

# Worst of the worst?

*Recent immigration raids targeting the “worst of the worst” criminals picked up a pastor, a grandmother and hundreds of others who pose no threat to public safety*



March 2015

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Updated March 24, 2015

# Key findings

- **Few of those targeted by Operation Cross Check were the “worst of the worst” criminals**
- **The majority of individuals apprehended represent NO plausible threat to public safety or national security**
- Nearly half of those picked up (47 percent, 960 individuals) had misdemeanor convictions<sup>1</sup>
- Of those with felony convictions, 476 were for immigration-related violations<sup>2</sup>
- ICE appears to be giving no consideration to the severity of a criminal offense, how long ago it was committed, or how strong an individual’s ties are to family or the community
- ICE is not properly exercising prosecutorial discretion in the manner in which it was directed by November 2014 guidelines
- Although there is a bipartisan effort in Congress to reduce sentences for low-level crimes, ICE appears to be moving in the opposite direction for immigration infractions<sup>3</sup>
- ICE officers may be using questionable tactics, including entering homes using trickery or false pretenses

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<sup>1</sup> American Immigration Council, <http://immigrationimpact.com/2015/03/13/ice-sweeps-up-minor-offenders-with-families-using-heavy-handed-approach/>

<sup>2</sup> Los Angeles Times, <http://www.latimes.com/nation/la-na-immigration-arrests-deportations-20150309-story.html>

<sup>3</sup> <http://time.com/3714876/criminal-justice-reform-is-becoming-washingtons-bipartisan-cause/>;  
<http://www.wsj.com/articles/bipartisan-coalition-to-press-congress-on-criminal-justice-overhaul-1424883190>

# Summary

## Operation Cross Check

During the week of March 2, 2015, U.S. Immigration and Customs Enforcement (ICE) undertook *Operation Cross Check* which swept up 2,059 immigrants for removal from the United States for past crimes. According to comments from top ICE officials, those targeted were the “worst of the worst” criminals.<sup>4</sup>

Contrary to ICE statements, however, both the statistics of the arrests and anecdotal stories indicate that few of those detained were dangerous criminals. In fact, it is difficult to argue that a majority of the individuals targeted pose any threat whatsoever to public safety or national security. Many are long-time residents of the U.S. with old and/or minor criminal convictions who have since created families and become vital members of their communities.

Nearly half of those picked up in Operation Cross Check (960 individuals) had only misdemeanor convictions.<sup>5</sup> Of those with felony convictions, nearly half were for immigration-related violations (476 individuals).<sup>6</sup>

## The worst of the worst?

*“My dad is a lot of things but a threat? He’s not. He’s a husband, a father, he’s a grandfather. He has helped a lot of people, a lot of organizations, a lot of booster clubs.”*

— Sonia, daughter of Gustavo Villalpando, a business owner who was apprehended in Operation Cross Check

One individual taken in Operation Cross Check, Mennonite Pastor Max Villatoro, was picked up due to a records tampering conviction from 1999, related to his trying to obtain a state identification card. He was also convicted of DUI in 1998. Sixteen years later, Villatoro is now pastor of a church, husband and father of four U.S. citizen children, and works to help those struggling with substance abuse and addiction.

Ana,<sup>7</sup> who has been in the U.S. for more than 40 years was also picked up in Operation Cross Check. Ana’s criminal convictions stem from non-violent drug-related charges many years ago. She has since turned her life around and now is a loving mother and grandmother.

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<sup>4</sup> <http://www.cnn.com/2015/03/09/politics/ice-arrests-immigrants/>

<sup>5</sup> American Immigration Council, <http://immigrationimpact.com/2015/03/13/ice-sweeps-up-minor-offenders-with-families-using-heavy-handed-approach/>

<sup>6</sup> Los Angeles Times, <http://www.latimes.com/nation/la-na-immigration-arrests-deportations-20150309-story.html>

<sup>7</sup> Name changed to protect identity

According to ICE officials, the goal of Operation Cross Check was to apprehend individuals who pose the “greatest risk to our public safety:”

*“This nationwide operation led to the apprehension of more than 2,000 convicted criminal aliens who pose the greatest risk to our public safety. Today, communities around the country are safer because of the great work of the men and women of U.S. Immigration and Customs Enforcement.”*<sup>8</sup>

— Deputy Secretary of Homeland Security Alejandro Mayorkas

*“[Those apprehended in Operation Cross Check] meet our highest priorities to ensure public safety and national security.”*<sup>9</sup>

— ICE Director Sarah Saldaña

*Operation Cross Check targeted “the worst of the worst criminals.”*<sup>10</sup>

— Deputy Secretary of Homeland Security Alejandro Mayorkas

*“Public safety is directly and significantly improved by deporting those individuals involved in crime. By focusing on those who pose the greatest risk to our communities, we are marshaling our limited resources in the most responsible manner.”*<sup>11</sup>

— ICE Director Sarah Saldaña

*“The focus is on public safety and national security.”*<sup>12</sup>

— Deputy Secretary of Homeland Security Alejandro Mayorkas

Pastor Villatoro and grandmother Ana clearly do not present a risk to public safety or national security. In fact, their families and communities will be devastated by their loss. In the case of Pastor Villatoro, more than 40,000 people have signed petitions calling for his release.

