

CONSTITUTION ON ICE

A Report on Immigration Home Raid Operations



IMMIGRATION JUSTICE CLINIC

CARDOZO

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

CONSTITUTION ON ICE

A Report on Immigration Home Raid Operations

CARDOZO IMMIGRATION JUSTICE CLINIC

Immigration Justice Clinic

by

Bess Chiu

Lynly Egyes

Peter L. Markowitz

Jaya Vasandani

CARDOZO
BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

ACKNOWLEDGEMENTS

This report was written by the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law at Yeshiva University. The authors are Bess Chiu, Lynly Egyes, Peter L. Markowitz, and Jaya Vasandani.

The authors wish to acknowledge the valuable insights, assistance, and technical expertise of: Professor Baher Azmy, Professor Bassina Farbenblum, Jeremy Watson and Elyce Matthews of the Seton Hall School of Law Center for Justice; Sandra Dunn of the Hagedorn Foundation; Dan Kesselbrenner of the National Immigration Project of the National Lawyers Guild; Professor Bruce Levin, Chair of the Department of Biostatistics at the Mailman School of Public Health at Columbia University; Sergeant Israel Santiago of the Nassau County Police Department; Zsuzanna Toth of Cardozo School of Law; and Professor Michael Wishnie of Yale Law School.

The Cardozo Immigration Justice Clinic also gratefully acknowledges the generous support for this report provided by the Hagedorn Foundation.

© 2009 Cardozo Immigration Justice Clinic, All Rights Reserved

No part of this publication may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopying, or any information storage and retrieval system, without permission from the Cardozo Immigration Justice Clinic. A full-text PDF of this document is available for free download from <http://www.cardozo.yu.edu/immigrationjustice>.

Requests for permission to reproduce excerpts of this report should be directed to: Immigration Justice Clinic, Cardozo School of Law, 55 Fifth Avenue, rm. 1109, New York, NY 10003.

Suggested citation: Bess Chiu, Lynly Egyes, Peter L. Markowitz, and Jaya Vasandani, *Constitution on ICE: A Report on Immigration Home Raid Operations*, Cardozo Immigration Justice Clinic (New York, NY 2009).

LAW ENFORCEMENT ADVISORY PANEL

This report was prepared under the invaluable guidance of an advisory panel comprised of law enforcement professionals. The authors wish to thank the members of the advisory panel for their important contributions, particularly in assisting the authors to develop the policy recommendations contained herein. The members of the Law Enforcement Advisory Panel are:

Commissioner Lawrence W. Mulvey, Commissioner of the Nassau County Police Department in New York. Commissioner Mulvey, who chaired the advisory panel, is a decorated veteran with 28 years of policing experience who also formerly served as a security contractor to the Department of Homeland Security.

Chief George Gascón, Chief of Police of the Mesa Police Department in Arizona. Prior to his current appointment, Chief Gascón spent over 28 years with the Los Angeles Police Department, rising to rank of Assistant Police Chief and Director of the Office of Operations.

Professor Charles A. Lieberman, Ph.D., full-time lecturer in the Department of Law, Police Science and Criminal Justice Administration at John Jay College of Criminal Justice in New York. Prior to joining academia, Professor Lieberman served in the New York City Police Department for 15 years.

Chairman Anthony Miranda, Executive Chairman of the National Latino Officers Association (NLOA). Prior to assuming leadership at NLOA, Chairman Miranda served in the New York City Police Department.

Professor Christopher W. Ortiz, Ph.D., Assistant Professor of Criminal Justice and the Deputy Director of the Center for Security and Disaster Response at the New York Institute of Technology. Professor Ortiz is also a Sergeant with the City of Glen Cove Police Department and has served as a Senior Research Associate at the Center on Immigration and Justice at the Vera Institute of Justice, New York, N.Y.

General Counsel Michael Ramage, General Counsel for the Florida Department of Law Enforcement (FDLE). Mr. Ramage has served in his current capacity since 1992. Prior to joining the FDLE, Mr. Ramage served as a state prosecutor under then State Attorney Janet Reno.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	ii
LAW ENFORCEMENT ADVISORY PANEL	iii
EXECUTIVE SUMMARY	1
I. INTRODUCTION	3
II. OVERVIEW OF ICE HOME RAIDS STRATEGY	5
ICE Home Raid Operations	5
Constitutional Requirements for ICE Home Raids	6
ICE Policies Governing Home Raids	6
III. THE PREVALENCE OF CONSTITUTIONAL VIOLATIONS DURING ICE HOME RAIDS: ASSESSING THE EVIDENCE	9
Empirical Evidence	9
<i>Data From ICE Arrest Records</i>	9
<i>Suppression Motion Data</i>	12
Law Enforcement and Political Leaders Accounts of ICE Home Raids	14
Uniform National Pattern of Constitutional Violations During ICE Home Raids	16
IV. ANALYSIS	23
Potential Causes of ICE's Home Raid Misconduct	23
<i>ICE's 2006 Performance Policy</i>	23
<i>Lack of Suppression Motions in Removal Proceedings</i>	24
<i>Barriers to Civil Remedies</i>	25
<i>Management and Oversight Failures by ICE</i>	25
Impact of ICE Home Misconduct on Local Law Enforcement and Public Safety	26
V. POLICY RECOMMENDATIONS	27

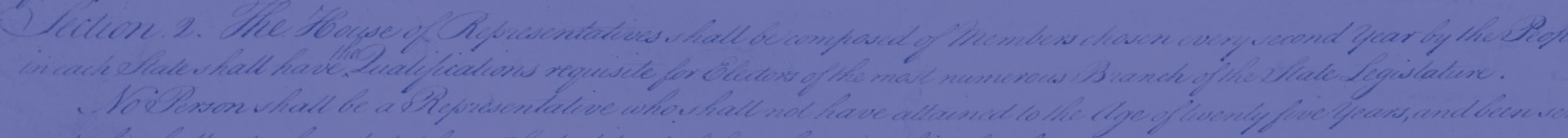
EXECUTIVE SUMMARY

During the last two years of the Bush Administration, the U.S. Immigration and Customs Enforcement agency (ICE) vastly expanded its use of home raid operations as a method to locate and apprehend individuals suspected of civil immigration law violations. These home raids generally involve teams of heavily armed ICE agents making pre-dawn tactical entries into homes, purportedly to apprehend some high priority target believed to be residing therein. ICE has admitted that these are warrantless raids and, therefore, that any entries into homes require the informed consent of residents. However, frequent accounts in the media and in legal filings have told a similar story of constitutional violations occurring during ICE home raids — a story that includes ICE agents breaking into homes and seizing all occupants without legal basis.

This report is the first public effort to compile and analyze the available evidence regarding the prevalence of constitutional violations occurring during ICE home raids. Through two Freedom of Information Act lawsuits, the authors of this report obtained significant samples of ICE arrest records from home raid operations in New York and New Jersey. Analysis of these records, together with other publicly available documents, reveals an established pattern of misconduct by ICE agents in the New York and New Jersey Field Offices. Further, the evidence suggests that such pattern may be a widespread national phenomenon reaching beyond these local offices. The pattern of misconduct involves:

- **ICE agents illegally entering homes without legal authority — for example, physically pushing or breaking their way into private residences.**
- **ICE agents illegally seizing non-target individuals during home raid operations — for example, seizing innocent people in their bedrooms without any basis.**
- **ICE agents illegally searching homes without legal authority — for example, breaking down locked doors inside homes.**
- **ICE agents illegally seizing individuals based solely on racial or ethnic appearance or on limited English proficiency.**

The report analyzes the variety of factors that have contributed to this pattern of ICE misconduct including: 2006 changes in ICE performance expectations; the inability of suppression motions or civil lawsuits to serve as a meaningful deterrent to ICE misconduct; and serious management and oversight failures by ICE supervisors. In order to correct course and to improve the ability of ICE to carry out its mission, we propose several policy recommendations aimed at: setting appropriate limits on the use of home raids; revising ICE's warrant & consent practices; improving supervision and training of ICE home raid teams; minimizing harm to local community policing



efforts; minimizing the intrusion to non-targets encountered during ICE home raids; and improving accountability for ICE agents and supervisors involved in illegal home raids. Our key recommendations include, among others:

- **ICE should use home raids as a tactic of last resort, and then, only to make criminal arrests or civil arrests for targets who pose a real risk to national security or who have violent criminal records.**
- **ICE should obtain judicial warrants in advance of any home raid.**
- **ICE should require a high level supervisor to be on site for any home raid.**
- **ICE should videotape home raids.**
- **ICE should issue clear guidance that the sole objective of a home raid is to apprehend the target — agents should not generally question non-targets encountered about matters other than the location of the target.**
- **The Department of Homeland Security's (DHS) Office of the Inspector General (OIG) should undertake an investigation of the pattern of misconduct established in this report to better assess the national scope of the problem.**
- **DHS and/or the Department of Justice should enact regulations disallowing the use of evidence in immigration removal proceedings when such evidence has been obtained through violation of the Constitution.**

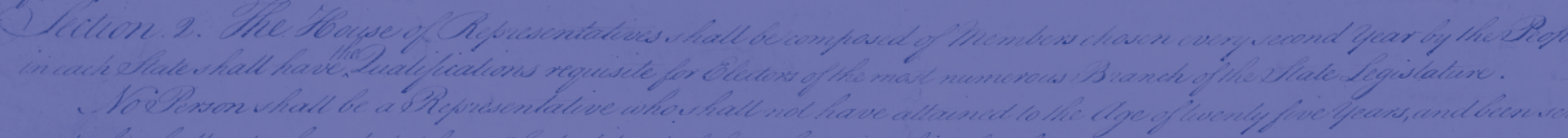
INTRODUCTION

The U.S. Immigration and Customs Enforcement agency (ICE or “the Agency”) of the Department of Homeland Security (DHS or “the Department”), created in 2003, is primarily responsible for the enforcement of immigration laws in the interior of the United States.¹ ICE has historically used a number of strategies to locate and apprehend persons suspected of violating civil and criminal provisions of the Immigration and Nationality Act² (INA). Such strategies include, among others, coordinating with local criminal justice systems to identify deportable immigrants who have been arrested on criminal charges, coordinating with the United States Citizenship and Immigration Services agency to identify deportable immigrants who have applied for some form of immigration benefit, and conducting traditional criminal investigations of persons suspected of violating the criminal provisions of the INA. During the last two years of the Bush Administration, ICE substantially increased its use of one particular enforcement tactic: high profile SWAT-style raids on homes and workplaces targeting civil immigration violators.³ Much has been written on the phenomenon of workplace raids and ICE has, in fact, recently revised its guidelines for such raids.⁴ However, relatively little public scrutiny has been focused on the related phenomena of ICE home raids. This report seeks to begin filling that void.

Starting in 2006, a growing body of evidence has arisen which suggests that many ICE agents have failed to routinely observe constitutional requirements in carrying out ICE home raid operations. Citizens and non-citizens alike are protected by the Fourth Amendment’s prohibition against unreasonable searches and seizures.⁵ However, frequent accounts in the media and in legal filings have told a similar story of Fourth Amendment violations occurring during ICE home raids. From these accounts, the picture that emerges of a typical home raid depicts a team of heavily armed ICE agents approaching a private residence in the pre-dawn hours, purportedly seeking an individual target 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. Once inside, agents immediately seize and interrogate all occupants, often in excess of their legal authority and even after they have located and apprehended their target — though in the large majority of cases, no target is apprehended. While these abuses are by no means universal, accounts of such behavior have occurred with sufficient frequency to warrant this inquiry.



ICE raid in Santa Ana, California. © AP/Mark Avery



This report is the first public document to collect and analyze the available evidence regarding the prevalence of constitutional violations occurring during ICE home raids. In addition to assessing the home raid incidents discussed in various news accounts and legal filings, this report relies upon the special perspective of local law enforcement and political leaders, and for the first time examines ICE's own records for empirical evidence of the prevalence of violations occurring during ICE home raids.

Section II presents a practical and legal overview of ICE's home raid strategy. Section III compiles and analyzes evidence regarding the prevalence of constitutional violations occurring during ICE home raids. Section IV analyzes the causes and costs of the problems with ICE's home raid strategy. Finally, Section V sets forth a series of policy recommendations designed to curb the widespread constitutional violations occurring during ICE home raids. These policy proposals were developed, in large part, in collaboration with a Law Enforcement Advisory Panel assembled for this report. The Advisory Panel, chaired by Nassau County Police Commissioner Lawrence W. Mulvey, is comprised of law enforcement leaders and scholars from across the United States. The Advisory Panel played a critical role in reviewing the report findings and in developing these specific policy proposals for ICE to ensure that its officers comply with constitutional requirements when conducting home raids.

OVERVIEW OF ICE HOME RAIDS STRATEGY

Within ICE, there are two major divisions that carry out its interior immigration enforcement mandate: the Office of Detention and Removal (DRO), which primarily seeks to identify and arrest immigrants for civil immigration violations, and the Office of Investigations (OI), primarily a criminal investigative division of ICE,⁶ tasked with investigating national security threats, financial and smuggling violations, gang offenses, commercial fraud, and other immigration violations.⁷ Both DRO and OI regularly use home raids.

ICE HOME RAID OPERATIONS

Several DRO and OI operations have, since 2006, come to rely heavily on home raids as a primary tactic. These operations include, among others, the National Fugitive Operations Program (NFOP), targeting individuals with orders of deportation; Operation Cross Check, encompassing enforcement efforts that target specific immigrant populations, such as immigrants from certain countries or immigrants working in certain industries;⁸ Operation Community Shield, targeting immigrant gang members; and Operation Predator, targeting immigrant sex offenders. Despite these operations' purported focus on high priority targets, the evidence demonstrates that the large majority of arrests made in home raids carried out under these operations are not of high priority targets but rather are collateral arrests of mere civil immigration status violators.⁹

ICE's NFOP is worthy of further explanation because of its size and because of the publicity its home raid operations have garnered. ICE created the NFOP, within DRO, in 2003.¹⁰ NFOP uses seven-person Fugitive Operations Teams (FOTs) to carry out the Program's mission. The stated purpose of these teams is to expand the agency's efforts to locate, arrest and remove immigrants with old orders of deportation,¹¹ while giving priority to cases involving immigrants who pose a threat to national security and to the community. In 2006, ICE instituted several dramatic policy changes related to its FOTs which, collectively, help explain ICE's increased reliance on home raid operations and the constitutional violations occurring during such operations. The policy changes inflated the arrest expectations for FOTs eight-fold, while simultaneously removing a requirement that FOTs focus on "criminal aliens," and for the first time permitting FOTs to count collateral arrests of civil status violators toward their inflated arrest expectations. The impact of ICE's 2006 revised performance expectations is discussed in detail later in this report.¹² Over the course of time, the number of FOTs increased as well; while the NFOP started with eight FOTs, today there are over 100 teams.¹³ Given the size of the NFOP and its primary reliance upon home raids, the behavior of FOTs are of particular importance in assessing ICE's home raid strategy.

