

# Chapter 9

## The Changing Face of Ethics in the Workplace: Care and the Impact of Immigration Enforcement

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### Introduction

Remnants of the Bush-era immigration policy continue to impact many aspects of business within the United States, as the Obama administration attempts to find its footing amidst diverse voices in the immigration debate. Even after the results of a Department of Homeland Security review of worksite immigration raids were announced in May 2009 by Secretary Janet Napolitano, the policy of widespread raids has been kept intact.<sup>1</sup> Both Napolitano and President Obama have iterated their mutual commitment to criminalizing employers for hiring undocumented workers (*San Antonio Express-News*, May 2009), but they have chosen to continue to use immigration raids on businesses as their enforcement tool. The implementation of this policy creates a tangle of ethical issues for business owners, administrators, and workers.

At root, the ethical and existential climate for employers and employees has devolved as “aggressive interior enforcement activities” are pursued by the Immigration and Customs Enforcement (ICE mission statement 2010). Rather than taking any particular side on the immigration debate, or focusing on the ethical impact of undocumented workers on business, this paper addresses the palpable ethical effects on business that result from enforcing immigration policy through worksite raids, and the need for an ethics of care to mitigate those effects. My contention will be that the true costs to business (an increase in unpaid dependency workers (Schutte 2002), a rise in redistribution expenditures aimed at helping working-class families (McCluskey 2002), and the environmental pressures of living under the constant fear of the government (Buff 2008) require new methods of theory and practice to be overcome. This paper will argue that classic cost-benefit utilitarianism is inadequate to address the thorny ethical dimensions

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<sup>1</sup>Napolitano said, “Make no mistake, we will be doing worksite enforcement. There will be employees, as well as employers, who ultimately are picked up in those enforcement actions.” Associated Press (2009).

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facing employers, brought on by aggressive immigration enforcement, because it cannot take into consideration the compelling moral significance of “attending to and meeting the needs of the particular others” affected, whether the needs of the employer or employee (Held 2006, 14–21). As political tensions increase over the immigration debate, and real consequences are faced by employers, employees, families, and communities, this issue needs to be approached with a more nuanced cache of ethical tools, including those provided by an ethics of care: the reconceptualization of public and private, a relational and interdependent sensitivity to needs, and a broader moral framework into which justice fits.<sup>2</sup>

Towards that end, I will use the Marshalltown, New Bedford, and Postville examples to demonstrate that aggressive immigration enforcement through worksite raids relies upon an outmoded ethical opposition in business between economic growth and social equity, which especially exploits the interests of documented workers. These three cases will show that an ethics of care could help assuage the problems facing businesses—and the families employed by them—because of its emphasis on community response to need (Kittay 1998, ix). If businesses could draw upon ethics of care principles, and if the ICE refocuses its enforcement efforts (for example, to their Criminal Alien Program), the result would be that American businesses and their employees would be better able to respond to needs, work with clear focus on the job, and begin to once again pump money back into their communities without fear.

## **Immigration Policy Enforcement in Business by the Obama Administration**

In order to understand the ethical groundwork and implications of immigration raids on business, it is important to first underscore the current administration’s policies and practices surrounding immigration raids.

In May 2009, a policy switch was to be announced in which President Obama would distance himself (at least in theory) from the immigration raids actively pursued by the previous administration. Bush-era immigration raids were the result of the National Fugitive Operations Program, created in 2003, which had the mission of apprehending and deporting fugitives who were national security or public safety threats (Ruiz 2009, 37). Prior to election, however, candidate Obama projected that an overhaul to the immigration system—including immigration raids—would be a part of the package of policy changes he would bring to Washington. “Immigration raids are not a long-term solution,” White House spokesman Nick Shapiro stated in early February 2009, “The real answer to our broken immigration system is to fix it. The president has said that we will start the immigration reform debate this year, and this continues to be the plan” (Dinan 2009, A01).

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<sup>2</sup>I agree here, with Friedman (2008, 540), Gilligan (1995), and with Engster (2007), that a successful ethics of care accommodates a notion of social justice.

There has not, however, been a change in the use of immigration raids to enforce employment policies for businesses. Since Obama took office, major immigration raids on business have been performed in Arizona, California, Oklahoma, Washington, and Texas (Castro 2009). Instead of a change in using immigration raids for policy enforcement on businesses, the administration has altered the expressed targets of the immigration raids. Ms. Napolitano noted that the focus of ICE actions at worksites was no longer to be on undocumented workers, but on “employers who intentionally and knowingly exploit the illegal labor market.” (Gorman 2009, A13). In July 2010, the White House announced that the changes in policy enforcement underscored key differences in immigration enforcement priorities that would “boost confidence in the administration,” and cited, “new guidelines directing immigration agents to target employers who hire illegal immigrants rather than simply arresting undocumented employees” (Gorman 2009, A13). In tandem with the Obama administration’s announcement, in 2010, DHS notified more than 650 businesses of plans to audit their employment records.

The purpose of auditing employment records is to identify businesses whose employees use I-9 documents that either cannot be verified as their own or have conflicting (and possibly, fraudulent) information. The pragmatic difficulty in assessing the veracity and efficacy of the policy shift, however, is that the audits are often enforced by immigration raids, and the aim of the immigration raids on businesses is the detainment and termination of employees.<sup>3</sup> In early October 2009, for example, ICE raided American Apparel in Los Angeles, which was not under suspicion of violating health, safety or labor laws, but was under suspicion of employing workers who had improper employment documentation. As a result of the raid, 1800 workers of American Apparel were detained and, later, fired after federal immigration authorities concluded their employment documents were illegitimate or out of order. John T. Morton, the head of ICE appointed by President Obama, commented on the American Apparel case that, “the administration intends to change the practices of American employers as a class” (Rutten 2009, A29).

