

THE LOS ANGELES RAPID RESPONSE NETWORK

How Advocates Prepared for and What They Learned from the Recent Workplace Raid in Van Nuys

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Shortly after the second shift got under way at Micro Solutions Enterprises (MSE), a manufacturer of toner cartridges and inkjets in Van Nuys, Calif., hundreds of workers' lives suddenly were thrown into chaos. That Thursday (Feb. 7, 2008), approximately 100 armed U.S. Immigration and Customs Enforcement (ICE) agents stormed into the plant, whose exits they had first sealed off. Agents ordered workers to stop what they were doing and to segregate themselves based on their immigration status: U.S. citizens were to form one line, lawful permanent residents or those who were otherwise authorized to work were to form a different line, and those who were in the U.S. without papers were ordered into a separate line. ICE agents handcuffed the men. They then herded all the workers into the cafeteria. The agents would not release documented workers or U.S. citizens until they presented evidence of their lawful immigration status. Workers were not free to leave and had no choice but to go into the holding area ICE had set up. Workers, including pregnant women and parents of small children, were not allowed to use their cell phones or the bathroom. Agents then individually questioned those who were in the line for undocumented people, to assess whether they should be released on humanitarian grounds.

ICE had arrest warrants for eight MSE employees charged with criminal violations relating to alleged identity theft, but the agents did not limit their enforcement operation to those workers. Instead, they detained approximately 150 workers. About 50 of these workers, mostly women, were released that evening on humanitarian grounds. The approximately 100 remaining workers were detained at the plant and then taken to ICE's facility in downtown Los Angeles for processing (Van Nuys is a community within the San Fernando Valley area of Los Angeles). ICE also simultaneously

raided the homes of workers who had not shown up for work at MSE that day, including some who were no longer employed by MSE. Finally, ICE detained other "collaterals" at the plant who had never worked at MSE. For example, a woman who sold tamales outside MSE and had entered the plant to use the bathroom was caught up in the raid. And, reportedly, ICE agents pulled a man out of his car and detained him after he drove into the MSE parking lot to make a U-turn.

* * *

Recent vigorous enforcement efforts by ICE — such as the Van Nuys raid — have ripped apart immigrant communities and families, separating children from their parents, in some cases leaving the children abandoned or in foster care while ICE detains their parents. ICE has taken record numbers of workers into custody, disrupting businesses and devastating local economies as employers lose some of their most productive employees. During their raids, ICE agents have indiscriminately targeted workers who fit certain racial/ethnic profiles and, as a result, ICE has wrongfully detained, and even deported, U.S. citizens and lawful permanent residents. Most recently, ICE has treated immigrant workers as criminals, requiring those whom the agency has detained and released pending further proceedings to wear electronic "ankle bracelet" monitors.

That afternoon of Feb. 7, a "raids rapid response network" of organizers, attorneys, and other advocates began to coalesce even while the raid was in progress. During the ICE action and in its aftermath, this network's members learned valuable lessons that we hope will benefit efforts across the country to advocate for an end to these inhumane raids and for just immigration reform that brings families and workers out of the shadows and onto a clear path to legal status.



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Initial rapid response by advocacy

network. Per DHS's recently developed "Guidelines for Identifying Humanitarian Concerns among Administrative Arrestees When Conducting Worksite Enforcement Operations" (see box, this page), an unidentified Dept. of Homeland Security (DHS) official left a telephone message at the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) informing CHIRLA that the raid was in progress. CHIRLA staff called the telephone number the DHS official had left and were able to confirm that a raid was taking place in Van Nuys, though DHS refused to provide details about the actual location. The person who answered CHIRLA's phone call said DHS was contacting nonprofits in the area so that the nonprofits could help assist families in locating their detained family members.¹ CHIRLA then contacted the ACLU of Southern California, which in turn contacted key organizations such as the Central American Resource Center of Los Angeles (CARECEN), the local chapters of the National Lawyers Guild (NLG) and the American Immigration Lawyers Association (AILA), NILC, UNITE-HERE Local 11, and others that had already begun organizing to prepare for an immigration raid in the Los Angeles area.