Despite these operations' purported focus on high priority targets, the evidence demonstrates that the large majority of arrests made in home raids carried out under these operations are not of high priority targets but rather are collateral arrests of mere civil immigration status violators.⁹

CONSTITUTIONAL REQUIREMENTS FOR ICE HOME RAIDS

The Supreme Court has held that “physical entry of a home is the chief evil against which the wording of the Fourth Amendment is directed.”¹⁴ In the absence of consent from an adult resident,¹⁵ or exigent circumstances,¹⁶ a search conducted without a judicial warrant issued by an impartial magistrate¹⁷ is presumed to be in violation of the Fourth Amendment of the Constitution. Administrative warrants do not authorize agents to enter homes without consent because they are not issued by impartial magistrates.¹⁸ Outside of the home, government agents are generally empowered to make warrantless arrests when they have probable cause to believe an individual has committed an arrestable offense.¹⁹ However, even where probable cause exists to make an arrest, government agents may not enter a home without a judicial warrant. The nature of the arrest — criminal vs. civil-immigration — has no bearing on the constitutional protections applied to the home.²⁰

In addition, the Fourth Amendment restricts the power of police to seize people for investigatory purposes or to search a home without consent. The Constitution requires that an officer have “reasonable suspicion” that an individual is engaged in unlawful activity before the officer can seize the person, even for brief questioning,²¹ and generally requires a judicial warrant to search

a home.²² There is an exception to this rule when an officer, lawfully present inside a home, needs to search the home or briefly seize an individual to ensure the safety of the officer.²³ 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.²⁴

These constitutional requirements should govern ICE’s conduct in home raids. When an ICE agent enters a home without consent, armed only with an administrative warrant, it is a constitutional violation that goes to the heart of the Fourth Amendment.

These constitutional requirements should govern ICE’s conduct in home raids. When an ICE agent enters a home without consent, armed only with an administrative warrant, it is a constitutional violation that goes to the heart of the Fourth Amendment.

Further, even if an ICE agent is lawfully in a dwelling, he generally violates the Constitution if he searches the home without consent (or beyond the scope of the consent) or if he seizes an occupant without a reasonable suspicion that the individual is engaged in unlawful conduct.

ICE POLICIES GOVERNING HOME RAIDS

DHS’s own regulations and policies incorporate the constitutional requirements set forth above. During home raids, ICE agents are generally armed only with administrative arrest warrants issued by an immigration official, rather than judicial search or arrest warrants issued by a neutral judge.²⁵ These administrative warrants do not require a showing of probable cause, as in the case of judicial warrants.²⁶ According to ICE’s own Detention and Deportation Officer’s Field Manual, “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.”²⁷

Accordingly, when targeting residences, both DRO and OI agents are supposed to follow similar mandatory “knock-and-talk” procedures laid out in official ICE manuals.²⁸ The Field Manual explains that “Officers can knock on a door and request to speak with the occupants of the house without first obtaining a search warrant. However, in order to enter a residence, *someone who has authority to do so must grant informed consent, unless a court-approved search warrant is obtained in advance.*”²⁹

If consent is given, ICE agents are permitted to enter the home and ask questions regarding the location of the intended target.³⁰ If agents encounter other people in the home, agents are permitted to seek consent to ask questions regarding immigration status.³¹ However, agents may not detain the occupants for questioning unless they have a “reasonable suspicion, based on specific articulable facts, that the person being questioned ... is an alien illegally in the United States.”³² If, after lawful questioning, agents develop a reason to believe that an individual is in the United States illegally, they can arrest them without a warrant and transport them to the local immigration processing center.³³

ICE agents are also permitted to request consent to search the residence, or a portion of it.³⁴ But agents are “not permitted to search portions of the premises other than those for which consent to search has been given,” and have been “instructed that consent to remain in the house and to search can be revoked at any time.”³⁵ The only exception to this general rule is when ICE agents have “reasonable suspicion that the premises harbor a person who poses a danger to the agents” — in which case the agents are permitted to conduct a protective sweep.³⁶ However, “agents have been instructed that any protective sweep [can] extend only to areas in which the potentially dangerous person(s) could be hiding.”³⁷

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People in each State shall have Qualifications requisite for Electors of the most numerous Branch of the State Legislature.
No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and when elected shall have been

THE PREVALENCE OF CONSTITUTIONAL VIOLATIONS DURING ICE HOME RAIDS: ASSESSING THE EVIDENCE

In recent years, individual accounts from across the country demonstrate a suspiciously uniform pattern of constitutional violations during ICE home raids. These accounts are documented in civil law suits, suppression motions in immigration proceedings, and local and national media coverage. These narratives show a trend that establishes three distinct types of conduct which violate the Fourth amendment: *entering* and *searching* homes without warrants, exigency or consent, and then *seizing* residents without reasonable suspicion. The pattern which emerges from the individual narratives is supported by the observations and statements of local political and law enforcement leaders, who have a unique vantage point to view ICE misconduct in their communities. Finally, this report examines empirical data drawn from ICE's own arrest records from two separate ICE field offices and publicly available suppression motion data. Collectively, the evidence strongly suggests a significant and disturbing pattern of ICE misconduct during home raids.

EMPIRICAL EVIDENCE

Data From ICE Arrest Records

ICE regulations, which carry the force of law, require that:

An immigration officer may not enter into ... a residence ... unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected. *When consent to enter is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given.*³⁸

Accordingly, review of ICE arrest reports should reveal whether or not consent was obtained prior to the entrance of ICE agents into a residence. Since ICE does not obtain judicial warrants for its home raids, entering a home without consent is a violation of the Fourth Amendment of the Constitution.

Two data sets of ICE arrest records were reviewed in preparation for this report to examine whether, among other things, consent was noted on the arrest records. The first data set was obtained pursuant to a Freedom of Information Act (FOIA) lawsuit and included arrest records from home raid operations in Nassau and Suffolk County, New York between January 1, 2006 and April 18, 2008 (hereinafter "Long Island data set"). This data set included the ICE arrest records related to 100 randomly selected individuals arrested in home raids out of the total of

457 such arrests during this period.³⁹ The second data set was also obtained through a FOIA lawsuit and included 600 electronically available arrest reports from home raid operations conducted by the Newark, New Jersey ICE Office and the Central New Jersey ICE Office on certain dates between February 22, 2006 and December 7, 2007 (hereinafter the "New Jersey data set").⁴⁰

ICE agents from the New York and New Jersey Field Offices failed to obtain lawful consent to enter homes in violation of the Constitution in a large percentage of cases.

Fig. 1: New Jersey Consent Data

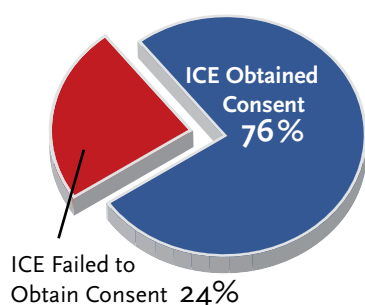
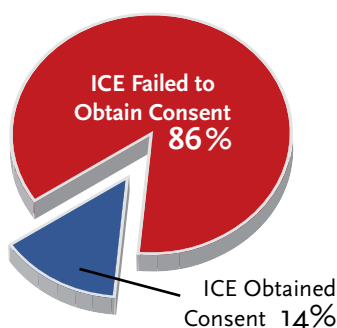


Fig. 2: Long Island Consent Data



The data from both sets reveal several alarming trends. As set forth in Figures 1 & 2, based on the assumption that ICE is following its own legal requirements regarding notation of consent, and based upon ICE's public statements that it does not obtain judicial warrants in home raid operations, both data sets demonstrate that ICE agents from the New York and New Jersey Field Offices failed to obtain lawful consent to enter homes in violation of the Constitution in a large percentage of cases.

Interestingly, the data from the two data sets show significantly different rates of illegal entries by ICE agents during home raids. There are several possible explanations for the difference. The two data sets involve ICE agents from different field offices. It is possible that the supervision, training, and culture of the ICE offices are sufficiently different to account for the marked difference in the rate of illegal entries during home raids. It is also possible, that record keeping practices vary between the offices such that the New York office may be failing to note consent in some instances when it is actually obtained and/or the New Jersey office may be noting consent in some instances when it is not actually obtained.

Indeed, there are some indications that the officers from the New Jersey Field Offices are, in some instances, either fabricating consent in their reports or misunderstanding the legal requirements of consent. For example, in one arrest record from the New Jersey data set, an officer notes that "[t]he Newark Fugitive Operation team ... gained access into apartment [redacted] by way of knocking, thus the door was opened from the intensity of the banging. Upon slowly entering the apartment at [redacted] I noticed that [redacted] was approaching the doorway." The same arrest report incorrectly states: "Gained Access to home via: Subject gave consent" — apparently boilerplate language that appeared in many New Jersey arrest records. Moreover, in a handful of cases from the New Jersey data set, we were able to match arrest records that noted consent, with detailed eyewitness accounts of those raids, which contradicted the arrest records accounts of consent. Even if the New Jersey arrest reports are taken at face value, it is possible that the New Jersey data was skewed in ICE's favor since, unlike the New York data, the New Jersey arrest records were not randomly drawn.

Whatever the cause of the divergence between the two data sets, they share one crucial trait: they both evince an unacceptable level of illegal entries by ICE agents during home raid operations in violation of the Fourth Amendment. If this data were the only evidence of such illegal entries it

[T]he high percentage of collateral arrests is consistent with allegations that ICE agents are using home raids for purported targets as a pretext to enter homes and illegally seize mere civil immigration violators, in order to meet inflated arrest expectations.⁴¹

might be possible to discount these statistics as record keeping failures. However, when placed in the context of the other evidence set forth below, these arrest records serve to confirm the widespread nature of the violations occurring in the New York and New Jersey field offices.

Figures 3 & 4 break out the percentage of target arrests versus collateral arrests of civil immigration violators made in each home raid data set. Both data sets demonstrate that the large majority of home raid arrests from the New Jersey and New York Field Offices do not involve the purported targets of the operations. This data is instructive because the high percentage of collateral arrests is consistent with allegations that ICE agents are using home raids for purported targets as a pretext to enter homes and illegally seize mere civil immigration violators, in order to meet inflated arrest expectations.⁴¹

Here, the data is notably consistent between the two data sets, showing that only approximately one-third of all home raid arrests are of targets. The remaining two-thirds of the arrests are of civil immigration violators who ICE happens to encounter during home raid operations.

A review of the arrest records also demonstrated that, notwithstanding the legal requirement that ICE has some reasonable suspicion before it detains and questions individuals, the large majority of arrest reports articulated no basis for the initial seizure.

A review of the arrest records also demonstrated that, notwithstanding the legal requirement that ICE has some reasonable suspicion before it detains and questions individuals, the large majority of arrest reports articulated no basis for the initial seizure.

Again, the data is extremely consistent and suggestive of widespread Fourth Amendment violations by agents from the New Jersey and New York Field Offices. While, unlike the consent data, there are no regulations specifically requiring ICE agents to note the basis for their initial stop, such information is precisely what one would expect to find in an arrest report. Further, the fact that such information is included in approximately one-third of such reports, suggests that ICE agents are trained to include the information.

Fig. 3: New Jersey Target vs. Collateral Data

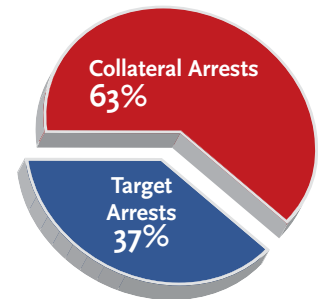


Fig. 4: Long Island Target vs. Collateral Data

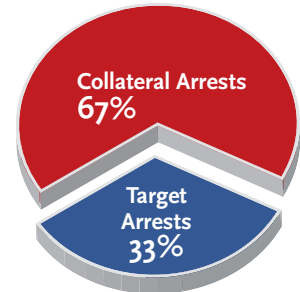


Fig. 5: New Jersey Basis for Seizing & Questioning

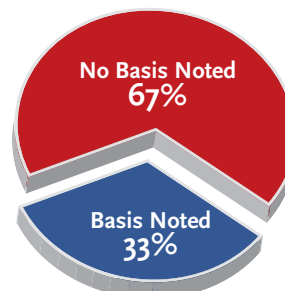
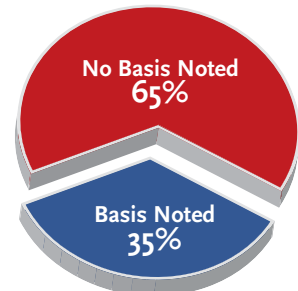


Fig. 6: Long Island Basis for Seizing & Questioning

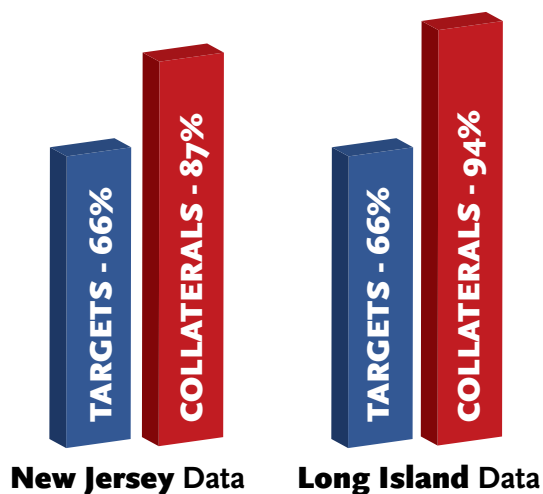


Finally, the data also revealed a disturbing trend suggestive of racial profiling by ICE agents during home raid operations by the New Jersey and New York Field Offices. Specifically, the data demonstrates that Latinos are significantly overrepresented in collateral arrests by ICE agents during home raids. Figure 7 below compares the percentage of Latinos arrested as targets with the percentage of Latinos arrested as collaterals in both data sets.

