

INTRODUCTION TO RECOMMENDATIONS OF  
GOVERNOR MIKE JOHANN'S TASK FORCE ON THE IMPACTS OF  
IMMIGRATION AND NATURALIZATION SERVICE (INS) ENFORCEMENT

I. Background.

The Nebraska meatpacking industry is the leading industry in the state, and ranks among the leaders in the country. The industry employs tens of thousands of people, including large numbers of recent immigrants to the United States from Mexico, Central America, and around the world. The meatpacking and processing industry is extremely important to Nebraska's economy and the general economic health of our state, particularly in rural Nebraska.

In September 1998, the United States Department of Justice's Immigration and Naturalization Service (INS) publicly announced its intention to introduce into Nebraska's meatpacking industry a workplace enforcement initiative originally entitled "Operation Prime Beef." This statewide, industry-specific operation "represents a shift in the way the INS approaches the problem of unauthorized workers in Nebraska's meatpacking industry. Instead of primarily arresting groups of undocumented aliens, as the INS has historically done, the agency is aiming to remove the magnet that initially draws them to the Midwest: employment."<sup>[1]</sup>

The INS announced its intent to implement "Operation Prime Beef" through several "phases":

- 1) "The INS will mail Notices of Inspection and Administrative Subpoenas to each meat packing/processing business in Nebraska, requesting copies of employment eligibility paperwork and employment history records for all employees," including Forms I-9 (employment eligibility verification), Social Security numbers, hire dates, and Alien Registration numbers.
- 2) "INS agents will travel to plants throughout Nebraska to collect Forms I-9 and related paperwork."
- 3) "Agents will take subpoenaed paperwork back to INS facilities. There, INS and other cooperating state and federal agencies (Social Security Administration, State and U.S. Departments of Labor) will run employee information through their databases to determine who is authorized to work in the United States and who is not."
- 4) "A list will be compiled for each meat packing/processing facility. The list will note whether fraudulent documents or numbers were discovered, and/or whether an interview with an employee is required to obtain further information."
- 5) "The results will be shared with plant managers at a seminar in Omaha, NE.... In addition, managers of eligible plants will be encouraged to sign up for computerized work eligibility screening programs such as [the INS Basic Pilot]."
- 6) "The INS will set up an appointment to visit each facility and talk with employees for whom record checks revealed discrepancies. It is expected that many employees who lack valid work authorization will resign prior to the INS visit. If there are situations in which work eligibility is unclear, the INS will interview the employees in question to resolve the issue. In some cases, the INS may apprehend undocumented aliens encountered during the visit."
- 7) "The entire process will be repeated as needed in the future, effectively preventing unauthorized aliens from gaining employment in Nebraska's meat packing industry."<sup>[2]</sup>

The INS explained at this time that "Operation Prime Beef shifts the enforcement focus from removing undocumented aliens to removing the magnet that draws them here in the first place... In the past, the INS addressed the problem piecemeal, on a plant-by-plant basis. Undocumented workers easily moved from one facility to another when the pressure was on. Prime Beef

addresses the problem industry-wide, throughout the entire state of Nebraska (and abutting Iowa counties), and at roughly the same time. With new programs available so that employers can more effectively screen new hires, the process should ‘freeze out’ undocumented workers.”<sup>[3]</sup>

The INS further stated Nebraska was chosen for Operation Prime Beef because “Nebraska has a high concentration of meat packing/processing plants, an industry that has traditionally attracted large numbers of unauthorized workers. (Estimates are that about 25 percent of the industry’s work force is illegal.) In addition, corporate leaders of the meat packing industry have expressed sincere interest in maintaining a legal workforce. The Nebraska Congressional delegation has been supportive of our efforts in the area of worksite enforcement. All these elements made Nebraska an excellent place to launch this operation.”<sup>[4]</sup>

In their public materials, the INS at this time also addressed likely concerns about the impact on the industry. In the “Questions and Answers about Operation Prime Beef,” the INS responded to the posed statement of “You estimate that 25 percent of my work force is illegal. If I lose a quarter of my employees all at once, my plant will be crippled,” with the following: “Our intention, of course, is not to harm operations but work in partnership to help you maintain a stable, legal work force. At the same time, we have an obligation to enforce the law, and will pursue Operation Prime Beef with diligence.”<sup>[5]</sup>

