene for Houston was this: 200 people surrounding U.S. Air Rags—I will get the name—Air Rags USA, guns drawn, doors kicked in, a little 4-foot, 5-foot female bammed against the wall who happens to be a citizen, the woman falling from 20 feet, the

original then an arrest that went forward—and I am going to finish in just a moment Ms. Chairwoman if you would indulge me—then the arrest was in the morning at their residence, surrounded by ICE officers. They arrested, and it was a commitment that they would be released on bond by 12 noon of that day. They didn't accede to that. They were then taken from the detention center with cameras blasting, neck chains, leg chains and all kinds of chains——

Ms. LOFGREN. The gentlelady's time has expired.

Ms. JACKSON LEE. Could she just answer and say was that purposeful? Does that help you to intimidate by performing in that manner?

Ms. FORMAN. In all due respect, I have spoken to the special agent in charge, and that did not occur.

Ms. JACKSON LEE. With all due respect, it did occur, and I would like a full report from that special agent in charge as to what occurred because it did occur.

Ms. LOFGREN. Well, the Committee will ask for a written report on the subject.

Ms. JACKSON LEE. I yield back.

Ms. LOFGREN. Gentlelady's time has expired.

I would just like to note that the Committee hearing will remain open for 5 days. We may have additional questions, which we will submit to you in writing. We would ask that you promptly respond if that occurs. And I would say, to the extent that the questions are specifically about what happened in Waterloo, we would ask that you have Mr. Dummermuth submit the information he has personal knowledge of because we want direct information.

And as part of the question to be answered in writing, the warrant request mentions methamphetamine at the plant, which is inconsistent with the testimony you have just given, and I would just like an explanation. I mean, I realize you probably didn't prepare this affidavit, and if you could explain that in writing, that would be very helpful.

And we thank you both for your testimony.

We will now call the third and final panel to the table.

As the panel is coming forward, I will begin by introducing them.

I am pleased to welcome Erik Camayd-Freixas. Dr. Camayd holds master's and doctoral degrees in language and literature from Harvard University and a bachelor's degree in psychology from Tufts University. He is professor of legal interpreting and director of translation studies at Florida International University and the former director of training for the State of Florida Interpreter Services program.

Dr. Camayd is the author of numerous books and articles and has lectured widely around the world on linguistic and cultural studies. Dr. Camayd has been a federally certified interpreter since 1985, and he frequently serves in Federal and state courts as an expert witness in semantic and linguistic analysis.

The next witness is David Leopold. Mr. Leopold is the principal in the David Wolfe Leopold & Associates in Cleveland, Ohio. He has practiced immigration and criminal law for nearly 20 years.

For nearly 10 years, Mr. Leopold has also served as a criminal justice—CJA—plan defense attorney for the U.S. District Court for

the Northern District of Ohio, representing criminal defendants in Federal criminal matters upon court appointment.

In addition to his practice, he directs the immigration law curriculum and teaches immigration law at the Case Western Reserve University School of Law and serves as an adjunct professor of immigration law at the Cleveland-Marshall School of Law at Cleveland State University.

Mr. Leopold is also a frequent speaker on immigration consequences of criminal convictions at Federal, State and local bar continuing legal education seminars.

He is testifying today on behalf of the American Immigration Lawyers Association. He currently serves as AILA's first vice president.

I am also pleased to welcome Professor Robert Rigg. Mr. Rigg is an associate professor of law at Drake University Law School in Des Moines, Iowa. He is the president and founding member of the Iowa Association of Criminal Defense Lawyers and currently sits on the Iowa Supreme Court Attorney Disciplinary Bar. He previously sat on the Iowa Supreme Court Advisory Committee for Rules of Evidence and Rules of Criminal Procedure.

He has been published in the Boston University Public Interest Journal, the American Journal of Criminal Law, the T. M. Cooley J. Practice in Criminal Law and West Law's Iowa Practice of Criminal Law.

He has been quoted on NPR by the Los Angeles Times, the Associated Press, Newsday, USA Today, and, finally and not unimportantly, the Des Moines Register.

Our final witness is Ms. Lora Costner. Mrs. Costner is a resident of Newport, Tennessee. She is married and the mother of two children, Molly and Mason. She and her husband were victims of identity theft, and her congressman was here this morning to stick up for her, and we appreciate your willingness to be here as well.

So if we may begin with Dr. Camayd. We have five—your full written testimony—and that of all of you—will be made part of the official record and—but we do ask that your testimony consume about 5 minutes.

And we will begin with you, Doctor.

TESTIMONY OF ERIK CAMAYD-FREIXAS, PROFESSOR OF MODERN LANGUAGES, FLORIDA INTERNATIONAL UNIVERSITY

Mr. CAMAYD-FREIXAS. Thank you, Chairwoman Lofgren.

Ms. LOFGREN. We need the microphone on, though.

Mr. CAMAYD-FREIXAS. Thank you, Chairwoman Lofgren, Ranking Member King, honorable Members of the Subcommittee.

I was 1 of 16 interpreters who served both weeks of the Postville hearing. Unlike judges, prosecutors or attorney, I was present at every step of the process. It is my duty as an impartial expert witness, an officer of the court, to ensure that the court is not misled and to bring to its attention any impediments to due process. I have done so in the best interest of the Federal court I am proud to serve and with the conviction that, if our honorable judges had known how this judicial experiment would turn out, they would have never allowed it.

In my statement submitted for congressional record, I document the flaws. Detainees' quarters were not certified. The court failed to maintain physical and operational independence from ICE prosecution and a level playing field for the defense.

There was inadequate access to counsel, no meaningful presumption of innocence. Defendants appear not to understand their rights and charges. Bail hearings and other due process rights were denied. The charge of identity theft used to force a plea lacked foundation and was never tested for probable cause.

Defendant did not know what a Social Security number was and were not guilty of intent crime. Guilty pleas were obtained under duress. Judges had no sentencing discretion pursuant to a binding plea agreement. Sole providers whose families are in jeopardy now endure a cruel and unusual psychological punishment, the foreseeable effect of a prison time on common——

Abridgement of process produced wholesaling justice at the other end. Parents begging to be deported put in jail at public expense. Proud working mothers branded like cattle with the scarlet letter of an ankle monitor dehumanized and reduced to begging at the doors of the church as they were released on humanitarian grounds.

The town of Postville devastated. The kinship ties are noble people are quick to forge with all newcomers painfully severed. Families and friends separated.

I saw the Bill of Rights denied and democratic values threatened by the breakdown of checks and balances, and it all appeared to be within the framework of the law pursuant to a broken immigration system.

Postville lays bare a grave distortion in the legal structure of government. Post 9-11, ICE was granted power to wage the war on terror, but since 2006, it has diverted resources even from disaster relief to an escalating and unauthorized war on immigration.

Yet the men and women of ICE are not to be faulted for doing their duty. It is unrealistic in our adversarial system to ask prosecutors to exercise restraint and not use all legal mean to win convictions. The fact is our laws have not kept up with this growth in enforcement.

Congress failed to pass immigration reform, and ICE has filled the legal void with its own version of it. Now we have a serious contradiction, the growth of authoritarian rule inside a democratic government. This entity can simultaneously wield immigration and criminal codes plus issue administrative rules, leaving no room for constitutional guarantees.

It co-ops other branches of government—Social Security, U.S. Attorney, Federal court—and uses appropriations to recruit local police for immigration enforcement, setting neighbor against neighbor and dangerously dividing the Nation.

With the help of local sheriffs, Postville repeats itself daily while the harshness of border enforcement is reenacted in the American Heartland with great collateral damage to our citizens and community. It is a rush to raid as much as possible before Congress regains the vision and courage to restore the law of the land.

Part of immigration reform is redefining jurisdiction over—ICE jurisdiction over immigration and criminal matters without impair-

ing the agency's ability to defend us from terrorist threats. Since 2006, families have been separated on a scale unseen in the Americas since the Spanish Conquest, when it led to the extinction of Ameri-Indian nations. In Postville, we have the added moral burden posed by the presence of ethnic Mayan, testimonial people who constitute and endanger patrimony of humanity.

I bring to this forum three requests from the people of Postville.

First, our government has left a humanitarian crisis for Sister Mary McCauley and her good neighbors to cure. I call on all to contribute to St. Bridget's Church and on the Federal Government to respond with aid that guarantees survival for their schools, businesses and institutions. It is time for America to adopt Postville.

Second, with regard to the imprisoned aliens, government says they have 300 criminals. The people say, "Show us one victim of their crime or send them home."

Third, our national unity requires that Congress pass not only comprehensive but compassionate immigration reform as would befit the dignity of this great country built upon the shoulders of immigrants by their children.

Thank you.

[The prepared statement of Mr. Camayd-Freixas follows:]

PREPARED STATEMENT OF ERIK CAMAYD-FREIXAS

STATEMENT

OF

DR. ERIK CAMAYD-FREIXAS
FEDERALLY CERTIFIED INTERPRETER

AT THE

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA

REGARDING A HEARING ON

"THE ARREST, PROSECUTION, AND CONVICTION OF 297 UNDOCUMENTED WORKERS IN POSTVILLE, IOWA, FROM MAY 12 TO 22, 2008"

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY AND INTERNATIONAL LAW
July 24, 2008 at 11:00am
1310 Longworth House Office Building

PREPARED STATEMENT OF DR. ERIK CAMAYD-FREIXAS

Introduction

Good morning, Chairwoman Lofgren, and distinguished members of the Subcommittee. My name is Dr. Erik Camayd-Freixas. I was one of 26 interpreters who started the court hearings at Waterloo on May 13, 2008, and one of approximately 16 interpreters who stayed the whole two weeks, until May 22.

The role of the Interpreter is defined in Rule 604 of the *Federal Criminal Code and Rules* (1989) as both an Officer of the Court and the Court's Expert Witness. In that impartial capacity, I wrote my essay, *Interpreting after the Largest ICE Raid in US History*, which I respectfully submit for the congressional record. I finished the essay on June 13, with the intention of sending it to an educational trade journal for translators and interpreters.

I first sent my essay to the court and to the group of interpreters with whom I worked in Waterloo. After proper consultation and several requests, I granted permission to forward the essay to family and friends. Immediately, I began to receive, on a daily basis, scores of e-mails of support from attorneys, academics, other interpreters, and people in all walks of life around the country. Distributed by people over the Internet, in two weeks my essay had been read by thousands, had made it to Congress, and later to the media.

The essay can be found at the end of this statement.

In my capacity as the court's expert witness I observed that the arrest, prosecution, and conviction of 297 undocumented workers from Postville was a process marred by irregularities at every step of the way, which combined to produce very lamentable results.

It is important to note that the initial appearances, plea hearings, and sentencing hearings were presided by different magistrates and judges, and that the interpreters were the only officers of the court who were present at every step of this fast-tracking operation, including the individual interviews in jail, which were not accessible to judges or prosecutors.

This unprecedented operation was a learning experience for all concerned. It was also a pilot operative to be replicated at a similar or smaller scale throughout the country. In this context, it is the duty of the interpreter, as the court's expert, to ensure that the court is

not misled, and to bring to the court's attention any misunderstandings and impediments to due process.

While on location, I was only able to give the court a sketchy oral report. Only after careful research, analysis, and reconstruction of the events was I able to make a detailed written report in the form of the abovementioned essay. Moreover, I had to do this after the cases were already closed, so as not to influence their outcome, which is the rationale for the confidentiality clause in the interpreter's code of ethics.

It is also important to note that I maintained an impartial position throughout the proceedings and I remain impartial today. All my judgments were arrived at from such impartial perspective, in the same way that judges or juries can emit impartial judgments and conclusions of fact.

I had occasion to observe and document the following problems in the judicial process:

1) The compound and quarters where the detainees were kept were not certified by the DOJ or the Bureau of Prisons.
2) The court failed to maintain a physical separation and operational independence from the ICE prosecution.
3) There was inadequate access to legal counsel.
4) The court failed to provide a level playing field for the (centralized) prosecution and the (fragmented) defense.
5) At initial appearance there was no meaningful presumption of innocence.
6) Many defendants did not appear to understand their rights, particularly the meaning and consequences of waiving their right to be indicted by a grand jury.
7) There was no bail hearing, as bail was automatically denied pursuant to an immigration detainer.
8) The heavier charge of aggravated identity theft, used to leverage the Plea Agreement, was lacking in foundation and never underwent the judicial test of probable cause.
9) Many defendants did not appear to understand their charges or rights, insisting that they were in jail for being in the country illegally (and not for document fraud or identity theft), and insisting that they had no rights.
10) Many defendants did not know what a Social Security Number is or what purpose it serves. Because "intent" was an element of each of the charges, many were probably not guilty, but had no choice but to plead out.
11) The denial of bail, the inflated charge, and the leveraged Plea Agreement combined to create, for the many sole providers whose families were put in

jeopardy, a situation of duress under which the pleas were obtained. Under these circumstances, the pleas, in many cases, may have been coerced.

12) At sentencing, the judges had no discretion to administer justice, as they were presented with a binding and coerced Plea Agreement.
13) It was a foreseeable effect that, for the many sole providers whose families were put in jeopardy, the recommended prison sentence would in fact result in a cruel and unusual psychological punishment.

In order to accurately interpret the meaning and spirit of the message, the interpreter has to identify with and "become" each speaker. Seeing from within the perspective of the other is a common procedure in legal interpreting. When I assumed the perspective of most defendants, I found the charges and rights to be incomprehensible; I felt that a great injustice was being done; and I found their imprisonment, with their families in jeopardy, to be an intolerable burden.

I will now concentrate briefly on the defendants' inability to understand their charges and rights. This was due to the interplay of four factors:

1) It was unclear to what extent the numerous ethnic Mayans understood Spanish as a second language.
2) There are vast cultural differences between Mexican and Guatemalan rural cultures, on the one hand, and American legal culture on the other.
3) It is my expert opinion as an educator that, due to their lack of schooling and low rate of literacy, most of the defendants had a level of *conceptual* and *abstract* understanding equivalent to that of a third grader or less. They needed much more time and individualized legal counsel than could be remotely provided by this fast-tracking process under the average ratio of 17 clients per attorney.
4) The court was put in a position of interdependence with the prosecution, which resulted in the court sending very mixed messages. For example, telling defendants in chains, without right of bail, and who are being fast-tracked without regard for individual circumstance, that they have the presumption innocence.

In general, the defendants were not able to understand the far-fetched, abstract, and derivative concept of "identity theft," because they felt they had not literally stolen from anybody, but had in fact *purchased* the documents necessary to obtain work, paying up to $300 for them.

Similarly, many had trouble understanding the charge of Social Security fraud because they felt they had not done anyone any harm. They simply understood that both were

arbitrary charges brought by the government for the sole reason that they were in the country illegally and that, therefore, they had no rights.

They further understood that, because they were in the country illegally, they had no chance of ever wining at trial, and that its outcome was predetermined. They had lost all confidence in our justice system. Some even distrusted their own court appointed lawyers, who had come to deliver a forcible Plea Agreement that offered them no viable option. If they pleaded not guilty, they could end up waiting longer in jail, without bail, for a trial they felt they could never win.

Whatever rights they were told they had made absolutely no difference, so they kept insisting that they had no rights because they were here illegally. With their rights being meaningless or denied, and without understanding the nature of the charges against them, they were unable to aid in their own defense.

Their decision, both to waive grand jury indictment or other rights and to plead guilty, was solely based on which was the fastest way to get back home and look after their families. Nothing else had any real meaning.

Interpreting after the Largest ICE Raid in US History: A Personal Account

Erik Camayd-Freixas, Ph.D.
Florida International University

June 13, 2008

On Monday, May 12, 2008, at 10:00 a.m., in an operation involving some 900 agents, Immigration and Customs Enforcement (ICE) executed a raid of Agriprocessors Inc, the nation's largest kosher slaughterhouse and meat packing plant located in the town of Postville, Iowa. The raid –officials boasted– was "the largest single-site operation of its kind in American history." At that same hour, 26 federally certified interpreters from all over the country were en route to the small neighboring city of Waterloo, Iowa, having no idea what their mission was about. The investigation had started more than a year earlier. Raid preparations had begun in December. The Clerk's Office of the U.S. District Court had contracted the interpreters a month ahead, but was not at liberty to tell us the whole truth, lest the impending raid be compromised. The operation was led by ICE, which belongs to the executive branch, whereas the U.S. District Court, belonging to the judicial branch, had to formulate its own official reason for participating. Accordingly, the Court had to move for two weeks to a remote location as part of a "Continuity of Operation Exercise" in case they were ever disrupted by an emergency, which in Iowa is

likely to be a tornado or flood. That is what we were told, but, frankly, I was not prepared for a disaster of such a different kind, one which was entirely man-made.

I arrived late that Monday night and missed the 8pm interpreters briefing. I was instructed by phone to meet at 7am in the hotel lobby and carpool to the National Cattle Congress (NCC) where we would begin our work. We arrived at the heavily guarded compound, went through security, and gathered inside the retro "Electric Park Ballroom" where a makeshift court had been set up. The Clerk of Court, who coordinated the interpreters, said: "Have you seen the news? There was an immigration raid yesterday at 10am. They have some 400 detainees here. We'll be working late conducting initial appearances for the next few days." He then gave us a cursory tour of the compound. The NCC is a 60-acre cattle fairground that had been transformed into a sort of concentration camp or detention center. Fenced in behind the ballroom / courtroom were 23 trailers from federal authorities, including two set up as sentencing courts; various Homeland Security buses and an "incident response" truck; scores of ICE agents and U.S. Marshals; and in the background two large buildings: a pavilion where agents and prosecutors had established a command center; and a gymnasium filled with tight rows of cots where some 300 male detainees were kept, the women being housed in county jails. Later the NCC board complained to the local newspaper that they had been "misled" by the government when they leased the grounds purportedly for Homeland Security training.

Echoing what I think was the general feeling, one of my fellow interpreters would later exclaim: "When I saw what it was really about, my heart sank…" Then began the saddest procession I have ever witnessed, which the public would never see, because cameras were not allowed past the perimeter of the compound (only a few journalists came to court the following days, notepad in hand). Driven single-file in groups of 10, shackled at the wrists, waist and ankles, chains dragging as they shuffled through, the slaughterhouse workers were brought in for arraignment, sat and listened through headsets to the interpreted initial appearance, before marching out again to be bused to different county jails, only to make room for the next row of 10. They appeared to be uniformly no more than 5 ft. tall, mostly illiterate Guatemalan peasants with Mayan last names, some being relatives (various Tajtaj, Xicay, Sajché, Sologüí…), some in tears; others with faces of worry, fear, and embarrassment. They all spoke Spanish, a few rather laboriously. It dawned on me that, aside from their Guatemalan or Mexican nationality, which was imposed on their people after Independence, they too were Native Americans, in shackles. They stood out in stark racial contrast with the rest of us as they started their slow penguin march across the makeshift court. "Sad spectacle" I heard a colleague say, reading my mind. They had all waived their right to be indicted by a grand jury and accepted instead an *information* or simple charging document by the U.S. Attorney, hoping to be quickly deported since they had families to support back home. But it was not to be. They were criminally charged with "aggravated identity theft" and

"Social Security fraud" —charges they did not understand… and, frankly, neither could I. Everyone wondered how it would all play out.

We got off to a slow start that first day, because ICE's barcode booking system malfunctioned, and the documents had to be manually sorted and processed with the help of the U.S. Attorney's Office. Consequently, less than a third of the detainees were ready for arraignment that Tuesday. There were more than enough interpreters at that point, so we rotated in shifts of three interpreters per hearing. Court adjourned shortly after 4pm. However, the prosecution worked overnight, planning on a 7am to midnight court marathon the next day.

I was eager to get back to my hotel room to find out more about the case, since the day's repetitive hearings afforded little information, and everyone there was mostly refraining from comment. There was frequent but sketchy news on local TV. A colleague had suggested *The Des Moines Register*. So I went to DesMoinesRegister.com and started reading all the 20+ articles, as they appeared each day, and the 57-page *ICE Search Warrant Application*. These were the vital statistics. Of Agriprocessors' 968 current employees, about 75% were illegal immigrants. There were 697 arrest warrants, but late-shift workers had not arrived, so "only" 390 were arrested: 314 men and 76 women; 290 Guatemalans, 93 Mexicans, four Ukrainians, and three Israelis who were not seen in court. Some were released on humanitarian grounds: 56 mostly mothers with unattended children, a few with medical reasons, and 12 juveniles were temporarily released with ankle monitors or directly turned over for deportation. In all, 306 were held for prosecution. Only five of the 390 originally arrested had any kind of prior criminal record. There remained 307 outstanding warrants.

This was the immediate collateral damage. Postville, Iowa (pop. 2,273), where nearly half the people worked at Agriprocessors, had lost 1/3 of its population by Tuesday morning. Businesses were empty, amid looming concerns that if the plant closed it would become a ghost town. Beside those arrested, many had fled the town in fear. Several families had taken refuge at St. Bridget's Catholic Church, terrified, sleeping on pews and refusing to leave for days. Volunteers from the community served food and organized activities for the children. At the local high school, only three of the 15 Latino students came back on Tuesday, while at the elementary and middle school, 120 of the 363 children were absent. In the following days the principal went around town on the school bus and gathered 70 students after convincing the parents to let them come back to school; 50 remained unaccounted for. Some American parents complained that their children were traumatized by the sudden disappearance of so many of their school friends. The principal reported the same reaction in the classrooms, saying that for the children it was as if ten of their classmates had suddenly died. Counselors were brought in. American children were having nightmares that their parents too were being taken away. The superintendant said the school district's future was unclear: "This literally

blew our town away." In some cases both parents were picked up and small children were left behind for up to 72 hours. Typically, the mother would be released "on humanitarian grounds" with an ankle GPS monitor, pending prosecution and deportation, while the husband took first turn in serving his prison sentence. Meanwhile the mother would have no income and could not work to provide for her children. Some of the children were born in the U.S. and are American citizens. Sometimes one parent was a deportable alien while the other was not. "Hundreds of families were torn apart by this raid," said a Catholic nun. "The humanitarian impact of this raid is obvious to anyone in Postville. The economic impact will soon be evident."

But this was only the surface damage. Alongside the many courageous actions and expressions of humanitarian concern in the true American spirit, the news blogs were filled with snide remarks of racial prejudice and bigotry, poorly disguised beneath an empty rhetoric of misguided patriotism, not to mention the insults to anyone who publicly showed compassion, safely hurled from behind a cowardly online nickname. One could feel the moral fabric of society coming apart beneath it all.

The more I found out, the more I felt blindsided into an assignment of which I wanted no part. Even though I understood the rationale for all the secrecy, I also knew that a contract interpreter has the right to refuse a job which conflicts with his moral intuitions. But I had been deprived of that opportunity. Now I was already there, far from home, and holding a half-spent $1,800 plane ticket. So I faced a frustrating dilemma. I seriously considered withdrawing from the assignment for the first time in my 23 years as a federally certified interpreter, citing conflict of interest. In fact, I have both an ethical and contractual obligation to withdraw if a conflict of interest exists which compromises my neutrality. Appended to my contract are the *Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts*, where it states: "Interpreters shall disclose any real or perceived conflict of interest… and shall not serve in any matter in which they have a conflict of interest." The question was did I have one. Well, at that point there was not enough evidence to make that determination. After all, these are illegal aliens and should be deported —no argument there, and hence no conflict. But should they be criminalized and imprisoned? Well, if they committed a crime and were fairly adjudicated… But all that remained to be seen. In any case, none of it would shake my impartiality or prevent me from faithfully discharging my duties. In all my years as a court interpreter, I have taken front row seat in countless criminal cases ranging from rape, capital murder and mayhem, to terrorism, narcotics and human trafficking. I am not the impressionable kind. Moreover, as a professor of interpreting, I have confronted my students with every possible conflict scenario, or so I thought. The truth is that nothing could have prepared me for the prospect of helping our government put hundreds of innocent people in jail. In my ignorance and disbelief, I reluctantly decided to stay the course and see what happened next.

Wednesday, May 14, our second day in court, was to be a long one. The interpreters were divided into two shifts, 8am to 3pm and 3pm to 10pm. I chose the latter. Through the day, the procession continued, ten by ten, hour after hour, the same charges, the same recitation from the magistrates, the same faces, chains and shackles, on the defendants. There was little to remind us that they were actually 306 individuals, except that occasionally, as though to break the monotony, one would dare to speak for the others and beg to be deported quickly so that they could feed their families back home. One who turned out to be a minor was bound over for deportation. The rest would be prosecuted. Later in the day three groups of women were brought, shackled in the same manner. One of them, whose husband was also arrested, was released to care for her children, ages two and five, uncertain of their whereabouts. Several men and women were weeping, but two women were particularly grief stricken. One of them was sobbing and would repeatedly struggle to bring a sleeve to her nose, but her wrists shackled around her waist simply would not reach; so she just dripped until she was taken away with the rest. The other one, a Ukrainian woman, was held and arraigned separately when a Russian telephonic interpreter came on. She spoke softly into a cellular phone, while the interpreter told her story in English over the speakerphone. Her young daughter, gravely ill, had lost her hair and was too weak to walk. She had taken her to Moscow and Kiev but to no avail. She was told her child needed an operation or would soon die. She had come to America to work and raise the money to save her daughter back in Ukraine. In every instance, detainees who cried did so for their children, never for themselves.

The next day we started early, at 6:45am. We were told that we had to finish the hearings by 10am. Thus far the work had oddly resembled a judicial assembly line where the meat packers were mass processed. But things were about to get a lot more personal as we prepared to interpret for individual attorney-client conferences. In those first three days, interpreters had been pairing up with defense attorneys to help interview their clients. Each of the 18 court appointed attorneys represented 17 defendants on average. By now, the clients had been sent to several state and county prisons throughout eastern Iowa, so we had to interview them in jail. The attorney with whom I was working had clients in Des Moines and wanted to be there first thing in the morning. So a colleague and I drove the 2.5 hours that evening and stayed overnight in a hotel outside the city. We met the attorney in jail Friday morning, but the clients had not been accepted there and had been sent instead to a state penitentiary in Newton, another 45-minute drive. While we waited to be admitted, the attorney pointed out the reason why the prosecution wanted to finish arraignments by 10am Thursday: according to the *writ of habeas corpus* they had 72 hours from Monday's raid to charge the prisoners or release them for deportation (only a handful would be so lucky). The right of habeas corpus, but of course! It dawned on me that we were paid overtime, adding hours to the day, in a mad rush to abridge habeas corpus, only to help put more workers in jail. Now I really felt bad. But it would soon get worse. I was about to bear the brunt of my conflict of interest.

It came with my first jail interview. The purpose was for the attorney to explain the uniform Plea Agreement that the government was offering. The explanation, which we repeated over and over to each client, went like this. There are three possibilities. If you plead guilty to the charge of "knowingly using a false Social Security number," the government will withdraw the heavier charge of "aggravated identity theft," and you will serve 5 months in jail, be deported without a hearing, and placed on supervised release for 3 years. If you plead not guilty, you could wait in jail 6 to 8 months for a trial (without right of bail since you are on an immigration detainer). Even if you win at trial, you will still be deported, and could end up waiting longer in jail than if you just pled guilty. You would also risk losing at trial and receiving a 2-year minimum sentence, before being deported. Some clients understood their "options" better than others.

That first interview, though, took three hours. The client, a Guatemalan peasant afraid for his family, spent most of that time weeping at our table, in a corner of the crowded jailhouse visiting room. How did he come here from Guatemala? *"I walked."* What? *"I walked for a month and ten days until I crossed the river."* We understood immediately how desperate his family's situation was. He crossed alone, met other immigrants, and hitched a truck ride to Dallas, then Postville, where he heard there was sure work. He slept in an apartment hallway with other immigrants until employed. He had scarcely been working a couple of months when he was arrested. Maybe he was lucky: another man who began that Monday had only been working for 20 minutes. "I just wanted to work a year or two, save, and then go back to my family, but it was not to be." His case and that of a million others could simply be solved by a temporary work permit as part of our much overdue immigration reform. "The Good Lord knows I was just working and not doing anyone any harm." This man, like many others, was in fact *not* guilty. "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 the papers filled out for him at the plant, since he could not read or write Spanish, let alone English. But the lawyer still had to advise him that pleading guilty was in his best interest. He was unable to make a decision. "You all do and undo," he said. "So you can do whatever you want with me." To him we were part of the system keeping him from being deported back to his country, where his children, wife, mother, and sister depended on him. He was their sole support and did not know how they were going to make it with him in jail for 5 months. None of the "options" really mattered to him. Caught between despair and hopelessness, he just wept. He had failed his family, and was devastated. I went for some napkins, but he refused them. I offered him a cup of soda, which he superstitiously declined, saying it could be "poisoned." His Native American spirit was broken and he could no longer think. He stared for a while at the signature page pretending to read it, although I knew he was actually praying for guidance and protection. Before he signed with a scribble, he said: "God knows you are just doing your job to support your families, and that job is to keep

me from supporting mine." There was my conflict of interest, well put by a weeping, illiterate man.

We worked that day for as long as our emotional fortitude allowed, and we had to come back to a full day on Sunday to interview the rest of the clients. Many of the Guatemalans had the same predicament. One of them, a 19-year-old, worried that his parents were too old to work, and that he was the only support for his family back home. We will never know how many of the 290 Guatemalans had legitimate asylum claims for fear of persecution, back in a country stigmatized by the worst human rights situation in the hemisphere, a by-product of the US-backed Contra wars in Central America under the old domino theory of the 1980s. For three decades, anti-insurgent government death squads have ravaged the countryside, killing tens of thousands and displacing almost two million peasants. Even as we proceeded with the hearings during those two weeks in May, news coming out of Guatemala reported farm workers being assassinated for complaining publicly about their working conditions. Not only have we ignored the many root causes of illegal immigration, we also will never know which of these deportations will turn out to be a death sentence, or how many of these displaced workers are last survivors with no family or village to return to.

Another client, a young Mexican, had an altogether different case. He had worked at the plant for ten years and had two American born daughters, a 2-year-old and a newborn. He had a good case with Immigration for an adjustment of status which would allow him to stay. But if he took the Plea Agreement, he would lose that chance and face deportation as a felon convicted of a crime of "moral turpitude." On the other hand, if he pled "not guilty" he had to wait several months in jail for trial, and risk getting a 2-year sentence. After an agonizing decision, he concluded that he had to take the 5-month deal and deportation, because as he put it, "I cannot be away from my children for so long." 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 jail there were limited visiting hours and days; at the compound there was little time before and after hearings, and little privacy due to the constant presence of agents. There were 17 cases for each attorney, and the Plea offer was only good for 7 days. 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.

In addition, the prosecutors would not accept any changes to the Plea Agreement. In fact, some lawyers, seeing that many of their clients were not guilty, requested an *Alford plea*, whereby defendants can plead guilty in order to accept the prosecution's offer, but without having to lie under oath and admit to something they did not do. That

would not change the 5-month sentence, but at least it preserves the person's integrity and dignity. The proposal was rejected. Of course, if they allowed Alford pleas to go on public record, the incongruence of the charges would be exposed and find its way into the media. Officially, the ICE prosecutors said the Plea Agreement was directed from the Department of Justice in Washington, D.C., that they were not authorized to change it locally, and that the DOJ would not make any case by case exceptions when a large number of defendants are being "fast-tracked." Presumably if you gave different terms to one individual, the others will want the same. This position, however, laid bare one of the critical problems with this new practice of "fast-tracking." Even real criminals have the right of *severance*: when co-defendants have different degrees of responsibility, there is an inherent conflict of interest, and they can ask to be prosecuted separately as different cases, each with a different attorney. In fast-tracking, however, the right of severance is circumvented because each defendant already has a different case number on paper, only that they are processed together, 10 cases at a time. At this point, it is worth remembering also that even real criminals have an 8th Amendment right to reasonable bail, but not illegal workers, because their immigration detainer makes bail a moot issue. We had already circumvented habeas corpus by doubling the court's business hours. What about the 6th Amendment right to a "speedy trial"? In many states "speedy" means 90 days, but in federal law it is vaguely defined, potentially exceeding the recommended sentence, given the backlog of *real* cases. This served as another loophole to force a guilty plea. Many of these workers were sole earners begging to be deported, desperate to feed their families, for whom every day counted. "If you want to see your children or don't want your family to starve, sign here" –that is what their deal amounted to. Their Plea Agreement was coerced.

We began week two Monday, May 19th. Those interpreters who left after the first week were spared the sentencing hearings that went on through Thursday. Those who came in fresh the second week were spared the jail visits over the weekend. Those of us who stayed both weeks came back from the different jails burdened by a close personal contact that judges and prosecutors do not get to experience: each individual tragedy multiplied by 306 cases. One of my colleagues began the day by saying "I feel a tremendous solidarity with these people." Had we lost our impartiality? Not at all: that was our impartial and probably unanimous judgment. We had seen attorneys hold back tears and weep alongside their clients. We would see judges, prosecutors, clerks, and marshals do their duty, sometimes with a heavy heart, sometimes at least with mixed feelings, but always with a particular solemnity not accorded to the common criminals we all are used to encountering in the judicial system. Everyone was extremely professional and outwardly appreciative of the interpreters. We developed among ourselves and with the clerks, with whom we worked closely, a camaraderie and good humor that kept us going. Still, that Monday morning I felt downtrodden by the sheer magnitude of the events. Unexpectedly, a sentencing hearing lifted my spirits.

I decided to do sentences on Trailer 2 with a judge I knew from real criminal trials in Iowa. The defendants were brought in 5 at a time, because there was not enough room for 10. The judge verified that they still wanted to plead guilty, and asked counsel to confirm their Plea Agreement. The defense attorney said that he had expected a much lower sentence, but that he was forced to accept the agreement in the best interest of his clients. For us who knew the background of the matter, that vague objection, which was all that the attorney could put on record, spoke volumes. After accepting the Plea Agreement and before imposing sentence, the judge gave the defendants the right of allocution. Most of them chose not to say anything, but one who was the more articulate said humbly: "Your honor, you know that we are here because of the need of our families. I beg that you find it in your heart to send us home before too long, because we have a responsibility to our children, to give them an education, clothing, shelter, and food." The good judge explained that unfortunately he was not free to depart from the sentence provided for by their Plea Agreement. Technically, what he meant was that this was a binding 11(C)(1)(c) Plea Agreement: he had to accept it or reject it as a whole. But if he rejected it, he would be exposing the defendants to a trial against their will. His hands were tied, but in closing he said onto them very deliberately: "I appreciate the fact that you are very hard working people, who have come here to do no harm. And I thank you for coming to this country to work hard. Unfortunately, you broke a law in the process, and now I have the obligation to give you this sentence. But I hope that the U.S. government has at least treated you kindly and with respect, and that this time goes by quickly for you, so that soon you may be reunited with your family and friends." The defendants thanked him, and I saw their faces change from shame to admiration, their dignity restored. I think we were all vindicated at that moment.

Before the judge left that afternoon, I had occasion to talk to him and bring to his attention my concern over what I had learned in the jail interviews. At that point I realized how precious the interpreter's impartiality truly is, and what a privileged perspective it affords. In our common law adversarial system, only the judge, the jury, and the interpreter are presumed impartial. But the judge is immersed in the framework of the legal system, whereas the interpreter is a layperson, an outsider, a true representative of the common citizen, much like "a jury of his peers." Yet, contrary to the jury, who only knows the evidence on record and is generally unfamiliar with the workings of the law, the interpreter is an informed layperson. Moreover, the interpreter is the only one who gets to see both sides of the coin up close, precisely because he is the *only* participant who is not a decision maker, and is even precluded, by his oath of impartiality and neutrality, from ever influencing the decisions of others. That is why judges in particular appreciate the interpreter's perspective as an impartial and informed layperson, for it provides a rare glimpse at how the innards of the legal system look from the outside. I was no longer sorry to have participated in my capacity as an interpreter. I realized that I had been privileged to bear witness to historic events from such a unique

vantage point and that because of its uniqueness I now had a civic duty to make it known. Such is the spirit that inspired this essay.

That is also what prompted my brief conversation with the judge: "Your honor, I am concerned from my attorney-client interviews that many of these people are clearly not guilty, and yet they have no choice but to plead out." He understood immediately and, not surprisingly, the seasoned U.S. District Court Judge spoke as someone who had already wrestled with all the angles. He said: "You know, I don't agree with any of this or with the way it is being done. In fact, I ruled in a previous case that to charge somebody with identity theft, the person had to at least know of the real owner of the Social Security number. But I was reversed in another district and yet upheld in a third." I understood that the issue was a matter of judicial contention. The charge of identity theft seemed from the beginning incongruous to me as an informed, impartial layperson, but now a U.S. District Court Judge agreed. As we bid each other farewell, I kept thinking of what he said. I soon realized that he had indeed hit the nail on the head; he had given me, as it were, the last piece of the puzzle.

It works like this. By handing down the inflated charge of "aggravated identity theft," which carries a mandatory minimum sentence of 2 years in prison, the government forced the defendants into pleading guilty to the lesser charge and accepting 5 months in jail. Clearly, without the inflated charge, the government had no bargaining leverage, because the lesser charge by itself, using a false Social Security number, carries only a discretionary sentence of 0-6 months. The judges would be free to impose sentence within those guidelines, depending on the circumstances of each case and any prior record. Virtually all the defendants would have received only probation and been immediately deported. In fact, the government's offer at the higher end of the guidelines (one month shy of the maximum sentence) was indeed no bargain. What is worse, the inflated charge, via the binding 11(C)(1)(c) Plea Agreement, reduced the judges to mere bureaucrats, pronouncing the same litany over and over for the record in order to legalize the proceedings, but having absolutely no discretion or decision-making power. As a citizen, I want our judges to administer justice, not a federal agency. When the executive branch forces the hand of the judiciary, the result is abuse of power and arbitrariness, unworthy of a democracy founded upon the constitutional principle of checks and balances.

To an impartial and informed layperson, the process resembled a lottery of justice: if the Social Security number belonged to someone else, you were charged with identity theft and went to jail; if by luck it was a vacant number, you would get only Social Security fraud and were released for deportation. In this manner, out of 297 who were charged on time, 270 went to jail. Bothered by the arbitrariness of that heavier charge, I went back to the *ICE Search Warrant Application* (pp. 35-36), and what I found was astonishing. On February 20, 2008, ICE agents received social security "no match"

information for 737 employees, including 147 using numbers confirmed by the SSA as invalid (never issued to a person) and 590 using valid SSNs, "however the numbers did not match the name of the employee reported by Agriprocessors…" ***"This analysis would not account for the possibility that a person may have falsely used the identity of an actual person's name and SSN."*** "In my training and expertise, I know it is not uncommon for aliens to purchase identity documents which include SSNs that match the name assigned to the number." Yet, ICE agents checked Accurint, the powerful identity database used by law enforcement, and found that 983 employees that year had non-matching SSNs. Then they conducted a search of the FTC Consumer Sentinel Network for reporting incidents of identity theft. "The search revealed that *a person who was assigned one of the social security numbers* used by an employee of Agriprocessors *has reported his/her identity being stolen.*" That is, out of 983 only 1 number (0.1%) happened to coincide by chance with a reported identity theft. The charge was clearly unfounded; and the raid, a fishing expedition. "On April 16, 2008, the US filed criminal complaints against 697 employees, charging them with unlawfully using SSNs in violation of Title 42 USC §408(a)(7)(B); aggravated identity theft in violation of 18 USC §1028A(a)(1); and/or possession or use of false identity documents for purposes of employment in violation of 18 USC §1546."

Created by Congress in an Act of 1998, the new federal offense of identity theft, as described by the DOJ (http://www.usdoj.gov/criminal/fraud/websites/idtheft.html), bears no relation to the Postville cases. It specifically states: "knowingly uses a means of identification of another person with the *intent to commit any unlawful activity or felony*" [18 USC §1028(a)]. The offense clearly refers to harmful, felonious acts, such as obtaining credit under another person's identity. Obtaining *work*, however, is not an "unlawful activity." No way would a grand jury find probable cause of identity theft here. But with the promise of faster deportation, their ignorance of the legal system, and the limited opportunity to consult with counsel before arraignment, all the workers, without exception, were led to waive their 5th Amendment right to grand jury indictment on felony charges. Waiting for a grand jury meant months in jail on an immigration detainer, without the possibility of bail. So the attorneys could not recommend it as a defense strategy. Similarly, defendants have the right to a status hearing before a judge, to determine probable cause, within ten days of arraignment, but their Plea Agreement offer from the government was only good for… seven days. Passing it up, meant risking 2 years in jail. As a result, the frivolous charge of identity theft was assured never to undergo the judicial test of probable cause. Not only were defendants and judges bound to accept the Plea Agreement, there was also absolutely no defense strategy available to counsel. Once the inflated charge was handed down, all the pieces fell into place like a row of dominoes. Even the court was banking on it when it agreed to participate, because if a good number of defendants asked for a grand jury or trial, the system would be overwhelmed. In short, "fast-tracking" had worked like a dream.

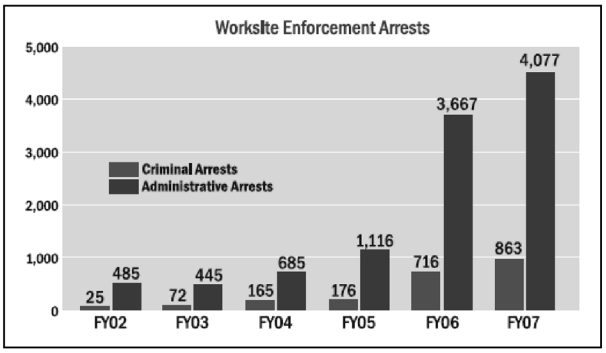
It is no secret that the Postville ICE raid was a pilot operation, to be replicated elsewhere, with kinks ironed out after lessons learned. Next time, "fast-tracking" will be even more relentless. Never before has illegal immigration been criminalized in this fashion. It is no longer enough to deport them: we first have to put them in chains. At first sight it may seem absurd to take productive workers and keep them in jail at taxpayers' expense. But the economics and politics of the matter are quite different from such rational assumptions. A quick look at the *ICE Fiscal Year 2007 Annual Report* (www.ice.gov) shows an agency that has grown to 16,500 employees and a $5 billion annual budget, since it was formed under Homeland Security in March 2003, "as a law enforcement agency for the post-9/11 era, to integrate enforcement authorities against criminal and terrorist activities, including the fights against human trafficking and smuggling, violent transnational gangs and sexual predators who prey on children" (17). No doubt, ICE fulfills an extremely important and noble duty. The question is why tarnish its stellar reputation by targeting harmless illegal workers. The answer is economics and politics. After 9/11 we had to create a massive force with readiness "to prevent, prepare for and respond to a wide range of catastrophic incidents, including terrorist attacks, natural disasters, pandemics and other such significant events that require large-scale government and law enforcement response" (23). The problem is that disasters, criminality, and terrorism do not provide enough daily business to maintain the readiness and muscle tone of this expensive force. For example, "In FY07, ICE human trafficking investigations resulted in 164 arrests and 91 convictions" (17). Terrorism related arrests were not any more substantial. The real numbers are in immigration: "In FY07, ICE removed 276,912 illegal aliens" (4). ICE is under enormous pressure to turn out statistical figures that might justify a fair utilization of its capabilities, resources, and ballooning budget. For example, the *Report* boasts 102,777 cases "eliminated" from the fugitive alien population in FY07, "quadrupling" the previous year's number, only to admit a page later that 73,284 were "resolved" by simply "taking those cases off the books" after determining that they "no longer met the definition of an ICE fugitive" (4-5).

De facto, the rationale is: we have the excess capability; we are already paying for it; ergo, use it we must. And using it we are: since FY06 "ICE has introduced an aggressive and effective campaign to enforce immigration law within the nation's interior, with a top-level focus on criminal aliens, fugitive aliens and those who pose a threat to the safety of the American public and the stability of American communities" (6). Yet, as of October 1, 2007, the "case backlog consisted of 594,756 ICE fugitive aliens" (5). So again, why focus on illegal workers who pose no threat? Elementary: they are easy pickings. True criminal and fugitive aliens have to be picked up one at a time, whereas raiding a slaughterhouse is like hitting a small jackpot: it beefs up the numbers. "In FY07, ICE enacted a multi-year strategy: ...worksite enforcement initiatives that target employers who defy immigration law and the "jobs magnet" that draws illegal

workers across the border" (iii). Yet, as the saying goes, corporations don't go to jail. Very few individuals on the employer side have ever been prosecuted. In the case of Agriprocessors, the *Search Warrant Application* cites only vague allegations by alien informers against plant supervisors (middle and upper management are insulated). Moreover, these allegations pertain mostly to petty state crimes and labor infringements. Union and congressional leaders contend that the federal raid actually interfered with an ongoing state investigation of child labor and wage violations, designed to improve conditions. Meanwhile, the underlying charge of "knowingly possessing or using false employment documents *with intent to deceive*" places the blame on the workers and holds corporate individuals harmless. It is clear from the scope of the warrant that the thrust of the case against the employer is strictly monetary: to redress part of the cost of the multimillion dollar raid. This objective is fully in keeping with the target stated in the *Annual Report*: "In FY07, ICE dramatically increased penalties against employers whose hiring processes violated the law, securing fines and judgments of more than $30 million" (iv).

Much of the case against Agriprocessors, in the *Search Warrant Application*, is based upon "No-Match" letters sent by the Social Security Administration to the employer. In August 2007, DHS issued a Final Rule declaring "No-Match" letters sufficient notice of possible alien harboring. But current litigation (AFL-CIO v. Chertoff) secured a federal injunction against the Rule, arguing that such error-prone method would unduly hurt both legal workers and employers. As a result the "No-Match" letters may not be considered sufficient evidence of harboring. The lawsuit also charges that DHS overstepped its authority and assumed the role of Congress in an attempt to turn the SSA into an immigration law enforcement agency. Significantly, in referring to the Final Rule, the *Annual Report* states that ICE "enacted" a strategy to target employers (iii); thereby using a word ("enacted") that implies lawmaking authority. The effort was part of ICE's "Document and Benefit Fraud Task Forces," an initiative targeting employees, not employers, and implying that illegal workers may use false SSNs to access benefits that belong to legal residents. This false contention serves to obscure an opposite and long-ignored statistics: the value of Social Security and Medicare contributions by illegal workers. People often wonder where those funds go, but have no idea how much they amount to. Well, they go into the SSA's "Earnings Suspense File," which tracks payroll tax deductions from payers with mismatched SSNs. By October 2006, the Earnings Suspense File had accumulated $586 billion, up from just $8 billion in 1991. The money itself, which currently surpasses $600 billion, is credited to, and comingled with, the general SSA Trust Fund. SSA actuaries now calculate that illegal workers are currently subsidizing the retirement of legal residents at a rate of $8.9 billion per year, for which the illegal (no-match) workers will never receive benefits.

Again, the big numbers are not on the employers' side. The best way to stack the stats is to go after the high concentrations of illegal workers: food processing plants, factory sweatshops, construction sites, janitorial services—the easy pickings. September 1, 2006, ICE raid crippled a rural Georgia town: 120 arrested. Dec. 12, 2006, ICE agents executed warrants at Swift & Co. meat processing facilities in six states: 1,297 arrested, 274 "charged with identity theft and other crimes" (8). March 6, 2007 —*The Boston Globe* reports— 300 ICE agents raided a sweatshop in New Bedford: 361 mostly Guatemalan workers arrested, many flown to Texas for deportation, dozens of children stranded. As the *Annual Report* graph shows, worksite raids escalated after FY06, signaling the arrival of "a New Era in immigration enforcement" (1). Since 2002, administrative arrests increased tenfold, while criminal arrests skyrocketed thirty-fivefold, from 25 to 863. Still, in FY07, only 17% of detainees were criminally arrested, whereas in Postville it was 100% —a "success" made possible by "fast-tracking"— with felony charges rendering workers indistinguishable on paper from real "criminal aliens." Simply put, the criminalization of illegal workers is just a cheap way of boosting ICE "criminal alien" arrest statistics. But after Postville, it is no longer a matter of clever paperwork and creative accounting: this time around 130 man-years of prison time were handed down pursuant to a bogus charge. The double whammy consists in beefing up an additional and meatier statistics showcased in the *Report*: "These *incarcerated aliens* have been involved in dangerous criminal activity such as murder, predatory sexual offenses, narcotics trafficking, alien smuggling *and a host of other crimes*" (6). Never mind the character assassination: next year when we read the FY08 report, we can all revel in the splendid job the agency is doing, keeping us safe, and blindly beef up its budget another billion. After all, they have already arrested 1,755 of these "criminals" in this May's raids alone.



The agency is now poised to deliver on the New Era. In FY07, ICE grew by 10 percent, hiring 1,600 employees, including over 450 new deportation officers, 700

immigration enforcement agents, and 180 new attorneys. At least 85% of the new hires are directly allocated to immigration enforcement. "These additional personnel move ICE closer to target staffing levels"(35). Moreover, the agency is now diverting to this offensive resources earmarked for other purposes such as disaster relief. Wondering where the 23 trailers came from that were used in the Iowa "fast-tracking" operation? "In FY07, one of ICE's key accomplishments was the Mobile Continuity of Operations Emergency Response Pilot Project, which entails the deployment of a fleet of trailers outfitted with emergency supplies, pre-positioned at ICE locations nationwide for ready deployment in the event of a nearby emergency situation" (23). Too late for New Orleans, but there was always Postville… Hopefully the next time my fellow interpreters hear the buzzwords "Continuity of Operations" they will at least know what they are getting into.

This massive buildup for the New Era is the outward manifestation of an internal shift in the operational imperatives of the Long War, away from the "war on terror" (which has yielded lean statistics) and onto another front where we can claim success: the escalating undeclared war on illegal immigration. "Had this effort been in place prior to 9/11, all of the hijackers who failed to maintain status would have been investigated months before the attack" (9). According to its new paradigm, the agency fancies that it can conflate the diverse aspects of its operations and pretend that immigration enforcement is really part and parcel of the "war on terror." This way, statistics in the former translate as evidence of success in the latter. Thus, the Postville charges—document fraud and identity theft—treat every illegal alien as a potential terrorist, and with the same rigor. At sentencing, as I interpreted, there was one condition of probation that was entirely new to me: "You shall not be in possession of an explosive artifact." The Guatemalan peasants in shackles looked at each other, perplexed.

When the executive responded to post-9/11 criticism by integrating law enforcement operations and security intelligence, ICE was created as "the largest investigative arm of the Department of Homeland Security (DHS)" with "broad law enforcement powers and authorities for enforcing more than 400 federal statutes" (1). A foreseeable effect of such broadness and integration was the concentration of authority in the executive branch, to the detriment of the constitutional separation of powers. Nowhere is this more evident than in Postville, where the expansive agency's authority can be seen to impinge upon the judicial and legislative powers. "ICE's team of attorneys constitutes the largest legal program in DHS, with more than 750 attorneys to support the ICE mission in the administrative and federal courts. ICE attorneys have also participated in temporary assignments to the Department of Justice as Special Assistant U.S. Attorneys spearheading criminal prosecutions of individuals. These assignments bring much needed support to taxed U.S. Attorneys' offices"(33). English translation: under the guise of interagency cooperation, ICE prosecutors have infiltrated the judicial branch.

Now we know who the architects were that spearheaded such a well crafted "fast-tracking" scheme, bogus charge and all, which had us all, down to the very judges, fall in line behind the shackled penguin march. Furthermore, by virtue of its magnitude and methods, ICE's New War is unabashedly the aggressive deployment of its own brand of immigration reform, *without congressional approval*. "In FY07, as the debate over comprehensive immigration reform moved to the forefront of the national stage, ICE expanded upon the ongoing effort to re-invent immigration enforcement for the 21st century" (3). In recent years, DHS has repeatedly been accused of overstepping its authority. The reply is always the same: if we limit what DHS/ICE can do, we have to accept a greater risk of terrorism. Thus, by painting the war on immigration as inseparable from the war on terror, the same expediency would supposedly apply to both. Yet, only for ICE are these agendas codependent: the war on immigration depends politically on the war on terror, which, as we saw earlier, depends economically on the war on immigration. This type of no-exit circular thinking is commonly known as a "doctrine." In this case, it is an undemocratic doctrine of expediency, at the core of a police agency, whose power hinges on its ability to capitalize on public fear. Opportunistically raised by DHS, the sad specter of 9/11 has come back to haunt illegal workers and their local communities across the USA.

A line was crossed at Postville. The day after in Des Moines, there was a citizens' protest featured in the evening news. With quiet anguish, a mature all-American woman, a mother, said something striking, as only the plain truth can be. "This is not humane," she said. "There has to be a better way."

Ms. LOFGREN. Thank you very much.

Mr. Leopold, we would be pleased to hear from you.

