

# Operation Return to Sender

## Slate

jurisprudence

By Jennifer Bennett

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## The government's immigration enforcers run amok.

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May has been an embattled month for the Bureau of Immigration and Customs Enforcement. ICE, a division of the Department of Homeland Security, faced inquiries from House and Senate members about the inhumane treatment of people detained for violating immigration laws. This congressional scrutiny followed a special report in the *Washington Post* (and a rash of articles elsewhere) detailing stomach-turning—and sometimes deadly—mistreatment in immigrant detention centers.

A bill to improve detention center conditions has recently been introduced in Congress, but this legislation would do nothing to address the abuses committed by ICE officers well before the people they pick up reach a detention center. Nor would it alter the framework of immigration enforcement that has led to the mistreatment. Congress should be thinking about these problems, too—and so should the courts.

Since 2006, ICE has been dispatching teams of agents into neighborhoods throughout the country as part of a ramped-up enforcement effort called "Operation Return to Sender." Each team must apprehend an annual quota, currently set at 1,000, of fugitive aliens. These are immigrants who remain in the United States despite outstanding orders to leave.

Unsurprisingly, people who've been ordered deported are not always easy to find. This is not just because undocumented immigrants flee deportation (although, of course, some do). It's also because, according to a 2006 Department of Homeland Security report, about half of the information in ICE's "Deportable Alien Control System"—a database of immigrants to be deported—is incorrect or incomplete. This means that many immigrants never receive a deportation notice and so don't know they've been ordered to leave. It also means that ICE officers, relying on faulty information, don't know where to find them.

And so, to meet their quotas, enforcement teams carry out large-scale sweeps, raiding homes in neighborhoods with a lot of immigrants just after sunrise. Without an accurate list of which homes actually harbor undocumented immigrants, agents often rely on race to figure out who's here legally and who isn't. For example, in Fair Haven, Conn., several residents reported that during a raid last summer, ICE officers went door to door asking how many people were inside each house—and what race they were. In an ICE operation

in Willmar, Minn., Latino residents were handcuffed and interrogated while white residents, some even in the same home, went unquestioned.

Race, in fact, is not a very good indicator of whether someone is in the United States illegally. Up to two-thirds of the people ICE arrests have never received deportation orders, frequently because their presence here is lawful. By ICE's own admission, the bureau has mistakenly detained, arrested, and even deported not only legal immigrants but also U.S. citizens. Those caught up in recent home raids include Adriana Aguilar, a citizen living in East Hampton, N.Y., who was sound asleep with her 4-year-old son when ICE officers stormed into her bedroom, pulled the covers off the bed, and shined flashlights into her face before interrogating her. In San Rafael, Calif., ICE detained 6-year-old Kebin Reyes, a citizen from birth, holding him in a locked office for 12 hours after immigration agents, pretending to be police, stormed into the apartment he shared with his father and forcibly removed him from his home.

Aguilar and Kebin are suing ICE for violating their Fourth Amendment rights; in all, civil rights lawsuits against ICE are pending in at least 10 states. The government may not constitutionally detain anyone without a reasonable suspicion that they have violated the law. Suspicion founded on race alone, the Supreme Court has emphasized, can never be "reasonable." The Fourth Amendment also prohibits government agents from entering a home without a warrant unless they have the occupant's consent. Shoving the occupant into the door to get him to open it—as ICE agents did in a New Jersey raid last month—doesn't count. Nor does bursting into a home while claiming to be the local police.

The agency's failure to abide by basic procedural rules threatens not only individual rights but also public safety. During a recent raid in Nassau County, N.Y., ICE agents twice drew their guns on local police officers by mistake. More generally, in the aftermath of raids in which ICE agents pretend to be local police, immigrant communities become fearful of law enforcement, making the work of actual police officers more difficult. Some cities, including Richmond, Calif., and Hightstown, N.J., have even passed resolutions calling for ICE agents to identify themselves as federal immigration officers rather than police.

The government's guidelines for immigration enforcement prohibit these kinds of abuses. Why aren't they being enforced? Theories abound. ICE attorneys have suggested that because most of the rules governing officer conduct were instituted before the Department of Homeland Security took over immigration enforcement, they don't apply to ICE at all. Another explanation is that in the wake of Sept. 11, stepped-up immigration enforcement may have taken priority over careful procedures. Whatever the reason, it's clear that rampant abuses continue. So what's to be done? Although Congress could enact legislation to rein in ICE's conduct, it's unlikely to do so anytime soon. Lawmakers have been deadlocked on immigration reform for years.

But courts, too, have tremendous power. The rules judges set for immigration proceedings largely determine how ICE officers do their work. In a criminal trial, the government can't use evidence obtained from an unreasonable search or seizure, and this

means that an officer who enters a home without a warrant or detains a defendant because of her race risks the entire case being thrown out. But illegal immigration is a civil, not a criminal, violation, so while immigration judges occasionally exclude evidence obtained through particularly egregious searches, in general these rules don't apply. This lax judicial treatment combined with their stringent arrest quota leaves ICE agents with little incentive to reform.

Twenty-five years ago, in the case of *INS v. Lopez-Mendoza*, the Supreme Court declined to extend the Fourth Amendment's guarantees to immigration proceedings. But Justice Sandra Day O'Connor recognized that if in the future there were "good reason to believe" that constitutional violations in immigration enforcement were "widespread," the way judges handled these cases would have to change. That time has come. If Congress won't, the courts should force ICE to follow the standard rules of American law enforcement.