CHIRLA members in the San Fernando Valley confirmed that they had seen DHS buses near the MSE plant. An organizer from CHIRLA and an attorney from ACLU went to the MSE plant immediately, while the raid was still in progress, but ICE agents would not let them into the plant parking lot, claiming that the employer was not consenting that they should enter. At the same time, other members of the response network, including an attorney, arrived at the ICE processing center in downtown Los Angeles where the workers were being transported. The attorney informed an ICE official that she represented the workers and asked to see them. The ICE official refused to let the attorney speak with the detainees, citing "security concerns." Members of the response network also immediately organized two conference calls to divide up work. Our immediate goal was to get as many workers released as possible, so they could obtain free legal consultation and we could gather facts from them about how the raid

¹ DHS's guidelines state that, once a raid is underway, ICE is to try to provide nongovernmental organizations (NGOs) the name and contact information of an ICE representative who has knowledge of the operation. The notification's purpose is to request that the NGOs assist ICE with identifying humanitarian issues that otherwise ICE would not be aware of.

ICE Humanitarian Guidelines

As a direct result of the advocacy efforts by immigrants' rights groups across the country, especially those in New Bedford, Mass., who denounced ICE practices that left numerous children abandoned after their parents were detained in other worksite raids, ICE developed voluntary "Guidelines for Identifying Humanitarian Concerns among Administrative Arrestees When Conducting Worksite Enforcement Operations."^{*} ICE agreed to develop a comprehensive plan to identify any individuals arrested on administrative immigration charges who are the sole caregivers of minor children or of disabled or seriously ill relatives or who have other humanitarian concerns — i.e., people with serious medical conditions, pregnant women, nursing mothers, and parents needed to support spouses in caring for sick or special needs children or relatives. Prior to conducting any large worksite raid, ICE is supposed to coordinate with the U.S. Department of Health and Human Services' Division of Immigration Health Services (DIHS) to provide sufficient personnel to screen the humanitarian needs of detainees. If DIHS is unable to support ICE, ICE is supposed to coordinate with an appropriate state or local social service agency or contract personnel to provide humanitarian screening.

^{*} (See www.nilc.org/immseplymnt/wkplce_enfrmnt/ice-hum-guidelines.pdf.)

had been conducted in order to develop our organizing and legal strategies.

The next 24 hours were chaotic. Friday morning, Feb. 8, many relatives of the detained arrived at ICE's downtown facility, searching for their family members. Although ICE had set up a toll-free information number and provided it to the media, the ICE representative who answered the resulting calls was unable to provide current information, leaving detainees' relatives uncertain and distressed about where their loved ones might be.²

Persistence and patience pays off. Response network attorneys and organizers arrived first thing Friday morning to meet with the detainees. However, attorneys were allowed to see only those individuals for whom they already had names and were not allowed to access other detainees despite the fact that the network had faxed letters to the local ICE office informing it that we were offering free legal consultations for all

² The DHS guidelines provide that ICE should set up a toll-free hotline for relatives who are seeking information about the location of a family member to call. The information should be up-to-date and staffed by bilingual personnel who speak Spanish and English. ICE is supposed to publicize the number to the community.

individuals detained in the MSE operation.³

UNITE-HERE Local 11 and CHIRLA organized a press conference at the federal building. Community leaders denounced the MSE raid, which had been the largest immigration enforcement raid in the Los Angeles area in recent years. Throughout the day, relatives of detained workers tried to post bond for them so they could be released. However, they faced frustrating bureaucratic hurdles. They were sent from one office to another and back to the first office, and each time they were given different reasons for why their bond could not be posted. At one point, ICE personnel decided that they were going to close the office early, but network advocates and individuals who had not yet been able to post bonds for their detained relatives successfully pressured ICE staff to reopen the office, only to see them try to close the office down again. Finally, however, the ICE official who was supervising the MSE operation agreed to ensure the release of all workers whose bonds had been posted or whose relative or friend had tried to post a bond but had been turned away by ICE.

