

The American Civil Liberties Union

Written Statement
For a Hearing on

ICE Worksite Enforcement: Up to the Job?

**Submitted to the House Judiciary Subcommittee
on Immigration Policy and Enforcement**

January 26, 2011

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I. Introduction

The ACLU is a nationwide, non-partisan organization of more than 500,000 members, countless additional activists and supporters, and 53 affiliates nationwide 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 ACLU of Southern California (ACLU/SC), based in Los Angeles, is the oldest of the 53 ACLU affiliates nationwide. Among the ACLU/SC's core priorities is to protect and ensure the constitutional and civil rights of immigrants. In the past three years, the ACLU/SC has responded to two large worksite raids – those targeting Microenterprise Solutions in Van Nuys, California in February 2008; and Terra Universal in Fullerton, California in June 2010 – and provided representation to workers arrested in those raids.

The ACLU submits this statement to express its concerns about the harm to *all* workers – including U.S. citizens, documented workers, and undocumented workers – caused by immigration worksite enforcement actions that include workplace raids. Immigration violations are inextricably linked to labor violations, particularly in low-wage industries. Immigration raids resulting in the arrest and deportation of workers have a variety of negative effects:

- They drive down wages and labor conditions for all workers, regardless of immigration status, including the loss of jobs for U.S. workers.
- They interfere with workers' ability freely to exercise their workplace rights and frustrate criminal and civil prosecutions of abusive employers.

Amendment, as well as to equal protection of the laws and due process under the Fifth and Fourteenth Amendments. The manner in which ICE has historically conducted raids raises serious concerns about their legality.

II. Immigration Raids Raise Serious Constitutional Concerns.

The ACLU has previously presented information to this Subcommittee about why ICE's conduct of worksite raids jeopardizes legal rights.¹ Citizens and non-citizens alike are protected by the Bill of Rights; any affront to the rights of non-citizens erodes the rights of all Americans. When due process and equal protection under the Fifth and Fourteenth Amendments, as well as the guarantee against unreasonable searches and seizures under the Fourth Amendment, are denied to one vulnerable group, our Constitution and its fundamental protections are tarnished.

ICE's worksite raids have been conducted in a particularly coercive manner. ICE has used tactics that create an atmosphere in which no reasonable person would feel at liberty to leave, making any due process right not to answer ICE's questioning illusory. For example, ICE has entered worksites like Microenterprise Solutions, a factory in Van Nuys, California, in dragnet fashion, using armed agents to secure the perimeter and exits. ICE has also forcefully ordered workers to stop working and detained them for questioning – including U.S. citizens – without any reasonable suspicion that they are in the country unlawfully.² ICE agents have

Employees who are detained are frequently not advised of their right to an attorney, or informed that statements could be used against them. After the 2008 Microenterprise Solutions raid, for example, ICE did not allow workers access to attorneys until after the ACLU/SC, the National Immigration Law Center, and the National Lawyers Guild filed a lawsuit, which ICE settled out of court.

Such illegal actions by ICE have continued beyond the initial questioning stage. Immigrants arrested in raids are commonly transferred to remote, out-of-state detention facilities within hours of their arrest. Panicked family members and lawyers – if workers are fortunate enough to have lawyers, given that the vast majority of detainees lack legal representation⁵ – are at a loss to ascertain the workers' whereabouts in a raid's aftermath.⁶ ICE agents have then pressured detainees into signing stipulated removal orders which waive critical due process rights and the opportunity to seek relief, even in cases in which a worker has a valid claim to stay in the United States.⁷

ICE's mission must be carried out in a humane manner and in accordance with the Constitution. The cost of workplace raids extends beyond causing lasting economic damage and impeding the exercise of employee rights to the detriment of all workers. In violating constitutional rights, ICE's past raids have brought discredit to the agency and compound the raids' counter-productivity with unlawfulness.

At subsequent ICE interviews, workers reported that they were threatened with detention if they did not admit their alienage. As soon as ICE charged them with removability, the agency created a conflict of interest that could have been avoided. It became far more difficult, if not impossible, for the workers to cooperate with ICE's criminal investigation of Terra Universal, and serve as witnesses about the company's unlawful employment practices, without making statements against their interest. Given the conflict of interest, the workers feared that if they cooperated in ICE's investigation they would either be forced to incriminate themselves or be detained for refusing to do so.