It remains unclear as to whether the intent of the administration is to change the practices of business owners as a class, or to change the face of business altogether. From a fiscal perspective, the federal government has prepared to use immigration raids as an increasingly significant arm of the ICE. Congress in 2009, for example, directed ICE to spend \$127 million on workplace operations, \$34 million more than requested by the Bush administration (Hsu 2009). And from a jurisprudential point of view, the Obama administration successfully argued over the course of 2009 that employees who use—knowingly or otherwise—documentation that is not their own are guilty of the felony of identity theft, even if the documentation that is used is not

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<sup>3</sup>Common concerns are racial profiling and due-process complaints. One recent court case pits US citizens who are employees of a Maricopa, Arizona business, against the US government. The citizens were arrested and detained, with alleged force, because they could not prove their citizenship during the raid. The legal argument contends that open-ended warrants allow federal officials to detain large groups of individuals without prior identification of those individuals. (*Mora, Mora, et al v. Maricopa County* 2009.)

actually assigned to any United States citizen. Recent court cases (see, for example, *Flores-Figueroa v. United States*), reversed the 2008 *United States v. Mendoza-Gonzalez* case, which required proof in identity theft cases that defendants knew “that the means of identification that he or she unlawfully transferred, possessed, or used did, in fact, belong to another person” (see also *Greenlaw* 2009; *Spears v. United States* 2009; *United States v. Ingram* 2009). The full consequence, then, of the shift in justification for immigration raid policy is not simply a governmental interest in increasing the number of arrests for business owners, but in making felons out of those who have or use improper documentation for employment.

One more interesting upshot of the change in policy should be noted for the ICE. Prior to the recent shift from *Mendoza-Gonzalez*, one of ICE’s main directives was the Criminal Alien Program, which hones in on aliens who are in the country illegally and are felons, have outstanding warrants for narcotic crimes, or who have a history of violent crimes. Included now in the Criminal Alien Program are new felons who do not have the proper documentation for employment (ICE 2010). The result is that for the first time in 20 years, the government is targeting almost exclusively those immigrants who are working in particular labor sectors and have irregularities with their papers, rather than deportable immigrants who are ensnared in the criminal justice system (Cox and Rodriguez 2009). ICE has created a new enforcement tool<sup>4</sup> called the Document and Benefit Fraud Task Force, whose primary task is to focus solely on document and benefit fraud (ICE 2010). The DBFTF’s largest operation to date has been to notify over 1000 companies in November that they would be audited for hiring immigrants, and so could be subject to immigration raids (Lewis 2009).

## The Justification for the Immigration Enforcement in Business

There are pragmatic and moral reasons that are given for the current enforcement policy of the immigration standards in business. From a pragmatic standpoint, immigration raids are justified for their potential to deter employers from hiring illegal immigrants. ICE contends, “effective worksite enforcement plays an important role in the fight against illegal immigration in protecting our homeland” (ICE 2010). If business owners face fines and federal charges when they employ individuals who do not have proper documentation, they will be less likely to run the risk of doing so. The bigger implication is meant to be, that if employers do not hire undocumented workers, people will not risk coming to the country

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<sup>4</sup>Along with the Department of Justice, U.S. Citizenship and Immigration Services (USCIS), Department of Labor Office of Inspector General, Social Security Administration Office of Inspector General, State Department Office of Inspector General, State Department Bureau of Diplomatic Security, U.S. Postal Inspection Service, U.S. Secret Service. “Document fraud” refers to the manufacture or use of documents that are tied to one’s identity. “Benefit fraud” is the use of those documents to obtain a benefit (like employment) that is reserved for US citizens.

illegally. According to ICE (2010), “Worksite enforcement investigations often involve egregious violations of criminal statutes by employers and widespread abuses, and by uncovering such violations, ICE can send a strong deterrent message to other employers who knowingly employ illegal aliens. These worksite enforcement cases often involve additional violations such as alien smuggling, alien harboring, document fraud, money laundering, fraud, or worker exploitation.”

The positive values of justice and national security serve as the given moral ground for the justifying rigorous enforcement of immigration policy enforcement in business. A democratic government has the responsibility to protect its citizens from risks, and if there are illegal aliens employed in jobs that can have an impact on national security, then it can be argued that the government has a duty to engage in any enforcement activities that will prevent national security risks. As DHS notes, “We will direct every resource available toward prevention and preparedness, and empower Americans to live in a constant state of readiness, not a constant state of fear” (DHS 2010).

Aggressive enforcement of immigration policy in business, however, undermines the values that the immigration raid model seeks to protect. The Marshalltown, New Bedford, and Postville raids underscore that aggressive policy enforcement relies upon an obsolete ethical opposition in business between economic growth and social equity, which especially exploits the interests of businesses and of legal, documented workers. The cases together show an evolution in federal immigration enforcement policy in business, and they work together to demonstrate the desultory logical effects the raids have: the raids were once performed to send a message to illegal immigrants, they now are performed to send a message to business owners and managers, but the raids have produced an increase in dependency workers, redistribution in the economy, and fear, all of which are consequences that require long-term intervention from the government to offset. These three cases will show that an ethics of care could help assuage the problems facing businesses—and the families employed by them—because of its emphasis on community response to need (Kittay 1998, ix).

## **Three Cases: Marshalltown, Postville, New Bedford**

### ***Marshalltown, Iowa***

Responding in part to criticism that Homeland Security had done little interior enforcement since the department’s 2003 creation, ICE was able to infiltrate the employment practices of a large meatpacking plant owned by the national company Swift & Company in Marshalltown, Iowa (Seper 2006). In 2006, an informant working for ICE was able to tape human resource workers and union officials advising new employees at Swift on how to obtain and protect false identities (Hsu 2008). Partially on the basis of the informant’s information, ICE conducted a raid on the Swift and Company’s holdings, and detained nearly 1300 employees, of which 274

Iowan workers were criminally charged, and more were charged on administrative immigration violations (Seper 2006 and Petersen 2009).

