

## TALKING LIBERTIES

### EPISODE 36: ICE Enforcement in Our Communities

**(0:00) Edwin Yohnka (ACLU-IL):**

Welcome to talking liberties with the ACLU of Illinois I'm your host Ed Yohnka. Today we return to the topic of immigration over the past several years immigration policy has been a flashpoint a political controversy and human concern. Much of the attention has been focused on border issues like family separation and remain in Mexico policies. But what does immigration policy and immigration enforcement in particular mean in a non border state like Illinois. That's what we're here to focus on today.

In the Spring of 2018 the Trump Administration announced an aggressive campaign of immigration enforcement in a number of communities. Mostly in areas where state and local government had policies of not cooperating with federal immigration authorities. This effort, included the Chicago area and over a six day period in May 2018 ICE arrested and detained more than 100 people across the Chicago region.

Within weeks, the National Immigrant Justice Center, NIJC, challenge these practices in Federal Court. First on behalf of two individuals who were stopping detained and later on behalf of others, as well as the Illinois Coalition for Immigrant and Refugee Rights and the organization Organized Communities Against Deportation or OCAD, the ACLU also became part of this legal team. A settlement in this case known as Castañon Nava versus Homeland Security recently was approved by a federal judge.

We're pleased to be joined by two guests today who can help us better understand the damage caused to our communities by these sorts of enforcement tactics, the background of this particular lawsuit. And exactly what the settlement in the case will mean. Antonio Gutierrez is a noted immigrant rights activist in the Chicago area and works with OCAD and Mark Fleming is the associate director of litigation at NIJC. Antonio and Mark, welcome to Talking Liberties.

**(2:23) Edwin Yohnka (ACLU-IL):**

Antonio I wanted to start just by asking. You know, we I talked in the introduction, about the fact that there were, you know more than 100 people arrested over this six day period of this particular set of arrests. But what kind of tactics does do you see or does OCAD or others see in the community in terms of these kinds of arrests.

**(2:46) Antonio Gutierrez (OCAD):**

Hi and thank you again for the invitation to speak today, some of the tactics and strategies that we have seen rights. is not only are these raids or potential like opportunities for raids in a community creating like chronic fear in the undocumented immigrant community, and we of course live there through a lot to the Trump Administration. But there's also been strategies or response towards those threats in our community as well. I remember in the first kind of years of the Trump Administration OCAD put together and organized multiple know your rights workshops, in order for individuals to know what to do in case ICE will go and knock on their door what to ask for in regards to a warrant be needed, what a warrant looks like, so that our community was prepared for that type of conversation. But of course the threat of raid in a workplace in our home has always been there is some documented immigrants have experienced that. Throughout like different administrations, even during the Obama Administration, the Bush Administration. And so that's been an ongoing kind of fear that has always been put on the table for the undocumented community in regards to how they go on and live in our communities and the type of risk or the type of interactions that they careful to have in

order to be able to thrive and be happy in their community.

**(4:08) Edwin Yohnka (ACLU-IL):**

Mark, Antonio you know raises an important point here that that these raids were nothing new under the Trump Administration. But was there a particular feature about these raids that sort of captured your attention, that you know again the tactics that were used, or the way they were handled that that sort of caught your eye.

**(4:29) Mark Fleming (NIJC):**

Yeah I mean, I think, as Antonio pointed out like these tactics had been going on and we've been monitoring them for a long time, I think, a couple of features that were particularly egregious were, number one from a publicity standpoint, these were intended to intimidate communities. That had taken the you know very rational policy of, say, look when we have state and local law enforcement want them to focus on protecting our communities and not be focused on immigration. So, the Trump Administration over the Spring of 2018 were very explicit that they were targeting quote unquote sanctuary jurisdictions. Jurisdictions that had passed laws that said, you know we as state and local law enforcement are just not going to participate in civil immigration enforcement. So there was that aspect of it in a lot of bravado in some of the statements that were made by Trump officials, but then, also in their press releases. But then with respect to these particular enforcement actions I think at a level that we hadn't seen before they had really targeted particularly Hispanic communities within Chicago and literally we're pulling people over for driving Brown. With really no pretext, as far as we can tell, of you know folks that they went into a community and literally tried to stop as many people as possible to check on their immigration status. And I'm not saying that those sorts of tactics may not have had, they may have happened before, but there was something unique about these particular set of enforcement actions with the brazenness with which the racial profiling was happening.

