



Making Justice Real

**The Importance of
the Civil, Labor,
and Human Rights
Provisions of ICE's
Prosecutorial
Discretion Policy**

**Jacinta Gonzalez G.
and JJ Rosenbaum**

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Preface

In the 1960 Supreme Court case *Boynton v. Virginia*, 364 U.S. 454, the Supreme Court held that racial segregation in public transportation, including interstate buses, was unconstitutional. But it took the Freedom Rides to make those protections real on buses across the South. Though the courageous riders faced aggressively hostile resistance including physical assault and criminal arrest, they could not be moved from the leadership of a civil rights movement that ultimately won victories beyond the implementation of current federal law. Through their courage and collective actions — sometimes but not always validated by the federal government charged with protecting their rights — they exposed an entrenched system of racism antithetical to the fundamentals of democracy. The reality they exposed in challenging hostile employers, landlords, and police presented a moral imperative to the federal government — sometimes ignored and sometimes answered — to take action to protect their rights to fundamental freedom and dignity.

The Southern 32 are men and women who have also chosen to take an active part in the struggle to improve our democracy. They did not choose what happened to them — being exploited, raided, arrested, overdetrained, and threatened with deportation — but they did choose their response: to organize.

I know what this choice is like. I made the choice to organize in small towns in Mississippi, like Magee, where unknown local heroes stood up against police brutality and confronted the Ku Klux Klan and the infamous Sheriff “Goon” Jones. I chose to join with the Texas Farm Workers Union in their organizing drive for recognition and the unity of workers on both sides of the border and across the South against anti-labor laws. I was the advance organizer for their march to Washington in the summer of 1977. In small towns throughout the South, ordinary people, local heroes, came forward to support the march and to strengthen their own organizing efforts. And I know that Louisiana, the South, and this country are better because of people who made the choice to organize.

I support the work of the Southern 32, described in this report, and the vision they have of Southern communities where all people will be able to live and work with dignity and without the threat of greedy employers or abusive law enforcement.

President Obama himself has recognized the importance of people who choose to organize. While still a candidate, President Obama delivered a speech about the ongoing struggle to make ours a more perfect union.¹ His background as a community organizer was obvious when he reminded us that “words on a parchment would not be enough to deliver slaves from bondage, or provide men and women of every color and creed their full rights and obligations as citizens of the United States.” What was needed, he said, were generations of people who are “willing to do their part — through protests and struggle, on the streets and in the courts, through a civil war and civil disobedience and always at great risk — to narrow that gap between the promise of our ideals and the reality of their time.”

Where would we be without the hundreds of men and women, known and unknown, who organized to “narrow that gap between the promise of our ideals and the reality of our time” — men and women like James Meredith, Fannie Lou Hamer, Albert Turner, Jimmie Lee Jackson, Viola Liuzzo, James Chaney, Andrew Goodman, and Michael Schwerner?

Boynton v. Virginia was nothing more than “words on a parchment” until the Freedom Riders put themselves in harm’s way to confront segregation head on, making *Boynton’s* protections real. Voting rights were expanded and enforced across the South — turned from words on a parchment into actual ballots cast — by grassroots civil rights organizations whose members stood up against violence and intimidation to insist on their right to participate fully in our democracy.

In cities and small towns across the South, the struggle for freedom and dignity and against discrimination continues. And in many places, doing as President Obama exhorted us to do in his speech, immigrants are standing up and organizing to build a more perfect union: an America that continues to close the gap between the promise of our ideals and the reality of our time.

The Southern 32 have made New Orleans their home and it should remain their home. We welcome them here. Releasing them from the threat of deportation permanently, authorizing them to work and support their families with full dignity, and adopting broader civil rights protections within the Department of Homeland Security is fair and right. And we will all benefit.

Theodore A. Quant

Director of the Twoomey Center for Peace Through Justice
Loyola University
New Orleans, Louisiana

Introduction



Photo: Ada McMahon/Bridge The Gulf

Exposing racial profiling by law enforcement, challenging unlawful detention, or asking an employer to provide safety equipment in a nondiscriminatory manner — these actions should not lead to deportation.

While U.S. Immigration and Customs Enforcement (ICE) has issued civil, labor, and human rights provisions of prosecutorial discretion policies that, if implemented fully, would protect civil, labor, and human rights defenders, the Department of Homeland Security (DHS) has failed to ensure its broad implementation in regional ICE field offices across the country. The failures of the Southern regional field office, which covers Louisiana, Alabama, Mississippi, Arkansas, and Tennessee, are particularly troubling. Alabama has passed the most extreme anti-immigrant state law in the United States, the Department of Justice has issued scathing findings regarding civil rights violations by the New Orleans police department and Sheriff, and limited state labor and employment law protections contribute to driving workplace standards downward. Yet ICE refuses to offer discretionary protections to civil, labor, and human rights leaders working to expose these egregious civil and labor rights conditions that violate federal law.

Protections for civil rights workers are even more critical as, across the country, communities are bracing for the outcome of the Supreme Court's decision in *U.S. v. Arizona* 11-182 (argument heard April 25, 2012). In the arguments before the Supreme Court, the Solicitor General concurred with Chief Justice Roberts that, "No part of your argument has to do with racial or ethnic profiling, does it?"² On the ground, however, communities have consistently opposed the Arizona law and other similar state laws because of the civil rights violations that result from their introduction and implementation. Civil rights groups monitoring the on-the-ground impact have documented racial profiling and other egregious civil and labor rights violations related to work, education, housing, and the criminal justice system.³

If the Supreme Court fails to strike down the Arizona law, even more immigrants will be in the position of the Southern 32 — faced with the question of what to do in the face of civil, labor and human rights violations.

The Southern 32 are thirty-two grassroots civil, labor, and human rights defenders from New Orleans, Louisiana who face deportation for standing up to expose civil and labor rights violations by employers, law enforcement, or Department of Homeland Security agents. Through their demand for protections from deportation because of their status as civil, labor, and human rights defenders, the Southern 32 represent and embody the fate of a whole nation of immigrant civil rights leaders who are upholding rights and values that are vital to everyone in the U.S.

Their collective experience reminds us of the important lessons of the history of the South. Civil and labor rights organizing that exposes the on-the-ground impacts of current law, policy, and implementation — in this case expanded racial profiling, deterioration of workplace standards for all workers, retaliation against those who speak up — remains critically important to democratic dialogue rooted in the reality of those families and communities.

This report draws from the collective experience of the Southern 32 to show the importance of the civil, labor, and human rights provisions of ICE's prosecutorial discretion policy and to highlight ICE's failure to ensure implementation in the Southern region. The report also offers concrete access-to-justice policy recommendations to make fundamental protections real in the workplaces, schools, homes, and streets of New Orleans, across the South, and across the United States.

Background on the Civil, Labor, and Human Rights Provisions of Prosecutorial Discretion From ICE

In the face of exposure and critique of ICE's civil rights record and the family and community impact of ICE's record deportation numbers, the Obama Administration directed ICE to implement policies designed to mitigate these effects by reviewing arrests and deportation cases to assess whether pursuing deportation furthered the agency's enforcement priorities,⁴ and separately, whether pursuing the deportations would negatively impact crime victims and individuals defending civil and labor rights.⁵

In ICE's June 17, 2011 memorandum entitled "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs," ICE Director John Morton specifically instructed that, in the absence of limited and extremely adverse factors, ICE officials should exercise "all appropriate discretion" for individuals "pursuing legitimate civil rights complaints" including "individuals engaging in a protected activity related to civil or other rights (for example, union organizing or complaining to authorities about employment discrimination or housing conditions) who may be in a non-frivolous dispute with an employer, landlord, or contractor."⁶ The Memorandum argues that exercising such discretion is necessary "to avoid deterring individuals from... pursuing actions to protect their civil rights." It therefore broadens the scope of protection beyond both the general balancing of equities analysis and the protection of key material witnesses provided in the agency's Memorandum of Understanding with the Department of Labor.

