

Big Brother USA: Police State Raids Against Immigrants

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In 2003, the Department of Homeland Security (DHS) established its largest investigative and enforcement branch – the US Immigration and Customs Enforcement arm (ICE) “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 on children (who are) criminal (and) terrorist” threats to the nation.

Along with Muslims, Latinos are its prime targets, often using militarized unconstitutional tactics against vulnerable, defenseless people. Post-9/11, the Bush administration initiated them, and they continue under Obama.

On May 23, 2007, as a senator, Obama said:

“The time to fix our broken immigration system is now. We need stronger enforcement on the border and at the workplace.”

Then on July 8, 2009, Wall Street Journal online writer Cam Simpson said on [politicalforum.com](#) that:

“The Obama administration (today) said it would move forward with a Bush-era program aimed at cracking down on illegal-immigrant workers and their employers, just as Republicans in the Senate are pushing legislation that would mandate a similar move.”

With about 10% of DHS’ \$55 billion FY 2010 budget, ICE will continue targeting Latinos at the border, at work sites, and at their homes with some recent examples below:

- in a September 18 press release, ICE’s Miami field office announced it “removed” 423 “criminal aliens from 36 countries” in August, charging them with drugs traffickin, robbery, and various fraudulent activities;
- on September 11, 23 alleged gang members faced deportation after being being arrested in a four-day operation; unmentioned was whether any of them are undocumented;
- on August 25, 15 Latinos were arrested in San Antonio, TX on alleged drugs trafficking charges;

- on August 11, 50 arrests were made on charges of “enter(ing) into sham marriages to gain citizenship,” including those undocumented and their US citizen wives;
- on July 31, 53 alleged South Florida gang members and associates were arrested in a two-day operation; some “were found to be in violation of the immigration law (and) were processed for removal from the United States;”
- on July 31, eight San Francisco area alleged gang members and associates were seized “during a six hour surge;” some were “foreign nationals who are being processed for deportation;”
- on June 30, 116 alleged gang members, their associates and “immigration status violators” were targeted in a five day operation in Houston, Beaumont, and Corpus Christi, TX;
- on June 30 in the Dallas-Fort Worth Metroplex, 81 others were arrested; foreign-born ones seized were from Mexico, El Salvador, Honduras and Laos;
- on February 25, 28 “illegal workers” were arrested at Yamato Engine Specialists in Bellingham, WA during an earlier Obama administration raid; and

On February 18, the Washington Post reported that “immigration officers had been raiding targets across Prince George’s and Montgomery counties all night long in search of fugitive and criminal immigrants but only netted a handful.”

Earlier, a Baltimore ICE supervisor warned about being well behind “a Washington-mandated annual quota of 1000 arrests per team” and ordered his agents to seize more saying: “I don’t care where you get more arrests, we need more numbers,” and apparently he meant from any street corner, work place, or personal residence. An hour later, 24 Latino men were seized at a nearby 7-Eleven store.

Since established in 2003, Congress appropriated hundreds of millions of dollars to let ICE “bring in tens of thousands of immigrants who have not evaded a deportation order or committed a crime....” Since then, it continued the operation, and, during 2007 and 2008, expanded tactical home entries using militarized agents for illegal warrantless raids without the consent of their owners.

On July 26, The New York Times reported that:

“Federal immigration squads with shotguns and automatic weapons (are) forcing their way into citizens’ homes without warrants or lawful consent, shoving open doors and climbing through windows in predawn darkness, pulling innocent people from their beds, holding groggy occupants at gunpoint, (and) taking people away without explanation – after invading the wrong house.”

“This is a true account of the depths to which the Bush administration sank in its twilight, when immigration enforcement was ramped up to a feverish extreme.” Shamefully, these practices continue under Obama.

A recent New York City Cardozo School of Law Immigration Justice Clinic (IJC) study titled “Constitution on Ice: A Report on Immigration Home Raid Operations” examined the

problem in New York, New Jersey, and Long Island from 2006 – 2008 and included other examples in California, Texas, Massachusetts, Georgia and elsewhere. Researchers documented a nationwide assault on poor immigrant workers, the great majority being Latinos. Many times ICE broke into homes, seizing all occupants “without legal basis.”