[T]he data also revealed a disturbing trend suggestive of racial profiling ... Specifically, the data demonstrates that Latinos are significantly overrepresented in collateral arrests by ICE agents during home raids.

Presumably, the ethnicities of the targets ICE seeks is a good indicator of the ethnic compositions of the immigrant communities in which ICE operations take place. Accordingly, it is difficult to explain why significantly more Latinos (21% more in New Jersey and 28% more in Long Island) are arrested as collaterals than as targets during home raid operations. Indeed, in both jurisdictions, the vast majority of collateral arrest records where ICE officers did not note any basis for seizing and questioning the individual were of Latino subjects — 90% in New Jersey and 94% in Long Island. This data lends empirical support to the community complaints that during home raids ICE agents seize Latino residents based simply on their ethnic appearance or limited English proficiency.

Fig. 7
Percentage of Arrestees who were Latino



This arrest data raises profound concerns over the constitutionality of ICE's home raid operations. The data is, of course, limited to two jurisdictions and it is possible that data from other jurisdictions could vary. However, the consistency of the New Jersey and Long Island data on most points, at minimum, raises the possibility of an agency-wide problem. It is difficult to imagine why the problems identified in these jurisdiction would be any less prevalent in ICE operations elsewhere. The data on the rate of illegal entries is the exception — since it varied dramatically between the two jurisdictions. This is certainly worthy of further investigation, though it is important to remember that even the “better” jurisdiction still showed officers illegally entering homes in one quarter of home raids.

Suppression Motion Data

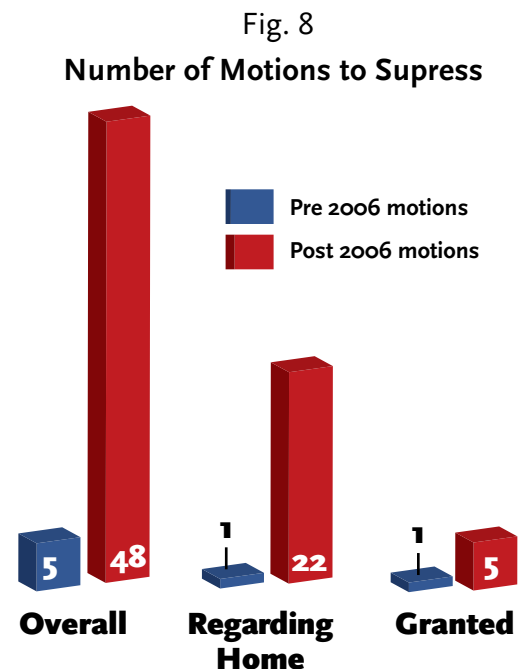
The increasing prevalence in recent years of suppression motions being brought in removal proceedings, alleging constitutional violations by ICE officers is another indication of the widespread practice of illegal home entries during ICE operations. To be sure, not all such motions are reflective of an actual underlying constitutional violation. However, in immigration court, unlike in criminal court, suppression motions are not a standard part of removal defense practice — many

immigration attorneys will go their entire career without filing a suppression motion. Accordingly, the statistics set forth below demonstrating a sharp increase in the filing of such motions after ICE expanded its home raid operation in 2006 is one more indication of the widespread Fourth Amendment violations occurring during ICE home raid operations.

Suppression motions are rarely brought in immigration court, in part because in 1984 the Supreme Court ruled that, since deportation proceedings are civil, not criminal, respondents are not generally entitled to suppression *even when evidence was obtained in violation of the Constitution*.⁴² However, the Supreme Court also reasoned that the exclusionary rule may be available in immigration proceedings for egregious or widespread Fourth Amendment violations, and lower courts and the immigration courts have subsequently recognized egregious constitutional violations as a basis for suppression.⁴³ Nevertheless, suppression motions remain extremely difficult to win in immigration proceedings, as they are very labor intensive, require Respondents to meet a high legal standard, and are often mooted out by evidence obtained independent of the constitutional violation.⁴⁴ Moreover, in most deportation cases ICE does not need to rely upon evidence it gathered during an arrest. Therefore, even if a respondent in a deportation proceeding can prove an egregious constitutional violation, it is uncommon that a suppression motion can alter the outcome of a deportation proceeding. Accordingly, in most cases suppression motions, even if meritorious, are futile and therefore will not be filed.

In preparation for this report, a Freedom of Information Act request was filed with the Executive Office for Immigration Review — the agency which oversees the federal immigration courts — seeking statistics on the prevalence and outcomes of suppression motions. Unfortunately, the agency does not track such data and was thus unable to substantively respond to the request. As a result, the best available data on the prevalence, outcome, and type of suppression motions being filed in immigration court is the on-line database which compiles opinions from the Board of Immigration Appeals (BIA) — the administrative court that reviews immigration judge decisions.⁴⁵ This database does not, however, contain all agency decisions related to suppression motion. The database only contains published BIA decisions and selected unpublished BIA decisions, and does not contain any immigration court decisions — where we would expect to find the majority of decisions discussing suppression motions. Accordingly, the data set forth below significantly under-represents the prevalence of suppression motions. However, the data remains instructive, not in regard to the raw numbers, but rather in regard to the trends demonstrated by the prevalence, types, and outcomes of suppression motions.

Comparing the period between 2006, when ICE instituted its new arrest performance expectations and vastly expanded its home raid operations, and June 2009, to an equal period of time immediately



preceding 2006, we looked at three variables: (1) the number of suppression motions filed, (2) the number of suppression motions involving home raids, and (3) the number of suppression motions granted. Figure 8 compares the raw numbers in each category between the periods before and after the 2006 policy changes and the expansion of ICE's home raid campaign.

Again, the raw numbers are not particularly instructive because of the limitations in the data set discussed above. However, the trends are noteworthy. Since 2006, there has been a nine-fold increase in the filing of suppression motions, a twenty-two-fold increase in suppression motions related to home raids, and a five-fold increase in the grant rate of suppression motions.

While the data set of recent suppression motions is far from complete, the significant uptick in the filing of suppression motions is one more indicator of a pattern of illegality arising out of, among other things, ICE's home raid campaign. Together, the arrest report and suppression motion data appear to demonstrate a significant pattern of constitutional violations occurring during ICE home raid operations in New York and New Jersey and are suggestive of a national pattern.

LAW ENFORCEMENT AND POLITICAL LEADERS' ACCOUNTS OF ICE HOME RAIDS

Concern over the prevalence of Fourth Amendment violations during ICE home raids reaches well beyond the immigrant communities targeted by ICE. Law enforcement and political leaders have voiced serious concerns specifically regarding ICE's violations of the Fourth Amendment, and more generally about how, because of local cooperation with ICE, ICE's conduct threatens to undermine the central crime suppression mission of local police departments.⁴⁶

ICE will often request support for home raid operations from local police departments, usually in the form of having a marked local police car accompany ICE agents to target residences. Apparently, ICE's theory is that when they bang on the door of a residence and shout "police," as is standard in home raids, residents are more likely to open their doors if they see a local police car outside

and, therefore, do not suspect an immigration raid. The fear of some local police leaders is that, to the extent local police are perceived as working with immigration agents, particularly when ICE agents are illegally entering homes, immigrant residents will be less likely to cooperate with police on criminal matters.⁴⁷ Such residents may be less likely to come forward as witnesses and victims of crimes, may be reluctant to call for police assistance in domestic violence situations, and may be less likely to open their doors for police officers.⁴⁸

“[Immigration raids] break up families ... just kick[ing] down the door in the middle of the night, taking [a] father, a parent away, that’s just not the American way. It must stop.”⁴⁶

**— Rep. Nancy Pelosi (D-CA),
Speaker of the House of Representatives**

Since 2006, there has been a nine-fold increase in the filing of suppression motions, a twenty-two-fold increase in suppression motions related to home raids, and a five-fold increase in the grant rate of suppression motions.

Two home raid operations have drawn particularly vocal responses from police and political leaders. In June 2007, ICE conducted a series of home raids in New Haven, Connecticut just two days after the city had adopted a municipal identification law that allowed all residents, including undocumented residents, to obtain government issued identification. Much of the criticism of those raids centered on suspicion that the raids were carried out in retaliation for the city's municipal identification policy, which is in tension with federal policy. However, political leaders also drew attention to the repeated accounts of how ICE agents pushed their way into homes, in violation of the Fourth Amendment.⁴⁹ New Haven's Mayor John DeStefano described a "very aggressive intervention" by ICE agents who "pushed into homes without warrants."⁵⁰ Senators Christopher Dodd and Joseph Lieberman, along with Congresswoman Rosa DeLauro wrote a formal letter to then-Secretary of DHS Michael Chertoff requesting an explanation for the repeated accounts of ICE agents illegally entering homes.⁵¹ Secretary Chertoff replied by affirming that the agents possessed only administrative arrest warrants that did not authorize them to enter homes without consent but he asserted that ICE obtained consent to enter all of the homes.⁵²

"I have been appalled by some of the practices I have heard about and I would like to work with your Department to end the practice of allowing immigration officers to forcefully enter people's homes with nothing more than an administrative warrant, and incarcerate anyone that can not immediately produce their immigration papers."⁴⁶

— Sen. Kirstin Gillibrand (D-NY)

It is also noteworthy that during the New Haven operation ICE agents failed to apprehend the large majority of targets, instead, consistent with the empirical data above, focusing on collateral arrests. The New Haven operation was part of the National Fugitive Operation Program. ICE was seeking to arrest sixteen target "fugitives" but ultimately arrested thirty-one individuals, only four of whom were targets of the raid — the rest were collateral arrests of undocumented immigrants encountered at the target residences.⁵³ The large percentage of collateral arrests and the fact that most of the arrestees were Latino, led Mayor DeStefano to raise concerns over potential racial profiling — a concern that Senator Dodd said warranted further investigation.⁵⁴ "We won't stand for the violation of constitutional rights and racial profiling in New Haven" said Mayor John DeStefano in reaction to the raids.⁵⁵

Several months later, in September 2007, a large-scale home raid operation in Long Island, New York sparked similar allegations of illegality from police and political leaders in Nassau County.⁵⁶ This time, the raids were coordinated by ICE's Office of Investigation under its Operation Community Shield. Nassau County Police Department initially agreed to a request by ICE to assist in the multi-day operation by detailing officers in marked units to accompany each ICE team.⁵⁷ However, two days into the operation, Nassau County Police pulled out of the operation because of "serious allegations of misconduct and malfeasance."⁵⁸ ICE sought ninety-six target individuals⁵⁹ who were believed to be deportable members of violent gangs living in Nassau County. After three days of raids, ICE arrested only six targets and again the vast majority of arrests — ninety-five to be precise — were collateral arrests for civil immigration violations.⁶⁰

Nassau County Police Commissioner, Lawrence Mulvey, and Nassau County Executive Thomas Suozzi both spoke out about a range of misconduct by ICE agents during the raids. Nassau County Executive Suozzi's letter to DHS Secretary Chertoff condemned "tactical actions which cross the lines of legality and law enforcement best practices," and asked Secretary Chertoff to look into the allegations that arose out of the Nassau County home raids.⁶¹ Commissioner Mulvey relayed accounts from his officers of excess shows of force by ICE agents, undisciplined law enforcement tactics, and deplorable intelligence that resulted in ICE targeting incorrect residences in over 90% of the raids.⁶²

"In my 29 years of police work, I have executed countless warrants and have sought consent 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*."⁶⁵

— Commissioner Lawrence Mulvey,
Nassau County Police Department

ICE later revealed that ICE did not possess any warrants, not even administrative warrants, for the targets in the Nassau County Community Shield Operation.⁶³ However, DHS again claimed that it received consent to enter all of the homes it targeted during the Nassau Community Shield Operation.⁶⁴ In response to this claim, Commissioner Mulvey commented that "In my 29 years of police work, I have executed countless warrants and have sought consent 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*."⁶⁵

Obviously these two highly publicized incidents of political and police leaders criticizing ICE's home raid operations do not alone evince a nationwide problem. However, taken in the context of similar statements from other political and law enforcement leaders,⁶⁶ these highly unusual public conflicts between law enforcement agencies over police tactics lend credibility and color to the empirical evidence set forth above and anecdotal evidence set forth below.

UNIFORM NATIONAL PATTERN OF CONSTITUTIONAL VIOLATIONS DURING ICE HOME RAIDS

Since 2006, when ICE vastly expanded its home raid operations, lawsuits have been filed in every region of the country — including two large class actions, and several lawsuits that include multiple defendants — all alleging a similar pattern of ICE misconduct. The accounts of ICE conduct in these lawsuits together with similar accounts in suppression motions in immigration court and in news reports evince a suspiciously uniform pattern of misconduct.

One common theme that emerges from the lawsuits, suppression motions, and news accounts is ICE officers' pattern of illegally entering residences. There is story after story of ICE agents, armed with only an administrative warrant, yelling and banging on doors and then forcing their way into homes in the pre-dawn hours by pushing their way in if residents unlock their doors, and

otherwise climbing through windows or kicking in doors. Some residents report being awakened by the presence of armed ICE officers in their bedrooms who illegally gained entry through unlocked doors. Once inside the homes, the lawsuits, suppression motions and news accounts all tell a similar story of ICE agents abandoning focus on a purported target and instead immediately seizing and questioning all occupants about their immigration status regardless of any legal basis to do so. The picture that emerges is that once ICE agents immediately detain all occupants, they generally conduct an illegal non-consensual search of the premises⁶⁷ looking for evidence of the occupants' immigration status — or lack thereof. Below are various accounts from across the country of this pattern of ICE misconduct:

March 2009, in Arizona, Jimmy Slaughter, himself a DHS officer, filed suit against ICE for raiding his home: “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 standing at my door ... 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.” *Slaughter v. Department of Homeland Security* (D.A.Z.) (Slaughters Aff., February 13, 2009).