If the wholeness and wellbeing of a community is of central concern, then ICE should not be leaving children without fathers or mothers, leaving families without breadwinners, leaving churches without pastors, or leaving communities without strong leaders. The communities from which many of these individuals were ripped away will be worse off for their loss.

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<sup>8</sup> <https://www.dhs.gov/news/2015/03/09/2059-criminals-arrested-ice-nationwide-operation>

<sup>9</sup> <http://www.cnn.com/2015/03/09/politics/ice-arrests-immigrants/>

<sup>10</sup> <http://www.cnn.com/2015/03/09/politics/ice-arrests-immigrants/>

<sup>11</sup> <http://www.latimes.com/nation/la-na-immigration-arrests-deportations-20150309-story.html>

<sup>12</sup> <http://www.latimes.com/nation/la-na-immigration-arrests-deportations-20150309-story.html>

## Is ICE following the law?

*“We’re all humans, we make mistakes. ... Not everyone deserves to be sent back, or held, or detained.”*

– Sister of “Rick” who came to the U.S. as a child more than 30 years ago and was apprehended in Operation Cross Check

Recent actions raise serious questions about whether ICE is exercising prosecutorial discretion in the manner in which it has been directed by November 2014 guidelines or whether ICE is rounding up and deporting individuals to meet internal quotas for detention and deportation. Under a November 20, 2014, Department of Homeland Security memo entitled, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” many of the individuals picked up in Operation Cross Check would fall under the “Priority 2” enforcement category.<sup>13</sup> This category includes those with “significant misdemeanor” convictions (this includes a charge of driving under the influence) or convictions related to the individual’s immigration status. The memo states that such individuals “should be removed... **unless**, in the judgment of [ICE or other DHS officials], there are factors indicating the alien is not a threat to national security, border security, or public safety, and should not therefore be an enforcement priority.” (emphasis added)

Pastor Villatoro and many other individuals caught up in Operation Cross Check clearly have factors indicating they do not pose a threat of any kind. ICE officials appear to be ignoring or incorrectly applying this guidance.

New York attorney Matthew Kolken argues that not only is ICE not following guidance from the November 2014 executive action, agents are using non-removable offenses to take immigrants into custody:<sup>14</sup>

“Under Secretary Johnson’s November 20, 2014, deportation priority memo individuals that have been convicted of driving under the influence are designated as a second priority for removal. That said, as evidenced by the recent raid, driving under the influence appears to be a priority one factor for consideration by ICE in determining who they target for deportation. It bears noting, driving under the influence is not a ground for removal, and there must be a separate immigration law violation for immigration court proceedings to be instituted against you. In sum, ICE is utilizing a non-removable offense to take immigrants into custody so they can deport them for minor non-criminal violations of U.S. immigration law.”<sup>15</sup>

The November 2014 Memoranda also direct ICE to identify individuals who might qualify for Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and expanded Deferred Action for Childhood Arrivals (DACA), review these cases and seek administrative closure or termination of their deportation order, referring these individuals for case-by-case determinations of deferred action.<sup>16</sup> While there has been some confusion around the injunction to the DAPA and expanded DACA programs, these instructions should be implemented. It is for this specific reason that ICE established a mechanism on the agency's

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<sup>13</sup>[http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf)

<sup>14</sup> [dhs.gov/immigrationaction](http://dhs.gov/immigrationaction)

<sup>15</sup> <http://thinkprogress.org/immigration/2015/03/12/3631771/ice-raid-2000-immigrants/>

<sup>16</sup> [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_deferred\\_action.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf)

website for individuals to identify themselves as candidates for deferred action, which is still currently active.<sup>17</sup>

According to the American Immigration Council:

ICE may choose not to remove a person even meeting DHS' highest priority, if "compelling and exceptional factors... clearly indicate" the person is not a "national security, border security, or public safety" threat. ICE has not stated whether it evaluated those factors for [individuals apprehended in Operation Cross Check]. Available evidence suggests that... ICE is blindly pursuing removals of individuals who fall within the administration's broad enforcement priorities, regardless of the individual circumstances.<sup>18</sup>