It was not just the ratio of employees detained versus those arrested that caused a controversy over the raid. During the raid, ICE asked the workers specific questions about how they obtained their identifications, and ICE's strategic practice in the raid was to round up every employee and arrest those who were unable to provide on-the-spot proof of immigration status (Aldana 2008). Additionally, prior to the raid, Swift & Co. had received ICE scrutiny over employment records, and responded by proposing a phased enforcement action that would allow the business to identify and incrementally dismiss unauthorized workers from its plants (*Lozano v. Hazelton* 2007). In fact, Swift & Co. initially responded to the investigation without notifying ICE by interviewing approximately 450 suspect employees at several of its plants and found that 90–95% were ineligible to work, which resulted in 400 of the workers quitting or being terminated (Injunctive Order, *Swift & Co v. ICE* 2006). After Swift & Co.'s preemptive actions, ICE was unable to determine how to charge the workers that left.

The Marshalltown raid is interesting philosophically not just for the scope of the raid, but for its focus. Swift management and ownership was never under scrutiny legally, and they distanced themselves immediately from legal culpability. "Swift has never condoned the employment of unauthorized workers, nor have we ever knowingly hired such individuals," Chief Executive Officer Sam Rovit said, noting that the eligibility of all job applicants is checked through a federal database before hires are made (Seper 2006). Their efforts were successful. "The company was not charged in today's action," said Homeland Security Assistant Secretary Julie L. Myers, the head of ICE at the time of the raid, "Today's action is against the individuals who have stolen identities of U.S. citizens and who are here working illegally."

### *New Bedford, Massachusetts*

In New Bedford, Massachusetts, Michael Bianco Inc. (MBI), a company that specialized in the manufacture of leather goods, was the focus of an immigration raid in March 2007. Five hundred employees were detained, and 361 were charged for possessing or using fraudulent employment documents. The New Bedford raid was motivated by "egregious hiring practices, widespread use of fraudulent documents and blatant disregard for the rule of law," said then-Homeland Security Assistant Secretary Julie L. Myers (Seper 2007). The national debate over illegal immigration quickly used the New Bedford raid as a flashpoint, however, largely because over two-thirds of the workers who were detained (and many, later deported) were women who had children at home (Wadhia 2008). That number contrasted with the stated focal target of the ICE New Bedford raid (that of upper-level management and ownership, who were also arrested on charges of conspiring to encourage or induce illegal aliens to reside in the U.S. and conspiring to hire illegal aliens).

Another significant aspect of the New Bedford raid was the tie MBI had to the Department of Defense. According to affidavits in the case, MBI held Defense Department contracts worth \$10 million between 2001 and 2003 to manufacture products for the U.S. military, and it received another defense contract in 2004 worth \$82 million. As a result of those contracts, MBI increased its work force from 85 in 2003 to more than 500 at the time of the raid (Seper 2007). The affidavits stated that although MBI required prospective employees to produce proof of their identity and their eligibility to work, the company was aware that many employees had obtained fraudulent Alien Registration Cards and were using fake Social Security cards to receive their paychecks. In addition, MBI management allegedly instructed prospective employees on how to obtain fraudulent documents.

### ***Postville, Iowa***

On May 12, 2008, more than 500 federal immigration authorities in helicopters, buses, and federal vehicles descended on Agriprocessors Incorporated in Postville, Iowa to conduct “one of the largest single-site raids in U.S. history” (Leys 2009). As a result of the raid on Agriprocessors Incorporated’s meatpacking plant, Immigration and Customs Enforcement detained 389 employees under warrants for both civil offenses (for those suspected of being in the United States illegally) and criminal offenses (for those suspected of felonious identity theft). ICE reported that none of those arrested had authorization to work in the United States (Petersen 2009). The plant was forced to close by November 2008 after Agriprocessors declared bankruptcy (Dinnen 2009).

The Postville raid signaled an important change in the tactics ICE used to enforce immigration policy at places of business. Prior to the Postville raid, ICE typically removed unauthorized workers from the country through administrative deportation hearings, and criminally prosecuted only those workers who committed additional crimes, but the Postville raid marked the first time in U.S. history that officials criminally charged and prosecuted such a large number of detainees (ICE Postville Press Release). Of the 389 employees who were detained under civil warrants, 305 were arraigned on criminal charges of using false documents and unlawfully reentering the United States (ICE Postville Press Release). Of the 305 who were arrested on criminal charges, 265 workers were sentenced to federal prison—each for 5 months—for a total of more than 110 years of imprisonment. The Postville raid was also unique because it was the first time that the section 1028A “identity theft” statute was applied to criminalize employees who used improper documentation. What is perhaps even more startling from a law enforcement perspective is that none of the 389 people who were detained had even a simple misdemeanor conviction between them (*United States v. Ingram*). The Postville cases were the toughest application to date of criminal charges against illegal immigrants whose main offense was that they were working without authorization (Preston 2009).

Postville also set a precedent for using an immigration raid as a medium to establish ground for arresting business owners and managers with employment

violations. Agriprocessor's chief executive, Sholom Rubashkin, was arrested on multiple charges, including bank fraud, and his lead manager, Laura Althouse, pled guilty to aggravated identity theft after prosecutors accused her of helping illegal immigrants gain employment at the plant by using documents that she knew were false (Friesen 2008; US vs. Agriprocessors 2009). (It should be noted that on November 19, 2009, all of the immigration-related charges against Rubashkin were dropped, although he was convicted on the bank charges. See *United States v. Sholom Rubashkin*. In addition, a federal judge allowed Ms. Althouse to withdraw her guilty plea after she successfully argued that she had not been aware that the documents that Agriprocessor employees presented to her were fraudulent. See Preston 2009.)