After sitting outside the federal building on the cold cement all evening waiting anxiously for loved ones to be released, the detained MSE workers' relatives, friends, and advocates finally witnessed the release of the last workers at about 2 a.m. As a result of the pressure mounted by the families and the advocacy network, a day after the raid two-thirds of all the MSE detainees had been released either on their own recognition or a \$1,500 bond, or wearing an electronic monitoring device. This was the first major victory, given that after most raids, particularly those in which Mexican nationals are detained, ICE rushes to remove the detained workers from the U.S., often within 24 to 48 hours, which means that usually they do not have the opportunity to consult with an attorney or advocate before they are removed from the country. The MSE workers who were released on humanitarian grounds on the first night and many of those released on Friday night were given appointments to return the following week to be processed.

RESOURCES THAT MAKE A RAPID RESPONSE POSSIBLE:

- If your community does not already have one, develop a rapid response network as soon as possible. As part of this strategy, establish relationships with local consulates in your area that will be critical allies after a raid, especially because they can help compile a list of all detainees.

³ We sent similar letters to the various consulates of the countries that, according to ICE, were the detained workers' countries of origin.

- More information on preparing to respond rapidly to a raid is available from the following sources:
 - *How to Be Prepared for an Immigration Raid* (NILC, March 2007).⁴
 - *Community Raid Preparedness Checklist: Lessons Learned from New Bedford, MA, and Marshalltown, IA* (Fair Immigration Reform Movement).⁵
 - *Community Resource Kit: Information on ICE Enforcement, Detention, and Deportation* (National Immigration Project of the National Lawyers Guild).⁶

LESSONS LEARNED (FOR RAPID RESPONDERS):

- Advocates should incorporate information covering ICE's new raids tactics, such as segregating workers based on their immigration status, into know-your-rights trainings and materials, to help workers be more aware of their constitutional rights, including the right to remain silent and not to answer questions about nationality, and more confident about insisting that ICE officers respect those rights during a raid.
- Advocates should document any violations of ICE's "Guidelines for Identifying Humanitarian Concerns." Having such a record will help your advocacy efforts to obtain workers' release, is important in the event that you decide to bring legal challenges connected to the raid and its aftermath, and can contribute to national advocacy efforts.
- To obtain the release of as many detained workers as possible, pressure and advocacy by their relatives and community members is especially critical within the first 48 hours after a raid.
- Reach out to consulates whose nationals were affected by the raid. Consulates may be able to identify detained nationals by name to assist with raid response efforts.

Undifferentiated Use of Electronic Monitoring Devices

As immigrant rights advocates, we argue strenuously for any alternative to detention for noncitizens who are challenging government efforts to remove them from the U.S. Our initial success in getting the

⁴ www.nilc.org/ce/nilc/immraidsprep_2007-02-27.pdf.

⁵ www.nilc.org/ce/nonnilc/raids_checklist_firm_2007-04.pdf.

⁶ www.nationalimmigrationproject.org/commresourcekit.html.

majority of detained MSE workers released on “humanitarian grounds” was undermined when, in the week following their release, many of them were required to wear electronic monitoring devices as a condition of their release. In certain circumstances, these devices are an important and satisfactory alternative to detention. However, the way ICE used electronic monitoring devices following the MSE raid is a case study in improper and overbroad use of such devices.