TESTIMONY OF DAVID LEOPOLD, DAVID WOLFE LEOPOLD AND ASSOCIATES, ON BEHALF OF AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Mr. LEOPOLD. Chairwoman Lofgren, Ranking Member King——

Ms. LOFGREN. I think the microphone went off again. There you go.

Mr. LEOPOLD. My name is David Leopold, and I am the national vice president of the American Immigration Lawyers Association. I am honored to testify this afternoon before you about the conviction and prosecution of nearly 400 undocumented workers in Postville, Iowa.

A prosecutor's duty is to do justice, not merely to convict. This cardinal principle was ignored by the government in its deal to criminalized undocumented workers in Postville, Iowa. The workers were denied access to counsel familiar with both immigration and criminal law. The defense counsel were put in at the untenable position of advising on plea deals without ability to assess the immigration consequences of the plea and the possibility that the clients might have full relief from deportation.

The workers impacted by the raid were essentially coerced into giving up their rights under the immigration law, such as the right to a hearing before an immigration judge and a chance to apply for relief from deportation.

The fast-tracking system concocted by the government amounted to a conviction and deportation assembly line, which exulted efficiency over fundamental rights. These poor, uneducated Guatemalan farmers were treated like the livestock prepared for slaughter at Agriprocessors. Shackled in groups of 10, they were efficiently packaged, convicted and ordered deported and sentenced to jail time.

This scheme was predicated on overcharging the workers and threatening them with 2-year mandatory minimum sentences. Faced with the choice of 5 months in prison and deportation or 6 months in prison waiting for a trial which could lead to a mandatory minimum 2 years in prison and then deportation, these workers faced an impossible choice.

In most cases, the defendants faced this choice without the advice of immigration counsel. This was a travesty of justice. Effective assistance of counsel to an immigrant in a criminal matter, including advice about whether or not to accept the terms of a plea agreement necessarily includes a thorough analysis of whether a defendant has acclaimed his citizenship, the immigration consequence of a plea or conviction at trial and the availability of relief from removal. Under the immigration law, a noncitizen may be eligible for adjustment of status, cancellation of removal and, of course, asylum.

Dr. Camayd's essay recounts the compelling the story of a man from Mexico who worked at Agriprocessors for 10 years. He had two young U.S. citizen daughters, a 2-year-old and a newborn. On the facts, this man was clearly eligible to apply for cancellation of

removal and legal permanent resident status because he was the sole support for these two young U.S. citizen girls.

But the plea agreement deprived him of any opportunity for a life in the U.S. with his girls. He faced the impossible choice of—between fighting his case or succumbing to the plea deal, which forced him to waive his rights to a hearing. And he faced this life-altering dilemma without the advice of an immigration attorney. His case underscores the fundamental injustice that occurs where defendants don't have access to immigration counsel when evaluating a plea.

To guarantee due process, Congress should do the following:

Congress should enact legislation to protect the right to protect the right to immigration counsel in ICE enforcement actions.

Most importantly, ICE should direct its enforcement resources for an investigations of high-level threats to national security and employers that deliberately violate the law, not workers who are merely trying to feed their families and to contribute to the U.S. economy and to our social fabric.

The chilling spectacle that unfolded at the Cattle Congress is a stain on our judicial system and an affront to the core principles for which so many Americans have made and are making the ultimate sacrifice. Congress should act now to ensure that the Administration enforcement actions respect the core American ideals of due process and fairness.

Thank you, and I look forward to answering your questions.

[The prepared statement of Mr. Leopold follows:]

PREPARED STATEMENT OF DAVID WOLFE LEOPOLD

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 the Judiciary

United States 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
11:00 a.m.
1310 Longworth House Office Building

Chairwoman Lofgren, Ranking Member King, and distinguished Members of the Committee, I am David Wolfe Leopold, National Vice-President of the American Immigration Lawyers Association (AILA). I am honored to appear before you today concerning the arrest, prosecution, and conviction of nearly 300 undocumented workers in Postville, Iowa from May 12 to 22, 2008.

AILA is the immigration bar association of more than 11,000 lawyers who practice and teach immigration law. Founded in 1946, the association is a nonpartisan, nonprofit organization and is affiliated with the American Bar Association (ABA). AILA members represent tens of thousands of families who have applied for permanent residence for their spouses, children, and other close relatives to legally enter and reside lawfully in the United States.; U.S. businesses, universities, colleges, and industries that sponsor highly skilled foreign professionals, students or visitors seeking to enter the U.S. on a temporary basis, or having proved the unavailability of U.S. workers when required, on a permanent basis; applicants for naturalization; and asylum seekers, often on a pro bono basis. AILA attorneys have been deeply involved in providing legal assistance in the aftermath of large-scale immigration enforcement operations.

Based in Cleveland, Ohio my law practice is devoted to the representation of individuals, corporations, health care institutions, law firms, religious organizations, and other entities across the nation and throughout the world. For nearly 10 years, I have served as a Criminal Justice Act (CJA) Plan defense attorney for the U.S. District Court for the Northern District of Ohio, representing criminal defendants in federal criminal matters upon court appointment. At the request of the Federal Public Defender I have either taken criminal appointments and/or offered counsel to public defenders in immigration related criminal matters. I am a frequent speaker on the immigration consequences of criminal convictions at federal, state, and local bar continuing legal education seminars. In addition to my practice, I direct the immigration law curriculum and teach immigration law at the Case Western Reserve University School of Law and serve as an adjunct professor of immigration law at the Cleveland-Marshall School of Law, Cleveland State University.

I. INTRODUCTION.

On May 12, 2008, the Agriprocessors meat packing facility in Postville, Iowa was raided by federal immigration agents. Before the raid, Agriprocessors had been accused of serious violations of labor, food safety, environmental and other labor laws. The government's own search warrant listed multiple violations of immigration, labor, and criminal laws committed by the company's supervisors and associates. It was soon learned that many of the nearly 400 undocumented workers arrested in the raid had been subjected to horrifying conditions, but had been powerless to speak out because they had no legal immigration status.

As a result of the raid, U.S. Immigration and Customs Enforcement (ICE) arrested 389 Agriprocessors workers. Of these, 306 were turned over to the U.S. Attorney's office to face criminal charges for working with false papers including Social Security Fraud under 42 U.S.C. § 408(a)(7)(B) and Identity Theft under 18 U.S.C. § 1028A(a)(1). Only 60 were released from detention, and the rest were herded into the National Cattle Congress (NCC) fairgrounds, a facility normally used to show livestock, that served as a temporary detention facility and makeshift courthouse in the aftermath of the raid.

AILA members and others in Postville reported that those arrested were denied access to immigration counsel for lengthy periods of time during "processing" and questioning; inadequate provisions were made to assure that each individual charged was afforded meaningful access to counsel familiar with both criminal and immigration law; defense counsel were forced to recommend acceptance of a uniform plea agreement in seven (7) days without sufficient time to assess the case facts and forms of relief under the immigration law or expose their clients to significant jail time; and, mass hearings were conducted at which CJA defense counsel were called upon to represent 10 defendants at a time in a single, brief, proceeding, with some called on to do so on multiple occasions for multiple groups of defendants.

Most striking was the May 12, 2008 press release from the U.S. District Court for the Northern District of Iowa announcing the temporary assignment of federal judges and court personnel to Waterloo, Iowa "in response to the ... prosecution of numerous illegal aliens..." The press release was issued by the court before any of those arrested and charged had been found to be in the country illegally.

II. THE EXPEDITED PROCESS USED TO CONVICT THE WORKERS COMPROMISED THE INDEPENDENCE OF THE COURT AND DEPRIVED THE DEFENDANTS OF DUE PROCESS.

A prosecutor's professional, moral, and ethical duty is to do justice, not merely to convict. This cardinal principal was ignored by the government in its zeal to criminalize undocumented workers. In essence, the expedited justice or "Fast Tracking" system concocted by the government, with the willing assistance of the U.S. District Court for the Northern District of Iowa, was a conviction/deportation assembly line which could not be burdened with protecting the fundamental rights of the defendants, mostly poor uneducated Guatemalan farmers who came to the U.S. to feed their families. As vividly described by Professor Erik Camayd-Freixas in his essay *Interpreting after the Largest ICE Raid in U.S. History: A Personal Account,* the workers were shackled in groups of 10, assembled and, like the livestock prepared for slaughter at Agriprocessors, they were efficiently packaged, convicted, and ordered deported. Shockingly, many of the workers appear not to have understood they were pleading to Social Security Fraud but

thought they were pleading guilty to having worked in the U.S. without proper documentation—a civil violation. Indeed, first hand accounts and press reports raise serious questions as to whether many of the defendants were even guilty of Social Security Fraud, as charged. As Dr. Camayd-Freixas recounted in his essay,

> "[M]ost of the clients we interviewed did not even know what a Social Security number was or what purpose it served. This worker simply had the papers filled out for him at the plant, since he could not read or write Spanish, let alone English." [1]

Why did the "Fast-Tracking" system work so well? First, the government charged the Defendants with Social Security Fraud and Aggravated Identity Theft. The Aggravated Identity Theft charge provided the necessary leverage to force a plea to Social Security Fraud because Aggravated Identity Theft carries a two (2) year mandatory minimum sentence. The government offered a uniform plea agreement which dismissed the Aggravated Identity Theft charge in exchange for a plea to Social Security Fraud, a five (5) month sentence, and a stipulated order of removal under the 8 U.S.C. § 1228(c), the Judicial Removal provision of the Immigration and Nationality Act. To increase the pressure on the Defendants and their court appointed CJA counsel, the government imposed a seven (7) day limit on the plea bargain offer. To make matters even more chaotic, the Defendants where provided counsel at a ratio of 17/1 and the Court did nothing to ensure that the Defendants were afforded meaningful advice regarding their immigration status or the immigration consequences of their pleas.

Stated simply, the "Fast-Tracking" system depended on threatening the workers with a two (2) year prison sentence, their inability to receive adequate attention from counsel, and their ignorance of the charges leveled against them. The government made the undocumented workers an offer they couldn't refuse. Faced with the choice of 5 months in prison and deportation, or 6 months in prison waiting for a trial which could lead to 2 years in prison and deportation, what choice did the workers really have? Needless to say the scheme left little room for the fundamental protections offered by the Constitution. The spectacle was a national disgrace.

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[1] 42 U.S.C.§408(a)(B)(7) (A) requires that the Defendant use a social security number "willfully, knowingly, and with intent to deceive".

III. THE "FAST-TRACKING" SYSTEM, WHICH INCLUDED A PLEA AGREEMENT THAT REQUIRED THE DEFENDANTS TO STIPULATE TO JUDICIAL ORDERS OF DEPORTATION, IMPROPERLY DEPRIVED THE WORKERS OF AN OPPORTUNITY TO FULLY CONSIDER THE IMMIGRATION CONSEQUENCES OF THEIR PLEAS.

By all credible accounts, the CJA defense counsel, who did a valiant job defending the workers under the extremely difficult circumstances created by the government and the court, barely had an adequate opportunity for meaningful discussion with their clients about the criminal charges leveled against them, let alone the immigration consequences of accepting the plea agreement. Dr. Camayd-Freixas' essay raises serious questions about whether the pleas taken from the workers at the NCC were given knowingly as required by law, not only because the defendants had limited access to CJA counsel, but because they had little or no access to advice regarding the immigration consequences of their acceptance of the uniform plea agreement. As recounted by Dr. Camayd-Freixas,

> 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 defense attorneys had limited opportunity to meet with clients: in jail there were limited visiting hours and days; at the compound there was little time before and after the hearings, and little privacy due to the constant presence of agents. There were 17 cases for each attorney, and the Plea offer was only good for 7 days. In addition, criminal attorneys are not familiar with the immigration work and vise versa, but had to make do (sic) since immigration lawyers are not court appointed, and these clients could not afford to pay.

Local AILA attorneys reported that they had difficulty accessing clients who were apprehended during the raid even when the attorneys had an attorney-client agreement in hand. Several attorneys reported driving many hours to the raids site only to be turned away.

Reports of the appalling situation at the Cattle Congress quickly reached AILA. Kathleen Campbell Walker, AILA President and Jeanne Butterfield, AILA Executive Director responded by sending a letter to Linda R. Reade, Chief Judge of the Northern District of Iowa expressing AILA's alarm about the workers' lack of access to immigration counsel:

> We understand that hundreds of people arrested pursuant to this enforcement action were denied access to immigration counsel all day Monday until Tuesday. In addition during "processing" and questioning, criminal charges were brought against scores of those arrested, but inadequate provisions were made to ensure that each individual charged

> is afforded meaningful access to counsel familiar with both criminal and immigration laws; and that the mass hearings have been held in which one court-provided defense counsel was called upon to represent as many as 10 defendants at a time in a single proceeding.

A criminal conviction, even a conviction for a minor offense, can have a devastating impact on an immigrant's right to stay in the U.S. with his or her family or to return to the U.S. after a trip abroad. Effective assistance of counsel to an immigrant in a criminal matter, including advice as to whether or not to accept the terms of a plea agreement, necessarily includes a thorough analysis of whether or not the defendant has a claim to U.S. citizenship, and, if not, the immigration consequences of a plea and/or conviction at trial and the availability of relief from removal. As explained in AILA's letter to Judge Reade,

> Immigration law is extremely complex. For example, people born outside the U.S. may be U.S. citizens, derivatively through parents or grandparents and not even realize it. In addition, they may be eligible for various forms of relief from removal, including potential asylum relief in some cases. It is not possible for a credible review of these potential issues to be even cursorily addressed in the time frame being forced upon these individuals and their over-burdened counsel. Stated simply, to impose Judicial Removal and obligate the federal defense bar in Iowa, within seven (7) days, to fully evaluate any legal or factual arguments against the arrests themselves, and to identify and evaluate any possible challenge to removal or relief from removal for scores of new clients, works a travesty of justice.

AILA requested that specific immediate steps be taken to guarantee full constitutional protections to the accused workers, including:

1. Assuring that prosecutorial discretion is applied to all cases to all cases to determine if criminal prosecutions are merited.
2. Assuring that, under the circumstances of this case, where nearly 400 individuals have been charged criminally under the immigration laws, CJA attorneys with immigration expertise—even from outside the Northern District of Iowa—are appointed to represent individual defendants.
3. Providing at least thirty days for defense counsel to associate with immigration bar support for the review of potential relief from removal for those charged.
4. Assuring that all detainees remain in the current state where arrested until their cases are adjudicated and be provided with the opportunity to seek release on bond and a fair and full bond determination.
5. Assuring that all detainees be individually interviewed by counsel to preserve attorney-client privilege and confidentiality.

6. Assuring that any defendant who, after full consideration with a competent immigration attorney, is found to have a reasonable basis for seeking relief from deportation under our laws be provided with a full and fair immigration court hearing to determine the eligibility for such statutory and discretionary relief.

Unfortunately, Judge Reade never directly responded to AILA's plea and no meaningful steps were taken to ensure the workers' full constitutional protections.[2]

IV. THE USE OF THE STIPULATED JUDICIAL ORDERS OF DEPORTATION WAS IMPROPER AND LIKELY DEPRIVED MANY WORKERS OF AVAILABLE DEFENSES, RELIEF, AND PROTECTION AVAILABLE TO THEM UNDER THE IMMIGRATION LAW.

As a non-negotiable term of the uniform plea agreement, the government required the workers to agree to stipulated judicial orders of deportation pursuant to 8 U.S.C. § 1228(c)(5). From the outset AILA raised serious concerns with Judge Reade about the use of Judicial Removal in the NCC proceedings and the unreasonably short time frame given to the defendants to consider the uniform plea agreement which provided that they waive all their rights under the immigration law.

Indeed, it appears the stipulated judicial orders of deportation may have been improperly used against many of the defendants in the Agriprocessors cases. By its terms, stipulated judicial orders of deportation are limited to removal orders against aliens who are "deportable" from the United States because of a criminal conviction. *See* 8 U.S.C § 1228(c)(5)(requiring that the alien agreeing to the stipulated order be found to be deportable). Congress has required, as an essential element of all deportation grounds based on criminal convictions, that the alien have been lawfully admitted to the United States. *See* 8 U.S.C. § 1227(a)(2)(A). Yet in the Agriprocessors cases, the uniform plea agreement, which included in paragraph 7 a stipulation to a judicial order of deportation, alleged that the "Defendant entered the United States illegally without admission or parole and is unlawfully present in the United States." This is a material contradiction in the uniform plea agreement because if the Defendant had entered the U.S. without inspection, as alleged, and then became removable due

[2] However, Judge Reade answered AILA indirectly during an interview with a reporter, to whom she said, "The immigration lawyers...do not understand the federal criminal process as it relates to immigration charges". See, *270 Illegal Immigrants Sent To Prison In Federal Push*, New York Times (May 24, 2008). AILA President Kathleen Campbell Walker respectfully replied by stating "It is precisely because immigration lawyers understand the complexity of the interplay between immigration law and criminal charges that we have recoiled so forcefully at this new approach."

to a criminal conviction, he or she would be treated as an applicant for admission and charged with the grounds of inadmissibility, not deportability.

Therefore, it appears stipulated judicial orders of deportation may not have even been legally available to the U.S. Attorney in the Agriprocessors cases. This mistake of law, at a minimum, would appear to render the stipulated judicial orders of deportation provision of the plea agreement void *ab initio*. Clearly, the use of stipulated orders in the Agriprocessor cases in and of itself underscores the need for the appointment of counsel familiar with both immigration and criminal matters. Even the most skilled CJA attorney could not have been expected to catch this serious contradiction in the plea agreement absent an intimate understanding of the immigration law.

Clearly, the use of stipulated judicial orders of deportation against the workers in Postville was unconscionable. It was unreasonable to impose a seven (7) day deadline for consideration of the terms of the plea agreement and to fail to provide the defendants any meaningful ability to fully analyze whether its use was lawful. The workers were essentially coerced into giving up procedural and substantive rights under the immigration law, including the right to a full hearing before an immigration judge which would have required the government to meet its statutory burden and afforded the defendants an opportunity to apply for relief from deportation.

a. The Use Of the Stipulated Judicial Orders of Deportation Likely Led To The Waiver Of Critical Forms of Relief From Deportation For Many Defendants.

The fact that a noncitizen may be in the U.S. unlawfully does not necessarily mean the law requires his or her removal. Under the intricate labyrinth that is immigration law an alien who is legally deportable from the U.S, may nevertheless be eligible for full relief from deportation. Congress has provided for relief from deportation, and the right to stay in the U.S., in many situations. Among the available forms of relief are Adjustment of Status—the mechanism by which an alien may be granted lawful permanent residency (green card status) based on family or employment ties; Cancellation of Removal for Nonpermanent Residents—the mechanism by which an alien who has been present in the U.S. for 10 years or more may granted lawful permanent residency, in the discretion of an immigration judge, due to exceptional and extremely unusual hardship to a U.S. citizen or lawful permanent resident spouse, parent or child; and Asylum—the mechanism by which an alien is protected through the provision of sanctuary in United States due to past persecution or a well founded fear of future persecution on account of race, religion, nationality, political opinion or membership in a particular social group.

The following is a summary some of the forms of relief from deportation that may have been available to the workers had they been afforded all the protections available to them under the law.

i. Asylum and Withholding of Removal.

Through enactment of the asylum and withholding provisions of the Immigration and Nationality Act, Congress has ensured that those who would face persecution or deprivation of freedom in their home countries are offered shelter in America. The overwhelming majority of the workers arrested in Postville were Guatemalans. The long history of human rights abuses in that country is well documented. Just this year the U.S. Department of State reported that Guatemala remains plagued with serious human rights problems. *See*, *Country Reports on Human Rights Practices—2007.*[3] The government clearly understood that many of the impoverished workers in Postville may have suffered persecution or have had well founded fear of future persecution or faced a threat to their life or liberty if they were forcibly returned to Guatemala.

Dr. Camayd-Freixas's essay provides an example of how the expedited process could have deprived a worker of the right to apply for asylum. He recounts his first client interview involving a man who he describes as a Guatemalan peasant afraid for his family who spent most of that time weeping at a table, in a corner of the crowded jailhouse visiting room. Incredibly, the man fled Guatemala on foot and walked all the way to the United States. A key word in the description is *afraid*. And while the man might have been referring to fear of economic hardship, thorough analysis of his situation would have included an intricate examination of his fear. Was there a political element to it? Had he or his family suffered persecution in Guatemala? Did he have a fear of future persecution if he returned? If so, did he understand that by signing the plea agreement he was forfeiting any right to protection in the U.S. under the asylum law? Even in the absence of the stipulation for Judicial Removal, did he understand how a conviction for Social Security Fraud might affect his asylum claim? It is important to understand that while a conviction for Social Security Fraud may not have made him ineligible for asylum, it nevertheless might have lead an immigration judge to deny the claim as a matter of discretion.

ii. Cancellation of Removal For Non Permanent Residents.

Among the millions of undocumented noncitizens in the U.S. are many whose families are "mixed". That is, while they are undocumented, their spouse or children are U.S. citizens or legal permanent residents. Congress has provided that a noncitizen who has been physically present in the U.S. for a minimum of

[3] http://www.state.gov/g/drl/rls/hrrpt/2007/100641.htm

10 years may apply to an immigration judge to cancel his removal from the U.S. and grant him legal permanent residence if he can demonstrate to the court that he is a person of good moral character and his deportation will result in exceptional and extremely unusual hardship to his U.S. citizen or legal permanent resident children. *See*, 8 U.S.C. § 1229b(b).
Dr. Camayd-Freixas, in his essay, recounted the compelling story of a man from Mexico who had worked for 10 years at Agriprocessors before he was arrested in May. He was the father of two U.S. citizen daughters, a two (2) year old and a newborn. He faced a choice between asserting his constitutional rights and making the government prove its case beyond a reasonable doubt or waiving those rights and taking the plea agreement. Unfortunately for him, holding the government to its constitutional burden of proof would have required that he spend six (6) months in prison waiting for a trial. In the alternative he could sign the plea agreement which, while it left him a convicted felon, led to his release from prison, and deportation, in 5 months.

On the facts, this man was clearly eligible to apply for cancellation of removal and legal permanent resident status because he was the father of two (2) U.S. citizen daughters for whom he was the sole support. However, the plea agreement deprived him of any opportunity to apply for relief and remain in the U.S. with his family. Further, even without the stipulation to judicial removal, his plea to Social Security Fraud prevents him from showing the requisite good moral character necessary to establish eligibility for cancellation of removal. While it can be argued that the "good moral character" requirement was put into the law to prevent undesirables from benefiting by becoming citizens, who can dispute the good moral character of a man that engages in dangerous backbreaking labor to support two young children. Clearly, given what was at stake for him, this man should have been afforded an adequate opportunity to consider the ramifications of a guilty plea and should not have been required to stipulate to his removal.

iii. Adjustment of Status.

Any worker who was the spouse of a U.S. citizen or lawful permanent resident or who had U.S. citizen son or daughter over the age of 21, may have been eligible to apply for lawful permanent residence based on their close relative. The immigration law generally provides that close relatives may sponsor their next of kin for green cards. Workers who had been advised of their eligibility for lawful permanent residency based on a close family tie to a U.S. citizen or lawful permanent resident would have understood that by signing the uniform plea agreement and waiving their right to contest removal, they were also giving up any hope they had of becoming lawful permanent residents.

Considering again the worker from Mexico with two (2) young U.S. citizen daughters described by Dr. Camayd-Freixas' in his essay, he may have been entitled to adjust his status under 8 U.S.C. § 1225. If he were married to a U.S. citizen or lawful permanent resident, she could have filed an immigrant petition on his behalf which would have allowed him to apply for his green card based on his *bona fide* marriage. His rights and options were undoubtedly unfairly abridged by the expedited procedure employed by the government at the NCC. Had he been afforded the minimum amount of time necessary to build an effective defense to the government's charges, his CJA lawyer would have extensively interviewed him, investigated his claims and advised him as to his options. Assuming that there was a question of fact as to whether the government could prove each and every element of the charges, the lawyer would have carefully laid out the options and made a recommendation. In a system of justice that jealously protected his rights, he would have had an adequate opportunity to consider that a conviction for a crime involving moral turpitude would render him forever inadmissible to the U.S., his wife's country of citizenship.

iv. U and T Visas For Crime Victims.

Given that each of the arrested workers was employed at Agriprocessors, which, at the time of the arrests, had been under investigation for a number of serious violations, it would follow that among the arrested workers were some who may have been victims of trafficking and crimes. Broadly speaking, the U and T visas are designed to protect immigrant victims of human trafficking and crime:

- By insuring access to the U.S. civil and criminal justice systems;
- By safeguarding the victims' availability so they can assist the state and their civil advocates; and
- By providing a path to legal permanent residence regardless of the victims' manner of entry into the United States.[4]

Yet the expedited conviction scheme employed by the government in Iowa did not permit an individualized assessment of the workers' eligibility for protection under the U or T visa categories.

[4] See generally, *Advanced Issues In Working With Noncitizen Crime Victims: Winning U and T Visas, Working With Law Enforcement, And Ethical Considerations For All Immigration Practitioners Encountering Victims of Trafficking and Crimes,* by Lea M. Webb, Gail Pendleton, and B. Kent Felty, Immigration and Nationality Handbook (AILA 2008).

v. Special Immigrant Juvenile Status.

Several juveniles were among the 400 hundred arrested in Agriprocessors. After the raid, the National Consumers League issued a press release in which it called on the Department of Labor to investigate allegations of child labor violations at Agriprocessors. According to Senator Tom Harkin, some eighteen children and teens were allegedly working in the slaughterhouse when it was raided.

It is not clear what happened to them. Dr. Camayd-Freixas recounts that some were released with ankle bracelets while others were processed for immediate deportation. This is disturbing and should be investigated. Congress has given these children very important rights under the immigration law. As juveniles, they could be eligible for Special Immigrant Juvenile status which permits them to stay in the U.S. as legal permanent residents if there is a determination by a competent juvenile court that they are eligible for long term foster care and return to their home country is not in their best interest.

vi. Analysis of Potential Claims to U.S. Citizenship.

While not technically a form of relief from deportation, anyone charged as a deportable alien cannot be removed if he or she can prove U.S. citizenship. People born outside the United States may be U.S. citizens and not even know it. U.S. citizenship can be derived through parents and grandparents. See, e.g. 8 U.S.C. § 1401. In Postville, the workers, all charged with serious crimes essentially as a result of their status as undocumented immigrants, should have been afforded, as part of their defense, an opportunity to thoroughly examine and analyze claims to U.S. citizenship. Clearly, a claim to U.S. citizenship for any of the workers would have materially affected the merits of the government's case.

IV. RECOMMENDATIONS.

The workers impacted by this raid were essentially coerced into giving up procedural and substantive rights under the immigration law, including the right to a full hearing before an immigration judge which would have required the government to meet its statutory burden and afforded the defendants an opportunity to apply for relief from deportation. To ensure that due process protections are guaranteed in future ICE enforcement actions, the following immediate steps should be taken to guarantee full constitutional protections:

- Congress should enact legislation to require ICE to advise noncitizens of their rights, including the right to obtain counsel at their own expense.

- Immigration officers should advise arrestees that statements they make may be used against them and, when questioning an individual, distinguish between questions that the noncitizen must answer from those that the he or she may refrain from answering.
- ICE should ensure that all detainees remain in the current state where arrested until their cases are adjudicated and be provided with the opportunity to seek release on bond and a fair and full bond determination.
- ICE should ensure that any defendant who, after full consideration with a competent immigration attorney, is found to have a reasonable basis for seeking relief from deportation under our laws be provided with a full and fair immigration court hearing to determine the eligibility for such statutory and discretionary relief.
- AILA opposes expedited procedures that lack appropriate safeguards, including stipulated judicial orders of deportation, but if these measures are used, they should only be used in the most extreme cases and not for large-scale enforcement actions.
- Criminal defense attorneys with immigration expertise should be appointed for defendants who may be eligible for relief from removal and defense counsel should be given adequate time to associate with immigration attorneys for the review of potential relief from removal for those charged.
- Most importantly, ICE should direct its enforcement resources toward investigations of higher level threats to national security, criminal syndicates, and employers that deliberately violate the law rather than workers who contribute to the U.S. economy and social fabric.

The chilling spectacle that unfolded over a two week period at the Cattle Congress is a stain on our justice system and an affront to the core principals for which so many Americans have made the ultimate sacrifice. Congress should act now to ensure that all administration enforcement operations respect core American ideals of due process and fairness.

Ms. LOFGREN. Thank you very much, Mr. Leopold.

Mr. Rigg, we would be pleased to hear from you.

TESTIMONY OF ROBERT R. RIGG, ASSOCIATE PROFESSOR OF LAW AND DIRECTOR OF THE CRIMINAL DEFENSE PROGRAM, DRAKE UNIVERSITY LAW SCHOOL

Mr. RIGG. Thank you, Madam Chairwoman.

I intend to address a specific concern of mine—and I think of the Criminal Defense Bar—in the process that was used at the Postville raids and, subsequent to those raids, implemented in Waterloo.

The biggest problem that I have identified—or at least I feel this Committee should address—is the compression of time that was imposed on defense counsel in this particular case. That caused a cascade of other errors that could have occurred and may have affected these guilty pleas. Whether or not they will down the road, we don't know, and that is subject to judicial scrutiny, and that is subject to review by the courts, obviously.

When the process was designed, this compression factor essentially put lawyers—competent lawyers—in a situation where they had very limited time to make very difficult decisions with very limited resources. They simply didn't have the time or the resources to do what they probably needed to do.

What that does is you can take the most competent lawyer in this country, and if you put them in a timeframe like that and you aggravate it by appointing them to 10 clients at a time and say, "You have got a week to make these decisions," that process is inviting those lawyers to make mistakes, not intentionally, not purposely, but you have created a situation where essentially giving somebody a lawyer but you have tied their hands behind their back. That is not consistent with due process, in my view.

The other issues that tend to come up would be the individual representation by attorneys. Who came up with the number 10? Why 10? Why not 2? How come more lawyers weren't contacted prior to this raid by either the judge, evidently, or by someone with the U.S. Attorney's Office and brought into this so you would have more lawyers available?

So you have a number of questions posed initially that I don't believe have been answered. I am not sure that they can be answered. The one thing I am sure of, the people that don't know the answers is the Criminal Defense Bar.

Prior to the adoption of these proceedings, to my knowledge, no one from the Criminal Defense Association—the national or otherwise—was consulted prior to the enactment of these fast-track rules. The normal course that we would use on the Committees I have served on with the Iowa Supreme Court is that you would bring in opposing counsel and try to address pertinent issues prior to their occurrence so you can avoid situations where you are having 10 clients being represented by one lawyer, who also maybe not have immigration experience.

The other problem, I guess, I have is the transparency of this process. This was an ambush essentially. There seems to be some security concerns by the folks from ICE about the Department of Labor being brought in on this. Well, obviously, you know, if there

is concerns about that, you are not going to talk to anybody about this regarding the criminal defense side of it.

And lawyers, from my understanding, were told not to discuss the invitation they received to the Federal courthouse in the Northern District of Iowa. That request was honored by those lawyers, they did not know, from what I understand, why they were being asked in, they didn't know until after the raids occurred and were essentially brought in and given a " how to practice law in Federal court" manual.

Those—those lawyers who refused to participate, that manual was taken away from them. I don't understand that. I don't see why that manual would not be public record and should be made available to the Members of this Committee and to other Members for its critique and criticism. It may be the best manual in—on the world, but unless somebody critiques it and looks at it and reviews it from the other side, well, we don't know.

The other thing that troubled me about this is the access to immigration attorneys. The reports that I received—and just as soon as 2 days ago—from a lawyer who actually went up to Postville who was contacted by family to go in and interview a client was essentially turned away by the ICE officials.

So you have a series of issues, but they all start to cascade with the compression of the time, the number of clients that were being asked to handle, and eventually I would criticize the lack of input by the Criminal Defense Bar.

Thank you. That is all.

[The prepared statement of Mr. Rigg follows:]

Robert R. Rigg, Associate Professor of Law and

Director of the Criminal Defense Program

At Drake University Law School

Des Moines, Iowa

July 24, 2008

Judiciary Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Hearing

The Postville Raid

Federal panel attorneys for the Northern District of Iowa were called to the Federal Courthouse by the United States Attorneys Office of the Northern District and a Federal Judge. At this meeting the panel attorneys were told by the United States Attorney's Office about procedures that were going to be implemented to process detainees who were suspected of being undocumented aliens and were also going to be charged with violations of federal criminal statutes. The panel attorneys were given a procedures manual[1] at the onset of the meeting. The panel attorneys were advised they would be representing groups of detainees rather than individuals. They were also advised of the potential pleas their potential clients would be offered by the United States Attorney's Office. The panel was advised they would have a limited number of days to represent their clients and allow the clients to make decisions. This compressed process put the attorneys in the position of having to advise clients, many of whom have limited language skills with immigration issues layered on the criminal cases, to make decisions in an abbreviated time frame. The plea offers made by the United States Attorney's Office having criminal and immigration law consequences were communicated by the panel attorneys appointed to represent them in rapid fire fashion. Within a few days groups of detainees represented by panel attorneys numbering in the hundreds, appeared in federal court in groups, held at a fair grounds to enter into agreements having far reaching consequences for the detainee's embracing both criminal law and immigration law.

Whether the procedure adopted and implemented in the Postville Raid comport with the constitutional requirement of due process.

The requirement of due process is fundamental to the administration of criminal justice in the United States. The procedures adopted after Postville in the Northern District pose several disturbing questions regarding the process used and its affect on the ability of counsel to provide effective representation. Certain aspects of representation of clients charged with criminal offenses have been reviewed by the Courts and by the American Bar Association within the last 10 years. In the interest of time I will submit some of my writing regarding standards for counsel representing individuals charged with crimes and invite the committee to refer to others who have written in this area. The following is from a law review article published in the Pepperdine Law Review. The title is *The T-Rex without Teeth: Evolving Strickland v. Washington and the Test for Ineffective Assistance of Counsel*, 35 Pepperdine L. Rev. 77 (2007). What follows is a discussion of three United States Supreme Court cases and the American Bar Association findings regarding assistance of counsel in criminal cases.

[1] The procedure's manual was taken from any lawyer who did not agree to participate in the process and procedures outlined in the meeting. No procedures manual has been made available for public comment.

The effect of Williams, Wiggins, and Rompilla is a detailed analysis of trial counsel's preparation and investigation, especially in death penalty cases by both state and federal courts.

In Coleman v. Mitchell, one of the early applications of Williams, the Sixth Circuit reversed a capital murder conviction. [FN121] Again, the reversal was based on trial counsel's lack of investigation into mitigating facts that would be relevant to the penalty phase of the trial. [FN122] Coleman presented an interesting argument advanced by the government. The petitioner had stated his desire to conduct a mitigation phase proceeding using the petitioner's own unsworn statement. [FN123] The district court found that trial counsel had honored the petitioner's request and therefore did not provide substandard representation. [FN124] An analogy was drawn between the limited representation presented in this case with a self-representation request. [FN125] The Sixth Circuit rejected the analogy, finding that counsel had never had a colloquy with the defendant that advised him of the dangers of his approach to the penalty phase of the case. [FN126] The court further found that the petitioner's request did not excuse trial counsel's duty to conduct an independent investigation. [FN127]

The court's finding is in harmony with the general duty to investigate as stated in the ABA standards cited by the Supreme Court in Williams v. Taylor:

> It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty. [FN128]

After Wiggins, the Sixth Circuit further articulated a more detailed analysis of defense counsel's duty to investigate mitigating circumstances. In Hamblin v. Mitchell, the Sixth Circuit granted a writ of habeas corpus based on trial counsel's failure to investigate mitigating circumstances in a death penalty case. [FN129] The court used both the 1989 ABA guidelines and the 2003 Guidelines to amplify counsel's obligation to conduct an investigation. [FN130] Central to the court's finding was the premise that:

> [T]he Wiggins case now stands for the proposition that the ABA standards for counsel in death penalty cases provide the guiding rules and standards to be used in defining the "prevailing professional norms" in ineffective assistance cases. This principle adds clarity, detail and content to the more generalized and indefinite 20-year-old language of Strickland . . . . [FN131]

The court was not troubled by the fact that the petitioner's trial occurred prior to the adoption of the 1989 standards. [FN132] Needless to say, state courts seized on the Williams and Wiggins application of ABA standards as well as their detailed factual inquiry into counsel's performance.

An example of this detailed analysis is found in In re Lucas. [FN133] The California Supreme Court vacated a capital murder conviction after appointing a special master to conduct an investigation into trial counsel's failure to adequately investigate. [FN134] Although trial counsel did interview the petitioner's wife, mother and sister, counsel only briefly explored the petitioner's history surrounding his childhood. [FN135] The California court specifically found that the petitioner was in and out of foster homes growing up, and that when his birth mother reclaimed him, there was evidence he had been beaten. [FN136] After the abuse was discovered the petitioner was placed in an abused children's facility where they verified that the petitioner had been severely abused and, as a result, had suffered advanced emotional trauma. [FN137] Records and witnesses of the petitioner's tragic childhood were readily available to trial counsel. [FN138]

This detailed finding by the court highlights the fact analysis done by the United States Supreme Court in Wiggins. [FN139] The court consistently referred to the findings in Wiggins, saying:

> As the United States Supreme Court has instructed: strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. [FN140]

The Court's use of ABA standards [FN141] as a means to measure a lawyer's performance in death penalty cases signifies a change that may subject attorneys to valid claims of ineffective assistance of counsel. This use of the ABA standards was not envisioned by the drafters of the standards. Both the current prosecution standards and defense standards begin with an admonition by the drafters:

These standards are intended to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of [prosecutor/defense counsel] to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances. [FN142]

In spite of the cautionary note by the ABA, the Court is using the standards in evaluating counsel's performance. In doing so, the Court has given teeth to the test for ineffective assistance articulated in Strickland.

The invocation of the ABA standards does not automatically mean a reversal of a conviction based on a claim of ineffective assistance of counsel. Courts throughout the country routinely reject claims of ineffective assistance. [FN143] However, the evolving use of the ABA standards has heightened the scrutiny courts use in evaluating counsel's performance over the years. Despite the favorable trend of ineffective assistance cases, the Strickland test is still criticized for setting the constitutional and ethical safeguards too low. [FN144] Eliminating the Strickland requirement that "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance" [FN145] is one step the Court may wish to take in order to focus more closely on counsel's performance. Looking at the language of Williams, [FN146] Wiggins, [FN147] and Rompilla, [FN148] the Court may have in fact abandoned the presumption in favor of a detailed factual analysis of the alleged breach of duty. If that is the case, then the abandonment of the presumption is well justified and long overdue. Where the Court is headed is, as always, subject to speculation by commentators. However, if the Court continues to follow the principle of adequate investigation fleshed out in Williams, Wiggins, and Rompilla, a look at the American Bar Association's recent studies may serve as a guide for what defense counsel can expect.

V. Evolving ABA Defense Standards

In 2004 the American Bar Association Standing Committee on Legal Aid and Indigent Defendants outlined the minimum steps defense counsel should take to adequately represent clients charged with a crime. [FN149] The Committee found that defense counsel should:

[K]eep abreast of the substantive and procedural criminal law in the jurisdiction; [FN150] avoid unnecessary delays and control workload to permit the rendering of quality representation; [FN151] attempt to secure pretrial release under condition most favorable to the client; [FN152] prepare for a initial interview with the client; [FN153] seek to establish a relationship of confidence and trust with the client and adhere to ethical confidentiality rules; [FN154] secure relevant facts and background from the client as soon as possible; [FN155] conduct a prompt and thorough investigation of the circumstances of the case and all potentially available legal claims; [FN156] avoid conflicts of interest; [FN157] undertake prompt action to protect the rights of the accused at all stages of the case; [FN158] keep the client informed of developments and progress in the case; [FN159] advise the client on all aspects of the case; [FN160] consult with the client on decisions relating to control and direction of the case; [FN161] adequately prepare for trial and develop and continually reassess a theory of the case; [FN162] explore disposition without trial; [FN163] explore sentencing alternatives; [FN164] and advise the client about the right to appeal. [FN165]

Most of the committee recommendations follow a common sense approach to criminal defense practice. Should the judiciary assume most lawyers conform their practice habits to these recommendations? Unfortunately, the committee's findings indicated there are system-wide failures throughout the United States. [FN166]

The committee, through various witnesses and documentary evidence, found the practice of providing defense counsel fell short in several aspects. [FN167] The report issued by the committee cited many troubling issues in criminal defense work, including: "Meet 'em and Plead 'em" lawyers; [FN168] incompetent and inexperienced lawyers; [FN169] excessive caseloads; [FN170] lack of contact with clients and continuity in representation; [FN171] lack of investigation, research, and zealous advocacy; [FN172] lack of conflict-free representation; [FN173] and ethical violations of defense lawyers. [FN174]

After these findings the questions become why do these problems exist and what can be done? As previously stated, the courts are starting to use ABA standards to evaluate defense counsel performance. The problem is not a lack of standards; it is the bench and the bar's lack of enforcement of existing standards. Again the case is made for the abandonment of Strickland's presumption of counsel's effectiveness. [FN175]

Do the procedures adopted in Postville pass muster under the previous analysis?

A strong case can be made that the procedures adopted are flawed for a number of reasons:

I. Lack of Input by the Defense Bar

The criminal defense bar was not consulted prior to the adoption of the procedures implemented after Postville. Without the input of either the Federal Public Defender's Office or the panel attorneys who were going to represent the clients, procedures that were adopted have created serious systemic problems with the system. The limited amount of time the lawyers were given to adequately investigate client cases and perform necessary research associated with criminal cases with immigration issues are just two of them. Some of these criticisms could be avoided with input from the defense bar prior their adoption.

II. Transparency of Process

The procedures manual given to the attorneys agreeing to represent the individuals detained should have been circulated earlier to allow attorneys to consult with one another and develop strategies for representation. This would include formulating objections to the procedures adopted, should the attorneys choose to do so.

III. Individual Representation by Attorneys

Attorneys were appointed to groups of individuals rather than individual clients. This combined with the compressed time line attorneys were given, resulted in lawyers spending an hour or less with clients. In some cases panel attorneys were meeting with multiple clients at the same time. Needless to say, client confidentially took a back seat to processing clients through an abbreviated system. The more compressed the time the greater the need for more lawyers to effectively handle client cases. Group representation invites error into the process.

IV. Compression

The time frame in which several hundred cases were handled by a limited number of defense counsel is astonishing. As previously mentioned, forcing group representation with a very short period of time denies the lawyers the ability to adapt and adjust to the procedures put in place and conduct adequate factual and legal investigation on behalf of each individual they represent. The result may be defective representation by competent lawyers who are put in a situation where they do not have adequate time or resources to prepare or explore the case. Even the best lawyer can be made ineffective without adequate time or resources.

V. Access to Immigration Attorneys by Defense Attorneys and Clients

Because the Postville raid caused the intersection of criminal law and immigration law, panel attorneys should have had additional time to either become more familiar with immigration issues prior to the raid or allowed immigration attorneys into the process as part of a defense

team. Access to immigration attorneys who are experts in the area helps ensure competent overall representation. As it turns out, immigration attorneys were initially denied access to detained clients.

VI. Individual Attention by the Federal Judges

Having groups of clients appearing before judges for the purpose of entering guilty pleas constitutes the appearance of assembly-line justice not associated with the decorum of Federal courts.

Conclusion

The process used to prosecute criminal offenses in the United States is as important as substantive law itself. Great care should be taken to protect the carefully thought out procedures adopted by Congress and tested in the courts in criminal cases. The procedures adopted prior to the Postville raids call into question those procedures and constitutional guarantee of due process. We should take care not to sacrifice effective representation in order to expedite disposition of criminal cases.

Ms. LOFGREN. Thank you very much.

All those bells and whistles mean we have votes. I am hoping we can get your testimony, Mrs. Costner, and then we will come back for our questions. So if you could give your 5 minutes of testimony, and then we will recess till about 3:15.

TESTIMONY OF LORA COSTNER

Mrs. COSTNER. Thank you for allowing me the opportunity to share my experience with you.

In April of 2004, my husband and I acquired custody of my biological niece, and her biological mother—my now estranged sister—was in a relationship with an illegal immigrant. It is our understanding that our personal identification was stolen from the adoption paperwork.

In April of 2005, we received a letter stating that my husband's driver's license would be suspended and there was a warrant for his arrest. At 3:30 a.m. in February of 2005, in a nearby town an impersonator—excuse me—who had no proof of insurance and a fake Social Security card with my husband's name on it got a speeding ticket. He signed his name—he printed actually—Jamey Dee Costner. He could not speak English.

When the ticket wasn't paid, they obviously sent us a letter stating we had 7 days. We had to hire an attorney, who explained to the Department of Transportation that we were victims of identity theft.

After that, they did not catch the gentleman that had done it. The detective who handled the case called us and advised that this same gentleman had worked at least two jobs in my husband's name, but the company that he worked for told us they would handle it with IRS.

So later in that year, we thought everything was okay, and the immigrant was located, and despite being charged, we took time off from work and went to the court date, the D.A. told us it was the gentleman's third charge of taking the identity of American citizens and he would be deported back to Mexico and would not be allowed back into our country.

Less than 30 days later, we received a phone call at 3 a.m., and it was the same illegal immigrant. He was laughing, and in broken English he said, "They do nothing to me." He went on to describe the make and model of the vehicles my husband and I drove and what time I left work, and then he mentioned the name of our daughter. He just laughed and—I was also pregnant at the time. And I called the police, and they told us that we need to get our phone number changed and there was nothing else they could do. So we just went on—you know, we had to.

Then in 2007—and I had been off work due to an injury. In February of 2007, I called the Tennessee Department of Labor, and they told me that I should not—that I had two workers' compensation claims out—I had gotten hurt at work—and they said that, on January 22, 2007, that I had fell off a line deboning chicken and that they—I knew that it was another identity theft. They told me the name of the hospital that I allegedly went to.

I went to Cook Foods, which is chicken-processing plant, and they argued with me and told me they had no way to believe I was

who I said I was. So I took my marriage certificate because she was working in my maiden name. They arrested her that afternoon after the H.R. manager had told me that they didn't want the police involved, but I went to the police.

The next month we went to a court date, and the lady couldn't speak English. She admitted through an interpreter that she worked there using my name and Social Security number for almost 2 years. She was charged with a misdemeanor and let go the same day.

Two weeks after that, I received a letter from the IRS, and for the year of 2005 alone we owe $7,854 in back taxes. We have sent letters, statements. Finally, David Davis got involved and they—we had to pay for an appeal so they wouldn't garnish our wages even though we had proof that these people admitted they did it, and we had to end up paying another $100, but they have released us from 2005, but they said that we would have 2006 and 2007.

She took FMLA leave in my name. She had a baby at—not in my name, but she signed in the doctor's office in my name, but she went to the hospital in her Hispanic name.

And I guess to sum up very quickly, I had the life that I always wanted, and now, because of this, I believe there is an argument that illegal immigrants have a right to come here, make a living, have a better life, but at what expense? I mean, I have worked hard my whole life to have what I wanted, and by adopting a little girl and trying to do the right thing, my husband and I have had to seek counseling, and, I mean, we are the—we are not who we were.

I have to fight every day to prove who I am. I wonder how many of you are willing to give up all you have worked for. That option was not given to us. Our identity was taken. After extensive research, we now know we can never fully regain who we rightfully are. Every day is a constant fight for the rest of our lives to defend who we are. This is a fight that should never have begun, a tedious, day-to-day worry that has taken many joys, happy times and life, a life that we did all the correct things and we earned that is no longer ours.

[The prepared statement of Mrs. Costner follows:]

PREPARED STATEMENT OF LORA COSTNER

Thank you for allowing me the opportunity to share my experience with you.

In April of 2004 I had the life I always wanted. My husband and I, by no means wealthy, were comfortable. In one afternoon this was taken. Not at once, but a slow beginning to what is now a life filled with a day to day struggle trying to get back what we had.

On April 12, 2004 we acquired custody of my biological niece. My now estranged sister was in a relationship with an illegal immigrant. It is our understanding that our personal identification was stolen from the adoption paperwork.

After a family vacation in April of 2005 we received a letter stating that my husband's drivers license would be suspended, and there was a warrant for his arrest. We assumed there was an error. After investigating we found that someone was stopped at 3:30 AM in a nearby town speeding in Feb. 05'.

The impersonator had no proof of insurance, and only a fake Social Security card with my husband's name and SS# on it. The speeding ticket had Jamey Dee Costner printed by the imposter. We were also told he could not speak English. Despite this he was allowed to go.

When no one paid the ticket or appeared for the court date a letter was sent to inform us of the punishment we would face. The car he was driving was registered

to my sister. However we had to pay an attorney to write the TN Department of Transportation advising we were the victims of identity theft.

The Detective handling the case, Mr. Bob Ellis, contacted us and advised that the same illegal immigrant had worked at least two jobs in my husband's name. We were in shock, but foolishly believed these companies when they stated that they would inform the IRS. Despite our anger we managed to move on. Things were quiet for a while.

Later in 2005 the illegal immigrant was jailed on a completely different charge. He had broken the window of my sisters car. My Mother informed me and I contacted the county he was arrested in. Taking more time off work my husband and I went to his court date to provide the info of the ID theft for the jobs and speeding ticket. The DA assured us this man would be deported and also we saw where he had been previously charged two separate times using the identity of other American Citizens. The entire process was unimaginable to me, how could this happen? If I am caught without proof of insurance my car would be towed, and the thought of using another persons identity for my own personal gain, well the thought alone baffles me. Yet we left finally feeling vindicated.

Less than 30 days later we received a phone call around 3 AM. It was the illegal immigrant, Douglas Valdez. Laughing and in broken English he said "They do nothing to me." He went on to tell my husband the make and model of our vehicles, named where we worked and our departure time.

He then mentioned the name of Molly, our little girl. He rotated from Spanish to broken English, yet the threats were clear. We had told on him, and the Government had set him free. We would hang up, he would call back. I called the local police department and was advised to have our phone # changed. Never have I felt so betrayed. If only the phone # was the issue, we were being threatened, yet he was able to live by a different standard of rules than us. We kept our #. Periodically for the next few months he would call and we would take our phone off the hook. Every contact we made at any level of authority had seemed to feel compassion, but had no answers or help. We had to live our life and do the best to protect our family, the stress was the last thing needed, I was pregnant expecting in April of 2006.

March 29, 2006 we had Mason. I took maternity leave and for a while everything was back on track. A couple of months after I returned to my job I began to clean up some of the reports that had piled up. I worked in sales in the lumber division of a wholesale hardware company. I'd been bitten on my head by a Brown Recluse spider. I was hospitalized for 10 days with encephalitis and a severe MRSA infection. This was in October of 2006. I was released to return to work in February of 2007. On Valentine's Day I made a call to the TN Department of Labor I had some questions before I returned to work. The lady I spoke with took my SS# and from the beginning of our conversation it was obvious we were not on the same page. She finally asked me why I was receiving benefits from Worker's Compensation when she had a record of me filing another claim on Jan. 22, 2007. At first I thought the system had transposed some #'s. However someone had filed a claim using my maiden name Lora Elizabeth Hale on Jan. 22, 2007. The customer service rep asked me if I had quote, "Fell off the line and hurt my elbow de-boning chickens at Koch Foods"—my heart sank, I knew what we had believed was taken care of a year before had just grown. I imagine the distress in my voice made the lady believe me. She gave me the workers comp claim #, date, and the ER info where "I'd" gone to be treated. Still being naive I immediately called Koch Foods. I thought they would be as outraged as I was, however that is not what I received. After being transferred to several different people I spoke with Tim Steffin, the HR Director. He told me that he had no way of knowing if I was Lora Hale or if the person working there was Lora Hale. He did advise that she could not speak English and suggested I meet there and she and I could come in the office at the same time and try to get this straightened out. To say I was irate would take away from my anger. Realizing all of my identification had the name Lora Costner, I took my marriage certificate off the wall in the frame and went to Koch Foods. The HR Manager advised me that the lady using my identity would be there at 4 PM and he would discuss this with her then. He also advised that he did not usually get the police involved in these matters. I realized this was not normal, however I told him, that was fine and left. I went straight to the police and filled out a report.

A court date was set for the next month. My husband and I took more time off work, went to the court date. The lady, Elizabeth Bautista Velasco, could speak no English. Through an interpreter she admitted working there using the name Lora Elizabeth Hale for almost two years. She was charged with a misdemeanor, the DA told us he could try for more, but could not guarantee she would receive any more time. Our faith in the system was already depleted, and we were tired. So we agreed with the recommendation.

