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The Obama Opportunity on Immigration Enforcement: Redirect Priorities to Smart Enforcement, Abusive Employers, and Real Border Security

It is now clear that the Bush Administration's priorities for immigration enforcement led to missed opportunities to strengthen immigration enforcement, crackdown on unscrupulous employers, and secure the border. The Administration was distracted by a focus on garden variety immigration law violators rather than unscrupulous employers and dangerous criminals.

The Obama Administration has a chance to redirect priorities toward the truly bad actors. Recently, Secretary of Homeland Security Janet Napolitano announced a [new initiative](#) focusing federal resources on combating the violent drug cartels in Mexico and weapons smuggling from the United States. And Napolitano has also indicated that her Department will [review the prior Administration's controversial worksite raids program](#) and ensure that future efforts focus on unscrupulous employers who break labor and immigration laws.

Following is a review of the previous Administration's immigration enforcement priorities, and analysis of the opportunities facing the current Administration.

Enforcement in the Workplace Targeted Workers, Not Employers

In the workplace, the Bush Administration's immigration enforcement strategy focused intensely on punishing immigrant workers, while employers who broke labor and immigration laws were much less of a priority.

In Fiscal Year 1999, 417 employers received notices of the government's intention to fine them for employing undocumented workers—a number that dropped to just three by 2004. After intense public scrutiny over this sharp decline in enforcement, Department of Homeland Security (DHS) Secretary Michael Chertoff [promised](#) that “The days of treating employers who violate [immigration] laws by giving them the equivalent of a corporate parking ticket—those days are gone. It's now felonies, jail time, fines, and forfeitures.” Yet the number of employers receiving notices of the Department's intent to fine grew to just seventeen in 2007.

In 2007, DHS' Immigration and Customs Enforcement (ICE) logged 4,077 administrative arrests and 863 criminal arrests at worksites across the country. Only 92 of the criminal arrests were of employers or managers. Immigrant workers accounted for 98% of all workplace immigration arrests and 89% of all workplace criminal arrests in FY 2007. The story was much the same in FY 2008, when ICE made nearly 5,200 administrative arrests and 1,101 criminal arrests. Only 135 of ICE's criminal arrests in FY 2008 were of employers or managers. This means that immigrant workers made up 98% of all worksite immigration arrests and 87% of worksite criminal arrests in FY 2008 as well.

Studies by the Government Accountability Office (GAO) also show that labor law enforcement suffered under the Bush Administration. A [July 2008 study](#) found that the Department of Labor (DOL) "inadequately investigated complaints from low-wage and minimum wage workers alleging that employers failed to pay the federal minimum wage, required overtime, and failed to pay employees their last paychecks." [Another report](#) in 2009 found that DOL's Wage and Hour Division mishandled nine out of ten wage theft cases the GAO used to evaluate the Division's performance.

The notorious Agriprocessors case is one example of how the Bush Administration focused its enforcement efforts on the wrong target. In May 2008, ICE raided the Agriprocessors meatpacking plant in Postville, Iowa and arrested nearly 400 immigrant workers. Over 300 of the workers were charged with crimes related to working without papers, and shuttled through cookie cutter plea deals to serve time in prison before deportation. For years before the raid, company owners and managers had been accused of serious labor abuses including wage and hour violations, employing underage labor, coercion, and more. In fact, they were being investigated for some of these violations by the state Labor Department at the time ICE raided the plant.

But rather than throw the book at the employer, who had clearly used the broken immigration system to commit very serious labor violations, ICE focused its efforts on prosecuting, detaining, and deporting the plant's workers. Only after six months of intense public pressure did the Bush Administration finally bring charges against the former CEO of Agriprocessors for his role in procuring the fake documents used by workers at the plant. But the rest of the labor abuses have gone unpunished by the federal government, and victims of serious labor and criminal law violations would be unable to testify because they were deported.

Enforcement in the Field Targeted Workers, Not Criminals

Reports by the Immigration Justice Clinic at the Benjamin N. Cardozo School of Law and Migration Policy Institute show that ICE's [Fugitive Operations Teams](#) also made a dangerous shift in priorities over the last several years. Fugitive Operations Teams (FOTs) are made up of seven to eight ICE agents each, and are charged with finding and arresting foreign nationals who were scheduled to be deported but have remained in the United States. They often work

with state and local police in doing so. Before 2006, the Bush Administration tasked each FOT with arresting 125 “high priority” targets each year, requiring that at least 75% of the arrests focus on criminals who have violated deportation orders. However, under pressure to appear “tough” on immigration enforcement, in 2006 the Bush Administration issued a directive that established a new quota of 1,000 arrests per FOT, and removed the 75% threshold for criminal targets.

According to the [Migration Policy Institute](#), despite a mandate from Congress “to arrest dangerous fugitives, almost three-quarters (73 percent) of the individuals apprehended by FOTs from 2003 through February 2008 had no criminal conviction.” Similarly, the Immigration Justice Clinic at the [Benjamin N. Cardozo School of Law](#) found that since the 2006 shift in priorities, FOT arrests of undocumented immigrants with no criminal record went up 32%. The study authors concluded that “while the human costs of ICE’s home raid strategy were painfully high, the law enforcement gains were shockingly low.”

Not only did ICE target undocumented workers over criminals through its Fugitive Operations Teams, but the federal government dramatically stepped up criminal prosecutions of immigrant workers, instead of focusing in on violent offenders and white collar criminals. The Transaction Records Access Clearinghouse (TRAC) at Syracuse University [reported recently](#) that “federal prosecutions of immigration crimes nearly doubled in the last fiscal year, reaching more than 70,000 immigration cases in the 2008 fiscal year.” Meanwhile, federal prosecutions for white collar crime fell by 15% from 2000 to 2008, and drug prosecutions were down 20% from FY 2001 to FY 2008.