Finally, the Postville raids were significant in terms of the effects the raid had on the community of Postville. Nearly 1/3 of the town's 2400 residents were arrested during the raid, and the Agriprocessor slaughterhouse was the largest employer in the town (Friesen 2008). The local elementary school immediately lost 1/3 of its students, as nearly all of the workers who were arrested were also deported, and many had children in the school (Preston 2009). The legal battles, as well, continue. In 2009, the Supreme Court ruled that to win convictions for identity theft, federal prosecutors have to show that illegal immigrants who use fraudulent documents know that the false identification they use actually belongs to another real person (*United States v. Ingram*). As a result of the ruling in *Ingram*, the immigration lawyers' national bar association called on the Justice Department to dismiss the guilty pleas of the workers from Agriprocessor, although to date the Court of Appeals for the Eighth Circuit covering Iowa upheld the interpretation of the identity theft law that prosecutors applied to the immigrant workers from Postville (Preston 2009).

## **The True Cost of Policy Enforcement on Business**

The Marshalltown, Postville, and New Bedford raids demonstrate a crucial aspect of the true impact of using immigration raids for immigration policy enforcement on businesses. An increase in dependency workers, financial redistribution expenditures, and the economic and psychological ramifications of living in fear are all factors that mitigate against an unrestricted use of cost benefit utilitarianism to justify immigration raids on business.

### ***Dependency Workers***

An unintended impact of the recent and polarizing immigration raids is that it has led, essentially, to children becoming temporary orphans, as their parents are taken away from them. Detained parents can be separated from their children for months as they await movement in their legal hearings (Zounes 2007). The New Bedford raid, for example, resulted in hundreds of children being stranded and separated



from their parents (Sacchetti and Bailou 2007), especially because more than 200 of the detainees were sent to detention centers in Texas and New Mexico to await their hearings, and none of them were asked about their childcare needs (Mishra and Ballou 2007). Of the suspected undocumented workers sent to other states, childcare arrangements had to be made by the state for at least 35 children (Rhor 2007 and Shulman 2007). DSS Commissioner Harry Spence said that, although he had been told of the raid prior to its execution, social workers were actually denied access while the raid was carried out (Weber 2007).

A supporter of immigration raids on businesses might argue that, even though poor execution of a large-scale immigration raid (like that which occurred in New Bedford), could unintentionally result in numbers of children being without care, that should not serve as the basis for rejecting the use of immigration raids to enforce policy. Such an argument, however, misses two important points. First is that the enforcement of immigration policy through immigration raids on businesses will *necessarily* produce large numbers of dependent children who will need care. That hundreds of children will require care by workers who are not their parents cannot be avoided if immigration raids are the vehicle by which an administration enforces their policy. In fact, the fear that is generated by the raids often leads to more dependent children who need care. Consider that detainees are frequently not initially honest with ICE investigators who inquire about their families, often because the detainees are afraid that their children will also be taken into US custody, even though many of the children are citizens of the United States (Abraham 2007). And after the detainees admit they have children, they are given the choice of taking their citizen-children out of the United States with them (in which case there is an administrative scramble to secure passports for them), or of being separated from their children permanently in hopes of giving them better opportunities (Abraham 2007). Those children who stay behind then become even more vulnerable to exploitation, since those who depend on the care of others and cannot get that care from a direct relative often suffer more from a lack of care (Bubeck 2002).

The second point that is missed by those who suggest that the New Bedford raid was an anomaly in its impact on children, is that, regardless of whether the consequence of having increased numbers of children who need care is intended or not, the system of policy enforcement on business through immigration raids has a damaging impact on the children it leaves behind as well as the communities involved in the immigration raid. Interestingly, prior to his oath of office, then-candidate Barak Obama appeared to understand the intrinsically negative impact immigration raids have on children, parents, families, and businesses. In a speech to the National Council of La Raza during his presidential run, Obama said, “When communities are terrorized by ICE immigration raids, when nursing mothers are torn from their babies, when children come home from school to find their parents missing, when people are detained without access to legal counsel, when all that is happening, the system just isn’t working, and we need to change it” (Ruiz 2010). Prior to his death, Sen. Edward Kennedy commented specifically on the New Bedford raid, arguing that “the immigration system is broken and the government has no effective plan to identify and help the children who would be left alone”

(Sacchetti and Bailou 2007). The systemic indifference to the needs of children has the (morally and economically ironic) result that the typically unpaid domestic work of caring for children (frequently performed by the spouse, parent, or siblings of the worker), now has to be paid by the state, whether the cost is foster parents, temporary custody, legal hearings, or deportation. Apart from the economic cost to the state, the community suffers the burden of an increased need of dependency workers. As Schutte (2002) points out, a society simply cannot function without dependency work, but in economic terms, dependency work tends to be costly since it requires that the time spent on unpaid care work will disenfranchise the dependency workers from the income they could have secured had they been free to engage in paid employment. Even for children who end up cared for by other, non-parental relatives, the economic and existential burden for the care of the child shifts, so that the one who had been staying with the child must go to work or must pay for someone else to be with the child.

### *Redistribution of Finances*

In the dominant liberal political theory, autonomy is the key to both a free state and a free market, whereas dependency is relegated to the family (McCluskey 2002). Immigration raids are used, in part, by the state as a demonstrative example of the government's ability to regulate how free markets can operate but they also create (as has been shown above) an increase in dependency relations that ends up impacting not just the family, but the state. An increase in dependency relations strains the community and businesses by taking workers out of the already-strained workplace to take care of their new charges, but it also can lead to problems in supporting the needs of caretakers, which ultimately has a deleterious effect on state finances. This consequence not only can be disastrous for communities, but it runs counter to the recent federal move away from long-term funding and social support for human services. For those states that make jobs a legitimate condition for the receipt of public assistance, even the detainment of a working family member can become an insurmountable economic hurdle.