**(6:08) Edwin Yohnka (ACLU):**

So just so our listeners understand this, Mark. When you say traffic stops they were literally pulling people over when they were driving through their own neighborhoods.

**(6:21) Mark Fleming (NIJC):**

Correct that they were driving through their own neighborhoods where ICE officials were boxing their cars in so people pulling a car over and then pulling cars in front and behind. Bringing out officers in plain clothes or with vest that just said police and immediately demanding licenses in one case of the lead plaintiff Margarito Castañon Nava they fingerprinted him and the occupy other occupant in the car without any sort of cut of conversation or explanation for why. They were pulling him over, let alone and then ultimately arresting in fact he wasn't aware of who these individuals were until he was brought down to the ICE processing center downtown in Chicago. But really aggressive tactics in how they pulled the cars over and immediately jumping to trying to identify them for immigration violations.

**(7:18) Edwin Yohnka (ACLU-IL):**

Antonio you sort of mentioned this earlier and I wonder if I can sort of come back to this point about what kind of impact that kind of enforcement has on a community. What is that like when that happens.

**(7:32) Antonio Gutierrez (OCAD):**

Yes, so during this set of raids and also throughout like saying the Trump Administration, especially in the beginning, we received a lot of calls from community members through our hotline that we have wanting to report ICE activity right just identify that were kind of driving through our communities. And how alarming it was for individuals to see those vans, as to why they were parked on the street, why would they be driving through our main like commercial corridors in Little Village in Back of the Yards in Albany Park. And so there was always that component of anxiety or wanting to report on what's happening for us to confirm the information and then provide updates using our social media platforms. But ultimately this overall fear really got people to either to self deport and go back to their countries of origin in some like minor cases that we saw. But then we also saw individuals just not leaving their homes and having to make like very direct decisions or hard decisions in regards to whether they were going to be going outside in order to get work and provide for their families or whether they could just like whether they wanted to just stay at home in order to make sure that they weren't separated from their families. Because the threat, and the risk of not coming back after leaving your home was always there.

**(8:54) Edwin Yohnka (ACLU-IL):**

It's hard to even imagine the destructive kind of effect that that has on a community. Mark, I guess, I want to ask so for a lawsuit why these raids, as opposed to some others was there was there something special you know in these tactics.

**(9:09) Mark Fleming (NIJC):**

I think, initially, it was a not in are not in our city sort of mentality. As we got into it and talking to OCAD talking to ICIR another organizational plaintive and then going out to the jails where these people were being held, we started peel back and started to understand really the ramifications of this week at the beginning, when we decided hey we're going to look to see if we can't file lawsuit very quickly we were focused on this collateral rest question this idea of individuals who were not targeted by ICE, but that were encountered in the community. But it was very quickly once we spoke to people, we started to really understand what the tactics were in particularly this as you've touched on of literally pulling over cars at random in Hispanic neighborhoods in in Chicago.

**(9:56) Edwin Yohnka (ACLU-IL):**

So, Antonio I wonder from OCAD's perspective to why you thought the organization thought this was an important lawsuit to join. And then I really wonder if you could talk a little bit about how this lawsuit kind of fits into your overall strategy to end deportations all together.

**(10:10) Antonio Gutierrez (OCAD):**

So for us when we saw the set of raids right, as I stated, this has been a tactic being used to in our community right, we fear for many, many years before even other situations before this. But the reason why we wanted to work with NIJC and other organizations into fighting this litigation really was that what happens when we create a sense that ICE can get away with this like this practices. What happens when we normalize the terror immigrant communities are subject through ICE operations in any they are allowed to get away with this, then what else are they going to be allowed to get away with. So that was the main important like aspect of why OCAD participated and collaborated on this like litigation.

The other part right is that we did wanted to exercise a community driven litigation strategy in regards for getting our members who most of the time are un-documented directly impacted immigrants by the ICE operations and enforcement policies to be participants in a process of holding ICE accountable, making sure that they have a way to create a narrative and make sure that their voice of fear of insecurity of the instances and experiences that they live to the community was part of the narrative and dialogue about what I look like that it wasn't just attorney speaking about what had happened in the situation, but that individuals that were directly impacted by those raids were able to speak up and create a platform for them. And that overall connects to our model of organizing and creating strategy right in making sure that the empowerment of undocumented immigrants is part of that organizing strategy and legal strategy that we tend to combine in order to get wins that are outside the law because we understand that the law, especially immigration law and policies are not just are not fair and that are based on other pillars of oppression like white supremacy and racism.

