



Defending Human Rights & Due Process

A Policy Brief from Heartland Alliance's National Immigrant Justice Center

SPRING 2009

Immigration Enforcement and Human Rights One Year After the Postville ICE Raid

On May 12, 2008, federal officials raided Agriprocessors, Inc., a meatpacking plant in Postville, Iowa, and arrested nearly 400 workers. The raid was one of the largest worksite enforcement actions in U.S. history. The due process and human rights violations that occurred in the raid have been the topics of two previous editions of this policy brief (available at www.immigrantjustice.org/resources/policy/nijcpolicybrief). Now, one year after the Postville raid and just over 100 days after President Barack Obama took office, the new administration has announced limited improvements in federal immigration enforcement policies. However, the Department of Homeland Security (DHS) has indicated it may continue to arrest workers in raids. Furthermore, nearly 40,000 immigrant men, women, and children remain detained in a patchwork detention system that operates with little transparency or accountability. Nearly 90 people have died in that system since 2003. President Obama, who has repeatedly expressed support for fair immigration reform, must understand that any efforts to fix the broken immigration system *must* address the human rights and due process violations that have become all too routine in U.S. immigration enforcement. ♦

DHS's New Approaches to Worksite Enforcement: More Progress Needed to Ensure Due Process for Workers

The Department of Homeland Security (DHS) has taken a new tack on worksite enforcement, according to an April 2009 announcement from Secretary of Homeland Security Janet Napolitano. While the agency's new policies are a step in the right direction, further reforms are needed to ensure workers' due process and human rights. A DHS fact sheet outlining the new policy is available online at www.ice.gov/doclib/pi/news/factsheets/worksite_strategy.pdf.

Targeting Employers, Still Arresting Workers

Secretary Napolitano's announcement directed agents to pursue employers that egregiously violate labor and immigration laws and to base worksite raids on investigative work and reliable evidence. The new orientation is focused on prosecution of employers, a change in course from that of the Bush administration, which arrested nearly 6,000 employees in worksite raids in 2008. However, the agency will continue to arrest workers "as part of an effort to build criminal and civil cases against employers," according to *The New York Times*.

DHS's new worksite enforcement guidelines take important steps toward smarter enforcement that respect the human rights of immigrant workers. But if the administration intends to

continue arresting workers during raids, it must provide legal protections to ensure those workers' due process rights are respected. For example, federal prosecutors and DHS agents must allow immigrants who are criminally charged access to both public defenders and immigration attorneys. DHS also must guarantee immigrants charged with civil immigration violations access to immigration attorneys.



ICE fugitive operation in November 2008. ICE Photo

workers during the raid at Yamato Engine Specialists Ltd., in Bellingham, Washington.

DHS's actions following the Bellingham raid may illustrate how the department's new worksite enforcement policy will

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Recommendations for New DHS Leadership: End Human Rights Violations in Immigration Detention

Soon after taking the helm of the Department of Homeland Security (DHS) in January 2009, Homeland Security Secretary Janet Napolitano called for the review of nearly a dozen immigration enforcement policies and programs. Under close scrutiny are U.S.



Napolitano meets with senior ICE leadership. USCIS Photo/Caffrey

Immigration and Customs Enforcement (ICE) detention and deportation operations, which have drawn extensive criticism and charges of human rights violations in past years with media reports of nearly 90 in-custody deaths, racial profiling, and denial of basic due process rights. The directive also suggests a possible shift in immigration enforcement away from policies that sweep up individuals with no criminal history to focus more closely on those individuals who pose threats. The directive is available online at www.dhs.gov/ynews/releases/pr_1233353528835.shtm.

Secretary Napolitano also appointed Dr. Dora Schriro, the former director of the departments of corrections in Arizona and Missouri, to serve as a special advisor on detention matters. Schriro visited detention facilities throughout the country and met with legal aid providers and other stakeholders in the immigrant rights community. She is expected to complete a report on her findings by late May 2009. That report should include recommendations for immediate modifications to policy and practice as well as for systemic reform.