IJC discovered a systematic pattern of misconduct “suggest(ing it) may be a widespread national phenomenon reaching beyond” the areas studied. It involves:

- illegal ICE agent entries with no legal authority;
- illegally arresting people randomly, including innocent ones in their bedrooms;
- conducting lawless searches and seizures in violation of the Fourth Amendment; and
- making arrests based on ethnicity, race, appearance, and English proficiency.

These police state tactics have no place in a democracy, yet ICE (on its web site) lists dozens of monthly SWAT-type raids, often against innocent people and their families in their homes. IJC described them this way:

A typical home raid has “a team of heavily armed ICE agents approaching a private residence in the pre-dawn hours, purportedly seeking an individual believed to have committed some civil immigration violation. Agents, armed only with administrative warrants, which do not grant them legal authority to enter private dwellings, then push their way in when residents answer the door, enter through unlocked doors or windows or, in some cases, physically break into homes.”

All occupants are then seized and interrogated with no legal authority, and often “no target is apprehended.” These aren’t random, standard operating procedures in violation of the Fourth Amendment that protects citizens and non-citizens alike. The Office of Detention and Removal (DRO) conducts them cooperatively with the Office of Investigations (OI), charged with investigating national security threats, immigration violations, and various other suspected crimes.

Home raid operations include:

- the National Fugitive Operations Program (NFOP) using over 100 seven-person Fugitive Operations Teams (FOTs) to target individuals for deportation;
- Operation Cross Check focusing on specific immigrant populations or ones working in certain industries like dangerous, low-paying meat packing operations, unattractive to workers able to find safer, better-paying jobs;
- Operation Community Shield (OCS) against suspected immigrant gang members; and
- Operation Predator against suspected immigrant sex offenders.

Most often, high priority targets aren’t seized. Instead, “collateral arrests of mere (suspected) immigration status violators” are made, and since 2006 the numbers expanded eight-fold because of primarily relying on home raids despite their illegality.

On April 15, 1980 in *Payton v. New York*, the Supreme Court ruled that “The Fourth

Amendment....prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine (criminal or civil) felony arrest." Such "entry....is the chief evil against which the wording of the Fourth Amendment is directed."

Searches are also prohibited. Only an adult resident's consent permits either or both. Administrative warrants have no authority, and police may only interrogate suspects based on "reasonable suspicion" of unlawful activity. "In addition, agents can never rely solely on the racial or ethnic appearance or the limited English proficiency of an individual to justify a seizure."

DHS' own regulations cover these restrictions, and ICE's Detention and Deportation Officer's Field Manual states:

"Warrants of Deportation and Removal are administrative rather than criminal, and do not grant the authority to breach doors. Thus informed consent must be obtained from the occupant of the residence prior to entering."

Nonetheless, "empirical data drawn from ICE's own arrest records (obtained by Freedom of Information Act lawsuits) strongly suggest a significant and disturbing pattern of (agency) misconduct during home raids" during which over 1000 people were seized. The evidence is alarming and shows "an unacceptable level of illegal entries" in clear violation of the law. In addition, most arrest records indicate "no basis for the initial seizure" and a disturbing racial profiling pattern against Latinos.

In recent years, defense lawyers increasingly have used suppression motions to prevent illegally obtained evidence being used. Earlier, they were rare in immigration courts, given the Supreme Court's decision in *INS v. Lopez-Mendoza* (July 5, 1984) that deportation proceedings are:

"civil action(s) to determine a person's eligibility to remain in this country....not to punish past transgressions. (As such) various protections (including suppression motions don't generally) apply....in a deportation hearing."

In immigration courts, they're not standard procedures. Since 2006, however, they're more often used because the High Court also "reasoned that the exclusionary rule may (apply) in immigration proceedings for egregious and widespread Fourth Amendment violations" even though prevailing in immigration cases remains challenging, expensive, and time-consuming.

Political and Local Law Enforcement Concerns

ICE often requests operational help from local police who complain that Fourth Amendment violations undermine their central crime suppression mission. Political leaders voice similar concerns. New York state Senator Kirstin Gillibrand said she was "appalled by some of the practices I have heard about," and New Haven Mayor John DeStefano said "We won't stand for the violation of constitutional rights and racial profiling" in reacting to city raids.