In reviewing cases for deportation, ICE officials appear to give no consideration to the level of crime committed, or how long ago that crime was committed (in many cases, 10, 15, or even 20 years ago). According to ICE spokesperson Shawn Neudauer: "You commit a crime and years and years later you regret that and you pay the price and you turn into a much better person and that's all relatively good but for law enforcement purposes you have a criminal record and that will forever change you."<sup>19</sup>

At a time when policymakers from both sides of the aisle support reducing sentences for low-level offenses,<sup>20</sup> ICE appears to be moving in the opposite direction for immigration infractions.

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<sup>17</sup> [ice.gov/immigrationaction](http://ice.gov/immigrationaction)

<sup>18</sup> <http://immigrationimpact.com/2015/03/13/ice-sweeps-up-minor-offenders-with-families-using-heavy-handed-approach/>

<sup>19</sup> <http://kwqc.com/2015/03/12/owner-of-azteca-mexican-restaurants-faces-deportation/>

<sup>20</sup> <http://time.com/3714876/criminal-justice-reform-is-becoming-washingtons-bipartisan-cause/>;  
<http://www.wsj.com/articles/bipartisan-coalition-to-press-congress-on-criminal-justice-overhaul-1424883190>

# Questionable ICE tactics

Allegations have arisen that ICE agents used questionable tactics in carrying out Operation Cross Check. In several of the arrests, immigrants' families have described agents entering their homes using trickery or false pretenses.<sup>21</sup>

In one case ICE agents came to an individual's home and accused him of not having his green card. When the individual protested that he did in fact have a green card and showed it to them as proof, they arrested him and took him to detention. In another case, ICE agents arrested a man in front of his 2-year-old son who is now traumatized by the experience.

In a third case, family members said that ICE agents "made it sound like he would get out that day or the next day. They said, 'you have a job. You have a child. You'll probably be able to talk to the supervisor when you get out the next day.'"<sup>22</sup> In another recent case, prior to Operation Cross Check, ICE agents told a family member "they were cops looking for two guys who were stealing people's identities. They showed me pictures and everything and asked if they could come into the house. I said, 'sure, I have nothing to hide,' then right away asked for his identification. He was playing with our two-year-old. They dragged him out of bed and arrested him."<sup>23</sup>

From a case in Florida, ICE agents ignored requests to see a warrant and reportedly threatened to take the 11-year-old son of a U.S. citizen and arrest others in her family if the individual did not tell ICE agents where her uncle was. At the end of the raid, they threatened her with arrest if she spoke about the encounter.<sup>24</sup>

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<sup>21</sup> <http://thinkprogress.org/immigration/2015/03/12/3631771/ice-raid-2000-immigrants/>

<sup>22</sup> <http://thinkprogress.org/immigration/2015/03/12/3631771/ice-raid-2000-immigrants/>

<sup>23</sup> <http://thinkprogress.org/immigration/2015/03/12/3631771/ice-raid-2000-immigrants/>

<sup>24</sup> <http://www.elnuevoherald.com/noticias/sur-de-la-florida/articulo14530706.html>

# Case studies

## A snapshot of the “worst of the worst”

The following case studies give a snapshot of those taken and detained (and some already deported) by ICE in Operation Cross Check March 2-6, 2015. They include: a pastor, a grandmother, two business owners, and a college student. The case studies illustrate that many of the individuals swept up in the recent ICE operations are long-time residents in the U.S. with minor, non-violent criminal convictions from many years ago. Some came to the U.S. as children, some have started businesses, some are the sole provider for loved ones who depend on them. Many would leave behind broken families and fragmented communities.

### Pastor Max Villatoro - deported

*Respected community leader, loving husband and father*

*Time in U.S.: 20 years (1995)*

*Family in U.S.: Wife and four U.S. citizen children, ages 7-15*

*Criminal conviction(s):* Records tampering (1999), DUI (1998)

*Details:* Pastor Villatoro came into the U.S. on Temporary Protected Status but fell out of status due to bad legal advice. He subsequently tried for several years to legalize his status, with the help of the Central Plains Mennonite Conference. Today, Pastor Villatoro is a leader in his community. His convictions were more than 15 years in the past and do not represent the man he is now. Not only does Pastor Villatoro eschew alcohol use for himself, he helps others who struggle with addictions. His positive impact on the community in Iowa City is illustrated by the thousands who have rallied to his side in the past weeks, including more than 40,000 who have signed petitions calling for his release. Pastor Villatoro’s relatives in Honduras have been victims of murder, assault and threats due to ongoing violence there and he should not be deported to this unsafe situation.