Most problematically, the devices were initially placed on *every* worker released on humanitarian grounds after the raid. We were informed that this initial decision to place monitors on all released workers without regard to their individual circumstances was neither an ICE-wide policy nor even a Los Angeles-wide policy, but a decision made for this particular MSE operation.⁷ Disturbingly, ICE made no attempt to assess whether each of the workers on whom bracelets were placed was an actual flight risk — i.e., someone who should be monitored to ensure that he or she would appear at subsequent ICE appointments and court hearings. In fact, most of the workers on whom bracelets were placed were initially released on their own recognizance, and the devices were not placed on them until they attended *subsequent* appointments with ICE. Had these workers actually been flight risks, they would not have shown up for these appointments. Worse, the basic screening questions that ICE officers asked the workers during the raid did not include whether they had preexisting medical conditions that could be exacerbated by the electronic devices.

Human impact of the electronic monitors. Many of the released workers have spoken eloquently about the great burden and shame the electronic monitors impose. The workers say they are ashamed to be seen by family and friends, feel degraded by the device, and feel that they have been labeled as dangerous criminals (though no court or government official has made an individual assessment of their dangerousness). Some individuals even report that fellow residents of their apartment buildings have

⁷ However, following the April 16, 2008, ICE raids on Pilgrim’s Pride plants in Arkansas, Florida, Tennessee, Texas and West Virginia, advocates reported that on the same day that the raids occurred electronic monitors were placed on workers released on humanitarian grounds.

asked them to move out of their homes because their every move was now being tracked by ICE.

Besides requiring that released MSE workers wear electronic monitors, ICE imposed additional onerous requirements, such as placing them on a 7 p.m. to 7 a.m. home curfew. In addition, many of the monitoring devices being used required a *daily three-hour* electrical recharge, forcing their wearers to sit connected to a power outlet while the devices were recharging. Because many of these rechargeable bracelets frequently malfunctioned, ICE ordered the private company, Group 4 Securicor Alternative (G4S), with which ICE contracts to perform the electronic monitoring to fit the MSE workers with a type of monitoring device that required them to have a “land” telephone line without common features such as voicemail, call-waiting, Internet access, etc., since such features could cause the monitors to malfunction.⁸ Because many of the workers did not have an established credit history, they had to pay the phone company a \$300 deposit to have the required landline set up, an additional expense that the workers, who now had absolutely no income and were finding it difficult to pay for basic necessities, including rent, could ill afford.

However, the new monitoring systems also malfunctioned. Some workers reported receiving multiple phone calls in the middle of the night from G4S monitoring staff calling to confirm that they were at home. One G4S supervisor, claiming that the monitoring system showed that the worker was not at home when the worker was indeed home, reportedly accused one of the worker’s relatives of lying and threatened to report her to ICE if it happened again. Obviously, requirements such as these prevent the monitored workers from engaging in very basic daily duties and activities that must be carried out before 7 a.m. or after 7 p.m. One worker, for example, said he feared he would not be able to take his child to the emergency room if the child had a severe asthma attack during the curfew. Of course, if a worker fails to comply with these extremely onerous rules, he or she faces the very real threat of being placed back into ICE detention and deported. To make matters worse, most of the monitored workers must submit to random home visits by ICE officials or G4S employees. The com-

⁸ G4S is the world’s largest provider of electronic monitoring devices.

To illustrate the tremendous power and control that the electronic monitoring and release program has over workers’ lives:

A pregnant MSE worker who had a supervision appointment with G4S began to have labor contractions the night before the scheduled appointment, so she went to the hospital. However, afraid of what would happen to her if she failed to show up for her G4S appointment, she asked her doctor to give her a drug that would slow her contractions so she would be able to attend it. Instead of going into labor that night, she was released from the hospital so she could be at the G4S office at the scheduled time.

bined effect of these various requirements is to severely limit the device wearers' ability to engage in normal, everyday duties and activities, and to make acquaintances, neighbors, and even friends extremely suspicious of them.