In September 2007, the Nassau County Police Department pulled out of an operation it agreed to because of "serious allegations of misconduct and malfeasance." In this case, no warrants were used, not even administrative ones. ICE fraudulently claimed they weren't needed because consent to enter all homes was received. In response, Nassau County

Police Commissioner, Lawrence Mulvey, said:

“In my 29 years of police work, I have executed countless warrants and have sought to enter countless homes. ICE’s claim that they received 100% compliance with their requests to enter is not credible even under the best of circumstances.”

Evidence Suggests a National Pattern of Constitutional Violations

Since 2006, lawsuits have been filed against ICE “in every region of the country – including two large class actions” and several with multiple defendants – all alleging a similar pattern of misconduct.

They pertain to illegally entering private homes as well as other misconduct charges. In March 2009, Jimmy Slaughter, an Arizona DHS officer, filed suit as well, stating:

“I was at home with my wife when the door bell rang. I opened the door and noticed approximately 7 uniformed ICE agents with vests and guns....I opened the door to look at the paperwork and five agents entered my house....The agents then told my wife to stand in the center of ‘OUR’ living room. Not once did anyone say they had a warrant.”

Numerous other instances confirm a national pattern of constitutional violations, including:

- unannounced pre-dawn raids;
- illegal entries into private homes, at times forcibly with drawn guns;
- some with administrative warrants; others with none; often with no probable cause or consent;
- unconstitutional searches and seizures;
- all occupants arrested and interrogated;
- commonplace use of excessive force; and
- at times, individuals prevented from calling attorneys.

New York Immigration Judge Noel Brennan ruled on one case saying:

“It is hard for me to fathom a country or a place in which we live in which the Government can barge into one’s house without authority from the Third Branch after a probable cause finding. So for all these reasons I find that what is essentially a warrantless search in the meaning of the Fourth Amendment....was an egregious violation, and therefore I suppress all the evidence and order these proceedings terminated.”

ICE’s 2006 Policy Changes

Three new memoranda issued dramatic enforcement changes that led to and facilitated nationwide home raids. Fugitive Operation Team (FOT) annual quotas were raised eight-fold (from 125 to 1000 arrests) and didn’t have to include “criminal aliens.”

Another change permitted “collateral” arrests of suspected civil immigration status violators. These actions “incentivized the pattern of unlawful behavior” and put tremendous

pressure on ICE agents to deliver. As a result, home raids increased sharply and illegally. Wrongful arrests became common. Easy targets were chosen, including women and children, often at the expense of real criminals remaining at large.

Immigrants are some of “the most vulnerable of populations in this nation’s legal system.” Most are poor, are unfamiliar with the law, and many speak imperfect or limited English. Often those seized have no lawyers, are kept in detention, and are then deported summarily with no ability to pursue justice. In addition, “traditional civil remedies are (often) ineffective deterrents to unlawful ICE home raids.”

IJC Policy Recommendations

Major constitutional issues are at stake making everyone potentially as vulnerable as immigrants. If authorities can get away with constitutional violations against some, they can do it against anyone. That said, IJC recommends the following:

- home raids should only be for criminal arrests or civil ones in cases posing real risks to national security or for persons with violent criminal records;
- judicial warrants should be required, not administrative ones;
- in all cases, “high-level centralized pre-approval in advance of any home raid operation” should be required;
- if judicial warrants aren’t obtained, residents’ consent should be required after informing them “explicitly and clearly” of their right to refuse before entry is made;
- in all pre-dawn and nighttime raids, judicial warrants should be required;
- in all cases, a high-level supervisor should be involved on site;
- home raids should be videotaped;
- ICE agents should be trained on home raid procedures stressing compliance with the law at all times;
- local law enforcement agencies should be apprised of raids and their results;
- they should not be asked to participate in or facilitate lawless activities;
- emphasis should be on arresting dangerous criminals, not collateral ones to meet quotas;
- arrests should be race, ethnicity, and English proficiency neutral;
- agent misconduct should be assessed and properly addressed;
- a clear public complaint procedure should be established; and
- illegally obtained evidence should be disallowed.

Obama Administration’s Immigrant Detention Policies

On August 7, Washington Post writer Spencer Hsu headlined, “Agency Plans to Improve

Oversight of Immigrant Detention” in saying the Obama administration intends to “restructure the nation’s much-criticized immigration detention system by strengthening federal oversight and seeking to standardize conditions in a 32,000-bed system now scattered throughout 350 local jails, state prisons and contract facilities.”