September 2008, in Texas, “The 68-year-old woman told Action 4 News that she heard a knock at her door Tuesday morning. But before she had a chance to get up she said U.S. Immigration & Customs Enforcement (ICE) agents were inside her home ... When she asked them why they came into her home they allegedly responded, ‘Show us your papers.’ Savage complied by showing them documentation proving that she’s been a United States citizen for 40 years.” Jackie Diaz, *Call 4 Action: Mistaken Immigration Raid?*, VALLEYCENTRAL.COM (Sept. 30, 2008).

March 2008, in California, ICE agents came to the home of an immigration attorney, looking for another person; when the attorney closed his door and asked them to leave the premises because they could not produce a search warrant, the agents threatened to break his door down. Sandra Hernandez, *ICE Increases Use of Home Raids*, DAILY JOURNAL (Mar. 26, 2008).

January 2008, in North Bergen, NJ, a tenant opened her door and ICE agents searched the entire apartment without permission or legal justification. The tenant was arrested notwithstanding the fact that she had recently been granted legal immigration status and had documents proving that her official work permit card would soon be coming. *Argueta v. Myers*, No. 08-cv-01652 (D. NJ) (complaint filed Apr. 3, 2008).

Jimmy Slaughter, himself a DHS officer, filed suit against ICE for raiding his home: “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 standing at my door... 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.”

December 2007, in Massachusetts, “eight to 10 ICE agents, with guns drawn, broke through the door of the three-family apartment building at 21 Jefferson St. about 5 a.m. Friday. ‘They came through and shined flashlights in people’s faces. They went into each room, they told everyone to lie down on the floor, they say not to move,’ he said. ‘They checked everyone’s papers. They took everybody.’” Evidence of ICE’s illegal search included “shards of the broken door frame they say ICE agents kicked through. A safe in one room lay open, its papers strewn all about. The men also showed the reporter another bedroom door they said ICE agents had kicked open.” Aaron Nicodemus, *Illegal Aliens Arrested in Raid: Feds Nab 15 in Milford*, TELEGRAM & GAZETTE (Dec. 9, 2007).

December 2007, in Newark, NJ, between 5:30am and 6:00am, there was loud pounding on the door. Believing it was another tenant who was locked out, a resident opened the door to find six ICE agents displaying holstered firearms. The officers forced the door to stay open and detained the resident without a warrant, probable cause, exigent circumstances, or a reasonable basis for believing that he was unlawfully present in the United States. *Argueta v. Myers*, No. 08-cv-01652 (D. NJ) (complaint filed Apr. 3, 2008).

September 2007, in Passaic County, NJ, around 5:30am, around nine ICE agents forced their way illegally into a home after someone inside opened the door to see who was banging on the door. The ICE agents illegally searched the home and stopped everyone from leaving. *Argueta v. Myers*, No. 08-cv-01652 (D. NJ) (complaint filed Apr. 3, 2008).

“Respondent persuasively argues that an egregious violation that was fundamentally unfair occurred during his arrest. . . . ICE agents used excessive force while searching his home . . . ICE agents entered his home and his private bedroom in the early hours of the morning armed with pistols. They forced him into the hall and required him to stand in his underwear before his brother, sister-in-law and their children. . . . ICE agents refused to produce a warrant or identify the person they claimed to be seeking. Finally, they tied a plastic cord around the Respondents wrists as handcuffs and forced him to accompany them to their office in Manhattan.”

– Immigration Judge Vivienne Gordon-Uruakpa,
New York Immigration Court

August 2007, in Hudson County, NJ, at 6:30am, ICE agents did not identify themselves while banging on the door. When a tenant opened the door to see who was outside, the ICE agents forced their way inside illegally, and illegally interrogated people in their home. One resident was forcibly stopped from calling her attorney. *Argueta v. Myers*, No. 08-cv-01652 (D. NJ) (complaint filed Apr. 3, 2008).

July 2007, in Staten Island, NY, in finding the ICE agents’ conduct during a 5:30am home raid unconstitutional, one Immigration Judge wrote “Respondent persuasively argues that an egregious violation that was fundamentally unfair occurred during his arrest. . . . ICE agents used excessive force while searching his home . . . ICE agents entered his home and his private bedroom in the early hours of the morning armed with pistols. They forced him into the hall and required him to stand in his underwear before his brother, sister-in-law and their children. . . .

ICE agents refused to produce a warrant or identify the person they claimed to be seeking. Finally, they tied a plastic cord around the Respondents wrists as handcuffs and forced him to accompany them to their office in Manhattan.” *In the Matter of R-B*, (New York, N.Y., Immigr. Ct., May 28, 2009).

June 2007, in New Haven, CT, in finding the ICE agents’ conduct during a 6:30am home raid unconstitutional, one Immigration Judge wrote “Respondent’s roommate testified that he opened the door ajar a few inches. Without saying a word, agents immediately and forcibly pushed the door wide open. Respondent’s roommate did not consent to their entry and DHS concedes they had no warrant. ... The agents’ unlawful early morning entry into a private residence strongly implicates “unreasonable” unlawful conduct.” *In the Matter of Y-*, (Hartford, CT Immigr. Ct. June 2, 2009).

June 2007, in New Haven, CT, in finding the ICE agents’ conduct unconstitutional, one Immigration Judge wrote “immigration agents forcefully entered a private home without a warrant, without probable cause, and without consent. ... Mr. [redacted] opened the door ajar a few inches. Agents immediately and forcibly pushed the door wide open, requiring Mr. [redacted] to step back and avoid being hit by the door. Mr. [redacted] did not consent to their entry and DHS concedes that they had no warrant to enter the home.” *In the Matter of X-*, (Hartford, CT Immigr. Ct. June 1, 2009).

June 2007, in Connecticut, the Office of the Mayor of New Haven issued a press release following the highly publicized raids there, which explained how “federal agents [were] pushing their way into houses, brusquely ordering men, women and children to common areas, and leading family members and loved ones away in handcuffs.” Press Release, Office of the Mayor of New Haven, Connecticut, June 6, 2007.

June 2007, in Morris County, NJ, at 6:45am, ICE agents took out their guns, banged on a door, and forced their way in once the tenant opened the door to find out who was there. ICE agents illegally entered and searched the home. An ICE agent yelled at one of the residents who tried to call her lawyer. The ICE agent used abusive language – yelling “F*** you” and “You are a piece of s***.” *Argueta v. Myers*, No. 08-cv-01652 (D. NJ) (complaint filed Apr. 3, 2008).

April 2007, in Long Island, NY, in finding the ICE agents’ conduct unconstitutional, one Immigration Judge wrote, “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

“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.”

– Immigration Judge Noel Brennan,
New York Immigration Court.

find that what is essentially a warrantless search in the meaning of the Fourth Amendment, meaning that the entry without a judicially authorized warrant on April 18 was an egregious violation, and therefore I suppress all the evidence and order these proceedings terminated.” *Matter of P-M-* (New York, N.Y., Immigr. Ct., May 13, 2008)

April 2007, in Minnesota, the news reported that ICE agents showed up wearing bulletproof vests and armed with guns. They pushed their way into homes and terrified the children. Shannon Prather, *Immigration Raids, Arrests Trigger Lawsuits*, ST. PAUL PIONEER PRESS (Apr. 19, 2007).

April 2007, in Willmar, MN, “Defendants conducted these warrantless home searches by going to Plaintiffs’ doors and knocking loudly on the doors. When asked by Plaintiffs to identify themselves, Defendant ICE agents would falsely claim ‘It’s the Police.’... When Plaintiffs would open their doors slightly to confirm that it was the police, Defendant ICE agents would force open the door and push their way into Plaintiffs’ homes all without any knowing or voluntary consent of Plaintiffs to allow the ICE agents inside their homes.” *Arias v. ICE*, No. 07-01959 (D. Minn. filed April 19, 2007).

April 2007, in Riverhead, NY, Residents were awakened by loud voices yelling “Police! Open the door!” and the sounds of windows and doors being forced open. When one resident entered his kitchen he found an ICE agent climbing through an unlocked window. With one leg inside the home, the armed agent yelled, “Open the f***** door!” When the resident unlocked the door, other agents stormed into the residence. Once inside, ICE agents immediately cuffed all residents, kicked in an interior door, and rifled through dresser drawers without consent, looking for immigration documents. *Matter of I-*, (New York, N.Y., Immigr. Ct.,) (on file with author).

March 2007, in California, “[ICE Agents] arrived at [the Reyes’ home] in the early morning hours...Armed and wearing clothes bearing the word “police,” [ICE Agents] entered the residence and demanded the immigration papers and passports of [7 year old] Kebin and his father...[ICE Agents] did not have lawful authorization or a valid warrant for entering the home... Despite being placed on notice that Kebin is a United States citizen, [Agents] instructed his father to waken Kebin because they were going to seize him as well...[Agents] took Kebin and his father to an ICE office in San Francisco and held them there against their will.” *Reyes v. Alcantar*, No. 07-02271 (N.D. Cal., filed Apr. 26, 2007).

March 2007, in Paterson, NJ, at around 4:00am, a lawful permanent resident was awakened by shouts of “Paterson Police.” The tenant opened the door to ask for a warrant and ICE agents illegally forced their way into the house and searched it without consent, permission, or legal justification. *Argueta v. Myers*, No. 08-cv-01652 (D. NJ) (complaint filed Apr. 3, 2008).

February 2007, in East Hampton, NY, “Armed ICE agents kicked in the door of [Nelly’s] home ... between 4:00 and 5:00 a.m. The ICE agents forcibly entered her home without a search warrant, consent, or any exigent circumstances.” *Aguilar v. ICE*, No. 07-1819 (S.D.N.Y.) (complaint filed Sep. 20, 2007).

February 2007, in East Hampton, NY, “The ICE agents pulled covers off of [Adriana’s] bed and shone flashlights into her face and the face of her son, who began to cry. The ICE agents searched the Aguilar/Leon family home without the consent of the Leon or Aguilar families. [A]driana asked the ICE agents to see a warrant. However, the agents did not show her any warrant. Andres also asked the ICE agents to see a warrant. The ICE agents did not permit Andres to read a warrant.” “The ICE agents positioned themselves so that the exits leading to the office were blocked. Adriana and Andres were not free to leave the office area.” *Aguilar v. ICE*, No. 07-1819 (S.D.N.Y.) (complaint filed Sep. 20, 2007).

November 2006, in Clifton, NJ, at 3:00 am, Arturo heard loud banging at his door. When he opened his door slightly, ICE agents forced the door open, shoved him out of the way, and illegally searched his home. “During the time that the agents were in Arturo’s home, none of the occupants were free to leave. One or more of the John Doe ICE Agents repeatedly shouted “Don’t move!” at the occupants in the common room. The agents carried holstered firearms. If an occupant moved, the agents placed their hands on their holstered guns, suggesting they were preparing to draw their weapons.” *Argueta v. Myers*, No. 08-cv-01652 (D. NJ) (complaint filed Apr. 3, 2008).

September 2006, in Metter, GA, “The ICE agents involved in the raids forcefully broke into many of the trailers in the Plaintiff Robinson’s [trailer] parks. The ICE agents caused intentional damage to at least one door and four windows in the Highway 46 Park. In the Turkey Ridge Road Park, the ICE agents ripped the skirting from the perimeters of a trailer and caused damage to the flood boards. Upon information and belief, [ICE Agents] did not have warrants or other legal justification for their actions. As a result of the unlawful and terrorizing actions of the ICE agents, the tenants who rented from Plaintiff Robinson were so terrified that many simply fled from the area.” *Mancha v. ICE*, No. 06-cv-12650 (N.D.Ga) (complaint filed Nov. 1, 2006).

September 2006, in Reidsville, GA, “Plaintiff Mancha, a tenth grade high school student, was getting ready for school [when her] mother, Plaintiff Martinez, left their home in Reidsville, Georgia, to run an errand. [Mancha] believed it was her mother returning, so she went to the front door, unlocked the door, left it closed, and went back to her bedroom. Shortly thereafter, Plaintiff Mancha heard voices coming from within the house. She left her bedroom, and, as she was walking down the hallway towards the living room, she heard people yelling, ‘Police! Illegals!’ When she reached the living room, she saw [ICE Agents] standing in the living room blocking the front door. [One ICE Agent] had his hand on his gun as if he was ready to take it out any minute.” *Mancha v. ICE*, No. 06-cv-12650 (N.D.Ga) (complaint filed Nov. 1, 2006).

January 2006, in San Francisco, CA, “Mr. G” was installing a washing machine in his garage when he heard his doorbell ring. Assuming it was his friend whom he was expecting, Mr. G opened the garage door and was immediately grabbed, handcuffed and searched by two individuals in plain clothes. Without identifying themselves, the two ICE agents began questioning

him in English, of which he had limited knowledge. Meanwhile, Mrs. G was cooking when she heard the doorbell ring. She went to the front gate and saw a man and a woman in plain clothes. As she was unlocking the gate to ask them what they wanted, the man forced the gate open and the two individuals entered her house. Mr. G was led into his house without first being asked for his permission to enter. In the house, Mr. G saw his pregnant wife crying and handcuffed to a chair, along with two strangers. Because the officers failed to show Mr. and Mrs. G a warrant for their arrest, failed to identify themselves as immigration officers, and forced their way into their home and handcuffed them before asking them any questions, the Immigration Judge concluded that a separate hearing on Mr. and Mrs. G's motions to suppress was warranted to determine whether the suppression of any statements they made during their interrogation and arrest is necessary. *Matter of M-* (San Francisco, C.A., Immigr. Ct., August 16, 2007).

Another repeated theme emerging from the various accounts of ICE home raids is a lack of law enforcement professionalism and a kind of cowboy mentality that may contribute to the apparent lack of attention to the governing constitutional norms. For example, during the Nassau County 2007 Community Shield Operation, ICE agents were criticized for donning cowboy hats and flaunting shotguns and automatic weapons.⁶⁸ Another example involved an April 30, 2007 email, obtained under a Freedom of Information Act Request, in which a Connecticut ICE agent boasted to a state police officer, "We have an [operation] scheduled for Wed, 05/02/07 in New Haven ... [I]f you're interested we'd love to have you! We have 18 addresses — so it should be a fun time!! Let me know if you guys can play!!"⁶⁹

These individual accounts alone tell us little about the larger picture of ICE's conduct during home raid operations. However, the similar pattern of misconduct in these cases together with the complaints from political and law enforcement leaders and the empirical evidence drawn from arrest reports and suppression motions are sufficient to raise substantial concern over ICE's behavior during its home raid operations.⁷⁰ Together the evidence tells a disturbing story of ICE misconduct.