Getting monitors removed from workers with medical conditions. Initially, it seemed unlikely that advocating for the removal of all the released workers' bracelets would be successful, so we crafted a tiered strategy to first secure their removal for those with the most urgent needs — including pregnant women and others with medical conditions that the devices aggravated. However, we continued to argue that the blanket use of the devices on all released workers was inappropriate. Not only the pregnant women, but many other released workers reported that the devices were causing severe bruising or rashes, or were cutting into the skin around their legs.

Although ICE initially released on humanitarian grounds the handful of workers who were pregnant at the time of the MSE raid, ironically it later required them to wear electronic ankle monitors despite their being pregnant, apparently without considering the negative effects the devices were likely to have on the wearers' health. The pregnant women soon reported that the devices were causing them great pain and that their doctors were outraged that the women had been required to wear them. We asked the women to obtain letters from their doctors detailing how the device was complicating their pregnancy, e.g., causing leg and back pain, swelling, and depression. Once one of the women had secured such a letter, we immediately demanded that ICE remove the monitors from all the pregnant women, as it is common knowledge that pregnancy usually causes swelling, especially in the ankles. In response, ICE quickly scheduled removal of the devices from all the pregnant women without requiring them to post any bond. Despite having the devices removed, the women were required to continue reporting to the private company, G4S. The removal of the ankle bracelets from the pregnant women was our first success in rolling back ICE's decision to place bracelets on all the released workers.

Based on that advocacy, we were able to obtain an agreement from the ICE official who ordered the removal of the devices from the pregnant women that ICE would consider removing the devices from other released workers on a case-by-case basis, if we could document other instances in which a worker's medical condition was being degraded by the electronic monitor. Based on this agreement, we were able to get ICE to remove monitors from workers who could document that they have chronic arthritis that is exacerbated by the device and also from HIV-positive workers for whom bruising or other medical complications caused by a device could be extremely dangerous.

Getting monitors removed from workers able to document that they are not a flight risk. We also asked ICE to remove the monitors from all MSE workers who were initially released without any kind of electronic monitoring, but were ordered to appear for subsequent appointments with ICE. In some of these cases, individuals were free for nearly a week before their appointment, and in some instances ICE had not even obtained their fingerprints prior to releasing them. Nevertheless, these individuals showed up for their ICE appointments, at which time the monitoring devices were placed on them. We were initially able to get ICE to agree to have the ankle devices removed from these workers if they posted a \$1,500 bond. Most of the workers have decided they prefer to post a bond rather than deal with the inhumanity and shame of having to wear an ankle monitor. Alongside these advocacy efforts, attorneys from the network agreed to file bond redetermination motions with immigration judges to request removal of the electronic monitors from some of the released workers. After extensive collaboration among those attorneys, one local immigration judge issued a favorable ruling finding that the ankle monitors and other restrictions amounted to constructive custody. The IJ allowed these workers to post a \$1,500 bond in order to have the devices removed. Shortly thereafter, ICE also agreed to remove the monitoring devices from any former MSE worker who could post a \$1,500 bond.

This was a big victory for the rapid response team and, most importantly, the affected workers. This success helped gain momentum for ongoing legal and organizing efforts. In addition, we were able to use money donated to a bond fund to help defray the cost of the posting of the bond for workers seeking to have their electronic monitoring devices removed. Without this critical donation, many MSE workers would have been unable to post bond on their own.

RESOURCES (ELECTRONIC MONITORING–RELATED):

- For more information on the advocacy and legal efforts used by the Los Angeles raids rapid response network with regard to electronic monitoring devices, contact Karen Tumlin at NILC.⁹

LESSONS LEARNED (ELECTRONIC MONITORING–RELATED):

- Quickly identify all workers released wearing electronic monitoring devices who have medical conditions that the devices might exacerbate. Such conditions might include pregnancy, diabetes, HIV, chronic rheumatoid arthritis, etc.

⁹ Email her at tumlin@nilc.org.

