

May 9, 2023

Delivered via Email

Shoba Sivaprasad Wadhia
Officer for Civil Rights & Civil Liberties
Department of Homeland Security
245 Murray Lane SW
Building 410, Mail Stop #0190
Washington, D.C. 20528
CRCLCompliance@hq.dhs.gov

Joseph V. Cuffari
DHS Inspector General
Office of Inspector General/Mail Stop 0305
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0305
dhs-oig.officepublicaffairs@oig.dhs.gov

Re: Civil Rights Violations in the Arrest and Continued Detention of Mr. Baldomero Orozco Juarez [REDACTED]

We submit this complaint on behalf of Mr. Baldomero Orozco Juarez regarding civil and human rights violations committed by the U.S. Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) against him, and in regard to specific enforcement actions by ICE that run counter to stated DHS civil and labor rights policy. **We respectfully request that CRCL and the OIG investigate ICE actions in this case and further:**

- 1. Conduct a thorough investigation into ICE's motives for and the circumstances surrounding Mr. Orozco Juarez's arrest and continued detention**
- 2. Recommend the immediate release of and protection from deportation Mr. Orozco Juarez, to facilitate that investigation**

Mr. Orozco Juarez is one of the most prominent immigrant community leaders in Mississippi. He has spoken to journalists, testified in front of government officials, and organized community meetings, all discussing immigration enforcement and the civil rights of immigrants. He is a visible leader of the Immigrant Alliance for Justice and Equity ("IAJE"), a prominent immigrant rights organization in Mississippi, and his wife participated in an IAJE protest in front of the Pearl, MS ICE office a few weeks ago. He also has prominently spoken out about ICE's 2019 raids of Mississippi chicken processing plants as one of its victims and raised concerns about this and other ICE enforcement actions. Finally, he is indigenous and a native speaker of Mam, and so his leadership has centered indigenous immigrants in Mississippi who are typically marginalized and have been disproportionately affected by ICE enforcement actions, especially the workplace raids.

Given this history—well-known to ICE officials—ICE’s decision to arrest Mr. Orozco Juarez after twenty-five months of living peacefully at home in compliance with his order of supervision raises three significant concerns that should be investigated imminently. First, the agency’s arrest and attempt to deport him runs directly counter to stated DHS policy and violates his First Amendment free speech and associational rights. Second, his arrest, detention, and possible deportation also undermine DHS stakeholder consultations on its newly announced guidance for deferred action for victims and witnesses to labor and employment agency enforcement action. Lastly, ICE enforcement against Mr. Orozco Juarez further contributes to the linguistic and political isolation of indigenous immigrants, who have disproportionately faced immigration enforcement in Mississippi and who struggle to access legal protections and participate in stakeholder engagement and accountability processes.

A. ICE’s Arrest and Detention of Mr. Orozco Juarez Was Retaliation that Violates the First Amendment and DHS Policy on Surveillance of First Amendment Activity

The First Amendment prohibits the government “from retaliating against individuals for engaging in protected speech.” *Lozman v. City of Riviera Beach*, 138 S. Ct. 1945, 1949 (2018). The First Amendment prohibits adverse governmental action taken against an individual in retaliation for the exercise of protected speech activities.” *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002). Speech addressing matters of government policy, including criticism of law enforcement practices, is entitled to First Amendment protection as “[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” *City of Houston, Tex. v. Hill*, 482 U.S. 451, 462–63 (1987).

Following a number of high-profile arrests of immigrant rights activists, DHS has also issued guidance on how its officials should respect First Amendment rights to political beliefs, political associations, and participation in protests.¹ That guidance directs DHS to not collect, maintain, or use information protected by the First Amendment unless the individual consents, maintaining the record is expressly authorized by statute, or the information is related to a law that DHS enforces. Subject to those conditions, DHS officials are expressly prohibited from questioning or researching an individual’s exercise of First Amendment rights.²

¹ Kevin K. McAleenan, Acting Sec’y Dep’t Homeland Sec, *Information Regarding First Amendment Protected Activities*, May 17, 2019, https://www.dhs.gov/sites/default/files/2022-06/info_regarding_first_amendment_protected_activities_as_1_signed_05.17.2019-508.pdf; see also Samantha Schmidt, *ICE Nabs ‘Dreamer’ Applicant After She Speaks Out at a News Conference*, Washington Post, Mar. 2, 2017 (describing the controversial Jackson arrest of activist Daniela Vargas while leaving a news conference where she had spoken out) available at <https://www.washingtonpost.com/news/morning-mix/wp/2017/03/02/ice-nabs-young-dreamer-applicant-after-she-speaks-out-at-a-news-conference/>.