When viewed together, the evidence is strongly indicative of a pattern of misconduct by ICE agents in the New York and New Jersey Field Offices and is suggestive of a widespread national problem involving:

- **Agents illegally entering homes without legal authority.**
- **Agents illegally seizing non-target individuals during home raid operations.**
- **Agents illegally searching homes without legal authority.**
- **Agents illegally seizing individuals based on racial or ethnic appearance or based on limited English proficiency.**

In order to begin to evaluate policy remedies necessary to bring the agency's home raid operations into compliance with the Constitution, we must first understand the underlying causes of the problems and must evaluate the full costs of ICE's current home raid practices.

POTENTIAL CAUSES OF ICE'S HOME RAID MISCONDUCT

The prevalence of constitutional violations occurring during ICE's home raids campaign can likely be attributed to a number of interrelated factors, including, at least: 1) a series of 2006 ICE policy changes which altered the arrest expectations of ICE's primary interior enforcement squads; 2) the fact that suppression motions are an ineffective deterrent to ICE officers; 3) the barriers that the vulnerable target population of ICE home raids faces in availing themselves of traditional civil remedies for government misconduct; and, 4) management, training and supervision failures by ICE.

ICE's 2006 Performance Policy

In 2006, ICE issued three policy memoranda which set forth a series of dramatic changes in its enforcement strategy that collectively set the stage for the Bush Administration's widely publicized campaign of immigration home raids.⁷¹ Prior to 2006, ICE Fugitive Operation Teams (FOTs), consisting of approximately seven agents each, were expected to arrest 125 target "fugitives" — people who had been ordered deported but remained in the United States — per year. Moreover, 75% of those arrests were required to be what ICE termed "criminal aliens." In early 2006, however, ICE increased each FOT's annual arrest quota from 125 arrests per year to 1000 arrests per year without any attendant increase in the size of the teams. Overnight, FOTs were expected to become eight times more efficient. Simultaneously, the new 2006 quota system eliminated the requirement that 75% of the arrests needed to be "criminal aliens." Several months later, in September 2006, ICE issued a further change which, for the first time, permitted FOTs to count "collateral" arrests of civil immigration status violators toward their new increased arrest expectations.⁷²

These policy changes incentivized the pattern of unlawful behavior set forth above in at least two ways. First, it placed tremendous pressure on ICE agents to meet the new inflated arrest expectations. It seems no coincidence that the issuance of ICE's 2006 Performance Policy coincided with ICE's increased use of home raids and the spike in complaints of misconduct arising therefrom. The pressure of the new expectations likely contributed to ICE agents' disregard for law and policy in their zeal to meet their new performance expectations. Second, the abandonment of the requirement to focus on "criminal aliens" and the permission to count collateral arrests of civil immigration status

It seems no coincidence that the issuance of ICE's 2006 Performance Policy coincided with ICE's increased use of home raids and the spike in complaints of misconduct arising therefrom. The pressure of the new expectations likely contributed to ICE agents' disregard for law and policy in their zeal to meet their new performance expectations.

By focusing on the easier to locate civil immigration violators, instead of the harder to locate dangerous targets, ICE agents were able to make more arrests in pursuit of their new arrest expectations. Unfortunately, the increased arrest numbers come at a significant cost, not only in terms of the constitutional violations occurring during home raids, but also because the focus on collateral arrests has caused a significant decrease in ICE's efficiency at capturing their purported priority targets: dangerous criminals and terrorists.⁷⁴

violators toward their arrest expectations likely contributed to the pattern of ICE agents seizing non-target residents without legal basis, and illegally searching homes for proof of immigration status and alienage without permission. The permission to count collateral arrests may also account for the high percentage of wrong or stale addresses raided by ICE agents.⁷³ Agents are not incentivized to take the time necessary to gather reliable intelligence on targets; rather, the 2006 Performance Policy encourages them to raid any house where they believe or suspect they may find immigration status violators. By focusing on the easier to locate civil immigration violators, instead of the harder to locate dangerous targets, ICE agents were able to make more arrests in pursuit of their new arrest expectations. Unfortunately, the increased arrest numbers come at a significant cost, not only in terms of the constitutional violations occurring during home raids, but also because the focus on collateral arrests has caused a significant decrease in ICE's efficiency at capturing their purported priority targets: dangerous criminals and terrorists.⁷⁴

Lack of Suppression Motions in Removal Proceedings

In criminal proceedings, the exclusionary rule is one of the primary mechanisms we rely upon to ensure police comply with constitutional search and seizure requirements; however, there are three factors which significantly undermine the deterrent effect of suppression motions on ICE agents.

First, suppression motions are extremely difficult for respondents to win in immigration court. In 1984, the Supreme Court made clear that suppression is not generally available in immigration court.⁷⁵ The Court did, however, leave the door open for suppression in cases of “egregious” or “widespread” constitutional violations. Subsequently, lower courts and the Board of Immigration Appeals (BIA) have recognized that egregious constitutional violations do warrant suppression in removal proceedings. While the definition of “egregiousness” remains murky and largely unsettled, one thing remains clear: proving an “egregious” constitutional violation remains a significantly higher hurdle than is required in criminal suppression motions.⁷⁶

Second, there is only a relatively small subset of deportation cases where suppression motions can alter the outcome of the proceedings. Suppression motions are inconsequential if ICE has an alternative source of evidence wholly independent of the constitutional violation. Suppression motions are, therefore, only useful in the uncommon instances where there is some ambiguity

about whether or not the respondent is actually a United States citizen. ICE bears the burden of proving that a person is not a citizen before the person can be deported. If the only evidence ICE has of the person's nationality was obtained through an egregious violation of the constitution, then a suppression motion may bear fruit. However, in most other circumstances, a suppression motion — even if granted — would be futile.

Finally, largely because of these first two factors, unlike criminal practice, suppression motions have not traditionally been a standard part of removal defense practice. Thus, unlike their police counterparts, most ICE agents have never been called to testify and account for their conduct at a suppression hearing.

Accordingly, the threat of evidence being excluded due to the unconstitutional conduct of ICE officers does not act as an effective deterrent to ICE agents carrying out home raids, or conducting other types of operations. While the exclusionary rule has played a critical role in deterring Fourth Amendment violations in the criminal context, the factors set forth above, together, work to make suppression motions in deportation proceedings relatively rare occurrences and undermine the deterrent value of such motions on ICE officers' conduct in the field.

Barriers to Civil Remedies

Due to a variety of systemic and cultural factors, immigrants are amongst the most vulnerable of populations in this nation's legal system. Fifty-two percent of the foreign born population are limited English proficient. Immigrants are also disproportionately poor and are significantly more likely to be lacking in basic education.⁷⁷ Accordingly, many immigrants simply lack the inclination and financial resources to hire private counsel.⁷⁸ Immigrants are also often unfamiliar with the U.S. legal system and unaware of their rights under domestic tort law. In addition, many victims of home raids are held in immigration detention following the raids on their homes and then deported — limiting their opportunities to pursue civil lawsuits. These realities make it extremely difficult for immigrants who are the subject of Fourth Amendment violations during ICE home raids to avail themselves of traditional civil remedies. Accordingly, traditional civil remedies are also ineffective deterrents to unlawful ICE home raids.

Management and Oversight Failures by ICE

Finally, ICE official policy has been crystal clear for some time that officers cannot enter or search homes without judicial warrants or consent and may not seize persons without a reasonable suspicion that the person is illegally in the United States.⁷⁹ However, notwithstanding these clear official policies, the evidence indicates that ICE agents are not routinely observing these agency policies. This type of disconnect between agency policy and practice is likely indicative of management, training and oversight failures by ICE supervisors and officials.⁸⁰

IMPACT OF ICE HOME MISCONDUCT ON LOCAL LAW ENFORCEMENT AND PUBLIC SAFETY

The constitutional violations during ICE home raids are, of course, most directly harmful to the people whose homes are invaded and whose rights are violated, but the costs of ICE misconduct in its home raid operations reach far beyond those individuals. ICE's home raid misconduct also undermines the traditional crime fighting mission of local law enforcement agencies.

In immigrant communities, local police are increasingly perceived as in cahoots with ICE agents carrying out home raids. This is in part because of actual cooperation between many police agencies and ICE, often in the form of detailing local officers to accompany ICE agents on home raid operations. However, even in circumstances where no local police are actually involved, ICE agents often identify themselves as "police" presumably because they suspect residents are more likely to cooperate with local police than with ICE. Because of the actual and perceived cooperation between local police agencies and ICE agents conducting home raids, ICE misconduct during those raids threatens to taint local officers' relationships with immigrant communities.

The three major law enforcement reports on the role of local police in immigration enforcement have all recognized the ways local involvement in immigration enforcement can undermine community policing strategies by making immigrant witnesses and victims of crime less likely to cooperate with local police.⁸¹ Renewed emphasis on community policing strategies by local police agencies has been credited, in part, with significant nationwide declines in crime. Community policing strategies are dependent on cooperative relationships between police and the communities they serve. To the extent ICE misconduct is undermining these relationships, it makes the job of local police officers more difficult and can thereby undermine public safety.

POLICY RECOMMENDATIONS

The policy recommendations below were developed in close consultation with the Law Enforcement Advisory Panel after the panel had the opportunity to review the findings above and share their experiences regarding ICE home raid operations. The Advisory Panel was guided by a collective belief that: ICE has a valid mission and that any recommendations should support and advance that mission, that all law enforcement officers must conform their behavior to the strictures of the Constitution, that ICE operations should always attempt to avoid interference with vital local community policing policies, and that sound law enforcement strategy and practices should inform ICE home raid operations. Moreover, the recommendations below should in no way be interpreted as an indictment of ICE agents who have followed ICE procedures and adhered to the Constitution.

It is worth noting at the outset that the Department of Homeland Security under current Secretary Janet Napolitano has already taken some positive steps toward reforming the 2006 Performance Policy that appears to have precipitated much of the abuses outlined in this report. On January 30, 2009, Secretary Napolitano issued a directive calling for an internal review and assessment of ICE's FOT program.⁸² Subsequently, DHS announced the abandonment of its 1000 arrest per year goal. DHS now requires that each interior enforcement team "identify and target — though not necessarily arrest — 50 fugitives per month, as well as 500 a year as part of operations with other teams."⁸³ The increased focus on identification and targeting — in contrast to arrest expectations — is a significant improvement that should prompt ICE teams to concentrate their efforts on appropriate intelligence gathering. These are positive steps, which together with the recommendations set forth below, should help correct the problems outlined in this report.

LIMIT USE OF HOME RAID OPERATIONS

- 1. Home raids should be used as a tactic of last resort, and then only to make criminal arrests or civil arrests for targets who pose a real risk to national security or who have violent criminal records.**

DHS Secretary Napolitano has repeatedly emphasized her intention to focus ICE's limited enforcement resources on apprehending the narrow class of immigrants who pose a real danger to the public.⁸⁴ Home raids are extremely resource intensive and, as currently employed, an inefficient use of scarce internal enforcement resources.⁸⁵ In addition, home raid operations carry with them several significant costs, including: physical danger to residents and officers, costs to local community policing efforts, significant privacy intrusions for residents, and potential legal liability for the agencies involved. In light of these factors and in light of the record of abuses during home raid operations outlined in this report, sound policing policy dictates that home raids should be a tactic of last resort reserved for truly high priority targets.

REVISE WARRANT PRACTICE

2. ICE should obtain judicial warrants in advance of any home raid.

Federal courts possess authority to issue search and/or arrest warrants for ICE home raids.⁸⁶ ICE's practice of using administrative warrants for home raids is, therefore, a policy decision presumably driven by administrative convenience, not law. Unfortunately, this convenience appears to have contributed to ICE's failure to devote adequate resources to intelligence gathering. By using administrative warrants, ICE is not required to demonstrate to a neutral magistrate its probable cause to arrest a target and its basis for believing that the target will be at a given residence. Too often, this has led ICE to identify target residences based on insufficient intelligence — leading to intrusions into innocent residents' homes and to ICE's failure to capture targets.

The procedures for obtaining a judicial warrant would be a healthy incentive for ICE to refocus its interior enforcement teams on appropriate intelligence gathering on high priority dangerous targets. In a related arena, DHS Secretary Napolitano has recently issued guidelines directing ICE agents to increase their use of judicial warrants in worksite enforcement operations as part of an attempt to impose "high investigative standards."⁸⁷ Having recognized the power of judicial oversight to heighten investigative standards, Secretary Napolitano should extend that same logic and guidance to home raid operations.

Obtaining judicial warrants would certainly impose some additional burden on ICE; however, it is a burden that virtually every other law enforcement agency in the nation is faced with and overcomes with relative ease. If ICE limits its use of home raids as suggested above, and refocuses its interior enforcement teams toward locating and arresting truly dangerous targets, it should have abundant resources to properly investigate its targets and obtain judicial warrants. Such warrants would not only incentivize appropriate pre-raid investigations but would also eliminate many of the problematic issues set forth in this report.

3. To the extent ICE continues to use home raids to execute administrative warrants, it should require field offices to obtain high-level centralized pre-approval in advance of any home raid operation.

While judicial review is preferable, proven and available, if ICE chooses to forego a judicial warrant, a procedure should be adopted requiring agents from ICE field offices to obtain pre-approval from ICE headquarters before conducting any home raid. The agents requesting approval should be required to justify their request by explaining the basis for their assessment of the dangerousness of the target, their determination that the target is likely to be at a given residence, and their conclusion that apprehending the target outside the home is impracticable.

REVISE CONSENT PROCEDURES

- 4. Whenever ICE conducts a home entry without a judicial warrant, it should ensure that it obtains valid consent by explicitly and clearly informing residents of their right to refuse consent and then obtaining written consent, of clear scope, before entry is made.**

The Constitution does not always require officers to advise residents of their right to refuse entry when officers seek consent to enter a home.⁸⁸ However, it is well established that factors such as: whether the individual understands the right to refuse to consent, whether an individual understands English, whether the individual was informed of her Miranda rights prior to the consent, whether the individual is familiar with the American legal system, and whether the police encounter occurred in a public or secluded location, are all relevant to determining whether valid consent was obtained.⁸⁹ Moreover, mere acquiescence to a show of force or legal authority is not consistent with the constitutional consent requirement nor is the mere failure of an individual to object to police intrusion.⁹⁰ Finally, permission to enter a residence does not necessarily authorize agents to search all parts of the residence — particularly in the case of multiple occupancy dwellings. Agents must clarify the scope of any consent obtained.