Since 1979, the National Immigration Law Center (NILC) has represented, protected, and promoted “the rights of low income immigrants and their family members (and) earned a national reputation as a leading expert on immigration, public benefits, and employment laws affecting immigrants and refugees.”

It calls US immigrant detention centers “A Broken System” in a recent report that presents “the first-ever system-wide look at the federal government’s compliance with its own standards regulating immigrant detention facilities....based on previously unreleased first-hand reports of monitoring inspections.”

Annually, over 320,000 immigrants are incarcerated. They face enormous obstacles challenging their detention, and they’re held under conditions “as bad as or worse than those faced by imprisoned criminals.” They’re kept in three types of facilities:

- ICE owned and operated Service Processing Centers (SPCs);
- privately run Contract Detention Facilities (CDFs); and
- Intergovernmental Service Agreement Facilities (IGSAs) holding two-thirds of detainees – mostly state or county jails plus a small number in US Bureau of Prisons or other facilities.

Since 1992, immigrant detentions have increased from 6,259 to 20,000 in early 2006 to the current 31,000 total – a number that continues to grow due to policies discussed above.

NILC learned that detention standards are poorly regulated and that government efforts to monitor compliance have been “woefully deficient and in need of a major overall.” Testimony obtained from ICE employees revealed that monitoring is understaffed. Before inspections, facilities get at least 30 days notice to fix or cover up problems and abuses in advance. Multiple review levels are used, yet headquarters rarely requires violations to be corrected and often gives facilities “higher overall assessments than the review team’s original ones.”

Systemic problems were also uncovered pertaining to annual review procedures and their inadequately identifying and correcting noncompliance with acceptable standards. ICE plans to let private contractors monitor compliance, yet current failures suggest that new management will let a broken system fester and worsen as the detention population grows and overcrowded facilities get further stretched.

Despite repeated calls for reform, greater transparency, accountability, and better controls, “the government has not taken effective measures to ensure that even its nonbinding standards are met.” It shows an appalling indifference to some of the nation’s most vulnerable people, no match against a system in place to repress them.

Currently, numerous violations are systemic, serious, and numerous. They include:

- (1) Visitations by family, lawyers and others

Detainee visitations are severely restricted in violation of clear constitutional and statutory rights, especially to free access to counsel and close family members.

(2) Recreation

Standards require safe recreational time for physical, mental and emotional well-being, including for those with special needs or in segregation. Yet they're routinely denied or offered at the discretion of facility staff. In addition, programs are way inadequate, and many detainees get limited or no access to outdoor recreation and a chance to interact with others in a natural environment.

(3) Telephone access

Many facilities didn't comply with standards. Monitoring of confidential legal calls was conducted, and restrictive time limits were imposed. Numerous facilities also prevented detainees from contacting courts, consulates, and getting access to free legal service providers.

(4) Access to Legal Material

Immigration law is so complex that good counsel is essential. Yet it's expensive and few detainees can afford it. Instead they must rely on pro bono help if available or their own resourcefulness. Standards require facilities to have a law library and an adequate environment to research and prepare legal documents. Yet numerous facilities have none, and the limited information on hand is inadequate and outdated. Still other facilities require specific document requests, even though detainees have no way to know what applies to their case.

(5) Group Presentations on Legal Rights

Facilities are required to let authorized attorneys or representatives, on written request, conduct immigration law and detainee rights presentations. Few do it, and individual counseling is also limited.

(6) Correspondence and Other Mail

Most facilities restrict access, monitor incoming and outgoing mail, and confiscate items at times. As a result, confidential correspondence is compromised. At times, identity documents are destroyed. Detainees miss court deadlines, and they're intimidated from freely sending and receiving mail.

(7) Administrative and Disciplinary Segregation

It's supposed to be non-punitive isolation to ensure detainee safety or facility security. Instead it's done punitively for extended periods for even slight rule infractions. Reports also uncovered severe privilege restrictions, unsanitary conditions, and poor health care protection for segregated detainees and the entire facility population.

(8) Disciplinary Policy

They're supposed to protect detainees from arbitrary disciplinary actions with rules conspicuously posted so they're known and can be obeyed. Yet most facilities don't do it.

(9) Detainee Handbook

Facilities are required to develop and make available a “facility-specific handbook” covering policies, rules, and procedures. However, those having them “presented an inaccurate or incomplete picture of facility policy” because important information was missing, erroneous, incomplete, or inappropriate.