² Secretary Mayorkas further directed that “A noncitizen’s exercise of their First Amendment rights also should never be a factor in deciding to take enforcement action,” although the memorandum is vacated

DHS officials appear to have violated the First Amendment and DHS guidance by arresting and refusing to release Mr. Orozco Juarez. The full history of his constitutionally protected activity and harassment by ICE, as recounted below, points to a retaliatory motive for the decision to arrest Mr. Orozco Juarez. But since that decision, ICE’s senior official with the authority to release Mr. Orozco Juarez has revealed that First Amendment protected activity has been collected, maintained, and used to refuse his release, contrary to constitutional guarantees and DHS guidance. Specifically, on April 19, in response to a request for Mr. Orozco Juarez’s release, ICE Field Office Director (“FOD”) Mellissa Harper emailed his counsel, asking “[w]as his wife at the office the day of his arrest? I’ve been advised that in a Facebook video she can be seen and heard talking to the protesters.”³ This comment, which refers to a protest outside the Pearl, Mississippi ICE office in which supporters spoke to media about the injustice of ICE’s decision to arrest Mr. Orozco Juarez on April 12, demonstrates that ICE’s decision to continue detaining him has been tainted by prohibited monitoring of protest activity and use of that information. Ms. Garcia Matias had briefly attended this protest, composed of faith and community leaders and including children, to voice her opposition to her husband’s arrest and request to see him.⁴ She and every other participant in that protest complied with every official order and did not violate any law; rather, they joined together to exercise their right to petition for redress and express their political views. Despite this exercise of protected speech, ICE retaliated by calling the police on the protestors. Then, in the wake significant press coverage of the protest and of Mr. Orozco Juarez’s arrest,⁵ ICE repeatedly denied requests for his release.

Even preceding this comment, ICE appears to have targeted Mr. Orozco Juarez for his outspokenness and relentlessly pursued his deportation. In 2019, ICE initially arrested Mr. Orozco Juarez and 679 others in the largest single state raid in U.S. history in Mississippi. This shocking arrest led Mr. Orozco to increasingly speak out about the impact of immigration enforcement on his family and community. In the years that followed his deportation, Mr. Orozco Juarez and his wife Silvia Garcia Matias led their community in advocating for policies that would help their community in Carthage, Mississippi rebuild. Ms. Garcia Matias spoke publicly to national media about the fear and destruction caused by the raid and Mr. Orozco

and currently in litigation before the Supreme Court because of its effect on detention decisions. Alejandro N. Mayorkas, Sec’y, Dep’t Homeland Sec., Guidelines for the Enforcement of Civil Immigration Law, Sept. 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

³ Exhibit A (Email from FOD Harper to Mr. Orozco Juarez’s Counsel).

⁴ Holly Emery, *Family pleads for the release of their loved one from ICE custody*, WLBT, Apr. 13, 2023, <https://www.wlbt.com/2023/04/14/family-pleads-release-their-loved-one-ice-custody/>; Mina Corpuz, *ICE agents detain immigrants during routine check-ins, advocates say*, Mississippi Today, Apr. 24, 2023, <https://mississippitoday.org/2023/04/24/ice-detains-immigrants-during-routine-check-ins/>.

⁵ *Id.*; Kobee Vance, *Immigrant rights allies in Mississippi call for release of ICE detainee*, Mississippi Public Broadcasting, Apr. 13, 2023, <https://www.mpbonline.org/blogs/news/immigrant-rights-allies-in-mississippi-call-for-release-of-ice-detainee/>.

Juarez's arrest in particular during the workplace raids.⁶ Then, in 2021, when Mr. Orozco Juarez was released to his family after re-entering the United States, the couple began organizing their community with IAJE.⁷ Through IAJE, Mr. Orozco Juarez organized and facilitated meetings in which Carthage city officials and community members met and discussed improving seeking relations between the indigenous and Hispanic community and local law enforcement.⁸

Mr. Orozco Juarez's return to Mississippi in compliance with his order of supervision led to increasing outrage from deportation officer Francisco Ayala, who has long faced allegations of retaliatory treatment towards immigrant workers.⁹ In 2021, when Mr. Orozco Juarez attended a scheduled appointment with ICE, Officer Ayala berated Mr. Orozco Juarez. Officer Ayala angrily asked Mr. Orozco Juarez, "what are you doing here, I thought I deported you" and said "I could deport you at any time, you know?" Officer Ayala was then present when ICE arrested Mr. Orozco Juarez at a subsequent check-in on April 12, 2023. Officer Ayala may have played a role in the decision to detain Mr. Orozco Juarez despite his continued compliance with his order of supervision and lack of significant criminal history.