- Document cases of workers who appear for ICE appointments or court appearances *before* a monitoring device has been placed on them, so as to be able to argue that they have already proven they are not a flight risk and should not be subject to electronic monitoring.
- If you are challenging the use of the monitoring devices in immigration court, coordinate, as quickly as possible, a legal strategy to request bond redetermination and removal of the electronic monitors. If possible, set up test cases.
- Create a bond fund to provide grants or interest-free loans to defer the cost of posting bond in lieu of detention or release on electronic monitoring. This fund will be necessary if your advocacy efforts to have electronic bracelets removed from released detainees are successful.

gional phone numbers that relatives and counsel may call to obtain information regarding detained class members. ICE's webpage currently titled "Family Information on El Salvadorian [sic] Detainees in ICE Custody" contains a link to a list of ICE's Detention and Removal Operations (DRO) field offices, which includes for each office the office director's name, the office's address and phone number, and the geographical area for which the office is responsible. Under the injunction, a Salvadoran detainee's relative or attorney who calls a DRO field office during normal working hours and provides the detainee's name to the ICE officer who answers is to be informed of the detainee's current location. If the detainee is scheduled for departure from the U.S., the inquiring individual should also be informed of the date and time and the place from which the detainee is scheduled to leave. If an attorney informs the officer that he or she wishes to

Protecting Against Out-of-District Transfers, and Helping to Locate Detainees

Following a large-scale worksite raid such as the one at MSE, attorneys and advocates will need to rely on any tool available to locate those who are detained, which is essential to ensuring that the detainees are provided access to counsel and that their children and other dependants do not go uncared for. One tool that has been used effectively is the permanent injunction in *Orantes-Hernandez v. Gonzalez*, No. 82-01107 MMM (VBKx) (C.D. Cal. Nov. 26, 2007) (modified, consolidated injunction), which applies nationwide to nationals of El Salvador detained by immigration authorities. Although the injunction's protections apply only to Salvadorans, using these provisions may indirectly benefit workers of other nationalities detained in the same raid.

We have successfully used two provisions of this injunction to prevent the transfer of detained Salvadorans to detention centers far removed from their homes, families, and available low-cost or free legal services. As described in more detail below, the *Orantes* injunction contains provisions that (1) require immigration authorities to provide a phone number that relatives and counsel may call to obtain information about the location of detained Salvadorans and (2) restrict the transfer of detained class members to locations outside of the district where they were apprehended.

Designated phone number. Paragraph 6 of the injunction requires that ICE designate re-

Orantes Injunction's Transfer Provisions

Paragraph 11 of the *Orantes* injunction provides that immigration authorities "shall not transfer detained class members who are not represented by counsel from the [U.S. Immigration and Customs Enforcement] district where they are apprehended for at least seven (7) days," in order to give them an opportunity to obtain counsel. Class members who obtain counsel may be transferred outside of the district during the seven-day period immediately following their apprehension, but in such cases the venue for the deportation or removal case remains in the district, and the class member must be returned to the district sufficiently in advance of any proceedings to allow him or her to consult with counsel.

If the detained class member is transferred outside of the district of their apprehension after he or she obtains counsel, ICE must return the class member to the district "within a reasonable time after receiving a request to do so from the detainee's counsel." This provision of the injunction is critical for ensuring, first, that detainees are able to secure counsel for their removal proceedings. Transfer of detainees out of the area where they were apprehended cuts them off from friend and family networks that can help them obtain free or low-cost counsel. Once detained Salvadorans retain counsel, they may, under the injunction, be transferred out of the district where they were detained. At that point, however, the injunction's protections function to ensure that detainees can keep the same counsel and do not have to restart immigration proceedings in a new jurisdiction.

As a practical matter, ICE may be unwilling to transfer detained Salvadorans outside of the area where their counsel is located because ICE does not want the cost or hassle of moving the detainees back and forth between the new detention location and the place where their counsel, and court case, remains.

communicate with a detained class member who is scheduled for voluntary departure and has not been able to do so, ICE “shall not expel the plaintiff class member until such counsel has had a reasonable opportunity for such communication.” Advocates have had difficulty obtaining timely information through this phone system, and if you are unable to obtain detainee location information within the same business day that you call, please contact the class counsel listed below.

