

‘Home Raids’ and U.S. Immigration Enforcement

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On Jan. 4, U.S. Immigration and Customs Enforcement (ICE) conducted home raids of 121 mothers and children who had been recently ordered removed.¹ The raids spanned seven states, including Florida, Georgia, and Texas, and they targeted Central American families from the “Northern Triangle” of El Salvador, Guatemala, and Honduras.² In a rare move, ICE had announced these raids ahead of time; on Nov. 20, 2014, Department of Homeland Security (DHS) Secretary Jeh Johnson had publically stated that recent arrivals were a designated “priority” for removal.³ Still, wide-scale *home* raids—as opposed to, say, workplace arrests or apprehensions of individually targeted fugitives—were a new phenomenon. The act of rounding up mothers and children was perceived as particularly harsh, and the raids sent shockwaves of terror through the U.S. immigrant community.⁴ As of yet, these raids have not been repeated, but their occurrence has raised important legal and policy considerations.

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” is guaranteed by the Fourth Amendment. These raids, in particular, call the Fourth Amendment into play. Under the Supreme Court’s decision in *I.N.S. v. Lopez-Mendoza*, evidence may be suppressed in immigration proceedings when a violation of the Fourth Amendment is determined to be “widespread” or “egregious.”⁵ If the accounts in the human rights reports are accurate, some or all of these home raids may have occurred without any arrest warrant from either a court or DHS.⁶ On that basis alone, some courts have designated that suppression is warranted. And if home entry occurred by trick or force, as some anecdotes also claim, they could even more easily be designated “egregious.”⁷

Even if each of the raids complied with the Fourth Amendment, however, a question remains regarding their efficacy as a matter of public policy. For the purposes of this article, I spoke with University of Virginia professor David A. Martin, author of one of the most widely used immigration law textbooks and former general counsel for the legacy Immigration and Naturalization Service.⁸ Martin articulated the Obama

administration’s position regarding the necessity and utility of the home raids. From the administration’s standpoint, enforcement of existing removal orders, in compliance with publically stated priorities, is necessary to preserve the integrity of the legal immigration system. According to this view, there was, in fact, fair warning of apprehension to all who constitute removal priorities in the official public memorandum issued November 2014 by Secretary Johnson. Deterrence of nonmeritorious asylum claims, Martin acknowledges, is also an aspect of this policy.

Immigrant advocacy groups maintain that deterrence is, in fact, the central objective of the raids. According to pro bono attorney Katie Shepherd, who manages the CARA Pro-Bono Project at family detention centers, ICE is engaged in a wholesale policy shift from “a policy of deterrence through deportation to a policy of deterrence through detention.”⁹ CARA and other immigrant advocacy groups have condemned the home raids as unnecessarily inhumane and reflective of “a deep misunderstanding of the refugee crisis south of our Texas-Mexico border.”¹⁰ According to CARA, all but 32 individuals apprehended in the raids have now been removed; the 12 remaining families have all obtained emergency stays of deportation.¹¹ Among advocates like Shepherd, legal arguments regarding due process have been raised, but objections to the raids have also included policy arguments, with a strong element of moral condemnation that mothers and children fleeing brutal violence should be targeted for the harsh experience of home invasion.

Whether the moral arguments resonate, the shock-and-awe factor created by the raids should give every reader particular pause. As I have argued in other contexts, this country’s immigration system can only tolerate a certain level of disenchantment before it starts to crumble. Adjudicators count on full disclosure from those who seek asylum—not to mention their actual presence for court hearings and other application procedures. If enforcement is perceived as overly aggressive, arbitrary, or unpredictable, it discourages that participation and instead can lead to avoidance or even fraudulent behavior. This tension between

the need for enforcement and the need for immigrants' participation has long existed at the heart of the U.S. immigration system. Unless or until we obtain a legal regime that is wholly, consistently enforceable, these tensions will continue to occur, and sometimes—like this time—the right balance might not be struck. ☉

Endnotes

¹David Nakamura, *Obama Struggling With Immigration Rules and Cruelties of Deportation*, WASH. POST (Jan. 19, 2016), www.washingtonpost.com/politics/obama-struggling-with-immigration-rules-and-cruelties-of-deportation/2016/01/18/5c2d4258-bba7-11e5-b682-4bb4dd403c7d_story.html (accessed Mar. 4, 2016); United We Dream, *Immigration Raids: The Real Impact: Findings From the National Deportation Defense Hotline* (Jan. 2016), unitedwedream.org/wp-content/uploads/2016/01/Report-Hotline-raids-1.pdf (accessed Jan. 28, 2016) at 3. Reports indicate that 77 of the 121 were children, and 50 were “adults, mostly mothers.”

²*Immigration Raids: The Real Impact*, *supra* n. 1 at 3.
³Jerry Markon & David Nakamura, *U.S. Plans Raids to Deport Families Who Surged Across Border*, WASHINGTONPOST.COM (Dec. 23, 2015), www.washingtonpost.com/politics/us-plans-raids-to-deport-families-who-surged-across-border/2015/12/23/034fc954-a9bd-11e5-8058-480b572b4aae_story.html (accessed Mar. 4, 2016); Jeh Johnson, Secretary, U.S. Dep't of Homeland Sec., “Memorandum: Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants” (Nov. 20, 2014).

⁴Seung Min Kim & Lauren French, *Obama Administration De-*

fends Immigration Raids Despite Democratic Furor POLITICO.COM (Jan. 28, 2016), www.politico.com/story/2016/01/white-house-immigration-raids-218344 (accessed Feb. 1, 2016); *Immigration Raids: The Real Impact*, *supra* n. 1 at 3.

⁵468 U.S. 1032, 1051-52 (1984). This statement was originally made by a plurality of the Court, but it has come to be accepted as the criteria for suppression of evidence in U.S. immigration proceedings. *See, e.g., United States v. Navarro-Diaz*, 420 F.3d 581, 585 (6th Cir. 2005); *Gonzalez-Rivera v. I.N.S.*, 22 F.3d 1441, 1451 (9th Cir. 1994); *Oliva-Ramos v. A-G-*, 694 F.3d 259, 271 (3d Cir. 2012); *Miguel v. I.N.S.*, 359 F.3d 408, 411 n. 3 (6th Cir. 2004) (acknowledging egregious violations exception).

⁶*Immigration Raids: The Real Impact*, *supra* n. 1 at 5; Southern Poverty Law Center and Georgia Latino Alliance for Human Rights, *Families in Fear: The Atlanta Immigration Raids* (2016), www.splcenter.org/sites/default/files/splc_families_in_fear_ice_raids.pdf (accessed Jan. 28, 2016).

⁷*See, e.g., Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1016 (9th Cir. 2008) (INS home-arrest without a warrant deemed egregious violation of Fourth Amendment, subject to suppression).

⁸Telephone interview with David A. Martin, professor, University of Virginia (Feb. 1, 2016).

⁹E-mail interview with Katie Shepard, Managing Attorney, CARA Pro Bono Project (March 3, 2016); “Who,” CARA Pro Bono Project, <http://caraprobono.org/partners> (last visited April 19, 2016).

¹⁰E-mail interview with Katie Shepherd, *supra* n. 9.

¹¹*Id.*

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