

# In Immigration Cases, Employers Feel the Pressure

But Critics Fault Laws as Ineffective

By Spencer S. Hsu  
Washington Post Staff Writer  
Monday, July 21, 2008; A01

A three-year-old enforcement campaign against employers who knowingly hire illegal immigrants is increasingly resulting in arrests and criminal convictions, using evidence gathered by phone taps, undercover agents and prisoners who agree to serve as government witnesses.

But the crackdown's relatively high costs and limited results are also fueling criticism. In an economy with more than 6 million companies and 8 million unauthorized workers, the corporate enforcement effort is still dwarfed by the high-profile raids that have sentenced thousands of illegal immigrants to prison time and deportation.

Stewart A. Baker, assistant secretary for policy at the Homeland Security Department, recently told immigration experts the disparity can be traced to ineffective policies that need to be addressed by Congress.

"Companies tell me, 'We have an immigration system that allows us to hire illegal workers, legally,'" Baker said. Asked to defend President Bush's track record, he said, "Why are employers not punished more often? Because the laws we have don't really authorize that."

In the first nine months of this fiscal year, U.S. Immigration and Customs Enforcement (ICE) made 937 criminal arrests at U.S. workplaces, more than 10 times as many as the 72 it arrested five years ago. Of those arrested this year, 99 were company supervisors, compared with 93 in 2007.

The arrests have led to several convictions, including a union official at a Swift meatpacking plant; three executives of a Florida janitorial services company; a temporary-staffing agency manager for a Del Monte Fresh Produce plant in Oregon; two supervisors of a Cargill pork plant cleaning contractor in Illinois; and seven managers of IFCO Systems North America, a pallet services company, among others.

But Baker's comments acknowledged criticism by labor union leaders, immigrant rights' groups and Democrats about the limits of employer enforcement. His remarks also illuminate why the White House, Congress and some states have scrambled recently to adopt new steps to compel companies to identify illegal workers, and why such efforts will probably remain ineffective.

Political opposition from big business, labor and immigrant and civil rights interests has diluted immigration law for two decades, according to analysts in both parties.

"If you want law enforcement, you have to have laws that are enforceable," said Doris M. Meissner, who headed the former Immigration and Naturalization Service under the Clinton administration. The 1986 law banning the hiring of illegal immigrants, she said, "has just been chronically flawed from the time it was passed."

Raids against Swift packinghouses in six states in December 2006 highlight the administration's strategy to seek criminal indictments and felony convictions against corporate violators. An earlier approach that relied on administrative fines and forfeitures was increasingly dismissed by executives as a cost of doing business.

The tactics used now are similar to law enforcement techniques honed in developing cases against mobsters and drug lords. In June 2007, federal agents wired a Mexican slaughterhouse worker who had been arrested on immigration charges and sent him to call at the home of his former boss at a meatpacking plant in Marshalltown, Iowa.

The informant, nicknamed "Memo," carried a false ID. He told Christopher Lamb, now the plant's human resources manager, that he was free pending a hearing and wanted to return to work.

Lamb, 38, coached Memo but seemed to realize he was walking into a trap, court records show. "Where's the migra?" he asked later, using the Spanish term for immigration agents.

The informant's tapes led Lamb to plead guilty in March to one charge of harboring an illegal immigrant. In a deal with prosecutors, he agreed to serve a year's probation, pay \$300 in fines and cooperate against others targeted after immigration raids in 2006 against meatpacker Swift, now JBS Swift.

An undercover agent taped union official Braulio Pereyra advising new employees at an orientation speech on how to protect false identities.

"You can lie to your boss or whomever, but not to the police," Pereyra was recorded as saying. "That's a federal offense."

He was convicted in May on one charge of harboring illegal immigrants, and faces as much as five years in prison and a \$250,000 fine. Pereyra's lawyer, Keith Rigg, said his client committed no crime and had a First Amendment right to give the speech. He is seeking a retrial.

Enforcement disparities were displayed vividly May 12 when ICE agents swept into an Agriprocessors Inc. kosher meatpacking plant in Postville, Iowa. They arrested 389 illegal workers; 270 were convicted within days in expedited court proceedings at a cattle fairgrounds; and many were sentenced to five months in prison, mostly on criminal document-fraud charges.

By contrast, ICE agents arrested two supervisors and issued an arrest warrant for a third man on July 3. The firm remains in operation.

Frank Sharry, executive director of America's Voice, a newly formed group that promotes citizenship for the estimated 12 million illegal immigrants, said the raid shows the misdirected policy of criminalizing illegal immigration for workers while not shutting down the jobs "magnet" that lures them. Several critics, including a federal court interpreter who participated in the Agriprocessors hearings, said the government's legal tactics are coercive and threaten defendants' due process rights.

"There's no question this administration is coddling unscrupulous employers while arresting undocumented immigrants in order to make their statistics look good," Sharry said.

But he echoed Baker's frustration at politicians who seek to look tough on immigration and yet do not provide effective law enforcement tools or address the nation's labor needs and underground population. "The dysfunctional immigration system really is the fault of Congress, for failing to lead," Sharry said.

Piecemeal measures to combat illegal hiring are under way this year, but the moves remain controversial and their effects uncertain.

In March, the White House attempted to jump-start a campaign to notify 140,000 employers about workers' use of suspicious Social Security numbers, seeking to force businesses to resolve questions or fire workers within 90 days.

If companies do not respond to "no-match" letters, ICE could use that failure as evidence of illegal hiring. But the plan remains stalled by a federal lawsuit filed by the U.S. Chamber of Commerce, the AFL-CIO and the American Civil Liberties Union, which allege that it will disrupt businesses and discriminate against legal U.S. workers.

Also in dispute is another effort to expand use of a voluntary online system that checks whether new hires are eligible to work in the United States. The Bush administration on June 9 ordered 60,000 federal contractors to use the government's E-Verify system, which checks workers' information against Social Security and immigration-status databases.

Still, 12 years after Congress mandated that such a tool be piloted in 1996, the change will enroll about 2 percent of U.S. companies.

Critics warn that the system has a high error rate that will exclude legal workers, cannot detect the fraudulent use of stolen Social Security numbers, and will permit some employers to harass workers.

Frustrated by the stalemate, Arizona, Missouri and South Carolina since January have passed laws or have begun requiring businesses to use E-Verify under certain conditions.

But Illinois has gone the opposite direction, barring companies from participating until the government proves that E-Verify is 99 percent error-free.

The conflicting moves show how opposition has frustrated enforcement of the ban on hiring illegal immigrants. In 1986, Congress required law enforcement agencies to show that an employer knowingly violated the law, but provided few tools, agents or dollars to do so.

Under the law, employers need only to verify that a new hire present at least one "facially valid" form of identification. The overhaul simply created a huge fake-ID industry, while granting unscrupulous employers a ready defense since the government had no system to validate a document's authenticity. At the same time, employers face discrimination complaints if they unduly scrutinize new hires.

Few expect the situation to change soon with this fall's elections looming. Some GOP congressional campaigns are talking tough, but the party is wary of further alienating its traditional business base. Democrats in turn rely on labor and immigrant support, leading the House to propose a \$40 billion DHS budget bill that would require ICE to prioritize \$800 million in enforcement funding next year to deporting illegal immigrants with criminal records, not workers.

At a Georgetown Law School conference in May, Baker of DHS described a sense among voters that "both parties owed their base a kind of collusion of pretend enforcement of the immigration laws." He added, "I can't say that was completely misplaced skepticism."