



THE NATION

No Need for a Warrant, You're an Immigrant



Pool photo by Michael Schwartz

DIFFERENT RULES A federal raid aimed at illegal immigrants in Long Island last month angered local officials who objected to the lack of warrants.

By JULIA PRESTON
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LONG ISLAND officials protested when federal agents searching for immigrant gang members raided local homes two weeks ago. The agents had roused American citizens and legal immigrants from their beds in the night, complained Lawrence W. Mulvey, the Nassau County police commissioner, and arrested suspected illegal immigrants without so much as a warrant.

"We don't need warrants to make the arrests," responded Peter J. Smith, the special agent in charge in New York for Immigration and Customs Enforcement, or ICE, the agency that conducted the raids.

His concise answer helps explain the friction that the Bush administration's recent campaign of [immigration](#) enforcement has caused. Last week, immigration officials announced that they had made more than 1,300 arrests across the country over the summer when they went looking for gang members. Since the raids were carried out under immigration law, many protections in place under the American criminal codes did not apply. Foreign residents of the United States, whether here legally or not, answer to a different set of rules.

Immigration agents are not required to obtain warrants to detain suspects. The agents also have broad authority to question people about their immigration status and to search them and their homes. There are no Miranda rights that agents must read when making arrests. Detained immigrants have the right to a lawyer, but only one they can pay for.

While criminal suspects are generally sent to jails near the courts that hear their cases, immigration agents have discretion in deciding where to hold immigrants detained for deportation. Many

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suspected illegal immigrants who were detained in Nassau County, for example, were quickly moved to York, Pa., distant from family and legal advice.

This parallel course for noncitizens is not new. But it has come into fuller view as the enforcement drive has swept up record numbers of illegal immigrants, also reaching legal immigrants and citizens. In answer, a barrage of lawsuits is challenging both the laws and their enforcers.

“Buried within the proud history of our nation of immigrants, shrouded but always present, there exists a distinct system,” wrote Daniel Kanstroom, a law professor at [Boston College](#), in his book “Deportation Nation: Outsiders in American History,” which traces the history of the immigration code. To begin with, he writes, the Constitution does not specifically address the government’s power to control immigration. This is “not a small problem for a nation of immigrants,” he notes.

Immigration law remains founded on the notion that immigrants are not full members of American society until they become citizens, writes Professor Kanstroom, who is also a practicing immigration lawyer. The reduced protections in modern-day law were shaped by some of the darker episodes of the 20th century, he writes, including the prosecution of immigrant dissidents, like the Australian union leader Harry Bridges, in the 1930s; and the mass roundups of Mexican workers in the 1950s.

Arising from that landscape, the courts that handle immigration cases are part of the Justice Department, not the judiciary. Even immigrants who have lived here legally for many years, lawyers said, can run afoul of the immigration laws with minor infractions or misdemeanors. A late filing of visa renewal papers or a shoplifting citation can quickly spiral into an order for the ultimate penalty: deportation. Immigrants who fight the orders have more limited bail rights than American criminals and can spend years behind bars while their cases inch through the overburdened court system.

The immigration laws have gained new influence in everyday life because of the record number of immigrants — 37.1 million, according to census figures — now living in the United States. Of those, more than 22 million are not naturalized citizens and remain subject to the immigration system, including about 10 million legal residents and 12 million illegal immigrants, by estimates from the Pew Hispanic Center in Washington. Increasingly, immigrants live in mixed-status families that include illegal and legal residents as well as citizens.

Over the last two years, ICE has grown more aggressive, entering factories and communities, hunting down foreign fugitives ranging from convicted criminals to workers whose visas have expired. Last year, the agency deported 195,000 people, another record. After President Bush’s immigration overhaul failed in Congress in June, the administration has vigorously pursued the enforcement-first policy that Republicans demanded.

There are sharp differences among legal experts and law enforcement officials about the limited protections in the immigration laws, many of which have been upheld over the years by the [Supreme Court](#). Officials point out that the majority of the people deported last year entered the country illegally or plainly had lost any claim to legal status, including thousands of convicts.

“Immigration law enforcement is all about getting you to where you belong, which is outside the United States,” said Jan C. Ting, a law professor at [Temple University](#) who is a former assistant commissioner of the Immigration and Naturalization Service, the precursor to ICE. He pointed out that immigration laws are civil codes, not criminal. “A lot of constitutional protections that one would normally expect in a criminal case do not necessarily apply,” he said.

Professor Ting says ICE agents are well within their authority to question people they come across in the course of a raid, even if they are not its targets, and detain them as suspects.

But new legal challenges are seeking to restrain ICE’s powers. A lawsuit in Tennessee challenges raids where agents teamed up with a county sheriff to search trailer parks, forcing their way without warrants into Hispanic immigrants’ homes. In a suit against ICE in Texas, seven citizens and legal immigrants contend their rights were violated in raids last year at Swift & Company meatpacking plants.

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These cases are spurred by people like Peggy Delarosa-Delgado, a naturalized citizen born in the Dominican Republic whose Long Island home was raided twice. She described the shock of having a dozen ICE agents march into her living room, terrifying her children. As the laws governing immigrants have left American citizens increasingly vulnerable as well, more legal challenges can be expected.

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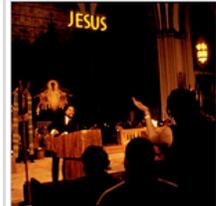
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