In light of these legal requirements and the record of non-consensual entries outlined in this report, sound policing policy dictates that ICE agents should, as a matter of policy, always explicitly and clearly inform residents of their right to refuse consent before entering a home without a judicial warrant. Many local police departments follow this practice and use standard consent forms — sometimes referred to as “speed sheets” — to deliver warnings and record written consent. ICE should adopt a similar practice. Moreover, ICE should always have an agent who speaks the language of the target on site for any home raid to ensure that informed consent is obtained.

- 5. Tactical pre-dawn or nighttime home raids should only be conducted with judicial warrants.**

As ICE regulations explain, “in order to enter a residence [without a judicial warrant], someone who has authority to do so must grant *informed consent*.”⁹¹ Tactical pre-dawn or nighttime home entries, conducted by heavily armed seven member teams, with residents who often do not speak English and are unfamiliar with American legal norms, are simply not consistent with obtaining informed consent. Acquiescence to authority is not consent.⁹² Accordingly, tactical pre-dawn or nighttime home raids should only be conducted with judicial warrants.

IMPROVE SUPERVISION AND TRAINING OF ICE HOME RAID TEAMS

- 6. Require a high level supervisor to be on site for all home raids.**

Because of the dangerousness and level of privacy intrusion involved, many police departments require a high level supervisor to be on site to supervise any home raid operation. ICE FOTs have one agent

designated as a “Team Leader” who is generally present during any home raid operation.⁹³ “Supervisors are encouraged,” but not required, “to accompany teams into the field” for home raid operations.⁹⁴ However, as compared to the practice of many local police departments, such team leaders do not seem sufficiently senior to oversee highly sensitive home raid operations. The record of abuses occurring during home raid operations supports the conclusion that more intensive and responsible supervision is required. Accordingly, a high level supervisor should be on site for any ICE home raid operation to ensure that entry does not occur absent consent or a judicial warrant and, if consent is obtained, that the supervisor immediately notify the entire team of the bounds of the consent obtained.

7. Videotape home raids.

Increasingly, police departments are videotaping sensitive situations that may involve even allegations that officers failed to observe constitutional rights.⁹⁵ Given the sensitivity of home raid operations and the record of ICE abuses in such operations, ICE should institute a policy of videotaping home raids. Such a policy would both incentivize agents to comply with constitutional norms and would protect ICE against unfounded allegations of misconduct.

8. Retrain relevant agents on home raid procedures. Require periodic refresher training on such procedures.

At minimum, the findings of this report should be a strong indication to ICE that its interior enforcement teams are in need of additional training on home raid procedures. This includes additional training for ICE supervisors. Moreover, periodic refresher trainings should be a regular and ongoing part of agents’ professional development.

MINIMIZE HARM TO LOCAL POLICE AGENCIES’ COMMUNITY POLICING EFFORTS

9. Local police agencies should, at all times, be notified of the planning and results of ICE operations within their jurisdictions.

Too often, ICE has failed to adequately collaborate with local police agencies. Police agencies need adequate advance warning of such operations to permit them time to collaborate with ICE on ways to mitigate harm to local community policing efforts. Moreover, ICE needs to share information in a timely fashion on the results of an operation, including the details of any individuals taken into custody. Such information is necessary to allow local police to respond to common community inquiries after an ICE operation.

10. ICE should not request assistance of local police for the purpose of deceiving residents as to the identity of the agency conducting a home raid operation.

As a general matter, local police should be called upon to assist ICE when such assistance is necessary to ensure community or officer safety or when ICE anticipates that it will encounter

individuals involved in local criminal activity. However, ICE's routine practice of requesting a marked local police cruiser to accompany ICE agents on home raids often produces the effect of deceiving residents about which agency is conducting a home raid—an outcome which significantly undermines local police agencies' community policing efforts. Such deception is likely to make residents less willing to open the door for local police in the future and may deter some immigrant victims and witnesses of crimes from contacting local police. To guard against the misimpression that ICE agents are local law enforcement, agents should be trained to stop identifying themselves as “police” and instead identify themselves as “immigration,” “ICE,” or “federal agents.” ICE must assure that those impacted by the raid clearly understand that those conducting the raid are federal agents, and the agencies involved are clearly identified.

MINIMIZE INTRUSION TO NON-TARGETS ENCOUNTERED

11. Ensure that performance targets for ICE interior enforcement teams set realistic goals, provide incentives for teams to focus on dangerous targets, and award teams no incentive to divert scarce resources to collateral arrests of mere civil immigration violators.

The detrimental effects of ICE's 2006 Performance Policy are plain to see. The new policies precipitated both the increase in constitutional violations outlined in this report and the decrease in efficiency of interior enforcement teams at capturing dangerous high priority targets.⁹⁶ The 2006 policy should be abandoned and replaced with a policy that sets realistic goals for interior enforcement teams and creates incentives for teams to focus efforts exclusively on high priority targets.

DHS should be credited for the steps it has already taken to revise the 2006 policies.⁹⁷ However, without full details on the new policy, it is impossible to determine if the policy requires teams to focus on high priority targets. Specifically, ICE should make clear that teams get no additional performance credit for making collateral arrests and should focus their limited resources exclusively on violent criminals and national security threats.

12. Clear guidance should be issued that the sole objective of a home raid is to apprehend the target — agents should not generally question non-targets encountered in or around the residence about matters other than the location of the target.

Too often since 2006, ICE agents have used home raid operations, purportedly seeking an individual target, as an opportunity to seize and question non-targets in and around the target residence for the purpose of random investigatory questioning. Revision of the performance targets discussed above and eliminating credit for collateral arrests should help curb this type of behavior. However, in addition to the revised performance goals, ICE should issue clear guidance that the privacy of non-target individuals encountered during home raids should be respected and that such raids

should not be used as opportunities to question collaterals on subjects other than the location of the target. The sole objective of a home raid should be to apprehend the target.

When agents are lawfully inside a home, they are permitted to briefly seize individuals to conduct a protective sweep when they reasonably believe that the premises harbor a person who poses a danger to the agents. However, the temptation is for officers to improperly use such seizures as an opportunity to conduct baseless investigatory interviews of non-target individuals. If non-targets need to be temporarily seized for a protective sweep, such temporary detention should not be used as an opportunity for investigatory questions regarding non-targets' immigration status.

13. A new regulation should be issued to require officers to note the reason why they initially seized and questioned any individual in their arrest report.

Federal regulations already require ICE agents to note whether consent to enter a residence was obtained and, if so, from whom.⁹⁸ The apparent purpose of this regulation is to remind officers of their constitutional requirement to obtain consent and to hold them accountable for their behavior. The same rationale applies with equal force to the physical seizure of individuals by ICE agents — especially in light of the record set forth above regarding a pattern of unlawful seizures of non-target individuals. Accordingly, ICE should require its agents to note the basis for their initial seizure of individuals in their arrest reports.

14. Clear guidance should be issued that neither racial nor ethnic appearance nor limited English proficiency is ever a sufficient sole basis for seizing or questioning an individual.

ICE officers must have, at minimum, reasonable suspicion that a person has violated the law in order to seize the individual, even for investigatory questioning.⁹⁹ In no situation is racial or ethnic appearance or limited English proficiency ever a sufficient basis for seizing and questioning an individual.¹⁰⁰ The empirical data above, suggestive of racial profiling by ICE agents, warrants additional clear guidance on this settled point of law. Current ICE policy undoubtedly forbids this illegal behavior but additional guidance and training on this point is necessary to protect non-target individuals during ICE home raids.

IMPROVE ACCOUNTABILITY

15. The DHS Office of the Inspector General (OIG) should undertake an investigation of the pattern of misconduct established in this report to better assess the national scope of the problem.

The data from Long Island and New Jersey are strong indicators of pervasive problems in the New York and New Jersey ICE field offices and the other evidence set forth above is suggestive of a national trend. The public's ability to fully assess the scope of this problem is, however, limited

by incomplete access to relevant ICE records and by our inability to interview ICE employees and arrestees. OIG does not suffer from these same limitations and, based upon the record of misconduct set forth in this report, should undertake a broader national investigation of ICE misconduct during home raid operations. Such a report should be followed up by periodic spot checks of arrest records and interviews with agents and arrestees at various field offices to monitor the problem over time.¹⁰¹

16. Establish a revised clear public complaint procedure, managed by OIG, for allegations involving violations of constitutional rights by ICE agents.

Currently ICE's Office of Professional Responsibility (OPR) generally handles any investigation of ICE constitutional violations occurring during home raid or other operations. Unfortunately, OPR has been unresponsive to many such complaints and appears to lack the independence necessary to properly scrutinize ICE conduct. In contrast, OIG is more removed from ICE field offices and has, in the past, demonstrated its ability to provide effective oversight to ICE operations.¹⁰² Accordingly, DHS should establish an oversight unit in OIG to handle community complaints of ICE misconduct. OIG should make its complaint procedure widely known and easily available to local law enforcement and political leaders, immigrant advocates, and the general public. OIG should ensure that complaints are thoroughly investigated and that complainants receive timely responses. OIG should, of course, receive such additional funding and staffing as is necessary to accomplish these tasks.

17. Enact regulations disallowing the use of evidence that has been obtained through violation of the constitution in removal proceedings.

In 1984, the Supreme Court held that constitutional violations do not require suppression of evidence in immigration removal proceedings; at least in the absence of egregious or widespread constitutional violations.¹⁰³ However, nothing prohibits DHS or the Department of Justice (which oversees the immigration courts) from excluding constitutionally tainted evidence as a matter of policy. Moreover, the rationale of the Supreme Court's 1984 decision is in some tension with the findings of this report. Most importantly, the Court placed significant reliance upon ICE's ability to develop its "own comprehensive scheme for deterring Fourth Amendment violations by its officers."¹⁰⁴ This report strongly suggests that ICE's "comprehensive scheme" has broken down. Local police officials recognize the power of the exclusionary rule to help conform officers' behavior to the strictures of the Constitution. In light of the record of misconduct set forth in this report, imposing this common rule of law enforcement in the immigration realm would be an important step toward ensuring that ICE home raid operations, and all ICE operations, are conducted in accordance with the Constitution.

1. The other two DHS agencies principally involved in immigration matters are the U.S. Customs and Border Protection agency (CBP), charged with securing the nation's borders, and the U.S. Citizenship and Immigration Services agency (USCIS), charged with administering immigration benefits such as citizenship and permanent residence. These three agencies were created to replace the former U.S. Immigration and Naturalization Service (INS) and the U.S. Customs Service. For a recent assessment of these three agencies, see generally Doris Meissner and Donald Kerwin, Migration Policy Institute, *DHS and Immigration: Taking Stock and Correcting Course* (2009), available at http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf.
2. Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. The INA is the federal statute that governs naturalization and deportation law.
3. The most common civil immigration status violations are overstaying the time permitted by one's visa and having entered the country without inspection.
4. See DHS Fact Sheet, Worksite Enforcement Strategy (Apr. 30, 2009), available at http://www.ice.gov/doclib/pi/news/factsheets/worksite_strategy.pdf; see, e.g., Julia Preston, *U.S. Shifts Strategy on Illicit Work by Immigrants*, N.Y. TIMES, July 3, 2009.
5. U.S. CONST. amend. IV; see also *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1047 (1984) (majority assuming that all persons in the United States, including undocumented immigrants, have Fourth Amendment rights); *Au Yi Lau v. U.S. INS*, 445 F.2d 217, 223 (D.C. Cir. 1971) ("[A]liens in this country are sheltered by the Fourth Amendment in common with citizens.").
6. ICE has five operational components, four of which are domestic law enforcement divisions: 1) Office of Investigations, 2) Detention and Removal Operations, 3) Federal Protective Service, 4) Office of Intelligence. See About U.S. Immigration and Customs Enforcement (ICE), <http://www.ice.gov/about/index.htm>. See generally Department of Homeland Security Office of Inspector General, An Assessment of Immigration and Customs Enforcement's Fugitive Operations Teams, OIG-07-34 (Mar. 5, 2007), available at http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_07-34_Mar07.pdf [hereinafter OIG FOT Report].
7. See generally U.S. Immigration and Customs Enforcement Website, <http://www.ice.gov/index.htm>; OIG FOT Report *supra* note 6.
8. Declaration of Darren Williams, Supervisory Detention and Deportation Officer with the NYC FOT in the New York Field Office of ICE's DRO (Dec. 2007), submitted in *Aguilar v. ICE*, No. 07 Civ. 1782 (S.D.N.Y. 2007) [hereinafter Williams Declaration].
9. See discussion *infra* at note 41 & 71 and accompanying text.
10. OIG FOT Report *supra* note 6, p. 4.
11. ICE Fugitive Operations Program Fact Sheet, http://www.ice.gov/pi/news/factsheets/NFOP_FS.htm.
12. See discussion *infra* at note 71-74 and accompanying text.
13. Margot Mendelson, Shayna Strom & Michael Wishnie, Migration Policy Institute, Collateral Damage: An Examination of ICE's Fugitive Operations Program 8 (Feb. 2009), available at http://www.migrationpolicy.org/pubs/NFOP_Feb09.pdf [hereinafter MPI Collateral Damage Report].
14. *Payton v. New York*, 445 U.S. 573, 585 (1980) (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)).
15. *United States v. Matlock*, 415 U.S. 164, 171 (1974).
16. *Michigan v. Tyler*, 436 U.S. 499, 509 (1978) (citing *Warden v. Hayden*, 387 U.S. 294, 298-99 (1967)).
17. *Katz v. United States*, 389 U.S. 347, 357 (1967).
18. See generally *See v. City of Seattle*, 387 U.S. 541 (1963); *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1963).
19. *Payton*, 445 U.S. at 587.
20. DHS incorporates this constitutional requirement in its regulations. See 8 C.F.R. § 287.8(f)(2); see also note 17.
21. *Brown v. Texas*, 443 U.S. 47, 50 (U.S. 1979).
22. *Payton*, 445 U.S. at 587.
23. *Terry v. Ohio*, 392 U.S. 1 (1968).
24. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975) ("The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens."); *United States v. Manzo-Jurado*, 457 F.3d 928, 937 (9th Cir. 2006) ("By itself, however, an individual's inability to understand English will not justify an investigatory stop because the same characteristic applies to a sizable portion of individuals lawfully present in this country."); *Gonzales-Rivera v. INS*, 22 F.3d 1441, 1443 (9th Cir. 1994) ("We conclude that the stop, which resulted solely from Gonzalez' Hispanic appearance, constituted a bad faith and egregious violation of the Fourth Amendment.")
25. Letter from Michael Chertoff, Former Sec'y of Homeland Security, to U.S. Sen. Christopher Dodd (June 14, 2007), available at <http://www.nytimes.com/packages/html/nyregion/20070723Chertoff.pdf> [hereinafter Chertoff Letter, June 2007]; Nina Bernstein, *Hunts for 'Fugitive Aliens' Lead to Collateral Arrests*, N.Y. TIMES, July 23, 2007, at B5; see also 8 C.F.R. § 287.5(e)(1) (2008).
26. 8 C.F.R. § 287.5(e)(2) (2008); see also INA § 287(a)(3), 8 U.S.C. § 1357(a)(3); discussion *supra* at note 18 and accompanying text.
27. "Revisions of Chapter 10 Title and Realignment of the Section Titles of the Detention and Deportation Officer's Field Manual," August 21, 2008 (emphasis added); see also Chertoff Letter, June 2007 *supra* note 25.
28. The conduct of ICE agents in OI operations is governed by policies and procedures set out in Chapter 42 of the Special Agent's Handbook entitled Search and Seizure [hereinafter Special Agent's Handbook] and the Law of Arrest, Search and Seizure Manual, commonly referred to as the M-69. Similarly, the conduct of ICE agents in DRO Fugitive Operations Program are governed by policies and procedures set out in Chapter 19 of the Detention and Removal Operations Policy and Procedure Manual [hereinafter DROPPM]. See also 8 C.F.R. § 287.8(b)(2). Information about DROPPM and the Special Agent's Handbook was obtained from the Declaration of Jeffrey Knopf, Group Supervisor in the NY Special Agent-in-Charge (SAC) Office of ICE's Office of Investigations (Dec. 2007) [hereinafter Knopf Declaration], submitted in *Aguilar v. ICE*, No. 07 Civ. 8224 (S.D.N.Y. 2007) and the Williams Declaration *supra* note 8.
29. DROPPM *supra* note 28, as quoted in paragraph 21 of Williams Declaration *supra* note 8 (emphasis in original); "Voluntary and effective consent to search obviates the