8 CFR § 287.8(c)(2)(vii) prohibits ICE officials from using any threats or coercion "to induce a suspect to waive his or her rights or to make a statement." The Fifth Amendment requires that ICE cease its questioning about alienage once a person asserts his or her right to silence.⁸ ICE has no legal authority to detain persons for being "uncooperative witnesses," as the agency mistakenly perceived the Terra Universal workers to be. To arrest and detain without a warrant, ICE must determine that a subject is "likely to escape before a warrant can be obtained" or is a flight risk, categories inapplicable to these workers who had already qualified for release.⁹

The Terra Universal raid shows that the agency is not universally putting into practice either effective or lawful enforcement practices. ICE's own April 30, 2009 "Worksite Enforcement Strategy" states that "[a]n effective strategy must do all of the following: 1) penalize employers who knowingly hire illegal workers; 2) deter employers who are tempted to hire illegal workers; 3) encourage all employers to take advantage of well-crafted compliance tools. To accomplish these goals, ICE must prioritize the criminal prosecution of the actual employers who knowingly hire illegal workers because such employers are not sufficiently punished or deterred by the arrest of their illegal workforce." ICE's actions with respect to Terra Universal's workers demonstrate that a raid-based approach works at cross-purposes with the goal of targeting unscrupulous employers: If workers are treated as removal targets, rather than integral witnesses to criminal and civil employment violations who may also be victims of abusive practices, ICE plays into the hands of abusive employers by stifling workers' ability to complain and assist enforcement efforts.

IV. Immigration and Labor Violations are Inextricably Linked in the Workplace.

⁸ See, e.g., *Pearl Meadows Mushroom Farm, Inc. v. Nelson*, 723 F. Supp. 432, 447-48 (N.D. Cal. 1989) ("Constitutional restraints on unbridled police detentions apply to detentions for questioning on illegal alienage.").

⁹ 8 U.S.C. § 1357 (ICE officials can make warrantless arrests of individuals for immigration violations only if there is probable cause and if the individual "is likely to escape before a warrant can be obtained for his arrest"); 8 C.F.R. § 287.8(c)(2)(ii) (requiring a warrant before any immigration arrest is made "except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained").

Federal employment and labor laws protect all workers regardless of immigration status.¹⁰ As long as immigration enforcement interferes with workers' ability to secure such protections, it will continue to drive down wages and labor conditions. As the Supreme Court has underscored, "acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and wor

harboring unauthorized workers.”¹³ Company supervisors subjected these workers to sexual

V. Immigration Raids Drive Down Workplace Conditions for All Workers and Undermine Labor Enforcement.

Immigration raids that target undocumented workers for arrest and deportation harm U.S. workers. Rather than curbing the race to the bottom on wages and working conditions, immigration raids fuel that race for several reasons:

First, U.S. workers often lose their jobs in the wake of immigration raids. Immigration raids can cripple a workforce and require employers to pay significant costs and fees that may

result in the employer calling ICE. Unscrupulous employers use the threat of immigration enforcement to quell worker grievances. The rampant substandard conditions that prevail in these abusive businesses affect all workers by worsening working conditions across whole industries and sectors of the economy.

Indeed, where undocumented workers cannot complain about workplace conditions to their employers, it is likely that U.S. citizen and documented workers are being prevented from doing so as well. For example, U.S. citizen and documented workers at Terra Universal were frequently told that if they did not like their work conditions, they could leave, as plenty of other workers were lined up for their jobs.

Poor working conditions can also accompany human trafficking, as in the case of Signal International, a marine and fabrication company with shipyards in Mississippi, Texas, and Alabama against which (along with Signal's co-conspirators) the ACLU and allied co-counsel have filed suit for subjecting more than 500 Indian men to "a campaign of psychological abuse, coercion, and fraud designed to render Plaintiffs and other class members afraid, intimidated, and unable to leave Signal's employ."²⁵ Signal's actions included the company's own "raid" against workers advocating for their rights, after consultation with ICE. Signal personnel engaged in "forced physical restraint, abuse of the legal process, [and] detention and attempted deportation of the two Indian workers . . . as a forceful demonstration to the [others] that resistance to Signal's rules and demands was unacceptable and would result in similar punishment."²⁶

Third, in recent years, ICE has conducted numerous immigration raids without coordinating, consulting with, or even informing state and federal labor enforcement agencies, including cases when ICE knew of ongoing labor disputes and workplace violations. By taking such unilateral action, ICE's worksite raids significantly undermine and frustrate the efforts of state and federal labor enforcement agencies to improve working conditions, including the very conditions that perpetuate the hiring of unauthorized workers. To give two examples:

- At the time of the Terra Universal raid, ICE knew about significant workplace violations, but only informed the Department of Labor (DOL) of its planned action a day before the raid. DOL subsequently investigated the company, but that investigation has been impeded by ICE's efforts to deport victims and witnesses, as well as ICE's confiscation of the company's employment records.