“Operation Streamline,” a program requiring the prosecution of undocumented workers for the crime of entering without inspection, is responsible for much of this shift. Instituted in 2005, [the program has been quite controversial](#) among judges, prosecutors, and others because it prioritizes immigration enforcement over more serious crimes. George P. Kazen, the senior judge in Laredo (TX), told the *New York Times* he was concerned about other priorities getting short shrift, including weapons smuggling from the U.S. to Mexico by drug cartels. “The U.S. attorney isn’t bringing me those cases. They’re just catching foot soldiers coming across the border. They bust some stooge truck driver carrying a load of drugs, and you know there’s more behind it. But they will tell you that they don’t have the resources to drive it and develop a conspiracy case.”

In fact, former U.S. Attorney for the Southern California District Carol C. Lam was ousted after refusing to supplant more serious cases for low-grade immigration offenses. Lam told the *New York Times*: “If two-thirds of a U.S. attorney’s office is handling low-level narcotics and immigration crimes, young prosecutors may not have the opportunity to learn how to do a wiretap case, or learn how to deal with the grand jury, or how to use money laundering statutes or flip witnesses or deal with informants and undercover investigations. That’s not good law enforcement.”

Federal Support to State and Local Police Declines

The Bush Administration also reduced programs to assist state and local police in fighting crime, and directed money toward expanding their role in civil immigration enforcement.

Funding for the State Criminal Alien Assistance Program (SCAAP)—a reimbursement program for state and local law enforcement agencies that detain foreign nationals convicted of crimes—[declined precipitously](#) during the Bush years from \$573 million in FY 2000 to a low of \$240 million in FY 2003 (the FY 2008 appropriation was increased to \$410 million). According to a [report by The University of Arizona for the U.S./Mexico Border Counties Coalition](#), the twenty-four U.S. counties along our nation's border with Mexico incurred \$192 million in law enforcement and criminal justice costs related to undocumented immigration in FY 2006, adding up to a total of \$1.23 billion from 1999 through 2006. However, the federal government only reimbursed these counties \$4.7 million through SCAAP in FY 2006, for a total of \$54.8 million from 1999 to 2006.

In fact, the Bush Administration tried to terminate SCAAP, zeroing it out of the President's annual budget year after year. The program was saved through concerted advocacy by state and local police, governors, other elected officials, and Members of Congress, but suffered serious hits that put more of the financial burden on states and localities. President Obama's [FY 2009 budget request](#) also leaves out SCAAP, according to the U.S./Mexico Border Counties Coalition.

Other federal initiatives created to support state and local police, such as the Community-Oriented Policing Services (COPS) program, were also underfunded over the last several years. For example, in FY 2008 COPS funding stood at [less than half](#) of its original appropriation (\$587 million versus \$1.3 billion in FY 1995). According to [analysis](#) by the Third Way, federal criminal justice aid to states fell a whopping 56% during the current decade.

Meanwhile, Congress [allocated \\$42 million](#) for the 287(g) program in FY 2008, an increase of \$27 million over the previous year. 287(g) is a program where state and local law enforcement agencies can enter into agreements with the federal government, receive training, and be deputized to enforce civil immigration laws. Most of the money appropriated for the program funds the training of police officers in immigration law, not the costs of implementing the agreements at the state and local level. In addition, many in law enforcement believe that involving state and local police in the deportation of non-criminal, undocumented workers makes it harder for them to work with the community to solve real crimes and put criminals behind bars.

Recently, Montgomery County (MD) Police Chief J. Thomas Manger [testified](#) on behalf of the Major Cities Chiefs Association in a hearing on the 287(g) program before the House Homeland Security Committee. Manger said that: "Immigration enforcement by local police would likely negatively affect and undermine the level of trust and cooperation between local police and

immigrant communities. . . . Without assurances that contact with the police would not result in purely civil immigration-enforcement action, the hard-won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims, and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.”

The Obama Administration should re-commit to programs like SCAAP and COPS that have suffered over the last several years. The American Recovery and Reinvestment Act of 2009 wisely included \$1 billion for the COPS Hiring Recovery Program, so that the current economic crisis does not lead to fewer cops on the street. However, more must be done to ensure state and local police resources are directed at real criminals and dangerous individuals, not civil enforcement duties that take police away from their primary mission of fighting crime.

Conclusion

In each of the areas examined above—immigration law enforcement, labor law enforcement, and support to state and local police—the Bush Administration focused its resources on immigrant workers rather than unscrupulous employers and dangerous criminals, and missed an opportunity target the truly bad actors.

The Obama Administration should pursue effective immigration enforcement strategies that are focused like a laser on the worst offenders—the employers who use our broken immigration system to undercut workers and law-abiding competitors, the criminals who hide in the shadows, and the smugglers who profit from our broken immigration system. In addition, Congress and the Administration should pass a comprehensive immigration reform law that brings undocumented workers out of the shadows and require them to go through background checks, pay fines and back taxes, and learn English on the way to earning U.S. citizenship.

According to the [Coalition for Immigration Security](#), a group of former federal law enforcement officials concerned about effective enforcement: “The current flow of illegal immigrants and people overstaying their visas has made it extremely difficult for our border and interior enforcement agencies to be able to focus on the terrorists, organized criminals, and violent felons who use the cloak of anonymity that the current chaotic situation offers. . . . But enforcement alone will not do the job of securing our borders. Enforcement at the border will only be successful in the long-term if it is coupled with a more sensible approach to the 10-12 million illegal aliens in the country today and the many more who will attempt to migrate into the United States for economic reasons.”