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In Denial: Illegal immigration enforcers try to find a balance

By Chris Collins

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Brian Poulsen fought on the front lines of the war against illegal immigration for three decades. He patrolled the border near San Diego on horseback, grew a ragged beard to disguise himself as a human smuggler, arrested and deported thousands of illegal immigrants, and tracked down fake document vendors at flea markets.

His job description was clear: Do everything you can to stop illegal immigrants from coming and kick them out if they get here.

But Poulsen and other agents have discovered it's not easy to enforce immigration laws, especially those that target employers.

Aggressive crackdowns can backfire if they hurt business. A sweep of Midwestern meatpacking plants in the late 1990s, for example, prompted outrage from business and civic leaders. Immigration officials have learned to tread lightly.

Poulsen, who retired this year as the top immigration enforcement official in the central San Joaquin Valley, tried to strike a balance between stopping illegal immigration and protecting farmers' interests. His office rarely conducted audits, never issued a fine and avoided messy, high-profile raids that would permanently shut down a business and separate families.

"There's a little bit of a tightrope. I understand where the farmers are coming from," said Poulsen, who grew up harvesting potatoes in Idaho. "You don't want to see people go out of business, but at the same time, we're sworn to do a job and can't look the other way."

Things may be changing: The Obama administration has stepped up the pace of audits, which are less likely to spark a backlash than workplace raids. For example, of 16 audits conducted in the central San Joaquin Valley over the past eight years, 11 have come since late 2008.

Stanislaus and San Joaquin counties and all areas north to Oregon are covered by the San Francisco office, which has been considerably more aggressive. There have been 75 audits this year and 391 since 2004, including parts of western Nevada run out of the Reno office..

Some agriculture leaders are worried about the audits, which can hurt businesses by making them fire all the illegal workers.

But government figures show that the new effort is tame compared with the early 1990s, when immigration officials fined about 900 companies a year and audited thousands. This year, they fined 237.

Many experts say aggressively cracking down on employers will rid the nation of illegal immigrants. Because the vast majority of them come here to work, the United States would be a much less appealing destination without job opportunities.

But advocates for stricter enforcement say there is little political appetite to sever the co-dependent relationship between businesses and illegal immigrants.

And aggressive enforcement, agents have learned, can backfire.

Meat plant sweeps

In the late 1990s, in response to calls for tougher enforcement, the U.S. Immigration and Naturalization Service, which later became Immigration and Customs Enforcement, blanketed Midwestern meatpacking companies with audits that identified thousands of employees suspected of being illegal immigrants.

Frightened workers left in droves, slowing slaughter-line speeds to a crawl and hurting farmers who relied on the meatpacking businesses.

"All hell broke loose," said Mark Reed, a former top INS official who was in charge of the crackdown, dubbed Operation Vanguard. "All of a sudden, these communities that wanted these people out of there realized that they needed them. They didn't realize that the kids who played on their soccer teams and the people they went to church with were going to go. They didn't realize that they were the center of their economy."

Nebraska's governor and members of Congress intervened. Operation Vanguard — which was scheduled to expand to the rest of the country — was nipped in the bud.

That's the problem with aggressive enforcement — it works too well, Reed said. The Obama administration's strategy could cause trouble, too, if it targets entire industries with audits. So far, however, ICE has focused on cases driven by leads — an approach that is more tempered than Operation Vanguard.

"They're smarter about it today," Reed said. "They're very cautiously going out and doing the audits in such a way that they won't rock the boat so much that they'll lose their authority."

But the essential problem remains: Create too much publicity about immigration enforcement and risk a backlash from politicians and business leaders. Too little, however, means businesses won't pay attention.

Roundups in the fields

The history of immigration enforcement in the Central Valley has been marked by inconsistencies and shifting policies.

Decades ago, federal agents would show up at fields in vans and helicopters to round up and deport illegal workers. Often, the workers would come right back.

David Remus, now a school librarian in Clovis, worked for the U.S. Department of Agriculture in the 1970s and saw it firsthand.

"Sometimes the Border Patrol would come by and pick them up and they'd be back the next day from Mexico," he said.

In 1986, Congress passed the Immigration Reform and Control Act, which granted amnesty to almost 3 million immigrants and made it a crime to hire illegal workers. Agents were required to obtain search warrants; the result was fewer raids.

Posing as smugglers

In the 1990s, the Border Patrol — which at that time wasn't restricted to the border — infiltrated human smuggling rings and tried to crack down on fake document vendors. Its agents also posed as grape growers and ranchers in the valley and asked smugglers to bring them workers.

But in 1996, the Border Patrol began withdrawing from the INS Fresno office, which covered the central San Joaquin Valley. The office was left with few resources to investigate smugglers or to document vendors or employers who hired illegal immigrants.

"We lost a lot of ground," Poulsen said. "It was very frustrating."

Acting on tips from disgruntled workers or competing businesses, agents tried to crack down on businesses that hired illegal immigrants.

But those they audited usually were able to negotiate a small fine — "a slap on the hand," Poulsen said. Agents grew tired of it and decided to focus their efforts elsewhere.

After the backlash from Operation Vanguard, INS scaled back employer enforcement efforts across the country. After the Sept. 11 attacks, INS narrowed its focus to contractors that worked at places critical to national security, such as airports and military bases. As a consequence, the number of employers fined dropped from 535 in 1998 to 13 in 2002, according to government data.