**(12:10) Mark Fleming (NIJC):**

I really do want to highlight the courage that OCAD as an organization showed in this like let's not forget what the Trump Administration was trying to do to immigration by being a plaintiff's OCAD was open themselves up to discovery to depositions to opening what they do and I don't want that to be missed that like this was community led to push back.

**(12:35) Edwin Yohnka (ACLU-IL):**

Yeah and it's so important, you know, I wonder if I can go one step further on that and Antonio maybe I'd start with you. Is thinking too about the courage of the actual name plaintiffs to come forward like in the in a case like this in much the same way Mark as you were talking about with OCAD as an organization and what does that mean in terms of really fighting back and having the courage to hold ICE accountable.

**(13:02) Antonio Gutierrez (OCAD):**

I think for us when we see the understanding way and also within the conversations of leadership development in building the relationship with the individuals that we work with. That is always a conversation around the vulnerability of the risk that I will take, but also a conversation about how this might be able to impact how other undocumented

immigrants want to interact with ICE how they might want to also speak up around what they have experienced with ICE or the decision that they have experience and you know overall right when we get hundreds of calls reporting these ICE raids, reporting that these activities are happening in our community, we have to respond, and what better way to respond then by allowing those directly impacted to lead the process and to lead the narrative.

I think that in regards to like the risks that we have in getting arrested or detained by raids or by ICE targeting our communities there's always going to be this understanding, where that people still need to go out into the world they need to go and find jobs they need to find and survive all their systems, besides the immigration system that are being put in place or that are oppressing them, such as the oppression of ICE right and also capitalism and surviving under this economic system that unfortunately does not see undocumented immigrants is equals regarding residents and citizens and creates a targeted community for exploitation of labor on this economic system.

**(14:36) Edwin Yohnka (ACLU-IL):**

Mark, do you have thoughts about the courage of the name plaintiffs in this instance.

**(14:41) Mark Fleming (NIJC):**

I mean, I think it's quite remarkable to be honest, because, again it's hard at the moment to place oneself back in 2018 and what's the atmosphere of fear was, and you know in talking to them, they were just frankly outraged at what happened to them in and they stood up and you know, with with real risk of retaliation, particularly under you know the prior administration so yeah I mean I think at NIJC we try very hard to provide wraparound service to our name plaintiffs so in this case we represent in their immigration proceedings. All of the name plaintiffs except for one who already had prior counsel. But you know that's that that's as far as we can go there still is the courage that needs to come from the person, and you know, frankly, all of our our plaintiffs have been quite remarkable in that regard.

**(15:30) Edwin Yohnka (ACLU-IL):**

And you think about the right the courage above the name plaintiffs and OCAD, and ICCIR put themselves forward in this way is really remarkable. Antonio you wanted to add something else.

**(15:41) Antonio Gutierrez (OCAD):**

Yes, I wanted to add a little bit of the history of where OCAD like comes from right. Many of the founders of OCAD also were part of the Immigrant Youth Justice League. Which here in Chicago was an undocumented youth led organization that created a coming out of the shadows event on March 10 2010. That the first one was here in Chicago where seven and undocumented immigrants came out as undocumented. And for the first time publicly we have narratives and storytelling regarding what the undocumented experience and identity looks like right. And so from that moment on, we continue to put together that annual event of coming out of the shadows and, later on that became a national movement that changed and shifted the power dynamics of what immigrant justice movement look like in the United States and out of that, that value right of making sure that we are empowering people as they're dealing with those crises and to be courageous in order to empower other immigrants it's been a component of OCAD's is litigation, but any of our organizing work that we have done over the years.

**(16:47) Edwin Yohnka (ACLU-IL):**

Yeah and the discussion writ large across the country, it really is such an important element. So Mark, you got a settlement, then, in this case, out of the Department of Homeland Security, we should just talk for a second about like what are the elements of that settlement like what does it require.