need for a warrant or probable cause. To justify a search without a warrant on this ground, there must be a volitional [sic], duress-free permission to enter and make the kind of search agreed to.” Special Agent’s Handbook *supra* note 28; “Warrants of Deportation or 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.” DROPPM *supra* note 28.

30. Knopf Declaration *supra* note 28, para. 9.

31. *Id.*, para. 10.

32. 8 C.F.R. § 287.8(b)(2).

33. INA §287(a)(2), 8 U.S.C. § 1357(a)(2). Section 287(a)(2) of the Immigration and Nationality Act states that “any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant ... to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest....”

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. 8 C.F.R. § 287.8(f)(2) (emphasis added).

39. *See Families for Freedom v. ICE*, 08-cv-5566 (Sept. 24, 2008 S.D.N.Y.) (Amended Stipulation and Order). The standard ICE arrest report is an I-1213, Record of Deportable Alien. However, in the Families for Freedom litigation ICE identified two other documents which could contain information regarding the legal basis of entry, including Fugitive Operation Worksheets (FOW) and Significant Incident Reports (SIR), though these documents are not generated in every arrest. Pursuant to a court ordered stipulation, ICE agreed to hand over the 100 randomly selected I-213s and any related FOWs and SIRs.

40. Stipulation of Partial Settlement and Revised Scheduling Order, *Seton Hall School of Law Center for Justice and Evicao El Brasileira v. DHS et al.*, No. 08 Civ. 00521 (D.N.J. Oct. 29, 2008). ICE actually handed over 885 arrest records pursuant to this stipulation but only 600 or 68% involved home raid operations. The analysis of the New Jersey data set was performed by the Seton Hall School of Law Center for Justice.

41. Indeed, the 2006 performance policy changes permitting collateral arrests to count toward performance expectations encouraged this pretextual behavior by allowing collaterals to count “but only where these arrests are made as part of a DRO Headquarters-approved operation.” DRO Memorandum, *Fugitive Case Management System Reporting and the 1,000 Arrests Annual Goal for Fugitive Operations Teams* (Sept. 29, 2006), available at <http://cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/memos%20and%20data.pdf>.

42. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984).

43. *Id.* at 1050; *Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012 (9th Cir. 2008); *Almeida-Amaral v. Gonzalez*, 461 F.3d 231, 235 (2d Cir. 2006).

44. *See* discussion *infra* at note 75-76 and accompanying text.

45. *See* Westlaw Database, “Federal Immigration - Board of Immigration Appeals’ Administrative Decisions,”

available at https://web2.westlaw.com/scope/default.wl?rs=WLWg.05&frm=NotSet&fn=_top&sv=Split&tc=1101&tf=770&db=FIM-BIA&vr=2.0&rp=%2fscope%2fdefault.wl&mt=Immigration.

46. *See, e.g.*, Spencer Hsu, *DHS Signals Policy Changes Ahead for Immigration Raids*, WASH. POST, Mar. 29, 2009 (quoting House Speaker Nancy Pelosi’s statement that immigration raids “break up families in that way, just kick down the door in the middle of the night, taking [a] father, a parent away, that’s just not the American way. It must stop.”); Letter from Sen. Kirstin Gillibrand (D-NY) to Janet Napolitano, DHS Sec’y (Feb. 5, 2009), available at <http://gillibrand.senate.gov/imo/media/doc/Napolitano-Raids1.pdf> (“I have been appalled by some of the practices I have heard about and I would like to work with your Department to end the practice of allowing immigration officers to forcefully enter people’s homes with nothing more than an administrative warrant, and incarcerate anyone that can not immediately produce their immigration papers.”); Will Oremus, *P.A. Sends Message On Federal Raids, Immigrants*, SAN JOSE MERCURY NEWS, Oct. 23, 2008 (reporting on Palo Alto resolution decrying “improper and unlawful law enforcement tactics by the U.S. Immigration and Customs Enforcement agents” and asking federal agents to “respect its residents’ constitutional rights”); *Broken Borders Need More Than Lip Service*, USA TODAY, June 27, 2008 (reporting on Senator Robert Menendez’s (D-NJ) speech condemning the way U.S. citizens and lawful permanent residents have been “denied their constitutional rights” during ICE home raids); Fernando Quintero, *Greeley Mayor’s Call For End To Raids Ignites Firestorm*, DENVER ROCKY MOUNTAIN NEWS, May 17, 2007 (reporting on Mayor’s call for end of immigration raids in his community); Jesse McKinley, *San Francisco Bay Area Reacts Angriely to Series of Immigration Raids*, N.Y. TIMES, Apr. 28, 2007 (Mayor Al Boro of San Rafael explained that following recent ICE home raids “[c]alls to the local police have decreased in recent weeks”; he attributed the drop-off to the immigration raids’ “chilling effect because people think our police were involved.”); Press Release, Senator John Kerry (D-Mass.) (Mar. 17, 2007) (“The recent raids conducted by the Immigration and Customs Enforcement (ICE) across the country have exposed for all to see the horrific enforcement tactics and reprehensible treatment of families.”); Letter from Sen. Joe Lieberman (Ind-CT), Sen. Chris Dodd (D-CT), and Rep. Rosa DeLauro (D-CT) to Michael Chertoff, former DHS Sec’y (June 11, 2007), available at <http://dodd.senate.gov/index.php?q=node/3936> [hereinafter Lieberman, Dodd, DeLauro Letter] (seeking clarification about the way in which a New Haven immigration raid was conducted, its timing, and if violations of protocol may have occurred); Letter from Thomas R. Suozzi, Nassau County Executive to Michael Chertoff, former DHS Secretary (Oct. 2, 2007) available at <http://www.nassaucountyny.gov/agencies/countyexecutive/newsrelease/2007/10-2-2007.html> [hereinafter Suozzi Letter] (calling for a federal investigation into the tactics and practices used in ICE raids in Nassau County communities); Letter from Lawrence W. Mulvey, Nassau County Police Commissioner, to Joseph A. Palmese, Resident Agent-in-Charge, ICE Office of Investigation, Bohemia N.Y. (Sept. 27, 2007) (on file with author) [hereinafter Mulvey Letter]; Senators Menendez (D-N.J.) and Kennedy (D-Mass) have introduced legislation that, among other things, would enforce the protection of fundamental constitutional rights of persons wrongfully swept up in immigration raids. A Bill To Protect United States Citizens From Unlawful Arrest And Detention, S. 3594, 110th Cong. (2008).

47. See generally Anita Khashu, Police Foundation, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* (Apr. 2009), available at <http://www.policefoundation.org/>; see generally Nicole J. Henderson, Christopher W. Ortiz, Naomi F. Sugie, Joel Miller, Vera Institute of Justice, Law Enforcement and Arab American community relations after September 11, 2001: technical report (June 2006), available at <http://www.vera.org/content.law-enforcement-and-arab-american-community-relations-after-september-11-2001-technical-repo>; see, e.g., Damien Cave, *Big-City Police Chiefs Urge Overhaul of Immigration Policy*, N.Y. TIMES, July 2, 2009 (Miami Police Department Chief Timoney explained, "The problem for us is they don't discern between federal authorities and local authorities. As far as they're concerned it's all law enforcement.").
48. *Id.*; see, e.g., Damien Cave, *Big-City Police Chiefs Urge Overhaul of Immigration Policy*, N.Y. TIMES, July 2, 2009 ("[Miami Police Department] Chief Timoney, Chief Art Acevedo of the Austin Police Department in Texas and former Chief Art Venegas of the Sacramento Police Department said local law enforcement had been undermined by the blurred line between crimes and violations of immigration law, which are civil. Those who call illegal immigrants "criminals"... are misreading the law and hurting their own communities by scaring neighbors who could identify criminals."); Kareem Fahim, *Should Immigration Be a Police Issue?*, N.Y. TIMES, Apr. 29, 2007, at CN14 (Former New Haven Police Chief Francisco Ortiz explained, "'I have two undocumented individuals who are murder victims.... You need people to tell you about the lives of the victims.' If his officers were also charged with enforcing immigration policy -- no matter how small the role -- witnesses would say, 'You're on your own.'"); Nina Bernstein, *Raids Were a Shambles, Nassau Complains to U.S.*, N.Y. TIMES, Oct. 3, 2007 (Nassau County Police Commissioner Lawrence Mulvey explains that the reason Nassau has the lowest crime rate in the nation for a county of its size is in part because the police have good cooperation from the community. The conduct of the raids could undermine that relationship, he added. "I was misled," Mr. Mulvey said. "In good conscience, I can't continue to cooperate unless these problems are ironed out."); Craig E. Ferrell Jr., Deputy Director and Administration General Counsel, Chief's Command Legal Services, Houston Police Department, *International Association of Chiefs of Police, Immigration Enforcement: Is It a Local Issue?*, (Feb. 2004) (Deputy Director Ferrell writes, "Immigration enforcement by state and local police could have a chilling effect in immigrant communities and could limit cooperation with police by members of those communities. Local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families. Because many families with undocumented family members also include legal immigrant members, this would drive a potential wedge between police and huge portions of the legal immigrant community as well."). See also National Immigration Law Center Fact Sheet, *Immigration Enforcement, Know Your Rights at Home and at Work* (revised May 2008), available at www.nilc.org.
49. Leiberman, Dodd, DeLauro Letter *supra* note 46.
50. *New Haven Urges End To Federal Immigration Raids*, ASSOCIATED PRESS, June 12, 2007.
51. Leiberman, Dodd, DeLauro Letter *supra* note 46.
52. Chertoff Letter, June 2007 *supra* note 25.
53. Jennifer Medina, *Arrests of 31 In U.S. Sweep Bring Fear In New Haven*, N.Y. TIMES, June 8, 2007, p. B1.
54. *New Haven Urges End To Federal Immigration Raids*, ASSOCIATED PRESS, June 12, 2007; Mark Spencer, *U.S. Defends Raids In New Haven: Chertoff Letter Says Sweep Was Not In Retaliation*, HARTFORD COURANT, June 18, 2007.
55. Joelle Fishman & Dorothy Johnson, *New Haven Unites To Stop Immigrant Raids*, PEOPLE'S WEEKLY WORLD, June 20, 2007.
56. See generally Suozzi Letter *supra* note 46; Mulvey Letter *supra* note 46.
57. Affidavit of Lawrence Mulvey, Nassau County Police Commissioner, ¶¶ 5-7 (signed on Sept. 9, 2008) (on file with authors) [hereinafter Mulvey Aff.].
58. Suozzi Letter *supra* note 46; Suevon Lee, *Gang Members Illegally in U.S. Are Arrested in Federal Sweep*, N.Y. TIMES (Oct. 10, 2007).
59. Nina Bernstein, *Raids Were a Shambles, Nassau Complains to U.S.*, N.Y. TIMES, p. B1 (Oct. 3, 2007).
60. Editorial, *Stop the Raids*, N.Y. TIMES, p. A28 (Oct. 4, 2007); Nina Bernstein, *Raids Were a Shambles, Nassau Complains to U.S.*, N.Y. TIMES, Oct. 3, 2007, p. B1. Commissioner Mulvey, reported a slightly different number of targets and target arrests: 131 targets sought, 9 targets arrested. Mulvey Aff. *supra* note 57, ¶¶ 5-6, 9. The difference is insignificant, however, since both reports have ICE arresting only 6-7% of the targets they sought.
61. Suozzi Letter *supra* note 46.
62. Mulvey Letter *supra* note 46; Mulvey Aff. *supra* note 57, ¶ 8.
63. Peter J. Smith, the Special Agent in Charge (SAC) denied Suozzi's allegations, but conceded, "We didn't have warrants...We don't need warrants to make the arrests. These are illegal immigrants." Nina Bernstein, *Raids Were a Shambles, Nassau Complains to U.S.*, N.Y. TIMES, Oct. 3, 2007, p. B1.
64. Mulvey Aff. *supra* note 57, ¶ 10.
65. *Id.* (emphasis added).
66. See discussion *supra* at notes 46 & 48.
67. ICE agents may have the authority to perform a protective sweep of a residence when there is a reasonable basis to believe an individual posing a danger to the officers is hiding in the premises. See *Maryland v. Buie*, 494 U.S. 325, 327 (1990). Such searches, however, are only justified if an officer has legally entered a premises and must be limited to looking in places where dangerous people may be hiding. *Id.*
68. Nina Bernstein, *Raids Were a Shambles, Nassau Complains to U.S.*, N.Y. TIMES, Oct. 3, 2007.
69. Email on file with author.
70. Organizations from all over the country have gotten involved in the discussion of these Fourth Amendment violations. Resources have been created and distributed regarding ways to prepare for home raids, how to respond to home raids, what to do in the event of home raids and community education and training regarding safety plans and legal rights. See, e.g., Jen Smyers, Church World Service, *Community Responses to*