These protections are critical for civil, labor and human rights defenders in the South. In some cases, local law enforcement and employers are engaged in egregious violations of civil, labor, and human rights and rely on threats of deportation as part of their abusive schemes.⁷ A recent Congressional Hearing on racial profiling documented how Alabama's draconian anti-immigrant law invites and has resulted in racial profiling and other egregious civil rights violations related to education, housing, and the criminal justice system.⁸ In other cases, DHS agencies themselves have undertaken actions that have invited federal civil rights investigations.⁹ The Memorandum recognizes that exercising discretion is necessary "to avoid deterring individuals from... pursuing actions to protect their civil rights."

Consistent and broad implementation of relief through prosecutorial discretion for immigrants defending civil, labor, and human rights would protect people across the United States who are exposing and organizing against a broad array of injustices. In addition to workers cooperating with civil and criminal investigations of illegal conduct and pursuing civil litigation, these protections would be available, for example, to workers who go on strike against unpaid wages or discrimination; neighborhood committee members opposing racial profiling by local law enforcement; Dreamer students defending students from deportation

and organizing campaigns for tuition access; community members involved in protected civil rights actions to occupy foreclosed homes; women collectively acting to expose the discriminatory impact of law enforcement policies on women and children; and detainees who expose detention conditions violations.

Expansive implementation of this policy is critical for those who may qualify for immigration relief under separate statutory or discretionary grounds and for those who currently have no other grounds on which to seek relief. For individuals who may separately have claims for statutory or discretionary immigration relief, this expansive policy would publicly assure immigrants that DHS will respect their civil, labor, and human rights actions and will not weigh their actions negatively in separate pending statutory or discretionary claims for immigration relief. In other words, the policy will serve as a clear commitment to the principle that pending claims to immigration relief of any kind should not chill civil, labor, and human rights work. No immigrant should fear retaliation in the form of denial of or delay of relief because of participation in civil, labor and human rights work. For many other immigrants, especially low-income immigrants, relief through prosecutorial discretion based on protected civil, labor, and human rights actions will be their only options to block deportation—even deportation based on illegal conduct by corporate and law enforcement officials.

While the specific legal mechanisms of discretionary relief vary depending on the individual's immigration case, discretionary relief involves three types of protections:

- (1) Removal of DHS Custody Conditions.** Examples of discretionary actions to remove DHS custody conditions include, but are not limited to, release from detention, removal of ankle monitors, cessation of ICE check-in requirements, return of immigration bond money already paid, and/or lifting of ICE travel restrictions.
- (2) Long-Term Future Status.** Examples of discretionary actions to provide indefinite future status could include, but are not limited to, termination or closure of an immigration case, an indefinite stay of removal, and/or long term deferred action. Whatever the procedural mechanism, it is critical that the protections are long-term. The provision of short-term protections does not offer civil, labor, and human rights defenders the protections and stability they deserve.
- (3) Provision of Employment Authorization.** Employment authorization is fundamental to ensuring individuals can provide economic security for their families.

Civil Rights Record of the ICE Southern Regional Field Office

From April 23 to May 4, 2012, ICE reviewed the New Orleans Immigration Court's caseload of individuals who are not in immigration detention, as part of ICE's second round of case review to determine which cases will qualify for relief under the new discretionary policy. Approximately 3000 cases currently pending in the regional New Orleans Immigration Court were reviewed; these arose from enforcement actions in the Southern states of Alabama, Arkansas, Louisiana, Mississippi, and Tennessee.

During that time, none of the Southern 32 received offers of discretionary relief based on their protected actions related to civil or labor rights.¹⁰

Specifically, at the close of the review period, the Southern regional ICE office continued to oppose closing deportation cases of labor leaders who went on strike to demand an end to discrimination against Latino workers during the Hurricane Ike clean-up effort. ICE's court filings for Josue Diaz, Melvin Mejia, and two other workers go beyond a failure to implement the prosecutorial discretion policy — they demonstrate an aggressive opposition to the policy and its underlying priorities. The Southern regional ICE office also continued to pursue the deportation case of Jose Monterrubio, a day laborer leader, who filed a federal civil rights complaint exposing a pattern and practice of racial discrimination and unconstitutional arrests on New Orleans day labor corners and defending the First Amendment rights of reconstruction workers in New Orleans. The New Orleans Immigration Court closed his case — over ICE's objection — so that the federal civil rights investigation could proceed. The Southern regional ICE office opposed closing the case and immediately sought to have the case reinstated by the Court. At the close of the review period, the Southern regional ICE office had not granted long-term relief from deportation for Delmy Palencia, a nationally recognized civil rights leader who won release after being held in jail for a week beyond the constitutional limit. ICE granted her a one-year stay of removal. ICE had also not communicated the results of its review for the remaining 26 pending requests from civil, labor, and human rights defenders.

At the level of policy and practice, at the close of the review period, the Southern regional ICE office had not published any training materials on these standards. The training materials ICE had published on prosecutorial discretion did not include these provisions and their specific standards.¹¹ Nor had ICE released any statistics related to the number of cases specifically reviewed for relief based on civil, labor, and human rights or the outcome of their review. ICE had also not published policies to proactively limit harm to ongoing civil, labor, and human rights activities.

While disappointing, ICE's failure to implement the civil, labor, and human rights provisions of prosecutorial discretion is consistent with well-documented past incidents suggesting a hostility towards civil and labor rights.

In Louisiana, when immigrant detainees attempted to submit human rights complaints that detention standards at the South Louisiana Correctional Facility failed to live up to ICE's own detention manual, the agency subjected the detainees to solitary confinement and other actions designed to repress complaints.¹² ICE's own internal audits later confirmed the majority of the detainees' complaints.¹³

In Mississippi, ICE advised a major employer on how to conduct illegal private deportations of workers who were attempting to access basic legal rights.¹⁴

In Alabama, ICE agents covertly surveilled immigrant workers as they visited a civil rights museum in Montgomery, Alabama while they were attempting to access anti-trafficking protections guaranteed to them by Congress.¹⁵

And in Tennessee, ICE agents conducted home invasions in the Shelbyville community only a day after the community held a public hearing against racial profiling, targeting and deporting community leaders.¹⁶

The experience of the Southern 32 also exposes retaliation by ICE. After Delmy Palencia won her release from Sheriff Gusman's custody on an immigration detainer and spoke out about the unconstitutional overdetention, ICE raided her home and re-arrested her. After Josue Diaz, Melvin Mejia, and other workers refused to continue working without safety equipment and an end to discriminatory treatment, ICE met them outside the labor camps with the police, placed immigration holds on them, and arrested them based on those holds even when the criminal charges alleged by their employer in the labor dispute were ultimately withdrawn by the district attorney for lack of evidence.

Stories of the Southern 32



Photo: Jacob Horwitz



Photo: Ted Quant

JOSUE DIAZ



Photo: Mike Posey Photography & Video

MELVIN OMAR MEJIA

Reconstruction workers and community know-your-rights trainers for the Congress of Day Laborers in New Orleans, Josue Diaz and Melvin Omar Mejia face deportation because they led a strike to demand an end to illegal discrimination against Latino workers during the Hurricane Ike clean-up effort. Their employer refused the Latino workers legally required wages and health and safety equipment. When they led a strike, the employer, law enforcement, and ICE colluded to detain and deport the Latino workers on the jobsite. Since then, Josue and Melvin have pushed for the enforcement of federal worker protections, which includes cooperating with three federal investigations into misconduct by law enforcement and their former employer. But ICE continues to push for their deportation.

Standing up to discrimination and unsafe working conditions and for the right to strike

racism on the worksite — discrimination which endangered our health and left us unable to provide for our families,” recounted Melvin Mejia. “Based only on the word of our employer, the police arrested us and put us in jail for stealing our own clothes. I remember thinking, ‘I never imagined that something like this could ever happen in the United States.’ And even then I never thought I would spend 80 days in jail and 47 days in immigration detention and years continuing to fight my deportation.”

“The main reason people don’t stand up for themselves and defend their own rights is because they are afraid of being deported,” explained Josue Diaz. “I never thought I would be in a jail or a detention center. But, when my employer and ICE forced me to be there just for demanding an end to discrimination, I met so many people with experiences that were similar

“I will never forget the moment when we were sitting outside of the labor camp, being arrested for demanding an end to the

to mine. My courage comes from the injustices that I've lived. The fear that keeps others from standing up is real — ICE is still trying to deport me just for standing up. But my desire for a community where people live without racism and discrimination is stronger.”