In order to protect human rights and access to due process for

immigrants, Secretary Napolitano and Schriro should consider the following recommendations as they prepare a strategy for detention reform:

The detention system must abide by international human rights standards and the U.S. Constitution. Noncitizens, especially asylum seekers, should be detained only under very limited circumstances and only after a judge finds them to be a danger to the community, a flight risk, or a threat to national security. DHS should rescind parole guidance issued in November 2007 that unnecessarily restricts the release of asylum seekers, and reinstate prior guidance that allowed release under reasonable and secure circumstances. When detention is the only option, it must be humane and guarantee that immigrants can consult with legal professionals. Every noncitizen must have the opportunity to apply for release on bond. Detention standards must be legally binding and subject to vigorous oversight. Alternatives to detention must be developed in conjunction with community-based organizations and fully funded.

The immigration system must honor the principles of the American justice system, ensuring that all immigrants have fair opportunities to seek immigration status, to see a judge before facing deportation, and to appeal negative decisions in their cases. Congress must expand federally funded legal orientation programs to ensure that detained immigrants understand their rights.

DHS must bring the United States into compliance with international conventions and treaties protecting refugees, asylum seekers, and torture victims. DHS should protect *bona fide* refugees and asylum seekers from overly broad “terrorist” definitions in immigration law, support legislation to eliminate the one-year filing deadline to asylum claims, and recognize gender-based harm and persecution of children as valid bases for asylum claims. ♦

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operate. In late March 2009, one month after the raid, many of the immigrants arrested in the raid were released from custody. They received work permits and were asked to assist federal prosecutors with the investigation of their employer. On April 2, 2009, ICE officials searched the administrative offices of Yamato Engine Specialists.

Applying Humanitarian Protocols During Raids

The new DHS worksite enforcement guidelines also expand the application of humanitarian protocols in raids in which workers are arrested on immigration charges. The protocols direct ICE to release immigrants who are pregnant or nursing, are sole care givers to children, or have other

compelling needs for release. The Bush administration only applied the humanitarian protocols to actions in which 150 or more individuals were arrested. Secretary Napolitano will now implement the protocols whenever 25 or more individuals are taken into custody.

The expansion of the application of the humanitarian protocols is a welcome shift in policy. Nonetheless, additional improvements are still necessary. The department must further expand the scope of the humanitarian protocols to include other vulnerable populations and to include anyone arrested in a worksite raid, regardless of the size of the action. All individuals are equally deserving of humane treatment and consideration for release. ♦

John Morton and the Future of Immigration Enforcement: *Excerpts from the ICE Nominee's Senate Questionnaire*

The U.S. Senate is expected to confirm John Morton as the next head of U.S. Immigration and Customs Enforcement. Morton is a former Immigration and Naturalization Service trial attorney who has spent more than 15 years in federal law enforcement.

As assistant secretary on Immigration and Customs Enforcement for the Department of Homeland Security, Morton will inherit a broken immigration detention system and controversial enforcement policies. U.S. government officials as well as international and U.S. nongovernmental organizations have criticized ICE for failing to protect human rights. In a pre-hearing Senate questionnaire, Morton expressed an understanding of the need to reform the detention system to protect detainees' due process and human rights. But he also indicated he might support the expansion of problematic local enforcement programs, and he did not overtly support codification of the detention standards.

Worksite Enforcement: "I support using all available tools as part of a coherent worksite enforcement strategy. ... I would place particular emphasis on those employers who knowingly engage in illegal hiring on a grand scale or who knowingly aid unauthorized workers to circumvent verification by the use of false documents or other fraud."

Local Enforcement: "As a general matter, I am a strong proponent of federal coordination and cooperation with state and local law enforcement. Under the right circumstances I also believe such coordination and cooperation can play an important role in the enforcement of our civil immigration laws."

Alternatives to Detention: "I strongly support the development of effective alternatives to detention (ATD)... [T]hey promote an alien's appearance for hearings and compliance with a final order of removal, save taxpayers the considerable expense of detention, and spare the alien from more restrictive conditions of detention. ... More analysis is needed to determine if ATD programs offer a sufficiently high rate of compliance with removal orders."

Parole for Asylum Seekers: "Although I believe that the 2007 policy directive was a step in the right direction to promote accountability and consistency in parole decisions, I am concerned that so many stakeholders view it as unacceptably restrictive. As such, I would welcome concrete recommendations from Congress, the [U.S. Commission for International Religious Freedom], the U.N. High Commissioner for

On ICE's Responsibilities:

"I believe ICE's principal mission is to protect national security and promote public safety through the use of its criminal and administrative enforcement authorities. In pursuit of this mission, ICE has the responsibility to deter the illegal entry of contraband and people to the United States consistent with civil rights and civil liberties ..."