²⁵ Second Amended Complaint, *David et al. v. Signal Int'l LLC*, No. 08-cv-01220 (E.D. La. Nov. 23, 2010), available at http://www.aclu.org/files/assets/david_secondamendedcomplaint_20101123.pdf

- At the time of the Agriprocessors raid, DOL and its Iowa state counterpart had investigations pending. In addition, the United Food and Commercial Workers International Union (UFCW) was engaged in an ongoing organizing drive. The union informed ICE of these three ongoing efforts, stating that “any potential ICE action could not only have a chilling effect over the existing workforce . . . but [] could also result in employees leaving the plant, thereby interfering with the DOL’s investigation.”²⁷ One week later, however, ICE raided the plant, without, according to DOL, giving any advance notice.²⁸ Mark Krikorian’s testimony to the Subcommittee with respect to Agriprocessors omits this full context of labor enforcement and union organizing.²⁹

The Immigration and Naturalization Service (INS), ICE’s predecessor, adopted policies in the late 1990s designed to ensure that immigration enforcement is not conducted at the expense of labor rights. Internal guidelines under Operating Instruction 287.3a (now designated as ICE Special Agents Field Manual § 33.14(h)) were adopted to address the impact that immigration enforcement can have on workers’ efforts to exercise and enforce their rights. The guidelines direct ICE agents to take certain steps before initiating an enforcement action “[w]hen [ICE] has reason to suspect that a source might be providing information about potential undocumented aliens in order to interfere with the rights of the employees in the middle of a labor dispute or for retaliatory purposes.”³⁰

²⁷ Raids on Workers, *supra*, at 40; *see also id.* at 36 (describing the 2007 raid on the Michael Bianco, Inc. (MBI)

In 1998, INS and DOL adopted a Memorandum of Understanding (MOU) aimed in part at “reduc[ing] the economic incentives for the employment of unauthorized workers . . . by increasing employers’ compliance with minimum labor standards.”³¹ The MOU directs DOL and INS to “develop and implement policies consistent with INS Operations [*sic*] Instruction 287.3a that avoid inappropriate worksite interventions where it is known or reasonably suspected that a labor dispute is occurring and the intervention may, or may be sought so as to, interfere in the dispute.”³² ICE has an obligation to operate consistently with these principles.

Fourth, immigration raids erect barriers to employer accountability and workers’ access to justice. By arresting and placing workers in removal proceedings prior to the conclusion of any criminal or civil investigation of an employer, ICE raids can result in the deportation of victims and witnesses before they are able to testify. Raids interfere with victims’ and witnesses’ willingness and ability to cooperate with prosecutors and investigators. Immigration raids also have a chilling effect, due to fear of retaliation, on workers’ right to bring civil lawsuits against their employers, or to participate in opt-in collective actions under the Fair Labor Standards Act (FLSA). For example, on April 16, 2008, ICE agents raided Pilgrim’s Pride, a poultry plant in Chattanooga, Tennessee, which employed 1,350 workers. Prior to the raid, attorneys had been developing a wage-and-hour class action lawsuit on the workers’ behalf. After the raid, however, workers – even those authorized to work – were afraid to join the class action for fear that ICE would retaliate against their family members.³³

It is vital to look at raids’ consequences holistically, at how they interfere with workers’ rights and disrupt labor enforcement. They also have devastating impacts on local communities. In his testimony, Mark Krikorian asked the Subcommittee to focus on the 8 percent wage and bonus increase that resulted from the raid on Swift & Company in Marshalltown, Iowa.³⁴ This uni-dimensional approach ignores a more comprehensive analysis’s conclusion that this “ICE raid contributed to a localized economic recession for perhaps six months to a year after the

raid.”³⁵ More generally, those who look carefully at the aftermath of raids understand that “immigration enforcement actions have lasting consequences that can harm the financial, human, and social capital of communities.”³⁶

VI. Conclusion