The INS established a 30-day public comment period as to these workplace enforcement plans. In addition, the INS held several “INS-Community Information and Education Forums” around the state to provide information about the new initiative and how the INS will be working with the community and employers. Public concern was voiced at this time by various parties and organizations about the possible impacts of Operation Prime Beef on Nebraska’s entire Latino immigrant communities, and on the livestock industry more generally.<sup>[6]</sup>

In response to public comment, the INS renamed the initiative “Operation Vanguard.” Further, the INS changed the implementation time frame.<sup>[7]</sup> Phases one through four (above) of Operation Vanguard were thereafter implemented between November, 1998 and March, 1999.

During this implementation period, packing industry, including cattlemen and pork producers, as well as immigrant and community advocates voiced strong concern about the likely impacts of Operation Vanguard on Nebraska. This concern led to meetings by these Nebraskans in early 1999 with Congressional representatives and senior officials with the INS, including at the regional and national level. Nevertheless, no material changes were made to Operation Vanguard as a response to these concerns.<sup>[8]</sup>

On Monday, April 12, 1999, the INS held its planned “seminar” in Omaha with almost one-hundred meat packing and processing employers from across Nebraska to release the lists of those employees whose “record checks indicated discrepancies.” These lists were of those employees for whom the INS was unable to verify employment eligibility, and with whom the INS intended to interview at their place of employment. The INS identified a total of 4,762 employees at forty separate meat packing and processing plants to be interviewed out of a total of 24,310 Form I-9s reviewed as part of Operation Vanguard.

The INS also distributed notices for each one of the 4,762 employees on the “discrepancy lists,” to be delivered by the employer to each employee. These notices explained that the INS would be coming to the place of employment to interview the employee. The notices also stated that if an employee failed to complete an interview or provide additional information to the employer and INS, “your employer may terminate your employment.”<sup>[9]</sup>

The INS' informational materials distributed at this April 12 meeting included a new set of "Questions and Answers." This material acknowledged the likely impact on the industry, stating "we are well aware of the impact that removing a large number of employees would have, and [we] will take that into consideration as we set up appointments to talk with employees for whom record checks reveal discrepancies." The INS also acknowledged that the operation could cause thousands of workers to quit their jobs and remain in the area, and committed to doing "outreach" in communities "to inform them of the expected results of the operation." Furthermore, the INS acknowledged the potential for discrimination against immigrant workers posed by Operation Vanguard, reminding employers of their obligations under the law not to fire workers on the list or discriminate as they sought to comply with the demands of Operation Vanguard.<sup>[10]</sup>

These "discrepancy" lists expressly noted: "This working document is reflective of initial discrepancies identified as a result of a preliminary review of over 26,000 Forms I-9, Employment Authorization Verification. A discrepancy does not necessarily indicate that an employee is working in the U.S. illegally."<sup>[11]</sup> Nevertheless, these lists, which were made publicly available due to the Freedom of Information Act, were incorrectly reported by the local media as indicators of which meat packing employers employed undocumented workers and how many undocumented workers were in each plant.<sup>[12]</sup>

Subsequently, as notices were distributed and interviews at packing plants were scheduled in May, 1999, and the INS began to visit plants across the state, it was widely reported that Operation Vanguard was having a broad, negative impact across many parts of Nebraska society. This included packing plants having to operate with significantly reduced staffs, livestock producers with serious downturns in local prices,<sup>[13]</sup> churches and social service providers with an increased demand for basic subsistence benefits, and families moving out of local communities.<sup>[14]</sup> In response, Nebraska's Congressional delegation began to express significant concern over the continuation of Operation Vanguard.<sup>[15]</sup>