Josue, Melvin, and four other colleagues face deportation solely for refusing to continue working in the Hurricane Ike clean-up effort without adequate safety equipment and fair wages.¹⁷ Their employer, All Dry Water Damage Experts, recruited workers from a day labor corner in New Orleans, transporting them into the hurricane disaster zone of Beaumont, Texas, just four days after Hurricane Ike, to perform clean-up and demolition work. Subjected to dangerous work conditions, racial discrimination, unpaid wages, and squalid housing, workers engaged in a courageous workplace strike to protect their civil rights and liberties. The extreme vulnerability of hurricane reconstruction workers and the long-term health and economic impacts of rampant discrimination, dangerous workplace conditions, and wage theft has been well documented, including the use of retaliatory threats of deportation to block workers from enforcing minimum standards.¹⁸

In response to the demand from Josue, Melvin, and the other workers that their employer end onsite discrimination, the employer evicted the workers from the labor camp, called the police and had workers arrested based on false accusations of theft.

During 80 days in criminal custody on the baseless charges, Josue, Melvin, and the other workers were pressured to accept plea agreements that would have resulted in multi-year prison sentences. They refused. During that time their organization, the Congress of Day Laborers, rallied support letters and legal assistance in support of their claims of innocence and employer misconduct. Ultimately, the district attorney was forced to withdraw all the charges against the workers for lack of evidence.

But Josue and Melvin's struggle did not end there. Even after all charges were dropped, they were not released. After the jail continued to hold the workers on voluntary investigatory holds (sometimes called “immigration detainers”), ICE then rearrested them, jailed them without bond, and pushed for their deportation. The workers were only released from detention after 47 days, through advocacy by the Equal Employment Opportunity Commission and the National Labor Relations Board, who had conducted preliminary interviews in the immigration detention center. The Department of Homeland Security's Office for Civil Rights and Civil Liberties also opened an investigation, benefiting from the workers' release from custody to conduct onsite investigations and in-person interviews.

While Josue and Melvin continue to stand up as grassroots labor leaders — supporting other day laborers in defending their rights against discrimination and wage theft — and continue to cooperate with ongoing investigations, ICE continues to push for their deportation and has repeatedly refused to terminate their cases and grant them humanitarian protections.

Josue asks, “This is supposed to be a country that respects freedom. What does that mean when people keep getting deported for standing up for what is fair? As a human rights trainer, I encourage other day laborers to report violations of the law. But they ask me if the government cares about the laws that protect workers or just the laws that deport us. What do I say to that when the government is still trying to deport me?”

Melvin agrees, “Training and supporting other workers to defend their rights is so important. But even when you do stand up — it is an uphill battle. I know that from personal experience. I have also learned that this is not what most people in America think is right. When I have spoken out about what happened to me, people always respond with, ‘That’s not fair’ and ‘That’s not justice.’”

Josue and Melvin continue to cooperate with a DHS investigation into why ICE got involved in their labor dispute with their employer in spite of limitations imposed on such activity¹⁹ and why ICE’s own prohibitions on enforcement in the Hurricane Ike zone also did not protect them.²⁰ They regularly stand up with labor, religious, and community leaders to advocate for protections from discrimination and wage theft that work on the ground — and for the most vulnerable workers in the most extreme situations like hurricane clean-up. They have trained hundreds of workers across the country — emphasizing not only the rights provided by law but the strategies necessary to resist arrest, detention, deportation, and other strategies which block effective enforcement of worker protection laws.

“We’ve heard the Obama administration talk about a new civil rights policy for ICE. We’re still waiting to see it on the streets of New Orleans,” said Josue. “But we’re not just waiting on the government, we are working every day to make justice real as our communities understand it. I want every person to have the courage to stand up against racism, discrimination, and wage theft and to be protected when they do.”

“From my experience, people agree workers should have these protections,” said Melvin. “It’s time for the government to listen to the voice of working people, our families, and our communities, and then stand up with us.”



Photo: Mike Posey Photography & Video

DELMY DINORA PALENCIA GONZALES

A mother, a member of the Congress of Day Laborers, and a civil rights defender, Delmy Palencia faces deportation after ICE retaliated against her for standing up against racial profiling and abuse of power by local law enforcement. After Delmy demanded her own freedom and an end to the unconstitutional use of immigration detainers by the notorious New Orleans Sheriff, ICE retaliated against her: they arrested her in her home, humiliated her, and jailed her.²¹

Standing up against unconstitutional conditions at Orleans Parish Prison and for the rights of women and families

“As women we have to stand up — for our children, our families, our communities, and ourselves,” said Delmy. “Our families and communities have been traveling a long road to dignity and justice, and we will keep walking no matter what obstacles the criminal justice system and ICE put in our way. I know that I should not be in jail and I should not be deported for being a good mother and trying to build a better world for my son.”

Delmy first stood up to resist civil rights violations she faced when the New Orleans Police Department turned a family dispute into a problem of the criminal justice system.²² On May 21, 2011, Delmy was first arrested for locking her husband out of the house following a domestic argument. During the arrest, no police officer could speak to her, her husband, or any witnesses in Spanish. She spent 45 days in jail separated from her infant before the district attorney reviewed the arrest and dropped all charges against her.

After the charges were dropped, the New Orleans Parish Sheriff chose to continue to hold Delmy in jail at Orleans Parish Prison based only on an investigatory immigration hold (sometimes called an “immigration detainer”).²³ At this time, the Sheriff was already

facing investigation by the U.S. Department of Justice and a civil rights lawsuit based on his illegal use of these voluntary, investigatory holds to terrorize the immigrant community in New Orleans. Delmy fought for her release from unconstitutional detention. From inside the jail, she filed a petition for writ of habeas corpus. She became a key witness in the ongoing investigation and litigation about the Sheriff's unconstitutional actions, and began speaking out about her experience and the need for fundamental changes in policy and practice at Orleans Parish Prison.²⁴

Although she won her own release from the criminal justice system, ICE then retaliated against Delmy. They re-arrested her in a warrantless night raid on her home, and separated her from her infant once again. On August 3, 2011, shortly after she had successfully challenged her unlawful detention stemming from an ICE hold request, ICE entered her home late in the evening, arrested her without a warrant, and detained Delmy without bond. They transferred her to a rural detention center over four hours away from her infant son.

Despite all these obstacles, Delmy has chosen to continue to stand up as a civil rights leader. Upon release and reunion with her family, Delmy helped to found the women's civil rights committee Women United For Justice — urging an end to practices by the New Orleans Police Department, Orleans Parish Sheriff, and Orleans Parish Prison that violate civil and human rights. Her powerful leadership arises from her direct experience. In this rare case, the Sheriff and ICE have not been able to deport the witnesses against them.

Delmy advocates for better local and national policies that ensure civil rights protections for women and families within the criminal justice system.²⁵ She has participated as a community leader in delegations to Georgia and Massachusetts and has spoken with civil rights leaders, policy makers, and other community members to reveal the human-rights impact of immigration enforcement, including state anti-immigrant bills and the federal "Secure Communities" program, on women, children and families.

"As women from New Orleans, of all backgrounds, of all races, we stand up together for our children and for our vision of a dignified community. Through our community organizations, we support each other, and try to ensure that other women don't experience the injustices that we've had to experience.

"Our families cannot afford to wait for the government to give us justice," said Delmy. "We have to make justice real. The government should stop trying to deport me and stand up with me and my community as we fight to end racial profiling and stop law enforcement officials who abuse their power and responsibility."



Photo: Mike Posey Photography & Video

JOSE HERNANDEZ MONTERRUBIO

A resident of New Orleans since Hurricane Katrina and an active member of the Congress of Day Laborers, Jose Monterrubio stepped to the frontlines of the civil rights struggle in New Orleans after ICE conducted a series of immigration raids on New Orleans day labor corners. In one of those raids, ICE identified Jose through racial profiling and illegally searched him and arrested him. He now faces deportation for standing up to a pattern and practice of racial discrimination and unconstitutional arrests on New Orleans day labor corners and for defending the First Amendment constitutional rights of reconstruction workers in New Orleans.