Less than two weeks later we received a letter from the IRS. For the tax year of 2005 alone we owed $7,854.00. I sent letters to the IRS with copies of court records, letters from our place of employment (we had worked for the same company, I had been there for 12 years and Jamey for 8 years, both full time) Detective Bob Ellis from the Hamblen County Police Department wrote a letter on our behalf. For the IRS this was not enough. Everything we sent only made them ask for more. The taxes were also adding to the owed amount. In late September of 2007 we received a letter stating that we needed to send a money order to stop our wages from being garnished. We had fifteen days to send this money to place the garnishment on hold while an independent counsel would decide if we would be granted an appeal. During this time I faxed a letter to State Rep. Mr. Eddie Yokley and State Senator Bob Corker. Mr. Yokley called and spoke with my husband and said he had never dealt with a situation like this and would be glad to help but did not know what to do. Mr. Corker's office sent us a letter with a brochure on legal aide. I contacted legal aide and was advised we made too much money for assistance. We sent the money and were planning to hire an attorney when the IRS advised if our appeal request was granted.

While waiting on the response to our appeal a local newspaper wrote an article in December of 2007. The article stated that a lady who lived in Maine was about to lose her disability due to wages she had not earned, yet the IRS claimed she had. The place of employment was Koch Foods in Morristown, TN. She had traveled thru the area two years prior and had her wallet stolen. I decided to call the reporter. I truly just wanted to advise this had happened to us. Mr. Robert Moore wrote an article about our situation. He also told me that Rep. David Davis was known for helping in this battle. The same day Mr. Davis' office faxed me a release form giving permission for him to speak to the IRS on our behalf.

Mr. Davis' office was in contact with us, however we were still receiving letters from the IRS. Finally in March of 2008 we had to send $99.00 and received a release for the 2005 tax year.

The IRS rep that I spoke with said that we should expect delinquent notices for 2006 & 2007. To date we have not, but it was 2 years before we received the notice for 2005.

A local station did a report on our situation that appeared on the 5PM channel 6 news. A reporter for the Knoxville News Sentinel then picked up the story and wrote an article. I have found that people are in shock that this can happen. Since the articles we have had calls with offers to help, but no one knows what to do. One of the most disturbing options was for us to change our names and SS#'s.

The workers comp claim the illegal immigrant had in my name was paid by the insurance carrier for Koch Foods, however there is no record of anyone using my name or SS# at the local hospitals. I also have faxes from a local physicians office where a Hispanic lady checked into the office using the name Lora Hale and my DOB and SS#, yet the next day when she checked in the hospital for a procedure she had no SS# and used her Hispanic name. This was in March of 2006. The physician was on OBGYN, his office provided me with a fax that was sent to the HR department of Koch Foods stating the discrepancies. However she continued working there until I caught her. It is my belief she filed my name at the OBGYN to receive FMLA leave, and her Hispanic name at the hospital for free medical. And the same with the Comp claim. It will forever be on my record, but how did the insurance carrier pay a claim that was reported in one name and treated in another?

I understand there is an argument that illegal immigrants are here only to make a living, a better life for their families. But I question at what expense? We have always worked hard. We were doing the right thing and taking in a little girl. The guilt I have since this was my biological sister has been devastating. My husband and I have sought counseling yet the damage has been done. We are a shell of the happy couple we once were.

I will close by telling you that I think anyone who goes thru the proper channels to achieve the "American Dream" should be allowed. No matter what your dream is this Country has always given the opportunity to work hard and achieve it. I know this because at one time I was living my dream, however "small," it was all I'd wished for.

Now I have to fight every day to prove I am who I say. I wonder how many of you are willing to give up all you have worked for? That option was not given to us, our identity was taken. After extensive research we now know we can never fully regain who we rightfully are.

Every day is a constant fight for the rest of our lives to defend who we are. This is a fight that should have never begun. A tedious day to day worry that has taken

many joys, happy times, and life. A life that we did all the correct things, and we earned. But is no longer ours.

Ms. LOFGREN. Mrs. Costner, thank you for your testimony.

We are going to recess this hearing now. We have a series of votes, and we will not be back before 3:15. So go get a cup of coffee, and we will ask some questions when we return.

[Recess.]

Ms. LOFGREN. The Subcommittee will reconvene. Hopefully, the Ranking Member will be here shortly.

First, apologies. We thought that we would be back at—by 3:15, but we had more votes than we had anticipated, and we appreciate your patience and your willingness to stick with us on this.

We have just a couple of questions that we will be able to pose to all of you.

But before I do, let me just say to you, Mrs. Costner, what happened to you was really terrible and outrageous, and I don't think there is a person in the Congress who would defend what happened to you, and I appreciate that you were willing to come here and share your story. The individual that did that to you should have been prosecuted, and I think it is—you know, I don't see U.S. Attorneys are here now. I don't understand why they didn't do their job to protect you and your family, and I just wanted to say that before getting into the legal questions for the others.

Let me ask you, Dr. Camayd, you have been a translator for a long time, and I read the statement that you made that was available publicly after this raid, and I was struck by, in your statement, how shocked you seemed to be by the procedures that you encountered here and that it was your judgment that these individuals had no idea what was going on.

And you are, of course, the interpreter so you were in kind of the catbird seat to understand what people knew perhaps even better the lawyers because they couldn't actually talk directly to the defendants.

Have you ever seen anything like this before in your 23 years as a interpreter?

Mr. CAMAYD-FREIXAS. Never.

Ms. LOFGREN. I think that is quite revealing.

In your judgment, did these defendants understand the nature of these proceedings and the pleas that were—there was a lot of representation that the defense counsel had advised them and they knew all the immigration issues. Did you observe that?

Mr. CAMAYD-FREIXAS. Well, there were almost 300 individuals, and the level of understanding was different from one to the other. My determination is that the majority of them did not understand the charges or the rights that they were waiving. And I base that on several factors.

First, it is unclear to what extent the numerous ethnic Mayans understood Spanish as a second language. Then there are vast cultural differences between Mexicans and Guatemalan rural cultures on the one hand and American legal culture on the other.

And the most important factor is that, in my expert opinion as an educator, due to their lack of schooling and low rate of literacy, most of the defendants had a level of conceptual or abstract understanding equivalent to that of a third grader or less. So they clearly

needed a lot more time, a lot more educating on a one-to-one basis on the part of the defense attorney to even come closer to understand what these things meant.

In addition to that, they really were tuning it all out because the only thing—particularly the parents—the only thing that they cared about is how to get back to their families to look after their families so they were just listening to the time factor. "Okay. If I do this, do I get home quicker," or "If I do that."

Particularly troubling was the waiver of the right to be indicted by a grand jury on felony charges. These were all felony charges. They basically at that point had no knowledge of the plea agreement or the plea offer that the government was going to make so they basically were given false hopes that, if they waived the right to a grand jury indictment, they would go home faster. So they did.

Ms. LOFGREN. Let me ask you this. We had testimony that there were—the defense lawyers had been completely schooled on immigration law—and that there were immigration lawyers in the facility. Did you observe that?

Mr. CAMAYD-FREIXAS. I am sorry. I didn't——

Ms. LOFGREN. That the defense counsel had been instructed in immigration law and that there were immigration lawyers there at every stage helping the defendants understand. Did you see that?

Mr. CAMAYD-FREIXAS. No. I didn't see any immigration attorneys there. There were actually very few attorneys each day because, even though 18 defense attorneys participated, they would come in 3, 4, 5 each day. And I didn't see any immigration attorney.

I also understood that the official policy was that these were criminal cases, not immigration cases..

Ms. LOFGREN. Right.

Mr. CAMAYD-FREIXAS [continuing]. Therefore——

Ms. LOFGREN. But they had implications once you plead guilty to this crime. Even if you had another benefit available to you under existing immigration law, that would then be foreclosed.

Mr. CAMAYD-FREIXAS. Well, I did observe that some attorneys were able to call on immigration law colleagues——

Ms. LOFGREN. Okay.

Mr. CAMAYD-FREIXAS [continuing]. But the issues were so complicated that sometimes they had to consult with two and three——

Ms. LOFGREN. Right.

Mr. CAMAYD-FREIXAS [continuing]. Different lawyers, and they would get different indications.

Ms. LOFGREN. Let me ask the two law professors, and I am going to read from the affidavit that was filed in support of the application for the search warrant, and it is point 85. I will summarize. The first part isn't really that material.

"A search was conducted by ICE agents in the Accurate Database"—which, as we know, is the private-sector database—it is highly accurate—"for the individuals' Social Security numbers listed in second quarter 2007 payroll reports. This search revealed that approximately 878 out of 1,116, or 78.6 percent, of the Social Security numbers input into Accurate either did not appear to be associated with the person assigned to that Social Security number, or the number did not reveal any person associated with the number."

What were hearing here from the government's own affidavit is that 78—well, let us say almost 79 percent of the individuals didn't have somebody else's Social Security number, they had a made-up number.

How is that consistent, in your judgment, with the necessity to base a prosecution on evidence that the prosecutor's burden to have the elements of the crime known and present before proceeding with a prosecution. Could you comment briefly on that?

Mr. LEOPOLD. Well, that statistic, Madam Chairwoman, is very troubling. Eighty percent of these people apparently did not have—the Social Security number didn't correspond to a real person. That draws into the real question, the whole use of the identity theft as a charge and really brings into question the Social Security charges.

I tell you, I have sat on the CJA panel Northern District of Ohio now for 10 years that handles criminal cases in addition to my immigration practice. I would love an opportunity to cross-examine the affiant here about that because what he seems to say in this paragraph at the end is, "Well, this evidence didn't really add up, but so what. I am an expert. Believe me." So it is very troubling.

Mr. RIGG. I concur with Mr. Leopold's analysis there. The two parts of that paragraph seem to be inconsistent, but, again, that is something that would have been submitted to a judge. But that is the type of information you would want a preliminary hearing on.

Ms. LOFGREN. Well, if I may time is running out, but it just seems to me that the prosecutor's obligation is first to do justice, not to just to get convictions. It is to, as an officer of the court, to make sure that justice is done. That is the whole system. And if the elements of the crime, by the government's own attestation under oath, aren't there, how can the prosecutors, consistent with their ethical obligations, proceed? I just—I have a concern about that.

My time has expired so I am going to turn to the Ranking Member for his 5 minutes of questions.

Mr. KING. Thank you, Madam Chair.

I am going to turn first to Dr. Camayd, and I don't see it in your written testimony, but what I think I heard you say was that the subjects of this raid endured cruel and unusual punishment. Did I hear that correctly?

Mr. CAMAYD-FREIXAS. Yes, sir.

Mr. KING. And I just can't help but reflect that the Supreme Court has conferred habeas rights on enemy combatants and also conferred Geneva Convention status to enemy combatants, and I have—I am looking at this as being precisely language from the Eighth Amendment of the Constitution, cruel and unusual punishment. Were you advocating that those defendants then would bring a case to have their constitutional rights protected?

Mr. CAMAYD-FREIXAS. No, sir. I don't have an opinion about that.

As an interpreter, part of my job is to interpret the meaning of what people are saying, not just the words. In order to do that, I have to put myself in the position of the individuals I am interpreting for, whether they are attorneys or witnesses or defendants. And when—I did that for 14 hours during the jail interviews on a

Friday and Sunday, and I was able to put myself in each individual situation, and I was talking specifically about the parents who were worried sick about their children——

Mr. KING. Okay.

Mr. CAMAYD-FREIXAS [continuing]. And their families and having to basically spend the next 5 months at every moment of their waking hours just consumed with this worry.

Mr. KING. And—and I understand that was part of your earlier testimony, and I agree with you that a good interpreter interprets not just the words, but voice inflection, words unsaid, body language—all those things together. And I read the words in your testimony too and some of them are—they are inflammatory to me. And so I will just leave that there rather than belabor that point.

And I would turn then—first, I wanted to make a little comment about Mr. Rigg's testimony.

First, I think it is the most reasonable of the majority's witnesses here. And you made two points: One, that the compression of time imposed limits on attorneys that may have put the defendants' rights at risk. I think that is a valid point, and I don't know if it is—I don't necessarily agree or disagree with it. I just think it is a good point to have raised. Then the—you referred to as an ambush—I think a surprise—to the attorneys who were drawn into this process. That is how I interpreted it.

I just wanted to say to you that, being on the Iowa Supreme Court Advisory Committee, I have a certain amount of envy that I am not on that advisory committee.

So instead of asking you a question, I would just take a little license here, and in the time that is remaining, I really want to turn to Mrs. Costner and say I recognize how difficult this was for you to be here today. I appreciate the Chairman's cooperation in that, and I know that you had to overcome a fair amount of intimidation just from the very fact of this being Congress to come here and testify, and I think the way that you went through your testimony and got to the end of it and actually compressed it within the 5 minutes, I want to thank you. And I know there are Members on both sides—the Democrats and Republicans—that know how difficult this was. And that is the way citizens serve this country. You have done that.

But I would ask you, are you finished? Do you know that the identity theft is over, and how would you know if it was?

Mrs. COSTNER. I was told that we would never know, that, unless we changed our names and Social Security numbers, that they would always be out there. And the IRS told me that we would get tax notices for 2006 and 2007. I just don't know when they will be here.

Mr. KING. Do you know the initial perpetrator—do you know where he is now in the—in the legal process?

Mrs. COSTNER. They let him go. They said that it was not illegal to use someone's name to obtain employment.

Mr. KING. But he was he never ordered deported from the United States?

Mrs. COSTNER. That is what the D.A. told us was going to happen when we left court, but then they——

Mr. KING. But it didn't happen. And we are very—we are very familiar with those circumstances by which we are short of law enforcement personnel in a lot of ways, and I just say as a matter of—statistically—two of my staff people have been hit by drivers who were illegal, and in each case law enforcement took the information, took the Matricular Consular card number, they knew very well it wouldn't hit a positive hit on the database, turned them loose. And even though, when I send my chief of staff to town to try to get enforcement, we can't get it even in my own staff.

So I just—I thank all the witnesses—I know we have strong emotional feelings, and as emotions come out in your testimony, Dr. Camayd, and I actually think some of that was plenty. And I appreciate the professionalism that comes here when it arrives, and I know how it was most difficult for Mrs. Costner, and, again, I thank you for your testimony especially.

Ms. LOFGREN. The gentleman's time has expired.

I would turn now to the gentleman from Illinois Mr. Gutierrez.

Mr. GUTIERREZ. Thank you very much.

Let me share with Mrs. Costner thank you for coming and bringing your testimony before this Committee. I think it is very valuable information and testimony for us. We need to do more about identity theft, and I thank you for your testimony. I think it will help us here. At least I am very hopeful it will help us here.

Let me go to Mr. Camayd. We heard Ms. Costner's testimony about identity theft. It sounds to me like the gentleman who stole her identity committed aggravated identity theft. Would that be your opinion?

Mr. CAMAYD-FREIXAS. Absolutely.

Mr. GUTIERREZ. And I just want to see how that relates to your experience in being an interpreter and what the people were charged. Was there any evidence of this kind of critical criminal intent—as using someone's identity, Social Security number—and causing the kind of harm that was caused to Mrs. Costner and her husband?

Mr. CAMAYD-FREIXAS. Well, I expressed to Mrs. Costner how sorry I was for what happened to her during the break. And I want her to know, for her peace of mind, that the individuals that I saw in this case in Iowa were just hard-working people and, in fact, only 5 out of 389—had any kind of criminal record.

One of the issues that bothered me about the case in Iowa is that individual circumstances of each case were not considered. And I think that, when we look at the very unfortunate case of Mrs. Costner, as well as issues as to whether illegal workers are good or bad for the country, I think it—I keep going back to that situation and saying, "Well, how can we apply these broad issues to the individual cases if we don't know the facts of each case?"

Mr. GUTIERREZ. And so of the people that you helped interpret for, there was no evidence—in your testimony you seem to really stress the difference between the aggravated identity theft and the use—the improper use of a Social Security card. Would you—what is the difference?

Mr. CAMAYD-FREIXAS. Well, aggravated identity theft was a charge created by an act of Congress in 1998. For almost 10 years, it had been used for its proper purpose and meaning. And it was

only until the middle of 2007 that it began to be used in immigration cases, basically in presenting false documents to obtain employment. So it seemed like it was a way of testing the waters until in Postville it was applied on a large scale.

But the Department of Justice Web site has a very good page on identity theft. It explains what it is. It gives several examples. The examples it gives pertain to people who have stolen identity to charge sometimes hundreds of thousands of dollars under somebody else's name, that type of——

Mr. GUTIERREZ [continuing]. That is to use somebody's identity to commit a crime?

Mr. CAMAYD-FREIXAS. That is correct.

And also it remits you to the actual statute, and the language of the statute is that identity theft is using somebody else's identity to commit a crime under the false pretense of being another person.

Mr. GUTIERREZ. Let me just follow up because I would like to ask Mr. Leopold.

So when I read, "If you plead guilty to the charge of knowingly using a false Social Security number, the government will withdraw the heavier charge of aggravated identity theft"—and this is from the interpreted—this was the plea agreement, which the assistant general attorney had a little bit of problem but not much problem with. I mean, this is basically what the interpreters are saying, that the defense counsel was giving to their client.

What is wrong with that? What in essence is there anything wrong with an attorney—with a U.S. attorney or the Federal Government accusing somebody of something and then offering them a lesser plea? What is wrong in this case?

Mr. LEOPOLD. Well, what is wrong with it is is apparently there was very little evidence to convict them even on the lesser plea. And what they did was they compressed this whole situation by use of what is otherwise known as an exploding plea agreement, which was 7 days long or it ended. So that compressed timeframe, coupled with the fact that most of these people—or all of them—their real intent was really to get out and work and feed their families again, and their real—this whole situation banked on the fact that the workers really didn't understand the nature of the charges against them.

What was wrong was to use that kind of leverage in this particular case and to try to criminalize—successfully criminalize as many undocumented workers as they did when, in fact, all they were trying to do was feed their families.

Mr. GUTIERREZ. And one last question. If it is an immigration case, would you take any lawyer for a—is there a particular reason you want an immigration lawyer to deal with an immigration case?

Mr. LEOPOLD. Well, look, absolutely, Congressman. The travesty here is that these pleas that were given could not possibly have been given knowingly because there was not adequate advice of immigration counsel. And in a criminal case involving a noncitizen, part and parcel of the defense is an analysis of the immigration consequences.

In Dr. Camayd's essay, there was a discussion of a man from Guatemala, and as the Chairwoman mentioned, Guatemala has a

rather checkered history with human rights violations. Many of these farmers were from Guatemala. There were probably asylum claims in there. There were probably people that needed protection. All they needed to do—all the U.S. Attorney's Office needed to do and should have done and failed to do was ensure that immigration advice—competent, thorough immigration advice was available to all of these detainees.

Ms. LOFGREN. The gentleman's time has expired.

The gentleman from California, Mr. Lungren, is recognized.

Mr. LUNGREN. Well, I am sorry I missed a good portion of this while I was tending to other things, but I guess I have been here long enough to see what the hearing is all about. ICE screwed up. Labor Department screwed up. U.S. Attorney's screwed up. Court screwed up. There is no criminality here. People like Mrs. Costner, who have their identity stolen and suffer the consequences, we apologize to you, but, you know, no one really did anything wrong here. They just took your identity.

I have been in this place 14 out of the last 30 years working on immigration issues. I thought that we solved this problem in 1986 when we had the largest, most generous legalization in the history of this country, which, by the way, was not very particularized. There wasn't much you had to prove to them and we managed to legalize millions of people, but we did not enforce the law.

And people think the comments here about the Federal employees who worked on this are not going to deter them from doing their job, I think they are sadly mistaken. We have been told that they were cowboys, that they were rogues, that they had no consideration for the rights of anybody. Now, maybe that is true. Maybe this was wholesale. Maybe every single ICE officer disrespected the rights of everybody else. Maybe the U.S. Attorney's Office did it completely. Maybe the Labor Department was involved in some sort of grand conspiracy with Department of Homeland Security. But, frankly, I find that a whole lot hard to swallow.

Ms. Costner, when your identity was lost and taken by somebody else, were you concerned whether the person was doing it for a reason they considered to be good? Would that have made a difference in terms of the implications with you, the impact on you?

Mrs. COSTNER. No. When I went to court with the lady, I actually was in a position to where I felt sorry for her, but I still owed $8,000 and had lost a big part of my life.

Mr. LUNGREN. This upside——

Mrs. COSTNER. I mean, I am still——

Mr. LUNGREN. Did this turn your life upside down?

Mrs. COSTNER. Yes. And——

Mr. LUNGREN. So it is not a victimless crime? I mean, you were a victim in this?

Mrs. COSTNER. And will be the rest of my life.

Mr. LUNGREN. But what we hear in Congress mostly is to blame the Social Security system because they didn't do a good enough job in it and because we don't check well enough. I mean, at some point in time, I hope people understand folks have to take responsibilities for their action. And it is illegal to come into this country when you don't have a basis for coming to this country. It is illegal to take a job when you don't have a right to have a job.

And I will continue to talk about this until something is changed. We have an unbelievable crisis in this country, a scandal in this country with the unemployment among young African-Americans age 17 to 35. I dealt with it when I was attorney general. We were dealing with the high rate of incarceration of that group, and one of the concerns was where are the jobs? And I hope we will not forget about that. But I hear very little about that.

And, you know, when you are trying to balance the scales of justice, we ought to treat people fairly, they ought to have the right to have a fair hearing, they ought to have the right to have lawyers, but let us also remember the other side of the balance here. There is people like Ms. Costner who——

Mrs. COSTNER. Had to pay for my lawyers.

Mr. LUNGREN. And your life has been turned upside down.

Mrs. COSTNER. Yes. I mean, it is——

Mr. LUNGREN. Now, maybe no one intended that, but that is what happens when people steal identity here, and it is almost as if we are saying——

Ms. LOFGREN. Would the gentleman yield?

Mr. LUNGREN [continuing]. It is not that big a deal.

I will be happy to yield, but, I mean, I have sat here and heard questions while I was here.

Ms. LOFGREN. I don't think you had arrived yet when all of us expressed concern about——

Mrs. COSTNER. Correct.

Ms. LOFGREN [continuing]. Mrs. Costner's——

Mr. LUNGREN. Oh, I understand that.

Ms. LOFGREN [continuing]. Situation and also expressed the view that the perpetrator should have been prosecuted and deported.

But here is—and I thank the gentleman for yielding—the affidavit filed by the government based on their search says that 80 percent of the individuals didn't take somebody's Social Security—it was a number that—it wasn't somebody's Social Security number. It was a made-up number not attached to any real person. And I think that is one of the issues that at least is of concern here is there was no victim because there was nobody who had the number.

And I thank the gentleman for yielding.

Mr. LUNGREN. I appreciate that.

You know, we have a schizophrenic country. On the one hand, we want to deal with illegal immigration and enforce the law. On the other hand, we want to have people here to take jobs that "Americans won't take." And I think there is an area in which that applies, and that is why I have been working for 30 years to get a temporary worker program and to get some legal means to do it.

It is my observation the American people will not allow us to do that until they believe we have the enforcement side in control. And when they see the impact of phony Social Security cards or stolen identity, that does not give them great confidence that we have this under control. And my fear is that we will never get to the point of having that temporary worker program, having those means by which we can determine how many people should come here, take them out of the shadows of illegality so they have the protections of the law unless we take enforcement seriously.

And my bottom-line concern is that the hearing seemed to be directed at an agency that screwed up. And I suppose we might find a raid where they actually did things right. And maybe we——

Ms. LOFGREN. We will keep looking.

Mr. LUNGREN. Well, I know. We will keep looking, but that is very encouraging to the people at ICE as we have been told that we have great respect for them and the work they do and then we just constantly tell them they have done a terrible job.

If I sound frustrated, I am frustrated because I have worked for 30 years to try and get a solution here, and one of the results of not having a solution is Ms. Costner, is what you had to go through, and unless we get a grip on this, many others are going to go through that. And we are all going to invite you here, and we are all going to apologize to you, say we are sorry it happened to you——

Mrs. COSTNER. Pass around the hat.

Mr. LUNGREN. Yes, we will pass around the hat. But we won't do anything about it. So I will add my apology too, but the best apology we could make to you is when we actually pass a law that deals with this and puts it on the right track.

Thank you very much.

Ms. LOFGREN. The gentleman's time has expired.

I recognize the gentlelady from Texas Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you, Madam Chairwoman, again.

I associate myself with the latter words of my good friend from California. We do have to pass a law, Ms. Costner, and I would start with you simply to say that I am outraged about what happened to you. As I looked over your very eloquent statement, this is, I think, the thrust of my comments. I want the bad guys, the ones who are stalking you, who are criminally calling you up on the phone and ridiculing you. I want the guy who speeded and got a speeding ticket to be deported. And the outrage is where was—why was there a disconnect? The local law enforcement could have taken the gentleman in and called the Federal law enforcement right there. That is the kind of criminal bad guy that you want to be gone. Obviously, we would like a lot of these incidences to not occur.

So my question, I know that you are not an expert in Federal law—and I see this other individual who you felt sympathy for—but there was a purposeful use of your identification, and I don't want to stereotype a profile, but I would think your name is slightly different. Maybe they perceived you to be—this individual to certainly have the ability to have maybe a name as yours. But it might have been an indicator to ask a few more questions.

And so I think obviously and conspicuously on the face of your facts we could have helped you. And I apologize for the lack of coordination. We have advocated that there should be coordination. We don't think local law enforcement or Federal law enforcement. But if this person was poised to be deported for conspicuous, reckless criminal actions—I am talking about the first individual, who seemingly began to stalk you—that should have occurred.

And I just simply ask you the question would you like to see, as we look to try to fix this immigration system, that our law enforcement goes after those who are poised or are already in the act of

criminal acts that already violate the criminal laws? If you were doing this, that would be against the law. Should we be putting resources there to get those kind of people?

Mrs. COSTNER. Yes. But I would like to see them here going through the channels to be here legally so it is not a question and they don't have to steal an identity to work to feed their families.

Ms. JACKSON LEE. Well, you are very gracious, and I just want to apologize to you and thank you for your testimony——

Mrs. COSTNER. Thank you.

Ms. JACKSON LEE [continuing]. And for being here, and we will certainly look at some of the fractures in the system that caused this individual—the first individual that took your husband's ID, of course—to treat you in that manner, and I thank you for your testimony.

Let me go to Mr. Leopold. I went down this line of reasoning with the representative for the DOJ and the ICE, which is to suggest that there may have been some thinking as relates to putting forward these criminal charges knowing that criminal charges placed on individuals who, as you had indicated, come from places like Guatemala may have been simply farmers who were trying to come here for economic opportunity, albeit that they were undocumented, that placing them in this criminal predicament—in this criminal charge predicament would have then cast them as felons and made their journey back home more difficult or their journey and their ability to return more difficult.

What do you think about that kind of thinking?

Mr. LEOPOLD. Well, the criminalization of undocumented farmers really goes nowhere. Yes, it does brand them as felons. And you are correct, once somebody is branded as a felon, it creates all kinds of problems later on with respect to admissibility to the United States. Not everybody who is deportable who is a felon, but many are. Many people who are felons, it is impossible to be admitted. There is no 10-year bar. I think I heard the representative from the Department of Justice talk about a 10-year limit. I don't know of any 10-year limit. It is a lifetime limit.

Ms. JACKSON LEE. It is a lifetime.

Mr. LEOPOLD. It is a lifetime limit.

Ms. JACKSON LEE. That is right.

Mr. LEOPOLD. You are correct. And absent a waiver—and even then, you have to show a qualifying relative—it becomes extremely, extremely complicated.

Ms. JACKSON LEE. I don't want to cut you off, but my time, and I would like the other three gentlemen.

I don't want us to get tainted as unpatriotic because we are arguing for a sense of balance, but I need some help. I know that you have been engaged in this. The use of resources used like this raid, help me find a more effective pathway. I have looked at the numbers: 104 raid teams and we look to get 4,000 in 2008, immigration lawyers being utilized, other resources. Is this an effective tool for enforcing immigration laws or putting the system right-side up?

You want to start Mr. Rigg?

Mr. RIGG. Thank you. I don't think it is the most effective tool. You can make an argument that, yes, we achieved what we set out to do if you are ICE if we removed individuals who were undocu-

mented, we are getting them out of the country, we have now prosecuted them, and you can claim some success with that.

Was the overall process a fair one? That is where I have real problems. And the purpose of the criminal justice system is to make sure that we get at the truth and that justice is in fact done. And critical resources have to be devoted, not only to ICE and to the Department of Justice, and they also have to be devoted to the Judiciary and the Criminal Defense Bar, and everybody seems to overlook the Criminal Defense Bar and give them, I think, the opportunity to have some input into this and maybe make suggestions that might actually serve ICE's purpose better.

Ms. JACKSON LEE. Mr. Leopold, could you quickly just answer the effective use of resources?

Mr. LEOPOLD. The most effective use of resources, Congresswoman, would be to fix the broken immigration system. As Congressman Lungren pointed out, it is broken, and it does need to be fixed. And this is a symptom, the terrible story that we hear from Mrs. Costner, other stories. This is the symptom of a broken—badly broken immigration system. And, frankly, Congress needs to roll up its sleeves, get down to the nitty gritty of fixing the system. It is not going to happen overnight, and it is going to take a lot of hard work. And, frankly, I implore Congress to do this about it.

Ms. LOFGREN. The gentlelady's time has expired.

Ms. JACKSON LEE. I thank the distinguished Chairwoman, and I will just say, Chairwoman, in closing my sentence, I think we need to ask the president of the United States, which has to be a partner in signing a bill, and I personally ask him if he would take in these waning months leadership on helping turn this system rightside up.

I yield back.

Thank you.

Ms. LOFGREN. Thank you.

The gentlelady from California Ms. Sánchez is recognized for 5 minutes.

Ms. SÁNCHEZ. Thank you to the Chairwoman for holding this hearing because I think, although it has been a long day, it highlights several issues that I think speak to the fundamental nature of what are we as a democracy.

And while I don't want to diminish the terrible circumstances that Ms. Costner's gone through, in listening to—in reading through some of the testimony, it is clear that the workers who were using Social Security numbers that were not assigned to another individual, their intent was not to wipe out somebody's bank account, charge up thousands of dollars on their credit cards or steal their pension, it was simply to work.

And I think in all the panels we have heard at some point or another people say we need to fix a broken immigration system; otherwise, these types of things are going to continue to occur. And there will be criminals, like the criminal who stole Ms. Costner's identification, who will go unpunished. But there will also be hardworking people who are just trying to feed their families or trying to make a better life for themselves or escape repressive regimes in their home countries of origin who are also going to get caught

up in unfortunate circumstances because I consider some of their circumstances very unfortunate as well.

What particularly concerns me about this raid is the question of due process rights, and much has been made about the fact that the taxpayers pay for it. Well, you now what? It is a constitutional guarantee that, if you cannot afford an attorney and you are being charged with a crime in this country, one is provided for you. And yet, you know, people seem to make light of the fact that, hey, as long as you are given an attorney, what are you complaining about? Well, if you don't have a reasonable way to participate in your own defense, if you don't have a understanding, a basic grasp of what you are being charged with, how can you really make informed decisions in a criminal process? And the compressed timeframe, I think, only underscores the egregiousness of the due process that was not afforded to many of these—many of these workers.

In my Subcommittee on Commercial and Administrative Law, we have heard testimony under Operation Streamline and in Postville defense lawyers were being assigned up to a dozen clients at once and given less 30 minutes to, number one, meet and educate the client themselves; number two, decide whether the client was competent to stand trial; number three, determine whether there is a defense of citizenship or duress, a lack of intent or a need for pretrial motions to suppress evidence or statements due to constitutional violations; and, number four, learn personal information which might mitigate a sentence and a whole host of other things. Thirty minutes was granted to each of these people.

I want to ask Mr. Leopold and Mr. Rigg, in your professional opinion, can any defense attorney adequately and ethically execute their duties in less than 30 minutes to a client, and especially in a case where they have to interpret with somebody who doesn't speak the language? Does 30 minutes seem like a sufficient amount of time?

Mr. LEOPOLD. Well, you know, I can speak from experience as a CJA panel attorney myself that 30 minutes is enough time to shake the client's hand and get to know their name. Of course, not, Congresswoman. Of course, not.

You know, and couple that with this compressed plea agreement—and by the way, I don't know—nobody has ever explained the representative from the Department of Justice or the U.S. attorney—nobody has ever explained why did they have to impose this 7-day deadline on the plea agreement? Why?

There was absolutely no reason to do that other than to pressurize, not only the panel attorneys—the CJA panel attorneys—who, by the way, did a valiant job out there in Iowa—but to pressurize the clients into taking these pleas. I know of no situation in my experience—and I have asked other attorneys—where this type of plea agreement was used.

Ms. SÁNCHEZ. Mr. Rigg?

Mr. RIGG. I am also the director of the Criminal Defense Program, and one of the things I do is I supervise students in criminal cases. I would fail any student who took 30 minutes to advise a client on a misdemeanor charge to plead or not to plead, much less do the analysis that you have described. Essentially what you have

described is a violation of every standard of the ABA standards of a prosecution function and defense function.

Ms. SÁNCHEZ. Thank you. I appreciate your honest answers to that.

Mr. Camayd—did I pronounce that correctly?

Mr. CAMAYD-FREIXAS. Camayd.

Ms. SÁNCHEZ. Camayd.

To the best of your knowledge, did any individual who you interpreted for refuse to answer questions during ICE's processing?

Mr. CAMAYD-FREIXAS. I was not present during that questioning session so I wouldn't be able to answer that.

Ms. SÁNCHEZ. Okay. So you don't know if any during processing asked for an attorney at that point either?

Mr. CAMAYD-FREIXAS. I am sorry?

Ms. SÁNCHEZ. If any individual during the processing asked for an attorney?

Mr. CAMAYD-FREIXAS. I do not know that.

Ms. SÁNCHEZ. Okay.

I just want to ask one final question, and I would beg the Chair's indulgence as I did not get a chance to question any of the previous panels.

Clearly, there seems to be a problem with this particular instance in terms of whether people had a knowing and a full understanding of what they were doing before they entered their plea agreements.

I want to know from our panelists—Mr. Leopold and Mr. Rigg—what is the potential harm to the American system of justice when we allow criminal prosecutions to go forward in this manner? I mean, if it can happen here, can there not be other instances in which it can happen? And then what does that do fundamentally to the American system of justice?

Mr. LEOPOLD. Well, Congresswoman Sánchez, if you could imagine for a second how we would react if we heard of a group of Americans overseas in a foreign country being rounded up into a cattle pen and prosecuted in 7 days. I mean, the whole spectacle itself demeans our system of justice and stands as a stain upon this system which we all—we all cherish.

These types of precedents in terms of the type of prosecution as it was done out there is a terrible precedent, a terrible way to handle justice, and I would respectfully submit that it shouldn't ever happen again.

Ms. SÁNCHEZ. Thank you.

Mr. Rigg?

Mr. RIGG. I think anytime you value high turnover and economy of justice, that is exactly what you get, that you don't get justice, and you probably are going to violate due process in doing so. And anytime the American system—and every day the American system is put on trial, and are we getting it right, and it is rightfully tested by the careful arguments between defense counsel and prosecutors with a neutral and detached judge. And when you take any part of that component away, you are guaranteeing at some level you are going to create a problem.

Ms. SÁNCHEZ. All right. One final question, and I can't resist asking this because Mr. Leopold said, "If you could imagine this happening to Americans overseas."

What if U.S. citizens here in the United States—here in the United States were rounded up and arraigned 10 at a time and processed and given plea agreements? What can you imagine would happen here if American citizens were treated like that under our system of justice?

Mr. LEOPOLD. Well——

Ms. SÁNCHEZ. Because it seems to me that there is an inherent bias if they say, "Well, it is fine because, you know what? These people don't matter anyway. They don't really count."

Mr. LEOPOLD. Well, I think that is an astute point. I think that we wouldn't see that kind of roundup of U.S. citizens.

You know, in the panel cases that I have done in the Northern District of Ohio involving big cases with a lot of defendants, it is always one lawyer to one client. I have never seen 17 clients to one lawyer, 15 minutes or 30 minutes to speak to the client.

You know, in this case—this is the immigration law, this huge book. I don't know how you can explain this in 30 minutes to somebody, let alone the enormous consequences of taking a plea.

Ms. SÁNCHEZ. Any further comment from any other panelists on that?

Ms. LOFGREN. The gentlelady is granted one additional minute for an answer——

Ms. SÁNCHEZ. Thank you.

Ms. LOFGREN [continuing]. And then we will be——

Ms. SÁNCHEZ. I will yield——

Ms. LOFGREN [continuing]. Adjourning the hearing.

Mr. CAMAYD-FREIXAS. Yes. I want to make clear that I believe everybody here is in favor of enforcement but done the right way. The consequences of not doing it the right way, we don't have to look too far to find them, and Mrs. Costner's case is a case in point.

Related to this case, I heard of situations in which the authorities were called about an individual similar to in the case of Ms. Costner's, and they are response was, "You have only one guy?" They said, "No. We can't take care of it." In this case, obviously, there were 700 warrants so this is what attracted the attention of law enforcement.

I also wanted to point out that I want to dispel the myth that the target was the employer. As a matter of fact, one of the three charges, which was very much related to the Social Security fraud charge, was use or possession of false identity document with intent to deceive. Now, that phrase "with intent to deceive" isn't really with intent to deceive the employer. So that held the employer harmless. Not only that, but that made it a crime of moral turpitude, which renders the convict ineligible to even apply for immigration relief.

Ms. SÁNCHEZ. Thank you.

I will just—before I yield back my time—will make one last comment, and that is I find it interesting that, when we talk tough about getting tough on illegal immigration, we always talk about criminalizing the immigrant. We never talk about criminalizing the employer. And I think that, if we made it a criminal penalty to

knowingly hire somebody who was undocumented, I think a large part of our immigration problem might be solved. But the employers are typically only let off with a slap on the wrist or a fine, if that.

And with that I will yield back the balance of my time.

Ms. LOFGREN. The gentlelady's time has expired.

The Ranking Member has asked to be recognized for a brief comment.

Mr. KING. Thank you, Madam Chair.

This Committee is poised to adjourn with a misconception hanging in the air, and I would direct the attention to page 10 of Ms. Rhodes's testimony—the U.S. attorney from Alabama—who in her testimony says, "Nearly all of the defendants sentenced to time served had admitted using identification information that belonged to other people."

And the specific of it are this: 233 are false use of identification after admitting the use of an actual person's identity, 30 for false use of Social Security number after admitting the use of an actual person's identity and 2 for false identification to obtain employment after admitting an actual person's identity.

So the idea that it was a minority, rather than majority, almost all—nearly all defendants used somebody else's identity, somebody like Mrs. Costner.

Thank you, and I yield back.

Ms. LOFGREN. Gentleman yields back.

I will just note that this—the Ranking Member's comment really proved the point of the lack of due process because there was an admission to something that was not true. The evidence, which is found on page—on point 85 of the application for the search warrant, shows that the evidence is that 80 percent of these people had a number that didn't belong to anybody, and so really it does got to the due process question of whether these individuals were—pled guilty to something that there was no factual basis for.

Mr. LUNGREN. Would the Chairlady yield on that?

Ms. LOFGREN. I certainly would.

Mr. LUNGREN. I believe that affidavit deals with the over 700 people that they were talking about in the first instance, about half of which, I believe, were not at the site at the time that the exercise by ICE took place, and the number that the Ranking Member was talking about was the number that actually pled, which is a much smaller number than the overall 700.

Ms. LOFGREN. I concede the gentleman's point. The further point being that, since there was no trial, there was no facts gathering, the only evidence we had was this, and there was no way to sort the individuals who, in ignorance, pled guilty from those who—the 80 percent that did not have a number.

I am not going to belabor this point because we have been here all day. I do want to thank all of the witnesses. People don't realize that the witnesses are volunteers for our country come here of their own free will to share information, to inform the Congress, hopefully, to improve our country.

I will say that I personally find the processes used in the criminal proceedings to be unusual and provocative and do have ques-

tions about whether they meet the requirements of due process that is guaranteed in our constitution.

Looking at you, Mrs. Costner, I am so disappointed. I mean, the law, really, required ICE to do something they didn't do. They were busy doing things with people who weren't doing people harm, and they wouldn't take the time to deal with your situation when harm was done, and that is really just so maddening to me and, I think, to all of us.

So we will be adjourning now. Our hearing is open for 5 days. We may have additional questions in writing for you, and if so, we would ask that you respond as promptly as you can.

And, again, many, many thanks to all of you for being here and for helping to shed some light on this situation.

Before adjourning, I will just note that Mr. Gutierrez will be—and several other Members of Congress—will be going to Postville—at their own expense, not as a part of—official part of this Committee—to investigate matters further this weekend, and we look forward to getting their feedback after that trip is concluded.

And with that, this hearing is adjourned.

[Whereupon, at 4:44 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE HILDA L. SOLIS, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

I would like to applaud Chairwoman Lofgren and the members of the House Judiciary Subcommittee on Immigration for holding this hearing about the detrimental impact of immigration raids. Since 2006, the Immigration and Customs Enforcement Agency (ICE) has engaged in unprecedented workplace raids. The Bush Administration and its allies have chosen an enforcement only immigration strategy. These punitive enforcement initiatives ignore the hardworking contributions of immigrants and are affecting the well-being of immigrant communities.

From the Swift raids in 2006 to the raid in Postville, Iowa, ICE's actions have left children and other vulnerable populations without proper care and supervision and limited legal representation. Nearly 400 immigrants were arrested at the workplace raid on the Agriprocessors plant in Postville, Iowa. This ICE raid was the largest workplace raid conducted by the Bush administration on a single site. The day following the raid approximately half of the school system's 600 students were absent, including 90 percent of Latino children, because their parents were arrested or in hiding.

Today, the families in Postville continue to struggle to cope with the aftermath of the raid with family members awaiting deportations or living under house arrest. A recent New York Times article highlighted the detrimental impacts of the Postville raid, the largest in the nation, on the lives in the local community. The raid has been described as ripping "the heart out of the community." As a nation built on family values, these enforcement only tactics are not only damaging children, families and communities, but ripping at the fabric upon which our nation was built.

Separating families puts children at risk of economic hardship and psychological trauma. We must ensure that as immigration laws are being enforced that our nation's children are not at risk. That is why I have introduced the Families First Immigration Enforcement Act (H.R. 3908), which would ensure that immigrant raids are humane and children are protected. This legislation would protect immigrant detainees and their families from mistreatment and unnecessary separation from minor children, and encourages the release of detainees on humanitarian grounds.

We cannot turn a blind eye to the injustices that workplace raids are having on our children and families. As the sponsor of the Families First Immigration Enforcement Act (H.R. 3980), I will continue to work with my colleagues in Congress and across the country to find a solution on how immigration enforcement could be improved to protect the children and families involved.

Congressional Hispanic Caucus Visit
Postville, Iowa
Saturday, July 26, 2008

Congressional visitors will travel from Chicago and expect to arrive in Postville at 10:00 a.m. The local community will have coffee, pastries, and some finger food available throughout the morning.

Conversation participants will be seated in a circle. Others are welcome to sit in the chairs that will be set up outside the circle.

Agenda

10:00 a.m.	Welcome and Introductions
10:10 a.m.	Individual Stories
10:50 a.m.	Legal Matters
11:10 a.m.	Community Impact
11:40 p.m.	Labor Matters
12:20 p.m.	Community Request
12:30 p.m.	Wrap Up

10:00 a.m. Welcome and Introductions

- Sister Mary McCauley will welcome all, offer a brief prayer, and introduce the "Local Relief Team" as well as other local officials
- Irma Hernandez y Elida Tuchan will introduce those representing the people affected
- Congressman Gutierrez will introduce the other CHC members and those traveling with them
- Sister Mary McCauley will acknowledge others present
- David Vasquez will provide a brief outline of the agenda and moderate the conversation

10:10 a.m. Individual Stories

Three people will share their personal stories in conversation with the CHC members, reflecting on three primary questions: (1) the individual's story, why and how they came to Postville; (2) What happened the day of the raid? What was it like for you? (3) What is your life like now, after the raid? What does your future hold? These three individuals will also reflect on the experience of their relatives who are still in detention.
The women with "bracelet," as we have come to call those who were detained and then conditionally released, elected women to represent them. Congressman Gutierrez will review lead them through the three questions above. When her turn comes, Maritza will first read a prepared statement.

- Irma Hernandez
- Elida Tuchan
- Maritza Nuñez (U.S. Citizen Child)

10:50 a.m. Legal Matters

Sonia Parras, chief legal counsel representing minors and many of the adults with bracelets, will briefly outline the various legal efforts underway and highlight concerns about the criminalization of the detained. She will share brief excerpts from the depositions of clients she is representing. The hope would be to assess how much people understand about what they are facing, the human impact of the criminal charges, and the concerns about the criminalization of those who are still detained.

11:10 a.m. Community Impact

Members of the "local relief team" and other local leaders will speak to the impact of the raid on the community—main street, schools, and church (the pillars of all communities, particularly rural communities): What has the community been "left with" following the raid? What and how have immigrants contributed to the community that is now threatened? What is the town like now? What has been the emotional, physical, and economic impact?

- Robert Penrod, Postville Mayor—economic impact (business, housing market, labor force, work/challenges ahead with a fast changing, often more transient, new population)
- Principal Chad Wahls—impact on children and the schools (what does the future hold)
- Paul Rael—financial assistance, living in fear, impact on the Catholic Hispanic Ministry
- Maria Laura —the loss of her pastor, her community, and her church "Unidos en Cristo," one of the local protestant/evangelical communities
- John Schlee—custodian at St. Bridget's and a life-long resident of Postville will be available for questions

11:40 p.m. Labor Matters

The United Food and Commercial Workers (UFCW) will offer a brief outline of the labor investigations that were underway before the raid, and the negative impact of the raid on those investigations. Three workers (including minors) will share their stories of their work experience at the factory, including concerns about abuse, safety, and wages.

Overview: Agriprocessors, Inc., Labor Violations
Jerry Messer, UFCW Local 431, Davenport, Iowa

Violations: Child Labor, Gilda Lopez, Under Age Worker, Speaker
(Under age workers, Joel Rucal and Nilda Rucal will also be there to answer questions)

Violations: Overtime, Wage Theft, Working Conditions,
Bartolo Bustamante, Worker

Violations: Health and Safety, Wilson Adolfo Caguach, Injured Worker

Violations: Sex Discrimination/Sexual Harassment on the Job
Nilda Rucal, Victim of Sexual Harassment

Summary: ICE Raid Impact on Labor Violations
Jerry Messer

12:20 p.m. Community Request

Sister Mary McCauley will share final words on behalf of the community. Two representatives from the community will share with the CHC members what they hope the members will take with them back to Washington. Throughout the session the requests stated by the community will be written down into a letter addressed to congressional leadership from both parties.

12:30 p.m. Wrap Up

CHC members will reflect on what they have heard and offer closing remarks. As time allows, questions may be entertained from the Press. *The meeting is scheduled to be completed by 1:00 p.m.*

Participants

Representatives from those directly affected:

- Bartolo Bustamante
- Wilson Adolfo Caguach
- Irma Hernandez
- Gilda Lopez
- Maritza Nuñez
- Joel Rucal
- Nilda Rucal
- Elida Tuchan

Congressional Hispanic Caucus (CHC) Members:

- Joe Baca, California 43rd District, CHC Chair
- Luis Gutierrez, Illinois 4th District, Chair of the CHC's Immigration Task Force
- Albio Sires, New Jersey 13th District, Chair of the CHC's Economic Development Task Force

Others traveling with CHC Members:

- Billy Ocasio, 26th Ward Chicago City Alderman
- Rev. Wilfredo De Jesus, New Life Covenant Church
- Susan Collins, Congressman Gutierrez' Office
- Lynn Tramonte, Policy Director, America's Voice

Local Committee:

- Violeta Aleman, Postville Relief Effort Administrative Intern (also worked in quality control for a company whose product was manufactured by AgriProcessors before the raid)
- Lori Eastwood, Postville Relief Effort Volunteer Coordinator
- Father Richard Gall, St. Bridget's Sacramental Priest
- Luz Maria Hernandez, Spanish Professor, Luther College
- Sister Mary McCauley, St. Bridget's Parish Administrator
- Father Paul Ouderkirk, Retired Pastor of St. Bridget's
- Paul Rael, Director for St. Bridget's Hispanic Ministry
- David Vasquez, Campus Pastor, Luther College

Others:

- Jerry Messer, UFCW Local 431, Davenport, Iowa and other Union Representatives and other UFCW representatives
- Sonia Parras, lead attorney, Benzoni Law Office, PLC
- Robert Penrod, Postville Mayor
- John Schlee, Custodian at St. Bridget's
- Chad Wahls, Postville Elementary Middle School Principal
- Press: Univision, Associated Press, Des Moines Register, BBC
- Advocacy Groups

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Written Statement
For a Hearing on

Immigration Raids: Postville and Beyond

Submitted to the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

July 24, 2008

ACLU Washington Legislative Office
Caroline Fredrickson, Director
Joanne Lin, Legislative Counsel

ACLU Immigrants' Rights Project
Mónica M. Ramírez, Staff Attorney
Lucas Guttentag, Director

I. Introduction

The American Civil Liberties Union (ACLU) commends the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law for conducting a hearing on July 24, 2008 regarding the Postville, Iowa immigration raid and criminal prosecutions. Many important facts and questions emerged from the oral and written testimony at the hearing. However, many disturbing aspects of this raid have not been fully addressed and many inconsistencies and critical questions remain unanswered.

The ACLU is a nationwide, non-partisan organization of more than 500,000 members dedicated to enforcing the fundamental rights of the Constitution and laws of the United States. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy and public education to enforce and protect the constitutional and civil rights of immigrants, including the rights of immigrant workers during immigration raids and in other contexts. The IRP is actively engaged in assessing the policies, practices and procedures related to the Postville raid and its aftermath; investigating its planning and implementation; and analyzing its consistency with constitutional values and principles.

The ACLU submits this statement to express its grave concern about the numerous unresolved questions regarding the planning, implementation and execution of the Postville raid and the subsequent criminal prosecutions of more than 300 immigrant workers. The instant statement does not attempt to assess every aspect of the raid. Rather, it is a preliminary statement that addresses some of the key facts and unanswered questions that we strongly believe warrant further investigation by this Subcommittee and others. In particular, we address key factors that by design or effect were used in combination to compromise, if not negate, meaningful legal representation, voluntary and knowledgeable waivers of rights and public confidence in a fair prosecutorial and judicial process. These factors include (1) appointment of too few defense counsel to represent multiple defendants; (2) the use of "exploding" seven-day plea offers; and (3) conditioning pleas upon defendants accepting stipulated judicial orders of deportation that compel waiver of all rights and protections under the immigration laws.

II. Background

On May 12, 2008, U.S. Immigration and Customs Enforcement (ICE) conducted the largest single-site immigration raid in U.S. history at Agriprocessors, Inc., a kosher meatpacking plant in Postville, Iowa and the largest employer in northeast Iowa.[1] While the size of the raid alone is significant, the critical and novel element that sets Postville apart from prior ICE raids was the pre-planned and massive *criminal* prosecution of immigrant workers for allegedly using false documents to work. The prosecutions, designed and implemented to achieve high-pressure, mass processing of hundreds of indigent defendants in an extremely short period of time, raise profound and unanswered questions about the proper use and possible manipulation of the criminal justice system. The fairness, transparency, origins and impact of this plan remain in question.

[1]Department of Justice and ICE Joint Press Release. "ICE and DOJ Joint Enforcement Action at Iowa Meatpacking Plant." May 12, 2008. http://www.ice.gov/pi/news/newsreleases/articles/080512cedarrapids.html.

ICE initially arrested 389 workers, the overwhelming majority of whom were Guatemalan nationals, for "administrative immigration violations."[2] However, it is evident from subsequent events that the government intended from the outset to bring criminal charges against most or all of the arrested workers. Three days after the raid, on May 15, 2008, the U.S. Attorney's Office in the Northern District of Iowa charged 306 of the arrested workers criminally for allegedly using false documents in relation to their employment.[3] Within seven days, 300 of the workers had pled guilty principally to knowingly using false Social Security numbers in violation of 42 U.S.C. § 408(a)(7)(B) or other false employment documents in violation of 18 U.S.C. § 1546(a).[4] Every defendant was immediately sentenced – the majority to five months in federal prison and three years of supervised release.[5] Within ten days of the raid, more than ten percent of Postville's population was convicted based on pleas that had been obtained under an unprecedented combination of practices, policies and circumstances promulgated by the U.S. Departments of Justice and Homeland Security.[6]

III. Unresolved Issues and Areas of Further Inquiry

The Postville raid processed hundreds of immigrant workers through the immigration and criminal justice systems with unprecedented speed and under unprecedented conditions. It has been widely recounted in news reports and firsthand accounts—such as the interpreter's essay of Mr. Erik Camayd-Freixas—that the expedited process used to obtain guilty pleas from the defendants raises profound concerns and questions about the compromise of their due process and other constitutional rights.[7]

A. Appointment of Too Few Defense Counsel to Represent Multiple Defendants

One critical element of the Postville criminal prosecutions was the pre-determined decision to appoint a single criminal defense lawyer to represent large numbers of defendants. Only 18 criminal defense attorneys were appointed by the federal court to represent hundreds of defendants; every attorney represented 17 defendants on average.[8] It is unclear how the court

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[2] *Id.*

[3] DOJ Press Release. "Over 300 Criminal Arrests In Postville ICE Operation." May 15, 2008. http://www.usdoj.gov/usao/ian/press/May_08/5_15?08_Agriprocessors.html.