Restrictions on transfer. The injunction provides an important protection by barring for at least seven days the transfer of detained Salvadorans out of the area in which they were apprehended, unless a detainee has obtained counsel. And with respect to detained Salvadorans who have obtained counsel, the injunction protects that precious attorney-client relationship even in the event that the detainee subsequently is transferred far away from his or her counsel. Although these provisions apply only to Salvadorans, enforcing these rights for Salvadorans often has an indirect, positive effect on non-Salvadorans who are detained at the same time as Salvadorans (i.e., during the same raid). For example, on the Friday afternoon following the MSE raid we learned that all the detained women, including the Salvadoran women, were scheduled to be transferred to a detention facility in Arizona. As a result of our advocacy to ensure that the injunction’s transfer provision, which barred the transfer of the Salvadoran women, was honored, ICE agreed not to transfer *any* of the women out of California. And, probably because there was insufficient detention space in the local area, all the women were released that Friday night.

RESOURCES (TRANSFER-RELATED):

- A copy of the current *Orantes* injunction is available from NILC’s website.¹⁰
- The list of phone numbers family members or counsel should use to find the location of detained Salvadorans (i.e., contact information for ICE Office of Detention and Removal Operations of-

fices) is available on ICE’s website.¹¹ Call the phone number for the field office closest to where the detained Salvadoran was taken into custody.

- Attorneys and legal workers who experience problems getting ICE personnel to honor these provisions of the *Orantes* injunction should contact Karen Tumlin or Linton Joaquin, counsel for the *Orantes* class.¹²

LESSONS LEARNED (TRANSFER-RELATED):

- Although the *Orantes* injunction protections are Salvadoran-specific, ensuring that ICE honors them may also protect the rights of non-Salvadoran detainees.

Safeguarding Access to Counsel

Even before the MSE raid, the local raids rapid response network had assembled a list of reputable immigration attorneys in the area who belonged to NLG or AILA and who had agreed to provide free legal consultations to workers de-

tained during a raid. In the days following the MSE raid, the network scrambled to assign attorneys to represent the released workers at their processing interviews and appointments concerning the terms of their release. The goal, of course, was to ensure that every worker with a claim to remain in the U.S. was able to do so. It was a Herculean task simply to identify workers with processing appointments in the week following the raid and to assign volunteer attorneys to

meet them for those interviews.

The difficulty of coordinating representation for workers, however, quickly became overshadowed by the fact that the attorneys were being excluded from these interviews where their clients were being subjected to lengthy and far-reaching interrogations. Workers who refused to answer questions unless their counsel were present were subjected to particularly

EGREGIOUS VIOLATION OF THE RIGHT TO COUNSEL A Not-So-Unique Example

One of the advocacy network attorneys related the experience of his client, a Salvadoran woman who was over eight months pregnant. The attorney already had submitted formal paperwork to represent her but nevertheless was not allowed to be present during what turned out to be a two-hour processing session. He was forced to sit outside the room where his client was being processed. When he argued that his client should be provided a break so she could use the restroom, ICE denied his request. Later, his client reported that she had been repeatedly questioned about alleged gang affiliations in El Salvador and told that things would go much easier for her if she would just give up her immigration case and agree to “voluntary departure” back to El Salvador.

¹⁰ www.nilc.org/immlawpolicy/arrestdet/orantes_injunction_2007-11-26.pdf.

¹¹ www.ice.gov/about/dro/contact.htm.

¹² tumlin@nilc.org; joaquin@nilc.org.

aggressive questioning, and some were even threatened with detention when they asked for their attorney to be present.