Standing up against systematic raids on day labor corners and for the constitutional rights of day laborers

In immigration court, Jose argued that his case should be closed because he is cooperating with a federal civil rights investigation into violations of

civil and constitutional rights. ICE objected. After the immigration judge closed the case over ICE's objection, ICE fought back: ICE filed a motion to reinstate his case and proceed with his deportation.

"I knew that someone had to stand up, even if it meant being punished for it. I took a stand for New Orleans — for the city I have helped to rebuild, the city that I love, and the city that is now my home. I want New Orleans to be a city where all people live with respect and dignity and where the police and ICE don't abuse their power."

As a day laborer in New Orleans since Hurricane Katrina, Jose had witnessed ICE conduct a series of immigration raids on New Orleans day labor corners before he was targeted. Jose knew other day laborers who had been deported based on raids where ICE was refusing to follow the constitution or its own rules. He knew the terror the raids were causing in the

community to have men — fathers, brothers, sons, and workers — disappearing from the corner. And he knew the humiliating impact of living under a regime of discrimination and racial profiling by law enforcement.

When ICE identified Jose through racial profiling and illegally searched him and arrested him, he stood up and said, enough. He and another day laborer filed a civil rights complaint exposing years of illegal ICE harassment and racial profiling against day laborers in New Orleans.²⁶

In retaliation for standing up against ICE's longstanding unconstitutional practices and harassment of day laborers, ICE has continued to aggressively push for Jose's deportation. ICE refused his request to close his deportation case even though he is cooperating with an ongoing investigation by the Department of Homeland Security's own Office for Civil Rights and Civil Liberties.

When an immigration judge asked ICE to consent, ICE again refused. After the immigration judge closed Jose's case over the objection of ICE, ICE filed additional papers asking that the case be reinstated immediately.

"ICE's actions in New Orleans speak louder than words from Washington. The message is clear: File a civil rights complaint and ICE will push even harder to deport you," says Jose.

Meanwhile, in California, the Ninth Circuit Court of Appeals validated the First Amendment rights of day laborers.²⁷

"We the people know what the constitution means and what is fair. I'm proud that the U.S. Court recently enforced protections for day laborers and that the immigration judge closed my case. I hope this is just the beginning of protections that immigrants like me can rely on."



Photo: Mike Posey Photography & Video

JOAQUIN NAVARRO HERNANDEZ

A member of the Congress of Day Laborers from the Franklin day labor corner, Joaquin Navarro Hernandez faces deportation even after he exposed gross misconduct and an attempted cover-up of that misconduct by U.S. Customs and Border Patrol officials. Instead of providing humanitarian protections for Joaquin and beginning its own investigation of the misconduct he exposed through organizing, advocacy, and federal litigation, DHS continues to press forward with the deportation of Mr. Hernandez before the matter is fully investigated and before Joaquin can continue with his civil rights work.

Standing up against a Border Patrol cover-up and for the right to information necessary for a civil rights based deportation defense

Joaquin was placed in deportation proceedings after the botched and chaotic raid of a day labor corner by U.S. Customs and Border Patrol. After going

beyond its jurisdiction on an interior patrol, U.S. Customs and Border Patrol attempted to raid the day labor corner. Far from a targeted enforcement action to secure the border, the raid ended in complete chaos. A local community member assaulted Joaquin; a neighbor called the New Orleans Police Department on the assailant; and CBP was called to the scene of the assault several blocks away.

Upon realizing that Joaquin had been assaulted and turned over to the police, did U.S. Customs and Border Patrol act to protect Joaquin and limit the consequences of its botched and illegal action? No. Instead, they lied on the arrest report and aggressively attempted to deport the evidence of their misconduct — Joaquin.

When Joaquin decided to fight his deportation, he uncovered that not only had he been the victim of an assault and gross civil rights violations in his arrest, but CBP had lied on his arrest record. CBP officers had written on his arrest record that he had been arrested at the

day labor corner after casually admitting his unlawful status. Joaquin knew that by defending himself and fighting to expose the truth, he was defending not only himself, but all the day laborers on the Franklin Corner and everyone in New Orleans who believes respect for civil rights benefits the entire city.

Joaquin, represented by the New Orleans Workers' Center for Racial Justice and the National Day Labor Organizing Network, filed a federal Freedom of Information Act (FOIA) request seeking publicly available information related to his arrest as well as broader patterns of Border Patrol raids on day labor corners and collaboration between Border Patrol and local law enforcement in violation of civil rights laws. When U.S. Customs and Border Patrol ignored the FOIA request, Joaquin took the federal agency to court to demand the information as part of a broader strategy with the Congress of Day Laborers to promote civil rights policies with local and federal agencies including U.S. Customs and Border Patrol.

Joaquin persevered to obtain the few documents CBP had to expose the cover-up. Although his due process rights and ability to defend himself at his deportation proceedings were on the line, CBP refused to turn over relevant and responsive documents. The federal court later noted, "Over the course of this litigation, CBP withheld each record mentioned above in its entirety. Only after the Court granted Plaintiff's motion for partial summary judgment, over Defendant's objections, were any of these documents released to Plaintiff."²⁸

At the conclusion of his federal court case, the federal judge recognized the uphill battle Joaquin had faced, his leadership and courage, and the critical collaboration between Joaquin and the New Orleans Workers' Center for Racial Justice:

At present, there is a vigorous public debate on the topic of targeted immigration enforcement, most notably as to whether such efforts should prioritize aliens with documented criminal histories, as opposed to individuals who have committed only civil immigration law violations, such as Plaintiff. There is also widespread public debate on the related issue of whether and to what extent local police should be involved with federal immigration enforcement efforts. Both these questions are of substantial public interest in the City of New Orleans, where the plight of the large population of immigrant workers who have assisted in rebuilding efforts after Hurricane Katrina has been a matter of particular concern. Here, Plaintiff has used the records disclosed as a result of this case to increase public awareness of the above issues, as well as to facilitate public oversight of CBP's enforcement of federal immigration law in the New Orleans area, both as it relates to his own case and in general.²⁹

The federal court also recognized that Joaquin's fight for transparency and due process in his deportation case was a civil rights matter. The Court wrote, "Plaintiff sought to ensure he was afforded a full and fair hearing in his pending deportation proceeding. This interest, while personal in nature, also implicates the strong public interest in preserving the administration of justice in our nation's immigration courts."³⁰

While ICE continues its pressure to deport him, Joaquin continues to engage in his civil rights work — to defend his own case and to help support others who are willing to take a stand to expose law enforcement misconduct. He has used the information from his FOIA case to support Know Your Rights trainings related to self-defense from the New Orleans Police Department as well as ICE and CBP. He has advocated with local and national policy makers regarding new policies and enforcement practices which respect civil rights.

“At times you feel alone in raising your voice, but I have seen the power of having an organization stand up with me. And I have learned through my own experience that the truth will come out,” said Joaquin.



Photo: Mike Posey Photography & Video

JOSE LUIS GOMEZ CASTOR

A member of the Congress of Day Laborer's civil rights committee since Hurricane Katrina, Jose Luis Gomez Castor faces deportation after ICE agents raided an organized day labor corner in New Orleans. Dressed as a contractor, an ICE agent recruited Jose and two other day laborers into an unmarked vehicle — purportedly to hire them as painters. But it was an ambush. After turning the corner, additional ICE agents appeared, pulled out their guns, and demanded information. Jose knew his rights, refused to answer, and presented his workers' center photo identification card invoking his right to remain silent and right to counsel. Even though he stood up to the agents interrogating him and respectfully invoked his right to remain silent and consult with his attorney, ICE arrested him and is aggressively pursuing his deportation.

Standing up against racial profiling and for the right to remain silent and the right to counsel

Jose explained how he had the courage to remain silent in that moment in the following way:

"I have been working to defend the civil rights of my community

since 2005. After Hurricane Katrina, day laborers were doing the hardest jobs to help the city recover. Still, day after day the National Guard, the Police, and ICE — they tried to intimidate and dehumanize us. They would use military jeeps and equipment to try to herd us around like animals. At this time, many workers were arrested just for trying to get paid or get medical care when they were hurt on the job."