[4] U.S. Attorney's Office Northern District of Iowa Press Release. "300 Now Convicted and Sentenced Following May Arrests in Postville." June 10, 2008. http://www.usdoj.gov/usao/ian/press/June_08/6_10?08_Postville.html.

[5] *Id.*

[6] Hsu, Spencer. "Immigration Raid Jars a Small Town" Washington Post. 5/18/08. Pg. A01. http://www.washingtonpost.com/wp-dyn/content/article/2008/05/17/AR2008051702474.html.

[7] Camayd-Freixas, Erik. "Interpreting after the Largest ICE Raid in US History: A Personal Account." 6/13/08. http://graphics8.nytimes.com/images/2008/07/14/opinion/14ed-camayd.pdf.

[8] Chishti, Muzaffar. "Iowa Raid Raises Questions about Stepped-Up Immigration Enforcement," Migration Policy Institute. 6/16/08. Pg1. http://www.migrationinformation.org/USFocus/display.cfm?ID=686. Attorneys who represented the arrested workers were provided a pre-packaged "manual" at a meeting at the federal courthouse in Cedar Rapids in anticipation of the mass criminal prosecutions following the raid. It contained scripts for plea and sentencing hearings as well as documents providing for guilty pleas and waivers of rights. *See* July 24, 2008 Letter of Rockne Cole to Representative Zoe Lofgren. According to the Federal Courts' June 2008 Newsletter, *Third Branch*, the district court assembled checklists and forms related to initial appearances, status conferences, pleas and sentences prior to the raid. The Third Branch, "Largest Ever Criminal Worksite Enforcement Operation Stretches Court," Vol. 40 No. 6, June 2008. Pg 1. http://www.uscourts.gov/tbf/2008-06/article01.cfm.

decided to appoint that number, how the defendants-to-attorney ratio was determined and how the defense lawyers were selected or identified for appointment.[9]

No explanation has been offered as to why an insufficient number of defense attorneys were appointed to provide individualized representation in light of the court's recognized knowledge of the anticipated mass prosecutions in advance of the raid.[10] Individualized representation was especially critical given that the anticipated proceedings would involve complex questions of immigration law and where language, cultural and other barriers would likely impede communication between the client and counsel. The appointment of 26 Spanish-language interpreters to work with defense attorneys did not obviate the need for more defense attorneys.[11] Because most of the defendants were Guatemalan nationals of Mayan descent for whom Spanish was a second language, Spanish-language interpretation of legal concepts and other matters related to the defendants' prosecutions was likely inadequate. The need for more attorneys and necessary interpreters cannot be overstated and should be further investigated, particularly in light of the pre-planned "exploding" plea offers and expedited proceedings more generally.

B. "Exploding" Plea Offers and Waiver of Rights

The problems associated with appointing a minimal number of defense counsel to represent numerous defendants were exacerbated by the U.S. Attorney's Office plea bargaining tactics. As has been widely reported, the U.S. Attorney's Office offered seven-day "exploding" plea agreements to all defendants. Under this practice, each defendant was compelled to decide whether to accept the offer within seven days. Under the standard plea offer, defendants in the majority of cases were required to decide whether to plead guilty to knowingly using a false Social Security number under 42 U.S.C. § 408(a)(7)(B) or knowingly using a false employment document under 18 U.S.C. § 1546(a), with a possible sentence of probation or five months incarceration, or be charged with "aggravated identify theft" under 18 U.S.C. § 1028(A)(a)(1) and face a mandatory minimum sentence of two years in prison. Under the circumstances of Postville, with multiple defendants represented by a single lawyer, complex immigration issues, and significant language, educational and cultural barriers, the extreme time limit made adequate legal defense, investigation and counseling almost impossible. Within days, defendants routinely waived all of their rights—including their right to indictment, to court reporters, to review the pre-sentence investigation report, and to appeal their convictions and sentences—and pled guilty, the vast majority with a judicial order of deportation, pursuant to Section 238(c)(5) of the Immigration and Nationality Act (INA), that makes *any* further immigration relief impossible. It

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[9] Ms. Deborah R. Rhodes, Senior Associate Deputy Attorney General, suggested in her oral testimony before this Subcommittee that Chief Judge Linda R. Reade of the U.S. District Court for the Northern District of Iowa may have made this decision, but this is still unclear. Deborah Rhodes before this Subcommittee at July 24, 2008 hearing entitled "Immigration Raids: Postville and Beyond." http://www.cq.com/login.do;jsessionid=4EBCF0615AB3C272F67CE390F33025DB.manono?jumpto=http%3A%2F%2Fwww.cq.com%2Fdisplay.do%3Fdockey%3D%2Fcqonline%2Fprod%2Fdat...trnl%40committees%26pub%3Dcongressionaltranscripts%26print%3Dtrue.

[10] The Third Branch, "Largest Ever Criminal Worksite Enforcement Operation Stretches Court," Vol. 40 No. 6/6/08. http://www.uscourts.gov/ttb/2008-06/article01.cfm.

[11] *See* Camayd-Freixas, Erik. "Written Statement for July 24, 2008 House Judiciary Committee Hearing on Immigration Raids." Pg 2. http://judiciary.house.gov/hearings/pdf/Camayd-Freixas080724.pdf.

is still unclear whether and how the defendants were capable of making informed decisions about their rights and eligibility under these conditions.

Ms. Deborah Rhodes, Senior Associate Deputy Attorney General, testified at the House Immigration Subcommittee hearing on July 24, 2008 that "through interviews, documents, and use of informants, ICE developed information indicating that the vast majority of Agriprocessors workers were illegal immigrants," and "further, that over 70 percent were using fraudulent Social Security documents with stolen or fictitious identities."[12] Yet, as Representative Lofgren pointed out during the hearing, paragraph 85 of the government's affidavit supporting the criminal search warrant refutes that assertion.[13] The affidavit states that 78.6% of the Social Security numbers inputted into the Accurint database "either did not appear to be associated with the person assigned to that social security number or the number did not reveal any person associated with that number." Moreover, paragraph 86 of the affidavit provides that only one person assigned one of the Social Security numbers being used by an Agriprocessors employee reported his or her identity as being stolen. In short, it is far from clear whether the reportedly false numbers associated with individual defendants actually relate to a different person or may be fictitious numbers. With regard to the criminal process more generally, it is noteworthy and troubling that a press release, which is no longer available on the internet, issued by the court on the day of the raid characterized the workers as "numerous illegal aliens" before criminal charges had been adjudicated.[14]

Under the compressed seven-day ticking clock, it was nearly impossible for defense counsel to assess each case individually. Ms. Rhodes's testimony described how defendants charged with the same offense and offered the same plea agreement were arranged in groups of ten and represented by the same attorney. This mechanism was designed to allow the attorney to explain common information to a group of similarly situated clients. According to Ms. Rhodes, the attorneys were "free to meet with clients individually."[15] However, under the compressed seven-day time period, the process appears to have been designed to be a "mass" process, whereby each individual defendant's defenses and equities could not have been fully explored under the circumstances. The plea hearings themselves also reveal the cursory nature of the process and cast serious doubt on whether all defendants voluntarily and knowingly entered into their plea agreements. Based on the court hearing minutes, it appears that most of the plea hearings, which involved the use of an interpreter for each defendant, lasted approximately one hour in total. The sentencing hearings, which were conducted immediately after the plea hearings, were usually completed in a shorter timeframe. Among other reasons for the speedy hearings, defendants were obliged to waive their right to review the pre-sentence investigation reports as part of the plea agreement and, therefore, sacrificed their opportunity to contest the

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[12] Rhodes, Deborah. Written Statement for July 24, 2008 House Judiciary Committee Hearing on Immigration Raids http://judiciary.house.gov/hearings/pdf/Rhodes080724.pdf.

[13] *See* Application and Affidavit for Search Warrant, *In the Matter of the Search of Agriprocessors, Inc.*, No. 08-mj-00110-JSS (N.D. Iowa, signed May 9, 2008); Search Warrant and Affidavit available on the federal court password-required electronic website (PACER) or at the following: http://www.gazetteonline. com/apps/ pbcs.dll/article?AID=/20080513/ NEWS/515835882/ 1006/news.

[14] Leopold, David. "Written Statement for July 24, 2008 House Judiciary Committee Hearing on Immigration Raids." http://judiciary.house.gov/hearings/pdf/Leopold080724.pdf.

[15] Rhodes, Deborah. "Written Statement for July 24, 2008 House Judiciary Committee Hearing on Immigration Raids." Pg. 6. http://judiciary.house.gov/hearings/pdf/Rhodes080724.pdf.

sentences recommended by the government and routinely approved by the court. The plea agreement also required each defendant to waive his or her right to a court reporter at any of the hearings.

C. Judicial Orders of Deportation as Part of Plea Agreement

In addition to the criminal prosecutions themselves, the formulaic guilty pleas demanded by prosecutors almost universally required defendants to accept mandatory stipulated judicial orders of deportation under Section 238(c)(5) of the INA, codified at 8 U.S.C. § 1228(c)(5). These orders barred any further consideration of defendants' immigration status or claims. Section 238(c)(5), which to the best of our knowledge has never been used in mass criminal prosecutions and in fact has rarely been invoked in ordinary criminal cases, was aggressively deployed against the Postville defendants.

Section 238(c)(5) requires that the U.S. Attorney seek the concurrence of the Department of Homeland Security before making a plea agreement which waives the right to notice and hearing before an immigration judge prior to removal from the United States and stipulates to the entry of a judicial order of deportation as part of the plea agreement or as a condition of probation and/or supervised release. Such a plea must comply with Rule 11 of the Federal Rules of Criminal Procedure and, therefore, must be made voluntarily and knowingly and must be supported by a factual basis. As explained in Mr. David Wolfe Leopold's written testimony to this Subcommittee, by its terms, stipulated removal orders of deportation are limited to removal orders against aliens who are "deportable" from the United States because of a criminal conviction. *See* 8 U.S.C. § 1228(c)(5).

Of critical significance, the use of Section 238(c)(5) requires a careful and comprehensive inquiry into an individual's immigration status and possible claims under the INA. Former Attorney General Janet Reno provided specific guidance on how 238(c)(5) should be applied. In a 1995 memorandum, the Attorney General admonished that "prior to engaging in plea negotiations with an alien defendant, prosecutors should contact the designated INS [now DHS] contact for an assessment of the defendant's alienage, deportability, and the possibility he will claim relief from deportation."[16]

For defense counsel to determine if their clients had any colorable claims to immigration relief, expertise in immigration law, a sufficient amount of time and the ability to engage in careful communication with each client were clear prerequisites. That was rendered virtually impossible in Postville by the arbitrary plea deadlines imposed by prosecutors; the federal court's appointment of many defendants to a single defense counsel; the lack of experience and expertise by many counsel with the complexities of immigration law; and the language, cultural and other barriers impeding communication between the client and counsel. Moreover, the plea deadlines made it impossible for defense counsel to verify that the U.S. Attorney's Office had met all of the 238(c)(5) procedural and substantive requirements, including determining whether each defendant was "deportable" and ineligible for immigration relief. This is particularly troublesome in light of the fact that the vast majority of defendants were Guatemalans, who may

[16] Reno, Janet. "Memorandum to All Federal Prosecutors: Deportation of Criminal Aliens." April 28, 1995. http://www.usdoj.gov/ag/readingroom/deportation95.htm.

have had bona fide claims for asylum or potential relief under the Convention Against Torture that should have been carefully examined.

Other potential forms of immigration relief may have also been available to some defendants. The U visa, for example, is available to non-citizens who have suffered substantial physical or mental abuse resulting from criminal activity and are likely to be helpful with the investigation or prosecution of the crime.[17] According to Ms. Rhodes's testimony before this Subcommittee, the criminal investigation of Agriprocessors, Inc. is still pending and the cooperation of the non-citizens workers is required pursuant to the plea agreement.[18] In addition, the ICE affidavit supporting the criminal search warrant executed at Agriprocessors, Inc. on May 12, 2008 contains many examples of labor and other workplace violations at the Agriprocessors plant.[19] The affidavit, for example, states that undocumented workers from Guatemala and Mexico were paid below the minimum wage; that supervisors made a side business of selling workers used vehicles, sometimes threatening them with loss of employment if they did not purchase one; and that in at least one instance a supervisor duct-taped the eyes of an employee who was then hit with a meat hook.[20] Earlier in the year and prior to the raid, the Des Moines office of the U.S. Department of Labor's Wage and Hours Division had launched an investigation of the Agriprocessors plant in connection with possible violations of federal labor law.[21] Thus, based on these facts, the arrested workers may have been eligible for other forms of immigration relief.

Notwithstanding the use of stipulated judicial orders of deportation as a standard term of the uniform plea agreement, immigration lawyers were reportedly not afforded the opportunity to meet with defendants. Ms. Rhodes's testimony that immigration lawyers were given access to detainees even during the booking process, and that there were joint meetings held between criminal and immigration lawyers, has been rebutted by immigration and criminal defense lawyers who were actually present during the processing.[22]

Finally, the Reno memorandum states that "[a]t least 30 days prior to the date set for sentencing, a document charging alienage and identifying the crime that causes the alien to be

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[17] INA § 101(a)(15)(U); 8 U.S.C. § 1101 (a)(15)(U).

[18] Deborah Rhodes before this Subcommittee at July 24, 2008 hearing entitled "Immigration Raids: Postville and Beyond."
http://www.cq.com/login.do;jsessionid=4EBCF0615AB3C272F67CE390F33025DB.manono?jumpto=http%3A%2F%2Fwww.cq.com%2Fdisplay.do%3Fdockey%3D%2Fcqonline%2Fprod%2Fdat...tml%40committees%26pub%3Dcongressionaltranscripts%26print%3Dtrue

[19] *See* Application and Affidavit for Search Warrant, *In the Matter of the Search of Agriprocessors, Inc.*, No. 08-mj-00110-JSS (N.D. Iowa, signed May 9, 2008); Search Warrant and Affidavit available on the federal court password-required electronic website (PACER) or at the following: http://www.gazetteonline. com/apps/ pbcs.dll/article?AID=/20080513/ NEWS/515835882/ 1006/news.

[20] *Id.*

[21] Representative Bruce Braley (D-IA) before this Subcommittee at July 24, 2008 hearing entitled "Immigration Raids: Postville and Beyond."
http://www.cq.com/login.do;jsessionid=4EBCF0615AB3C272F67CE390F33025DB.manono?jumpto=http%3A%2F%2Fwww.cq.com%2Fdisplay.do%3Fdockey%3D%2Fcqonline%2Fprod%2Fdat...tml%40committees%26pub%3Dcongressionaltranscripts%26print%3Dtrue.

[22] *See* Leopold, David. "Written Statement for July 24, 2008 House Judiciary Committee Hearing on Immigration Raids." http://judiciary.house.gov/hearings/pdf/Leopold080724.pdf.

deportable under 8 U.S.C. § 1251(a)(2)(A) [now 8 U.S.C. § 1227(a)(2)(A)] must be filed."[23] Compliance with this provision appears impossible given the compressed time frame under which the Postville guilty pleas were obtained. Among the issues that warrant further investigation are whether authorities complied with the Reno memorandum and whether the Department of Justice or the Attorney General has issued any subsequent guidance with regard to 238(c)(5) orders.

IV. Conclusion

The Postville raid and mass prosecutions raise many troubling questions that compel further investigation by this Subcommittee and others. The ACLU commends the Subcommittee for conducting a hearing and urges it to continue this inquiry into the planning and execution of this operation by the Department of Justice, the Department of Homeland Security and the federal district court, as well as into the subsequent actions of DOJ and DHS with regard to the workers who were arrested.

[23] Reno, Janet. "Memorandum to All Federal Prosecutors: Deportation of Criminal Aliens." April 28, 1995. http://www.usdoj.gov/ag/readingroom/deportation95.htm.

The Implications of Immigration Enforcement on America's Children

Submitted to:

U.S. House of Representatives Committee on Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Hearing on the Arrest, Prosecution, and Conviction of Undocumented Workers in Postville, Iowa on May 12-22, 2008

Submitted by:

National Council of La Raza

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August 1, 2008

I. Introduction

On behalf of the National Council of La Raza (NCLR), we are pleased to submit testimony for the record on the impact of our current immigration enforcement strategies on America's children. NCLR—the largest national Hispanic civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations, NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. Established in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC.

NCLR has a long history in the immigration debate; our work on this issue is focused on ensuring that we have an immigration system that functions in the best interest of the nation. Immigration to the United States should be orderly and legal, promote economic growth, sustain our families, and be implemented in a way consistent with our best values in the United States. As you know, the country is far from achieving that goal. My organization, our Affiliates, and our many coalition partners are dedicated to an effort to reform U.S. immigration laws in a way that promotes order, fairness, and, above all, legality. Until a major immigration reform is enacted, the country will continue to cope with challenges resulting from the presence of roughly 12 million undocumented immigrants in our workforce and communities.

There is substantial, growing evidence that the use of workplace raids as an immigration enforcement strategy is causing great harm to children, schools, child care centers, and communities well beyond the immigrant population. The raid that took place in Postville, Iowa on May 12, 2008 was no exception. As the largest worksite raid in U.S. history, it caused a great strain on the small town of Postville, evidenced by how affected families relied heavily on schools, churches, and other local institutions in the aftermath of the raid. Many of the young children were left in the care of these institutions as they waited to hear from their loved ones. While NCLR believes that the United States can and should enforce its immigration laws, all Americans should be assured that they are enforced wisely and well. It is clear that our policies are not doing enough to protect our nation's children. Enforcement actions, such as the Postville raid, create chaos and disruption that are detrimental to the lives and well-being of the very children that, as a nation, we seek to protect.

We commend the work of this committee on pursuing rational and reasonable immigration enforcement policies, including policies that uphold our nation's values and do not undermine other important goals, such as the protection and well-being of children.

II. Consequences of Immigration Enforcement for Children

A. Report on the Impact of Workplace Raids

The impact of immigration enforcement raids on children is often disregarded and poorly understood. For these reasons, NCLR commissioned the Urban Institute to conduct a study of three communities in which large-scale worksite raids occurred in 2007. NCLR released this report, *Paying the Price: The Impact of Immigration Raids on America's Children*, in October 2007 (see Attachment 1). The findings confirmed the inevitable hardship that children faced

following an immigration raid. There are approximately five million children in the U.S. with an undocumented immigrant parent, the vast majority of whom are U.S. citizens and under the age of ten. The Urban Institute researchers found that for every two immigrants detained as a result of worksite raids, approximately one child is left behind. Furthermore, the study shed light on the fact that many children slipped through the cracks as a direct result of the Immigration and Customs Enforcement's (ICE) enforcement protocols. For example, ICE did not provide detained immigrants with access to telephones. This means that parents were unable to notify family members and coordinate alternative child care arrangements, forcing some children to stay with landlords or babysitters indefinitely or, even worse, stay home alone. ICE also failed to consider hardships to children when making custody determinations. Some children experienced the loss of both parents through their parents' detention both locally or out of state, making it virtually impossible for these children to visit them.

There were also accounts of ICE detaining nursing mothers, resulting in infants being forcibly weaned from breast milk. In a 2006 raid in New Bedford, Massachusetts, an eight-month-old infant was taken to the emergency room to be treated for dehydration after her mother was detained. The infant's pediatrician appealed to ICE officials to release the child's mother, citing medical reasons for which the child needed to continue breastfeeding. NCLR and our sister organizations in the Latino community wrote to the Department of Homeland Security after this incident to raise concerns; we received a response stating that the incident never occurred, despite extensive evidence, including video footage of the child and interviews with the emergency room physician who treated her.

In addition, the report found evidence of increased economic hardship, social stigma, fear, isolation, family separation, disruptions in schooling, and negative emotional and mental health consequences for children. Throughout the three communities examined in the report, teachers, caregivers, and mental health professionals consistently described children with symptoms of depression and other detrimental psychological conditions such as sleep disturbance, loss of appetite, fearfulness, mood swings, and feelings of abandonment by their parent(s).

Beyond the negative consequences to children's well-being resulting from worksite raids, the report provides evidence that our nation's social institutions such as school and child welfare agencies, which are tasked with protecting and nurturing children, are overburdened by playing the role of first responder in the aftermath of a raid. For example, school officials interviewed for our report discussed steps they took on the day of the raid to ensure the well-being of children, such as instructing bus drivers to release children only at homes in which there was an adult present, asking teachers to stay late to help care for children, and coordinating mental health services. In the days following the raid, school personnel visited homes and attended community gatherings, reminding parents that schools were a safe place for children and urging their return to school. A school leader in Grand Island, Nebraska made a poignant statement regarding how the raid served as a diversion from the school's primary mission of ensuring that no child is left behind.

Today, nearly every time there is a significant immigration enforcement operation, NCLR receives reports from the community similar to those noted above. There is a similar pattern with each raid: school systems and child care centers must scramble to find relatives or

caregivers for children whose parents have abruptly disappeared. These institutions, along with community-based organizations, must grapple for days or weeks with an emergency situation in which families struggle to find the locations of detainees, who are often unable to access legal services. Even since the implementation of ICE guidelines in response to these many problems, there are always cases of children left behind and nearly always cases of nursing mothers separated from their infants for long periods. Moreover, school systems and child care centers report enormous long-term challenges in meeting the needs of children whose families have been forcibly and suddenly separated in this way.

B. Impact of the May 12, 2008 Raid in Postville, Iowa

The workplace raid that took place on May 12, 2008 in Postville, Iowa provides further evidence that despite ICE's efforts to ameliorate some of the impact of enforcement actions on children, the negative effects of workplace raids on American children, school systems, and social service infrastructure can be catastrophic.

To begin, it is important for the members of the Committee to have a clear picture of what happened to children during and in the immediate aftermath of the raid in Postville. As federal agents in trucks and helicopters descended on the Agriprocessors plant in Postville, an uproar occurred in local schools, from which the helicopters were clearly visible. Students with immigrant parents were immediately affected, as were teachers and administrators. The situation for children in school was documented eloquently in the *Des Moines Register* by a teacher (see Appendix 1).

Almost immediately, as the raid was taking place, the local Catholic parish, St. Bridget's, became a focal point for community activity. NCLR spoke with individuals at the church who described the scene as chaotic. About 150 children (most of whom are U.S. citizens) spent the night there, and the church provided food to more than 400 children throughout the first 24 hours following the raid while they also scrambled to match up every child with a relative. The burden of ensuring that children are accounted for fell squarely on the shoulders of the church, school, and community. In the days following the raid, many families continued to seek sanctuary in the church and school officials began coordinating transportation from the church to school in order to ensure that children returned to the classroom. Church and school officials report that access to counselors and mental health professionals for children emerged as one of many pressing, unmet needs in the days following the raid. Today, the staff at St. Bridget's continues to assume responsibility for feeding hundreds of children whose parents are unable to work and provide for themselves or their families. Close to 50 of these families consist of single caregivers who are monitored by ICE via an ankle bracelet. These families are almost entirely dependent on the church for their survival as they await the outcome of an often lengthy legal process.

Finally, NCLR is concerned that the raid itself appears to have undermined an investigation into the use of child labor at the Agriprocessors plant in Postville. At the time this raid occurred, there was substantial reason to believe that the employer in this case was likely violating a number of laws in the treatment of his employees, including employing children by allegedly recruiting some of them from the local middle school. In the weeks following the raid, it has been made clear that labor authorities were aware of the labor law violations, including laws

prohibiting child labor, in advance of the raid and were conducting an investigation. In fact, the United Food and Commercial Workers Union wrote to ICE to request that an immigration enforcement action not take place, citing fears that it would undercut the enforcement of labor laws intended to protect all of the workers at the plant.[1] ICE appears to have disregarded this evidence, citing coordination with a labor official not specifically involved in the investigation. As many as a dozen child workers—one as young as 13—who were evidently poised to provide information that would assist in the investigation of labor law violations were instead detained for several days by ICE authorities. While it may be the case that some of these workers, including children, are now cooperating with the labor investigation of Agriprocessors, this is clearly not the example for how to handle similar situations in the future; the actions of one federal agency enforcing one set of laws should never undercut the enforcement of another important set of laws designed to protect all workers, especially children.

III. Continuing Impact: Enforcement at Migrant Head Start Centers and Schools and Concerns about 287(g) Agreements

A. Particular Concerns at Migrant Head Start Centers

Beyond worksite raids, there is growing alarm in the immigrant community about ICE's engagement in intimidation and enforcement tactics near public schools and Head Start programs. For example, NCLR has several Affiliates who operate Head Start programs that serve the children of migrant farmworkers. Last spring, many of these programs began reporting the following incidents (see Appendix 2):

- ICE agents parked near migrant Head Start centers during drop-off and pickup times.
- ICE agents and local law enforcement followed school buses carrying children under the age of five, beginning as early as 4:00 a.m. In some instances, ICE followed school buses for the entire route, as long as two hours.
- ICE agents and local law enforcement followed migrant Head Start staff to and from the center during lunch breaks.

These actions on the part of ICE are having a chilling effect on the participation of migrant children in Head Start. Quite simply, the presence of ICE near Head Start centers is causing fearful parents to keep their children away from the program. In fact, the low rates of attendance registered by these programs have even garnered the attention of the U.S. Department of Health and Human Services, Office of Head Start, which monitors Head Start enrollment and sanctions programs for failing to meet their enrollment targets. During the reauthorization of the Head Start Act, NCLR worked closely with the U.S. House Education and Labor Committee to ensure that migrant children benefit from greater access to Head Start. We were proud of that committee's bipartisan work to prioritize the expansion of migrant Head Start and its commitment to ensuring that migrant children exit the fields and enter classrooms where they can learn and grow. It is deplorable that the laudable goals of that committee have been virtually undone by the current immigration enforcement strategy of this Administration.

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[1] See coverage from WHO TV, Des Moines: http://www.whotv.com/global/story.asp?s=8332288.

We are also aware of instances in which ICE has actually entered private homes and school buildings to remove children. For example, in October 2007, a Honduran immigrant mother, who was in her Ohio home breastfeeding her nine-month-old infant when ICE agents entered her home, was taken into custody while ICE agents went to her children's school to remove her other children.[2]

In another account, an NCLR Affiliate, HELP - New Mexico, Inc., contacted NCLR in September 2007 to report that ICE agents and local police entered their preschool program, located inside the Sunrise Elementary School in Chaparral, New Mexico, to remove children whose parents had been detained in a local sweep of Hispanic businesses and homes.[3] One child, Virginia Ana Rodriguez, was released to her father, who was in the custody of four fully armed Otero County police officers at the time. The officers initially brought the father into the main office of Sunrise Elementary until the principal asked them to accompany her into the conference room so as not to alarm other students and staff. These same agents also entered the local middle and high schools to remove children of detained immigrants.

In the immediate weeks following this incident, school officials at the Gadsden School District documented that approximately 200 students were absent and a small number returned to school during the remainder of the school year. The HELP - New Mexico preschool program also registered lower rates of enrollment in the ensuing weeks and has yet to fully reach enrollment targets consistent with previous school years. A preschool teacher reports the challenges they now face in enrolling children in the program because parents remain afraid of the possibility that ICE agents will return to the center. Clearly, ICE's current approach toward immigration enforcement is instilling fear among our nation's children and families and undermining our important social policy goals for children and the programs designed to meet these goals.

B. Concerns about the Impact of Local Law Enforcement Agreements (287(g))

In recent months, NCLR has grown increasingly concerned about ICE Memorandums of Understanding with local law enforcement agencies, known as 287(g) agreements, which are having a deleterious effect on children. For example, on October 29, 2007, four-year-old Mike Anthony and his mother were walking to a McDonald's in Woodbridge, Virginia when local law enforcement stopped them and arrested his mother in front of him. As the agents apprehended her, Mike Anthony's mother was ordered by the police to call someone to pick the child up from the scene. For close to eight months, Mike Anthony was cared for by a nonrelative who did not have the means to arrange for the child's travel to Honduras to reunite with his mother. If not for the intervention of a local bilingual newspaper, which covered the story and helped raise funds to purchase a plane ticket to Honduras for Mike Anthony, this child would have likely ended up in the foster care system.

In another, more recent case, a woman who was detained in the middle of the night off of interstate 85 in North Carolina was forced to leave her three children on the side of road in the custody of a man she barely knew. The officer asked the eldest child, age 14, to translate for her handcuffed mother to determine whether or not the mother approved of leaving her children with

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[2] See http://www.nytimes.com/2007/11/17/us/17citizen.html?fta=y.
[3] For more information, see http://www.aclu-nm.org.

a man to whom she was simply giving a ride home after a church function. Immediately after police left with the detained mother, the acquaintance abandoned the children. These scared, exhausted, hungry, and distraught children remained on the side of the road for more than eight hours until a relative arrived from Maryland to pick them up.[4]

While many local law enforcement agencies admit that there are no set procedures for handling cases in which children are involved, these instances are becoming more common as the number of 287(g) agreements increase.

IV. Limitations of ICE Policies for the Protection of Children

Many of the problems that are documented in the NCLR/Urban Institute report have also been the subject of media attention, litigation, and congressional inquiries. As a result of this pressure, during 2007, ICE developed and released three policy memoranda that consider children in the conduct of immigration enforcement actions. While these memoranda represent an improvement in ICE sensitivity to these important considerations, experience with immigration raids since the development of these policies suggests that they have significant limitations. The scope and the limitations of these guidelines are as follows:

(1) Guidelines for Identifying Humanitarian Concerns among Administrative Arrestees for Worksite Enforcement Actions, November 16, 2007. Following the New Bedford, Massachusetts raid in March 2007, Senators Edward Kennedy (D–MA) and John Kerry (D–MA) and Congressman William Delahunt (D–MA) worked with ICE to develop guidelines for quickly identifying persons arrested who are sole caregivers or who should be released from custody for other humanitarian reasons. The guidelines apply to larger worksite raids that result in the arrest and/or detention of more than 150 immigrants. The guidelines stipulate that ICE will:

- Develop a comprehensive plan for quickly identifying humanitarian issues among detainees
- Coordinate with federal health and/or state and local social services, including allowing these entities to serve as intermediaries to help screen and assess humanitarian issues among detainees
- Facilitate communication among detainees and their family members by providing access to telephones. ICE is also expected to coordinate with nongovernmental agencies and make information on detainees and ICE personnel available to these entities in real time so that they can help to screen for humanitarian concerns.

(2) Memorandum Outlining Prosecutorial Discretion for Nursing Mothers, November 7, 2007. In response to mounting accounts of infants forcibly weaned from breast milk as a result of enforcement actions, ICE released guidelines highlighting the importance of discretion when making arrests and custody determinations of nursing mothers. These guidelines call for the following:

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[4] Kristin Collins, "Mom arrested, kids left on I-85," *The News & Observer*, July 23, 2008, http://www.newsobserver.com/news/crime_safety/story/1150866.html (accessed July 28, 2008).

- Nursing mothers should be released on an Order of Recognizance or Order of Supervision, and the Alternative to Detention programs should be considered as an additional enforcement tool.
- In situations where ICE determines that nursing mothers should remain in custody, field personnel should consider placement in the Berks Family Shelter Care Facility or Hutto Family Detention Center.

(3) Memorandum Regarding Juveniles Encountered During Fugitive Operations, August 24, 2007. In March 2006, ICE agents raided a home in San Rafael, California and apprehended Kebin Reyes, a six-year-old U.S. citizen. ICE agents kept Kebin in detention for ten hours alongside his father, who repeatedly pleaded for access to a telephone to make alternative care arrangements for Kebin. The American Civil Liberties Union (ACLU) filed a lawsuit that led to the development of a memorandum concerning the treatment of minor children encountered during enforcement actions.[5] The memo stipulates the following:

- ICE should not take into custody a legal permanent resident or U.S. citizen minor child.
- ICE should coordinate the transfer of a minor child to the nearest child welfare authority or local law enforcement agency. If these options are not feasible, ICE should document the parent's request for the transfer of the child to a third party.
- To the greatest extent possible, ICE should coordinate with child welfare authorities prior to an enforcement operation.

In general, ICE appears to have made attempts to adjust its enforcement policies to consider humanitarian issues, including hardships to children. There is even some evidence to suggest that ICE has adhered to its stated objective of promptly releasing nursing mothers. For example, recent large raids in Van Nuys, California and Postville, Iowa demonstrate that ICE has released nursing mothers with electronic monitoring devices. However, there is also anecdotal evidence that the release of these mothers can be significantly delayed and the conditions of their detention, inappropriate. NCLR has learned that one nursing mother detained last week in Postville was not provided sufficient access to food during a nearly 24-hour period before she was released to care for her infant.[6]

However, the positive impact of ICE's guidance memoranda is severely limited with respect to providing any real assurances that children will be comprehensively and systematically protected in immigration enforcement activities. For example:

- The policy guidelines noted above are nonbinding, as they are not regulations and not codified.

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[5] For more information, see http://www.aclu.org/immigrants/detention/29526prs20070426.html.

[6] NCLR has spoken to Sister Kathy Thill of the Sisters of Mercy of Waterloo, Iowa. She recounted that her community was contacted in the middle of the night on the night after a raid to pick up a young mother who was being released from detention. They were called multiple times from midnight until the mother was finally released at 4:00 a.m. The young woman had a small child who she was still breastfeeding at night, and she was released because she voiced concerns for whether the child would be okay without her. While in detention, this young woman was given very little to eat and was not given access to a telephone to call her family. When she was finally picked up by Sister Kathy at 4:00 a.m., she had not eaten since 2:00 p.m. the previous day.

- There is no mechanism for holding ICE accountable for compliance with its own stated policies.
- The humanitarian guidelines for worksite raids only apply to raids of more than 150 people. Thus, it is unclear whether or not ICE will attempt to apply these guidelines in raids yielding less than 150 detainees.
- The guidelines noted above fail to address the undue burden placed on schools, early childhood centers, child welfare agencies, churches, and community-based organizations that are left to play the role of first responder in the aftermath of a raid.
- The guidelines fall short of accounting for all of the situations and scenarios in which children could potentially be harmed by enforcement action. Simply put, the guidelines do not stipulate that all children, regardless of any type or size of enforcement action, will have their best interests taken into account.
- There are no stated policies regarding how local law enforcement acting under a 287(g) agreement with ICE will take measures to protect children.
- There is no clear policy with respect to whether ICE should not conduct enforcement actions at or near schools and early childhood programs.

Unfortunately, there is substantial evidence that ICE does not consistently follow its own guidelines. For example, Immigration and Naturalization Service's (ICE's predecessor) policy guidance dating back to 1993 strongly discourages immigration enforcement actions near schools.[7] The policy states that agents are to "attempt to avoid apprehension of and to tightly control investigative operations on the premises of schools, places of worship, funerals, or other religious ceremonies." In 2004, the Bureau of Customs and Border Protection of the Department of Homeland Security reaffirmed the 1993 guidance. However, as noted above, there are mounting stories of an ICE presence near schools and Head Start centers, providing clear evidence that ICE does not uphold the guidelines and is actively conducting enforcement operations in violation of them.

In the execution of the Postville raid, ICE was subject to its humanitarian guidelines given that the raid resulted in the arrest and detention of more than 150 immigrants. One important element of the guidelines stipulates that ICE will facilitate access to free telephones. According to NCLR's contacts in Iowa, very few families were able to communicate with a detained family member. This complicates the ability of parents in detention to make alternative arrangements for their children and considerably increases the stress on nondetained family members, including children. Similarly, it adds a layer of uncertainty for school systems, child care centers, and social service agencies that are dealing with issues of finding appropriate adult supervision for children whose parents have been detained.

Finally, even if ICE were to execute all of its existing policy guidance perfectly and expand its scope to include all children who are affected by immigration raids, there would still be a profound dissonance between the goal of enforcing our nation's immigration laws and the equally important goal of protecting America's children and supporting the institutions that are charged with meeting their needs. Even if the federal government were to use great care and

[7] See three memoranda: U.S. Border Patrol, "Enforcement Activities at Schools, Places of Worship, and at Funeral or Other Religious Ceremonies." Washington, DC, May 1993, June 2001, and April 2004.

attention when removing parents from their workplaces, homes, families, and communities—which is far from the case now—our current enforcement strategy relies heavily on raids which undeniably and inevitably have an impact on American children and creates difficult challenges for schools, child care centers, and the child welfare system in meeting their needs.

V. Conclusion and Recommendations

NCLR wants to be as clear as possible that we are not calling for a halt to immigration enforcement. We recognize that the nation can and should control its borders, and that it is reasonable to conduct interior enforcement activities. But it is also true that every enforcement agency must establish priorities and parameters for its work, and it is reasonable—indeed, essential—for these parameters to include consideration of child and family health within these law enforcement goals.

It is vitally important to the well-being of America's children and all communities that the federal government engages in a conversation that results in good judgments about how to enforce our immigration laws without undercutting other important goals, such as child protection, education, and worker protection. In the Postville raid, immigration enforcement clearly trumped an important labor law investigation in a way that may have lasting implications for workers, including children, in the meatpacking industry. To place children in detention while their exploitative employer regroups and reopens within a day is a clear indication that our enforcement priorities need examination.

In Postville, as in the locations of other raids that preceded it, school systems, child care centers, and the social service infrastructure have been left with a huge challenge of meeting the needs of children whose parents literally disappeared from one day to the next. *The New York Times* has estimated that some 13,000 American children have had at least one parent removed from the country;[8] surely this merits a conversation about whether workplace raids are causing more harm than good. NCLR believes that this committee has an important role to play in such a conversation.

While NCLR is glad to see that ICE has responded to some of these concerns, there is clear evidence that our current immigration enforcement strategy is undercutting a variety of important priorities for our nation's children and the systems that protect and nurture them. It is also very clear that even ICE's carefully constructed guidance to avoid these problems will prove insufficient in addressing this larger challenge. This problem is in effect a collision between very important policy goals. NCLR does not believe that we can regulate our way out of this dilemma with guidance or other tweaks. We need to make policy choices, and all of the implications of these choices should be on the table.

In closing, we know that the members of the Committee are aware that we are in a highly charged environment on the immigration issue. The longer that our immigration system remains

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[8] Julia Preston, "Immigration Dilemma: A Mother Torn From a Baby," *The New York Times*, November 17, 2007.

broken and unaddressed by Congress, the longer that these and related problems—and the tensions surrounding immigration itself—will continue. Literally every day NCLR uncovers new evidence supporting the misguided notion that any immigration enforcement is considered good enforcement, even if it does grave damage to our American citizens and our nation's most cherished values. We have tolerated this environment for too long. The raid at Postville alone provides evidence that we need to exercise judgment in the application of our laws affecting immigrants to avoid doing harm that we will later regret, especially to our children

NCLR urges the Committee in the strongest possible terms to engage the Department of Homeland Security and the other congressional committees of jurisdiction to conduct serious assessments of the costs and benefits of these raids, particularly from the perspective of our children. NCLR believes that a thorough examination will inexorably lead to the conclusion that we need to change course in how we enforce our immigration laws.

Appendix 1

Des Moines Register, May 15, 2008
Guest column: Raid prompts questions about government actions

Kerris Dillon of Postville is a high school teacher in the Postville school district.
"Are the black helicopters going to come back and kill us, too?" Many parents and teachers did not know how to react to the questions posed by their elementary, middle and high school students. That question was posed by a kindergarten student to a grandparent. "Is our school going to still be able to run with no students?" asked a middle-school student. "Am I going to have a job after this year?" asked a teacher of another teacher.

These were some of the questions that have arisen around the school at Postville. I am a high school social-studies teacher, and within the past couple of days, my experience with local, state and national government has changed so dramatically, I doubt that the manner I speak about it will ever be the same.

About 10 a.m. Monday, I was in the middle of reviewing for a test in World History when I heard the roar of a helicopter outside the window. My students jumped out of their seats and headed toward the window. Jokes were made about Agriprocessors being attacked by the government. I went to the window and saw a black helicopter with a yellow stripe circling close to the school, but definitely around Agri. Within minutes, my student's cell phones went off, text messages came pouring in and I realized this wasn't a joke. Students read messages from their phones: "There are police cars everywhere." "The Hispanics are pouring out of Agri."
What began as a joke was quickly mass panic. Students paced back and forth. Two Hispanic girls in my classroom began talking very quickly, worried about their parents who were working at Agri. Some Hispanic youths from other classes grabbed their backpacks and headed out the door.

Some teachers who work at the end of the building were watching Immigration and Customs Enforcement agents in neighborhood backyards, hiding behind trees of rental properties.
I'm part of the ambulance crew in Postville, and we were called to a couple of scenes in Agri. The manner in which ICE agents had lined up Hispanic workers outside of Agri - like cattle and

cuffed - was inhumane. My thought was, "How do they know who is illegal and who isn't?" As a social-studies teacher, I kept asking myself, "Hasn't the federal government heard of innocent until proven guilty?" I don't want to be a part of a nation that treats its citizens like this.
I returned to school to find many students crying, scared and needing to be consoled because they did not know whether their parents had been taken. For a handful of students, both parents were taken. I'm thankful the Catholic Church was providing a place for all Hispanics to stay.

The Red Cross was the only organization that showed up to help our town. There has been no leadership on the part of the government - federal or state - to help our city. The local people are the heroes here, volunteering their time, money and energy to make sure that human beings are being cared for, especially the children.

Many of the workers began moving here in 1986. They had stable lives with housing, a solid job and many friends in the community. These are our friends and neighbors. These are my students. These are my daughter's best friends.

It is easy to discount these people if you do not know them, but I ask, when all of us die, is God going to care what the color of your skin is or whether you maintained your borders correctly?

Appendix 2: Chart outlining immigration enforcement near migrant and seasonal head start (MSHS) centers

Prepared by the National Migrant and Seasonal Head Start Association.
For more information, contact Yvette Sanchez, Executive Director, at (202) 223-9889.

DATE	LOCATION	INCIDENT
April 2008	Holley, NY	Local officers parked near a MSHS center. Local officers followed staff leaving the MSHS center.
April 2008	Immokalee, FL	MSHS staff intervened on behalf of MSHS children when parents were detained and not released, even when they presented proof of having young children to ICE officers, leaving the children without proper care.
April 2008	Bybee, TN	ICE officers parked a block from an MSHS center. Families' fear of being detained and separated from their children has forced parents to make a decision to take their children to the fields.

		Recently a couple of young parents made the decision to take their child with them. They *tied* the toddler in the pickup truck with the doors opened. The baby actually hung itself and died.
April 2008	Meter, GA	ICE officials set up road blocks that blocked access to an MSHS center.
August 2007	Winnemucca, NV	ICE officials parked near an MSHS center and followed a MSHS school bus transporting children. As a result, MSHS centers removed signage from buildings and buses.
June–October 2007	Hinton, OK	ICE officials questioned MSHS staff checking into hotels. MSHS staff were there to provide training and technical assistance to the local MSHS center.
May–November 2007	Semmes, AL	ICE officers parked outside MSHS centers. Families were so fearful that they chose not to register children for MSHS; the center did not open.
September 2007	Chaparral, NM	Sheriffs, with ICE close behind, were conducting raids of homes and businesses without warrants, finding excuses to get people to open their doors and pulling over Latinos at traffic stops. When they determined that folks spoke Spanish, they called ICE over to ask for papers. They detained the undocumented individuals, asked them about their kids, and then took them to the MSHS center operated by HELP - New Mexico, Inc. to retrieve them. That center had seven children removed by their parents, with three to four armed sheriffs standing behind

		each parent. They also went to local schools with detained parents to remove children.
September 2007	Alamo, TN	Since 2006, Alamo parents were afraid to attend parent and policy council meetings because immigration enforcement agents were reputed to be pulling over Latino families at road blocks on the highway leading to the center.
September 2007	Summer City, TN	ICE officials parking outside of MSHS centers and other social service providers (WIC, food stamps, Medicaid) forced parents to make a decision about enrolling their families and children in these federally funded programs.
April 2006	Immokalee and Nocatee, FL	ICE officials parked near a MSHS center and followed a MSHS school bus transporting children. Within a couple of weeks, there was an employment raid where the majority of MSHS parents were working. Parents were detained and MSHS staff worked to get information to the parents regarding their rights while the MSHS centers remained open beyond regular business hours to care for children.

LYNN WOOLSEY
6TH DISTRICT, CALIFORNIA

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May 23, 2008

Assistant Secretary Julie Myers
U.S. Immigration and Customs Enforcement
425 I Street, NW, Room 7030
Washington, DC 20536

Dear Assistant Secretary Myers:

The full enforcement of our nation's immigration laws is vital to the safety of our communities and the security of our country. A strong and trustworthy relationship between federal immigration enforcement officials from Immigration and Customs Enforcement (ICE) and members of our local community is essential to ensuring our immigration laws are enforced and people across the country willingly cooperate with federal officials.

For ICE's mission to be successful, the manner in which enforcement operations are carried out is often as important as when and where they take place. On May 20, 2008, I chaired a hearing in the House Workforce Protections Subcommittee on how the March 2007 ICE raids in San Rafael and subsequent workplace raids have impacted children and local communities. The hearing witnesses stressed how critical it is that immigration activities are handled with care and that the needs of the most vulnerable among us, our children, are taken into account. Testifying at the hearing was Kathryn Gibney, the principal at San Pedro Elementary School, who discussed how schools managed the crises caring for students during these 2007 raids and how students reacted.

On May 22, 2008, ICE agents launched an enforcement operation in the Canal District in San Rafael, arresting 17 people. Ms. Gibney's school was, again, one of the schools most impacted during the raids. The most devastating aspect of yesterday's San Rafael raids on the community, however, was the manner in which they were conducted. There are reports of ICE agents sweeping housing developments, indiscriminately knocking on people's doors and arresting some who came out of their homes. Children watched their family members seized right in front of them. ICE vans parked near school bus stops resulted in widespread panic and fear as children left their parents and boarded their buses for school. Absenteeism at the schools in the Canal District spiked dramatically, and three of the schools canceled their Open Houses planned for that night out of fear for the safety of parents and students in the community.

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Yesterday, I spoke with Deputy Assistant Director James Spero and Jamie Zuieback, Director of the Office of Congressional Relations, to ascertain some of the details surrounding the raids. Based on those conversations, I would greatly appreciate a response to the following questions:

- How many people did you arrest? How many were arrested as a result of a warrrant? How many of them are the sole caregivers of children, the disabled, or seriously ill relatives? What provisions have been made for people detained with medical conditions?
- What notification did ICE provide the community prior to enforcement operation? How did ICE work with the schools and child service agencies before, during, and after the raids to address the needs of children that may have been affected?
- How did ICE address the needs of the children affected by the raids? How many of those arrested had children that depend on them for care? What steps did you take to prevent children from observing their family member being taken away by ICE agents? Was any child taken into custody during the raid? How many children came home to find family members arrested, and what steps were taken to address their needs?
- ICE has developed voluntary humanitarian guidelines for worksite enforcement operations targeting the arrest of more than 150 people. What steps do you believe are necessary to make certain that these guidelines are consistently applied to non-worksite raids and worksite raids of under 150 people?

I look forward to your prompt written response to the above questions. ICE operations are a necessary part of our nation's immigration enforcement strategy and ensuring these raids are conducted in a humane fashion and are protective of our children will only strengthen our ability to enforce immigration laws. I look forward to working with you on this and other important immigration matters in the future, and if you have any questions, please contact me or Jason Feld on my staff at (202) 225-5161.

Thank you very much for your assistance in answering these important questions.

Sincerely,

Lynn Woolsey

Lynn Woolsey
Member of Congress

cc: Spero, Zuieback

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate
WASHINGTON, DC 20510-2101

May 16, 2008

Michael Chertoff
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Michael O. Leavitt
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Chertoff and Secretary Leavitt:

I'm writing as Chairman of the Senate Committee on Health, Education, Labor, and Pensions and the Judiciary Subcommittee on Immigration, Refugees and Border Security to request that you adopt an interagency agreement, issue guidelines, and take other appropriate steps to reduce the impact of enforcement actions by Immigration and Customs Enforcement (ICE) on children participating in Head Start and other federally-assisted child development programs.

It has come to my attention that in the past year, as part of its increased immigration enforcement, ICE has targeted programs serving children whose parents are suspected of being illegally in the United States. Numerous incidents have been reported in which ICE or local law enforcement agencies acting in cooperation with ICE have staked out Head Start and other child-oriented service programs to intimidate or apprehend such parents of children participating in such programs. Local law enforcement officials, in cooperation with ICE, have arranged for ICE agents to enter federally-funded early childhood programs armed and in full gear to remove children. In several communities, ICE enforcement activities have blockaded roads leading to such programs, interfering with traffic patterns and hindering access to the programs by children and their families. In other cases, ICE agents have followed school buses and employees of early care and education programs to identify families suspected of being undocumented for apprehension and arrest.

Numerous children have already been affected by these activities and potentially millions more are at risk. Nearly two-thirds of the children affected by such raids are U.S. citizens under the age of ten. It is projected that for every two immigrants who are detained, one child is left behind.

Forcible separation from their parents can have a profoundly negative impact on children's mental health, schooling, and well-being. In some instances, children removed from early childhood programs as a result of ICE enforcement are placed in child protective services and later subjected to the child welfare and foster care systems. Educational disruption can also have severe consequences, potentially resulting in an increased need for remediation, special education or other educational support services. Carrying out such enforcement actions also places significant burdens on social institutions that care for children, such as schools, early childhood education centers, and child welfare agencies that must meet the needs of children in the aftermath of a raid. In addition, such enforcement actions affect not only the children whose parents are apprehended but also the children's peers who witness such actions.

I fully appreciate that ICE has the authority to take individuals into custody who are in the United States illegally. However, ICE also has the responsibility to exercise this authority in ways that are effective, humane, and result in the least disruption to children and their families. I was encouraged by ICE's decision to take an important step toward handling such vulnerable cases with appropriate care and compassion, by issuing humanitarian guidelines to ensure appropriate treatment of care providers and their dependents following its raid on the New Bedford Michael Bianco plant.

In keeping with that sound decision, I urge your agencies to work together to reach an agreement and issue guidelines defining appropriate limitations on enforcement that respect the needs of children participating in early childhood education and care programs. Such action is essential to the developmental needs of these children, and is critical to the sound implementation of federally-assisted early care and education programs.

As we deal with the many immigration challenges facing us, it is essential to develop and implement policies and procedures that respect the dignity and humanity of the communities, families, and children that are most affected. I look forward to your response, and my staff and I stand ready to assist you in this effort in any way that will be helpful.

With respect and appreciation,

Sincerely,

Edward M. Kennedy

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Statement of Lutheran Immigration and Refugee Service and Bishop Steven Ullestad, Northeastern Iowa Synod of the Evangelical Lutheran Church in America

Submitted to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Hearing on "Immigration Raids: Postville and Beyond"

July 24, 2008

As the national Lutheran agency serving immigrants and refugees, and the synodical bishop of the Evangelical Lutheran Church in America (ELCA) in Northeastern Iowa, we are deeply concerned about the impact of the May 12, 2008 Immigration and Customs Enforcement (ICE) raid in Postville, Iowa. In a town of a few thousand people, ICE apprehended 389 immigrant employees, making it the largest single-site raid in U.S. history. In the aftermath, the local economy, businesses and local institutions and hundreds of children and families have been directly harmed. Indeed, the entire town has been left wondering how it will recover.

The Lutheran church has responded by sending volunteers to offer services to the immigrants and families affected by the raid and donating money to provide food, rent and utilities assistance to immigrant families in crisis. Lutheran leaders and church members have taken extraordinary steps to voice their concerns and take public action, including passing a church synod resolution and issuing a domestic disaster announcement.

Given the devastation caused by this single event, we ask that Congress call for a moratorium on raids until clear protocols and protections are in place to ensure that ICE does not traumatize immigrant families and that local communities are not harmed by such future actions. We further urge Congress to declare raids of places of worship, social service sites, and schools as off-limits.

Postville, Iowa Declared a Domestic Disaster by the ELCA
Within days after the Postville raid, the ELCA designated the town a domestic disaster in response to the emotional trauma experienced by the community and the sheer magnitude of humanitarian need. As a Lutheran denomination comprised of more than five million Lutherans nationwide, the ELCA made the decision based on its assessment that the size and nature of the impact and the humanitarian consequences were comparable to a major natural disaster (see attached, "Lutherans Responding to People Affected by Iowa Immigration Raid"). This is the first time that the ELCA designated a government-caused immigration action a domestic disaster.