The economic impact of displaced families through these raids is borne by the government, but the overall result of using immigration raids to enforce employment laws is that a cycle of dependency has been created by the state that also must be funded by the state. By taking away an alternative to wage work for immigrant parents of US-born children, families who depend on wage work to avoid poverty must then forgo productive labor market opportunities by seeking state subsidies just to survive.<sup>5</sup> The needs of the family are redistributed to the state, at the same time that the ability for businesses to eviscerate dependency costs are impeded by the loss of workers. It should be noted, as well, that the fiscal redistribution burden added to the state as a result of this cycle is potentially incredibly high. There are

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<sup>5</sup>McCluskey (2002) gives a fascinating treatment of the relationship between the need for dependency workers and the economic interests of the state.

many varieties of mixed-status families who could need to rely on welfare (or some other state-sponsored subsidy), given that approximately one in five children in the United States live in a family in which at least one parent is an immigrant (Federal Interagency Forum on Child and Family Statistics 2007).<sup>6</sup> Children in immigrant families form, “the fastest growing segment of the United States child population”, and if current demographic trends persist, “children of immigrants will represent at least a quarter of all U.S. children by 2010” (Thronson 2008). The staggering numbers of children potentially impacted by workplace raids, as well as the numbers of families who could potentially be caught in a web of financial displacement should give us pause when thinking about whether the pragmatic reasons for immigration raids in business are actually justified.

A report by the Urban Institute found that the actual impact of these raids on communities is so damaging that it far outweighs any potential benefit received from conducting the raid in the first place (Capps 2007, 68). Public schools carry the burden of caring for children whose parents are detained as well as normal educational duties, and this strain increases when the parent that is removed from the home is the primary wage earner, which is typically the case (Capps 2007, 41). In addition to the burdens on schools, families, and children, the workplace raids have a lasting negative consequence for the members of a community as a whole. In Postville, for example, community respondents said that the aftermath of the raid was akin to “disaster relief”, and in all three of the major raids discussed in this paper, churches and other faith-based organizations were the primary responders to the crisis, but soon faced infrastructure and staff limitations that impeded the ability to provide sustaining, lasting relief (Merritt 2009). The cycle of dependency that requires fiscal redistribution through the state is not just a possibility, then, but has become an actuality for communities devastated by immigration raids.

## *Fear*

The implementation of immigration enforcement through worksite raids has the final consequence of creating an atmosphere of fear for every level of business and the community, which then undermines one of the specific goals of immigration enforcement: to encourage job growth for American citizens and legal permanent residents (DHS 2010). At a fundamental level, ICE raids cannot be successfully achieved without racial profiling, and the profusion of racial profiling at the federal level can breed a reluctance for business owners to hire, especially, Latinos (Cox and Rodriguez 2009). An atmosphere of fear has been bred throughout every level of business as a result of immigration raids: employers fear “Gestapo methods of enforcement”, sanctions, and significant financial losses that come with a loss of employees and production (Capps 2007); employees fear being detained even if

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<sup>6</sup>More specifically, “15 percent of all children in the [United States] were native-born children with immigrant parent(s),” and “4 percent of children were foreign-born children with at least one immigrant parent” (Thronson 2008).

they are legal (as has been the practice of the ICE since the Marshalltown raid); and the communities fear losing workers, gaining groups of children without parents or primary earners, and, ultimately, watching business become bankrupt and leave town (as was the case for Agriprocessors<sup>7</sup> and Swift in the Iowa raids).

Without warrants that name specific individuals to detain, workplace raids must depend upon racial profiling for their success. A surprise raid on Micro Solutions Enterprises in Van Nuys, CA in early 2008 provides a troubling example. About 238 employees of MSE were swept up in the raid, including more than 100 US citizens and legal residents. Perhaps not surprisingly, none of those detained were Caucasian, and all of those who were not Caucasian were required to show proof of citizenship, and if they could not, they were arrested on the spot (Bazar 2008). Rep. John Conyers, D-Michigan., has posed an interesting counterexample when questioning the efficacy of workplace immigration raids, “When dealing with Anglo identity theft suspects, is federal law enforcement going to start cordoning off white neighborhoods or workplaces, handcuffing and detaining everyone, and only then sort out the accused?” (Reyes 2008).

If worksite immigration raids could be performed without racial profiling, or without instilling economically and psychologically debilitating fear in the people upon whom the national economy depends, there might at least be stronger pragmatic reasons to accept the continuation of its practice. But ICE agents often work from internally assigned “administration warrants” which give them broad discretion in the execution of the raid, and also work under pressure to fill certain detention “quotas” during worksite raids (Schumacher-Matos 2009). It is simply easier (and loosely, it is legal) to detain individuals who are not white than to require ICE agents to confirm that those who are working at a particular place of business are, in fact, working illegally and, even more difficult, to confirm that business owners intentionally are hiring undocumented workers. Enforcement practices that instill a top-to-bottom fear will damage businesses (and so, it will negatively impact job growth and production), even though the immigration raids are supposed to protect legal business practices and to encourage the development of jobs for American residents. Worksite raids are, once again, contrary to their purpose, and so their justification should be reevaluated.

## **True Cost Requires New Methods to be Overcome**

Economic, political, and existential factors all come to bear on the debate over using immigration raids as policy enforcement in business, but there are also moral reasons to assess the efficacy of immigration raids on business. Policy enforcement that depends upon immigration raids for its success, but results in the disastrous

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<sup>7</sup>Agriprocessors in Postville went bankrupt only after they hired homeless individuals to take the place of their workers, but the experiment went awry with a rise in crime, public drunkenness, and a run on food banks (Reyes 2008).

consequences noted above requires moral reasoning that is different from the cost benefit model, which cannot quantify certain “human” aspects of this issue (community impact, for example, or the influence of racial profiling and perhaps, most especially, the logical and pragmatic contradictions that come with policy enforcement through worksite raids). The difficulty, however, in refocusing the moral justification for immigration enforcement in business is that doing so requires a review of the relations between business owners, employees, and those who enforce policy. This difficulty is assuaged, however, if an ethics of care is used as justification for policy enforcement, since it grounds moral reasons in how people are related to others. An ethics of care, if used as a new method of moral reasoning for policy enforcement, reconceptualizes what is public and private, it provides for a relational and interdependent sensitivity to the needs of others, and it sustains a broader moral framework into which justice fits (which, if applied to the immigration issue in business, will allow a focus on criminal activity beyond the identity theft clause). An ethics of care allows for both the recognition that we are tied to each other and that those relations need to serve as a basis for moral decision-making when there is injustice that results in those relations (Mahowald 2006, 180).