B. ICE's Targeting of Mr. Orozco Juarez Undermines the Implementation of DHS's *Process Enhancements for Supporting Labor Enforcement Investigations Policy and Ongoing CRCL Efforts at Stakeholder Engagement*

The 2019 arrest of Mr. Orozco Juarez and 679 others in workplace raids of poultry plants has served as one of the prototypical examples of ICE enforcement that had the effect of chilling the exercise of workplace rights and inhibiting the enforcement of labor and employment law. ICE had orchestrated this mass arrest of chicken processing workers in plants where workers had denounced and the Equal Employment Opportunity Commission (EEOC) had confirmed widespread sexual harassment and nation origin discrimination.¹⁰ A few years later, after reviewing DHS policy and practice, Secretary Mayorkas therefore criticized "mass worksite operations" "resulting in the simultaneous arrest of hundreds of workers" in his October 2021 memo that directed DHS sub-agencies to "Cease mass worksite operations."¹¹ As Mayorkas

⁶ Gaby del Valle, *The ICE Raids in Mississippi Have Made Life Nearly Impossible for Families: "I'm Afraid to Leave My House"*, VICE News, Aug. 12, 2019, <https://www.vice.com/en/article/vb5gn3/the-ice-raids-in-mississippi-have-made-life-nearly-impossible-for-families-im-afraid-to-leave-my-house>.

⁷ Exhibit B (IAJE Letter).

⁸ Exhibit C (Letter from Former Carthage Mayor Mary Ann Vivians)

⁹ See Fourth Amended Complaint, *Zelaya v. Hammer*, No. 3:19-cv-00062-TRM-CHS, ECF No. 396 ¶¶267-68 (May 5, 2020 E.D. Tenn),

<https://tennesseelookout.com/wp-content/uploads/2022/06/immigration-raid-complaint.pdf>

¹⁰ U.S. Equal Employment Opportunity Commission, *Koch Foods Settles EEOC Harassment, National Origin And Race Bias Suit*, Aug. 1, 2018,

<https://www.eeoc.gov/newsroom/koch-foods-settles-eeoc-harassment-national-origin-and-race-bias-suit>.

¹¹ See note 2, *supra*.

observed, “These highly visible operations misallocated enforcement resources while chilling, and even serving as a tool of retaliation for, worker cooperation in workplace standards investigations.” Through this memo, Secretary Mayorkas recognized the widespread chilling effect by the raids and the misallocation of DHS enforcement to dramatic, terrifying mass workplace arrests, which resulted in the deportation of undocumented workers who were living peaceably and decimated entire Mississippi communities, including in the Town of Carthage where Mr. Orozco Juarez and his family live.¹²

Mr. Orozco Juarez and his wife have played a role at every step of DHS’s significant shifts over the past few years toward refocusing enforcement to support rather than chill the exercise of labor and employment rights. In the aftermath of the arrest of Mr. Orozco Juarez and other workers, his wife spoke out publicly about the desperation of their family, using her real name despite the ongoing fears of further ICE enforcement in the community.¹³

After the release of Secretary Mayorkas’ memo ending mass worksite raids and also calling for a broad review of policies that chill worker participation in labor and employment investigations, Mr. Orozco Juarez and his wife became public leaders in the #DALE campaign (“Deferred Action for Labor Enforcement”) to inform this policy review, joining the Blue Ribbon Commission.¹⁴ His wife spoke at a Washington, DC gathering of immigrant workers strategizing on workplace organizing and administrative advocacy, inspiring other workers to come forward to seek immigration protections and engage with the labor and immigration agencies developing new guidance. When Labor Secretary Marty Walsh traveled to Mississippi to meet with victims of the 2019 ICE poultry raids, Mr. Orozco Juarez gave testimony about his arrest and deportation to Secretary Walsh and also spoke about the need for DOL support for immigration protections for witnesses and victims of labor violations.¹⁵ A few days after the

¹² Maria Clark, Alissa Zhu, <https://www.vice.com/en/article/vb5gn3/the-ice-raids-in-mississippi-have-made-life-nearly-aumatized-children-and-broken-families>: The invisible scars of the Mississippi ICE raids, *The Clarion Ledger*, Aug. 11, 2020, <https://www.clarionledger.com/story/news/american-south/2020/08/11/mississippi-ice-raids-one-year-late-r-traumatized-children-broken-families/3300522001/>.

¹³ See note 5, *supra*.

¹⁴ Blue Ribbon Commission on Protections for Immigrant Workers, Highlights and Recommendations, at 9, 17, Dec. 2021, <https://www.google.com/url?q=https://ndlon.org/wp-content/uploads/2021/12/Blue-Ribbon-Commission-on-Protections-for-Immigrant-Workers.pdf&sa=U&ved=2ahUKEwjE1uOMz-j-AhXbIYkEHTqYDc4QFn0ECAkQAg&usg=AOvVaw2sdGS03EBjoF7AsrVdrE-V/> (quoting Commission member Ms. Garcia Matias in saying “Hopefully what Secretary Mayorkas said are deeds and not words. We demand that the people who were affected by the raids [in Mississippi] should not be forgotten, that they are given a work permit.”).