At the state level, Governor Mike Johanns responded to Operation Vanguard by calling for a meeting with national, regional, and local INS officials to explain Operation Vanguard and how the INS was addressing problems in Nebraska caused by Operation Vanguard. This meeting was held on June 23, 1999, in Omaha. At this meeting, INS officials explained Operation Vanguard, and various elements of Nebraska society were allowed to comment on the impact of Operation Vanguard. Governor Johanns at this time called for a review of Operation Vanguard by all impacted sectors of Nebraska society, and his willingness to coordinate such an effort. INS officials indicated their willingness to cooperate with such a review, and representatives of Nebraska's congressional delegation indicated their willingness to participate.<sup>[16]</sup>

Governor Johanns thereupon received a request in early August, 1999 from a widely representative variety of stakeholders affected by Operation Vanguard for the creation of such an advisory panel. The request stated that such a panel could "evaluate, with precise and relevant measures, the social and economic impact of workplace enforcement initiatives such as Operation Vanguard on Nebraska, and to base recommendations for change or elimination on solid evidence." The request also stated that "in the long term, we believe that we have a unique opportunity in Nebraska to produce groundbreaking policies and legislation aimed at confronting the reality of Nebraska's labor shortages and the presence of undocumented workers... Nebraska can help produce immigration policy reforms that address the real issues that caused an Operation Vanguard in the first place."<sup>[17]</sup>

II. Creation of Task Force.

Governor Johanns subsequently, on September 9, 1999, created the “Advisory Commission on Impacts of INS Enforcement Actions on Cattle and Pork Producers, Packing Industry, Labor, Rural Communities, Immigrants, and the Nebraska Economy.” The charge of the new advisory commission was as follows: “The commission shall assess in the short term, using precise and relevant measures, the social and economic impact of Immigration and Naturalization Service (INS) workplace enforcement initiatives such as Operation Vanguard on Nebraska. In the longer term, using this assessment the commission shall recommend innovative policies and legislation aimed at confronting the reality of Nebraska’s labor shortages and the recruitment and hiring and treatment of immigrant workers called on to meet these labor shortages. The commission shall base these recommendations for change or reform on solid, objective evidence.”

Furthermore, the advisory commission was “to be comprised of individuals representing: cattle feeders, pork producers, labor, immigrants, rural communities, local government, farm groups, advocacy organizations, churches, community groups, packers, academics, immigration lawyers, and other concerned Nebraskans. All have a common interest in a healthy packing and processing industry in Nebraska and the well being of meatpacking workers and communities. In addition, at least three representatives of the regional and national offices of the federal Immigration and Naturalization Service will be asked to serve in an ex-officio observer role, along with representatives from each of the Nebraska congressional offices.”

The Governor then appointed to the “Impacts of INS Enforcement Task Force,” as it became known, a broadly representative group of individuals, representing all of the above concerns, in accordance with the above purpose.<sup>[18]</sup> Serving in ex-officio roles were the District Director of the INS, and representatives of each member of Nebraska’s congressional delegation. As chair, Governor Johanns appointed Lieutenant Governor David Maurstad. The task force was given a goal of submitting a report and recommendations to the Governor by March, 2000.

### III. Task Force Proceedings.

The task force held its first full meeting on September 29, 1999 in Lincoln. Lieutenant Governor Maurstad led a discussion of the identification of the issues and concerns of the task force.<sup>[19]</sup> Following this discussion, the Lieutenant Governor summarized the identified general issues regarding the impact of INS enforcement activities as follows: Does INS enforcement belong in the workplace? Are the impacts of enforcement efforts done to improve working conditions? How do enforcement actions relate to resident aliens? How do they impact the livestock industry? And how do they impact communities? The meeting closed with a desire to have the INS describe its operations more in detail.

The second meeting of the full task force was held on October 18, 1999 in Omaha. This meeting featured a presentation about Operation Vanguard by the INS representatives on the task force. It was reiterated by the INS representatives that they intended to continue Operation Vanguard, believed this operation lets them get to the core of the problem of undocumented workers in the meatpacking industry, and intended to take the operation at some point nationwide. The INS representatives also described various service improvements in the district, including planned expansion and renovation of the Omaha service center. The Lieutenant Governor closed the meeting by asking task force members to come to the next meeting focused on the general issue areas identified during the first meeting, and on October 22 sent out a summary of these general areas along with background information provided by task force members.<sup>[20]</sup>