The enormous impact of immigration raids on business, and the disconnect of reasons from the human condition upon which it depends, requires that a different model of moral reasoning constrain immigration enforcement. For business interests, employees, and the goal of federal enforcement, an ethics of care can serve as an effective moral theory to guide policy enforcement, especially since the American economy depends in practice upon the intricate social and business relations between employees, business, and the government. Worksite immigration raids invert what is private (like dependency care) and what is public (such as the legal status of business managers, owners, and workers). Policy enforcement that is both consistent and effective should include as its justification the crucial relations in the workplace upon which an effective economy depends.

Care as a normative base speaks at least to the dissociations which can abruptly an employee’s ability to work effectively. Gilligan notes (1995, 125) “the vibrations and resonances which characterize and connect the living world” are “numbed by the types of dissociations that present themselves when care is not present.” Grounding the bottom line in the mutual care of employees ensures that corporate interests (even for small businesses) depend upon the proper treatment of workers, and that the success of the workers on the job depends in part on the business model used. All employees are in a subordinate relation to their employees, businesses are subordinate to federal law, and when employees and businesses can produce without fear, they are in a position to contribute to the maintenance of their connection (Smeyers 1999, 236), which for the purposes here, can then foster immigration reform in business that does not have the deleterious effects immigration raids have. Rather than assuming, as do the dominant moral theories, that moral relations are to be seen as entered into voluntarily by free and equal individuals, the ethics of care is developed for the realities of unequal power relations (Held 2004, 143), such as the ones that exist between businesses and the government and businesses and their employees. The ethics of care is not limited, then, to private contexts. Employees are

not objects to be manipulated, but instead are free beings who should be valued—if nothing else—for their intrinsic tie to the success of the economy, and so for the government. What the employees (as those cared-for) give to the relation serves to prevent the business interest from being subverted to simple survival of the business. Care is a value that is universal, since it refers mainly to the social relations upon which we rely, it cannot be dispensed practically and morally from social relations, such as those in business (Mahowald 2006, 178).

If the conception care ethics has of persons as “relational and interdependent” is correct, then ethics must start with the moral claims of particular others (Friedman, 2008, 541). If moral justification for actions is grounded in the claims of those we are tied to, then justification for actions is essentially second-personal. An ethics of care, then, is essentially second-personal, because it contends that we have a compelling moral interest in attending to and meeting the needs of others for whom we take responsibility (Held 2006, 10–14). On the basis of the second-personality of care ethics, moral rules (like that upon which cost benefit utilitarianism depends) are less compelling than the claims of others, because they are wholly independent from the agents the action will impact. Second-personal care claims, then, constrain other moral rules. (This doesn’t mean that businesses should abandon the cost/benefit calculus as an appropriate practical business model, or that governments should not use reasoning other than an ethics of care, but instead for ethical judgments, cost benefit moral reasons should be informed by and constrained by an ethics of care.) If the pragmatic and moral aspects of life depend upon the connection of others’ interests, then moral reasons must be tied to that connection to be successfully justified.

Especially in the wake of an economic crisis like the one we are now suffering through, economic gain is made the highest priority of policy, and every social element is considered to be a fungible commodity (Held 2004, 148). The fact that immigration raids put communities in the position of supporting families as well as businesses should factor in to the economic justification for immigration raids. In the atmosphere in which we desire stronger markets and more jobs, actions (like worksite raids) that negatively impact the economy should be avoided. But, if market practices are constrained by an ethics of care, we can have both an improvement in market conditions, effective and humane policy enforcement, and an avoidance of critical consequences brought on by immigration raids. Institutions that erode the care relation are pragmatically and morally malignant, but applying an ethics of care can encourage just business and personal relations.

It is logically consistent, on the one hand, to use as the moral foundation of actions that affect people who have mingling interests, a moral theory that is itself based on relations in which people have shared interests (Held 2004, 144). It is, on the other hand, practically consistent for businesses to assume their workers understand their responsibility to the company within the context of a relationship they have to the company. An ethics of care allows for both, since responsibility is equated with the need to respond to those with whom we are connected, and the moral imperative to care obligates us to alleviate troubles for others (Kroeger-Mappes 1994, 109). Business owners and managers respond to their

workers, and workers in turn take care of the job; similarly, the government ensures its actions and policy enforcement techniques appropriately respond to the needs of communities and those in need.

A critic might contend that immigration enforcement is not a matter of morality, but of public policy. But such a view denies the human costs that are important to the rationale behind enforcing immigration policy through immigration raids on businesses, and it obfuscates the dependency of our economy on meeting the needs of employees—or in the very least, of allowing employees the freedom to be able to meet their own needs. Engster notes that care theories, “start with the individuals already existing in society and dependent upon one another for their survival, development, and social functioning, and highlights the unchosen obligations we all have toward others by virtue of our interdependency,” and our mutual dependency means that, “all capable individuals have obligations to care for others in need regardless of our explicit or tacit consent” (Engster 2007, 7–8). The scope of care must be extended to injustices within communities, and so within business, since caring is fundamentally about concern for others (Smeyers 1999, 236). Grounding the bottom line for immigration policy enforcement as well as for the economy in the mutual care of communities and employees ensures the business interests and the needs of the employees are inextricably related. Care, then, is the wider moral framework into which justice for employees and businesses (and, let it be said, economic development as well) can be fit.