As a result of this gross denial of counsel, NILC and the ACLU Foundation of Southern California filed a lawsuit (*National Lawyers Guild v. Chertoff*) challenging ICE's policy and practice of excluding attorneys from these interviews and seeking a temporary restraining order barring future interviews until the practice was ended. The lawsuit was filed on behalf of the NLG-L.A. chapter as well as an MSE worker who had not yet attended his processing interview but who, based on ICE's practice of excluding counsel from interviews with detainees, reasonably feared that his counsel would not be allowed to represent him during that hearing.

The litigation initially triggered a stay of any future interviews with the MSE detainees until the government could ensure that their attorneys were not being excluded from the interviews. Ultimately, the government agreed to a favorable settlement under which ICE would allow attorneys to accompany detained MSE workers to all processing interviews as well as to appointments concerning their conditions of release.

At this point, the response network began assigning attorneys to each of the workers who had been detained in the MSE raid. Two private attorneys representing the NLG and AILA chapters helped screen and coordinate the over 40 immigration attorneys who agreed to be part of the network. In order to be part of the network, the private attorneys agreed to take a maximum of 4 cases either pro bono or at a reduced rate set by the network. Because we strongly believe that ICE, in conducting the MSE raid, had violated workers' Fourth Amendment right to be free of illegal searches and seizures, the attorneys also had to agree to pursue the same legal strategy of filing a motion to suppress the evidence for workers who had been placed in removal proceedings as a result of the evidence ICE obtained during the raid.

Finally, in order to ensure that workers continue to have access to legal counsel and are able to fight their legal cases if they choose to, the network has been raising funds to establish a workers' legal defense fund that is administered by CHIRLA. The funds raised will be divided equally among all workers who retain network attorneys. Because the limited funds will not be enough to cover all the legal costs, the network also has been able to secure an interest-free loan so that workers can borrow the rest of the money not covered by the grant received from the fundraising efforts. A worker who receives a loan will not have to pay it back until his or her legal case is resolved. The network drafted a one-page explanation of the workers' legal defense fund and a one-page contract for workers to sign so that CHIRLA can issue checks directly to the attorneys they retain.

The combination of our legal strategy for safeguarding workers' right to counsel and our efforts to raise funds for the workers' legal defense fund makes us confident that workers detained in the MSE raid will be able to secure legal counsel. This will greatly increase their ability to successfully challenge any attempt by ICE to deport them based on ICE's actions during the MSE raid, and we hope that the immigration judge in each case will terminate the immigration proceeding against the respective worker who prior to the raid had been gainfully employed and contributing to our society and economy.

RESOURCES (SAFEGUARDING ACCESS TO COUNSEL):

- A copy of the complaint filed in *National Lawyers Guild v. Chertoff* is available on NILC's website.¹³

LESSONS LEARNED:

- It is important to have bilingual attorneys available to attend all processing interviews.
- Attorneys must be well versed in their rights and prepared to terminate the processing interview of their clients if they are not given access to the interview.

Conclusion

Although they cause untold suffering, government efforts to crack down on illegal immigration by raiding worksites where immigrant workers are likely to be employed are mainly a smokescreen. Even when they result in the detention of hundreds of workers who may or may not be authorized to work in the U.S., ultimately these military-style raids succeed in removing from the U.S. only a miniscule fraction of the 12 million undocumented immigrants who live and work among us. The raids' most salient effect is to foment fear and thus paralyze entire communities and push undocumented immigrants deeper into the shadows, where they can be more brutally exploited. Broad immigration reform would be the only rational government response to the current situation — and the only solution that would benefit the country as a whole. Until our lawmakers summon the courage to do the reasonable thing, a combination of organizing, communication, and legal strategies are needed to expose the inhumanity of these raids and to hold ICE accountable for the countless civil rights violations its officers are committing against immigrants and U.S. citizens alike.

¹³ www.nilc.org/immsemplymnt/wkplce_enfrcmnt/nlg-v-chertoff.pdf.