**(17:05) Mark Fleming (NIJC):**

Yeah so so there's a couple pieces of it that are now nation are going to be nationwide and then some aspects of it that are specific to the ICE Chicago field office and despite its name actually the ICE shift Chicago field office covers six states which is Wisconsin, Illinois, Indiana, Kentucky, Kansas, and Missouri. So there are specific remedies available to individuals who may be arrested in violation of the settlement for those states over the next three years. So the main piece of it is this new nationwide policy and, in that nationwide policy ICE has agreed, through our negotiations and with our organizational plaintiffs and name plaintiffs to establish a new policy as to when they can make warrantless arrest and specifically specific documentation requirements when making warrantless arrests in and vehicle stops that lead to warrantless arrests. And, in particular, under the Immigration and Nationality Act, which is the main immigration law at

the federal level, ICE is only allowed to make warrantless arrests when not only do they have probable cause that a non citizen is removable from the United States but also probable cause that the individual is likely to escape before warrant could be obtained for the arrest.

The policy then lays out in it's attached to the settlement, which was approved by the District Court Judge here on February 8. But the policy then lays out some factors that ICE the ICE officer needs to look at including community ties so, for example, if an individual has a home or employment or family, these are all factors that mitigate against them having probable cause to make a warrantless arrest. And so, in instances where those are available, many times, they should not be making an arrest at all, and they would need to then decide if they're going to take future enforcement action against that individual at a later date. But if they do make a warrantless arrest they then need to be documenting that on what's called an I-213 it's a form and ICE form for how they document arrests in they need to specifically document certain aspects of the arrest, including were there community ties, was the arrest in a home, and was it in a place of employment, was the person an employee of the place of employment, was it in a vehicle all these sorts of factors. So they need to describe circumstances arrest, so that if there was a violation, we can seek a remedy, similarly, with respect to vehicle stops ICE officers, no longer can say that it's very clear that they are, they have no authority for enforcing state and local traffic laws. So the policies very clear, and that they can't state to the individual that they're stopping them because of state or local traffic laws and then likewise like in the context of warrantless arrests as well, they need to have a reasonable suspicion that an individual in the car is without authorization to be in the United States and if they do end up making an arrest that they have to document that as well on the what's called the I-213, which is the arrest form. So that's nationwide it should go into effect in about six months in the reason being is we are now negotiating with them this specific training materials that will then every ICE officer nationwide will be trained on it first the ICE Chicago field office within 45 days and then nationwide within 180 days so about six months.

**(20:50) Edwin Yohnka (ACLU-IL):**

Can I ask a couple of quick follow ups on the national policy itself. Is it fair to say that what you're really expecting as the result of this national policy is a significant reduction or use of warrantless arrest and tactics like traffic stops is that is that really the goal of that of those policies.

**(21:13) Mark Fleming (NIJC):**

Yes, I think, absolutely because the reality is how ICE has done its enforcement, has been to just ignore the limitations on those policies, but this limitation on their warrantless arrest authority has existed for decades, but we know as a matter of practice that ICE never follows it. As a matter of policy, they they're not trained on it. And so, basically our expectation is that quote unquote collateral arrest individuals who are just swept up because they're the wrong place at the wrong time that disproportionately those arrest should no longer occur. Likewise, vehicle stops unless. They have a clear target that they've been monitoring, for some reason.

**(21:56) Edwin Yohnka (ACLU-IL):**

Yeah and there are other elements, then of the settlement I should let you continue.

**(22:00) Mark Fleming (NIJC):**

Yeah so the other elements of the settlement are mostly on the local level or at the field office level, which are as soon as the training starts. On a monthly basis for going on for three years, we as class counsel will receive the I-213 sees arrest forums. For anyone that is warrant loosely arrested within the northern district of Illinois, which is about the top third of the state in incorporates the entire Chicago-land area. Separately from that in the event that there is a warrantless arrest that occurs within the six state region that I mentioned that if it's in violation of the settlement or the nationwide policy that we as class counsel can go to the Court and seek the release of that individual or if they've already bonded out to get their bond money back. We also it would lead and require remedial measures against the ICE officer that violated the policy and in the event of more systemic violations, we can go to the Court and seek even more remedies yet to be determined, depending on what those systemic violations are.