Immigration Raids: A Collection of Resources, www.nclr.org/files/54953_file_Comprehensive_Raids_Resources.pdf; Bay Area Immigrant Rights Coalition, Toolkit for Community Response to ICE Raids, Section 3: Additional Resources, Attachments and Handouts, http://www.immigrantrights.org/toolkit/Toolkit_Section3_pg20-24%20-%20Documentation%20Forms%20Eng%20and%20Spn.pdf. These resources document the expansion of the issue of home raids and Fourth Amendment violations from a simple community issue to an issue that reaches inside the homes of people throughout the country. Evidence of a growing concern of Fourth Amendment violations during home raids is also showing up in local, state and national organizing campaigns. Organizations have created Action Toolkits to allow people all over the country to take part in actions to end home raids. One organization created a Night of 1,000 Conversations which allows people from all over the country to gather in homes, offices, coffee shops, and places of worship to talk about how to work together to ensure that the Department of Homeland Security no longer undermines the civil liberties and human rights of people living in America. *See, e.g.*, Night of 1,000 Conversations Website, www.nightof1000conversations.org (encouraging website visitors to host conversations about ICE raids). They have also organized rallies, protests and petitions aimed at ending immigration home raids. Support groups for victims of Fourth Amendment violations during home raids have been created throughout the country. *See, e.g.*, Bob McCobbin, *Immigrants, supporters say: End ICE raids* International Action Center Website, May 28, 2008, http://www.iacenter.org/immigrants/ice_iowa0530008 (noting public protest of ICE raids in Iowa, Northern California, and San Diego). Blogs, Facebook and Twitter have also been an important organizing tool that have brought the issue of home raids into the homes of young and old alike. *See, e.g.*, Stop ICE Raids on Twitter, http://twitter.com/Stop_ICE_Raids; Demand an End to the ICE Raids and Support Comprehensive Immigration Reform Facebook Group, <http://www.facebook.com/home.php?#/group.php?gid=41007976096>.

71. *See* Nina Bernstein, *Target of Immigrant Raids Shifted*, N.Y. TIMES, Feb. 4, 2009, at A1; Spencer S. Hsu, *Immigration Priorities Questioned, Report Says Focus on Deporting Criminals Apparently Shifted*, WASH. POST, Feb. 5, 2009, at A2; *see also* MPI Collateral Damage Report *supra* note 13; Memorandum from John P. Torres, Acting Director, ICE Office of Detention and Removal Operations to All Field Office Directors, Fugitive Operations Case Priority and Annual Goals (Jan. 31, 2006), *available at* <http://cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/memos%20and%20data.pdf>; Memorandum from John P. Torres, Acting Director, ICE Office of Detention and Removal Operations to Assistant Directors, Deputy Assistant Directors and Field Officers, ICE Office of Detention and Removal Operations, Fugitive Case Management System Reporting and the 1,000 Arrests Goal for Fugitive Operations Teams (Sept. 29, 2006) [hereinafter DRO Sept. 29, 2006 Memo], *available at* <http://cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/memos%20and%20data.pdf>.
72. The DRO Sept. 29, 2006 Memo *supra* note 71 provides that “[I]n calculating Field Offices’ success in reaching the goal of 1,000 arrests . . . non-fugitive arrests may now be included in that total. However, each Field Office must nonetheless average at least 500 fugitive arrests per Fugitive Operation Team.”
73. DHS Office of Inspector General, Department of Homeland Security, An Assessment of United States Immigration and Customs Enforcement’s Fugitive Operations Teams, p. 15 (March 4, 2007) (discussing how targets are identified using internal government databases that are rife with well-documented inaccuracies); Suozzi Letter *supra* note 46. *See generally* MPI Collateral Damage Report *supra* note 13; Marisa Antos-Fallon, *The Fourth Amendment and Immigration Enforcement in the Home: Can ICE Target the Utmost Sphere of Privacy*, 35 FORDHAM URB. L.J. 999 (2008).
74. *See* MPI Collateral Damage Report *supra* note 13; Cardozo Immigration Justice Clinic Press Release, *Previously Secret Memos And Data Show Bush-Era Immigration Raids Were Law Enforcement Failure*, *available at* <http://www.cardozo.yu.edu/immigrationnews> (explaining how since the 2006 expectations were implemented, the number of “criminal aliens” arrested per FOT has dropped 62% and FOTs have become 23% less efficient at capturing “fugitives” and that between 2005 and 2008 ICE arrested only one “fugitive that posed a threat to national security”).
75. *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984).
76. In fact, ICE’s standard litigation position is that immigration courts lack the power to suppress evidence even in the face of egregious constitutional violations. *See, e.g.*, *In re I.*, A#XXX XX XXX, DHS Brief in Opp. To Mot. To Suppress (N.Y. Immigr. Ct.) (on file with author).
77. Press Release, U.S. Census Bureau, Census Bureau Data Show Characteristics of the U.S. Foreign Born Population (Feb. 19, 2009), *available at* http://www.census.gov/Press-Release/www/releases/archives/american_community_survey_acs/013308.html (stating that 68% of the foreign-born population has high school degrees, compared to 88% of native born. Also noting that 52% of the foreign born population say they speak English “less than very well” compared to 2% of the native born).
78. While there are no statistics available on the economic status of respondents in removal proceedings, census statistics on the foreign born population generally demonstrate that foreign born individuals are more likely to live in poverty and have lower median household incomes than the native born population. *See id.*
79. *See* discussion *supra* at notes 25-37 and accompanying text.
80. In addition, there is some indication that ICE’s Office of Professional Responsibility (OPR) has failed to adequately investigate allegations of misconduct. For example, OPR concluded that every report of misconduct it reviewed arising out of the highly publicized 2007 Long Island Community Shield Operation was “unsubstantiated.” E-mail from ICE Counsel in *Families for Freedom v. U.S. Bureau of Immigration and Customs Enforcement*, No. 08 Civ. 5566 (S.D.N.Y. filed June 20, 2008) to author (Apr. 9, 2009) (on file with author). While it is possible that all allegations were in fact unsubstantiated, the uniformity of OPR’s self-serving outcome is somewhat suspect in light of the eyewitness accounts of Nassau County Police Officers. *See generally* Mulvey Aff. *supra* note 57.
81. The Police Foundation, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, pp. 23-25 (April 2009); International Association of Chiefs of Police, *Police Chiefs Guide to Immigration Issues*, pp. 24, 35 (July 2007); Major Cities Chiefs (MCC),

Immigration Committee Recommendations For Enforcement Of Immigration Laws By Local Police Agencies, pp. 5-6 (June 2006).

82. DHS Press Release, *Secretary Napolitano Issues Immigration and Border Security Action Directive* (Jan. 30, 2009), available at http://www.dhs.gov/ynews/releases/pr_123333528835.shtm.
83. N.C. Aizenman, *Conflicting Accounts of an ICE Raid in Md.*, WASH. POST, p. A1 (Feb. 18, 2009).
84. *See, e.g.*, Josh Meyer and Anna Gorman, *Napolitano Shifts Focus to Employers of Illegal Workers*, LOS ANGELES TIMES (Mar. 31, 2009) (a DHS spokesperson explained that Napolitano is “focused on using our limited resources to the greatest effect, targeting criminal aliens ...”); Spencer S. Hsu, *Immigration Priorities Questioned. Report Says Focus on Deporting Criminals Apparently Shifted*, WASHINGTON POST, p.A2 (Feb. 5, 2009) (Napolitano rejecting the assertion that focusing on “criminal fugitives” is equivalent to “amnesty” for civil immigration violators and explaining “No, it’s a matter of where you put your emphasis.”).
85. For example, according to Commission Mulvey, ICE’s Nassau County Community Shield Operation in September 2007, involved ICE flying in and housing approximately 80 agents from other jurisdiction who worked together with approximately 150 agents from the local New York field office. Over the course of three days these agents apprehended only thirteen targets in Nassau County, and fifteen targets in Suffolk County, NY, according to ICE. *See also* MPI Collateral Damage Report *supra* note 13 at p. 1 (“In 2007, Congress appropriated \$183 million for NFOP. With those funds, ICE reported that in 2007 its fugitive operations teams arrested only 672 fugitive aliens who either had a violent criminal history or were considered dangerous to the community.”).
86. *See* 8 C.F.R. § 287.8(f)(2); *see generally* Fed. R. Crim. Pro. 41; 28 U.S.C. § 1651; *see Kotler Industries, Inc. v. I.N.S.*, 586 F. Supp. 72, 74 (D.C. Ill., 1984) (“Kotler argues first that the magistrate had no authority to issue civil warrants permitting the INS to search for illegal aliens. This contention is meritless. As the District of Columbia Circuit Court of Appeals has explained, the power of the INS to obtain search warrants for commercial premises may be inferred from its general statutory power to seek out and question suspected illegal aliens”); *see also INS v. Delgado*, 466 U.S. 210, 217 n.5 (1984); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1219-22 (D.C.Cir.1981), *cert. denied*, 455 U.S. 940 (1982).
87. DHS Worksite Enforcement Strategy Fact Sheet (Apr. 30, 2009), available at http://www.ice.gov/doclib/pi/news/factsheets/worksite_strategy.pdf.
88. *See generally Schneekloth v. Bustamonte*, 412 U.S. 218, 234 (1973); *see also United States v. Drayton*, 536 U.S. 194, 206 (2002).
89. *See, e.g., United States v. Alcantar*, 271 F.3d 731, 737 (8th Cir. 2001); *United States v. Ivy*, 165 F.3d 397, 402 (6th Cir. 1998); *United States v. Jerez*, 108 F.3d 684, 720 (7th Cir. 1997); *United States v. Chaidez*, 906 F.2d 377, 381 (8th Cir. 1990).
90. *See Bumper v. North Carolina*, 391 U.S. 543, 548-49 (1968) (government’s burden to show consent “cannot be discharged by showing no more than acquiescence to a claim of lawful authority”); *United States v. Jaras*, 86 F.3d 383, 390 (5th Cir.1996) (“[I]t is well established that a defendant’s mere acquiescence to a show of lawful authority is insufficient to

establish voluntary consent.”); *MacKenzie v. Robbins*, 248 F. Supp. 496, 501 (D.Me.1965) (stating that “all of the cases” found by the court “have held that mere acquiescence in the entry to private living quarters by police officers acting under color of their office is insufficient to constitute the type of consent” required to validate a search). As a federal appellate court recently explained:

The purpose of a “knock and talk” is not to create a show of force, nor to make demands on occupants, nor to raid a residence. Instead, the purpose of a “knock and talk” approach is to make investigatory inquiry or, if officers reasonably suspect criminal activity, to gain the occupants’ consent to search.... To have conducted a valid, reasonable “knock and talk,” the officers could have knocked on the front door to the front house and awaited a response; they might have then knocked on the back door or the door to the back house. When no one answered, the officers should have ended the “knock and talk” and changed their strategy by retreating cautiously, seeking a search warrant, or conducting further surveillance. Here, however, the officers made a show of force, demanded entrance, and raided the residence, all in the name of a “knock and talk.” The officers’ “knock and talk” strategy was unreasonable... *United States v. Gomez-Moreno*, 479 F.3d 350, 355-56 (5th Cir., 2007).

91. *Id.* (emphasis in original). *See generally* discussion *supra* at notes 25-37 and accompanying text.
92. *See* discussion *supra* at note 90 and accompanying text.
93. ICE Memorandum from Anthony S. Tangeman, Director DRO , *Addition to Chapter 19, Section 5 (Field Operations/Tactics) of Detention and Deportation Field Officer’s Manual*, p. 4 (undated or date redacted) (on file with author).
94. *Id.* at p. 6.
95. *See generally* Jim O’Hara, *Fitzpatrick Wants Confessions On Tape: District Attorney Expects Police To Balk At Having Suspects’ Statements On Video*, POST STANDARD, Mar. 16, 2009; Laura Cadiz, *Questions On Video Assisting Justice Police Policy In Md. Varies; Legislation On Tap In Assembly*, BALTIMORE SUN, Feb. 20, 2006; P.L. Wyckoff, *Where Trooper Video Cams Roam, Questions Arise: Many Policy Decisions Loom For State Police*, THE NEWARK STAR-LEDGER, July 1, 1998.
96. *See generally* MPI Collateral Damage Report *supra* note 13.
97. *See* discussion *supra* at note 83 and accompanying text.
98. 8 C.F.R. § 287.8(f)(2).
99. *United States v. Brignoni-Ponce*, 422 U.S. 873, 881-83 (1975).
100. *See* discussion *supra* at note 24.
101. These spot checks should include, among other things: review of whether consent is being noted on arrest reports; examinations of whether the reason for initial seizures are being noted on arrest reports; examination of the ethnic composition of non-targets arrested; examination of the ratio of targets to non-targets arrested; and a comparison of the number of home raid operations conducted where a target was arrested versus those home raids where no targets were apprehended.
102. *See, e.g.*, OIG FOT Report *supra* note 6.
103. *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984).
104. *Id.* at 1044-45.

IMMIGRATION JUSTICE CLINIC

Cardozo School of Law
55 Fifth Avenue
New York, New York 10003
Tel: 212-790-0340