## Conclusion

This paper set out to perform a unique task: to evaluate the pragmatic and moral consistency of the current administration’s continued use of immigration raids on business to enforce immigration policy, without taking a particular stance on the immigration debate itself. I have not argued for any specific view on the immigration debate at all. Even more, this paper did not argue that immigration enforcement should not occur at all at the worksite.

Instead, this paper looked at the role that immigration raids are meant to perform for this administration, and I weighed its purported role against the practical and moral results that immigration raids at worksites necessarily produce. There are logical consequences of this inquiry: Proponents of immigration raids as policy enforcement for businesses cannot consistently plan for economic growth for the communities in which the raids are performed. Neither can one consistently maintain that immigration raids protect business interest by ensuring that only properly documented workers are employed, since immigration raids on business create an increase in the need for dependency workers, a cycle of dependency which must be funded by the government, and an atmosphere of fear that undermines the very impetus for immigration raids. An inquiry into three significant immigration raid cases in business both shows these to be true, and motivates a change in a moral point of departure.

Not all is lost, however. If we use an ethics of care to inform our policy making and enforcement, the pragmatic and moral contradictions can be overcome. An ethics of care can inform, and then, constrain how we respond to certain difficulties, like the impact of illegal immigration on the bottom line of business. Actions that are rooted in an understanding of our mutual dependence, and of the relation between the economy and the worker, can more consistently and effectively be performed and maintained. In addition, the government is able to seek out policy enforcement that ensures the preservation of the dignity of its residents and gains authenticity with those impacted by the policy enforcement.

## References

- Abraham, Y. 20 March 2007. As immigration raids rise, human toll decried. *Boston Globe*, online edition. [http://www.boston.com/news/nation/articles/2007/03/20/as\\_immigration\\_raids\\_rise\\_human\\_toll\\_decried/](http://www.boston.com/news/nation/articles/2007/03/20/as_immigration_raids_rise_human_toll_decried/). Accessed 31 January 2010.
- Aldana, R. February 2008. Rights and Remedies: Of Katz and “aliens”, privacy expectations and the immigration raids. *University of California-Davis Law Review* 41: 1081.
- Associated Press. 26 April 2009. Two Iowa towns, 2 perspectives on immigration raids.
- Bazar, E. 25 June 2008. Citizens sue after being detained in workplace. *USA Today*, final edition, news, 1A.
- Bubeck, D. G. 2002. Justice and the labor of care. In *The subject of care: Feminist perspectives on dependency*, eds. Eva Kittay, and Ellen Feder. New York, NY: Rowman & Littlefield.
- Buff, R. 2008. The deportation terror. *American Quarterly* 60 (3): 523–551.
- Capps, R. 2007. Paying the price: The impact of immigration raids on America’s children. The Urban Institute. <http://www.urban.org/UploadedPDF/411566>
- Castro J. 2009. Second-class citizens: the Schism between immigration policy and children’s health care. *Hastings Constitutional Law Quarterly* Fall 37: 199.
- Cox, A., and Rodriguez, C. December 2009. The president and immigration law. *Yale Law Journal* 119: 458.
- Department of Homeland Security. 2010. <http://www.dhs.gov/xabout/responsibilities.shtm>. Accessed 30 Jan 2010; Fact Sheet, [http://www.ice.gov/doclib/pi/news/factsheets/worksite\\_strategy.pdf](http://www.ice.gov/doclib/pi/news/factsheets/worksite_strategy.pdf). Accessed 8 Feb 2010.
- Dinan, S. 2 February 2009. Raid on immigrants dismays Obama Backers. *Washington Post*, Page One, A01.
- Dinnen, S. 31 May 2009. How an immigration raid changed a town. *Christian Science Monitor*, 17.
- Engster, D. 2007. *Heart of justice*. Oxford: Oxford University Press.
- Federal Interagency Forum on Child and Family Statistics. 2007. *America’s Children: Key National Indicators of Well-Being* 8. <http://www.childwelfare.gov/systemwide/statistics/wellbeing.cfm>
- Flores-Figueroa v. United States*. (4 May 2009). U.S. 129 S. Ct. 1886, 173 L. Ed. 2d 853, 2009 US Lexis 3305, WL 1174852.
- Friedman, M. September 2008. Care ethics and moral theory. *Philosophy and Phenomenological Research* 77 (2): 539–555.
- Friesen, J. 24 May 2008. Hardening the line on illegal works. *The Globe and Mail*, A16. International News; Weekend Special: Canada.
- Gilligan, C. 1995. Hearing the difference: Theorizing connection. *Hypatia* 10: 120–127.
- Gorman, A. 26 July 2009. Obama sets the priorities on immigration. *Los Angeles Times*: Part A, 13.
- Greenlaw*. 2009. U.S. 128 S. Ct. 2559, 171 L. Ed. 2d 399, 2009.
- Held, V. 2004. Care and justice in the global context. *Ratio Juris* 17 (2): 141–55.
- Held, V. 2006. *The ethics of care: Personal, political, and global*. Oxford: Oxford University Press.
- Hsu, S. 21 July 2008. In immigration cases, employers feel the pressure; but critics fault laws as ineffective. *Washington Post*, Met 2 Edition, A-Section, A01.