**(23:11) Edwin Yohnka (ACLU-IL):**

So this this issue of the release and and or getting someone's bond returned I just that that is a perspective thing heading forward over the next three years you're going to be able to look at these arrests and then determine whether or not there are steps that could be taken to either get someone released who's being detained if they were arrested,

with a warrantless arrest or they get their bond money back.

**(23:36) Mark Fleming (NIJC):**

Correct and it is prospective.

**(23:40) Edwin Yohnka (ACLU-IL):**

And I wonder if, if I could ask a sort of a generic question, then, because it covers six states and because of that perspective piece, you are not just remedying wrong you're actually changing a policy moving forward. How historic how significant is this settlement in the context of the way that ICE sort of been held the task in the past.

**(23:59) Mark Fleming (NIJC):**

I think it's quite substantial for the issues that it addresses. Because, as I flagged that I got you know for almost 80 years now they've had this limitation on their warrantless arrest authority and yet. I am not aware of them ever following the limits of their warrantless arrest authority and so these at large in the community arrests. I guess I'm cautiously hopeful will fundamentally change how they proceed in their enforcement in the community.

**(24:30) Edwin Yohnka (ACLU-IL):**

Antonio from the perspective of OCAD when you hear these details or as you went through them as part of the settlement process. What did what did you guys think I mean what do you, what do you think of all of this what's your response.

**(24:40) Antonio Gutierrez (OCAD):**

Yeah with other like the settlement did really well in regards to creating processes right for the community to still hold ICE accountable to the settlement. And I think that as a great victory that we have not seen in other like similar litigation or even campaigns that we have done. I think the idea that there's not going to be any more collateral arrest is great why because many of our public campaigns even prior to 2018 we're about individuals that were detained as collateral rest, even in cases where multi-unit buildings in Albany Park. ICE came and start knocking and everybody's door without really looking for anybody without targeting anybody, other than targeting a multi-unit building where they knew immigrants like we're living and then arresting individuals. Where we highlighted those public campaigns in always knowing that ICE just didn't have the right to properly do this, but even then, when highlighting this case is it wasn't part of the narrative of how we hold us accountable. Even though those policies were already in place was really hard to get them to be implemented or to advocate for the individuals released by using those protections or those policies that they needed to follow. Now we have another tool that not only are we going to be in tune with what their activities is within a month right. But we're going to be able to work with those individuals, hopefully in be able to carry on or demand might be whether it's released or whether there's anything else that we could potentially do and still highlight that ICE needs to be limited in how they carry on their operations, as many of those practices are inhumane. We want them to change, we need them to modify them in order to really create a narrative and dialogue, of how we fix the current issues with our immigration system. Without that our community is always a threat of deportation, of detention and we need to kind of get over that that fear and over that potential possibility in order to really create a dialogue with those directly impacted in to come with solutions and alternatives to the current system that we have.

**(26:46) Edwin Yohnka (ACLU-IL):**

Now wonder Antonio, you know OCAD, is doing some outreach to let people know about this settlement and help in terms of that all the process you've just described, moving forward, and I wonder what steps you're taking to do that work.

**(27:04) Antonio Gutierrez (OCAD):**

Yes, of course, COVID has changed how community organizing is like done for now right but we already made a webinar. We did a virtual can a press conference slash webinar where we did announce many of these points that were discussing today and start highlighting it on social media platforms, both of OCAD and ICCIRR, we do have a large following of not only undocumented immigrants, but also the allies and other individuals in our communities. So we are informing them, I think in the future we do foresee, especially as we're going to start getting some of these reports and the settlement goes into implementation level as Mark was saying in hopefully six months time that there will be other moments of

community education around the settlement around, how is changing, how ICE can interact with the community and hoping that individuals can learn about the settlement so they're making hopefully exercise their rights, whenever they come into contact on to any type of situation where they come into contact with ICE agents.

**(28:05) Edwin Yohnka (ACLU-IL):**

Mark, I wonder if you're you know you, you mentioned a couple of times that this this you know prohibition against warrantless arrests or limitations on warrantless arrests has existed for decades and not always been followed aren't you concerned after the three years that that maybe that without the enforcement mechanism that that you know we could slide right back into the same system.