After ICE was formed in March 2003, the Fresno office began to regain its footing. But because the office had limited resources and a wide range of responsibilities, most employers escaped scrutiny, said Poul-sen, who was a supervising agent until he became the resident agent in charge of the Fresno office in 2006.

From 2003 to 2006, the office didn't audit a single company. In the past two years, following the national trend, it has audited 11. Still, it has yet to fine a single company in the central San Joaquin Valley.

The Fresno office has been even less aggressive with raids. Poulsen remembers only one, in 2004 — a boat-manufacturing business in Merced that refused to fire illegal workers. He said about a dozen illegal workers were arrested. The employer wasn't arrested or fined.

When angry employers complained to Poulsen about being audited, he told them it could be worse: "I'd say, 'Well, I'm auditing you instead of showing up with a dozen agents and shutting you down completely. I'm doing you a favor.' "

Part of the reason for his approach, he said, was that he understood the farmers' plight.

"Nobody is more empathetic to the farmworkers than I," he said. "The guys who have their grapes, they need to have their crops harvested. In our society, we think we're too good for stoop labor. There has to be somebody to do it."

During the waning years of the Bush administration, immigration agents grabbed headlines by raiding companies and deporting workers. The raids across the country drew controversy, just as Operation Vanguard did a decade earlier.

Controversy, then change

The Obama administration decided to take a different approach.

In April 2009, ICE issued a memo that downplayed the importance of raids, noting that they did little to prove that employers knowingly hired illegal immigrants.

Instead, it hired scores of auditors and directed them to build cases against businesses. If an audit shows that a business employed illegal immigrants, the owner must fire them to avoid fines of up to \$3,200 for each illegal worker — or prison time.

In 2006, ICE spent just 2 percent of its staff time on worksite enforcement, and not a single company was fined for hiring illegal immigrants. This year, it audited 2,196 businesses and fined 237.

Still, ICE spent only about 5 percent of its staff time on worksite enforcement through April — less than a fourth of the time it spent on drug smuggling.

'Nightmare' for farmers

Manuel Cunha, president of the Fresno-based Nisei Farmers League, an association of agriculture businesses in the West, said ICE audited four growers in his association last year, forcing them to fire many of their workers. He described it as a farmer's "worst nightmare."

"It was like Satan came to their door and said, 'We're taking your children because you know what? Your children sinned,' " Cunha said. "These farmers knew these workers. They were part of their community. They were part of their families. You yank them out, what does that do to that industry? To those farmers? To those workers?"

Mike Saqui, a Sacramento immigration attorney for businesses, said an audit can be destructive for businesses. One client who was audited in the middle of harvest time last year had to fire 269 of his 280 field workers.

If ICE wanted to use audits to get agriculture employers' attention, it worked. Cunha said growers worry about audits "every day now." Yet some doubt the administration's audit strategy will succeed.

Reed, the former INS official who runs an immigration consulting firm in Tucson, Ariz., said ICE should take a more comprehensive strategy and audit all companies in a region in the same industry instead of its "hodgepodge" approach. Otherwise, he said, businesses will continue to hire illegal immigrants because they believe there's little risk of an audit.

Audits only 'half a loaf'?

And another expert thinks ICE needs to continue workplace raids to clamp down on employers.

Jessica Vaughan, director of policy studies at the Washington, D.C.-based Center for Immigration Studies, said audits alone don't do enough because illegal immigrants don't have to worry about being arrested.

"What we have now is half a loaf," she said.

Philip Martin, an immigration and farm labor expert at the University of California at Davis, said one question is whether the administration will follow its strategy consistently.

"So far, it hasn't been sustained long enough for it to have a significant effect," he said. "That's the big question: Is it going to be sustained?"

Audits aren't the only thing employers worry about. Immigration officials are deporting illegal immigrants, many of them working for farmers or construction companies, at a record pace. In the 2009-10 fiscal year, they deported 393,000, almost twice as many as four years earlier.

Much of the focus has been on deporting illegal immigrants suspected or convicted of crimes. But others often are swept up in such efforts.

That is what happened in Mendota during a February 2007 raid that was criticized by some local officials. Mendota officials said it took residents about a year to recover and the local economy suffered.

Former Fresno Mayor Alan Autry criticized ICE for being "mind-boggling in its callousness."

Erik Bonnar, the deputy field office director who supervises deportations in the San Joaquin Valley, said agents couldn't ignore the fact that some residents were illegal immigrants.

"If our officers determine that they're here illegally, then they'll take them into custody," he said.

More recently, ICE started a program in 2007 called Secure Communities that has attracted growing attention. It uses fingerprints to determine whether jail inmates are illegal immigrants, which often leads to their deportation.

Fresno, Tulare and Merced counties joined the rapidly expanding program this year. Because of jail crowding, however, many illegal immigrants arrested on suspicion of misdemeanor crimes are not booked into jail. Still, ICE officials predict that Secure Communities will help the agency dramatically increase the number of deportations.

Win Eaton, a Bakersfield-based immigration attorney who represents several agriculture employers, said his clients are "running scared" because of the audits and increasing number of deportations. The worst is yet to come, he said.

"We're seeing a great deal more enforcement activity in 2010 than we ever saw under the Bush administration," Eaton said. "What I'm most concerned about is where this could lead."