Law enforcement actions that rely on racial profiling have been regular occurrences on New Orleans day labor corners since Hurricane Katrina in 2005. Despite national enforcement priorities from DC, ICE New Orleans has continued to raid day labor corners, sometimes by dressing as contractors and luring day laborers into unmarked vehicles with promises

of construction work. In Jose's case, a disguised ICE agent induced Jose and two other day laborers to enter his vehicle with promises of painting work. The ICE agent then drove around the corner where additional uniformed ICE agents attempted to enter the car and began interrogating Jose and the other day laborers about their identity and immigration status. But Jose knew his rights. He didn't answer. Instead, he gave the ICE agent his Congress of Day Laborers membership card demonstrating that he was a member of the civil rights organization and invoked his right to remain silent and right to counsel. The ICE agents should have let him walk away. Being a day laborer is not probable cause for an ICE arrest. Instead, the ICE agents cuffed him, took him for processing, and continued to pressure him into talking and signing documents without receiving counsel.

Jose explains, "The United States has some good laws that protect people from racism and law enforcement abuse of power on paper, but they don't mean anything on the streets unless we defend them. And as day laborers — because we look for work on corners in public — it is often up to us to make these laws real. And we've seen how this matters. Because we stood up for our rights, eventually, the National Guard and the police began to respect the rights other day laborers have won in the courts. Many people in New Orleans respect our right to remain in the city we've helped to rebuild with our own hands and the rights to fairness and equality we've helped to make real for all residents."

Jose remains an active member of the Congress of Day Laborers. He has filed a civil rights complaint about what happened in the raid and is cooperating with the ongoing civil rights investigation. Workers' Centers and their supporters from across the United States have urged for protections for Jose and for a thorough investigation of ICE's actions. They recognize that ICE's actions raise fundamental questions for low wage workers irrespective of their immigration status — when a low-wage worker invokes his constitutional rights, will DHS listen? Do the protections in the constitution apply fairly? Despite the ongoing civil rights investigation into these issues, ICE continues to pursue Jose's deportation.

"In the last five years, I've trained hundreds of day laborers on their rights and how to defend themselves when law enforcement abuses its power. When I stood up to ICE, I was defending the rights of everyone on my day labor corner, everyone in New Orleans, and workers across the United States. Many other day laborers and other members of organizations across the country are watching my situation and supporting me. They want to believe that if workers defend their rights — if they show their membership identification and ask for interrogations to stop and to speak with their lawyer — that these fundamental rights will be respected. I think ICE is watching too — someone has to tell them they are not above the law."



HERNAN LOPEZ ALAS

On the morning of August 29, 2011, ICE and local law enforcement conducted a payday raid on workers in the midst of a labor dispute. The raid spilled over into the community and the apartment complex where the workers had gathered to be paid.³¹

Standing up against violent payday immigration raids and for the right to work with dignity and legal wages

Hernan Lopez Alas, a 32-year-old father and member of the Congress of Day Laborers, explained what happened as he stood in the doorway of his

apartment holding his infant daughter. “ICE pushed into my apartment and an agent violently struck me on the head with a gun. By then, I was in too much pain to lock the door and prevent them from coming in. I can still hear the sound of my daughter crying as the ICE agent hit me.”

Hernan faces deportation and possibly permanent separation from his wife and daughter because the ICE payday raid spread into the surrounding apartment complex where he and his family live. On Monday, August 29, 2011, at 7:00 am, employees of Louisiana Home Elevations LLC gathered to get paid for the last week of work. As they had done for many weeks before, they gathered in the parking lot of an apartment complex — the one where Hernan lived. That morning, ICE and local law enforcement conducted a coordinated payday raid on the workers and the apartment complex.

Alerted by noise outside, Hernan, holding his child in his arms, went to the doorway of his apartment to see what was happening. He tried to close the door, but ICE agents forced it open. Then an agent struck Hernan on the head with a gun and handcuffed him. “I suffered pain and visible head injury for over three weeks,” lamented Hernan. After violently striking and placing Hernan in custody, the ICE agents ran through the house yelling with guns

drawn — including the bathroom where Mr. Lopez’s wife was showering. “They didn’t ask me anything — not even my name — before handcuffing me. They just lined me up with dozens of other Latino men in the parking lot.” Hernan was not working for Louisiana Home Elevations, but like the others arrested that day, he is Latino and working class.

Hernan is an active member of the Congress of Day Laborers. He has filed a civil rights complaint about what happened in the raid and is cooperating with the ongoing civil rights investigation. Despite this, ICE continues to pursue his deportation.

“Was I afraid?”, Hernan asks himself when talking about the courage it took to come forward and make a civil rights complaint against the ICE agents who stormed into his home, assaulted him, and continue to press for his deportation. “Of course I was afraid...one is always afraid,” he admitted. “But you keep fighting, keep trying to push the movement forward. People have to know what’s happening — and since this happened to me, I have to be courageous for my family and community. That is the only way forward.”



Photo: Mike Posey Photography & Video

GERSON DIAZ

Gerson Diaz refused to allow his arrest through a warrantless pre-dawn raid and resulting deportation proceedings lessen his will to stand up for justice or his belief that the actions of ordinary people are what makes justice real.

Gerson explains: “I am a man — a worker and a father. I am willing to stand up for my rights because I believe all people should be treated equally. If I don’t stand up for myself, my family and my community, who will?”

Standing up against inhumane immigration detention conditions and for the rights of detainees

After pulling him out of bed in his underwear at dawn and arresting him, ICE sent Gerson to immigration detention at the infamous South

Louisiana Correctional Center in Basile, Louisiana. This private detention center filled with hundreds of immigration detainees from across the United States is located over 180 miles northwest of Louisiana. Isolated from the detainees’ families and community and a four-hour drive from most of Louisiana’s immigration attorneys, Basile is notorious for inhumane detention conditions.

When ICE refused to improve conditions and meet its own standards after the immigration detainees filed grievances, Gerson and 60 other detainees began hunger strikes to show the seriousness of ICE’s failures and to ask for national oversight of the conditions.³²

Philip Miller, ICE Field Office Director for the five-state Southern Region, defended the conditions at Basile, saying that ICE exercises “a high degree of caution and a high degree of sensitivity in how we maintain our facility.”³³

But Gerson and other detainee human rights monitors exposed not only the reality of the conditions, but ICE’s retaliation against detainees for their actions that exposed them.³⁴

Reports by detainee human rights monitors,³⁵ most of which were later validated by ICE’s own review of the facility,³⁶ outlined how ICE failed to meet its own minimum standards in the following areas:

- Medical Care
- Hunger Strikes
- Disciplinary Policy and Administrative and Disciplinary Segregation: Special Management Units
- Access to Legal Materials
- Telephone Access and Correspondence and Other Mail
- Issuance and Exchange of Clothing, Bedding and Towels
- Food Service

While the Southern regional field office continued to defend the facility and used solitary confinement and other pressure to silence detainee human rights monitors, DHS Secretary Janet Napolitano directed Dora B. Schriro, newly appointed Director of the Office of Detention Policy and Planning for the Department, to fly to Basile on her first day in office to meet detainee human rights monitors.³⁷

DHS Office for Civil Rights and Civil Liberties eventually opened an investigation into the conditions at Basile and ICE’s retaliation against detainees who exposed them. And ICE’s own internal investigation validated the illegal conditions Gerson helped to expose. Detention conditions for immigrant detainees improved significantly. In immigration court, Gerson has also continued to expose egregious civil rights violations related to his initial arrest. Nevertheless, ICE continues to pursue Gerson’s deportation.

Gerson explains, “It takes courage to stand up for your rights — especially in a detention center. But for me it was worth it. I know the actions I took with other detainee human rights monitors improved the conditions for many people. And I hope they helped inspire others to feel empowered to stand up for their own civil rights.”