On June 28, the Northeastern Iowa Synod of the ELCA passed a resolution which declared that the immigration raid has caused a humanitarian crisis and called for Congress and the President to pass just and fair immigration laws so that such harsh, punitive enforcement measures do not happen again (see attached, "A RESOLUTION ON IMMIGRATION REFORM"). The synod has also created a web site to update its constituents about the raid, volunteer opportunities and upcoming events.

Bringing New Hope and New Life

Many of the immigrants and their families who have been affected by the raid have sought help through the Hispanic Ministry program at St. Bridget's Catholic Church in Postville, and they continue to convene there in search of support and services. Volunteers from the local St. Paul Lutheran Church and nearby Luther College and Wartburg College have donated money to support these families and continue to visit St. Bridget's church to serve food, provide child care, bring immigrants to their immigration appointments and offer them spiritual support. One Lutheran went as far as donating her unused food stamps to provide food to the pantry.

In the critical hours following the raid, Lutheran Immigration and Refugee Service (LIRS) helped to facilitate legal services for immigrant families and develop communication protocols between legal service and social service providers. LIRS also helped to secure outside funding from Lutheran donors to support legal services for those affected by the immigration raid.

Harm to Families and Children

The impact on those arrested, their children and families, and the whole community was devastating, and more than two months later, the town continues to experience the fallout. In the days following the raid, an estimated 65 percent of Latino high school students and 90 percent of Latino students overall were absent from class. Some elementary classes shrunk from 25 children to less than ten. Children of U.S. citizen parents were also traumatized by the action. These children reported having nightmares about their own parents being taken away and some drew pictures including the words, "Don't take my friends away."

Over 10 percent of Postville's population has been detained. Those who were arrested were valued members of the community whose absence has hurt Postville. Businesses lost customers, landlords and realtors saw renters and homebuyers disappear, and schools saw their classrooms emptied of students. People in Postville continue to ask if the U.S. government gave any consideration to the impact on this small town before they took this action. School officials wonder how many children will enroll in school next fall and how many teachers they will need to hire.

Most of the people picked up in the raid were charged related to using false identification to work and will be detained for five months before the deportation process begins. We do not condone people breaking laws, but we question whether the raid was the appropriate and proportionate response for such violations. Instead of arresting hundreds of people, putting children at risk, tearing families apart, and disabling Postville's economy, Congress and the President need to create viable means to meet our nation's need for both skilled and unskilled workers. Our immigration system must provide a way for workers to come to the United States legally and for those who have already been working in this country for years to obtain legal status through a fair, earned legalization process.

The Postville raid underscores the need for an overhaul of our immigration laws to protect children and unite families, safeguard human rights and worker rights, enable marginalized undocumented people to come out of the shadows and to live without fear, and provide a path to permanence for those who have put down roots. In Postville, children were put at risk and families divided. There are charges that the employer committed workplace abuse. People with deep roots here, many with U.S. citizen children, are being detained and deported instead of being given an opportunity to earn their legal status. We need to put families first and fix the broken system.

Protection of Children and Families Must Be Primary in Any Enforcement Actions

Meanwhile, urge Congress to exercise rigorous oversight of immigration raids and enforcement actions. Specifically, we call for a moratorium on raids and similar actions until protocols are in place to prevent severe social and economic harms and trauma to local communities. Such protocols should at least require

that ICE do the following: 1) coordinate with community social service and pastoral care workers to mitigate the traumatic impact of any ICE enforcement action on children and families; 2) facilitate access to legal counsel for all immigrants taken into ICE custody and detention; 3) prioritize the importance of keeping people picked up in raids or other enforcement actions detained locally; 4) provide communication mechanisms that allow family members and lawyers to locate those in detention; and 5) work with appropriate federal, state and local government agencies to provide support and assistance to the community based on the projected impact the raid would have on the community.

Thank you for holding this important hearing and for the opportunity to submit this testimony. If you have questions or comments, please direct them to Gregory Chen, director for legislative affairs at Lutheran Immigration and Refugee Service at 202-626-7933 or via email at gchen@lirs.org.

Yours truly,

The Rev. Dr. Steven Ullestad
Bishop of the Northeastern Iowa Synod
Evangelical Lutheran Church of America

Lutheran Immigration and Refugee Service

ELCA NEWS SERVICE

May 15, 2008

Lutherans Responding to People Affected by Iowa Immigration Raid
08-064-JB

CHICAGO (ELCA) -- Members of St. Paul Lutheran Church, Postville, Iowa, are responding to the needs of people who have been affected by a May 12 federal immigration raid at a Postville meat processing plant. Hundreds of family members of those arrested have taken refuge inside St. Bridget's Catholic Church, Postville, said the Rev. Stephen P. Brackett, St. Paul Lutheran Church.

On May 12 U.S. Immigration and Customs Enforcement (ICE) agents arrested 390 people, and are seeking an additional 300 people who were not at the kosher meatpacking plant, Agriprocessors Inc. The purpose of the raid was to secure evidence of possible identity theft, stolen Social Security numbers and illegal immigration, said Tim Counts, an ICE spokesperson. Federal officials said the raid was the largest operation of its kind in U.S. history.

Most of the people arrested were believed to be from Guatemala and Mexico, and some were from Israel and Ukraine, the Associated Press reported. They were taken to Waterloo, Iowa, where most remain. More than 50 people were released on humanitarian grounds to care for children, and a few others were released because of medical conditions. Some who were released were fitted with ankle bracelets, Brackett said.

Church members and others in the community have stepped in to help family members who were not arrested but affected, Brackett said. Those who are at St. Bridget's include newborns, children, teens, adults, mothers, fathers and grandparents, he said. Brackett estimated that as many as 30 members of St. Paul are helping out at St. Bridget's by providing and serving food, providing clothing, helping with sleeping arrangements, tutoring students and reading to younger children. Also helping out at St. Bridget's are several students from Luther College, Decorah, Iowa, one of 28 ELCA colleges and universities, he said.

"We're almost overwhelmed with the food and clothing donations that have come in," Brackett said. "We're trying to bring in resources as they are needed."

For those arrested a significant need will be securing legal help, Brackett said. The cost of meeting with a lawyer is at least $150 per person, he said.

No one is staying at St. Paul, Bracket explained. Many who sought refuge at St. Bridget's went there because they were familiar with the congregation's Hispanic Ministry program, he said. Some children have been able to return to school during the day, he said. A nearby Presbyterian church is housing a few people.

Calling the situation "very traumatic" for those affected, Brackett said some family circumstances are "excessively complicated" because some children are U.S. citizens and their parents may not be U.S. citizens. Families could be broken up if members are deported, he said.

"This could go on for a while," Brackett said. "We may have people here for a long, long time."

"Families and friends are suffering tremendous loss and grief," said the Rev. Steven L. Ullestad, bishop, ELCA Northeastern Iowa Synod, Waverly, in a message to the synod. "The long-term implications for these families, as well as the impact on the schools and businesses of Postville, are significant."

The synod is working with the local Catholic diocese to assist at St. Bridget's, Ullestad said. The synod's greatest concerns are keeping families together, providing for their needs and making sure children are safe, he said.

The synod is developing a list of pastors who speak English and Spanish to assist families, Ullestad said. He asked Lutherans to pray for the people of Postville, and the bishop invited congregations to talk about immigration concerns.

"The ICE raid in Postville is yet another example of the harsh environment of fear that immigrants -- documented and undocumented -- now face, especially since the collapse of comprehensive immigration reform last summer," said Ralston H. Deffenbaugh, president, Lutheran Immigration and Refugee Service, Baltimore. "Our immigration law is badly broken and desperately needs reform."

"Most of those taken into custody are honest, hard-working people just trying to make a living," Deffenbaugh said. "As a result of the raid, families have been torn apart, children have been traumatized, and a diverse community that was once thriving is now in complete upheaval," he said.

The Rev. Kevin A. Massey, acting director, ELCA Domestic Disaster Response, said financial gifts to assist families in Postville may be given to ELCA Domestic Disaster Response.

An ELCA "Message on Immigration" is at http://www.ELCA.org/What-We-Believe/Social-Issues/Messages/Immigration.aspx on the ELCA Web site.

NOTE: Financial gifts may be sent directly to ELCA Domestic Disaster Response, 8765 W. Higgins Rd., Chicago, IL 60631-4101. Designate gifts for Postville.
Credit card gift line: 1-800-638-3522
Credit card gifts via Internet: http://www.ELCA.org/disaster

For information contact:
John Brooks, Director (773) 380-2958 or news@elca.org
http://www.elca.org/news
ELCA News Blog: http://www.elca.org/news/blog

Resolution 7-08

A RESOLUTION ON IMMIGRATION REFORM

WHEREAS, Agents of the Immigration and Customs Enforcement (ICE), an agency of the Department of Homeland Security, have conducted a raid at Agriprocessors at Postville, Iowa on May 12, 2008; and,

WHEREAS, Over 390 people were apprehended in this raid by ICE, making it the largest raid of its kind on a single facility; and,

WHEREAS, The arrest and detention of these hundreds of workers have created such a humanitarian crisis of turmoil, distress, and fear among the families, neighbors, and community that the ELCA has designated Postville, Iowa a domestic disaster site; and,

WHEREAS, Families have been torn apart, children have been traumatized, businesses have been adversely affected, and whole neighborhoods have been emptied of inhabitants; and,

WHEREAS, The people and churches of Postville, particularly Sister Mary McCauley, Paul Rael, Father Paul Ouderkirk, Father Richard Gaul, and Pastor Stephen Brackett; Pastor David Vasquez of Luther College; Bishop Steven Ullestad of the Northeastern Iowa Synod of the ELCA; Archbishop Jerome Hanus of the Archdiocese of Dubuque; and many others have been tireless in their support, encouragement, and advocacy of those affected by this raid; and,

WHEREAS, The illegal status of working immigrants opens them to discrimination, victimization, extortion, and abuse by employers and others who seek to profit from their illegal status; and,

WHEREAS, These events in Postville are but a small example of the results of greed and exploitation of the poor by nations and corporations; and of the failure of the Congress and President of the United States to establish and enforce a just and fair immigration policy; and,

WHEREAS, Our Lutheran tradition calls on us to uphold the Biblical mandate to welcome the stranger: "When a stranger sojourns with you in the land, you shall not do him wrong. The stranger who sojourns with you shall be to you as the native among you, and you shall love him as yourself; for you were strangers in the land of Egypt: I am the Lord" (Leviticus 19:33-34) "Welcome one another, therefore, as Christ has welcomed you, for the glory of God" (Romans 15:7) ; and,

WHEREAS, The Rev. Mark Hanson, Presiding Bishop of the ELCA, and Ralston H. Deffenbaugh, Jr., President of the Lutheran Immigration and Refugee Service, have issued a statement calling for fair and just immigration reform which would:

- Oppose the criminalization of the church, its ministers and its members who provide humanitarian aid to undocumented immigrants;
- Oppose provisions which criminalize undocumented presence;
- Provide a path to permanence for individuals currently residing and working in the United States as well as their families;

- Ensure basic constitutional due-process rights in the enforcement of our laws; and
- Include in the legislation the bipartisan "Agricultural Job Opportunities Act" for farm workers, a measure negotiated by growers, agricultural employers and farm workers to create an "earned adjustment" program enabling some undocumented farm workers and H-2A guest workers to obtain temporary immigration status with the possibility of permanence and that revises the existing H-2A worker program;

Therefore, be it

RESOLVED, That the members and congregations of the Northeastern Iowa Synod be encouraged to lift up in prayer:
1) the workers who have been detained in the May 12 raid on Agriprocessors at Postville and their families, friends, and neighbors, as they face this humanitarian crisis;
2) the owners and operators of Agriprocessors at Postville, that they will immediately begin employment and hiring practices that are lawful and provide a living wage;
3) those called to law-enforcement, that they will be able to safely discharge their duties in a manner that is both humane and respectful; and be it further,

RESOLVED, That the Northeastern Iowa Synod commend Bishop Steven Ullestad, Pastor Stephen Brackett, the people of St. Paul Lutheran, Postville, Pastor David Vasquez and the many volunteers from Luther College, the Lutheran Immigration and Refugee Service, and the ELCA Domestic Disaster Response for their witness, service and advocacy on behalf of all those affected by the recent immigration enforcement raid in Postville; and be it further,

RESOLVED, That the members and congregations of the Northeastern Iowa Synod be encouraged to petition the U.S. Congress and the President to quickly pass comprehensive immigration legislation which provides for the current labor needs of businesses, while at the same time rigorously fines businesses that hire undocumented workers; and be it further,

RESOLVED, That the members and congregations of the Northeastern Iowa Synod be encouraged to petition the U.S. Congress and the President, the State of Iowa, and the Global Mission division of the ELCA to develop strategies to help the people of Mexico and Guatemala build schools, hospitals, and infrastructure that provides respectable living conditions for their citizens; and be it further,

RESOLVED, That the Northeastern Iowa Synod endorse the call issued by Presiding Bishop Mark Hanson and LIRS President Ralston H. Deffenbaugh, Jr. for a Fair and Just Immigration Reform; and be it further,

RESOLVED, That the congregations of the Northeastern Iowa Synod be encouraged to read, reflect, and study this statement; and be it further,

RESOLVED, That the Board of Ministry in Mission of the Northeastern Iowa Synod be directed to be in conversation with the Western Iowa Synod and the Southeastern Iowa

Synod in promoting a full and public debate on the issues surrounding immigration reform in the state of Iowa and throughout the nation.

SUBMITTED BY: Pastor Jim Klosterboer, Pastor Kris Snyder, Pastor Stephen Brackett, Pastor Dave Lenth, Pastor Ron Yarnell, Pastor Marshall Hahn, Pastor Chris Staley, Pastor Jason Cooper, Pastor Lin Reichstadter, Pastor Ian Wolfe, Pastor Harold McMillin, Jr., St. Paul Lutheran Church Council of Postville, Bethany Lutheran Church Council of Elkader, Zion Lutheran Church of Castalia, Norway Lutheran Church Council of St. Olaf, Marion Lutheran Church Council of Elgin (Gunder), St. Paul Lutheran Church Council of Guttenberg, St. John's Lutheran Church Council of Guttenberg, St. Peter Lutheran Church Council of Garnavillo

ACTION OF THE RESOLUTIONS COMMITTEE:
Background: The Resolutions Committee believes that the editorial change clarifies our relationship with the other synods.
Recommendation: Adoption
Status: Upon presentation by the Resolutions Committee, this resolution will be considered by the assembly for action.
Vote Required for Adoption: Majority

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209 E. Washington St. Ste. 305 Iowa City, IA 52240 | www.colevondra.com

July 24, 2008

Representative Zoe Lofgren
Washington, D.C. Office
102 Cannon HOB
Washington, D.C. 20515

Re: May 12, 2008 Postville Immigration Raids

Dear Congresswoman Lofgren:

Your Legal Advisor Traci Hong contacted me last week, and asked me to submit a written statement in connection with the Congressional hearing on the immigration raids in Postville, Iowa. I told her that I had a fairly limited role in this process, but that I would be willing to describe my experience of May 12, 2008.

May 12 began like any other day. I arrived at the office, and began reading my email. At about 9:30 a.m., my partner, Dan Vondra, knocked on my door, and told me "the raids have begun and the black helicopters are flying over Postville." Homeland Security officials had rented the *Cattle Congress* several weeks before, but no one knew when or where the raid would take place. We anticipated that the raid would probably proceed like the Swift plant packing raid in Marshalltown, Iowa last year. I then checked the internet, looked at the initial photos, and then went back to work.

A short time later, Denise Pickens, a clerk in the Northern District of Iowa, called me. Ms. Pickens used to be the appointment clerk for *Criminal Justice Act* appointments for the federal court in Cedar Rapids, Iowa. About two years ago, the Federal Defender consolidated *Criminal Justice Act* appointments into the office of the Chief Public Defender in Des Moines, Iowa, and now all appointments usually begin with a phone call from Des Moines. Ms. Pickens told me that there was going to be a special meeting at the United States District Courthouse in Cedar Rapids at 1:30 p.m. that afternoon, and that I should not tell anyone about the meeting. So I drove up to Cedar Rapids to see what this meeting was about.

I went up to the Main Courtroom on the 3rd Floor. I saw approximately 10-15 defense lawyers whom I knew to be on the *Criminal Justice Act* Panel in Cedar Rapids. I also saw: Assistant United States Attorney (AUSA) Stephanie Rose; Chief Clerk of Court Robert Phelps; some United States marshals, and I believe some probation officials. At some point early in the presentation, Chief Clerk Phelps handed out what I can only characterize as guilty plea handbooks. These handbooks described all of the elements of offenses, and essentially contained a book of waivers of various rights of the defendants.

Mr. Phelps also passed around a sign up sheet with requests for our cell phones, and email addresses.

AUSA Rose began the meeting by scanning the audience for media officials. After she determined that no media were present, she began the presentation. She immediately began discussing the so called "representation plan." She indicated each attorney would be assigned a group consisting of 10 clients. She indicated that we could be expected to represent up to 40 defendants, and that they were expecting possibly 700 defendants. As it turns out, I believe the Des Moines *Register* confirmed an average of 17 clients per attorney.

She then described the four possible pleas deals being offered to each group. The first deal was a plea to a felony (I do not recall which), and immediate placement in the custody of Bureau of Immigration and Customs Enforcement. So in other words, the defendant was offered no jail time, but the client would have a felony in the record. The second deal, and apparently most common, was a five month jail sentence to be followed by immediate deportation to their home countries. The third category was 12 months and one day. I believe the fourth category was reserved for defendants with significant aggravating facts such as prior aggravated felonies, or violent histories. I do not recall the specific felony that had to plead to but all the felonies were basically some variation on the use of a forged identification card to get a job.

At one point, I asked if she had considered that any of the defendants were innocent. She replied that they could opt out and proceed on the regular docket if they wanted to. I do not recall at that time whether she indicated that the United States was threatening an aggravated identity theft charge if they opted out. I have subsequently learned that any defendant refusing such a deal could face the aggravated identity theft.

My next question focused on the presentence investigation reports. I have probably represented about 5-7 federal defendants on fake papers charge in the past. In the typical case, the client had entered without inspection, and consequently had no legal status in the United States to protect. They often had already admitted to possession of the fake identification document, and consequently such cases were difficult to defend. Most resulted in "time served" plea deals. In those simple cases, we had often complained to probation about why they needed to do a full pre-sentence investigation report on the Defendants IF they chose to get deported as soon as possible. In fact, at one conference last year, United States District Court Judge John Jarvey even told one of the probation officers that a full presentence report was not necessary in the run of the mill case. The United States Attorney's Office and the Probation Office had often strongly resisted waiver of presentence reports on two grounds. First, they did not want to miss prior criminal convictions, which can increase the prison sentence. Secondly, the probation office did not get full credit for an abbreviated presentence report. So they wanted to do a full presentence report to keep their funding up for more probation staffing.

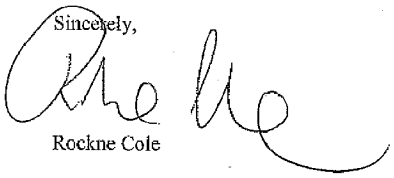
I asked Ms. Rose how they could be doing such a quick guilty plea process when they had so strenuously resisted abbreviated reports in the past. I asked her why they were not concerned about missing criminal convictions as they had in the past. She replied that these were Rule 11 (c) (1) (C) plea deals. In the typical plea deal, the court is not bound by the sentencing recommendations of each party. She is only limited by the statutory maximum penalty and the advisory sentencing guidelines. A Rule 11 (c) (1) (C) allows the court to be bound to the sentencing recommendations of the United States and defendant. At the guilty plea hearing, the court notifies the parties if she will accept the guilty plea, and if she does, she is bound to the sentencing recommendation of the Parties. If not, the defendant can withdraw the plea. This effectively guarantees that the defendant will get the agreed upon sentence on the plea bargain, and avoid the risk of a longer sentence before the judge. What I found most astonishing is that *apparently* Chief Judge Linda Reade *had already ratified these deals prior to* one lawyer even talking to his or her client. Judge Reade's presence at the meeting seemed to confirm as much. This directly violates Rule 11 plea procedure, which provides that the "court must not participate in these [plea] discussions." Moreover, this ratification appeared to be *ex parte* with the United States Attorney's office. Indeed, it had to have been *ex parte* because no lawyers had even met with their clients prior to these Rule 11 (c) (1) (C) plea bargains being announced.

Ms. Rose concluded by stating that plea status hearings would begin by Saturday, May 17, 2008, and that the clients would have seven days to accept offer. She justified the quick time line because they were concerned about getting the defendants back to their families in Guatemala as soon as possible. Especially considering this extremely rushed process, I realized that the acceptance of such an appointment would have required me to immediately report myself to the Iowa Bar Association for failing to protect a client's right to conflict free counsel. Iowa Rule of Professional Responsibility 32:1.7 (a) and (b) provides that a lawyer shall not represent a client if there is a significant risk of conflict, and that any consent to conflict shall be in writing. The potential conflicts were obvious. For example, suppose, under the group representation plan, that an attorney simultaneously represents a woman with a Violence Against Women Act adjustment case against her husband, and her husband in a different group. In this situation, the wife may have a good claim to adjust status, and remain in the United States on the basis of her status as a victim of domestic violence. Her husband will likely be prosecuted for domestic abuse, and could be deported on the basis of being the abuser. Their interests directly conflict. Other examples come to mind. What if one of the workers helped the other to obtain the false paper? That person would certainly be a witness for either the defense, or the United States. Moreover, if such potential conflicts existed, the 6th Amendment compels disclosure to the Court, and on the record colloquy by the District Court to ensure the client's right to conflict free counsel. See Holloway v. Arkansas 435 U.S. 475, 485-486 (1978) (defense attorneys have the obligation, upon discovering a conflict of interests, to advise the court at once of the problem.). Under these circumstances, it would have impossible to meaningfully assess conflict of interest issues in seven days.

After Ms. Rose described the plea deals, a United States marshal began describing the Orwellian security plan. Each attorney accepting an appointment had to arrive early the following day at the *Cattle Congress* for processing and to obtain a photo identification card. I think these cards were similar to a necklace type press credential. He then told us that attorneys would be able to meet with clients in a designated representation zone. He indicated that each attorney could not walk around *Cattle Congress* grounds without an escort by a United States marshal. He also advised us of an evacuation plan in case of any disturbance. At that point, I felt that I could not participate in the mass violation of rights. I informed Mr. Phelp that I would not be participating. He said, "Ok, please turn in your 3-ring binder." I then walked out in disgust. Chief Judge Reade was there for at least 10 minutes. I do not recall at which point she left. I think at some point AUSA Stephanie Rose advised her it would be a good time to leave as people began asking about the details of these deals.

Obviously, I am fairly reluctant to openly criticize Judge Reade. I have pretty much resigned myself to not taking any more appointments in her district. However, in spite of the financial repercussion for taking this position, I simply could not stay silent on this issue. The Clerk of Court issued a press release talking about the roundup of illegal aliens. This process: presumed guilt; deprived defendants of their right to due process; and interfered with their basic right to choose their own counsel. The court appointed attorney's role appeared to be only to act as a guilty plea processing clerk, and served only to expedite the mass waiver of rights. From what I can infer based upon the facts from the initial meeting as well as subsequent media reports, Judge Reade, and the United States Attorney's office coordinated the mass detention, roundup, representation plan, plea deals, and sentencings PRIOR to one single attorney consulting with a client. I hope I am wrong about that inference, but the overwhelming facts suggest a breath taking level of coordination between the United States District Court Judge and the Department of Justice. I nevertheless strongly encourage the Committee to keep an open mind, and to afford all officials involved a fair hearing, which unfortunately was not given to the Defendants in Postville.

Sincerely,



Rockne Cole

Congress of the United States
Washington, DC 20515

August 6, 2008

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration, Citizenship, Refugees,
Border Security and International Law
517 Cannon HOB
Washington, DC 20515

Dear Chairwoman Lofgren:

On behalf of the Congressional Hispanic Caucus (CHC), we write to report to the Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law of the Committee on the Judiciary the findings from our trip on July 26, 2008 to Postville, Iowa. The purpose of the trip was to examine the circumstances and impact of the Immigration and Customs Enforcement (ICE) raid conducted at the Agriprocessors meatpacking plant on May 12, 2008. We ask that this letter and the accompanying documents be included as part of the Immigration Subcommittee's official record of the hearing on July 24, 2008, entitled "Immigration Raids: Postville and Beyond."

On Saturday, July 26, 2008, we traveled to Postville's St. Bridget's Church, the "command center" of the relief effort organized in response to this large-scale, man-made disaster. For three hours, we listened to the testimony of city officials, relief workers, injured and abused Agriprocessors' workers, former detainees caught up in the raid, and many children and family members impacted by the largest immigration enforcement action in U.S. history.

As members of Congress, we have traveled the world and witnessed some of the worst human suffering imaginable. However, none of it prepared us for the needless and avoidable anguish unleashed on a small town in Iowa by our federal government just a short road trip from Chicago, IL.

We appreciate the opportunity to share with you, on behalf of those we met in Postville, the following observations and key findings of our trip. We ask that the Subcommittee examine more closely the concerns and issues these points raise.

Military-style raid in Postville, IA

We heard reports of a military-style raid in this small, peaceful Iowa town of 2,300 people, suggesting ICE was expecting dangerous terrorists in the midst of meatpackers. Dressed in black, agents entered with weapons drawn, including M-16 assault rifles, and wearing bulletproof vests. Helicopters circled above. Workers were swiftly herded at gunpoint, the vast majority of them shackled at the hands, feet and waist before being taken to the makeshift detention center and courts at the Cattle Congress fairgrounds in Waterloo, IA. Ultimately, ICE detained 389 workers, the majority of whom were from Guatemala and Mexico.

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In addition, the town itself was caught unprepared to deal with the human fallout of the law enforcement action. Children heard the ICE helicopters above their schools and teachers were hard pressed to explain or offer comfort to students whose parents worked in the slaughterhouse. Postville Mayor Robert Penrod spoke of the positive contributions of Agriprocessors workers to the small town and the city's challenge to "start all over again" after nearly 20% of Postville's population was caught up in the raid.

How this raid of unarmed workers was conducted raises serious questions. Was the show of sheer force ICE's only or best option? What other local, state, and federal law enforcement agencies participated, and what were their roles in the action? In addition to detaining workers, were the executive offices searched, managers or owners detained or questioned, were personnel records or other evidence in the plant seized? To what extent was the town of Postville and city services' prepared for the law enforcement action? What was the total cost of the raid for all agencies involved, including the planning and execution of the raid, the processing, detention, community monitoring and deportation of arrestees? What costs did Postville itself face as it responded to the needs of its residents?

In the end, we question whether the raid was cost-effective, a prudent use of government resources and Americans' tax dollars and/or provided a compelling national security benefit to our nation that justifies the manner in which it was conducted.

Troubling legal process

More troubling than the raid itself was the legal process through which detainees were fast-tracked. ICE's makeshift detention center, the physical relocation of the courtrooms from Cedar Rapids to Waterloo and the manual and scripts for court proceedings--all suggest an unusual collusion between the Department of Homeland Security, the U.S. Attorneys Office, the judges and the defense attorneys who represented anywhere from 10 to 20 detainees. Attorneys skilled in immigration law submitted Notices to Entry of Appearance as Attorney (United States Citizenship and Immigration Service Form G-28) for an estimated 115 detainees, yet they were not allowed to see their clients for 48 hours.

In addition to the immigration violations, 300 of the 389 detainees were charged with aggravated identity theft and sentenced in less than 10 days. This serious crime carries a mandatory minimum sentence of two years. When presented with a plea deal to serve five months in prison in exchange for admitting guilt to the lesser charge of using a false ID to obtain employment, most detainees had no real choice.

Whether the social security number they used to work actually belonged to a real person, whether Agriprocessors coerced them into buying fake papers, or whether the detainees even fully understood what a social security number was or what purpose it served-- all of these central questions of intent or guilt were irrelevant to detainees who signed guilty pleas and waived all of their rights, including their right to a hearing before an immigration judge. In the end, the desperate workers--if they even understood the charges or the plea agreement, which is

questionable--did not choose based on their innocence or guilt, but between allowing their families to go hungry for five months instead of two or more years.

To determine if detainees' constitutional or due process rights were violated, further investigation is warranted. The actual script of the court manual should be examined and the precedent for using one in this context further studied. It is also important for Congress to understand who made the decision to charge these undocumented workers with aggravated identity theft and who crafted and imposed the plea deal. We should also examine whether this fast-tracked process in this particular circumstance allowed for various participants in the judicial process to uphold their ethical obligations and duties under the law, including judges, U.S. Attorneys, attorneys at the Department of Homeland Security, the Department of Justice, and defense counsel. If so, we should examine whether any of those obligations and duties were violated.

"Humanitarian" release

According to the U.S. Attorney's Office of the Northern District of Iowa, 62 workers were released on humanitarian grounds. During our visit, we met with approximately 40 of them, most of them women with "ankle bracelets," or GPS homing devices, and some of them teenaged minors who worked until the day of the raid at the meatpacking plant.

We listened to them talk of the constant fear in which they and their children live. The women feel shame because the bracelets they wear mark them as "criminals" and announce to the town that they are unable to work, feed their children or pay the rent. Struggling to maintain their dignity, they are left, for the first time in their lives, to depend on the church, charity and handouts for day-to-day survival.

They wait for court dates and do not know if they will have to wait weeks or several months for an immigration hearing. They do not know, despite being released on humanitarian grounds, if they will face the same impossible plea deal and five months in prison. For those with family members serving five-month prison sentences, they talked about how hard it was to find out where their loved ones are being held, or how to visit or communicate with them.

Postville clearly demonstrates that Congress and ICE have much work to do to ensure that detainees with children or special circumstances and who are no threat to society are released under the most humanitarian conditions possible-- and with the ability to work, feed their families and visit and communicate with their detained loved ones.

Labor violations exposed, unprosecuted

As you are aware, DOL had an ongoing labor investigation of Agriprocessors at the time of the raid. Workers shared horrific stories of abuse endured at the plant. We heard from a group of teenagers who worked as many as 17 hours per day, 6 days a week on the kill floor or plucking chickens with dangerous knives, and without formal training or safety equipment. They worked for $7.50 an hour with no overtime pay.

We heard from women who explained that when they asked for decent pay, decent hours or decent treatment on the job, supervisors demanded sex of them in exchange. If a man asked for decent treatment, supervisors demanded bribes of hundreds of dollars.

We heard from a man whose hand and forearm were lost in a meat grinder, but who has not received one penny of compensation for being so seriously injured on the job. We heard from others about work injuries, shoddy or limited medical treatment, and being threatened with firing or being reported to authorities if they did not return to work, even against medical advice.

As you know, not one of the plant's upper managers or owners has been charged with violations of immigration or labor law. Our fear that a potentially egregious employer may escape prosecution is compounded by the fact that the strongest witnesses against the company are imprisoned and/or will be deported.

In light of the Subcommittee's jurisdiction, we ask that you examine closely the degree to which ICE collaborated with DOL to carry out the raid. We understand that they involved the Office of Inspector General, but are perplexed as to why they did not engage DOL and its wage and hour division directly. We ask that you consider what obligations exist, if any, for DHS to weigh the severity of an ongoing labor investigation before taking law enforcement actions against workers and potentially undermining the prosecution of such severe criminal and labor violations on the part of employers.

In addition, we understand that at least a third of those released under community supervision have retained an attorney and hope, as victims of crime and potential witnesses to the criminal investigation, to apply for a "U" visa. We can only imagine that a large percentage of the 300 others serving prison sentences might also serve as witnesses and/or could qualify for some form of relief under immigration law. We also fear that an unknown number of children remain in custody, serving prison sentences. We look to the Subcommittee for guidance as to how Congress can best support the efforts of crime victims to access the relief they deserve.

Chairwoman Lofgren, the testimony we heard and the human suffering we witnessed raised for us some very serious legal and policy questions that the U.S. Congress, as a coequal branch of government, has an obligation to investigate. We share these findings to not only enhance the hearing record, but to ask the Subcommittee to further examine the Agriprocessors raid to expose the injustice of the enforcement action and others like it; to propose legislative solutions that would better define Congress' intent with regard to a fair and just immigration enforcement policy; and to identify legal or constitutional wrongdoing, if any, on the part of DHS, DOJ, the courts, the U.S. Attorney's Office, or any other collaborating federal agency.

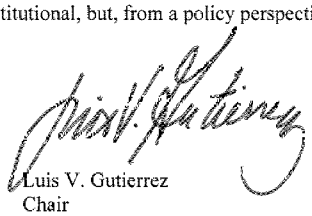
As a part of the enclosures with this letter, we have included profiles of a handful of those who were brave enough to share their experiences at the plant and before and after the raid. Although words on a page do not fully capture the suffering endured by so many of the undocumented workers in Postville, we hope that a few of their stories will help to put a human face on the Agriprocessors raid and on the Subcommittee's hearing record.

In addition, we have included a copy of our agenda from the trip, copies of letters from the Postville community to the U.S. Congress and the President, a Chicago City Council Resolution related to the raid and a relevant *New York Times* editorial.

We appreciate your investigation thus far into the raid and thank you again for conducting the July 24th hearing. Based on our brief visit to Postville, we believe that we have only scratched the surface the legal and political implications and the consequences of this raid. We ask that the Subcommittee investigate further into the concerns we have raised, and evaluate if what happened in Postville was not only legal and constitutional, but, from a policy perspective, prudent, cost effective, necessary and just.

Sincerely,

Joe Baca
Chair
Congressional Hispanic Caucus



Luis V. Gutierrez
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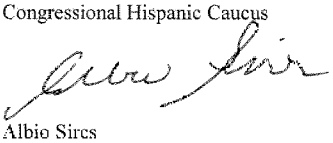
CHC Immigration Task Force



Albio Sires
Chair
CHC Economic Development Task Force

NCLR
NATIONAL COUNCIL OF LA RAZA

The Urban Institute

PAYING THE PRICE:

The Impact of Immigration Raids on America's Children

The National Council of La Raza (NCLR) – the largest national Hispanic civil rights and advocacy organization in the United States – works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations (CBOs), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas – assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families.

Founded in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC. NCLR serves all Hispanic subgroups in all regions of the country and has operations in Atlanta, Chicago, Los Angeles, New York, Phoenix, Sacramento, San Antonio, and San Juan, Puerto Rico.

The Urban Institute is a nonprofit, nonpartisan policy research and educational organization established in Washington, DC, in 1968. Its staff investigates the social, economic, and governance problems confronting the nation and evaluates the public and private means to alleviate them. The Institute disseminates its research findings through publications, its web site, the media, seminars, and forums.

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Paying the Price:
The Impact of Immigration Raids on America's Children

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A Report by The Urban Institute

For the National Council of La Raza

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Foreword

One of our society's fundamental principles is that, to the extent possible, children should not be punished for the sins of their parents. This principle has deep roots in both religion and law. Many of the world's great religions share similar teachings. And, from a legal perspective, when our nation was created, the value that children's futures should not be based on their parents' social status helped to shape the world's leading democracy.

Our child welfare system reflects this fundamental principle. If a child is endangered by abuse or neglect, our society steps in to safeguard the best interests of the child. And while there is clearly room for improvement in the child welfare system, there is little controversy about the rationale for the system's existence; few disagree that children deserve protection.

Like many morally sound policies, adherence to this principle has practical benefits as well. It happens to be in our long-term social and economic interest to minimize harm to children. Research demonstrates that abused and neglected children are less likely to become productive and well-adjusted adults. Thus, it's a good investment for taxpayers when we step in to ensure that children are protected.

This principle – and a core value of our democracy – is currently under assault. In recent months, the Department of Homeland Security has launched a series of raids that have resulted in the forcible separation of children from parents accused of violating our immigration laws.

Issues of immigration are fraught with emotion, which is perhaps fitting in this "nation of immigrants." While the emotion in this debate is understandable, the question is not whether to enforce immigration laws but how. It is critically important to focus policy-

maker attention on the fact that there are conflicting principles involved, and thus significant policy choices to be made. Enforcement resources are not unlimited, and a wise administration will make considered judgments about how best to make use of finite resources for the good of the nation. Presumably, this requires some assessment of the benefits of our enforcement priorities as compared to their costs. This study is the first significant attempt to assess the costs of these enforcement choices on innocent children, the most vulnerable members of our society.

The National Council of La Raza's desire to stimulate a more thoughtful policy conversation on enforcement priorities is our motivation for investing in this study, and for seeking a well-respected research institution to conduct it. We asked the Urban Institute to design a study that assesses the impact of immigration raids on children and families and the institutions that support them, such as early childhood education centers and school systems. Their findings help remove the issue from the hyperbole which often surrounds it, and the report outlines implications for children, families, and communities.

The results are striking. The number of children separated from one or both parents as a result of immigration enforcement is significant; the study found that for every two immigrants apprehended, one child was left behind. This suggests that potentially thousands of children have been separated from their parents as a result of recent immigration enforcement activities, and literally millions more may be at risk. The study found that fully two-thirds of affected children are U.S. citizens or legal residents, suggesting that the potential future costs for our country are significant. In addition, the Urban Institute found that the impact on the social structures that support children was profoundly negative. Surely Americans should be concerned when one of the effects of enforcing the law is that school systems and child care providers must prepare for the likelihood of substantial numbers of their children being left without care, without warning.

The Urban Institute's results suggest that there is an urgent need for Congress and the Administration to review the nation's immigration enforcement priorities and undertake a more careful analysis of the costs of the choices we make. If our immigration enforcement strategy undermines the health and well-being of America's children and the structures designed to protect and nurture them, it is time to reconsider our priorities.

Janet Murguía
President and CEO
National Council of La Raza

Acknowledgments

This report represents a collaborative effort between the Urban Institute and the National Council of La Raza (NCLR) to better understand how many children are potentially at risk of having a parent deported and/or detained as a result of worksite enforcement actions and the potential impact of such actions on these children. The authors of this study are Urban Institute researchers Randy Capps, Rosa Maria Castañeda, Ajay Chaudry, and Robert Santos. The views and conclusions included herein are those of the authors alone, and do not necessarily reflect the opinions of NCLR, the Urban Institute, or their funders.

The authors thank Joe Hammell and Kathleen Moccio of Dorsey & Whitney LLP in Minneapolis for reviewing drafts of the report and providing their perspective on the legal issues involved.

NCLR staff who contributed to the completion of this publication include Miriam Calderón, Associate Director, Policy Analysis Center; Flavia Jiménez, Senior Immigration Policy Analyst; Catherine Han Montoya, Emerging Latino Communities Program Coordinator; Michele Waslin, Director of Immigration Policy Research; and Cecilia Muñoz, Senior Vice President. In addition, Jennifer Kadis, Director of Quality Control; Nancy Wilberg, Assistant Editor; Jackeline Stewart, Copy Editor; and Ofelia Ardón-Jones, Production Manager/Senior Design Specialist of Graphics & Design were responsible for shepherding the report through the production process.

NCLR and the Urban Institute extend their gratitude to Massachusetts Immigrant and Refugee Advocacy Coalition, Nebraska Appleseed, and El Comité and Congregations Building Communities in Colorado, the four intermediary organizations who were instrumental in connecting Urban Institute researchers with key community contacts as well as with parents and other caregivers in the study sites. Without their assistance, the study would not have been possible. We also thank all of the community contacts in the sites for their time and expertise. The parents and other caregivers interviewed for the study shared personal, often painful, stories. Their accounts are the most important data supporting the findings in this report.

Finally, NCLR acknowledges the generous support of its funders. Foremost, this report was made possible through The Atlantic Philanthropies' support of NCLR's Latino Children's Advocacy Project. The Annie E. Casey Foundation provided additional assistance for report production, and the Foundation for Child Development supported the study's release. In addition, core support for NCLR's Policy Analysis Center is provided by the John D. and Catherine T. MacArthur Foundation.

The photos included in this report represent the many faces of America's children. Marlene Hawthrone Thomas, NCLR, contributed photos she took of students at Mary's Center/Education Strengthens Families (ESF) Public Charter School in Washington, DC. Additional photos were provided by photographer Susie Fitzhugh (those on pages iii, 1, 9, 15, 33, 41, and 55 are © Susie Fitzhugh). The cover photo was included with the permission of Peter Pereira, a photographer for the *Standard-Times*. This image of Baby Tomasa crying in the arms of her mother was taken during the immigration raid that occurred in New Bedford, Massachusetts in March 2007. It has become a symbol of the pain and suffering of the thousands of children who have lived through this ordeal.

I. Executive Summary

There are approximately five million U.S. children with at least one undocumented parent. The recent intensification of immigration enforcement activities by the federal government has increasingly put these children at risk of family separation, economic hardship, and psychological trauma. U.S. Immigration and Customs Enforcement (ICE), the interior enforcement arm of the Department of Homeland Security (DHS), the federal agency charged with enforcing immigration laws, has markedly increased the pace of worksite raids in the past few years to apprehend undocumented immigrants: the number of undocumented immigrants arrested at workplaces increased more than sevenfold from 500 to 3,600 between 2002 and 2006. These actions are part of intensified enforcement activities, including deportation of immigrants who have committed crimes; door-to-door operations to arrest immigrants with deportation orders; and large-scale raids of suspected undocumented immigrants' worksites. With the collapse of comprehensive immigration reform in Congress, and the all but certain appropriation of additional enforcement resources to ICE, it is likely that the number of worksite actions will continue to increase.

The primary goal of this paper is to go beyond the human interest stories reported in the media and provide a factual basis for discussing the impact of worksite enforcement operations on children with undocumented parents. The study focuses on children because they have strong claims to the protection of society, especially when they are citizens and integrated into their schools and communities, and the United States is the only country they have known and consider home. They also warrant our attention because they are emotionally, financially, and developmentally dependent on their parents' care, protection, and earnings.

The findings discussed in this report are based on a study of three communities that experienced large-scale worksite raids within the past year: Greeley, Colorado; Grand Island, Nebraska; and New Bedford, Massachusetts. In each location Urban Institute staff met with employers, lawyers, religious leaders, public social service agencies, nonprofit agencies, community leaders, and others to discuss the immediate aftermath of the raids, as well as the potential longer-term impact on children. Parents, including some released from ICE detention, and other caregivers of affected children were interviewed individually.

Greeley and Grand Island were two of the six sites in which Swift & Company meatpacking plants were raided. New Bedford was the site of a raid on Michael Bianco, Inc., a textile manufacturing facility that makes backpacks for the U.S. military. In all three sites the vast majority of workers arrested were from Mexico, Guatemala, or other Latin American countries. The findings in this report, however, may also be applicable to children with undocumented parents from other regions of the world, as about 22% of all undocumented immigrants in the nation come from regions other than Latin America.

Number of children affected. On average, the number of children affected by worksite raids is about half the number of adults arrested. Over 900 adults were arrested in the three study sites, and the parents among them collectively had just over 500 children.

A large majority of the children affected are U.S. citizens and the youngest and most vulnerable in our society – infants, toddlers, and preschoolers. In one site, two-thirds of the children were citizens – matching national data. In two of the sites, 79% and 88% (respectively) of children were ages ten and younger. In one site, more than half of the children were ages five and younger.

Immediate impact on children. ICE's processing and detention procedures made it difficult to arrange care for children when parents were arrested. Many arrestees signed voluntary departure papers and left the country before they could contact immigration lawyers, their families, or – in one of the sites – their home country consulates. Detained immigrants had very limited access to telephones to communicate with their families, and many were moved to remote detention facilities out of the states in which they were arrested. Some single parents and other primary caregivers were released late on the same day as the raids, but others were held overnight or for several days. Many of the arrested parents were afraid to divulge that they had children because they believed that ICE would take their children into custody as well.

In the days and weeks following the raids, informal family and community networks took on significant caregiving responsibilities and economic support of children. Families faced major economic instability as their incomes plunged following the arrest of working parents, usually the primary breadwinners. The most important immediate needs were food, baby formula, diapers, clothing, and other necessities. Families were generally reluctant to go to state or private agencies to ask for assistance due to fears of additional arrests of family members, be they adults or children. Many families hid in their homes – in some cases in basements or closets – for days and weeks on end.

On the day of the raids, school districts in all three sites were effective in ensuring that children were not dropped off to empty homes or left at school overnight, but some children walked to empty homes. The Grand Island school district implemented a plan to contact every child whose parents worked at the Swift plant and to determine adult supervision for them. Because of the efforts of school district officials and extended family and community networks, no young children were left behind in school, left at home without adult supervision, or taken into foster care. Some adolescents, however, were left in the company of other teenagers and children for days and even weeks. Some younger children remained in the care of babysitters for weeks or months.

Longer-term impact. Many parents were deported within a few days of their arrest, and in such cases families had to make arrangements depending on whether the arrested parent could eventually reenter the United States legally or would be willing to face the grave risks involved with attempting illegal reentry at some point in the future. Other parents were held in detention for months, and only released after paying substantial bonds (up to $10,000), or not released at all before their deportation. During the time these parents were held, their children and other family members experienced significant hardship, including difficulty coping with the economic and psychological stress caused by the arrest and the uncertainty of not knowing when or if the arrested parent would be released.

Hardship increased over time, as families' meager savings and funds from previous paychecks were spent. Privately funded assistance generally lasted for two to three months, but many parents were detained for up to five or six months, and others were released but waited for several months for a final appearance before an immigration judge – during which time they could not work. Hardship also increased among extended families and nonfamily networks over time, as they took on more and more responsibility for taking care of children with arrested parents.

After the arrest or disappearance of their parents, children experienced feelings of abandonment and showed symptoms of emotional trauma, psychological duress, and mental health problems. Many lacked stability in child care and supervision. Families continued hiding and feared arrest if they ventured outside, increasing social isolation over time. Immigrant communities faced the fear of future raids, backlash from nonimmigrants, and the stigma of being labeled "illegal." The combination of fear, isolation, and economic hardship induced mental health problems such as depression, separation anxiety disorder, post-traumatic stress disorder, and suicidal thoughts. However, due to cultural reasons, fear of possible consequences in asking for assistance, and barriers to accessing services, few affected immigrants sought mental health care for themselves or their children.

Community responses. In all three study sites, community leaders and institutions initiated intensive and broad response efforts to assist immigrant families after the raids. Religious institutions emerged as central distribution points for relief because they were considered "safe" by families, had space to hold functions and deliver services, provided a natural outreach avenue, were not threatening to other service providers, and could provide some assistance without "strings attached." But in the long run, church-based assistance was not sustainable due to the limited capacity of infrastructure and staff.

Other private social service delivery systems also played important roles. In Grand Island and Greeley, Swift & Company provided substantial assistance through United Way agencies, and in New Bedford, the Community Foundation of Southeastern Massachusetts funded efforts facilitated by the Massachusetts Immigrant and Refugee Advocacy (MIRA) Coalition, a statewide organization.

The presence of trusted membership organizations and coalitions with a focus on immigrant issues facilitated response efforts in New Bedford and Grand Island. In Grand Island, a number of state agencies and local leaders had previous experience with a raid in 1992, and they stepped forward to organize the response. But in Greeley, difficulties in coordinating services and obtaining the names of arrested family members – along with a major snowstorm about a week after the raid – delayed the response effort.

Local leadership, service delivery capacity, and cultural competence also emerged as critical factors in enhancing community responses, yet not all of these were present in all three sites following the raids. Small Latino community-based organizations (CBOs) played leading roles in relief efforts, but few featured strengths across all these

dimensions. Recent immigrant groups such as the Maya Kiche from Guatemala had limited leadership experience and needed support from outside groups.

State and local public health and social service agencies had varying levels of community trust and involvement in response efforts across the sites. The Massachusetts Department of Social Services (Massachusetts DSS) sent 35 workers to detention centers in Texas to interview detainees; they were successful in obtaining the release of 20 single parents who were held there. Through this effort, Massachusetts DSS attained direct contact with some affected families and gained their trust. In Greeley, by contrast, the county social service agency was not a trusted site for relief efforts due to a recent state law requiring that immigrants providing false documents be reported to the authorities. In Grand Island, a recent child welfare case – in which an immigrant parent lost her child and was deported – had broken trust between the agency and the community.

In all three sites, social service agencies sent staff to churches shortly after the raid to assist affected families, and they stationed staff at churches and other service delivery locations temporarily. Despite outreach efforts and the fact that U.S.-citizen children are eligible for a wide range of public benefits and services, few families sought public assistance in any of the three sites following the raids.

Nongovernmental service providers also faced trust issues with the affected families, which complicated service delivery. In Grand Island, ICE's ongoing door-to-door operations and arrests of immigrants in their homes maintained a high level of fear in the community for weeks, and families there would not even go to church or open the door for community leaders who brought them food baskets.

In all three sites, there was substantial paperwork associated with verifying that families seeking assistance were related to immigrants arrested at the worksites. Verification procedures substantially delayed delivery of aid in Greeley because it took more than two weeks to get a full and accurate list of arrestees from ICE.

The location where the major forms of assistance were distributed affected the delivery of services following the raids. In general, providing services in multiple locations such as religious and grassroots community organizations and going door to door was more effective than opening a central distribution point and waiting for families to seek assistance there.

Conclusions and recommendations. Children are vulnerable members of society; thus, the United States, like most other nations, has developed systems to protect them. These systems are designed to meet children's basic needs such as food, shelter, and health care, and to keep them safe from psychological and physical harm. Yet, these systems cannot replace parents when they are taken away from their children. Current U.S. immigration policy mandates the arrest of undocumented parents, and by extension causes separation of parents from children.

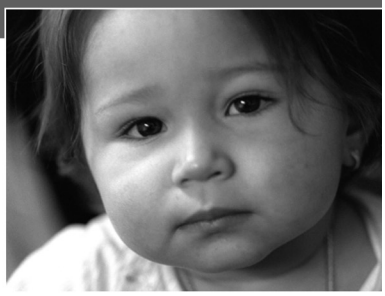
The U.S. government has largely been silent about the impact of these raids on children, and ICE has yet to acknowledge fully that worksite enforcement operations have harmful and long-lasting consequences for families. In fact, ICE has not issued public guidelines or regulations concerning the treatment of parents during their arrest, detention, and deportation.

Beyond the broad concern about the lack of protection for children following worksite enforcement operations, the research also raised many specific concerns about the conduct of worksite raids and community responses to them. The following is a brief list of the recommendations drawn from the study; the full list is available at the end of section VIII, "Conclusions and Recommendations," of this report:

- Congress should provide oversight of immigration enforcement activities to ensure that children are protected during worksite enforcement and other operations.
- ICE should assume that there will always be children – generally very young children – affected whenever adults are arrested in worksite enforcement operations, and should develop a consistent policy for parents' release. Single parents and primary caregivers of young children should be released early enough in the day so that their children do not experience disruptions in care; they should not be held overnight.
- ICE should provide detainees access to counsel and advise them of their right to confer with their country's consular office. Detainees should be allowed access to telephones, and the confidentiality of their telephone conversations should be ensured.
- Schools should develop systems to help ensure that children have a safe place to go in the event of a raid, and to reduce the risk that children will be left without adult supervision when the school day ends.
- Social service and other public agencies should prepare plans to respond to immigration raids and develop outreach strategies to assure parents and other caregivers that it is safe to seek emergency assistance and benefits for children under such circumstances.

- Churches and other religious institutions should be considered central points of communication, distribution of assistance, and outreach to families affected by immigration enforcement operations.
- Social services and economic assistance need to be provided over a prolonged period of time – often many months – until parents are released from detention and their immigration cases are resolved. Longer-term counseling for children and their parents to mitigate psychological impacts may also be necessary.
- Relatives, friends, community leaders, and service providers should develop plans for immigrant families in the event of a single parent's or primary caregiver's arrest and be ready to provide ICE with necessary documentation for a parent's release.
- Immigration lawyers, advocates, community leaders, and others should be honest with arrested immigrants about their chances of remaining in the United States, and strategic in choosing which cases to fight. Arrested immigrants should not have to pay large legal fees if their cases have a low probability of success, especially when they are already facing substantial economic hardship.
- A clearinghouse of information about responses to raids should be developed nationally. Such a clearinghouse could be a repository for stories about raids, a conduit for sharing information, and a setting for developing best practices in service delivery.

II. Introduction



The United States has reached a crossroads in its immigration policy and enforcement strategies. With at least 11 million estimated undocumented immigrants in the country,[1] there is mounting pressure on Congress and the DHS to resolve the status of immigrants and to create an immigration system that is fair and orderly. Some in Congress have pursued various legislative strategies that would grant permanent legal status to the 11 million or more undocumented individuals currently residing in the United States. Others have proposed granting temporary work permits, which would at least allow these immigrants to stay in the country legally for a period of a few years. But these measures have failed to pass the full Congress, leaving millions of immigrants without any form of legal status – or basic rights in the country – and vulnerable to arrest, detention, and deportation at any time.