(10) Hold Rooms in Detention Facilities

Physical space requirements and design specifications are supposed to be followed and monitored. Yet poor compliance was found, including inadequate toilet facilities and detainees held there too long in violation of rules requiring a maximum of 12 hours.

(11) Detainee Grievance Procedures

They’re to assure detainees can file grievances with uninvolved officers without fear of retaliation. Widespread noncompliance was found, and most often facilities don’t inform detainees of their rights.

(12) Detainee Transfers

Procedures are to protect their security in transit and make a traumatic experience easier, especially when to locations remote from their families. Transfers also interfere with attorney-client relations and harm constitutionally protected due process rights.

(13) Funds and Personal Property

Rules are supposed to safeguard detainees’ money and personal property with written procedures for receiving, processing, storing, and returning them. Evidence showed instances of theft, forfeiture of funds and property, and failure to conduct audits to assure none of this would happen.

(14) Admission and Release

Official procedures protect the health, safety, and welfare of detainees. Most facilities don’t do it, including providing proper medical care and personal hygiene considerations from admission to the time of release.

NILC concluded that “the nation’s immigrant detention system is broken to its core (and) reveals pervasive and extreme violations of the government’s own detention standards as well as fundamental violations of basic human rights and notions of dignity.”

On August 6, the Obama administration announced remedial plans amounting only to a cosmetic fix for a dysfunction system. A day ahead, The New York Times headlined “US to Reform Policy on Detention for Immigrants” and called the effort “an ambitious plan....to overhaul the much-criticized way the nation detains immigration violators, trying to transform it (into) a ‘truly civil detention system.’ ”

According to ICE Assistant Secretary, John Morton, ICE will create an Office of Detention Policy and Planning (ODPP) effective immediately. DHS Secretary Janet Napolitano said:

“This change marks an important step in our ongoing efforts to enforce immigration laws

smartly and effectively. We are improving detention center management to prioritize health, safety and uniformity among our facilities while ensuring security, efficiency and fiscal responsibility.”

What’s planned, in fact, is more centralized control and better ways to track, process, incarcerate, and/or deport growing numbers of undocumented immigrants – not treat them humanely as international law and DHS/ICE regulations stipulate.

The Obama administration has expanded and intensified the same harsh Bush administration policies, and ICE’s August 6 announcement signifies nothing more than a cosmetic repackaging of a broken system.

In May, the Obama administration asked Congress for a 30% funding increase to expand the controversial Bush administration Secure Communities program (begun in December 2007) to identify, arrest, incarcerate, and deport undocumented immigrants, mostly Latinos from Mexico and Central America.

In declaring “zero tolerance” for undocumented immigrants, he’ll also keep building the \$8 billion virtual border fence, planned for hundreds of miles, and will continue the same harsh Bush administration policies.

On August 4, the Immigrant Solidarity Network said that despite early pledges that he’d moderate them, Obama “is pursuing an aggressive strategy for an illegal-immigration crackdown that relies significantly on programs started by his predecessor.”

They call for “no-nonsense immigration enforcement” followed later in the year or early next year by immigration legislation to create a new bracero program, among other harsh measures, that immigrant rights group oppose. They also include extensive employee paperwork audits, an expanded (and much criticized) program to verify worker immigration status, and greater cooperation between federal and local authorities while rejecting proposals for legally binding rules regarding detention center conditions. Non-binding Bush administration ones still followed hold no one accountable and let detainees be treated harshly under a system described above.

In response to Obama’s decision, the National Lawyers Guild’s Paromita Shah, associate director of its National Immigration Project, said the government is “disregard(ing) the plight of the hundreds of thousands of immigration detainees” by continuing a dysfunctional system. DHS “has demonstrated a disturbing commitment to policies that have cost dozens of lives” and shows an appalling indifference to the fate of defenseless people.

Highlighting the plight of immigrants, the National Immigrant Justice Center’s Mary McCarthy described the current detention system as a “human rights nightmare. The past administration created this, and now we need to dismantle it.” Instead, Obama officials plan to make a “broken system” worse, then harden it with discriminatory immigration reform legislation later in the year. According to University of Houston immigration law Professor Michael Olivas, “We literally have the worst of all worlds,” and nothing is being planned to improve it.

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