Access-to-Justice Policy Recommendations

The Southern 32 are not alone. The Obama Administration has deported a record number of immigrants in its first three years in office. Facing an unprecedented outcry from the immigrant community, the Administration then announced it would exercise more discretion — including where immigrants were engaged in protected action to defend civil, labor, and human rights.

And despite clear direction from ICE Director Morton to exercise “all appropriate discretion” for individuals involved in legitimate efforts to protect their civil rights, grassroots labor organizers and community leaders continue to be targets of enforcement action, and ICE continues to push for their immediate deportation even when they are engaged in civil rights complaints, organizing and advocacy, and civil litigation to defend themselves, their families, and their communities.

In fact, not only has DHS not implemented the civil rights provisions of the discretion policy, but they currently do not have adequate guidance or practices in place to properly deal with these cases or, better yet, to prevent these individuals from ending up in deportation proceedings in the first place. In other words, systemic changes are needed within DHS in order to adequately and effectively implement this policy and for civil rights defenders across the South and across the United States to be able to truly access justice in their cases.

The experiences of the Southern 32 not only expose the current problems, they suggest concrete policy recommendations for DHS that will ensure DHS enforcement policies do not chill important civil rights actions — organizing, advocacy, administrative complaints, and litigation that is critical to making sure the laws on the books become rights on the ground and the rights on the ground are consistent with our values as a country.

The solution is not new policy, but policy recommendations that provide the necessary clarity and oversight to make sure key policies are implemented broadly and consistently.

Protected civil and labor rights actions involve exposing employers, law enforcement, and sometimes DHS agencies when they act outside the law and abuse their power. DHS needs improved access-to-justice policies to ensure its enforcement actions do not chill protected conduct and to protect civil, labor, and human rights defenders from retaliation.

These access-to-justice policy recommendations will ensure protections for immigrants standing up as civil, labor, and human rights defenders in their communities. This clearer picture of the on-the-ground reality created by current law and policy, and greater leadership and participation of grassroots immigrant voices, will inform legal and policy reform proposals across many areas.

Full Implementation of the Civil, Labor, and Human Rights Provisions of the Certain Victims, Witnesses, and Plaintiffs Memorandum.

DHS should issue public guidance directing enforcement and legal personnel to properly exercise discretion in cases involving protected civil, labor, and human rights actions and should ensure consistent and broad implementation. ICE personnel should apply the appropriate standard that, absent special circumstances, DHS shall exercise “all appropriate discretion” for all civil rights leaders who are victims, witnesses, and plaintiffs engaged in protected activity, civil litigation to protect their civil rights, or in the midst of a legitimate effort to protect their civil, labor, and human rights. All appropriate discretion should result in three types of protections needed for dignity, stability, and economic security: an end to all DHS custody conditions (including but not limited to detention, ankle shackles, travel limitations, and check-in requirements), indefinite future status (including termination of immigration cases with prejudice or indefinite stays of removal), and employment authorization. DHS should monitor consistent implementation in all regional field offices.

Maintain the Economic Strength of Workers, Families, Communities, and Small Businesses.

All appropriate discretion for civil rights leaders who are engaged in protected activity, civil litigation, and/or in the midst of a legitimate effort to protect their civil, labor, and human rights should include work authorization and return of their bond money as well as indefinite protections from deportation. All appropriate discretion should also include immediate temporary status and release from detention for victims and witnesses with pending U and T visas certifications or who are cooperating in government investigations of trafficking or severe civil, labor, or human rights violations. DHS should monitor consistent implementation in all regional field offices.

Adopt Proactive Policies to Limit Harm to Ongoing Civil, Labor, and Human Rights Activities.

It is not enough to provide discretionary relief after civil, labor, and human rights violations have occurred. DHS should adopt procedures that limit the destructive impact of worksite, day labor corner, and community raids and other enforcement actions. Prior to such raids and other enforcement actions, ICE should conduct a civil and labor rights impact assessment on the raid’s harm to protected activity relating to civil, labor, or human rights. DHS should also issue written, public guidance that enforcement operations shall not be undertaken in association with certain activities integral to effective disaster response including preparedness, evacuation, sheltering, return, and recovery. DHS should monitor consistent implementation in all regional field offices.

Terminate Agreements with Local Law Enforcement Officials Who Undermine Civil, Labor, and Human Rights. DHS should monitor and terminate collaboration with local law enforcement who are found to be undermining civil, labor, and human rights. Terminating collaboration should include terminating detention contracts and ICE Access programs in which local law enforcement are found to have subjected victims, witnesses, and plaintiffs to racial profiling, excessive use of force, overdetention based on expired DHS detainers, and/or unlawful detention conditions. DHS shall exercise all appropriate discretion for all victims of civil, labor, or human rights violations by local law enforcement officials. This includes victims subject to violations before, during, or after a DHS civil and labor rights impact assessment and/or termination of the contract. DHS should monitor consistent implementation in all regional field offices.

Investigate and Sanction DHS Misconduct and Protect Witnesses to the Investigation. All appropriate discretion should include empowering the DHS-Civil Rights and Civil Liberties (CRCL) to truly investigate and sanction officers that fail to comply with civil, labor, and human rights while protecting confidentiality and safety of victims and witnesses who come forward and report misconduct. This includes a streamlined process for ensuring ICE personnel grant all appropriate discretionary relief to individuals who are participating in the DHS-CRCL investigative process and limits on how information gathered through that process is shared and used against cooperating individuals in future removal proceedings .

Ensure Community Transparency and Accountability. DHS should publicly disclose information relating to implementation of the Victims, Witnesses, and Plaintiffs Memorandum including legal analysis, training materials, evidentiary standards, and other policies designed to ensure implementation of the civil, labor, and human rights provisions of its prosecutorial discretion policies. This includes providing data, by region, relating to the number of cases reviewed and discretion exercised pursuant to the Victims, Witnesses, and Plaintiffs Memorandum, all civil and labor rights impact assessments, and funding allocations towards components of the agency tasked with monitoring civil, labor, and human rights. DHS should also prioritize and expedite FOIA requests related to civil, labor, and human rights matters and voluntarily provide relevant information in its files to ensure individuals have access to full information necessary to support their claims for appropriate discretion.

Notes

- 1 Barack Obama's Speech on Race (Mar. 18, 2008) in N.Y. TIMES, Mar. 18, 2008, available at <http://www.nytimes.com/2008/03/18/us/politics/18text-obama.html?pagewanted=all> (accessed 05/30/2012).
- 2 See Transcript of U.S. v. Arizona, 11-182, (argued April 25, 2012) at p. 33, available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-182.pdf.
- 3 See, e.g., *Ending Racial Profiling in America: Hearing Before Subcomm. on the Constitution, Civil Rights and Human Rights of the Sen. Comm. on the Judiciary*, 112th Congress (2012) (statement of the National Immigration Law Center), available at www.nilc.org/document.html?id=685.
- 4 John Morton, Office of Dir., U.S. Dep't of Homeland Security, U.S. Immigration & Customs Enforcement, Policy No. 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011), available at www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf.
- 5 *Id.*
- 6 *Id.*
- 7 See, e.g., *EEOC v. Koch Foods*, No. 3:11-CV-00391-DPJ-FKB (S.D. Miss. filed June 29, 2011) (alleging that poultry processor subjected a class of female Hispanic employees in its Morton, Miss., poultry processing plant to various forms of sex-based harassment, including sexual assaults over several years, and accusing Koch Foods of discrimination against a class of male Hispanic employees because of their national origin); *EEOC v. Signal Int'l, LLC*, No. 11-CV-00179-LG-RHW (S.D. Miss. filed April 20, 2011) (alleging that the Gulf of Mexico marine services company violated federal law by subjecting a class of approximately 500 Indian employees to human labor trafficking and a hostile work environment). See also, e.g., U.S. DEPT. OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT, (March 16, 2011), www.justice.gov/crt/about/spl/nopd_report.pdf (finding reasonable cause to believe that NOPD engages in patterns of misconduct that violate the Constitution and federal law including racial profiling and use of force); U.S. Dept. of Justice, Civil Rights Div., JMS:LC:CMS:SJD:BJ:dj, DJ 168-32-71, UPDATE TO THE LETTER OF FINDINGS, UNITED STATES CIVIL RIGHTS INVESTIGATION OF THE ORLEANS PARISH PRISON SYSTEM, (April 23, 2012), www.justice.gov/crt/about/spl/documents/parish_update_4-23-12.pdf (finding that the conduct of officials at OPP evinces deliberate indifference to basic needs with particular risk to immigrants detained there).
- 8 See, e.g., *Ending Racial Profiling in America: Hearing Before Subcomm. on the Constitution, Civil Rights and Human Rights of the Sen. Comm. on the Judiciary*, 112th Congress (2012) (statement of the National Immigration Law Center), available at <http://www.nilc.org/document.html?id=685>.
- 9 Julia Preston, *Suit Points to Guest Worker Program Flaws*, N.Y. Times, Feb. 2, 2010, at A12, <http://www.nytimes.com/2010/02/02/us/02immig.html> (reporting that ICE "worked closely with a marine oil-rig company in Mississippi to discourage protests by temporary guest workers from India over their job conditions, including advising managers to send some workers back to India."); Editorial, *What Would You Do?*, N.Y. Times, April 22, 2010, at A28, <http://www.nytimes.com/2010/04/22/opinion/22thu3.html>. See also, e.g., Editorial, *Detention Reform*, N.Y. Times, August 7, 2009, at A18, <http://www.nytimes.com/2009/08/07/opinion/07fri2.html> (emphasizing that ICE should ensure that national policies on detention conditions affect "continuing outrages, like those documented by immigrant advocates at a center in Basile, La., where detainees have waged hunger strikes to get their grievances heard"); Editorial, *Detained and Abused*, N.Y. Times, August 1, 2009, at A16, <http://www.nytimes.com/2009/08/01/opinion/01sat2.html>.
- 10 Several members of the Southern 32 had previously received short-term relief based on independent eligibility in advance of the review period. None have received long-term status and none have received offers of discretionary relief based on the civil, labor, and human rights provisions of ICE's prosecutorial discretion policy.