Most of the children of undocumented immigrants are birthright citizens, and the rights of U.S. citizens extend to these children, along with the obligations of the U.S. government, other public institutions, and private actors in our society to protect them. Recent estimates suggest that there are about five million children in the United States who have one or more undocumented parents. Two-thirds of these children – more than three million – are U.S.-born citizens.[2] Under current law these children are just as vulnerable to immigration enforcement as their parents. While they cannot be deported themselves, the arrest, detention, and possible deportation of one or more parents have potentially great immediate and longer-term impact on these children.

Worksite enforcement is different from other immigration enforcement activities in several important ways, having negative short- and long-term implications for families and children. Worksite raids occur all over the country – not just near the border.

Generally, immigrants arrested in worksite raids have no prior criminal history or immigration-related arrests. Worksite raids by definition are aimed at people working in the country illegally, and the offenses for which they are arrested include unauthorized work and at times use of false Social Security numbers. For those who have been in the country working for many years – which includes the bulk of the immigrants included in this study – arrests arguably cause great shock and disturbance, and the instability following the arrest of parents can negatively affect children in all aspects of their lives – economically, psychologically, and otherwise.

Background on Department of Homeland Security (DHS) Worksite Enforcement Actions

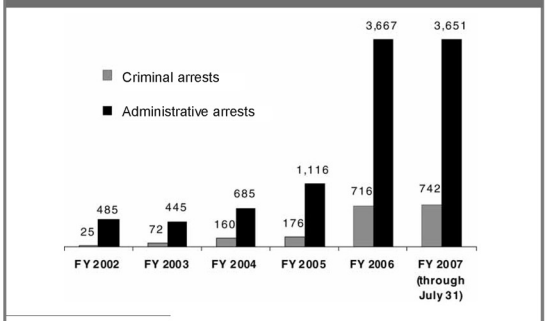
DHS is one of the largest law enforcement agencies in the world. Every year DHS arrests more than 1.6 million immigrants; the vast majority of them are arrested along or near the Southwest border with Mexico.[3] Further into the interior of the United States, Immigration and Customs Enforcement (ICE) conducts operations that net thousands of immigrants every year under a variety of enforcement strategies. Through "Operation Return to Sender," for instance, ICE arrested almost 20,000 undocumented immigrant fugitives in federal fiscal year (FY) 2006.[4] "Criminal aliens" – those immigrants convicted of criminal charges within the United States – are arrested in even larger numbers. Since 1996, when new criminal deportation provisions were enacted in the Illegal Immigration Reform and Immigrant Responsibility Act, more than 650,000 immigrants – both undocumented and legal noncitizens – have been deported as criminal aliens, many after serving substantial prison time. In both FY 2004 and FY 2005 more than 90,000 immigrants were deported as criminal aliens.[5] To meet the needs of its various investigation, law enforcement, detention, and deportation operations, ICE's budget is $4.7 billion for FY 2007.[6]

There has been an increased focus on worksite enforcement within DHS and ICE, but the number of worksite arrests is still small relative to other interior enforcement activities. The Immigration and Naturalization Service (INS), the predecessor agency to ICE, arrested very few undocumented immigrants at worksites during the late 1990s through 2002. But since its creation in 2003, ICE has "dramatically enhanced its efforts to combat the unlawful employment of illegal aliens in the United States."[7] Between FY 2002 – the last full year INS was in operation – and FY 2006, the number of worksite administrative arrests increased more than sevenfold, from fewer than 500 to more than 3,600 (Figure 1). During the first ten months of FY 2007 (October 2006 through July 2007), there were more than 3,600 administrative arrests and more than 700 criminal arrests – about as many as during all of FY 2006.

ICE's new emphasis on worksite enforcement has resulted in large-scale sweeping operations in many states, as well as many much smaller operations. In December 2006, as part of "Operation Wagon Train," more than 1,000 ICE agents raided six Swift & Company meatpacking plants; ICE also arrested 1,297 immigrants under administrative charges and another 274 persons – both immigrants and U.S.-born natives – on criminal charges.[8] Two of these Swift raid sites were visited for this study. Since the raid on Michael Bianco, Inc. in New Bedford in March – the last of the three operations discussed in this report – there have been worksite enforcement actions in at least nine states, with more than 700 immigrants arrested.[9] Almost all of the immigrants arrested in these raids were Latinos – primarily from Mexico, Guatemala and Honduras – but nationally almost a quarter of undocumented immigrants are from regions of the world other than Latin America. In some other worksite raids, arrested immigrants may not have been predominantly Latinos.

ICE's detention capacity has also increased to accommodate the growing number of arrests from worksite and other operations. On any given day in FY 2006, ICE detention facilities housed almost 20,000 immigrants, a 10% increase over FY 2005. There are large and growing numbers of deportations as well. In FY 2006, ICE formally deported more

FIGURE 1
U.S. Immigration and Customs Enforcement Worksite Arrests, Fiscal Years 2002 through 2007



Source: U.S. Immigration and Customs Enforcement, "Worksite Enforcement Overview." Fact Sheet. Washington, DC: U.S. Department of Homeland Security, 2007. Available at http://www.ice.gov/pi/news/factsheets/worksite.htm.

than 185,000 immigrants from the United States.[10] However large these numbers may seem, these deportations amounted to less than 2% of the estimated 11 million immigrants in the country without authorization.

Study Goals

The primary goal of this paper is to go beyond the human interest stories reported in the media and provide a factual basis for discussing the impact of worksite enforcement actions on children with undocumented parents. The study focuses on children because they have strong claims to the protection of society, especially when they are citizens and integrated into their schools and communities, and the United States is the only country they have known and consider home. They also warrant our attention because they are emotionally, financially, and developmentally dependent on their parents' care, protection, and earnings.

A secondary goal is to draw attention to the ground-level experiences of immigrant families and communities following the raids and use these experiences to understand how the raids have affected families and communities. This report also includes a concrete set of recommendations for policy changes, planning, and organizing to mitigate the impact of future raids on children and communities.

To this end, the study addresses the following key questions:

- **Number of children affected.** How many children have parents who have been arrested in worksite enforcement actions? What are the ages of these children, and how many are U.S.-born citizens?
- **Immediate impact on children.** What are the immediate physical, emotional, and psychological effects of the raids on children? Who cares for children on the day of a raid and what happens to them in the days that follow? How are their basic needs for supervision, food, and shelter met? What is the impact of separation from their parents? What happens with children's schooling?
- **Longer-term impact on children.** Over the longer term, do families remain in the same communities or relocate elsewhere in the United States or abroad? If a parent is deported, does the child move with the parent or remain with another parent or caregiver? How do families make decisions about moving or staying, and what are the implications of their decisions for children?
  - How do family circumstances and caregiving arrangements change during the intervening period between when a raid occurs and when parents are released from detention and deported? What housing, employment, and economic conditions do

the families face while the parent is detained, when they are released on bond and waiting adjudication, and once their case is decided?

- ◆ How do increased fear in immigrant communities and backlash from nonimmigrants affect children psychologically?
- ◆ What are the potential longer-term consequences for children's development?

■ **Community responses.** How have state and local public agencies, nonprofit service providers, faith-based organizations, community leaders, schools, and other people and institutions responded to the raids? What types of assistance are provided, and what needs are left unmet? What seem to be the most effective response models or strategies? What are the key challenges in delivering services to families and children?

■ **Lessons learned and recommendations.** What lessons can be learned from community responses to the raids in anticipation of similar raids in the future? What recommendations can be made for public agencies, private organizations, and immigrant communities to prepare for future raids? What recommendations can be made for ICE and the federal court system adjudicating the cases?

Organization of This Report

Following a brief description of the methodology, the report discusses the number of people arrested in the three raids covered by the study along with the numbers and characteristics of children in arrestees' families. Next, the report discusses what actually happened on the day of the raids in each site, and what happened to the people who were arrested. Following is a section discussing the immediate impact of the raids on children in terms of their caregiving arrangements, schooling, and basic economic needs. Longer-term consequences – economic, social, and psychological – are discussed in a separate section. The next section describes the social service responses of the three communities visited for the study. Implications for future responses to immigration raids are discussed throughout the report in text boxes at the end of each substantive section; vignettes and stories about affected families are also described in text boxes. Conclusions and recommendations are provided as the last substantive section of the report. Four appendices follow: (1) a detailed description of the methodology; (2) summary of the demographic, economic, and social characteristics of the sites; (3) description, in systematic detail, of the community responses to the raids in the three study sites; and (4) detailed estimates of the number of children in undocumented families nationally, regionally, by country of origin, and by parent occupation.

METHODOLOGY

The study was conducted in a short time frame – about four months from April through July 2007 – and is exploratory and preliminary in nature. Site visits were conducted in three communities within two to six months after large-scale worksite raids had taken place. Thus, the study covers only the short- and intermediate-term impact on children and the communities' responses to the raids. Some findings and hypotheses about potential longer-term effects on children were also explored in the study; however, a comprehensive assessment of longer-term consequences must be left to a follow-up study with a longer time frame. The impact on children who left the country with their parents or other caregivers was beyond the purview of this study.

In each site, information was obtained directly from immigrants who were arrested, their spouses, and other family members. Immigrant community leaders, employers, and public and private agency staff who provided relief following the raids were also interviewed. Semistructured interview guides were used to collect standardized information from site to site and among respondents; these guides also allowed for open-ended discussions with respondents. Data on the number of children directly affected were collected, when possible, from each site. National figures on children of undocumented immigrants and their characteristics were obtained using data from the March 2005 U.S. Current Population Survey (CPS), enhanced by Urban Institute assignments of legal status to noncitizens in the survey. The methodology is described in more detail in Appendix 1 at the end of this report.

The three study sites were all selected based on large-scale ICE worksite enforcement actions within six months before the site visits. The raids were conducted in manufacturing plants that are major employers. The sites were similar in size and included a substantial number of Latino immigrants, but the demographics of Latino populations differed across the locales, as did their residential and employment patterns. Although the report focuses on sites where virtually all of the arrested immigrants were from Latin America, the findings may also be applicable to children with undocumented parents from other regions of the world.[11] Appendix 2 describes the demographic, economic, and social characteristics of each of the three study sites in more detail.

III. Number of Children Affected

Understanding the scope of the impact of worksite enforcement actions on children and families requires data or estimates of the number of children potentially and actually affected. Unfortunately, there are no hard numbers on the undocumented population, as it is largely clandestine and difficult to survey; data on the number of ICE arrestees with children are also lacking. Absent such exact data, this section draws on two of the best available sources: national survey data from the U.S. Current Population Survey (CPS), and data obtained during the course of the study's three site visits.

Nationally, there are almost five million children with at least one undocumented parent, and about half as many children as undocumented working-age adults. From the site visits, the best available information suggests that at least 506 children were directly affected by the arrest of at least one parent. This is more than half of the total number of arrestees (912).

National Estimates of the Number of Children in Undocumented Families

While employer enforcement actions may deter the employment of undocumented adults, the unavoidable consequences of such actions include putting the well-being of children at risk. Nationally, about half of all working-age undocumented adults have at least one child. On average, one child is likely to be affected for every two workers arrested, if the demographics of undocumented workers arrested match the national data.

Nationally, the ratio of children to working-age undocumented adults (ages 18 to 64) was 53% in 2005. There were 9.3 million undocumented working-age adults and 4.9 million children (ages 0-17) living with these adults (Table 1).[12] About half (48%) of undocumented working-age adults had children. Three-quarters of undocumented families with children had two parents in the home, and there were two children on average per family.*

TABLE 1

National Estimates of Undocumented Working-Age Adults and Their Children, 2005

Number of adults (ages 18-64)	9,281,000
Number of adults with children (ages 0-17)	4,483,000
Percentage of adults with children	48%
Average children per parent	1.1
Average children per family	2.0
Total number of children (ages 0-17)	4,925,000
Ratio of children to adults	53%
Percentage of children:	
U.S.-born citizens	64%
Ages 0 to 5	37%
Ages 6 to 10	28%
Ages 11 to 17	35%

Note: Estimates are inflated by about 10% to adjust for undercounting in the Current Population Survey, as are the most recent and widely accepted estimates by the Pew Hispanic Center. See Passel, Jeffrey S., *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey.* Washington, DC: Pew Hispanic Center, 2006.

Source: Urban Institute analysis of March 2005 U.S. Current Population Survey data, augmented with assignments of legal status to noncitizens.

Thus, based on national data, one would expect that the number of children affected by raids would be equal to about half the number of adults arrested. Moreover, as undocumented families have two children on average, there are multiple children affected in most families. However, there are likely to be differences across our study sites based on the demographics of immigrants there and other characteristics. Potential reasons for variation across the sites are discussed in detail in Appendix 4.

* See Appendix 4 for further details.

Hundreds of other children were also affected because they lived in extended households with the arrested immigrants; families who were directly affected moved in with them; or they felt the psychological impact of the raids on the whole immigrant community. These children are not reflected in the estimates included in this report.

Citizenship of children. The majority of children in undocumented families are U.S.-born citizens; therefore, worksite enforcement actions are affecting a large number of citizens in addition to undocumented immigrants. The U.S. Constitution declares that children born in the United States are citizens by birthright. In 2005, almost two-thirds (64%) of children with undocumented working-age parents were U.S.-born citizens (Table 1).

The majority of younger children with undocumented parents were U.S.-born citizens, but most adolescents were foreign-born and therefore undocumented, like their parents. In 2005, 84% of children under age six were U.S.-born citizens, compared with 63% of children ages six to ten, and just 44% of children ages 11 to 17. As a result, in many cases worksite raids are affecting both citizen and noncitizen children within the same families.

Ages of children. Worksite enforcement actions are also affecting a large number of the most vulnerable members of society – the youngest children. The children of undocumented immigrants are predominantly young children, and many are infants, toddlers, and preschoolers. In 2005, more than a third (37%) were ages five and younger, and almost two-thirds (65%) were ages ten and younger.[13] Because so many of the children of undocumented parents are very young, child care arrangements are likely to be critical in the aftermath of worksite raids. Moreover, schools cannot be the only or primary focus of response efforts, because only about two-thirds of the children affected are likely to be old enough to be in school.

Implications

The almost five million children with undocumented parents in the United States are at risk of adverse consequences if their parents are arrested in worksite or other immigration enforcement actions. The small number of worksite arrests so far – just a few thousand – has directly affected only a small fraction of the children potentially at risk.

Estimates of Children Affected in the Study Sites

There were 506 children (collectively) whose parents were arrested in the three sites (912 total arrested adults). The ratio of children to arrested adults ranged from about three children for every four adults in Greeley to just under one to three in New Bedford.

Although only three sites were chosen for the study – and they are by no means representative of all the worksite enforcement actions that have taken place recently – data from the sites fall into line with the national data, suggesting that there are a little more than half as many affected children as adults. But there was great variation in the number of children from site to site, suggesting that some raids have significantly more impact on children than others. There were more children per arrested adult in Greeley and Grand Island than in New Bedford, most likely because New Bedford arrestees were younger, were more likely to come from Guatemala and other Central American countries, and were earning lower wages; these factors are discussed in more detail in Appendix 4.

Number of children with arrested parents. The sites in Greeley and Grand Island each had about 275 arrests (Table 2). In Greeley, according to service providers interviewed for the study, 90 households with children and at least one arrested worker received services. Assuming there was one arrestee per household, amounting to about one-third of arrestees with children, these households had a collective total of 201 children, or 2.2 children on average per household. In Greeley there were approximately three children for every four arrested adults.

In Grand Island, a similar number of children with arrested parents (192) were in families that sought services, but no information was available on how many adults or families with children sought services. The ratio of children to arrestees in Grand Island was more than two children per every three arrestees (69%), just below the ratio in Greeley.*

New Bedford had fewer adults with children, despite the larger number of overall arrestees (361). In this site, only 78 arrestees (22%) had children, and the total number of children was 113. Those arrestees with children had only 1.4 children on average in New Bedford, compared with 2.2 in Greeley. The ratio of children to arrestees was just under one child for every three arrestees (31%) in New Bedford, less than half that of the other two sites. The data we obtained from the first two sites likely undercounted the number of children affected because they are based on reports by service providers. However, in New Bedford, the data are complete.

Citizenship of children. Data on the U.S.-citizen share of children were obtained only for Greeley. At this site, 66% of children were citizens, consistent with national data. Given

* The figures on the number of children affected in the first and second sites are based on records of households that received services and had at least one parent arrested, verified against a list provided by the swift of company. Because not all families with children sought services, these numbers are likely underestimates.

TABLE 2

Numbers of Arrestees and Children of Arrestees for the Three Study Sites

	Greeley	Grand Island	New Bedford
Total workers arrested*	273	278	361
Number with children	90	N/A	78
Share with children (ages 0-17)	33%	N/A	22%
Average number of children	2.2	N/A	1.4
Number of children	201	192	113
Ratio of children to arrestees	74%	69%	31%
Percentage of children:			
U.S.-born citizens	66%	N/A	N/A
Ages 0 to 5	N/A	44%	71%
Ages 6 to 10	N/A	35%	17%
Ages 11 to 17	N/A	21%	12%
Geographic region of the U.S.	West	Midwest	Northeast
Predominant countries of origin of arrestees	Mexico Guatemala	Guatemala Mexico	Guatemala Honduras El Salvador

* Includes all those officially reported as arrested by ICE, some of whom were arrested at locations other than the primary facility that was raided.

Sources: Greeley and Grand Island data are based on information obtained from service providers and therefore may undercount the number of children affected as not all arrestees or families sought services. New Bedford data are based on a comprehensive list of arrestees and their family members compiled by state and local advocates and service providers.

the higher share of Guatemalan arrestees in Grand Island and New Bedford – and the fact that a higher share of children with Guatemalan than Mexican parents are citizens (Appendix 4) – one would expect the citizen share of children to be higher in these two sites, but no data were obtained.

Ages of children. Data on children's ages were obtained for Grand Island and New Bedford, and in both sites large majorities were age ten and younger. In Grand Island, 44% of children were under six years old, and another 35% were age six to ten. Just 21% were ages 11 to 17. Children were much younger in New Bedford: 71% were under six, and 17% were age six to ten. Only 12% were age 11 to 17, not counting the four arrestees

IMPLICATIONS

Arresting undocumented immigrants from worksites inevitably affects children. On average, there are likely to be about half as many children as adults affected by worksite enforcement actions. But there is likely to be great variation among worksite operations, as the share of children varies with immigrants' age, country of origin, and other factors.

who were themselves minors. In fact, a large number of the children in New Bedford were infants and toddlers, and a dozen pregnant women were arrested. The relatively young ages of the children in New Bedford – relative to Grand Island and the national data presented earlier – are most likely due to the same factors associated with fewer children in this site, especially the younger average age of arrestees (Appendix 4).*

* Nationally, in 2005 the age distribution of children in undocumented families was 37% under age six, 28% ages six to ten, and 35% ages 11 to 17.

IV. Worksite Enforcement Actions in the Study Sites

The central focus of this report is on the impact of the ICE worksite raids on children at the three study sites. These raids were large in scale and had a dramatic and long-lasting impact on the communities in which they were conducted. Arrested immigrants often experienced long and difficult periods of detention and uncertainty about their future. To understand the impact on children, it is important to first review how the raids were conducted and how arrested immigrants flowed through the ICE system of detention, release, appeal, and deportation following the raids. The discussion of these issues in this section of the report is not meant to be exhaustive, but only to provide a context for our later discussion of the impact of the raids on children and services provided to them.

The Day of the Raids

Greeley, Grand Island, and New Bedford experienced among the largest worksite enforcement actions that ICE – or any U.S. immigration authority – has ever conducted. They involved a large-scale show of force with hundreds of agents involved in each site. Greeley and Grand Island were two of the sites for "Operation Wagon Train," in which 1,297 undocumented immigrants in total were arrested at six Swift & Company meatpacking plants on December 12, 2006.[14] New Bedford was the site of a raid on the military contractor Michael Bianco, Inc., in which 361 undocumented immigrants were arrested on March 6, 2007.[15] These large-scale operations involved substantial logistical support, as hundreds of arrestees were moved across different locations, processed, detained, and then released or deported. They evinced significant community reaction and gained substantial attention in the media. Most of what we learned about the days the raids took place corroborated media reports.

The raids were conducted similarly in all three locations. ICE contacted local law enforcement personnel prior to the raid, but in Greeley and Grand Island no other authorities or community members had advanced warning. In New Bedford, state and local law enforcement officials were contacted in advance of the raid. ICE also contacted the governor, who notified the central office of the Massachusetts DSS. The local DSS office was not informed until the morning of the raid. In all three sites, ICE agents arrived at the plants early in the morning with a large number of vehicles – including several buses – to move arrested immigrants from the plants to processing facilities. To the general community, the movement of many buses and other ICE vehicles into town was the first sign that a raid was in progress.

In Greeley and Grand Island, ICE obtained warrants to search the plants for immigrants charged with identity theft (e.g., use of someone else's Social Security number) and used these warrants to gain access to the manufacturing plants. In New Bedford, ICE had placed an agent in the worksite and, based on the agent's observations, obtained a warrant for employer violations of working conditions and workers' rights. In all three sites, plant management shut down the assembly lines and instructed workers to assemble in central locations, where ICE agents separated them into groups by citizenship and legal status and requested to see their documentation. There were conflicting reports about the degree to which ICE agents were armed and had their guns drawn during the raids. There were also conflicting reports about the number of agents who spoke Spanish and were able to communicate effectively with the arrested workers. Less controversial was the fact that many Guatemalans in all three locations spoke a Mayan dialect, not Spanish, as their first language; ICE certainly had difficulty communicating with this group.

In many cases, the workers were not carrying proper identification documents on their person; therefore, they were initially unable to prove they were citizens or legal residents. As word of the raids spread across the communities, crowds gathered outside the plants. Spouses, relatives, lawyers, advocates, clergy, and others came to the plants to provide documentation for citizens and legal immigrants, although they often had difficulty getting past security – whether ICE, plant security, or local law enforcement – and communicating with ICE workers. In all three plants, it took several hours to sort through the many arrestees and determine their legal status, work authorization, and potential use of other people's Social Security numbers.

There were also conflicting reports of how arrestees were treated during the raids and while still at the plants. Some study respondents said that ICE agents behaved in a "professional manner" during the raids and allowed the workers access to lockers, food,

restrooms, and other necessities. Other respondents claimed that ICE did not allow for breaks or access to food and water for long periods of time. In general, the comments about ICE's conduct of the raids were much more positive in Grand Island than in the other two sites, suggesting there is some variation in enforcement actions depending on the ICE staff involved and the nature of the action. However, in all three sites, arrestees were held for several hours at the plants before boarding buses for other locations where they were to be held for processing, and during this time had no access to legal counsel or communication with their family members about their circumstances. Arrestees were generally placed in handcuffs or had plastic bands tied around their wrists during their transportation from the plants to the processing facilities. In New Bedford some of the arrestees also had their legs shackled during their transportation to detention facilities in Texas.

In all three sites, crowds gathered outside the plants over a period of several hours during which the raids took place. Many were relatives, friends, or others seeking to provide documentation, but others were community leaders and members. In Greeley and Grand Island, several high school students left school when they heard about the raids and went to the plants. There were no incidents of altercations or violence outside the plants at any of the three sites, however.

Much smaller follow-up raids occurred in both Greeley and Grand Island. In Greeley, several immigrants were arrested at a plant subsidiary, and a small number of people were arrested at their homes on the same day as the plant raid. In Grand Island, ICE continued to search for a handful of ID theft suspects by going door to door in the community over the course of several days following the plant raid.

IMPLICATIONS

Large-scale worksite raids involve an extensive show of force on the part of immigration authorities, and older children – especially adolescents – may witness force used against their parents, which can include handcuffing or shackling. The large-scale nature of the raids and the follow-up raids in Greeley and Grand Island kept the immigrant communities living in a state of fear. Pervasive fear and the experience of witnessing force used against their parents could leave a lasting psychological impact on children and adolescents.

DETENTION, RELEASE, AND DEPORTATION OF PARENTS

Arrestees from Greeley and New Bedford were initially processed at ICE facilities within Colorado and Massachusetts, but arrestees from Grand Island were moved to a National Guard camp in Iowa for their initial processing. Initial processing generally involved identifying and recording arrestees' true names and nationalities; collecting fingerprints; checking names and fingerprints against ICE, national criminal, and other databases; and determining whether arrestees should be released, detained, or allowed to leave the country voluntarily.

After initial processing, arrestees were generally sorted into four groups: (1) those taking "voluntary" removal or deportation – who left the country quickly; (2) those detained – either nearby or in many cases in other states – pending resolution of legal status and appeals; (3) those referred to federal or state authorities for trial on criminal charges; and (4) those released on their own recognizance pending an immigration hearing, usually because they were sole or primary caregivers of children (Figure 2).

Voluntary removal or deportation. In Greeley and Grand Island, a large number of arrestees signed papers agreeing to be deported without appeal. In many cases they also agreed to leave the United States before they had any access to a lawyer or an official from their consulate. Greeley had the largest number of Mexican arrestees (128), the majority of whom (86) signed voluntary deportation papers and were flown to the southwestern border within 48 hours.* This group was deported before they had access to lawyers or officials from the Mexican Consulate.** No information on their identities was made available until one and a half weeks after the raid, when the consulate received a list from ICE of all the arrestees. This group was composed almost entirely of men, and many of those with family in Greeley called their family members from the border, after deportation, to get back in touch with them. In addition, most of the 94 Guatemalans who were arrested signed papers agreeing to be deported, and they were deported within 40 days. The Guatemalan Consulate, unlike the Mexican Consulate, was able to provide representation to about half (50 out of 108) of their nationals who were arrested.

In Grand Island, the Mexican-origin population was also large (105 arrestees), and there was also a significant number of voluntary departures (72). Consular officials were able to interview more than 80% of the arrested Mexican-origin population, but many had already signed their deportation papers before these interviews.*** Lawyers seeking to represent the arrestees were denied access during the first seven to ten days (while the arrestees were being held on federal property at the National Guard camp in Iowa), and lawyers had to contact the U.S. Attorney and a U.S. senator for the state to intervene.

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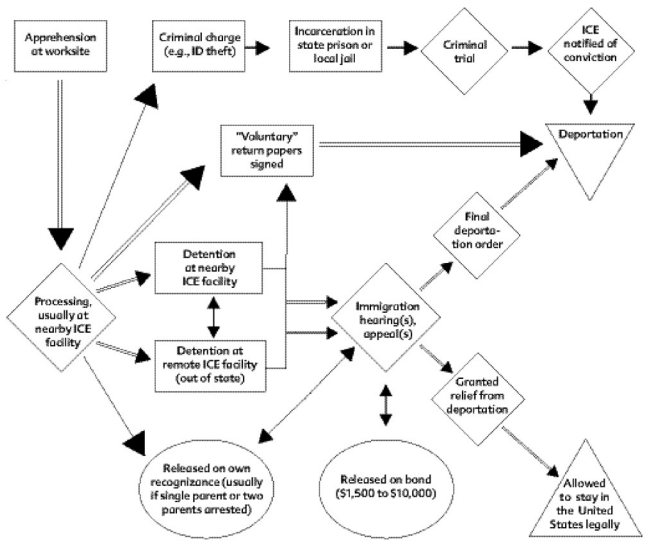
* A handful of those deported during the first 48 hours told ICE that they were from Mexico; however, they were actually from Peru or Central America, and were mistakenly deported to Mexico.

** Officials from the Guatemalan Consulate had similar difficulty obtaining access to their nationals within the first two days; however, a much smaller number of Guatemalans were deported right after the raids.

*** Consular officials from Guatemala and other countries did not travel to the ICE processing facility to attempt to gain access to their nationals in detention.

FIGURE 2

Flow of Worksite Arrestees Through ICE Processing, Detention, Release, and Deportation



Source: Adapted by authors of this study from the U.S. Department of Homeland Security, Office of the Inspector General, "Detention and Removal of Illegal Aliens." OIG-06-03. Washington, DC: April 2006.

According to study respondents, some of the arrestees from both Greeley and Grand Island who signed voluntary deportation orders planned to try to return to the United States eventually to be reunited with their families. Voluntary departure is a form of immigration relief allowing undocumented immigrants who are arrested in the United States to agree to leave the country without being forcibly deported. Voluntary departure allows noncitizens an opportunity to remain in the United States for a short period of time to wrap up their affairs, and then to depart without incurring years-long bars on legal reentry and other penalties that are attached to formal deportation orders. In other words, immigrants who take voluntary departure may one day be able to apply for legal admission. By taking voluntary departure, arrested immigrants also avoid lengthy detention, and the earlier they are released and deported, the earlier they can attempt illegal reentry – with its numerous risks and dangers.

In New Bedford, there were not very many voluntary deportations within the first few days because the arrestees there were almost entirely from Guatemala or other Central American countries. Guatemalan consular staff and lawyers from Catholic Charities and Greater Boston Legal Services (GBLS) were able to see some of the arrestees two days after the raid. Many arrestees, however, were flown to Texas within the first 48 hours before they were given access to lawyers. Consular staff and nine lawyers went to Texas a few days later when they were able to gain access to most of these detainees.* Thirty-five workers from Massachusetts DSS also went to Texas within the first few days to meet with detainees on a separate trip. The vast majority of New Bedford arrestees were detained, some for long periods of time. Only 11 of the arrestees had been deported by the time of the study's site visit, two months after the raid.

Voluntary deportation is a less desirable and more difficult option for undocumented immigrants who are not of Mexican origin. Mexicans are the only group who can be flown to the southwestern border and deported across that border. This involves domestic U.S. air flights, which are much easier for ICE to schedule. Flying Mexican deportees to the border puts them in close proximity to the United States, if they choose to attempt a return border crossing. Arrestees from Guatemala, by contrast, must be flown internationally, and this requires arranging flights with the Guatemalan government, and means that arrestees must spend more time in detention before they can leave the country. It also means that once they return to Guatemala, the deportees will have a more expensive, perilous, and longer journey – at least a few days – to return to the United

* Many of the detainees from New Bedford were sent to a facility in Harlingen, Texas. Harlingen is a small city along the Texas-Mexico border with few immigration attorneys, so legal counsel for this group largely had to be brought in from Massachusetts.

States. Study respondents also said that the economic and social conditions in Guatemala were very problematic for migrants' return, as there was little work, especially in the rural regions of Maya Kiche. We were also told that Guatemala was very dangerous, and many immigrants had already lost relatives due to ongoing crime, violence, and persecution in that country. As a consequence, many Guatemalans did not feel that returning was a viable option, and some preferred being detained to risking a return to Guatemala. Thus, Guatemalans were more likely than Mexican arrestees to fight their deportation cases.

IMPLICATIONS

Mexican immigrants who are arrested in worksite operations are more likely to choose voluntary departure, allowing them to be released from detention quickly and potentially return to the United States eventually to rejoin their families. Family and community members may not even know they have been arrested before they leave the country. Guatemalan, other Central American, and other non-Mexican immigrants, however, are generally detained for longer periods of time on average because they are more reluctant to sign voluntary departure papers; even if they do, it takes more time for ICE to arrange transportation to their home countries.

ICE detention. Most of the arrestees who did not sign voluntary deportation orders were detained for significant amounts of time in locations far from their homes and families. In Greeley, the last group of about one dozen detainees was being released at the time of the study's site visit, nearly five months after the raid was conducted. In Grand Island, a handful of arrestees were still in detention nearly six months after the raid. In New Bedford, just two months after the raid, about half of the arrestees (191) were still in detention.

In all three sites, large numbers of detainees were moved out of state after initial processing. In some cases, this was likely due to lack of capacity in nearby ICE facilities, as some ICE detention centers are overcrowded.[16] In other cases, women were moved to separate facilities from men. The movement of detainees to remote facilities made communication with lawyers, family members, and others that much more difficult for detainees. In Greeley, for instance, 46 out of 94 Guatemalans detained were transferred to Houston shortly after the raid. Some of the detainees from Grand Island were moved to Georgia. In New Bedford 90 arrestees were moved to two ICE facilities in Texas within the first couple of days. It was several days before consular officials, lawyers, and Massachusetts DSS workers were able to interview them.

Communication by detainees with their legal representatives and loved ones was also complicated by lack of telephone access in all three sites. In some of the centers, detainees were only allowed to make outside calls using prepaid telephone cards, and these cards were only available for purchase – using funds from detention savings accounts – once per week. In many cases, the only option for detainees was to call their relatives collect at substantial cost. In one site, consular officials were allowed to lend detainees their cell phones to call their families. Otherwise, immigration lawyers and

IMPLICATIONS

Long-term detention - up to several months - without consistent access to legal representation or working telephones is especially problematic for detainees with families and children. When detainees are moved to remote facilities, it makes it even more difficult for attorneys, social workers, and others to contact them. The isolation of detainees and communication difficulties make it more difficult for parents to arrange care for their children, and more difficult for children to inquire about their parents.

other visitors were generally barred from lending their phones to detainees during their visits. In addition, the phone systems at the detention centers were not always working, as problems with system reliability are widespread in ICE facilities.[17]

Release from detention. In all three sites, ICE released some arrestees within a day or two after the raids, based on their roles as primary or sole caregivers for children, or because of family health issues. However, respondents told us that ICE was not always consistent in its policies regarding release of caregivers, and that they had some difficulty in obtaining their release. Moreover, many arrested immigrants did not disclose to ICE that they had children in the United States for fear that their children would be arrested and detained or taken into foster care. One arrestee from Grand Island, for instance, did not tell ICE she had children until she was boarding the plane for her final deportation. Lawyers, consulates, social workers, and other trusted intermediaries were generally more successful in eliciting information about children than were ICE agents.

In Greeley, the vast majority of arrestees with children were living in two-parent families, and the other parent was not arrested. In this site, according to respondents, only a few arrestees were released initially as caregivers. Just seven Mexican arrestees – two men and five women – were released the same day as the raid because they were caregivers. Fourteen Guatemalans were released because they were single parents or actually had work authorization but could not provide it during the raid.

In Grand Island, a similarly low number of arrestees were released soon after the raids to take care of their children. Lawyers were able to obtain the release of nine arrestees – all women; in six cases they were single mothers, and in three cases the husbands were also arrested. The Mexican consulate obtained the release of two women whose children were living without parents. Local community leaders took about half a dozen children with them to an ICE office and were able to obtain the release of their parents.

In New Bedford, 60 detainees were eventually released because they were sole or primary caregivers,[18] and in total 95 were released without bond. Massachusetts DSS workers traveled to Texas to interview detainees being held there and recommended the release of 21 detainees because they were parents. It was only after the interviews, protest by the governor, and the intervention of Massachusetts' two U.S. senators that ICE released 20 of

the detainees. These detainees, who were mostly single parents with young children, spent several days away from their children. In addition, a few minor detainees (under age 18) were released into the custody of Massachusetts DSS and placed in foster care; they were all workers at the plant, and one was also the daughter of another arrested worker.

Most of the detainees identified as sole or primary caregivers were released "on their own recognizance," in other words without paying a fine or bond. Most of the detainees released over the longer term, however, paid significant bonds to be released. ICE detention sets the minimum bond at $1,500,[19] but respondents told us of much higher bond amounts, up to $10,000 in some cases. The bond amounts and difficulty getting released on bond varied greatly from ICE district to district, and as a rule those detainees held out of state had more difficulty getting bond. One immigration judge, for instance, held almost everyone for at least four months, releasing only 16% of those who were eligible on bond.* Another immigration judge set bond amounts at $4,000 or more. Thus, the setting of bond amounts and bond policies generally were highly dependent on the location of detention and the particular immigration judge presiding over the case. This resulted in unequal treatment of detainees – depending on where they were detained – and unequal consequences for children in terms of prolonged separation from their parents.

IMPLICATIONS

Many arrested immigrants do not disclose to ICE that they have children because they fear that their children would be arrested or taken into foster care. They are more likely to disclose this information to trusted intermediaries. When parents do not disclose that they have children, it may delay their release and prolong family separation, with especially severe consequences for young children whose only parent is arrested.

Difficulties obtaining legal representation and paying for bonds compounded economic hardship for the families of many arrestees. In Greeley and Grand Island, following the loss of their paychecks, arrestees had to pay attorney fees and bonds from other sources. Respondents told us that some families had sold their automobiles to pay for bonds. Others had taken up collections among relatives or taken out large loans. One family was moving from house to house to try to escape repayment of the loan for their bond. In New Bedford, however, an anonymous donor established a loan fund for portions of bond payments that released detainees which their families could not cover.

In New Bedford, some of the arrestees were released wearing "Electronic Monitoring Devices," or ankle bracelets. This is the most restrictive form of release and monitoring of arrestees which could potentially add to the stigma associated with arrest and have an additional psychological impact on parents and children.

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* Only about six of the ICE detainees were ineligible for bond because of criminal charges or other reasons.

IMPLICATIONS

Several factors exacerbate and prolong economic hardship and instability for the families of arrested immigrants, including extended periods of arrest, high bond amounts, and legal fees. Even after they are released, arrested immigrants may need to remain in their communities without work authorization for several months pending adjudication of their cases.

Overall, by the time of our site visits, most arrestees had been released or deported. In Greeley, all of the detainees had been released or deported by the time of our visit, five months after the raid. In Grand Island, a small number – about 25% of those with legal representation – were still in ICE detention six months after the raid. In New Bedford, which we visited just two months after the raid, 149 detainees (42%) had been released, but many (191) were still in detention.

Despite their release from detention, however, the vast majority of all those arrested and still in the country had to wait to find out if and when they would be deported until the final disposition of their cases was determined. Due to backlogs, the waiting period for immigration hearings can run into several months. In Greeley, a handful of arrestees were told they would have to wait up to nine months or a year before their final court date. During this waiting period, even when released, the arrestees do not have legal authorization to work and have been processed into ICE's list of pending deportations. These immigrants cannot work or make decisions regarding their children until the final determination about their status is made.

Referral for criminal charges. In two of the sites – Greeley and Grand Island – ICE initiated worksite operations to pursue alleged cases of identity theft (e.g., using someone else's Social Security number). In these two sites, a substantial number of arrestees faced criminal charges, and most of these were for either identity theft or for felony reentry into the United States. In Greeley, 21 immigrants (less than 10% of the total) were originally arrested by ICE on criminal charges.[20] Six Mexican immigrants were sent to a county jail, but no formal charges were filed, and the group was deported by ICE under administrative charges, i.e., illegal presence in the United States.

In Grand Island, 26 people (about 10% of the total) were arrested on criminal charges, and they were all referred to federal authorities for trial.[21] The judge gave them a one-year sentence and denied them bond during their detention. This group was held in county jails that have ICE contracts. Some of these detainees are parents, and at least one is a single parent. Despite any caregiving responsibilities, they cannot be released on bond due to the criminal charges.

In New Bedford, ICE did not commence its worksite operation based on suspicion of identity theft or other criminal activity by immigrants working at the plant. As a result, criminal charges were filed against the immigrants arrested there in only a handful of cases.

Relief from deportation. Most of the immigrants arrested in these raids have been or will be deported and, according to study respondents, there were very few forms of relief from deportation available to them. In Greeley and Grand Island, most arrestees had been deported five to six months after the raids, i.e., by the time of the study's site visits. But in New Bedford, all but 11 remained in ICE custody or had been released into the community.

The number of arrestees who received legal counsel and had potential relief from deportation – for example, those who had a chance of staying in the United States legally over the long run – was very small in all three sites. In Greeley, only about 20 of the arrestees were eligible for relief from deportation and received legal assistance. In Grand Island, there were ten cases represented through one of the consulates – most of whom were expected to be successful in obtaining work permits. There were an additional 15 to17 cases represented by a private lawyer – only two or three of which were expected to succeed. In New Bedford, an order by an immigration judge staying removal applied to 54 arrested immigrants, and another half dozen immigrants had cases that would possibly result in their ability to stay in the United States legally.

One of the identity theft cases involved a single mother with a disabled child. The disabled child was staying with a brother and sister-in-law who could not provide enough support for the child. Because the mother was arrested for identity theft, she could not be released on bond. As a result, the disabled child was being sent to Guatemala. On lawyers' advice, the arrested mother put in a plea to the immigration judge not to fight her deportation case; if she had fought the deportation, she would have spent at least a year in jail. The judge gave her "time served" as her sentence, and she was sent into ICE custody and deported.

Study respondents told us that there are four main forms of relief from deportation available to the arrestees. First, and the most likely to succeed, is marriage to a U.S. citizen or permanent resident. Some undocumented immigrants married to citizens or residents are eligible to apply for adjustment of status – e.g., to obtain a green card while in the United States; however, this relief is limited. Immigrants who entered the country illegally are ineligible for adjustment, even if married to citizens or residents, with few exceptions. Second, some of the women who were arrested had viable claims to legal residency based on the Violence Against Women Act (VAWA). To make a VAWA claim, they must prove that they were abused, specifically by their spouses. Third, some arrestees could qualify for cancellation of removal, if they could prove ten years or more of U.S. residency and "extreme hardship" to a U.S. citizen spouse or child. Extreme hardship typically involves a serious illness or disability of a family member; the woman with the disabled child in the example in the text box on the page might have been able to qualify, were it not for the felony identity theft charge. Finally, some immigrants, particularly those from Guatemala, could file a credible asylum claim. But respondents told us that the success rate for Guatemalan asylum claims is low.

In Greeley and Grand Island, the vast majority of arrestees were deported or would be deported by the time this report was written (summer 2007). Whether or not they signed voluntary deportation papers, were detained for several months, or were released into the community, the arrestees had few avenues of recourse against their eventual removal from the country. A small share of arrestees – about 10% among the two sites – were potentially eligible for some form of relief from deportation, but not all of these cases would succeed. Thus, detention over several months, release into the community, court dates, and appeals were in most cases simply delaying the inevitable decision – whether to leave children in the United States and undergo prolonged family separation or to return children to the deportees' home countries to face the difficult economic and social conditions there.

IMPLICATIONS

For most immigrants arrested in worksite raids, deportation is all but certain, even if departure is delayed by prolonged detention or appeals in immigration courts. There are very few avenues of relief open to undocumented immigrants under such circumstances. Prolonged legal battles delay decisions about children's futures and can be expensive for immigrant families if they do not receive subsidized legal assistance.

In New Bedford the outcome was less clear, in part because the site visit occurred only two months after the raid, as opposed to five to six months in Greeley and Grand Island. A large number of arrested immigrants (54) were subject to an order staying their removal, but study respondents described only a half dozen cases where some form of permanent relief from deportation was available. Four arrestees applied for asylum based on their experiences during the genocide in Guatemala. Two more applied for residency under VAWA; one was a domestic violence case, and the other had been raped by members of the Guatemalan military. There were no cases in New Bedford of marriage to a U.S. citizen or legal permanent resident.

V. Immediate Impact on Children

While worksite enforcement operations are aimed primarily at deterring employment of undocumented adults, they inevitably and negatively affect numerous children, as shown in the demographic analysis earlier in this report. The impact of these operations on children can best be understood by exploring the range of environmental factors that influence children's well-being. Children develop within the context of the immediate nexus of parents and other family members, as well as the broader community and the various social systems they encounter, including child care settings, schools, community and social networks, and public and private social service programs. How their family, community, and public networks support or fail to support children shapes their course of development.[22]

Many aspects of the public and private systems that are supposed to protect children are thrown into chaos during and immediately following worksite operations, creating inevitable disruptions for children. The most important factor for children's safety and well-being is how the raids are conducted, including whether decisions are made that are sensitive to parents' responsibilities and children's needs. The roles of extended family and larger social networks; local leaders; community-based organizations; and public institutions such as schools, social service agencies, and health departments are also important in the immediate aftermath of worksite raids. The roles of each of these institutions in protecting children are the subject of the "Community Responses and Services to Children" section and Appendix 3 of this report.

Immigration and Customs Enforcement (ICE) Procedures During and Following the Raids

The large-scale worksite enforcement actions in the three study sites created crisis scenarios in terms of the care arrangements for the hundreds of children who temporarily lost their parents. In all three locations, the sudden and large-scale nature of the raids – combined with the lack of communication by ICE and lack of community understanding about what was going on – led to a general sense of chaos and fear. On the day of the raids, family members, service providers, and the general public did not know whether or when parents would be released. As knowledge of the raids spread across the communities, concern grew about how to secure care and protection for the children in the short term, including who would pick up children after school and after work hours; provide milk, food, diapers, medicine, and clothes; and feed infants who were accustomed to breastfeeding. This situation deteriorated further toward outright panic as rumors – some of which were accurate and others that were not – spread by word of mouth from family to family during the first 24 to 36 hours after the raids. In addition, ICE continued to conduct small-scale raids in other workplaces and homes in both Greeley and Grand Island – further heightening fears and tensions.

As a result of the widespread fear and chaos, many families went into hiding during the first few days, or in some cases weeks, following the raids. In all three sites, there were stories of families who hid in their basements or closets for days at a time. People would leave the house only in small groups on short, focused trips, for instance to buy food. They kept their shades drawn and houses darkened. Some would not even open the door for people who came to bring them food or other forms of assistance. This seclusion was especially common, and lasted for several weeks, in Grand Island, where ICE continued to conduct door-to-door enforcement operations for several days after the worksite operation.

Many families and nonrelatives scrambled to locate children and arrange care for them on the day of the raid because arrested parents were not given access to telephones or other methods to communicate with their families. As a result, the responsibility for children's care depended mainly on where they were located – at school, at home, at a babysitter's house, or at a child care center.

In Greeley and Grand Island, the vast majority of children lived in two-parent families, and only one parent – more often the father – was arrested.* In New Bedford, about half

* Nationally, three-quarters of undocumented immigrant families with children have two parents in the home.

of the parents who were arrested were released at various points because they were the primary caregivers for very young children. In some cases, responsibility for children was transferred to nonrelative providers – the children's usual babysitters or others – when no adults in the family remained to provide supervision.

> *"My cousin's husband was deported. The little boy must be only two or three years old. [The parents] were both arrested. She was in jail for six to eight days. They took her to Port Isabel [Texas]. The son was with the babysitter during this time. She said that she had a young son but they [ICE] did not believe her. I don't approach the topic of how her son held up while she was in jail. We've never talked about it."*

Many parents did not disclose that they had children or provide correct information about their children's care arrangements. They feared that ICE agents would detain their children or other relatives, or that child welfare workers would take their children into custody. These fears were especially acute in Grand Island, where there were rumors that ICE agents had gone to schools and some children had been taken into custody during a previous worksite operation years earlier.

In addition, immigrants in Grand Island were fearful of losing their children to foster care based on a high-profile case in which an undocumented Guatemalan mother had been separated from one of her children for many months following a child abuse report. Nebraska Department of Human Services (DHS) had removed the child from the home and reported the mother to immigration authorities. She was deported before her court date in the child welfare system and lost custody of the child. After she left the country, she had to fight to get her child back from foster care.

After the immigration raids, ICE released many parents late in the evening, at night, or during the days that followed. In some cases, young children spent at least one night without a parent, often in the care of another relative or babysitter, before the arrested parent was released

In Grand Island, several parents were released late on the day of the raid, but only after community leaders took their children along with some of their family members to the local ICE office. Community leaders claimed that their presence along with the children at the office helped convince ICE to release the parents.

In New Bedford, an older mother with a toddler was not released until late in the evening because, she said, it took some time to convince ICE that she was a parent. She called her cousin, who was living with her and the child at the time, to get diapers and milk for the little girl. Twenty other parents who had been arrested in New Bedford were flown to Texas, and it took several days before Massachusetts DSS workers could get there and

IMPLICATIONS

The combination of fear, lack of telephone access, and the late release of many primary caregivers makes it difficult to arrange care for children when both parents are or a single parent is arrested. There is a high probability that arrested parents will not disclose correct information about children due to mistrust of ICE and child welfare authorities. Remaining family members are likely to go into hiding, making it even more difficult to find out information about the children of arrestees.

make arrangements with ICE to interview them. These parents were eventually released, but only after a week or more in detention and the intervention of the governor and two U.S. senators.

In Greeley, a mother with an infant was detained by ICE for 17 days. Her husband had been arrested on charges unrelated to the raid and was held until three days after the raid. During these three days the infant stayed with a babysitter, and the father took over caregiving responsibilities after the third day. The baby did not, however, have access to the mother's breast milk for about two weeks. The mother told us that ICE did not ask her whether or not she had children or where her child was until midnight on the day of the raid. When she responded that she had an infant, ICE still declined to release her.

FAMILIES AND EXTENDED NETWORKS

For the most part, immigrant communities in the three sites were able to avoid the most dangerous circumstances of young children left abandoned, homeless, or without someone to watch over them. In all three sites, no children became homeless, and in Greeley and Grand Island no children were taken into state custody. In New Bedford, ICE referred a few adolescents to state custody; these were minors who were working at the raided plant.* In all three sites, schools put into place emergency shelters, and teachers offered to take children home with them. Families in the broader communities also offered to adopt children temporarily. However, these offers proved unnecessary, as extended networks of family members, friends, or others in the immigrant communities took on significant caregiving responsibilities.

Heavy reliance on extended family networks was an effective response to the emergency needs of children in the context of the raids. This strong family orientation, termed *familismo* by anthropologists, social workers, and public health practitioners, is characteristic among small immigrant communities and Latinos.[23] The basic dimensions of *familismo* include family-level decision-making, the perception that family members are reliable providers of help and problem-solvers, and the provision of material and emotional support to needy family members.[24] In the context of the arrest of family

* One of them was the daughter of another worker who was arrested.

members by immigration authorities, *familismo* was an effective response to the emergency needs of children. Without this informal response, parents and community respondents said, a broader crisis would have been inevitable, especially in cases where primary caregivers were held for extended periods of time. Strong extended family networks are characteristic of many immigrant groups besides Latinos, and so it is likely that these networks would be able to take on similar functions when non-Latino immigrant communities are affected by immigration enforcement operations.

In one study site, a nonrelative babysitter stayed with a 14-month-old baby for four months. The baby's father was a single parent who had been arrested but not released quickly after the raid. The babysitter was unable to benefit from financial assistance offered to families affected by the raid since she did not have the child's birth certificate and lacked proof of her relationship to the child. She was a grandmother and was also responsible for caring for several grandchildren. The babysitter picked up food and essential supplies at an emergency assistance site for four months until the child's father returned.

In spite of the responsiveness of the immigrant community, many children faced traumatic circumstances and insecure care throughout the day and in the period after the raids. In New Bedford, respondents mentioned that at least one landlord showed up at an emergency assistance site on the evening of the raid with young children who belonged to tenants who were detained in the raid. In Grand Island, local community leaders took several children to a local ICE office to demand release of their parents. In Greeley and Grand Island, respondents knew of adolescents who spent considerable time without adult supervision. In one case a youth spent several days alone because both parents were arrested in the raid. In one household, three adolescents were left to fend for themselves after both parents were detained; neighbors provided occasional supervision. The respondents only found out about those cases because the youth subsequently showed up at food banks to ask for assistance. Another adolescent spent months in the care of a pastor of a local church where his parents worshipped. And in one case an adolescent girl with an infant, who was living with her younger sister, visited a nonprofit social service provider for assistance. The girl, her baby, and her sister were living together without an adult in the home.

Several young children were also left behind in the care of their relative and nonrelative babysitters, many of whom struggled to stretch their own limited economic resources to meet their new responsibilities. In the most critical case mentioned by respondents in New Bedford, a seven-month-old baby who was being breastfed was left in the care of a relative babysitter. The infant was unaccustomed to any other feeding method and refused cow's milk, then had to be rushed to the hospital due to dehydration on the night of the raid. The mother was detained for a few days before finally being released to continue to care for her son. A few days after the raid in another site, a babysitter called a church hotline set up for affected families hoping to find some way to communicate to a

IMPLICATIONS

Extended family and community networks provide the most important safety net for caregiving and emergency needs of children, making it unlikely that large numbers of children would be left unsupervised following a raid. However, the economic resources of these families and communities are often strained to meet children's needs, and there is no guarantee that they can meet all the needs of the affected children.

detained father that she would take good care of the four-month-old baby left in her care; she knew the mother had already been deported. The babysitter also said that she had a dire need for food, milk, diapers, and clothes, which were subsequently delivered to her by the hotline operator.

PUBLIC SCHOOL CHILDREN

Public schools served an important role in protecting the children of arrested immigrants on the day of the raids in two of the study sites. In Greeley and Grand Island, the majority of children were in school on the day of the raids, so school systems' responses affected a large number of children. School administrators and teachers in these two school districts said that they felt a heavy burden when dealing with instructional goals and normal daily routines while also managing a broad range of unanticipated issues that arose following the raids.