- Hsu, S. 31 March 2009. Proposed immigration raids delayed. *The Boston Globe National News*, 5. Injunctive Order at 7, Swift & Co. v. ICE, No 2:06CV-314-J (N.D. Tex.7 December 2006). <http://www.aif.org/lac/clearinghouse122106ctorder.pdf>
- Kittay, E. 1998. *Love's labor: Essays on women, equality, and dependency*. New York, NY: Routledge.
- Kroeger-Mappes, J. 1994. An ethic of care vis-à-vis an ethics of rights. *Hypatia* Summer 9 (3): 108–131.
- Lewis, N. 20 November 2009. In search for illegal workers, immigration officials will audit more companies. *The New York Times*, Late Edition, Final, Section A, Column 0, National Desk, 14.
- Leys, T. 28 August 2009. Critics tie scant new charges to wariness after Iowa raid. *Des Moines Register*, 1A.
- Lozano v. City of Hazelton*. 2007. U.S. Dist LEXIS 17118 (M.D. Pa., Mar 9, 2007), at P4.
- Mahowald, M. 2006. Review: Ethics of care: personal, political, global. *International Journal of Feminist Approaches to Bioethics* 2: 1.
- McCluskey, M. 2002. Subsidized lives and the ideology of efficiency. In *The subject of care: Feminist perspectives on dependency*, eds. Eva Kittay, and Ellen Feder, 115–137. New York, NY: Rowman & Littlefield.
- Merritt, N. Winter 2009. The conflicting interests of labor demands and employer based immigration laws. *The Scholar: St. Mary's Law Review on Minority Issues* 11 Scholar 281.
- Mishra, R, and B. Ballou. 9 March 2007. DSS to check on detainees sent to Texas: Some workers' children may lack care, officials fear. *Boston Globe*, A1.
- Mora, Mora et al. vs. Maricopa County*. 2009. US District Court for the State of Arizona, 29th U.S. District Lexis 101403, No. CV-09-1719-PHX-DGC, 28 Oct 2009.
- Petersen, C. November 2009. An Iowa immigration raid leads to unprecedented criminal consequences. *University of Iowa Law Review* 95: 323.
- Preston, J. 26 May 2009. Dismissal of guilty pleas is sought for immigrants. *New York Times*, Late Edition, Final, Section A, Column 0, National Desk, 19.
- Reyes, R. 8 August 2008. What are ICE raids accomplishing? *USA Today*, Final Edition, News, 9A.
- Rhor, M. 12 March 2007. Immigration raids split kids from moms. *Seattle Times*, A1.
- Ruiz, A. 31 January 2010. Immigration reform dies in 36 words. *Daily News (New York)*, 37.
- Ruiz, A. 8 February 2009. Obama takes positive steps towards reform. *Daily News (New York)*, 37.
- Rutten, T. 3 October 2009. Stripped of jobs by Obama. *Los Angeles Times*: Part A, 29.
- Sacchetti, M., and B. Bailou. 11 March 2007. DSS teams arrive in Texas to interview detained immigrants. *Boston Globe*, B3.
- San Antonio Express-News*. 1 May 2009. From AP reports.
- Schumacher-Matos, E. 1 August 2009. When law flies out the door. *Washington Post*, Regional Edition, Editorial Copy, A15.
- Schutte, O. 2002. Dependency work, women, and the global economy. In *The subject of care: Feminist perspectives on dependency*, ed. Eva Kittay, and Ellen Feder, 138–158. New York, NY: Rowman & Littlefield.
- Seper, J. 13 December 2006. Agents raid job sites for illegals; identity theft prompts effort. *The Washington Times*, Nation, 03.
- Seper, J. 8 March 2007. ICE to query 500 workers in illegals probe. *The Washington Times*, Nation, A04.
- Shulman, R. 18 March 2007. Immigration raid rips families: Illegal workers in Massachusetts separated from children. *Washington Post*: A06.
- Smeyers, P. 1999. "Care" and wider ethical issues. *Journal of Philosophy of Education* 33 (2): 231–255.
- Spears v. United States*. 2009. US 129 S. Ct 840, 172 L. Ed. 2d 596.
- Thronson, D. 2008. Creating crisis: Immigration raids and the destabilization of immigrant families. *Wake Forest Law Review* 43: 391.
- US Immigration and Customs Enforcement. 2010. [www.ice.gov](http://www.ice.gov), <http://www.ice.gov/document-benefit-fraud/>, Criminal Alien Program, <http://www.ice.gov/criminal-alien-program/>, Postville

- Press Release: <http://www.ice.gov/news/releases/0805/080520waterloo.htm>, <http://www.ice.gov/news/library/factsheets/cap.htm>, Accessed 31 Jan 2010.
- United States v. Ingram*. 2009. No. CR 07-4056-2-MWB, 613 F. Supp. 2d 1069; 2009 U.S. Dist. LEXIS 40075; 79 Fed. R. Evid. Serv. (Callaghan) 735, 11 May 2009.
- United States v. Mendoza-Gonzalez*. 2008. 520 F.3d912 (8th Cir) 2008.
- United States vs. Agriprocessors, Inc., Sholom Rubashkin, Brent Beebe, Hosam Amara and Zeev Levi*. 2009. No. 08-CR-1324-LRR, U.S. District Court for the Northern District of Iowa, Eastern Division, 2009 U.S. Dist. LEXIS 65165, 28 July 2009.
- United States vs. Sholom Rubashkin*. 2009. No. 08-CR-1324-LRR, US District Court for the Northern District of Iowa, Eastern Division, 2009 U.S. Dist. Lexis 109115, 20 November 2009.
- Wadhia, S. 2008. Emerging issues in immigration law: Immigrants' rights and the rule of law. *University of Memphis Law Review* 38: 853.
- Weber, D 11 March 2007. Delahunt says congress will investigate immigration raid. *Boston Globe*. [http://www.boston.com/news/local/massachusetts/articles/2007/03/11/delahunt\\_says\\_congress\\_will\\_investigate\\_immigration\\_raid/](http://www.boston.com/news/local/massachusetts/articles/2007/03/11/delahunt_says_congress_will_investigate_immigration_raid/)
- Zounes, S. 2007. Current development: Children without Parents: An unintended consequence of ICE's worksite enforcement operations. *Georgetown Immigration Law Journal* Spring 21: 511.