- 11 Immigration & Customs Enforcement, *Next Steps in the Implementation of the Prosecutorial Discretion Memorandum and the August 18th Announcement on Immigration Enforcement Priorities*, available at <http://www.dhs.gov/files/programs/cisomb-telecon-ice-public-advocate.shtm>; Dep't of Homeland Security, *Teleconference Recap: A Conversation with the U.S. Immigration and Customs Enforcement (ICE) Public Advocate*, available at <http://www.dhs.gov/files/programs/cisomb-telecon-ice-public-advocate.shtm>; Immigration & Customs Enforcement, *Guidance to ICE Attorneys Reviewing the CBP, USCIS, and ICE Cases Before the Executive Office for Immigration Review*, Nov. 17, 2011, available at <http://www.ice.gov/gcse-results.htm?q=guidance+to+ice+attorneys+reviewing+cbp%2C+uscis+and+ice+cases&cx=008742725097888865614%3A-tv3i3imaqu&cof=FORID%3A9&ie=UTF-8>; Peter S. Vincent, Office of the Principal Legal Advisor, Immigration & Customs Enforcement, *Case-by-Case Review of Incoming and Certain Pending Cases*, Nov. 17, 2011, available at <http://www.ice.gov/gcse-results.htm?q=case-by-case+review+of+incoming+and+certain+pending+cases&cx=008742725097888865614%3A-tv3i3imaqu&cof=FORID%3A9&ie=UTF-8>.
- 12 John Moreno Gonzales, *60 Immigrant Detainees Hunger Strike in Louisiana; Authorities Deny Poor Conditions*, ASSOCIATED PRESS, July 30, 2009, available at http://www.startribune.com/templates/Print_This_Story?sid=52115137; Editorial, *That Promise of Detention Reform*, N.Y. TIMES, Sept. 21, 2009, at A22, available at <http://www.nytimes.com/2009/09/21/opinion/21mon3.html>.
- 13 See ICE FOIA Request Number 2010FOIA 7265 (on file with author). Response includes Management Inspections Unit, Detention Facilities Inspection Group Quality Assurance Review, Detention and Removal Operations, New Orleans Field Office, South Louisiana Correctional Center, Basile, Louisiana (December 9–11, 2008) and Office of Detention Oversight Review Findings, Detention & Removal Operations, New Orleans Field Office, South Louisiana Correctional Center, Basile, Louisiana (August 10–12, 2009) recognizing multiple violations of ICE's detention standards, many of which were alleged by detainees.
- 14 Julia Preston, *Suit Points to Guest Worker Program Flaws*, N.Y. TIMES, Feb. 2, 2010, at A12, available at <http://www.nytimes.com/2010/02/02/us/02immig.html>; Editorial, *A Bitter Guest Worker Story*, N.Y. TIMES, Feb. 4, 2010, at A26, available at <http://www.nytimes.com/2010/02/04/opinion/04thur2.html>.
- 15 *Protesting Indian Workers to Meet Ambassador Sen*, INDIA TODAY, Mar. 27, 2008, available at <http://indiatoday.intoday.in/story/Protesting+Indian+workers+to+meet+Ambassador+Sen/1/6241.html>.
- 16 Chris Strunk & Helga Leitner, *Redefining Secure Communities*, THE NATION, Dec. 21, 2011, available at <http://www.thenation.com/article/165295/redefining-secure-communities>.
- 17 Along with Josue and Melvin, Dennis Dominguez-Verez, Santos Chacon-Mauriceo, Jose Eduardo Matuta Esperanza, and Gilberto Ines Chavez-Imestroza also face deportation because they participated in the strike to demand an end to illegal discrimination against Latino workers during the Hurricane Ike clean-up effort. They have also cooperated with the federal investigations into employer and law enforcement misconduct.
- 18 Judith Browne Dianis, NEW ORLEANS WORKERS CENTER FOR RACIAL JUSTICE, et al., AND INJUSTICE FOR ALL: WORKERS' LIVES IN THE RECONSTRUCTION OF NEW ORLEANS (2006), <http://www.nowcrlj.org/publications/reports>; Rebecca Smith, AFL-CIO et al., ICED OUT: HOW IMMIGRATION ENFORCEMENT HAS INTERFERED WITH WORKERS' RIGHTS (2009), nelp.3cdn.net/75a43e6ae48f67216a_w2m6bp1ak.pdf.
- 19 Immigration & Naturalization Service, Operating Instruction 287.3a, *Questioning Persons During Labor Disputes*, Revised Dec. 4, 1996 (redesignated as Immigration & Customs Enforcement, *Special Agent's Field Manual* § 33.14), available at <http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-53690/0-0-0-61072/0-0-0-61097.html>; Employment Standards Admin., U.S. Dep't of Labor, *Memorandum of Understanding Between the Immigration and Naturalization Service, Department of Justice and the Employment Standards Administration, Department of Labor*, Nov. 23, 2008. On December 7, 2011, after ICE's intervention in this labor dispute, DHS and DOL entered into an updated *Memorandum of Understanding* that further clarifies these issues, available at www.dol.gov/asp/media/reports/DHS-DOL-MOU.pdf.
- 20 Email from DHS Assistant Press Secretary Keegan On Immigration Enforcement During Hurricane Ike (September 11, 2008), available at <http://aila.org/Content/default.aspx?docid=26482> (stating that, "During Hurricanes Gustav and Ike ... there will be no DHS immigration enforcement operations associated with evacuations and sheltering"). Many advocates have urged DHS to adopt written, public policy guidance on enforcement during hurricanes and other natural disasters and/or emergencies, but DHS has not yet done so.