In New Bedford, however, 71% of the children were ages five and under and, therefore, most were not in school. In the case of these younger children, respondents said that most were in informal care settings, often with relatives or other Central American neighbors.[25] Many New Bedford families were either not informed about or averse to more formal child care settings because they believed that their citizen children were not eligible due to parental undocumented status, or they were fearful of any formal contact with public agencies.

The schools in Grand Island had developed a central plan for dealing with a workplace raid, following their experience with another large raid in 1992. The schools there had a database which included information about the parents' employers, and so the school was able to contact all children whose parents were working at the raid site. Teachers and other staff conducted one-on-one sessions with children of arrestees to ensure that each child knew what to do and whom to call if they found themselves alone without a caregiver. Bus drivers were instructed not to drop children off at homes where their parents or other trusted adults were not present. School officials hoped to prevent children from learning about the details of the raids and the potential loss of a parent or loved one while they were still at school. In Greeley, without prior experience of a raid or knowledge of which children might be affected, school administrators and staff improvised and developed many of the same strategies as those in Grand Island.

The impact of the raids played out very differently across as well as within the school systems in the three study sites. In Greeley, between a third and half of the student body

were picked up early in the schools with the highest proportions of Latino students. The other two school systems had a small number of schools that experienced only a few early pick-ups on the day of the raids. In some of these schools, some of the adults picking up the children had not been previously authorized to do so, and these cases were resolved with some improvisation by principals and teachers.* The schools either allowed students to identify their relationships with the individuals attempting to pick them up, or called other persons listed as authorized or emergency contacts to verify the identities of these individuals. In some cases authorized persons called to notify the schools that someone new would be coming that day to pick up the children.

The school systems in all three sites also scrambled to put in place emergency measures to ensure that children had adult supervision by the end of the day. In all three sites, the school administrators directed bus drivers to ensure that every child was dropped off with a caretaker. One or a few schools were designated emergency "shelters" so that students could return if no one was home. Those students who typically were picked up after school stayed with teachers or staff until someone (a parent, relative, or friend) retrieved them. In Grand Island it was late in the evening, 8:30 p.m., by the time the last middle school student was picked up by her mother who had been detained and just released that evening. In Grand Island, teachers offered to take children home with them overnight, but all of the children were picked up by the end of the day.

In all three sites, school officials and community respondents reported that they were able to avoid having any child left stranded at school or dropped off by a bus to an empty home. On the other hand, in Greeley and Grand Island, some elementary and middle school children who usually walked home spent a few hours alone, or with a cousin or sibling, on the day of the raids. According to parents and other caregivers we interviewed, these children did not know where their parents were. Some of the children were visited by neighbors or friends, or went to their houses to find out what was going on and ask for assistance.

While it was easier to prevent elementary and middle school students from learning about the raids, high school students had more access to communication with the outside community. Students with mobile phones and radios quickly learned about the raids. This contributed to unruly classrooms and an emotionally charged day. Some students left early

* Public school systems are allowed to release students only to persons listed in forms pre-submitted by a primary caretaker or with some other form of approval by a primary caretaker.

Implications

School systems have a responsibility to ensure the safety of all children in their care, and they play a major role in child protection following a raid, at least in places where the majority of arrestees' children are of school age. Proactive responses by schools help ensure that children are not left without adult supervision, and can also lead to better attendance and fewer disruptions for children. Head Start, Early Head Start, state-sponsored pre-kindergarten, and other formal child care settings could be important resources for families affected by raids by offering safe havens, helping to meet children's nutritional needs, and providing connections to social supports. The very low enrollment of immigrants' children, however, severely limits the reach of formal child care settings in helping families respond to immigration raids.

on their own to rush to the raid sites, meet up with relatives, pick up siblings from school, or babysit younger siblings at home. In Greeley, a group of youth protested outside the plant on the day of the raid.

As part of the overall climate of fear on the day of the raids, rumors began to spread that immigration agents might show up at schools to arrest undocumented children and parents. In all three sites, teachers and principals received calls from distraught parents throughout the day to check on the status of their children. Some parents and other relatives stopped by during the day to see their children to make sure they had not been picked up by ICE. Community leaders traveled between the schools and the raided worksites in the hopes of informing the family members of arrestees outside the plant that their children were safe and not at risk of being detained. The administration of the Grand Island schools made repeated public statements that the schools were safe and that ICE would not be allowed on the premises. These public assurances helped assuage immigrants' fears about keeping their children in school, and helped Grand Island's school attendance rebound within a few days after the raid.

VI. Longer-Term Impact on Children

Children of undocumented parents already faced a challenging journey even before the immigration raids. Many children of undocumented immigrants were already at risk for a number of disadvantages, including low income or poverty, low parental education, and limited English proficiency. Overall, among children of immigrants, poverty rates are significantly higher, as are other rates of economic hardship, for instance food insecurity, crowded housing, and high housing cost burdens for families.[26] Studies have established links between family income and children's health, cognitive development, and educational achievement.[27] They have shown that lower income puts immigrants' children at risk of poorer health and developmental delays.[28]

On the other hand, studies of immigrants' children have also shown that their families have important strengths, including a higher prevalence of two-parent families, extended families, and more working adults in the household.[29] The relative strength of immigrant families protects children from the adverse consequences often associated with growing up with single parents.

Worksite enforcement operations, by removing both a parent and a breadwinner from the home, have multiple consequences for children. First, the removal of a breadwinner substantially lowers family income and thereby further increases families' material hardship. Second, the loss of a parent creates a more unstable home environment and removes one of the main strengths in immigrant families – the presence of two parents.

In addition, the fear and stigma associated with a raid can isolate immigrant families and have a direct psychological impact on children. All of these factors, individually or combined, have a profound impact on child development and well-being.

Family Fragmentation

The most destabilizing impact on the children of arrestees following worksite enforcement actions came from the separation and fragmentation of families. In most cases, children were living with both parents and only one parent was arrested. But there were also cases in which both parents were arrested. In Grand Island, according to school district data, 25 of the 151 affected children (or about 17%), experienced the arrest of both parents.* In addition, there were cases of single parents being arrested. In New Bedford, for instance, approximately half of arrested parents were released at various points in time because they were single parents or primary caregivers of young children.

Family structure prior to the raid significantly affected the extent of family fragility following the raid. In all cases except those in which parents were released on the day of the raid, children lost at least one parent for an extended period of time. In the case of two-parent families, ICE seldom released the second parent on the day of the raid, and so two-parent families temporarily became one-parent families. As a result of communication difficulties in detention centers and lack of attorney and consular access, many families did not know the location of the arrested parent for several days. This was especially true in Greeley, where almost 100 arrestees were deported before any contact with attorneys or consulates; the first word from these deportees came via phone calls after their deportation. But in all three sites, a significant number of parents were detained for weeks and even months without regular and consistent contact with their family members.

During this time period the remaining parent often had significant difficulty coping with the economic and psychological stress caused by the arrest of their spouse or partner. Study respondents said that the remaining parent – usually the mother – was often less integrated into U.S. society and less familiar with the means to cope with daily life than the spouse or partner. This was especially true among Guatemalan families. For instance, in Grand Island, study respondents said that many of the Guatemalan women

* Data were not obtained on the share of children with both parents arrested in Greeley.

did not have driver's licenses and did not know how to drive. They were unaccustomed to making basic financial decisions and did not have access to husbands' bank accounts. Some women rarely left the house, even before the raids. For these women, the loss of their husbands represented not only the loss of a partner and breadwinner, but also a loss of direction and increased isolation. Following the raid, some of these Guatemalan mothers were left isolated, afraid, and unable to make the basic decisions about daily life that their husbands had often made before the raid.

By the time of the study interviews in Greeley and Grand Island – some five to six months after the raids – almost all of the arrestees had been deported or released from detention. In some of these cases, the second parent had been released and reunited with the family temporarily. In cases where the parent was deported, some families hoped that the deported parent might be able to return illegally or were in the process of moving to rejoin the parent abroad. In New Bedford, a majority of arrestees remained in detention at the time of the study visit, about two months after the raid. Thus, family separation caused by detention and deportation generally lasted for a period of months for most two-parent families.

Family fragility was more acute but the period of separation was much shorter in families where a single parent or both parents were arrested. In these cases, during the period of parents' detention, extended family members and others in the community took in their children. Respondents described the responsibility of the immigrant community to "take care of our own" children. In all three sites, community leaders and other respondents said that preventing any children from being taken into the custody of the state was one of their major accomplishments following the raids. However, as described earlier, the arrangements for these children were in some cases ad hoc and unreliable. In Greeley and Grand Island, there was a handful of cases in which very young children were moved from home to home over a period of weeks because temporary caregivers were unable to meet their needs. There were also cases in which babysitters stayed with children for extended periods of time – up to four months in one case in Grand Island.

For the most part, however, family separation lasted only a few days or at most a few weeks in single-parent families. In New Bedford, 60

Implications

Single-parent families are the most vulnerable following immigration enforcement operations that result in arrests. Often, these families are already fragile, and the loss of the single parent can lead to immediate hardship for the child and chaotic living arrangements for a period of time, even when extended family and community members provide support and care. If parents are released quickly, however, the impact on children can be mitigated. On the other hand, family separation and fragility last longer in two-parent families following arrests because the second parent is less likely to be released quickly. If the remaining parent – usually the mother – is unaccustomed to making major decisions regarding finances and other issues, the family may become immobilized and isolated following the raids.

primary caregivers (some of whom were single parents) of young children – a majority of the parents arrested – were released without bail and within a period of a few days. In Grand Island only about a dozen parents were released as single caregivers, and in Greeley this number was under ten. However, the share of arrestees who were single parents was very low in both of these sites.

Family Economic Hardship and Instability

The families who lost breadwinners as a result of the raids faced enormous economic challenges. Most of these families already had few resources and were living "paycheck to paycheck" before the raids. Exceptions were the more established families in Grand Island and Greeley, some of whom had worked in the plants for several years. In some cases these families had established credit histories and owned homes and automobiles. But most immigrant families in the three study sites rented their homes and had few assets or savings.

Impact on extended families and multifamily households. Economic hardship and instability extended beyond the families whose members were arrested in the raids. Following the raids, the plants in Greeley and Grand Island conducted reviews of the documentation of their employees to weed out other undocumented workers. The raids in both plants took place during daytime shifts, and workers in evening shifts were not arrested. In the weeks following the raids, as the plants conducted their documentation reviews, some undocumented workers were fired and others quit their jobs. Even though fewer undocumented workers subsequently left their jobs than were arrested in the raids, they added to the growing pool of families who lost breadwinners.

> *"My 17-year-old son skipped school because his 17-year-old friend was at home watching his younger brother and sister; his parents had been arrested. He was scared to leave his house to go over to his aunt's house. So my son called me, and I went and took him and his younger brother and sister to his aunt's house. There were four adults and 12 children living in this house."*

Extended family members and others who took in the children of arrested parents also experienced increased economic hardship. In some cases, affected children were already living in extended multifamily households, and these households lost one or more earners. In other cases, families who lost a breadwinner moved in with other families so that they could pool resources. As previously mentioned, a babysitter who took care of a child for four months also had several grandchildren of her own to support. These multifamily households often became increasingly crowded and their resources became strained following the raids. The *familismo* of these extended households – in other words, their strong reliance on mutual support and decision-making – meant that hardship was spread among larger units of adults and children.

In Grand Island, study respondents told us that most of the affected Mexican families were able to make contact with relatives or friends who were documented or citizens. By moving in with citizens or legal immigrants, they were able to ensure that at least some household members would retain their jobs. But in the Guatemalan community, there were very few citizens or legal immigrants. As a result, most of the affected families were unable to find households where the other adults were safe from losing their jobs or being swept up in ongoing household raids.

Reliance on savings, last paychecks, and assets. Families who lost breadwinners as a result of the raids and subsequent job losses relied on a combination of savings and last paychecks; support from extended family and community members; increased work among remaining members; and financial and other assistance, mostly from private community sources. Savings dwindled quickly because most families had only about one or two weeks' cash on hand. In Greeley and Grand Island, workers were paid weekly, and paychecks were generally spent by the end of the week. In both of these sites, workers were arrested early in the week, so they did not get their last paycheck. Swift & Company, with help from consulates and the union, was able to get last paychecks to many families within the first couple of weeks. But within the first month, these sources of income had virtually dried up.

A number of families in Greeley and Grand Island owned their own homes and automobiles and were able to sell their assets or obtain loans based on their credit history to help cover short-term costs. Some families in these sites also had savings accounts, although in some cases the parent who was not arrested did not have access to the accounts. However, the majority of families in Greeley and Grand Island, along with virtually all affected families in New Bedford, did not have sufficient resources to help them through the initial period of economic instability following the raids.

Supplemental employment in affected families. Some of the parents who were arrested and released were able to find work. Generally, the jobs they found were informal because the arrested parents were all

One family in Grand Island moved away to a small town in another part of Nebraska following the raid. The wife had permanent residency and had been in the United States since she was less than two years old. Her husband was undocumented. She worked days at the plant and was at work when the raid occurred; he worked on the night shift. She had not yet applied to renew her green card, which had expired. Even so, she was not arrested. However, one week later she lost her job when the company checked her paperwork and discovered that her green card was expired. They moved out of town, and the husband worked for a rancher who was verbally and physically abusive. He left that job, and they both started working at another ranch. They had a 12-year-old daughter with bad asthma; she had been seeing a specialist in Grand Island who accepted their insurance. They lost their insurance with their jobs and lost access to the specialist when they moved. The child's asthma worsened dramatically, and the family had no choice but to turn to a migrant health clinic for assistance.*

* In this case, it may have been technically illegal for the company to terminate her because of an expired green card; she most likely did have legal authorization to work since work authorization and legal permanent residency do not expire simply because a green card expires. However, she may have decided not to protest her termination or pursue a legal claim against the company because she needed to move on account of her undocumented husband.

undocumented and had to be very careful about seeking further illegal employment. Most of the spouses and partners of arrestees were also undocumented, but some were already working and extended their work hours. Some parents in Greeley and Grand Island were able to find agricultural work. Some of the women in all three sites began taking care of children at home for pay, and others started cooking meals for people or selling items informally. All of these types of jobs paid substantially less than the manufacturing jobs in Greeley and Grand Island, which were among the best-paying jobs available to immigrants in those communities. In addition, it was often difficult for released arrestees or their spouses to find full-time work.

Some families moved out of town altogether to avoid future scrutiny from ICE and to find secure employment. But these families often faced much greater economic insecurity than they had before the raid, and their children sometimes suffered as a consequence.

Dependence on assistance from private sources. Each of the 30 parents and other caregivers interviewed for the study became heavily dependent on various forms of assistance offered by community groups and religious institutions following the raids. They all received financial assistance to help cover rent and other housing expenses for a period of one to three months. The majority were helped with utility bills. All of the families interviewed had visited a food bank or other food distribution site to pick up groceries and diapers, or used charity grocery cards to purchase basic necessities such as soap and shampoo and perishable items such as milk for their children. But very few families relied on public assistance, since the undocumented family members were generally not eligible for such assistance and families were fearful of seeking relief from public agencies. The lack of public assistance is described in more detail in the section of the report on "Community Responses and Services to Children."

Pooling of resources through families and extended networks. The parents and other caretakers interviewed relied heavily on extended family and community networks for financial and other assistance over the longer term, as they did immediately following the raids. The material form of *familismo* was a central element in long-term responses to the raids, as three-quarters of the caregivers interviewed said that they had received cash assistance or substantial loans from friends or family members. Extended families and multifamily households also pooled resources to manage living costs. In these cases, workers who had not been arrested (but typically were undocumented) became fully responsible for household maintenance. For example, a single parent who was arrested lived with two young daughters in a small two-bedroom apartment and shared this apartment with a single cousin who had recently arrived from Guatemala. Following the mother's arrest, a second single cousin who was renting an apartment with a friend joined

the household to help support the girls. The two single men, both undocumented workers, were paying the $600 rent and other bills at the time of our interview.

Another example involves a household of three adults and three children, in which two of the adults lost their jobs in one of the worksite raids. The household was composed of a single mother, her high-school-age daughter, and her older son along with his wife and two daughters. The mother and her daughter-in-law were both arrested and then released; they lost their jobs. For three months following the raid, the six-person household relied on the son's income of about $400 per month plus rent, utility, and food assistance offered by churches and relief agencies.

Housing cost burdens and food insecurity. The combination of privately offered assistance by community groups and extended family networks prevented the families included in our study from facing the worst hardships such as homelessness. But these sources of support dwindled over time, and by the time of the study visits – a few months after the raids – families were facing increasing economic insecurity and material hardship. One of the study respondents, a single father with two children, said, "The people in our community opened their hearts and helped us so much. Now, though, I just live day to day, because looking ahead I just don't see how I will be able to make it."

A number of the caregivers interviewed had their utilities or phone service cut off, though generally for just a short period of time. In one of the sites, two of the ten respondents were several weeks late with their rent payments; others had been late with past payments. Some families moved due to inability to pay housing costs. One family interviewed for the study had moved twice in the six months since the raid, and their daughter had changed schools both times. Three families had moved to a smaller apartment or house where they paid less in rent.

Three-quarters of the parents and other caretakers interviewed said that their families faced some degree of food insecurity after the raids. They told us that they generally ate less than before the raids and sometimes skipped meals to leave more food for the children. Some respondents said that the children also ate less, and they attributed this

IMPLICATIONS

Many families lose breadwinners when parents are arrested, and even more families may lose breadwinners if parents leave jobs or are terminated following raids. Families often have limited resources such as savings, last paychecks, and cash on hand that can help them survive during the first few weeks following a parent's arrest or job loss. Extended families, informal networks, and community social service providers are also able to help affected families with basic forms of assistance – food, shelter, and other necessities – for a short period of time. These resources are often inadequate, however, to meet the longer-term needs of affected families, and after a few months many families begin to experience significant economic insecurity and hardship.

to stress as well as difficulties adjusting to the kinds of foods the parents could afford to feed them after the raid. For example, many children were not accustomed to the canned foods given out at the food banks. In Greeley, some of the community respondents said that the food banks were not stocked with foods that Latinos were accustomed to eating. Therefore, some families preferred food donations from the Latino community because they more closely matched their diet. Customary treats for children, such as going out for pizza or fast food, were no longer feasible after the raids. In the words of one mother with two children whose husband was arrested, "The kids are kids. They keep asking for things we can't provide now. They just don't know why we can't buy them the stuff that they like and are used to, so they just eat less now."

Interruptions to Schooling

Although the study was not in the field long enough to observe behaviors in school, respondents did provide some evidence suggesting that many children missed days of school, and that stress related to the raids may have sapped the attention of some children and affected their academic performance. The most obvious impact on children's schooling was the increase in absences reported in all three study sites. Declines in attendance following the raids were uneven across the sites, but in all three the schools with the highest proportion of Latino students saw the largest declines in attendance. In Greeley, school officials estimated that attendance declined by one-third to one-half on the week of the raid at two schools located in areas with high immigrant populations, and somewhat less at other nearby schools. Many families went into hiding out of fear of ongoing household raids and kept their children out of school for the first few days. In Grand Island, school district respondents reported that absences increased by ten or more children at some schools, and by about 20 at one school, on the days after the raid. Attendance steadily increased following the raids, and within two to three weeks had returned to normal in all three sites.

Parents, teachers, counselors, and school officials all recounted that some of the children were shaken up for days or weeks after the raid, making it difficult to hold their attention and for them to stay on track with academic plans and goals. The scene on the morning after was described as very emotional, especially at the elementary schools. Children saw the fear on the faces of their parents and relatives; some even witnessed the arrest of parents in their homes. One child told a teacher, "My daddy was arrested for working." A first-grade teacher relayed that, "The next day a lot of the kids were very emotionally upset, crying, and shaking. They were telling each other stories that they were told or overheard – about parents' hands tied; they took their phones; they couldn't come home; they just left." A second-grade teacher emotionally told the story of a little girl, a "dream

student," who always came to school well-coiffed and impeccably dressed, but showed up the morning after the raid disheveled and fatigued.

The emotional distress was most evident among children whose parents were arrested, but fear spread to many other children following the raids, as they learned details from conversations at home and with other students. The students empathized with each other, and "all of them were upset because they felt bad for the kids whose relatives that had happened to." They also built up fears that it would happen to them. There was pervasive insecurity about whose parents would be "taken" next. One teacher said, "I think the hardest [for them] is their not knowing [what is going to happen] at the beginning. The little girl [six years old] was afraid they would come get her mother and father. A lot of the others said the same." Children tended to get most emotional at "story time," when teachers led open-ended conversations with the children together. One teacher said that raid-related comments were "constantly surfacing" during story time.

The absences and distractions posed challenges for teachers' lesson plans and students' academic performance. A second-grade teacher said, "That next day you couldn't really teach them. You tried to but ended up doing something else because their minds were not there. They were pretty distraught all day, agitated, very concerned. Some of them had been up until very late [the previous night]." Two of the elementary school teachers said that they had children who turned in homework late in the weeks after the raid, but both teachers allowed the students to catch up or make up the work.

The raids also appeared to have had some impact on the attention and academic performance of some of the older children. A pastor who counseled many adolescent children of undocumented parents said that raid concerns drained much of their attention. "Because of confusion and the problems of their parents or their own status," he warned, "we are losing the energy these kids [have to offer] society. They are bright, intelligent, creative young kids who have a lot to offer. But immigration just dominates their thoughts. Their energy is just going elsewhere."* One 17-year-old senior high school honors student missed two weeks of school while her mother was detained

IMPLICATIONS

In the short term, worksite raids may distract children's attention from their schoolwork and lead to severe disruptions in attendance, homework, and behavior. In the longer term, however, the implications for children's academic performance are unclear.

* Nationally in 2005, 85% of children of undocumented immigrants under six years old were U.S.-born citizens. But among children over age ten, i.e., those in middle and high school, more than half (56%) were undocumented.

and ended up missing several assignments and grades. Only some of her teachers allowed her to make up the work. Another high school student had good attendance and grades prior to the raid, but afterward his academic performance deteriorated. This student was eventually arrested for shoplifting groceries in an apparent attempt to help his mother feed the family.

Respondents in the schools told us that the majority of children recovered academically a few months after the raid. However, due to the study's short time frame (just two to six months following the raids), the longer-term impact on children's behavior and schooling could not be assessed.

Emotional Trauma and Psychological Health Issues

Although children can be resilient under difficult and unstable circumstances, the severe disruptions caused by the raids in the three study sites led to behavioral problems and psychological distress for some children. Separation from arrested parents caused emotional trauma in some children, especially because it happened suddenly and unexpectedly. The trauma of separation was greater when it continued for an extended period of time. Community-wide fear and social isolation accentuated the psychological impact on children. Yet, few parents sought or received mental health care for themselves or their children.

Psychological impact of separation. Perhaps the greatest impact on children was the emotional trauma that followed separation from one or both parents. One of the major challenges for the parents who were not arrested was how to explain to their children the separation of a missing parent and manage their emotions. For children, especially very young children, the sudden loss of a parent played out like a "disappearance" and threatened their sense of security. The parents left behind struggled over whether and how to explain the disappearance, as well as how much hope to offer for a resolution. Most of the older children were either told what happened by the remaining parent or heard about it from other sources. In a number of cases, though, parents told their children other stories, which often seemed unsatisfactory to the children. Some parents or caregivers said that the missing parent had to stay away at work for a long period of time; others said that the missing parent was visiting family in their country of origin.

Even if the parent returned within a day or soon thereafter, the period of separation remained current in the child's memory and created ongoing anxiety in many cases. Psychologists interviewed for the study associated this pervasive sense of insecurity and the anxiety it produced in children with conditions ranging from separation anxiety to attachment disorder and post-traumatic stress disorder. Children – as well as some parents – felt "the ongoing stress that any day things can change, [that there is a] constant chance of separation." One mother interviewed for the study said, "One morning we were a tight family, and the next day it is all trauma and tension." Some parents said that, months after the raids, their children still cried in the morning when getting dropped off at school or day care, something that they rarely used to do. Children were said to obsess over whether their parents were going to pick them up from school or if – like on the day of the raid – someone else would show up. Even children whose parents were not arrested developed many of these same fears.

Some children said things to parents, other caregivers, or teachers which revealed how they had begun to personalize the cause of the separation. Especially among very young children, who could not understand the concept of parents not having "papers," sudden separation was considered personal abandonment. In some cases, separation triggered sadness; in others, it led to anger toward the parent who left or the one who remained. One child retorted, "So *papi* doesn't want to spend time with us?" A mother relayed that her eight-year-old was more volatile and said, "[He acts] now like he hates us." She added, "And he's aggressive; he hits other kids and hardly listens to me." Another chided the parent for "loving money more than he loves me." One child complained that the parent might be in the home country and asked, "Didn't we come here to be together? Why does he have to leave now?" Psychologists were concerned that these kinds of statements could indicate the onset of depression and other mental health challenges for children.

Fear and social isolation. Immigrant communities in all three sites experienced widespread fear following the raids, and this more general fear increased psychological duress for children. Two key threats propelled ongoing community fear. First, in two of the communities, immigration agents continued to pursue suspected undocumented immigrants with follow-up operations in private homes and other locations. In Grand Island, these operations continued for longer than a week, extending the environment of chaos and fear. Second, all three study sites experienced some degree of polarization between Latino immigrants and other community residents. According to study respondents, community tensions appeared highest in Greeley – where some anti-

immigrant activists had been protesting in favor of establishing an ICE office prior to the raid, and there had been counter protests in the Latino community. Also in Greeley, some teachers and students derided children whose parents were arrested. But there were also community tensions in the other two sites. For instance in Grand Island, one of the respondents – who is a naturalized citizen – was fearful after the raids of going to stores where non-Hispanics shopped because she felt she would be stereotyped as an undocumented immigrant.

Ongoing fears about ICE operations and community tensions led to widespread social isolation among immigrant families, which manifested itself most clearly in familiy seclusion.

In the most extreme cases, families and children hid in their homes for days or weeks at a time – sometimes staying in the basement or with their lights turned down so that no one would know they were home. Many families would not open the door for strangers or even acquaintances who brought them food and other forms of assistance, especially in Grand Island where these fears were most acute. Some families stayed at other safe havens such as in friends' basements or in local churches. In the words of one community leader we interviewed, "Families folded into themselves. People stopped going out in the street. People are living even more in the shadows."

Psychologists and other mental health professionals interviewed for the study suggested that social exclusion and isolation following the raids might induce depression and accentuate psychological distress among some parents and children. Many children absorbed the feeling of being outcasts from the broader community, even from their own previous social networks. Some children were warned not to identify who their parents were to anyone. Children's social networks in some cases exacerbated social exclusion, for instance, when they were harassed by other children or branded as criminals because their parents were arrested.

Changes in children's behavior. Parents, teachers, other caregivers, and mental health professionals who work with children reported changes in behavior which raised concerns about the children's vulnerability to emotional and psychological problems following the raids. Many children exhibited outward signs of stress. For instance, some lost their appetites, ate less, and lost weight. Others became more aggressive or increasingly displayed "acting out" behaviors. Some children also had more trouble than usual falling asleep or sleeping through the night. While impossible to evaluate in the

context of this study, mental health professionals suggested that many of these symptoms can lead to or are consistent with depression, post-traumatic stress disorder, or separation anxiety. One ten-year-old boy whose mother was briefly detained was diagnosed with major depression.

For one eight-year-old boy, stress associated with his mother's arrest manifested in health problems. Although his mother was released on the evening of the raid, he was unexpectedly picked up from school by a friend. While in the friend's care, the boy overheard a conversation about the raid and cried for a couple of hours until his mother arrived home. Following his mother's return, he found out about her possible deportation and experienced major separation anxiety. He was described as nervous and clingy after the raid, even though he had never displayed such symptoms before. He experienced repeated nightmares from which he sometimes awoke with uncontrollable shaking and loss of breath. He was taken to the hospital twice, and doctors diagnosed him with major anxiety disorder resulting from post-raid stress.

These outward behavioral changes provided only partial portraits of children's psychological health following the raids. Mental health professionals interviewed for the study emphasized that children's outward behaviors only offer glimpses of their true emotional states. They also said that children of different ages and developmental stages display symptoms differently, and that they have many different coping mechanisms. In the words of one teacher, "You see the two extremes, the loud kids who talk about it a lot or the quieter kids who clam up and don't say anything, so you don't even find out they've been affected for months."

Cultural barriers to obtaining mental health care. Mental health professionals interviewed for the study noted that it is not customary for low-income Latino immigrants to consider the stresses associated with migration and family separation as evidence of psychological trauma or a mental health disorder. The general reluctance of Latino immigrants to seek mental health care, combined with access issues such as cost of services and difficulties with interpretation and cultural

IMPLICATIONS

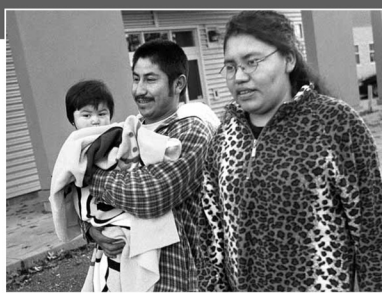
Children, especially younger children, are unlikely to understand why parents disappeared on the day of the raid, and may personalize their disappearance. Their anger at their parents and other symptoms may continue long after the parents return. Children may experience ongoing fears that they will be separated from their parents again.

Community-wide fears and tensions can increase the social isolation of affected families and children following the raids. Children face the stigma of having "illegal" parents. Other children with friends whose parents were arrested may have similar experiences.

Most mental health conditions are likely to go unnoticed and unaddressed following immigration enforcement worksite operations because Latino immigrants are often reluctant to seek mental health care.

competence, meant that children's and parents' mental health needs following the raids were seldom addressed. In fact, from all of our site work, we heard about only one parent who saw a psychologist regularly and only one child and two parents receiving prescription medications for mental health conditions. One health care provider said, "Typically in Latin American culture you don't think of depression, and you don't see a mental health therapist; you just think you're sad." Another provider said, "I don't think people think about this as a resource; they didn't associate the raid with any of the issues we deal with."

VII. Community Responses and Services to Children



In all three study sites, community leaders and institutions initiated intensive and broad response efforts to assist immigrant families after the raids. They mobilized quickly to bring immediate relief that helped many immigrants meet at least some of their basic, short-term needs. Due to the large-scale nature of the raids and the large number of families affected, relief efforts in all three sites took on community-wide dimensions. Community respondents from each site said that they approached the immediate aftermath of the raid as "disaster relief," even though few had experience providing emergency relief to hundreds of families simultaneously. One community leader said, "It seemed as if everybody was really in disaster response mode; all agencies, all staff came to help out."

Several common elements in the response strategies across all three sites were noted. All featured heavy involvement by churches and other faith-based organizations. Another commonality was some level of cooperation of various service providers to coordinate services. All shared a focus on immediate needs and short-term relief – especially housing, utilities, food, and clothing.

There were also significant differences in how assistance was delivered. There was variation in the centralization of leadership, coordination of service provision, and the roles played by the many groups providing assistance. The sites also varied in participation of state and local social service agencies. New Bedford was the only one of the three sites where a public agency, Massachusetts DSS, played a prominent and visible role in service delivery following the raids, though public health and social service agencies in Grand Island played supportive roles there. Finally, there were also

not need to collect data on immigration status or verify other information on people seeking assistance – although other service providers based at the churches did require such verification. Churches provided a natural outreach and information mechanism, as many families regularly attend Mass on Sundays and during the week. Priests, pastors, and other church staff conducted considerable outreach, providing transportation for affected families and going door to door to deliver services. Finally, churches were able to raise substantial resources for relief efforts, both within their own parishes and from other churches and affiliated religious organizations. Respondents from all three sites expressed that identifying a church or a few churches from which to base their initial activities was one of their biggest successes.

Limitations of church-based assistance. At the same time, churches faced some limitations in providing assistance to affected families. In the longer run, they faced infrastructure and staff limitations that made it difficult to sustain the relief efforts. For instance, in Greeley almost all assistance was provided through Our Lady of Peace, and church staff there were soon overwhelmed. Even with one or two staff from Catholic Charities and other agencies based there, it was difficult for all families who needed assistance to get it in a timely fashion, given the extensive demand. While churches did not need to verify information about people seeking assistance, they worked with formal service providers that did require such verification – especially when using support from funders demanding accountability. Churches themselves then became embroiled in controversies over verification requirements, and this to some extent eroded their trust with the community.

IMPLICATIONS

Churches and other religious organizations can play key roles as safe havens, central distribution points, and avenues for outreach because immigrant communities tend to trust and find comfort in religious communities that embrace their culture. Churches and other religious institutions, however, may have significant infrastructure, staff, and other capacity limitations when compared with better-funded public and private service providers.

THE IMPORTANCE OF COORDINATION OF SERVICES

In all three sites, the providers interviewed for the study reported that coordination among responding agencies was a greater challenge than lack of resources. A community leader in Greeley said, "Resources were adequate; there was a good response from the community. But the process of allocating the money, sending it through [to organizations], and handing it out took most of the time." The director of a community group involved in the response effort in New Bedford added, "If anything, the money and donations came in almost too much, too fast." Coordination emerged as the top concern because of the immediate needs of families, and because decisions about financial allocations had to be made swiftly as the money began to flow in within days after the

differences in the service delivery points established to assist families and in the cultural competency of service providers.

Overall, service delivery efforts in the sites involved a multitude of organizations and leaders, including faith-based providers and churches, state and local public institutions, community-based organizations, economic development organizations, business associations, informal cultural groups, and in some cases unions and the employers of the raided plants. Their various roles in fundraising, donating resources, coordinating services, managing and organizing service delivery, direct service provision, and advocacy are described in Appendix 3, including some of the details of service delivery that are not captured in the thematic discussion in this section of the report.

The Central Role of Religious Institutions as Safe Havens and Distribution Points

A common element in all three study sites was the central role that churches and faith-based groups played in the provision of emergency relief. On the day of or within days of the raids, churches emerged as the places where many families converged and from which assistance was first delivered. In the longer term, churches used their many resources to support the families affected and ultimately absorbed a large portion of the impact of the economic, psychological, and spiritual crises that engulfed many families.

The key role of churches in the response efforts reflects the important role of religious institutions in Latino communities – especially among immigrant populations. Many Latinos traditionally gravitate toward the church for both communal life and as a spiritual venue. Especially in times of hardship, they first turn inward to their families, then toward trusted religious institutions and leaders, and lastly toward the government. Hence, it seems natural that churches emerged as safe havens where families could seek refuge and retain respect for their culture and values.

Aside from providing a safe environment, churches have certain characteristics that made them ideally suited for the responses required to reach undocumented immigrant families. The churches that were most involved in the study sites – Our Lady of Peace in Greeley, St. Mary's in Grand Island, and St. James and Our Lady of Guadalupe in New Bedford – have flexible hours and large gathering spaces that could hold hundreds of families during meetings and aid distribution. Because they did not compete with social service providers and other community organizations for funding, churches for the most part did not threaten other organizations and therefore were able to work with them easily. Unlike public agencies and many formal nonprofit service providers, churches did

IMPLICATIONS

Disaster relief efforts benefit from centralized decision-making and a clear communications structure. The disaster relief model, which also applies to responses to large-scale immigration raids, reduces friction and competition among responding groups, improves accountability, and increases the efficiency and speed of service delivery.

raid took place. Donors required accountability, and this slowed down the process of aid distribution. Some degree of coordination and centralization of resources as well as information (e.g., the names of arrested immigrants) was necessary before assistance could be dispersed on a large scale and with proper accountability.

Respondents felt that service provision and allocation of assistance was more effective in New Bedford – where there was strong coordination organized by MIRA, the church, Catholic Charities, and Maya Kiche – than in the other two sites where an overall coordinating structure was lacking. Respondents also said that is was important to have regular meetings with a core group of organizations and providers to decide how to channel funds and develop service priorities. Such meetings were better attended and more effective in New Bedford, due in part to MIRA's facilitation, and in Grand Island through the Multicultural Coalition, than in Greeley where no such centralized leadership group existed. New Bedford and Grand Island, which experienced greater coordination and collaboration across agencies, both began service delivery much more quickly than in Greeley, which had a more fractious service delivery structure and did not begin disbursing financial assistance for nearly two months.

THE CHALLENGES OF LEADERSHIP, CAPACITY, AND CULTURAL COMPETENCE

Coordination alone appeared to be insufficient to planning effective response efforts in the study sites. In the period immediately following the raids, local leadership, service delivery capacity, and cultural competence emerged as critical factors in enhancing community responses. In the study sites, leadership and capacity concerns included whether community-based organizations had adequate staff and funding, established networks of organizational relationships, experience in distributing assistance, and an adequate infrastructure on which to build a service delivery system. In all three sites there was a great deal of uncertainty about the capacity of the few small Latino CBOs playing leading roles in relief efforts. Another important consideration was whether these organizations had adequate cultural competence – the ability to communicate with, garner the trust of, and ultimately reach the affected communities.

Leadership. Several characteristics inherent to the membership organizations facilitated their role in the overall response effort. First, the membership coalitions by their very

nature sought to promote partnerships among groups, which served to lessen turf issues among other organizations competing for resources to help their constituency after the raids. Second, these organizations had long-standing relationships with several of the community groups involved in the response effort. Because of these features, the organizations were naturally poised to serve a convening role and to become the main communications forum.

In Grand Island and Greeley, leadership was largely developed from local organizations and community leaders. In Grand Island, the Multicultural Coalition formed a natural though informal umbrella under which community leaders from various organizations – public, nonprofit, and informal – were able to come together. In Greeley, local leadership emerged more informally and in a less coordinated (and occasionally fractious) fashion, for instance through Our Lady of Peace Parish, Catholic Charities, and Al Frente. Local leaders stepped forward not only to deliver services, but also to advocate for better service delivery and bring media attention to the plight of arrested immigrants.

In New Bedford, the local leadership of the clergy, Catholic Charities, and the New Bedford Office of the Mayor was expanded by MIRA, although MIRA was located nearly two hours away. The local community was able to draw on its resources when MIRA temporarily stationed staff locally to help coordinate the relief effort in the weeks following the raid. MIRA helped coordinate the initial local response effort including fundraising activities to create the Niños Fund, although their involvement waned in the few months after the raid. In New Bedford, the grassroots group best poised to serve the largest affected community, Maya Kiche, required a considerable influx of resources and technical assistance to build its capacity.

Service delivery capacity. In all three sites, most food and other basic assistance was provided outside the framework of formal public and private social service delivery systems. Churches and small community-based organizations grappled with the pressure to bring assistance to immigrants affected by the raids in their communities, but had very limited resources to dedicate to delivering assistance. The churches had very few staff, and so they relied heavily on volunteers and donations. Staff at churches, public social service agencies, and formal service providers also donated substantial amounts of personal time to helping families. All of this made it difficult to sustain relief activities over the longer run.

Latino CBOs such as Al Frente in Greeley and Maya Kiche in New Bedford were essential to the response efforts there. These smaller organizations scrambled to expand their capacity very quickly after the raids to meet the immediate needs of the local immigrant

communities they represented. Although greatly underfunded, these organizations provided the most effective outreach to arrested immigrants and their families; they were trusted organizations which the immigrant community often turned to for leadership and assistance. An influx of private donations, and in some cases money, from the larger organized effort helped these organizations scale up their capacity to assist families very quickly after the raid. Technical assistance and material support from other organizations with greater expertise and resources (e.g., MIRA in New Bedford) were crucial to helping the smaller organizations that lacked adequate staff and infrastructure.

Finally, in the short term at least, involvement in raid response activities required a great investment of resources, especially for organizations leading the effort or delivering key services. Several staff and directors from community groups said that their organizations turned exclusively to coordinating or delivering services in the days and weeks after the raid, but their involvement waned drastically over time. MIRA, for instance, estimated that almost 100% of its time was focused on relief efforts for about three weeks after the raid. After transferring the organizational leadership to the foundation and the response effort's coordinating committee, its contribution dwindled to about 30% within two months. The coordinating committee structure was said to help diffuse the pressure on individual organizations to take on more than they could handle, although regular weekly meetings and other coordination efforts also took a toll on their staffing resources.

IMPLICATIONS

While it is rare for immigrant communities to be optimally situated with respect to leadership, service delivery capacity, and cultural competence, the more that these factors can be nurtured, the stronger and more effective the response model will be for assisting families.

Culturally competent leadership. Because the Latino immigrant community is set in culturally specific language, traditions, and values, it was especially important to have providers who have garnered the trust of the community and can communicate with immigrant families in a culturally relevant fashion. Several small, locally based organizations and community leaders in each city brought valuable culturally sensitive perspectives to the response approaches in each city, steering organizational leaders to more effective strategies.

THE LIMITED ROLE OF PUBLIC AGENCIES

State and local public health and social service agencies had varying levels of involvement from site to site. Social service staff played a lead role in terms of coordination and referrals to services for families in Grand Island and a supportive role in creating access to services in New Bedford. In both sites, senior staff assisted in the

organization of emergency meetings after the raid to establish links between intervening organizations and to initiate services to families and outreach strategies. In all three study sites, social service agencies sent staff to churches shortly after the raid to assist affected families, and they stationed staff at churches and other service delivery locations temporarily.* In New Bedford, the Mayor's Office was closely involved, and Massachusetts DSS sent 35 Spanish-speaking social workers to Texas to interview detainees from New Bedford about their families and their assistance needs.

Variation in public assistance receipt from site to site. Few families sought public assistance in any of the three sites following the raids. In spite of outreach efforts, only about 25 families affected by the raid (or about 10% of families with arrested members) sought services from Nebraska DHS. Between 20 and 25 families, again about 10% of those affected by the raids, sought public assistance in Greeley. Similarly low numbers received some form of public assistance in New Bedford.

The local public health department in Grand Island undertook outreach efforts and provided coordination and service referrals. For example, health agency staff offered one-time free immunizations to immigrant children at a local church one weekend, while other staff distributed flyers which listed service locations and answered questions about eligibility for public programs.

Public agencies sought to extend services to U.S.-born citizen children even though their ability to provide direct assistance to undocumented parents and children was limited by federal and, in Colorado, state law.[30] Citizen children were mainly helped through the Food Stamp Program, which gives monthly food benefits to households, and were enrolled in Medicaid or the State Children's Health Insurance Program (SCHIP). A few families received one-time special economic assistance to cover rent or house payments through Temporary Assistance for Needy Families (TANF). Some families also qualified for utility help through the Low-Income Housing Assistance Program.

State and local agencies also offered some services and benefits that were available to all those who needed assistance, regardless of citizenship and legal status. Women, Infants, and Children (WIC) offered food, milk, and other basic nutritional items for pregnant women and women with infants and toddlers. In fact, there was nearly universal receipt

* In Greeley there was criticism of the social service agency for sending staff to the church only on the weekends, and on fewer than six occasions.

of WIC for the youngest children of families who were interviewed in all three sites. Some state and local funds were available in all three sites for emergency assistance to help with rent, food, and transportation.*

Very few of the respondents had ever applied for or received cash assistance for their children, and only a small number of families applied for and received food stamps. For instance, according to the county social service office, only about five families with children were enrolled to receive food stamps in Greeley.

The major difference among the three sites was in the rate of enrollment of children in public health insurance programs. All but one of the young children of immigrants in New Bedford were enrolled in Medicaid or SCHIP, followed by about half of the children in Grand Island and fewer than 15 children (less than 10%) in Greeley.** Several of the parents whose children did not have health coverage said that they registered their children for health insurance for a short period after their birth, but subsequently declined further assistance. Overall, the majority of the undocumented immigrants interviewed for this study felt great reluctance to apply for or receive most types of public assistance.

Deterrents to seeking assistance from public agencies. Several factors influenced whether families sought or accepted assistance from public service agencies. Foremost among these was the fear that use of public benefits would result in being reported to immigration officials or otherwise damaging their chances of remaining in the United States.[31] In Greeley, most affected families stayed away from the county social service office because of a sign posted there stating that any immigrant who presented false documents would be reported to the authorities. At the time the raid occurred, Colorado had just implemented a new state law requiring adults to provide identification and proof of citizenship or legal status when applying for public services. The law also established criminal penalties for anyone providing false or fraudulent identification.[32]

Previous negative experiences in seeking public assistance may have also deterred affected families from seeking assistance. In general, undocumented and other immigrant

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* For instance, in Greeley, support for emergency services for families was drawn from federal and state child welfare funds designated to prevent out-of-home placement of children.

** Two-thirds of the children (about 130) served by nonprofit providers in Greeley were U.S.-born citizens, and lack of citizenship was not a barrier to Medicaid or SCHIP enrollment for these children.

families may face hurdles when applying for assistance, such as language barriers, difficult application procedures, and questions about the legal status of household members.[33] Although the present study focused on Latino immigrants arrested in raids, it is likely that immigrants from non-Spanish-speaking countries would face even greater language hurdles when requesting assistance.

Another factor was absence of knowledge that U.S.-citizen children and other household members might be eligible to receive services and benefits. The undocumented parents who were arrested in all three sites were accustomed to relying on work income to support their children, and none of the parents were eligible for federal or state-funded assistance themselves. For many families, the raids represented the first time they needed to ask the government for assistance.

Familismo may also have deterred families from seeking assistance and limited their eligibility for some means-tested programs. In general, reliance on family networks has been found to deter Latino immigrants from seeking health care.[34] In addition, by moving into larger extended households with greater resources, affected families may have inadvertently made themselves ineligible for means-tested public programs such as food stamps or general assistance.

Finally, a pervasive perception that child welfare agencies would take their children away also accounted for immigrants' avoidance of public agencies after the raids. In Grand Island, as described earlier in the report, a recent public scandal over a child welfare case increased community concerns that child welfare authorities could not be trusted.

Community fears about the child welfare system created a difficult situation for the public agencies in all three sites following the raids. On the one hand, these agencies were charged with protecting children, and this meant that they had an obligation to ensure that the children had adult supervision, lived in a safe home environment, were adequately cared for, and had adequate basic necessities. On the other hand, fear prevented most affected families from engaging with or revealing any information to child welfare authorities, and so it was difficult for public agencies to know about the conditions in which

IMPLICATIONS

Public social service agencies can provide critical resources and assistance in relief efforts, and most affected children are eligible for federal and state-funded benefits because they are U.S. citizens.
Undocumented immigrants, however, are generally afraid of seeking public assistance for their children due to fears that they will be arrested when seeking services and that child welfare authorities will take their children.
Public agency administrators and staff are often unclear about what the implications are for the child welfare system and how staff and administrators can provide relevant services to immigrant families which are both responsive and culturally sensitive.

affected children were living. In addition, public agencies were not accustomed to dealing with undocumented immigrants – who seldom if ever approached them for assistance even prior to the raids – and so lacked knowledge or preparation to deal with some of the newer local immigrant populations such as the Maya Kiche. Child welfare agencies also faced uncertainty around the legal issues of working with undocumented parents and children.*

Barriers Due to Service Locations and Information Requirements

The distribution location of the major forms of assistance affected take-up of services following the raids. The more centralized system in New Bedford was effective in reaching more families more quickly than in the other two sites where service delivery had to be moved (first to churches and later, in the case of Grand Island, out into the community). In New Bedford, although the organization of services was highly centralized, resource distribution occurred through multiple familiar and trusted sites such as churches, CBOs, and informal grassroots groups such as Maya Kiche. In Greeley, service delivery was much less centralized, offered primarily through a telephone hotline, the local Catholic Charities office, the food bank, and Our Lady of Peace Church. Most assistance was delivered at the church, because the other locations were not familiar or trusted sites for the local immigrant community. Informal grassroots organizations such as Al Frente were not part of the larger and better funded system of community response in Greeley. Service delivery was highly centralized in Grand Island, where the bulk of the resources were distributed through Central Nebraska Community Services (CNCS), which was not well-known to either the local Mexican or Guatemalan communities. Staff from CNCS were stationed at St. Mary's Cathedral following Mass, and offered some assistance there as well. When few families showed up at the church or CNCS the first week after the raid, service providers and community leaders began going door to door asking for families of arrested immigrants. In many cases, families did not open their doors for these leaders, even though they were known and trusted by the immigrant community. Food boxes and other assistance were often left on front steps of homes for these families.

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* For more information, see Nebraska Appleseed, "Foster Care Reform Update," April 5, 2007, available at http://www.neappleseed.org/lrc/040507.html.

The amount and type of information requirements also posed hurdles for many families who sought assistance. Personal information requirements and documents proving that a relative or household member lost employment as a result of the raids were common at the service locations. Such information requirements were very important to ensure accountability and that assistance went to the families who needed it because of the raids. This was also a condition of service delivery from funders such as Swift & Company in Greeley and Grand Island, and the Community Foundation of Southeastern Massachusetts, in New Bedford. Service providers used forms, sometimes several pages long, which asked for detailed information about the identities of arrestees, their addresses, telephone numbers, household incomes, and number of children. In Greeley and Grand Island, service providers often had to match the real names of arrested immigrants (provided by ICE or the affected families) against aliases that they used for employment (provided by Swift).* To receive rent, mortgage, and utility assistance – the big-ticket items in all three sites – applicants had to provide bills in their own names or prove that they paid some or all of these bills; this was not always easy in multiple-family households. In some cases, landlords were contacted to verify addresses and rents. All of these verification requirements significantly slowed down the application process, and some providers, for instance Al Frente in Greeley, preferred to distribute aid without any verification.

IMPLICATIONS

The typical centralized delivery model ("build it and they will come") for providing services is generally not effective following immigration raids, when cultural barriers, limitations on eligibility for publicly funded services, and ongoing fears of arrest may increase the reluctance of immigrant families to seek assistance.

* Service providers in Greeley were unable to obtain full lists of arrested immigrants from ICE or Swift until about two weeks after the raid, and this delay considerably slowed assistance delivery.

VIII. Conclusions and Recommendations

Following the collapse of comprehensive immigration reform proposals in early 2007, Congress has failed to achieve consensus on the future of undocumented immigrants in the United States. This leaves approximately 11 million undocumented immigrants in the country at risk of arrest and deportation, and about five million children – more than three million of whom are U.S. citizens – at risk of separation from their undocumented parents. The debate in Congress and in the public over the fate of undocumented immigrants – whether they should be legalized and allowed to stay in the country or denied employment and eventually forced to leave – has largely excluded any consideration for their children.

In the meantime, Congress has turned its focus to immigration enforcement and devoted additional resources to DHS for this purpose. The Administration and DHS have adopted a policy of vigorous enforcement which includes elements such as increased Border Patrol staffing and resources; increased capacity for detention and immigration courts; deportation of immigrants who have committed a wide range of crimes; pursuit of undocumented immigrants with outstanding deportation orders; and arrests of undocumented immigrants in workplaces.

Since the raid on Michael Bianco, Inc. in New Bedford in March, there have been worksite enforcement actions in at least nine states, with more than 700 immigrants arrested.[35] At the end of August 2007, for instance, ICE agents arrested more than 160 undocumented immigrants on administrative charges at a food processing plant in Ohio.[36] In July 2007, ICE arrested 20 more immigrants at the same Swift plants, including in Greeley and Grand Island, which were raided in December 2006.[37]

Workplace arrests are an important item in ICE's arsenal of enforcement strategies; without access to employment, there is less incentive for undocumented migration. But as the aftermath of the recent worksite enforcement raids shows, workplace arrests inevitably affect large numbers of children. For every two adults arrested, there is on average at least one child affected. Two-thirds of these children are U.S.-born citizens; most are young children and many are the youngest and most vulnerable in our society – infants, toddlers, and preschoolers.

Immigration raids are intended to deter undocumented adults from working, not to punish children; however, as our research shows, raids have a wide range of adverse consequences for the entire family. Parents are separated from children for long periods of time, and children – especially younger children – cannot understand why this separation occurred. They are suddenly thrown into poverty, and their families are afraid to ask the government or other institutions for support. Some children witness the arrest of their parents, and others are stigmatized by being associated with "illegal" immigrants. Whole communities experience fear, and this fear leads to trauma for children, who experience symptoms of depression, separation anxiety and, in extreme cases, post-traumatic stress disorder.

Local immigrant communities and the state, local, and private institutions that serve them are ill-equipped to deal with the fallout of worksite raids, especially when they are large in scale. They do not have the resources, leadership, infrastructure, and cultural competence to meet the needs of all affected families, even those who overcome their fears and come forward to seek assistance. This report offers many factors to consider, strategies for support, and recommendations for state, local, and private institutions in the event of future raids. Yet, even if all of these recommendations were followed during every raid, it would only slightly alleviate the hardship and trauma experienced by immigrant families and their children.

States and local communities have borne the responsibility for children of immigrants arrested in worksite raids, just as they bear the consequences of many other U.S. immigration policies. They have paid the fiscal, social, and humanitarian costs in the aftermath of the raids. The federal government has largely been silent about the impact of these raids on children, and ICE has yet to fully acknowledge that worksite enforcement operations have harmful and long-lasting consequences for families. In fact, ICE has not issued public guidelines or regulations concerning the treatment of parents during their arrest, detention, and deportation.