The third meeting of the full task force was then held on November 3, 1999 in Lincoln. The task force reviewed the earlier general areas, and amended and adopted more specific language

narrowing the general areas into four areas to be reviewed: 1) Does INS enforcement belong in the workplace? 2) Do INS enforcement operations lead to improved working conditions for laborers? 3) How do INS enforcement operations affect Nebraska communities? 4) What are the effects of INS enforcement operations on Nebraska's livestock industry? The full task force decided to break down into subgroups to review and address each issue, with each member identifying their preferred subgroup and the Lieutenant Governor making final assignments. On November 24, 1999, Lieutenant Governor Maurstad assigned four subgroups to explore the above topics.<sup>[21]</sup>

Subsequently, the full task force met on December 2, 1999, in Lincoln, and immediately adjourned into their four subgroups. Each subgroup was instructed to create a report on each issue. Each subgroup thereafter created their own meeting schedules, exchange of ideas, and method of review of their issue over the next six to eight weeks. Meetings were held of each subgroup during this time, and information was gathered relevant to each subgroup's issue.

#### IV. Task Force Findings.

A full meeting of the task force was then held on March 15, 2000. At this meeting, each subgroup submitted a preliminary report on their research and activities. Each of these reports included draft findings and recommendations specific to each issue, and described impacts and effects of INS enforcement operations.<sup>[22]</sup>

For example, the subgroup assessing the impacts of INS enforcement activity on Nebraska's livestock industry found, among other things, the industry suffered "undue hardship" and Operation Vanguard cast a "negative image on the food industry of Nebraska." Further, these operations affected confidence of customers and "reduced demand from single plant companies located in Nebraska" and the slowdown "resulted in a backlog of livestock, which reduced prices for Nebraska livestock producers. This was especially harmful to small producers who may only market livestock one or two times a year."

The subgroup assessing the impacts on Nebraska communities found, among other things, there were "increased demands being placed on community food pantries, emergency shelters and other similar services," "a substantial increase in the number of individuals seeking, and receiving State aid," "businesses which serve the Latino community... seeing a decrease in the number of customers utilizing their services and an increase in the number of customers leaving the community," and "an increase in civil rights violations against the entire minority community."

The subgroup assessing the impacts on working conditions conducted a survey of human resource managers and union business managers in the meatpacking industry and found, among other things, that "this alleged link—whether as a central objective or ancillary outcome—between [Operation] Vanguard and improved wages and working conditions was flatly rejected by plant and workers' union representatives alike." If anything, the subgroup found the conditions were worsened by the fact that the remaining employees had to work longer hours and, with fewer employees on the line to do the same job at the same line speed, the probability for injuries increased.<sup>[23]</sup>

And finally, the subgroup charged with assessing the question of whether INS enforcement belongs in the workplace, found, among other things, that "the law enforcement results of Operation Vanguard have been minimal and that the goals of Operation Vanguard have not been met... The costs and impacts of such a statewide, industry specific workplace enforcement action clearly outweighed the law enforcement results." The subgroup further found that "a statewide,

industry-specific workplace enforcement action such as Operation Vanguard is an ineffective method of enforcing federal workplace immigration law and a misapplication of INS' workplace enforcement discretion and resources.”

After each subgroup submitted their preliminary report, a decision was made to consolidate these various findings and recommendations into a final preliminary report and set of recommendations to be voted on by the full task force. Two individuals from each subgroup were assigned this task, under the leadership of Lieutenant Governor Maurstad. Subsequently, a meeting was held on June 29, 2000 to consolidate these reports and draft a final set of recommendations.

#### V. Task Force Recommendations.

The full task force thereafter met on August 21, 2000 to review a proposed set of final recommendations. After a detailed discussion and amendment of language, the full task force voted to endorse the following final recommendations.

The task force wishes to thank the Immigration and Naturalization Service for its cooperation with the task force proceedings, and for its timely and helpful provision of information and feedback. The task force believes this model of collaboration between the INS, Congressional representatives, and state government should be continued in future areas of common concern.

