

Center for Constitutional Rights

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://ccrjustice.org/home/what-we-do/our-cases/argueta-et-al-v-immigration-and-customs-enforcement-et-al>

Policy Issue Resources

In December 2012, the parties reached a settlement in the case, which awarded the Plaintiffs a total of \$295,000.

Nine individual plaintiffs brought this action against federal and local law enforcement officials, pursuant to *Bivens v. Six Unknown Agents Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and 42 U.S.C. 1983, challenging a pattern and practice in New Jersey by the Immigration and Customs Enforcement (ICE) of conducting dragnet, warrantless, nonconsensual raids on immigrants homes, which resulted in egregious violations of Plaintiffs clearly established Fourth Amendment rights.

This case is related to [Aguilar v. Immigration and Customs Enforcement](#). The case names as defendants thirty five individual immigration agents and their supervisors, and ICE itself. The case also named high level ICE policy makers, including Julie Myers, Secretary of ICE and her deputy, John Torres, who were subsequently ordered dismissed by the Third Circuit Court of Appeals.

All of the Plaintiffs were New Jersey residents, and most were citizens or lawful residents of the United States, when armed agents of Immigration and Customs Enforcement (ICE) entered Plaintiffs homes without judicial warrants, or voluntary consent from any household member, in violation of Plaintiffs clearly-established constitutional rights. During the course of eight separate raids on Plaintiffs homes, SWAT-style teams of ICE agents routinely struck in the pre-dawn hours, entered the homes by deception or physical force, searched each nook and cranny, and roused numerous occupants out of bed to question them about their immigration status. In several homes the ICE agents terrified household members (including young children) by pointing guns at them, threatening to take children away from their parents, promising deportation or loss of residency status, and thwarting their attempts to speak to their attorneys or otherwise assert their legal rights. In other homes, the agents deliberately disregarded evidence of lawful residency, detained individuals with every right to be in the United States, confiscated or damaged their property, and in one case threatened to come back and do it again.

The pattern and practice emerged as a predictable consequence of policy implemented in January 2006, by ICE Secretary Julie Myers and her deputy John Torres, flippantly called Operation Return to Sender which sought to increase apprehension and removal of criminal aliens and so-called fugitives i.e. individuals who remained in the country with outstanding removal orders. Pursuant to Operation Return to Sender, Myers and Torres issued a memorandum on January 31, 2006 ordering so-called Fugitive Operation Teams in New Jersey (and across the country) seven-member law enforcement teams to increase their quota of fugitive arrests by an order of 800% (from 125 per year per Fugitive Operation Team to 1000 per year per Team).

On September 29, 2006 Torres issued another Memorandum instructing the Director of the ICE Newark Field Office (as well as other regional Field Office Directors) that they would be permitted to count collateral apprehensions i.e. non-fugitive apprehensions of persons without outstanding deportation orders encountered by chance during a FOT operation toward the 1000-apprehension quota for each FOT. This dramatic policy change had predictable consequences FOTs shifted from searches of individuals identified as criminal fugitives to anyone who might be removable. This direction, combined with the quota pressure, wholly inadequate training, and reliance on an outdated and incomplete fugitive database, produced predictable results: the program became a pretext for wholesale, unlawful roundups of immigrants in home raids that inevitably swept up citizens and lawful residents, such as most of the Argueta Plaintiffs, as well as undocumented aliens.

In North Bergen, New Jersey for example, the ICE agents banged on the doors and windows of Maria Arguetas building at 4:30 a.m. on January 29, 2008. When other tenants opened the door to their apartment, the ICE agents told them and then told the landlord that they were police, looking for a criminal. When, based on this, Ms. Argueta opened the door, the ICE team poured into her home and, without producing a warrant or seeking consent, searched every room, including inside closets and underneath beds. Other agents followed Ms. Argueta around the apartment, even entering the bathroom where she went to change out of her nightclothes. When no criminal or anyone else was found, the ICE agents asked Ms. Argueta about her own immigration status. Ignoring her protests, and proof, that she held Temporary Protection Status, agents confiscated Ms. Arguetas Salvadoran passport, arrested her, placed her in handcuffs, and delivered her to the ICE facility in Elizabeth. She was transferred to two other detention facilities and was ultimately released, 36 hours later, without explanation.

A few months later, on April 2, 2008, a team of ICE agents in a half-dozen unmarked vehicles converged on the Patterson home of lawful permanent residents Walter Chavez and Ana Galindo and their U.S. citizen-son, W.C. The agents pushed their way into the home, and screamed at Ms. Galindo (who was showering when the raid began and was still only half-dressed) to tell them where the illegals were. No undocumented aliens were found. Nonetheless, during the course of the raid the ICE agents pointedly displayed their weapons, and one pointed it directly at Ms. Galindo as she tried to calm her terrified child. Agents announced to Ms. Galindo and W.C., that if she was hiding illegal people here, were going to take your son and your residency away. The agents left only after the family produced their green cards and the boys U.S. passport. Still, agents threatened to come back, promising, [N]ext time it will be worse. The child, W.C., was severely traumatized by the raid, which left him unable to sleep alone and to fear leaving the home, for fear that the agents would

return.

Despite representations by Myers to Congress in 2007, that ICE needed additional funding in order remove primarily criminal aliens, the vast majority of individuals apprehended in New Jersey and nationwide were neither criminals nor fugitives. According to a press release from the Newark Field Office, of the 2,079 individuals arrested in New Jersey in FY 2007, 87% had no criminal history. More significantly, as a result of ICEs decision to count collateral apprehensions towards the 1000-apprehension quota, over two-thirds of persons apprehended pursuant to Operation Return to Sender in New Jersey had no outstanding order of deportation against them, but were instead pursued as part of the pattern of home sweeps in the Complaint. Nationwide, in the year after the Torres Memos were issued, collateral apprehensions rose to comprise 40 percent of all FOT arrests, while criminal arrests dropped to 9 percent of all apprehensions. (For example, in a series of pre-dawn, raids undertaken on February 19, 2008 in Passaic, New Jersey, ICE acknowledged that its agents raided 13 homes in search of only six individuals, yet returned with 12 arrestees).

Plaintiffs sued dozens of individual ICE agents who conducted the unlawful, warrantless raids of their homes, as well as local officials who assisted in one such raid. They also sued Julie Myers and John Torres for implementing the Operation Return to Sender quota policy without any corresponding training or safeguards to prevent the entirely foreseeable illegality that would result from the policy, and for ignoring numerous reports that the policy was, in fact, resulting in vast unconstitutional behavior by their subordinates in New Jersey and throughout the country.

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