Children are the most vulnerable members of society, and so the United States, like most other nations, has developed systems to protect them. These systems are designed to meet children's basic needs such as food, shelter, and health care, and to keep them safe from psychological and physical harm. Yet, these systems cannot replace parents when they are taken away from their children. Current U.S. immigration policy mandates the arrest of undocumented parents, and by extension causes separation of parents from children. Millions of U.S. children will continue to be at substantial risk of separation from their parents, economic hardship, and psychological duress until federal policy-makers recognize the impact of immigration policies on children and change those policies accordingly.

Beyond the broad concern about the lack of protection for children following worksite enforcement operations, the research also raised many concrete concerns about how worksite raids are conducted and community responses to them. The following recommendations address some of these.

Recommendations for Congress

- Congress should provide oversight of immigration enforcement activities to ensure that children are protected during worksite and other operations.
- Congress should revise the rules concerning release, deportation, and banishment of noncitizens charged with nonviolent offenses such as identity theft, so that arrested parents can be reunited with their children in cases where children face hardship.

Recommendations for U.S. Immigration and Customs Enforcement

- ICE should assume that there will be children, and likely very young children, affected whenever adults are arrested in worksite enforcement operations. ICE should not assume that there are no children involved just because arrestees do not divulge this information to immigration agents.
- ICE should consider how the show of force and treatment of arrestees affect children psychologically – including older children who may witness enforcement activities – and plan operations accordingly.
- ICE should allow attorneys, consular staff, and other intermediaries speedy access to all arrested immigrants before they sign any legal documents. ICE should inform

detainees of their right to counsel and to home country consular officials.* All arrested immigrants should be given lists of pro bono attorneys and other legal resources. Those charged with nonimmigration offenses should be notified of their rights and given access to legal representation.

- ICE should allow arrestees access to telephones within a short time after arrest, and ensure confidentiality of telephone conversations. ICE should also take into consideration whether or not arrestees have children and whether or not arrestees have strong community connections when determining the location of their detention.
- ICE should develop a consistent policy for release of parents arrested in enforcement operations. Single parents and primary caregivers of young children should be released early enough in the day so that school children and children in child care do not experience disruptions in care; they should not be held overnight. Parents should be released quickly even when there are two parents in the home because the second parent often cannot function alone.
- ICE and the immigration court system should allow for a speedy resolution of arrested immigrants' disposition, to allow families to make final decisions concerning the care and well-being of their children.
- ICE should notify community institutions as soon as possible after enforcement operations so that the institutions can prepare responses, and should provide information on arrested immigrants – including the location of their detention – to these institutions in a timely fashion.

Recommendations for public schools

- Schools should develop systems to help ensure that children have a safe place to go in the event of a raid, and to reduce the risk that children will be left without adult supervision when the school day ends.
- Children may need academic and other counseling for an extended period of time following a raid, just as they would after any other major disruptive event.
- Schools, churches, and other community institutions should have forums to discuss the aftermath of the raids and to reduce community fears and tensions. Ongoing work to help heal communities and bridge immigrant with nonimmigrant communities may be necessary to reduce these fears and tensions.

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* Article 36(1)(b) of the Vienna Convention on Consular Relations (United Nations, *Treaty Series*, Vol. 596, 1963, p. 261) provides that if a person detained by a foreign country "so requests, the competent authorities of the receiving state shall, without delay, inform the consular post of the sending state" of such detention and "inform the person concerned without delay of his rights" to consular representation. Available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf.

Recommendations for State and Local Government and Nonprofit Service Providers

- Social service and other public agencies should prepare plans to respond to immigration raids and develop outreach strategies to assure parents and other caregivers that it is safe to seek emergency assistance and benefits for children under such circumstances. States and local governments should develop policies that ensure the confidentiality of undocumented parents seeking assistance for U.S.-citizen children, instead of policies that put parents at risk of arrest if they seek services.
- Relationships with various immigrant networks within a community must be established, nurtured, and grown well in advance and should be part of any community response plan.
- Organizations involved in relief efforts should develop centralized systems for coordination and communication which involve representation from a broad range of key groups, including public officials and agencies, nonprofit service providers, religious institutions, community-based groups, and immigrant community leaders. National, regional, and state-level organizations should develop programs to help local communities develop rapid responses to immigration raids.
- Outreach to families as well as efforts to contact arrested parents who are in detention may be necessary to gain information about the living situations of children and overcome parents' and other caregivers' fears about revealing such information. Additional outreach to children who are staying with babysitters or nonrelatives or living with other children – especially in the case of adolescents – may be necessary to determine children's needs and whether their living conditions are safe.
- Churches and other religious institutions should be considered as central points of communication, distribution of assistance, and outreach to families affected by immigration enforcement operations because they are trusted institutions that can serve families confidentially. Additional support from outside sources and coordination among several churches may be needed to raise funds and provide the infrastructure necessary for a large-scale response.
- Resources for social services and economic assistance will likely be needed over a prolonged period of time, often many months, until parents are released from detention and their immigration cases are resolved. During this time efforts should be made to help families find longer-term sources of support, obtain employment for adults who were not arrested, or potentially relocate.

- Mental health services should be a key component of and tied to other response efforts. Services should include outreach to affected families – potentially through schools, churches, and other trusted institutions – to reduce reluctance to seek care and to help overcome language, cultural, and other access barriers.
- Legal services should also be made available to arrested immigrants; for instance, through lists of pro bono lawyers or nonprofit legal services organizations.

Recommendations for immigrant community institutions and leaders

- Communities should prepare networks to obtain and disseminate information on children whose parents are arrested, and conduct outreach to find children whose families are in hiding. Such planning should be conducted well in advance of any ICE enforcement activity to increase its effectiveness.
- Communities should focus on providing support and assistance to the extended families of arrested immigrants, along with other caregivers in extended community networks. Backup plans should be in place for situations in which informal family and social networks prove insufficient.
- Relatives, friends, community leaders, and service providers should develop plans for single-parent immigrant families in the event of a parent's arrest and be ready to provide ICE with necessary documentation for the parent's release. They may also need to provide extra psychological support to some mothers in two-parent families while their husbands are detained to prevent the mothers from becoming isolated.
- Immigrant families should prepare legal documents that would enable them to transfer custody or guardianship of their children in the event of arrest.
- Immigration lawyers, advocates, community leaders, and others should be honest with arrested immigrants about their chances of remaining in the United States, and strategic in choosing which cases to fight. Arrested immigrants should not have to pay large legal fees for cases with low probabilities of success, especially when they are already facing substantial economic hardship.
- A national clearinghouse of information about responses to raids should be developed. Such a clearinghouse could be a repository for stories about raids, a conduit for sharing information, and a setting for developing best practices in service delivery.

IX. Appendices

APPENDIX 1

Methodology

Site selection. A large sample of children whose parents were arrested in worksite raids was needed to conduct the analysis in this study. To this end, three sites were chosen based on the number of people arrested in recent raids. The bulk of the arrests in all three sites occurred at large manufacturing plants, but a small numbers of arrests occurred in other locations at the same time in all three sites. Two sites had about 275 arrestees each, and the third had about 360 arrestees.*

The site visits took place within a short period of time, but not immediately, after the worksite enforcement actions. In one of the sites, the raid took place about two months before the first site visit and three months before the second. In the other two sites, where only one site visit was conducted, the raids took place between five and six months before the visit.

Sites were chosen to represent geographic diversity. Although all are cities with a population of 50,000 to 100,000, one is located in the West, one in the Midwest, and the third in the Northeast.

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* The exact number of arrestees depends on whether data were obtained from ICE, immigration lawyers, service providers, or other sources. Related raids occurred at other employers and within the community on the same day as the main raids that we studied.

Sites were also chosen based on the National Council of La Raza's (NCLR) field contacts. NCLR funded intermediary organizations, generally immigrant CBOs and coalitions, to provide connections to local-level contacts and help schedule site visits. Given the tight time frame of the study (all site work was conducted in May and June 2007) the assistance of these intermediary organizations was essential to conducting the work. The organizations also helped gain the trust of community leaders and CBOs, which was essential to completing the research.

Finally, it was critical that the sites include a broad mix of public officials, public and private service providers, community leaders, and other study respondents who would be willing to talk to us. Most important among these were the arrestees and their immediate family members who were very generous in granting us their time and their trust as we conducted the field research.

Respondents in the sites. There were four types of study respondents. First, community respondents were chosen from among the following institutions and locations within each of the three sites:

- Employers (in two of the sites)
- State and local public agencies providing services to families affected by the raids
- Nonprofit service providers
- Churches and faith-based organizations
- Public schools
- Grassroots organizations and local community leaders
- Immigration lawyers
- Consulates for countries with nationals arrested in the raids.

Community respondents were interviewed individually or in groups of three or less. Interviews were conducted in person in most cases. A small number of introductory and follow-up interviews were conducted by telephone, and they lasted between 60 and 90 minutes. A total of 72 interviews were conducted with 91 community respondents for the study.

Second, 30 caregivers were interviewed individually (28 in person and two over the phone) among the three sites. Caregivers included mostly parents who had been arrested and released, as well as spouses of parents who had been detained or deported. Some

caregivers were also relatives such as aunts or uncles.* Caregivers were recruited by local immigrant community leaders, faith-based organizations, CBOs, and other community leaders. These interviews, which were held in people's homes or other safe locations such as churches, also lasted between 60 and 90 minutes.

Third, in two of the sites focus groups were conducted with social workers who had direct contact with arrestees and their children.** These focus groups also lasted between 60 and 90 minutes.

Finally, a small number of national-level experts on immigration raids, arrests, and deportations were interviewed prior to the site work.

Structure of interviews and focus groups. Semi-structured discussion guides were used for all of the interviews and focus groups. These guides were designed to collect information in a standardized fashion for different sites and types of respondents. They were designed to elicit both detailed answers to specific questions (e.g., How many children had parents who were arrested in the raids?) as well as open-ended responses to broader questions (e.g., What were the strengths and weaknesses of community responses to the raids?). The guides included components for different areas of inquiry, which mostly follow the flow of this report. The guides were designed so that different respondents could answer different groups of questions; respondents were not expected to have expertise on all areas of inquiry. The main components of the discussion guides were:

- Background on the interviewee(s) and the community where the raid took place
- Number of immigrants arrested and children affected, along with their characteristics
- Details of what happened on the day of the raid
- Details of what happened to arrestees in terms of detention, release from detention, and deportation
- Discussion of the immediate impact on children and families
- Discussion of longer-term impact on children and families
- Community responses to the raids
- Insights and recommendations

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* We did not interview any parents in detention or any who had been deported.

** One of these groups included five people, and the second included 12 people.

Fieldwork approach. Discussions with intermediary organizations and a first set of contacts guided us toward diverse community leaders, service providers, and other key respondents. In each site we also attempted to contact everyone who had been quoted in the media, and in most cases we were successful. Focus groups of social service, child protective, and mental health case workers were organized through local community respondents.

Caregivers were contacted through formal and informal networks, both through intermediary organizations and some of our local community respondents. In each site, a snowball sampling technique was used, starting from at least two different points of contact, to ensure that respondents did not all originate from the same source. Caregiver interviews took place in safe settings such as churches, community-based organizations, and, in some cases, people's homes. A small number of interviews were also conducted over the phone.

Confidentiality of respondents and study sites. Study respondents were very candid in their interviews with us, and strict measures have been taken to protect their confidentiality. All respondents were guaranteed anonymity, and their responses were rephrased in many cases to protect their confidentiality. The Urban Institute's Institutional Review Board reviewed the study methodology, interview discussion guides, and data collection and storage techniques for confidentiality and protection of human subjects.

Data obtained and analyses conducted. For each site, we collected as much data as possible on the number of children affected and their characteristics (age, citizenship status, etc.) from different sources. Data were also collected on the number of arrestees, their countries of origin, and their status (e.g., detained locally, detained in another state, released on bond, deported) both immediately following the raids and at the time of the site visits. Complete data on the number of arrestees with children, along with the number of children and their characteristics, were only available for one site based on a list of all arrestees. For the other two sites, there was no such comprehensive list of arrestees combined with data on children, so the report relies on counts of families with children and their characteristics, where available, from multiple sources: schools, service providers, and lawyers. For these two sites, the number of children included in the report are incomplete and therefore represent an undercount.

The number of arrestees with children; number of children; and their age, citizenship status, and other characteristics are compared with national data based on the 2005

March Current Population Survey (CPS) augmented with Urban Institute assignments of legal status to noncitizens. The methods for assigning legal status generally involved adding up all of the noncitizens in the CPS data and subtracting the number of known legal immigrants based on DHS admissions data; the difference between the total number of noncitizens and number of legal noncitizens was roughly equal to the number of undocumented immigrants. Once the total number of undocumented immigrants was obtained, then the undocumented were differentiated from legal noncitizens using a probabilistic procedure based on data from the 1990-92 Legalized Population Survey.[38] The purpose of the national data comparison was to provide a framework for understanding the potential scope and impact of raids conducted thus far and future raids on children.

Key themes, details of events, and individual stories were selected from our three primary sources of information: community respondents, focus group participants, and parents and other caregivers. Findings were grouped based on the immediate impact on children, potential longer-term impact, and local service respondents which appear as sections in this report. Cross-cutting themes across sites and types of respondents and categories of questions were described where possible.

Respondents were asked for their specific recommendations regarding policy changes and planning for future community responses to worksite raids. Their suggestions are included in the "Conclusions and Recommendations" section of the report.

Also incorporated into this report was information from media reports on the raids in the three study communities and academic literature on immigration enforcement, children with incarcerated parents, and the impact of parent-child separation on child development and well-being.

Study limitations. The study was exploratory in nature, and field work was completed within the short time frame of only two months. In many cases the research uncovered more questions than answers.

Respondents were not selected randomly, but through intermediary organizations and key contacts on the ground in each site. Thus, despite snowball sampling starting from more than one origin in each site, the sample of caregivers included in the report is not representative of the arrestees' population or of the population of spouses or other relatives. The sources of our connection to individual interviewees may introduce bias, but in each site we used more than one initial point of contact. Focus groups do not

allow for statistical representation of findings either. However, rich themes and compelling stories were uncovered from our site visits.

The findings rely on respondents' memories of what occurred during that time because site visits were conducted between two and six months after the raids. Conversely, because the site visits occurred within six months of the raids, only limited pictures of longer-term consequences for children were captured. Further research into long-term impact will be necessary over a longer time frame.

APPENDIX 2

Profiles of the Study Sites

SITE 1: Greeley, Colorado. Greeley is a small city located approximately 100 miles northeast of Denver, with a 2005 population of between 75,000 and 90,000, of whom about one-third were Latinos.[39] The city is a manufacturing, banking, and services center for a large agricultural area. It is also a bedroom community for Denver and has experienced very rapid population growth of middle-class commuters in recent years. The rapid growth in the commuter population led to an explosion in the housing market followed by a steep decline in housing prices and a high foreclosure rate within the past year.

According to study respondents, the Mexican-origin community dates back more than 100 years to migrants from New Mexico and Texas. More recently, former *braceros* – temporary agricultural workers in the United States during the 1940s through the 1960s – and migrants from northern Mexico have moved into the community. Most recently, within the past eight to ten years, migrants from Central and Southern Mexico, along with Guatemalans, have come in large numbers. Salvadorans, Peruvians, and other Central and South Americans also have small populations in the area.

The Latino population remains highly segregated in the area near the plant that was raided and surrounding agricultural areas. Long-standing segregation persists because of restrictive covenants that limited where Latinos could live until the 1960s. More recently, there have been tensions between immigrants and others in the community over immigrant integration and competition for employment opportunities.

This city has a strong but uneven economy with unemployment averaging between 4.5% and 5% in 2006.[40] The raid occurred at a meatpacking plant owned by Swift & Company at the time. The plant is the largest employer in town and has been in operation under various owners since the 1950s. Other manufacturing facilities, banking and insurance businesses, and a university are also major employers. Most of these employers require its employees to possess substantially more education than that of the average undocumented Latino worker. Latino immigrants work primarily in lower-skilled manufacturing, agriculture, construction, landscaping, and service positions.

Assembly-line jobs at the manufacturing plant paid $10-$15 per hour before the raid. The jobs were full-time, unionized, and included inexpensive family health insurance along with other benefits. Many immigrants worked double shifts, earning substantial overtime

wages. But the extent of overtime varied seasonably with product demand. Respondents told us that families with two workers at this wage could achieve a decent standard of living. Wages are slightly higher in construction but lower in other major industries of immigrant employment.

Plant turnover was only about a quarter before the raids, meaning that the average worker was there for about four years. Some of the arrested workers had been working at the plant ten years or more. According to respondents, many Latinos owned their own homes and automobiles before the raid. Among the arrested immigrants, those from Mexico had been in the community the longest – or had relatives or acquaintances in town the longest – and they tended to be well integrated. Guatemalans tended to be more recent arrivals, although they too had been in town for many years on average. Guatemalans were less likely than Mexicans to have large, extended family networks or own their own homes or other assets.

SITE 2: Grand Island, Nebraska. The second community visited for the study, Grand Island, is a small city in Central Nebraska – about 100 miles west of Omaha – with a 2005 population of between 65,000 and 70,000, about one-sixth of whom were Latino.[41] This city is also a manufacturing, banking, and services center for a large agricultural area, but unlike Greeley, it does not include a large bedroom community of commuters. The Swift plant there had experienced an immigration raid in 1992.

Grand Island has been experiencing slow population growth, but substantial economic prosperity with 3% unemployment in recent years.[42] Many of the surrounding smaller communities in Central Nebraska also have manufacturing plants with large numbers of Latino workers.

Although the Mexican-origin population is larger, Guatemalan immigrants have a significant presence in the town and surrounding region. Some families can trace roots back 75 years, and a substantial number of Guatemalan immigrants arrived during the 1980s and 1990s. The largest wave of migration, however, occurred within the past five years, with the Maya Kiche moving to the area; they speak neither English nor standard Spanish.

The Latino community in Grand Island is relatively dispersed with less residential segregation than in Greeley, and there is a strong Hispanic Chamber of Commerce. There are also strong connections to other Latino communities throughout the state.

As in Greeley, the raid site was a Swift & Company meatpacking plant and the largest employer in town. Other manufacturing plants in the area also employ a substantial number of workers. Assembly-line jobs at the plant paid $10-$15 per hour before the raid. Six months after the raid, jobs at the plant were paying up to $17 per hour to start and offering large signing bonuses. Respondents told us that families with two workers at this wage could achieve a decent standard of living. Wages are slightly higher in construction but lower in the other major industries of Latino immigrant employment, such as services and agriculture.

The plant jobs are full-time, unionized, and include inexpensive health insurance, along with other benefits. Some immigrants work Saturdays to earn overtime. In conjunction with the local community college, the plant offers adult education programs – including English courses – for employees.

The Swift plant had about a 30% turnover before the raids, meaning that the average worker had been there a little longer than three years. Some of the arrested workers had been there ten years or more. Some of the immigrants who were arrested owned their own homes, but the majority were renters. Homeownership among Latinos appeared to be lower than in Greeley, at least according to study respondents.

SITE 3: New Bedford, Massachusetts. The third community, New Bedford, is a small city in Massachusetts, with a 2006 population of between 90,000 and 105,000; Latinos composed about one-eighth of this population.[43] It is a major seaport with an old industrial base and high unemployment in recent years due in part to manufacturing job losses. The major industries are textile and other manufacturing, maritime, fishing, transportation, wholesale trade, and others associated with the port. Unemployment averaged between 6.5% and 7% during 2006, much higher than the two other sites and well above the national average.[44]

The longer-term immigrant community is of Portuguese and Portuguese-colonial descent (mostly from Cape Verde and Brazil), but more recently large numbers of Central American immigrants have moved into the area. El Salvador and Guatemala are the largest countries of origin for the workers of the raided plant; many Guatemalans are Maya Kiche who have difficulty speaking and understanding both English and Spanish. There is also a significant Honduran community, and a small number of immigrants from Mexico. The Central American immigration flow started with refugees from the civil war in Guatemala during the 1980s, but most of the population growth is recent, occurring within the last ten years.

Michael Bianco, Inc., the raided plant, was one of the 15 largest employers in New Bedford. It is a textile operation and was making backpacks for the military at the time of the raid. Wages are low (just $7 to $9) relative to the cost of living – which is high in the city and surrounding area – and few immigrants can afford their own houses. Most live in crowded apartment settings.

According to study respondents, Latino immigrants live in the poorer areas of New Bedford, but are divided with the Maya Kiche living on one side of town and the Spanish-speaking Central Americans on the other. Most of these immigrants are renters.

APPENDIX 3

Overview of Service Delivery in the Sites

Service delivery efforts in the sites involved a multitude of organizations and leaders, including faith-based providers and churches, state and local public institutions, CBOs, economic development organizations, business associations, informal cultural groups, and in some cases unions and the employers of the raided plants. Their various roles included fundraising, donating resources, coordinating services, and managing and organizing service delivery, direct service provision, and advocacy. Due to the limited, exploratory nature of our study, the following general descriptions of service delivery in the three sites include the major relief efforts undertaken but do not include all forms of assistance delivered.

New Bedford, Massachusetts. The response effort in New Bedford featured relatively strong centralized leadership and coordination of providers and key elements of service delivery, centralized resource inflows and allocation of funds, and a strong supportive role by the public social service system. New Bedford benefited by its proximity to Boston and the substantial legal, social service, and advocacy resources based there.

The response effort was initially facilitated by MIRA. MIRA stepped in to fill a local vacuum, as there was no single organization in New Bedford which represented the affected immigrant groups (predominantly Hondurans and Maya Kiche from Guatemala) and had the capacity to organize a large-scale response. MIRA had greater resources than local groups, including staff to coordinate the response effort. One respondent said, "[MIRA] took an all-hands-on-deck model to the response, and this is what will be required in similar raids of this scale and scope."

On the day of the raid, MIRA launched the first communications efforts and began networking with the key groups that would eventually work together on the response effort. As word of the raid spread, several conference calls were initiated with key local community and faith-based groups. The groups acted swiftly to convene a multitude of service providers and community organizers with the families More than 400 families and individuals affected by the raid attended this convening, which was held in the basement of a large church on the evening of the raid. Various service providers and community organizations set up booths on one side of the room to collect information on the identities of the families, and referrals to services were set up on the other side.

Within days, the core group of first-responders created a new superstructure which included a formal leadership committee to serve as the central organizing body for coordinating service delivery for the response effort. The Niños Fund was established to receive donations. The Southeastern Massachusetts Community Foundation was chosen as the fiscal agent and overall administrator. The decision-making committee included representatives from the main service providers, thus helping them become involved in the allocation of resources. The committee included staff from MIRA, the Mayor's Office of New Bedford, several churches and other faith-based institutions, and various community-based organizations, including a nonprofit immigrant assistance and referral center and an economic development organization. The weekly committee meetings also served as the key communications system. While this superstructure at times produced some tension and conflict among participants, nearly all of the study respondents had a positive opinion of the basic approach.

The Niños Fund, which had collected $145,000 by the time of our visit two months after the raid, provided a comprehensive range of direct assistance to families with children. A portion of the fund was also used to build capacity among the organizations providing direct assistance. Most of the direct assistance funds went toward emergency needs including housing assistance, food assistance, utilities, and transportation. Distribution of aid began just three days after the raid. Three organizations distributed about $25,000 in food assistance in the form of grocery store gift cards and vouchers. About $60,000 in vouchers went toward rent payments for up to two months. Another portion of funds went to a nonprofit community action agency to help families pay for utilities. A local CBO and several churches offered transportation assistance (e.g., to take arrestees to and from their court appointments).

Multiple service distribution sites were chosen, each familiar to the immigrant families targeted for assistance: Catholic Charities; the Community Economic Development Corporation (CEDC); the Immigrant Assistance Center, a long-standing immigrant assistance and referral center; and Maya Kiche. Maya Kiche was a key organization because it was the only group that had the language capacity, cultural competency, and trust to work with the Mayan immigrants from Guatemala who composed the single-largest ethnic group arrested in the raid.

The State of Massachusetts also took a proactive, unique role in assisting the immigrants arrested in the raid. Under the governor's orders, Massachusetts DSS arranged for child welfare workers to meet with detained immigrants within three days of the raid to assess and make recommendations for release based on their family circumstances.

Massachusetts DSS workers helped obtain the release of 20 parents and other caregivers without bond within a few days after the raid. DSS staff were also present at service provider meetings and community events.

New Bedford also had access to substantial nonprofit legal resources, mostly provided out of Boston offices. Legal aid was offered by both Greater Boston Legal Services and a lawyer from Catholic Charities who specializes in immigration issues.

Grand Island, Nebraska. The response effort in Grand Island was less centralized than in New Bedford, but was coordinated informally and funded primarily by the employer (at that time, Swift & Company), the union (United Food and Commercial Workers), and other private sources. Community leaders in Grand Island were ready to respond when the raid happened because of experience with a previous raid at the same plant in the late 1990s. But Grand Island could not draw on the same level of resources from nearby cities, as was the case in New Bedford and Greeley, because the community is relatively isolated, located about 100 miles west of Omaha.

Several community leaders and institutions came together under the umbrella of the Grand Island Multicultural Coalition, a preexisting independent nonprofit membership organization dedicated to networking and coalition-building to better serve the needs of the area's Latino and other minority ethnic populations. The coalition, which already had participation from broad sectors of the community (including Swift, Nebraska DHS, public schools, nonprofit service providers, and local churches), facilitated connections among responding organizations and sponsored and provided the space for numerous meetings.

Out of concern for the school children, the Grand Island school district played a lead role in coordinating and providing assistance to families, starting on the day of the raid. The district had developed plans in the event of a raid at the Swift plant, based on the experience with the previous raid there. The superintendent held several press conferences throughout the day reassuring immigrant families that their children were safe at school. English as a second language program staff took the lead in convening meetings of community leaders, delivering assistance directly to families' homes, and referring immigrant parents to available services. The public schools became safe havens for children and an information pipeline for the community in the days and weeks after the raid. The district had developed a database of parents' employers, and used this database to contact all children whose parents might have been arrested at Swift.

The Swift plant had a history of strong, positive relations with the Latino community –

the source of most of its employees – and had been providing services such as adult education and English as a second language to some of its employees. Following the raid, Swift provided about $60,000 in funding to the local United Way for assistance to families of employees arrested at the plant. United Way disbursed the funds mostly through CNCS, an established nonprofit service provider, although assistance was provided at other locations. Swift provided a list of employees who had been arrested and stipulated that the funds be spent on assistance to families of employees. CNCS verified that recipients of assistance were in fact relatives or housemates with arrested employees. CNCS assisted affected families with a range of basic needs including housing, food, utilities, medical expenses, and other daily living expenses. CNCS served more than 100 families with almost 200 children. Families were allocated about $200 each during the first month following the raid, but assistance payments rose in value to $700 in subsequent months. Assistance lasted through about the fourth month after the raid.

Beginning on the Sunday after the raid, churches conducted impromptu food and cash drives and were able to start disbursing mostly one-time cash allocations and gift cards funded by Swift. They also arranged for meetings with the Mexican Consulate and offered transportation assistance. St. Mary's Cathedral, in downtown Grand Island, became a central point of distribution. The Omaha Hispanic Chamber of Commerce raised funds and donations from the Latino community there and brought food, toys, clothes, and other items to Grand Island.

Much of the distribution of food and other basic items was done in the community during the first few weeks after the raid with volunteers going door to door. Because so many families were in hiding and afraid of ongoing ICE raids, they did not go anywhere – not even to the church – to seek assistance.

Nebraska DHS and the city health department also anchored much of the response effort in Grand Island, although the role of public agencies was more limited than in New Bedford and families were afraid to go to these agencies. Agency staff assisted mainly with service coordination, setting up avenues of assistance and offering referrals. Staff from both the health department and social service agency assisted with assembling service points throughout the community (e.g., at CNCS, the Salvation Army, and St. Mary's); staffed the delivery of services at various sites; and referred immigrant families to specific agencies and organizations for food, financial assistance, and other services. Nebraska DHS was limited in the forms of assistance it could provide because

undocumented immigrants are ineligible for most federal and state-funded programs – such as the Food Stamp Program and TANF. In many families, U.S.-born citizen children were eligible for public assistance, but families were afraid to ask for assistance from Nebraska DHS for fear of losing their children to the child welfare system.

The Mexican Consulate in Omaha was involved in coordinating and delivering some of the services. Consular officials were the first to interview arrestees detained in Iowa the day after the raid, and the first to get detailed information about children of arrestees. Consular officials linked detainees and family members via phone and also set up connections with immigration attorneys, as attorneys had difficulty gaining access to the Iowa detainees for several days. The Consulate provided a small amount – about one week's worth of cash assistance – to Mexican families following the raid. The Mexican Consulate also put some detainees from other countries of origin in contact with their families and with lawyers. However, arrested immigrants from other countries of origin did not receive a similar level of consular services because they did not have consulates in the area. For instance, the nearest Guatemalan consulate was in Chicago.

The United Food and Commercial Workers (UFCW) represented most of the workers arrested at the plant and provided some cash assistance and relief as well. The union hired an attorney out of Omaha to help with about a dozen immigration cases. UFCW also provided assistance to families in obtaining the arrested workers' last paychecks and receiving compensation for unused vacation and other leave.

Nebraska Appleseed, based out of Lincoln, and another nonprofit in Omaha offered some free legal assistance as well. However, Grand Island itself had no trustworthy immigration attorneys or accredited Board of Immigration Appeals representatives, i.e., people who could represent clients before immigration judges. St. Mary's Cathedral was in the process of training two people to become accredited representatives and setting up a legal assistance program at the time of the raid. The lack of legal resources in Grand Island and generally across Nebraska limited avenues for arrested immigrants to appeal their deportation, and in some cases they used untrustworthy lawyers or legal consultants and lost substantial sums of money for legal fees.

Greeley, Colorado. The response effort in Greeley was the least centralized of the three sites, and public agencies played the smallest role there. There was no single coalition or organizational structure that formally coordinated relief, although efforts were informally coordinated through Our Lady of Peace, a local Catholic Church that served as the central distribution point for most assistance. Congregations Building Communities (CBC), a

church-based organizing group, facilitated the first meeting at Our Lady of Peace and continued to work with the church to provide services to affected families. CBC also connected the media with affected families so that they could tell their stories.

Greeley benefited from its proximity to the Denver area, where immigration lawyers, two consulates (Mexico and Guatemala), a large Latino community, and other resources are located. Greeley did not have experience with a prior raid, however, and the community was deeply divided over county government plans to petition ICE to open an office in town. Moreover, one of the worst snowstorms in years hit the area about one week following the raid, which greatly complicated service provision during this critical period.

The Swift plant's donation and United Way coordination drove most of the relief efforts in Greeley. As in Grand Island, Swift donated about $60,000 to United Way, predicated on the condition that the money be spent only on families with arrested employees. Swift also forwarded a list of arrested immigrants to United Way, which in turn coordinated the relief effort through a local nonprofit service provider – in this case, Catholic Charities. United Way provided another $25,000 raised through other sources. Catholic Charities branches in the Denver area provided additional sources of funding. In total, about $200,000 was raised; $140,000 in excess of the Swift seed grant and far above the total amount available in Grand Island. Catholic Charities served 96 families and more than 200 children. Families were allocated $500 each at the start of the process, but the cap was raised by several hundred dollars as families came back during the second, third, and fourth months after the raid for assistance. Some families received assistance with rent and mortgage payments as high as $1,200. Rent and mortgage assistance was the single-largest item; more than $70,000 was spent on assisting 90 families during the four months following the raids. More than $7,000 of the United Way funding was spent on food, coordinated through the local food bank. Our Lady of Peace distributed more than $12,000 in gift cards for use at local grocery stores, some of which were funded out of the United Way/Catholic Charities pool and some of which were donated by the stores.

Immediately following the raid, United Way organized services through Catholic Charities, the local food bank, and a toll-free (211) number. They used the 211 system which had been effective in previous disaster assistance efforts, for instance the response to Hurricane Katrina in New Orleans. Following the workplace raid in Greeley, however, this system was not as effective. There were not that many calls to the toll-free number, and not very much assistance was disbursed during the first month following the raid.

Also, very few people went to the offices of the food bank or the Catholic Charities office to seek assistance. As in Grand Island, families were too frightened following the raids to go to formal service providers, either public or private.

Our Lady of Peace held a meeting the evening after the raid and another later in the week. Weld County Department of Social Services (Weld DSS), Catholic Charities, and other major service providers in town, the union, the Guatemalan and Mexican Consulates, and community leaders came to these initial meetings. Meetings of the service providers continued on a weekly basis for several months. Moreover, many families attended the first meeting held in the basement of the church – informal estimates of attendance ran as high as 400. In fact, a large number of families were already in the church celebrating Our Lady of Guadalupe, a major Latin American festival, at the time the raid happened. Some of these families remained in the church in hiding the day of the raid. Our Lady of Peace is located in the heart of the Latino community in Greeley, only a few blocks from the raided plant. Due to its location and trust within the community, Our Lady of Peace became a safe haven and central distribution point following the raid.

Many families came to Our Lady of Peace seeking assistance in the days following the raid. The priests and other staff at the church raised some funding and received donations of food and other items from the Latino community in Greeley and other churches nearby. However, the large number of families seeking assistance quickly overwhelmed their capacity. In addition, the staff at the church did not have the capacity to manage the large pool of resources offered by United Way. As a result of these difficulties, the group of community leaders and service providers that was meeting regularly decided to base staff from Catholic Charities and the food bank at Our Lady of Peace to distribute assistance, track recipients, and verify their connections to arrested immigrants. It took almost one month to get this system set up because of difficulties in coordinating assistance and a two-week delay in getting the list of arrested immigrants from ICE via Swift. Thus, distribution of the major component of assistance – rent and mortgage payments – did not begin until the second month after the raid. Assistance continued for about three months, but this operation had largely closed down and the funding had all been spent by the time of our site visit, five months after the raid.

Al Frente, a community-based organization located just a few blocks from Our Lady of Peace and the Swift plant, also provided significant assistance, though mostly through informal support. Al Frente was not included in the formal distribution system set up by United Way and Catholic Charities which was housed at the church. Most of the support for their efforts came from the local Latino community, as well as Latino communities in

the Denver area. Al Frente distributed about 560 food boxes to more than 180 families; they did not ask for verification that families were directly connected to immigrants arrested at the plant. Al Frente also distributed clothing, diapers, infant formula, and other necessities over the first four months following the raid.

The UFCW represented most of the arrested immigrants, as in Grand Island – both Swift plants were unionized. The union hired a lawyer in Boulder to represent immigrants in detention, and the legal team grew to four lawyers and a Spanish-speaking clerk. The legal team represented more than 100 union members who were detained, but they were unable to represent about 20 workers who were not unionized. In addition, almost 100 arrestees – mostly Mexicans – had been deported before any lawyers were able to contact them. Although most of the immigrants who were held in detention received representation through the union's law firm, there were some who – as in Grand Island – received improper representation and lost substantial sums in legal fees. As in Grand Island, the UFCW in Greeley provided assistance with paychecks and compensation for leave.

Mexico and Guatemala both have consulates in Denver, which were very active in service provision following the raids. Although the Mexican Consulate was unable to meet with about 90 of their nationals before they were deported, they were able to meet with about 20 arrestees in detention and put them in contact with their families. The Guatemalan Consulate, however, was able to meet almost all of its 108 nationals in detention. Consular staff gained the release of 14 Guatemalans just after the raid and represented 50 more during hearings later on in the process. Both consulates also sent staff to Greeley to meet with community leaders and affected families at Our Lady of Peace on the day of the raid and at subsequent meetings. At those meetings, consular staff spoke to families to obtain information about who was arrested, made sure that children were not left alone (especially on the day of the raid), and helped refer families to services.* In this way they worked from both ends to put detainees in contact with their families. The Mexican Consulate did not provide direct assistance to families remaining in Greeley, but offered relocation assistance for two families to go back to Mexico; both of these families in the end, however, decided not to relocate.

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* For the entire first week after the raid everyone was in the dark about who had actually been arrested. Consular staff had to go to detention facilities and to Greeley to try to obtain information. ICE did not provide them with a complete and accurate list of who had been arrested until two weeks after the raid.

APPENDIX 4

National Estimates of Undocumented Adults and Their Children

A number of key factors influence the number of children potentially affected by ICE's enforcement activities. Primary among these are the industry of parental employment, geographic region of the United States, and parents' country or region of origin. These factors explain the relatively large number of children affected in Greeley and Grand Island compared with New Bedford.

Overall, in 2005 there were 9.3 million unauthorized working-age adults (18-64) and 4.9 million children (ages 0-17) living with these unauthorized adults (Appendix Table).[45] About half (48%) of these working-age adults had children. They had 1.1 children on average, but more than 80% lived in two-parent families, so there were 2.0 children on average per undocumented family. The ratio of children to undocumented working-age adults was 53% – suggesting that on average there was one child for every two adults.

When only those adults who were actually working are included in the analysis, the share of adults with children drops to 44%, but the average number of children per adult rises to 1.4 because in many immigrant families there are two parents, but only the father works. The number of children per family was also 2.0 on average. Among workers ages 18 to 64, the ratio of children to undocumented adults rises to 63% – suggesting there were almost two children for every three undocumented workers.

Variation in the number of children by parental industry of employment. Most of the largest worksite enforcement actions undertaken by ICE within the past year or so have been in manufacturing plants. Undocumented immigrants working in manufacturing – the industry for all three raid sites included in this study – were more likely to have children than undocumented workers in other major sectors of the economy. Thus, where enforcement activities are focused on manufacturing, there are likely to be more children affected than when enforcement focuses elsewhere.

In 2005, across the major industries of employment for undocumented immigrants, the share of undocumented workers with children ranged from a high of 55% in manufacturing to a low of 38% in construction. Agricultural workers had the most children on average (2.0), followed by construction (1.8); manufacturing workers had 1.6 children on average. The high share of workers with children in manufacturing and the

large number of children per worker on average in agriculture gave these two sectors the highest ratio of children overall per working adult (89%).

Almost two-thirds (63%) of children with undocumented parents working in manufacturing were U.S.-born citizens. Citizen shares of children were similar across all the other major industries except for agriculture where only 43% of children were citizens. Children of undocumented parents working in manufacturing and agriculture were slightly older on average than children of parents in other industries, and the children whose parents worked in construction were slightly younger.

The manufacturing jobs taken by undocumented immigrants tend to be stable, well-paying jobs, at least in contrast to agricultural and service-sector jobs. As a result, as it appears from the 2005 data, undocumented immigrants in manufacturing are more likely than workers in other sectors to have families, and these families are well-established with high shares of U.S.-citizen children as well as older children. Based on the national data, we would expect more than half of undocumented workers in our study sites to have children and for the ratio of children to adults to exceed 80%.

Variations in the number of children by geographic region of the United States. The sites selected for the study were located in three of the nation's four major Census geographic regions: the West, Midwest, and Northeast. The West, with its proximity to the southwestern border with Mexico, has the largest and most well-established undocumented immigrant populations. Undocumented communities in other regions of the country tend to be newer and less well established. The Northeast is the region farthest from the border and has the lowest number of undocumented immigrants, who tend to be more recent arrivals to the region.[46] Thus, one would expect ICE enforcement activities in the West to affect more children, and those in the Northeast to affect fewer children.

Across the three study regions, undocumented immigrants in the West were the most likely to have children in 2005 (56%), followed by those in the Midwest (46%) and those in the Northeast (42%). The West also had the largest average number of children per worker (1.2) and per family (2.2). The ratio of children to undocumented working-age adults was far higher in the West (65%) than in the other regions. The Northeast had the lowest ratio (41%). In both the Midwest and West, two-thirds of children with undocumented parents were U.S.-born citizens, compared with 56% in the Northeast. Based on these data, we would expect that the workers arrested at the Northeast study site (New Bedford) would have fewer children on average than those arrested in the West and Midwest sites (Greeley and Grand Island).

Variations in the number of children by parental country/region of origin. The two predominant countries of origin for workers arrested at the three study sites were Mexico and Guatemala. Mexico accounts for more than half of all undocumented immigrants, while Guatemala is a much less common country of origin nationally. Mexican immigrants have a long history of undocumented migration to the United States, dating back to the 1960s when the *bracero* temporary agricultural worker program ended. Mexican immigrants legalized in large numbers in the late 1980s and early 1990s, following the Immigration Reform and Control Act of 1986.[47] Guatemalans are a much more recent immigrant group, with the migration stream beginning in earnest during Guatemala's civil war of the 1980s, and increasing in size substantially during the 1990s. The migration of undocumented immigrants from other Central American countries such as Honduras and El Salvador followed a similar pattern, starting in the 1980s and increasing rapidly during the 1990s. As a result of their relative longevity in the United States, one would expect undocumented Mexican immigrants to be more established and therefore more likely to have children than Guatemalans and other Central Americans. As a result, ICE enforcement actions that focus on worksites or communities where there are more Mexican immigrants are likely to affect more children, while those focusing on Central American or other populations are likely to affect fewer children.

In 2005, more than half (53%) of undocumented Mexican immigrants had children, compared with just 41% of Guatemalans. There was little variation in the average number of children per parent by origin, but the overall ratio of children to adults was considerably higher for Mexicans than Guatemalans and other Central Americans (62% compared with 51% and 52%, respectively). A relatively low share of undocumented adults from regions of the world other than Central America had children, and they had fewer children on average, and so their ratio of children to adults was the lowest (41%).

Despite higher shares with children, Mexican immigrant families actually had a lower share of U.S.-citizen children than Guatemalan or other Central American families. About two-thirds (68%) of children with undocumented Mexican parents were citizens, compared with three-quarters (74%-75%) for children with Guatemalan and other Central American parents. Guatemalans also had a relatively high share of children over age ten (43%), but otherwise age distributions were similar across parental origin groups.

Based on the national data, we would expect Mexican immigrants arrested in the study sites to be more likely to have children than Guatemalan and other immigrants, and those sites with higher shares of Mexican immigrants to have more children affected by the

Appendix Table

National Estimates of Undocumented Working-Age Adults and Their Children by Work Status, Industry of Employment, Geographic Region of the United States, and Country/Region of Origin, 2005

			Industry of Employment					
	Total	Working	Manufacturing	Construction	Agriculture	Retail Trade	Services	Entertainment and Leisure
Number of adults (ages 18-64)*	9,281	6,724	974	1,317	246	767	494	1,164
Number of adults with children (ages 0-17)*	4,483	2,992	532	498	109	329	251	477
Percentage of adults with children	48%	44%	55%	38%	44%	43%	51%	41%
Average children per parent	1.1	1.4	1.6	1.8	2.0	1.6	1.7	1.5
Average children per family	2.0	2.0	2.1	2.1	2.4	1.9	2.0	1.9
Total number of children (ages 0-17)*	4,925	4,251	870	912	219	526	418	730
Ratio of children to adults	53%	63%	89%	69%	89%	69%	85%	63%
Percentage of children:								
U.S.-born citizens	64%	62%	63%	63%	43%	61%	63%	66%
Ages 0 to 5	37%	37%	33%	41%	31%	38%	32%	40%
Ages 6 to 10	28%	28%	25%	28%	25%	24%	32%	29%
Ages 11 to 17	35%	35%	42%	31%	45%	38%	36%	31%

	Geographic Region of the United States				Country or Region of Origin			
	Northeast	Midwest	South	West	Mexico	Guatemala	Other Central America	Other
Number of adults (ages 18-64)*	1,262	980	3,651	3,389	5,133	282	921	2,945
Number of adults with children (ages 0-17)*	532	446	1,611	1,895	2,731	115	414	1,222
Percentage of adults with children	42%	46%	44%	56%	53%	41%	45%	42%
Average children per parent	1.0	1.0	1.1	1.2	1.2	1.3	1.2	1.0
Average children per family	1.8	2.1	2.0	2.2	2.2	1.9	1.9	1.7
Total number of children (ages 0-17)*	516	450	1,763	2,197	3,207	145	480	1,217
Ratio of children to adults	41%	46%	48%	65%	62%	51%	52%	41%
Percentage of children:								
U.S.-born citizens	56%	66%	63%	66%	68%	74%	75%	50%
Ages 0 to 5	38%	42%	38%	36%	39%	38%	37%	35%
Ages 6 to 10	28%	26%	27%	28%	27%	19%	25%	30%
Ages 11 to 17	34%	32%	34%	37%	34%	43%	38%	35%

*Note: Whole number values expressed in thousands

Source: Urban Institute analysis of March 2005 U.S. Current Population Survey data, augmented with assignments of legal status to noncitizens.

raids. The share of U.S.-born citizen children might be higher in those sites with more Guatemalan and other Central American immigrants.

Reasons for variations in the number of children across the sites. There are several reasons why the shares of arrestees with children and total number of children affected are much lower in New Bedford than in Greeley or Grand Island. First, New Bedford is in the Northeast – the region with the lowest share of undocumented adults with children in the national data discussed earlier. Second, the arrested population in New Bedford is composed almost entirely of Guatemalans and other Central Americans, while arrestees in the other two sites were a mixture of Mexicans and Guatemalans. In the national data, undocumented Mexican immigrants were substantially more likely than Guatemalans and other Central Americans to have children. Third, the workers arrested in New Bedford were much younger than those in the other sites. In New Bedford, 80% of the workers were under age 35, and 42% were under age 25. In fact, four of the arrestees in New Bedford were under the age of 18, and therefore children themselves. Respondents in Greeley and Grand Island told us that the predominant age range for workers was 25 to 45, and that very few workers were under age 25.* Fourth, respondents told us that a substantial share of workers in New Bedford were not married – which is not surprising given their relatively young age – and that among those with children, a high share were single parents. By contrast, virtually all of the families with children in Greeley and Grand Island were two-parent families. Taken together, these three factors suggest that the arrested immigrants in New Bedford were younger, less established, and therefore less likely to have formed families than the arrestees in the other two sites.

Another factor that could influence the share of children is the relatively low wages paid in New Bedford. The average hourly wage at Michael Bianco ($7-$9) was much lower than in the Swift plants in the other two sites ($10-$15). Moreover, the cost of living is higher in New Bedford than in Greeley or Grand Island, and so the wages at Michael Bianco would make it difficult for an employee to raise a family, especially given that so many were single parents.

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* Age data for New Bedford are based on analysis of the list provided by advocates and service providers; age was provided for 349 arrestees. In the other two sites, no such data were available, and the age-range estimates are based on discussions with employers, lawyers, and service providers.

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3. U.S. Immigration and Customs Enforcement, "Detention and Removal Operations: Alternatives to Detention." Fact Sheet. Washington, DC: U.S. Department of Homeland Security, March 2007. Available at http://www.ice.gov/pi/news/factsheets/061704detFS2.htm.

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5. "Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy," 19:3(G). Washington, DC: Human Rights Watch, July 2007.

6. U.S. Immigration and Customs Enforcement, "Fiscal Year 2007 Budget." Fact Sheet. Washington, DC: U.S. Department of Homeland Security, February 2007. Available at http://www.ice.gov/doclib/pi/news/factsheets/FactSheet2007Budget020507a.pdf.

7. U.S. Immigration and Customs Enforcement, "Worksite Enforcement Overview," *op. cit.*

8. U.S. Immigration and Customs Enforcement, "Worksite Enforcement: Operation Wagon Train." Fact Sheet. Washington, DC: U.S. Department of Homeland Security, March 2007. Available at http://www.ice.gov/pi/news/factsheets/wse_ou_070301.htm.

9. U.S. Immigration and Customs Enforcement, "Worksite Enforcement Overview," *op. cit.*

10. U.S. Immigration and Customs Enforcement, *ICE: Fiscal Year 2006 Annual Report.* Washington, DC: U.S. Department of Homeland Security, 2007. Available at http://www.ice.gov/doclib/about/ICE-06AR.pdf.

11. Nationally about 22% of all undocumented immigrants come from regions other than Latin America. For more see Passel, Jeffrey S., *The Size and Characteristics of the Unauthorized Migrant Population in the U.S., op. cit.*

12. Over the years, Urban Institute and other researchers have developed estimates of the number of undocumented immigrants in the United States based on survey data, comparisons with official DHS admissions data, and assumptions about the characteristics of undocumented immigrants versus legal noncitizens. The latest of these estimates – for 2005 – suggest there are just over 11 million undocumented immigrants in the country in total. See Passel, Jeffrey S., *The Size and Characteristics of the Unauthorized Migrant Population in the U.S., op. cit.*; Passel, Jeffrey S. and Rebecca Clark, *Immigrants in New York: Their Legal Status, Incomes, and Taxes.* Washington, DC: Urban Institute, 1998; and Capps, Randy, Jeffrey S. Passel, Dan Perez-Lopez, and Michael E. Fix, *The New Neighbors: A User's Guide to Data on Immigrants in U.S. Communities.* Washington, DC: Urban Institute, 2003.

13. Children in undocumented families are substantially younger than children overall in the United States. In 2005, only one-quarter of children in the United States overall were under age five, and only 50% were under age ten. See U.S. Census Bureau, "General Demographic Characteristics: 2005," *American Community Survey*. Washington, DC: 2007. Available at http://factfinder.census.gov.

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16. A recent report by the U.S. Government Accountability Office concludes that detainee populations exceeded rated capacity in four out of 23 facilities visited for the study. See U.S. Government Accountability Office, *Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance*. GAO-07-875. Washington, DC: July 2007.

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25. This pattern of informal care is consistent with studies showing lower enrollment in pre-kindergarten, Head Start, and other formal child care settings among U.S. children of immigrants overall. See Capps, Randy, Michael Fix, Jason Ost, Jane Reardon Anderson, and Jeffrey S. Passel, *The Health and Well-Being of Young Children of Immigrants*. Washington, DC: Urban Institute, 2004; and Hernandez, Donald J., "Demographic Change and the Life Circumstances of Immigrant Families," *The Future of Children*, 2004, 14(2):16-47.

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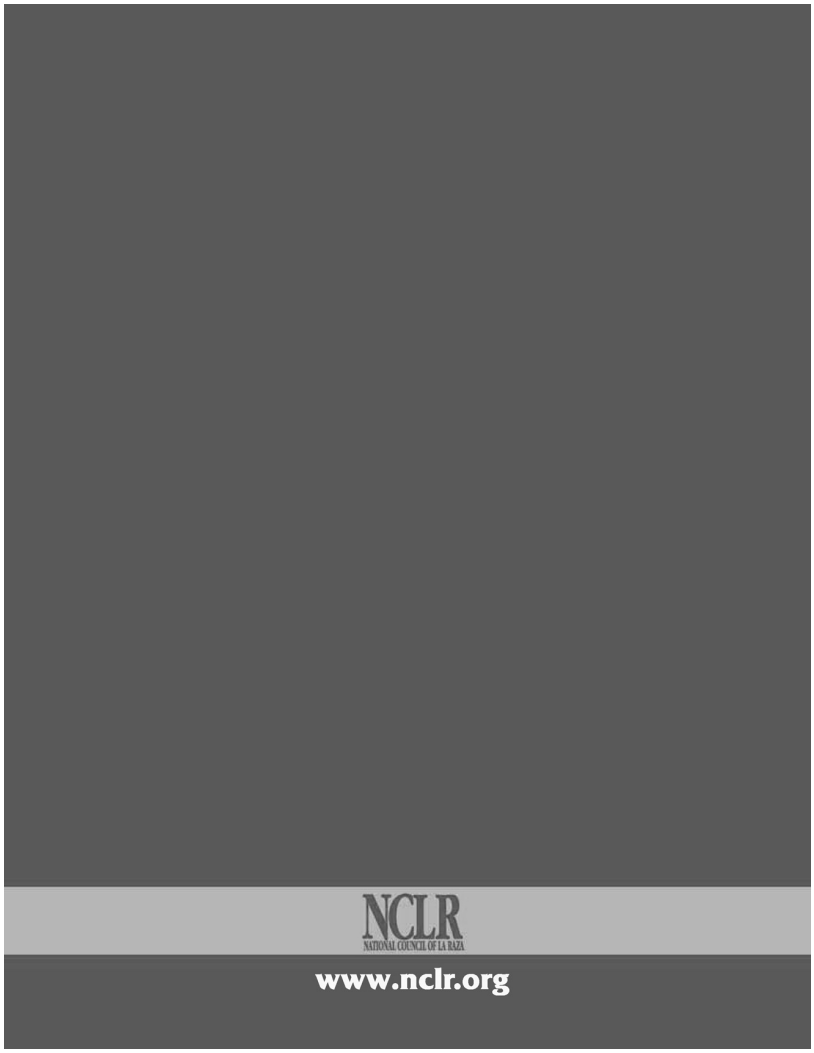
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