#### RECOMMENDATIONS:

- No federal program should be applied in a non-uniform way to any state, region or industry.
- INS enforcement does not belong in the workplace if conducted as a statewide, industry-specific workplace enforcement action as such activities constitute an ineffective method of enforcing federal workplace immigration law.
- Implement an I-9 quality control and compliance review system, similar to OSHA enforcement activity, for employers within a given industry rather than implementing statewide, industry-specific enforcement actions.
- In order for all employers to comply with existing law, the INS should furnish software or other programs allowing all employers to verify the legal status of their employees and job applicants.
- If the INS goal is to effectively enforce federal workplace immigration law and efficiently apply its discretion and resources, the INS should focus its workplace enforcement activities on continuing effective partnerships and on improving computerized employee verification processes. This would assure that both employers and employees are confident they are using fully accurate and relevant databases, that employee verifications are conducted in a timely manner, and that the computerized processes are available to all employers.
- The employee verification processes must fully respect the rights of all employees, particularly the civil and privacy rights of United States citizens and legally authorized workers.
- In order to help meet the critical labor shortage in Nebraska's meatpacking, food processing and other industries, the federal government should make more visas available to the non-

citizen workforce or pursue other approaches, such as the programs implemented in the high technology field, to expand the number of legally authorized workers.

- To allow applicants to adjust the status of lawful permanent residents in the United States, we call on Congress to implement new or reinstate former policy such as Sec. 245 (i) of the Immigration & Nationality Act.
- In order to help meet the critical labor shortage in Nebraska's meatpacking, food processing and other industries, the local INS office should improve the delivery of services to employers and employees to ensure that legally authorized workers are available for employment.
- The INS efforts in the State of Nebraska should emphasize the improvement of services and the streamlining of procedures that may lead to the adjustment of status for an increasing number of immigrant workers.
- The governor should support efforts for a new amnesty of immigrant workers, many of whom would have qualified under the old amnesty of 1987.
- Governor Johanns should urge our Congressional representatives to consider an amnesty program for all workers and families currently in the United States, many of whom would have qualified under the Immigration Reform and Control Act of 1986.
- Governor Johanns should request that the INS share with community, government and private industry representatives plans for proposed enforcement methods, such as Operation Vanguard, that are likely to have severe impact on local communities, workers and industries.
- Governor Johanns should urge our Congressional representatives to support a General Accounting Office study to assess the impact of immigration enforcement efforts on local industries, communities and workers. In addition, Governor Johanns should support similar studies to be undertaken by Nebraska Higher Education and other research institutions.

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<sup>[1]</sup> Fact Sheet, "Operation Prime Beef: A partnership initiative for gaining and maintaining a legal work force in the meat packing/processing industry," U.S. Department of Justice, Immigration and Naturalization Service, September, 1998, page 1.

<sup>[2]</sup> Id. at pages 1-2.

<sup>[3]</sup> "Questions and Answers about Operation Prime Beef," U.S. Department of Justice, Immigration and Naturalization Service, September, 1998, page 3.

<sup>[4]</sup> Id. at page 4.

<sup>[5]</sup> Id. at page 3.

<sup>[6]</sup> "INS: Undocumented Workers Face New Meat-Plant Tactics," Omaha World Herald, September 11, 1998; "South Omahans Call Policy On Immigration Racist, Unfair," Omaha World Herald, September 18, 1998.

<sup>[7]</sup> Letter from F. Gerard Heinauer, INS District Director, Omaha, NE, November 20, 1998.

<sup>[8]</sup> "Pork plants: Bad timing on INS plan," Lincoln Journal Star, January 8, 1999; "Immigrant Workers Group Wants a Meeting with INS," Omaha World Herald, January 16, 1999; "INS Will Stick With Plans

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for Packing Plant Checks,” Omaha World Herald, January 9, 1999; “INS Plans to Expand Meat Plant Program,” Omaha World Herald, February 12, 1999.

<sup>[9]</sup> “Operation Vanguard” Notice, U.S. Immigration and Naturalization Service, April 1999.

<sup>[10]</sup> “Questions and Answers, Operation Vanguard,” U.S. Department of Justice, Immigration and Naturalization Service, April, 1999.