¹⁵ Wicker Perlis, *NEWS After reuniting with his Mississippi family, why one outspoken immigrant once again faces deportation*, *The Clarion Ledger*, Apr. 23, 2023, <https://www.clarionledger.com/story/news/2023/04/28/man-detained-in-2019-ms-immigration-raids-has-been-detained-again/70152233007/>; IAJE, *U.S. Secretary of Labor Marty Walsh Meets With Immigrant*

meeting where Mr. Orozco Juarez testified, the DOL released their *Process for Requesting Department of Labor Support for Requests to the Department of Homeland Security for Immigration-Related Prosecutorial Discretion During Labor Disputes* on July 6, 2022, explaining how immigrant workers can seek support from DOL in requesting immigration protections during labor disputes. About six months later, DHS released its *Process Enhancements for Supporting Labor Enforcement Investigations* guidance.

Mr. Orozco Juarez and his wife were key voices that spoke about the impact of ICE's workplace raids and about the realities for migrant workers in the exploitative poultry industry for years, and thus Mr. Orozco Juarez played a critical role in informing and inspiring civil society and government officials from both the labor and immigration agencies to issue this pivotal guidance that streamlined requests for protection for individual victims and witnesses to labor and employment violations. As DHS officials stated in announcing the streamlined process, DHS's Process Enhancements guidance benefited from months of engagement with immigrant workers and their advocates. The agency has also described the guidance as an effort to build trust with immigrant workers, with the hope that successful applications for protection will further engender trust among workers and encourage more workers to come forward as witnesses and victims to labor violations.

Mr. Orozco Juarez's arrest endangers the objectives of this guidance as well as ongoing stakeholder engagement to inform DHS's efforts to streamline and improve their processes. ICE's continued detention and efforts to deport Mr. Orozco Juarez undermines the Department's work, through both the October 12, 2021 "Worksite Enforcement" memorandum and the Process Enhancements guidance, to encourage workers to come forward to report abuse, retaliation, or discrimination. The decision to target a prominent immigrant worker that has been willing to speak out about ICE's 2019 raids risks deterring both future individual applications for the streamlined deferred action process as well as worker participation in DHS stakeholder engagement on this process, led by CRCL. Seeing the arrest of Mr. Orozco Juarez after his leadership and public advocacy with the administration for immigrant workers, other workers are justifiably afraid that their own such participation will lead to their arrest and deportation rather than their protection.

C. ICE's Arrest and Detention of Mr. Orozco Juarez as an Indigenous Leader in Mississippi Further Marginalizes Indigenous Immigrants Who Are Disproportionately Targeted by ICE

Workers Impacted by Workplace Raids in Mississippi, Jul. 1, 2022, <https://www.iajems.org/press-releases>; DHS, *DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations*, Jan. 13, 2023, <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>.

Mr. Orozco Juarez is an indigenous leader who speaks Mam, a Mayan language spoken in Chiapas and Guatemala and by a large population living and working in Mississippi and across the U.S. south. Today, this population in the U.S. faces difficult language barriers, discrimination, and widespread workplace abuse. **Mr. Orozco Juarez has played a critical role for this indigenous community in Mississippi and importantly in bringing these issues to the attention of government officials from local city government to federal agency officials.** He is the rare outspoken indigenous leader in the immigrant rights movement in Mississippi, serving as a bridge between isolated indigenous communities and inspiring other indigenous immigrants to educate themselves on their legal rights, reach out for support, and even attend meetings and speak to decisionmakers.

Today, Mr. Orozco Juarez' arrest already is having a significant chilling effect on this work to reach out to indigenous immigrants in Mississippi and so a swift and thorough investigation into the arrest is needed to address the rapidly spreading fears taking hold within indigenous communities across the U.S. south, as well as in poultry plants in Mississippi and beyond.

D. Conclusion

Given ICE's apparent knowledge of Mr. Orozco Juarez and his wife's very public speech and advocacy regarding the raid, we believe that there is a significant possibility that ICE retaliated against the couple by arresting Mr. Orozco Juarez and then refusing to release him after a public protest. He must not be deported under these circumstances: a full investigation must follow, with immediate protection from deportation for Mr. Orozco Juarez, as a victim of retaliatory enforcement, and so that he can be interviewed as an essential witness to these events. Thank you in advance for your attention to this urgent matter.

Please do not hesitate to reach out directly to Jeremy Jong, jeremy@alotrolado.org or [REDACTED] for further information or to arrange an investigatory interview with Mr. Orozco Juarez.

Sincerely,
Al Otro Lado
National Day Laborer Organizing Network
Immigrant Alliance for Justice and Equity
Tulane Immigrant Rights Clinic