New York Committee for Occupational Safety and Health

When Nowhere is Safe: How the Trump Administration's Executive Order Threatens the Occupational Safety and Health of Immigrant Workers 3/10/17

President Trump's attack on immigrants began with the Executive Order on Enhancing Public Safety in the Interior of the United States, issued January 25, 2017, enacting various policy changes related to immigration enforcement. The executive order is clear. Immigration Customs and Enforcement (ICE) now has been given even more power than in the past when it comes to detaining and deporting immigrants, and all agencies, including the U.S. Department of Labor and the Occupational Safety and Health Administration, could be used to enforce immigration law. The order also contains components which will impact the health and safety protections of immigrant workers, and as a result, undermine the safety of all workers and the public at large.

In the order, the Department of Homeland Security is given clear direction to use "all lawful means" to enforce immigration laws. *"We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies [...] to employ all lawful means to enforce the immigration laws of the United States."* In Section 2(b), on Policy, the executive branch further states that its policy is to "*Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States."* This directive is detailed even more explicitly in memoranda issued by DHS Secretary Kelly on February 21, 2017.

The Immigrant Defense Project, in its recently released ICE Raid Toolkit, provides a detailed account of the types of tactics used under previous administrations, including that of Presidents Bush and Obama, as part of immigration enforcement. It catalogues a hair-raising list of tactics that includes: collateral arrests and a quota system; threats and physical force; deception; local law enforcement collaboration; and use of local law enforcement databases. Large workplace raids were a feature of Bush era enforcement, where hundreds of workers were arrested at once and charged with federal crimes--in many cases, the raids disrupted investigations of wage theft or workers' rights violations; ICE also surveilled picketers in union organizing campaigns; and arrested workers who filed workers compensation claims.

ICE would also impersonate OSHA officials in what is known as a "ruse": they would trick workers into attending a fake training and then detain them, which generated a significant outcry from unions, immigrant worker organizations, and health and safety groups.

> *"In an amazing display of arrogance and insensitivity, [ICE] has stated that it would continue to impersonate OSHA officials in order to nab undocumented workers, according to Inside OSHA [...]. ICE had previously indicated that it would cease and desist." Jordan Barab, Confined Space Blog, 2/7/2006*

Outcry from the public changed the Bush administration's policy: they issued a 2005 ICE Memorandum to Field Office Directors, mandating that the use of ruses involving health and safety and the impersonation of OSHA was to be discontinued.

The Obama administration, after being pressured by labor unions and worker centers, initiated a 2011 Memorandum of Understanding between the USDOL and ICE, where ICE agreed to stand

down when OSHA was investigating a worksite. The MOU states that ICE will "refrain from engaging in civil worksite enforcement activities at a worksite that is the subject of an existing DOL investigation of a labor dispute during the pendency of the DOL investigation and any related proceeding." The MOU was later expanded to cover the NLRB as well.

These worker-friendly policies of OSHA and the Department of Labor, combined with the outreach of labor organizations, ensured workers would report violations regardless of immigration status. However, these worker-friendly policies are gone; replaced by draconian measures that criminalize all immigrant workers that don't have citizenship status.

To support immigrant workers as the Trump Administration works to detain and deport them, NYCOSH urges unions and organizations to:

- Advise workers to attend health and safety trainings held by unions or trusted community organizations, and include know your rights and rapid response information in case of an immigration raid.

- File OSHA cases on behalf of workers, in order to protect anonymity from the government, if the workers choose to do so.

- Put protective language into collective bargaining agreements that disallows for the usage of E-Verify, ensures notification of immigration audits, and establish a fund to provide low-cost immigration services.

- Refer New York State workers with wage theft cases to the *state* department of labor or to *city* agencies which have committed to protect workers regardless of immigration status.

- Support the fight for expanded sanctuary measures to ensure localities do all they can to protect workers from ICE operations, in their homes, on the streets, and in their workplaces and all sensitive locations.

- Connect worker-friendly employers to campaigns declaring workplaces hate-free zones and sanctuary workplaces.

- Reject "good immigrant v. bad immigrant" narratives that pit workers against each other and continue to criminalize all immigrant workers.

- Immigrants are in danger of losing legal working status under DACA, TPS, or other programs; fighting to defend these policies must be a priority.

The health and safety movement in the United States began with a clear understanding that only workers can enforce health and safety protections on the job through sustained organizing. Now, more than ever, we need to join together with labor unions, workers organizations, and communities at large to protect the right of all workers to a safe and healthy workplace.