*Contact:* Rev. Karla Stoltzfus Detweiler, First Mennonite Church, Iowa City, karlastoltzweiler@gmail.com; David Boshart, Executive Conference Minister, Central Plains Mennonite Conference, davidboshart@centralplainsmc.org

*Petitions:* Moveon.org: [petitions.moveon.org/sign/keep-families-together-4.fb49](https://petitions.moveon.org/sign/keep-families-together-4.fb49);  
Groundswell: [action.groundswell-mvmt.org/petitions/stop-the-deportation-of-beloved-iowa-pastor-and-community-member-max-villatoro](https://action.groundswell-mvmt.org/petitions/stop-the-deportation-of-beloved-iowa-pastor-and-community-member-max-villatoro);  
Faithful America:  
[act.faithfulamerica.org/sign/max\\_villatoro/?t=1&referring\\_akid=521.225276.z9ncLE](https://act.faithfulamerica.org/sign/max_villatoro/?t=1&referring_akid=521.225276.z9ncLE)

*Videos:* [youtube.com/watch?v=orUfx939VW8](https://youtube.com/watch?v=orUfx939VW8); [youtube.com/watch?v=65e\\_ahGl69U](https://youtube.com/watch?v=65e_ahGl69U)

*Media coverage:* Huffington Post, MundoFOX, Univision, Telemundo, Mennonite World Review, Think Progress, Des Moines Register (Iowa), AP (Iowa), The Gazette (Iowa), KCRG, KGAN TV, Minneapolis Star Tribune, Dubuque Telegraph Herald

## Grandma Ana\*

*Loving grandmother and long-time resident*

*Time in U.S.:* **40+ years**

*Family in U.S.:* **Children, grandchildren**

*Criminal conviction(s):* Drug use (non-violent)

*Details:* Ana is a loving mother and grandmother who has spent most of her life in the U.S. Many years ago she struggled with substance abuse but has since turned her life around.

*Contact:* Available upon request

\*Pseudonym used to protect identity

## Gustavo Villalpando-Bolanos

*Business owner*

*Time in U.S.:* **More than 20 years**

*Family in U.S.:* **Wife, daughter, grandchildren**

*Criminal conviction(s):* Smuggling/harboring charges in 1997, related to helping others cross the border

*Details:* Owner of the Azteca Mexican restaurants in Davenport, Iowa. Villalpando's daughter, Sonia Villalpando said, "My dad is a lot of things but a threat. He's not. He's a husband, a father, he's a grandfather. He has helped a lot of people, a lot of organizations, a lot of booster clubs."

*Contact:* Available upon request

*Media coverage:* [kwqc.com/2015/03/12/owner-of-azteca-mexican-restaurants-faces-deportation/](http://kwqc.com/2015/03/12/owner-of-azteca-mexican-restaurants-faces-deportation/)

## Reginaldo Dimas - deported

*Father and sole provider for a son with autism*

*Time in U.S.:* **More than 15 years**

*Family in U.S.:* **Wife, son with autism (DACA), 2 daughters (U.S. citizens)**

*Criminal conviction(s):* DUI in 1998

*Details:* Reginaldo is a wonderful husband and father who turned his life around and became a regular churchgoer in 2006. His family is especially devastated by his deportation as he was the sole financial provider. Reginaldo and his wife, Elena, have a son with autism and Elena has heart problems that result in many financial expenses. Elena is currently waiting to have open heart surgery.

*Contact:* Misty Rebik, [misty@cwjiowa.org](mailto:misty@cwjiowa.org)

## Samy

*Citizenship application lost as a child*

*Time in U.S.:* **30+ years; since before age 9** (now 42)

*Family in U.S.:* **Wife, daughters, siblings, nephew, father-in-law**

*Criminal conviction(s):* “Failure to report” violation stemming from a drug-possession charge in the late 1990s

*Details:* Samy became undocumented in 1981, reportedly when U.S. immigration officials lost a citizenship application filed by his father. His siblings are all U.S. citizens. Samy served 18 months in immigration detention for a “failure to report violation” and, according to various family members, checked in with ICE officials for five years under supervisory visits and a judge in a “drug court program” as a part of his rehabilitation after he was released from detention. Samy went on to receive a degree from culinary school and up until his detention was working for 13 years in the food industry. According to Samy’s sister, Mona, “He’s going to lose his job. He’s been working hard and he’s married. He pays taxes! We’re all humans, we make mistakes. ... Not everyone deserves to be sent back, or held, or detained.” Reportedly, Samy’s 7-year-old daughter thinks he is on a business trip for work. He has been a model father, uncle, and husband. As a member of a minority group, it could be physically dangerous for Samy to return to his country of origin, and dangerous for his family to visit him there as well.