- 21 See e.g. Arthur Hunter Jr., *The Day-to-Day Reality of Enforcing Immigration Laws*, WASH. POST, Apr. 22, 2012, available at http://www.washingtonpost.com/opinions/the-day-to-day-reality-of-enforcing-immigration-laws/2012/04/22/gIQA1UGjaT_story.html. Commenting on a recent eight part investigative series in New Orleans' Times Picayune, New York Times Columnist Charles Blow noted the extreme racial disparities in incarceration, quoting the original series, "A prison system that leased its convicts as plantation labor in the 1800s has come full circle and is again a nexus for profit." Charles Blow, *Plantations, Prisons, and Profits*, N.Y. TIMES, May 26, 2012, at A21, available at <http://www.nytimes.com/2012/05/26/opinion/blow-plantations-prisons-and-profits.html>; Cindy Chang, Scott Threlkeld, and Ryan Smith, *Louisiana Incarcerated: How We Built the World's Prison Capital*, TIMES-PICAYUNE, May 13–20, 2012, available at <http://www.nola.com/prisons/>. Articles detail the following statistics: One in 86 adult Louisianans is doing time — nearly double the national average. That includes about 5,000 black men from New Orleans are doing state prison time, compared with 400 white men from the city. Overall, one in 14 black men in Louisiana are behind bars. See, e.g., http://www.nola.com/crime/index.ssf/2012/05/louisiana_is_the_worlds_prison.html.
- 22 U.S. DEPT. OF JUSTICE, CIV. RIGHTS. DIV., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT, (March 16, 2011), <http://www.justice.gov/crt/about/spl/nopd.php>.
- 23 U.S. DEPT. OF JUSTICE, CIV. RIGHTS. DIV., JMS:LC:CMS:SJD:BJ:dj, DJ 168-32-71, UPDATE TO THE LETTER OF FINDINGS, UNITED STATES CIVIL RIGHTS INVESTIGATION OF THE ORLEANS PARISH PRISON SYSTEM, (April 23, 2012), http://www.justice.gov/crt/about/spl/documents/parish_update_4-23-12.pdf.
- 24 *Cacho v. Gusman*, No. 2:11-cv-00225. (U.S. Dist. Ct. E.D. La., filed Feb. 2, 2011).
- 25 Premilla Nadasen, *Anything but "Secure" Federal Program Designed to Nab Criminals is Devastating Immigrant Families*, MS. MAGAZINE, Winter 2012, available at http://www.msmagazine.com/winter2012/anything_but_secure.asp. See also, Maria Clark, *Immigration Policy comes under Fire for Lengthy Detentions*, NEW ORLEANS CITY BUSINESS, March 22, 2012, available at <http://neworleanscitybusiness.com/blog/tag/delmy-palencia/>.
- 26 Marlon Santos Reyes also faces deportation based solely on an unconstitutional arrest on the Martin Luther King day labor corner in New Orleans. He jointly filed the civil rights complaint with Jose and is participating in the ongoing investigation. His case remains pending before the immigration court.
- 27 *Comite de Jornaleros de Redondo Beach v. Redondo Beach*, 657 F.3d 936 (9th Cir. 2011).
- 28 *Hernandez v. United States Customs & Border Prot. Agency*, 2012 U.S. Dist. LEXIS 14290 at *19 (E.D. La. Feb. 6, 2012).
- 29 *Id.* at *25-26
- 30 *Id.* at *29-30
- 31 Richard A. Webster, *Day Laborers Protest ICE Raid*, NEW ORLEANS CITY BUSINESS, Oct. 21, 2011, available at <http://neworleanscitybusiness.com/thenewsroom/2011/10/21/day-laborers-protest-ice-raid/>; U.S. Atty E.D.L.A. Press Release, Home Elevation Company, Owner, and Another Man Indicted for Conspiring to Hire Illegal Aliens, Money Laundering and Structuring Financial Transactions, Oct. 27, 2011, available at http://www.justice.gov/usao/lae/news/2011/2011_10_27_la_elevations_etal_ind.html; *Immigration Raids, Postville and Beyond: Hearing Before Subcomm. on Immigration, Citizenship, and Refugees of H. Comm. on Jud.*, 110th Cong. 110-198 (2008); *ICE Workplace Raids: Their Impact on U.S. Children, Families, and Communities: Hearing Before Subcomm. on Workforce Protections and Labor of H. Comm. on Educ. and Labor*, 110th Cong. 110-198 (2008); UNITED FOOD AND COMMERCIAL WORKERS, *RAIDS ON WORKERS: DESTROYING OUR RIGHTS* (2006), http://www.icemisconduct.org/docUploads/UFCW%20ICE%20rpt%20FINAL%20150B_061809_130632.pdf?CFID=7552141&CFTOKEN=74911757.
- 32 John Moreno Gonzales, *60 Immigrant Detainees Hunger Strike in Louisiana; Authorities Deny Poor Conditions*, ASSOCIATED PRESS, July 30, 2009, available at http://www.startribune.com/templates/Print_This_Story?sid=52115137. See also, Editorial, *Detention Reform*, N.Y. TIMES, August 7, 2009, at A18, available at <http://www.nytimes.com/2009/08/07/opinion/07fri2.html?scp=2&sq=basile%20...> (emphasizing that ICE should ensure that national policies on detention conditions affect "continuing outrages, like those documented by immigrant advocates at a center in Basile, La., where detainees have waged hunger strikes to get their grievances heard"); Editorial, *Detained and Abused*, N.Y. TIMES, August 1, 2009, at A16, available at <http://www.nytimes.com/2009/08/01/opinion/01sat2.html>.
- 33 John Moreno Gonzales, *60 Immigrant Detainees Hunger Strike in Louisiana; Authorities Deny Poor Conditions*, ASSOCIATED PRESS, July 30, 2009, available at http://www.startribune.com/templates/Print_This_Story?sid=52115137.

- 34 Monitoring Reports on Retaliation Against Detainee Human Rights Monitors at the South Louisiana Correctional Center, Basile, Louisiana. Compiled by the New Orleans Workers' Center for Racial Justice based on the firsthand accounts of detainee human rights monitors (2009), *available at* <http://www.nowcrj.org/wp-content/uploads/2009/08/retaliation-report.pdf>; Detention Conditions and Human Rights Under the Obama Administration: Immigrant Detainees Report From Basile, Louisiana. Compiled by the New Orleans Workers' Center for Racial Justice based on the firsthand accounts of detainee human rights monitors (2009), *available at* <http://www.nowcrj.org/wp-content/uploads/2009/07/detention-conditions-report.pdf>.
- 35 Monitoring Reports on Retaliation Against Detainee Human Rights Monitors at the South Louisiana Correctional Center, Basile, Louisiana. Compiled by the New Orleans Workers' Center for Racial Justice based on the firsthand accounts of detainee human rights monitors (2009) *available at* <http://www.nowcrj.org/wp-content/uploads/2009/08/retaliation-report.pdf>
- 36 See ICE FOIA Request Number 2010FOIA 7265 (on file with author). Response includes Management Inspections Unit, Detention Facilities Inspection Group Quality Assurance Review, Detention and Removal Operations, New Orleans Field Office, South Louisiana Correctional Center, Basile, Louisiana (December 9-11, 2008) and Office of Detention Oversight Review Findings, Detention & Removal Operations, New Orleans Field Office, South Louisiana Correctional Center, Basile, Louisiana (August 10-12, 2009) recognizing multiple violations of ICE's detention standards, many of which were alleged by detainees.
- 37 Editorial, *Detention Reform*, N.Y. TIMES, August 7, 2009, at A18, *available at* <http://www.nytimes.com/2009/08/07/opinion/07fri2.html?scp=2&sq=basile%20...> See also John Moreno Gonzales, *60 Immigrant Detainees Hunger Strike in Louisiana; Authorities Deny Poor Conditions*, ASSOCIATED PRESS, July 30, 2009, *available at* http://www.startribune.com/templates/Print_This_Story?sid=52115137.

The New Orleans Workers' Center for Racial Justice is dedicated to expanding democracy through the power and participation of low-income communities and communities of color across the South. The Center was founded after Hurricane Katrina and since then has protected the bedrock civil, labor, and human rights of African American and immigrant communities. The Center represents workers on the frontlines of today's changing South in policy change efforts, in the media, and in strategic litigation and legal advocacy. For more information see www.nowcrj.org

The Congress of Day Laborers is a grassroots membership organization of immigrant workers and their families, many of whom helped rebuild the city after Hurricane Katrina. Members of the Congress are grassroots labor leaders and civil rights defenders who are shining a light on abuse.

For more information on the Southern 32 see
www.makejusticereal.org