

May 29, 2011

---

## A Crackdown on Employing Illegal Workers

By [JULIA PRESTON](#)

TUCSON — Obama administration officials are sharpening their crackdown on the hiring of illegal immigrants by focusing increasingly tough criminal charges on employers while moving away from criminal arrests of the workers themselves.

After months of criticism from Republicans who said [President Obama](#) was relaxing [immigration](#) enforcement in workplaces, the scope of the administration's strategy has become clear as long-running investigations of employers have culminated in indictments, convictions, exponentially increased fines and jail sentences. While conducting fewer headline-making factory raids, the immigration authorities have greatly expanded the number of businesses facing scrutiny and the cases where employers face severe sanctions.

In a break with Bush-era policies, the number of criminal cases against unauthorized immigrant workers has dropped sharply over the last two years.

Among the employers who have felt the impact of the administration's tactics are two owners of Mexican restaurants in the Chuy's Mesquite Broiler chain, which are popular for their laid-back Margaritaville mood and their broiled mahi tacos. On April 20, immigration agents descended on 14 Chuy's restaurants in coordinated raids in Arizona and California, detaining kitchen workers and carrying away boxes of payroll books and other evidence.

But at the arraignment days later in federal court here, no immigrant workers stood before the judge. The only criminal defendants were the owners, Mark Evenson and his son Christopher, and an accountant who worked with them, Diane Ingrid Strehlow. If the Evensons are convicted on all charges against them of tax fraud and harboring illegal workers, they each could face more than 80 years in jail.

Of 42 illegal immigrants caught in the Chuy's sweep, only one was charged with a crime, and it was not related to the raid. Thirteen workers were processed for immigration violations — which are civil offenses — and detained or deported. The others remained in this country as witnesses or to seek legal status through the immigration courts.

Under President George W. Bush, immigration agents frequently conducted high-profile factory raids, leading away scores of unauthorized workers in handcuffs, often to face jail time for document fraud or identity theft before being deported. After a raid in Postville, Iowa, in 2008, nearly 300 immigrant workers went to federal prison.

The Chuy's prosecution contrasted with the application by state and county authorities of a law that Arizona adopted in 2007 to punish employers who hire illegal immigrants; the measure was upheld by the Supreme Court on Thursday. Despite the political furor over that law, only a handful of cases have been brought against employers under its terms, which provide mainly for civil penalties. But state authorities have continued to bring criminal cases against illegal immigrant workers, leading to their deportations.

The Obama administration's record on workplace enforcement has been fiercely debated in Washington since President Obama announced that he would try, against steep odds, to pass an immigration overhaul this year. Administration officials say that their audits and investigations of employers have laid the groundwork for a system that would dissuade companies from hiring illegal immigrants.

"We have steadily increased our efforts to investigate and prosecute employers who violate the law on a serious and grand scale," said John Morton, the director of Immigration and Customs Enforcement, also known as ICE. The next step, administration officials said, is to open a pathway that would allow millions of illegal immigrants in the country to live and work here legally.

Republicans, pointing to the decline in arrests of unauthorized workers, say the administration is failing to remove those immigrants from the work force just when Americans are grappling with high rates of unemployment.

"While President Bush's so-called get-tough strategy clearly did not do enough to remove illegal workers, President Obama's strategy is much worse," said Representative Elton Gallegly, Republican of California, who is chairman of the House Judiciary Committee's immigration subcommittee.

Secretary Janet Napolitano of the Homeland Security Department halted the flashier raids in 2009. Until this year, ICE's leading tactic was "silent raids," audits of companies' hiring documents. If immigration inspectors found irregularities suggesting that immigrant workers' identity documents might be false, managers had to dismiss the workers or risk prosecution.

Last year, according to government figures, the enforcement agency started 2,746 workplace investigations in addition to the audits, more than double the number in 2008, the last full year of the Bush administration. Fines totaling about \$43 million, also a record, were levied on companies in immigration cases.

Department of Homeland Security officials, speaking anonymously in order to discuss internal policy, said immigration officers were no longer authorized to carry out workplace raids unless they cooperated with federal prosecutors to prepare criminal cases against the employers. Last year, 119 employers were convicted.

In March, Rick M. Vartanian, the president of a furniture company in California, was sentenced to 10 months in prison for hiring illegal immigrants. A federal investigation is also under way into hiring practices at the Chipotle chain of Mexican fast-food restaurants.

Dennis K. Burke, the United States attorney for Arizona, who led the Chuy's prosecutions, called them a "game changer" for the state. During a lengthy inquiry, investigators, including undercover operatives, discovered that the Evensons were keeping two sets of books: one for waiters and cashiers, Mr. Burke said, and another for Mexican kitchen workers.

According to the indictment, a customer complained to Mark Evenson that he was employing illegal immigrants. "I need to hide you in the kitchen," Mr. Evenson is said to have told one Hispanic employee he knew to be undocumented.

Mr. Burke said prosecutors saw that they could accuse the Evensons under the severe penalties of the tax code — "the hammer," as he put it. Charged with evading more than \$400,000 in taxes on wages for some 360 unauthorized immigrant workers, the Evensons together face more than \$10 million in fines if convicted on all counts. They have pleaded not guilty, and their lawyers declined to comment, saying they awaited evidence from prosecutors.

Unusually, even immigration lawyers who represented Chuy's workers spoke favorably of the federal handling of the case.

"ICE was nice," said Delia Salvatierra, a lawyer in Phoenix who represents two workers who were in the process of gaining legal status when they were detained. "It was as benign as it can get," she said. Officers released the two workers so they could pursue their cases in immigration court.

The two of them, who are brothers, said they came to the United States from Mexico in the 1990s. Both had worked most of the time since in Chuy's restaurants. The eldest, Alejandro Díaz Ojeda, 36, learned to cook the Chuy's menu. Then he taught his brother, Javier, who is 30.

The brothers said they had been treated well. "I became very fond of the company," Javier said.

Their experience, however, suggests how the Evensons kept their menu prices famously low. The brothers said they were paid an hourly wage — Javier made \$9.50 after 14 years — by payroll check for the first 40 hours a week. Any overtime was paid with a different check, with no taxes deducted and no higher rate, they said. Both brothers said they often worked 70 hours a week.

The severe charges against the Evensons registered broadly with Arizona executives, business leaders here in Tucson said. But they said the case was mainly a cautionary lesson for managers who knowingly hire unauthorized immigrants.

"If companies are paying workers under the table," said Glenn Hamer, president of the Arizona Chamber of Commerce and Industry, "we encourage the federal government to throw the book at them."