**(28:27) Mark Fleming (NIJC):**

It's certainly possible and I'm under no illusions that just because we have a settlement that a bureaucracy is going to be able to change overnight and the patterns of enforcement that occurred and so. I really kind of view the settlement, as the starting point really it's going to be how successful are we over the next three years of identifying violations in and bringing them to a front, so that we can change the culture of how they do enforcement in the interior it's not as if I should flag it's not as if this nationwide policy just disappears after three years, it should remain in place now. You know who knows and a price of five next administration could resend it. But once it's out there we can go back to it at some point, if even if the worst case scenario happens and it gets rescinded somehow by an administration. And, I think something else to flag is built into the settlement is a recognition by ICE that after that six months of training that the policy can be used for bringing litigation in other parts of the country in the event that there are violations. And so you know, our hope is not only that we can change the culture of ICE enforcement within the ICE Chicago field office, but also with allies around the country can we can we change the culture nationwide so that so that we don't go back.

**(29:53) Edwin Yohnka (ACLU-IL):**

Right, do you think there are regional offices in other places, where just the threat of a lawsuit given this settlement might bring a change in behavior.

**(30:02) Mark Fleming (NIJC):**

It's possible it's possible. I think what's challenging about ICE is they as an institution do not have very strong control of their field offices at the federal level, this has always been a problem. I'm not sure it's unique to ICE but it's feels like very problematic at ICE. That I think it would be, it would really kind of depend on the field office and who the directors are at any given field office, but you know I would be hopeful that you know they would recognize the threat of litigation. And the fact that there is this settlement as grounds to try and seek corrective action short of another lawsuit.

**(30:36) Edwin Yohnka (ACLU-IL):**

Antonio as we sort of moved to close here, I wonder, like what do you see as the next step. What's the next thing that you know OCAD would like to see on the immigration front what should we all be thinking about and working towards to make this a more humane system?

**(30:53) Antonio Gutierrez (OCAD):**

Yeah just as Mark was saying we also at OCAD see this is like an initial step night to not only limit and highlight ICE separations and how they carry out in a community and how unfair and unjust those practices are. But it's also a continuation of projects that as OCAD, we already are doing, besides this litigation right we already have another litigation against ICE around the citizens academy that they wanted to put together in Chicago in 2020. We actually file public FOIA requests in many of the documentation for the citizens academy curriculum and information. And we were denied that information, even though we are under the rights of ICE being a public entity that the public should be able to receive those documents and that information. And so the fact that we are having to use litigation, just to be able to convince ICE to provide us those documents to get on the table with us and negotiate is unfortunate, but it's also a tool for our organizing that is used as a tactic right to provide a similar thing that platform for individuals are directly impacted to be able to file those lawsuits to be able to find a litigation against entities like ICE that we tend to think right, especially some documented immigrants that we have seen how institutions are not created there to protect us, but on the contrary, many of the times are created to detain us and oppress us. That we have power within those conversations and within the narrative and giving the power to the undocumented community as the settlement does is only the beginning to take more courageous risk and to be able to take on more risk to not only limit those practices of

ICE but, eventually, what does the narrative look like about the funding ICE and entity to abolish ICE and these three years are going to be key for us to continue to push the narrative and continue to understand what our community wants to do in order to what they believe should happen with ICE in our communities and how we like or abolish that organization.

**(32:54) Edwin Yohnka (ACLU):**

Well, Antonio and Mark, thank you so so much for coming and joining us today and talking about this, I think these kinds of settlements look complex in legalese but but both of you have really helped to kind of make this real so we really appreciate your time and and thanks for being with us and and we will i'm sure follow up on this down the road.

**(33:13) Mark Fleming (NIJC):**

Thank you for having us.

**(33:14) Antonio Gutierrez (OCAD):**

Thank you.

**(33:15) Edwin Yohnka (ACLU-IL):**

Let me thank Antonio Gutierrez an immigration advocate and OCAD and Mark Fleming the associate director of litigation and NIJC for joining us today. We really are grateful for your time, you can learn more about this case as well as more about and NIJC and OCAD on our website at [aclu dash IL.org](http://aclu-dash-il.org).

Thank you for listening to Talking Liberties with the ACLU of Illinois. This program is produced by the ACLU of Illinois and our content supervisor is Kimberly Koziel. The Executive Director of the ACLU of Illinois is Colleen Connell. You can subscribe to this podcast and rate us. Until next time this is Talking Liberties with the ACLU of Illinois will see you soon.