Refugees (UNHCR), and the NGO community concerning how ICE could best identify and parole bona fide asylum applicants from custody."

Transfers: "I support limiting unnecessary transfers. The location of a detained alien's family and attorney are appropriate considerations when ICE has the ability to select among multiple facilities."

ICE Oversight: "I will ensure effective oversight and create the capacity within ICE to review the conditions at facilities and investigate and assess complaints. If problems are identified at a particular facility, and those problems are not immediately addressed or later recur, I would not hesitate to terminate the contract or remove immigration detainees from the facility."

Detention Standards: "I understand the appeal of regulation in light of the current need for reform. ... On the other hand ... regulations can be inflexible and create unintended consequences as circumstances change over time."

Medical Care: "I will consider whether [the Division of Immigration Health Services] is sufficiently equipped to oversee the medical care of our detained population. I also will take steps to immediately increase oversight of the medical care provided to aliens in contract facilities, where DIHS is not involved.

"... I will assess whether and when an alien's medical condition may render detention inappropriate or require specialized care. I also will establish a standardized medical grievance procedure."◆

Reports on Human Rights and the U.S. Immigration System

The following human rights reports reveal numerous human rights violations that have occurred in the U.S. immigration detention system in recent years. Many of the reports identify recommendations to address these violations and ensure that every human being is treated with dignity and respect.

U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison (April 2009); www.humanrightsfirst.org/pdf/090429-RP-hrf-asylum-detention-report.pdf

Immigration and Customs Enforcement's Tracking and Transfers of Detainees from Dept. of Homeland Security, Office of Inspector General (March 2009); www.dhs.gov/xoig/assets/mgmt/rpts/OIG_09-41_Mar09.pdf

Jailed without Justice: Immigration Detention in the USA, Amnesty International (March 2009); www.amnestyusa.org/uploads/JailedWithoutJustice.pdf?tr=y&auid=4661415

Dying for Decent Care: Bad Medicine in Immigration Custody, Florida Immigrant Advocacy Center (March 17, 2009); www.fiacfla.org/reports/DyingForDecentCare.pdf

Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention, Human Rights Watch (March 17, 2009); www.hrw.org/en/reports/2009/03/16/detained-and-dismissed

Halfway Home: Unaccompanied Children in Immigration Custody, Women's Refugee Commission (February 2009); https://womenscommission.org/pdf/halfway_home_ex_sum.pdf

DHS: Organizational Structure and Resources for Providing Health Care to Immigration Detainees, GAO (February 2009); www.gao.gov/new.items/d09308r.pdf

Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement, Justice Strategies (February 2009); www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf

Collateral Damage: An Examination of ICE's Fugitive Operations Program, Migration Policy Institute (February 2009); www.migrationpolicy.org/pubs/NFOP_Feb09.pdf

Detention and Deportation in the Age of ICE, ACLU of Massachusetts (December 2008); www.aclum.org/ice/documents/aclu_ice_detention_report.pdf

Locking Up Family Values: The Detention of Immigrant Families, Women's Refugee Commission and Lutheran Immigration and Refugee Services (February 2007); www.womenscommission.org/pdf/famdeten.pdf

Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws, GAO (January 2009); <http://homeland.house.gov/SiteDocuments/20090304141023-69421.pdf>

TAKE ACTION:

Tell Congress that Immigration Reform Must Restore Human Rights in the Detention System

Call your members of Congress and encourage them to support fair immigration reform that protects the due process and human rights of all immigrants.

Ask them to support legislation like the Immigration Oversight and Fairness Act, H.R. 1215, a bill introduced in the House by Rep. Lucille Roybal-Allard (D-CA) to restore accountability to U.S. Immigration and Customs Enforcement and help protect the human rights of detained immigrants. This bill is an important tool to restore humanity and accountability to the U.S. immigrant detention system.

Call (202) 224-3121 and ask to speak to your Senators and House Representative.

For more information about the Immigration Oversight and Fairness Act, visit www.immigrantjustice.org.

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National Immigrant Justice Center

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