*Contact:* Available upon request.

*Media coverage:* [thinkprogress.org/immigration/2015/03/12/3631771/ice-raid-2000-immigrants/](http://thinkprogress.org/immigration/2015/03/12/3631771/ice-raid-2000-immigrants/)

# Leonel Ayala

*Business owner, community leader*

*Time in U.S.:* **Almost 25 years**

*Family in U.S.:* **3 children (one, 12 years old, is a U.S. citizen)**

*Criminal conviction(s):* 2 DUIs

*Details:* Leonel Ayala is a loving father and beloved member of his church and community. He is the proud owner of the body shop Fast Car, a business that provides jobs to several members of his community. In 2006 he started the process to obtain citizenship through his brother but is still waiting. Subsequent to his last DUI conviction, he complied with all requirements of his probation and passed all random drug tests. According to Leonel's family, ICE agents came to his house claiming to be probation officers there to perform a random drug test. They did not produce a warrant.

*Contact:* Available upon request.

*Petition:* [actionnetwork.org/petitions/stop-my-fathers-deportation?source=direct\\_link&referrer=ahlam-said-2](http://actionnetwork.org/petitions/stop-my-fathers-deportation?source=direct_link&referrer=ahlam-said-2)

# F.C.\*

*College student, father figure*

*Time in U.S.:* **30+ years, Legal Permanent Resident** (entered in the early 1980s as a child)

*Family in U.S.:* **Elderly mother (U.S. citizen), three young nephews (U.S. citizens)**

*Criminal conviction(s):* non-violent offenses, most recently in 2003 (state conviction)

*Details:* F.C. is in college, working and living with his elderly mother, who is a U.S. citizen. He is close to his three young nephews, also U.S. citizens, one of whom lost his father a few years ago and looks up to F.C. as a father figure. ICE came to F.C.'s door and accused him of not having his green card. When he protested that he does in fact have a green card and showed it to them as proof, they arrested him and took him to detention.

*Contact:* Available upon request

*\*Pseudonym used to protect identity*

# Jose\*

## *Suffering from cancer*

*Time in U.S.:* **Since 1970s; Legal Permanent Resident**

*Family in U.S.:* **3 adult U.S. citizen children**

*Criminal conviction(s):* Open drug case

*Details:* Jose is a long-time LPR who is suffering from advanced throat and neck cancer, and who has lived in the U.S. since the 1970s and has 3 adult U.S. citizen children.

*Contact:* Available upon request

*\*Pseudonym used to protect identity*

# Conclusions

Immigration enforcement operations such as Operation Cross Check are not meeting stated goals – to remove individuals who pose a threat to public safety or national security. Instead, individuals with longstanding ties to their communities, old convictions for minor offenses and who have since turned their lives around are being needlessly separated from their families. Families and communities are then feeling the hardship of this loss.

It is evident that at least some ICE officials are not consistently following guidelines for prosecutorial discretion and priorities for enforcement operations. It is also concerning to hear cases where ICE agents are apparently using questionable tactics to carry out operations.

# Recommendations

- **ICE should submit a report to DHS and the White House regarding each case targeted in Operation Cross Check, including the date of convictions, severity of offenses, and family ties, as well as how many offenses were misdemeanors or related to immigration status.**
- **ICE and DHS should ensure that individuals' equities, including family members in the United States and positive community engagement, outweigh potentially disqualifying factors when exercising prosecutorial discretion.**
- DHS should provide stronger oversight of ICE to ensure proper implementation of prosecutorial discretion in the manner in which it was directed by November 2014 guidelines, including training, monitoring and evaluation, and consequences for ICE offices and officials who do not comply.
- DHS should embrace reforms being made and proposed in the criminal justice system to reduce sentences for low-level crimes, including by implementing prosecutorial discretion for low-level offenses.<sup>25</sup>
- DHS and the White House should investigate complaints that ICE officers are using questionable tactics, including entering homes using trickery or false pretenses, and should enforce standards and consequences to prevent such actions.
- DHS and ICE should work to formalize a process for individuals and civil society to appeal decisions on cases, to ensure that local ICE offices are following guidelines for prosecutorial discretion and enforcement priorities.

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<sup>25</sup> <http://time.com/3714876/criminal-justice-reform-is-becoming-washingtons-bipartisan-cause/>;  
<http://www.wsj.com/articles/bipartisan-coalition-to-press-congress-on-criminal-justice-overhaul-1424883190>