<sup>[11]</sup> “Interviews to Be Scheduled,” U.S. Department of Justice, Immigration and Naturalization Service, April, 1999.

<sup>[12]</sup> “1 in 5 at Plants Checked May be Undocumented,” Omaha World Herald, April 13, 1999; “INS cracks down on meatpackers,” USA Today, April 13, 1999; “INS finds discrepancies in records at meatpacking plants,” Lincoln Journal Star, April 13, 1999; “Meatpacking Companies Call INS Figures Inaccurate,” Omaha World Herald, April 14, 1999.

<sup>[13]</sup> “INS Crackdown Slows Cattle Slaughter,” Omaha World Herald, May 11, 1999; “Vanguard Delay is Sought, Nebraska’s Cattlemen want the INS to look at its program to find illegal workers,” Omaha World Herald, May 15, 1999.

<sup>[14]</sup> “Checks by INS Raise Fears, INS Effort Prompts Concern Among Families,” Omaha World Herald, April 14, 1999; “INS brings Operation Vanguard to Southeast Nebraska,” Lincoln Journal Star, May 11, 1999; “INS Actions Tied to Delay in Teacher Hiring,” Omaha World Herald, April 21, 1999.

<sup>[15]</sup> “Congressmen question INS crackdown effect,” Lincoln Journal Star, May 14, 1999; “Terry: Halt Operation Vanguard,” Omaha World Herald, May 20, 1999; “Hagel Calls on Head of INS to Attend Vanguard Meeting,” Omaha World Herald, June 3, 1999.

<sup>[16]</sup> “Beef, pork trade hurt most, INS critics say; Johans, producers: Rethink Vanguard,” Lincoln Journal Star, June 24, 1999; “INS Aims to Trim Vanguard List; Speakers at a public meeting urge changes in a program that checks workers’ documents,” Omaha World Herald, June 24, 1999.

<sup>[17]</sup> Joint Letter to Urge Creation of Advisory Panel to Evaluate Impacts of INS Enforcement Actions on Cattle, Pork, and Packing Industries, Rural Communities, Immigrants, and Nebraska Communities, August 6, 1999, signed by: Nebraska Cattlemen; Nebraska Pork Producers; Nebraska Catholic Conference; Bishop Joel Martinez of the Nebraska Episcopal Area of the United Methodist Church; Siouxland United Methodist Hispanic Ministry; Nebraska Mexican American Commission; NAF Multicultural Human Development Corporation; Father Damien Zuerlien of Our Lady of Guadalupe Church, Omaha; Ben Salazar, Publisher, Nuestro Mundo; Dr. Lourdes Gouveia, Director, Chicano-Latino Studies, University of Nebraska at Omaha; Robert A. Eckerson, American Immigration Lawyers Association; Kevin Ruser, University of Nebraska College of Law; Virgil Armendariz, President, South Omaha Business Association.

<sup>[18]</sup> A listing of the task force members is attached as Exhibit...

<sup>[19]</sup> Minutes of each meeting of the full task force are available for review.

<sup>[20]</sup> This background information included: Memorandum of Understanding for Operation Vanguard Between INS and Employer; “Back to Braceros? Federal program receives push for renewal,” Christian Science Monitor, September 26, 1999; “Latino Immigrants, Meatpacking, and Rural Communities: A Case Study of Lexington, Nebraska,” L. Gouveia and D. Stull (1997); “Latino/a Immigrants and New Social Formations in the Great Plains: An Assessment of Population Growth and Multiple Impacts,” L. Gouveia and R. Saenz (1999).

<sup>[21]</sup> A listing of the task force members in each subgroup is attached as Exhibit...

<sup>[22]</sup> A copy of each subgroup’s preliminary report, including their findings, is attached as Exhibit...

<sup>[23]</sup> The activity of this subgroup was focused specifically on the effect of Operation Vanguard and other enforcement activities on working conditions. This work was done separately from a more general review of the working conditions in Nebraska’s meatpacking plants simultaneously being undertaken by Lieutenant Governor Maurstad at the request of Governor Johans. This other review resulted in a report by Lt. Gov. Maurstad in February, 2000, followed by, among other activities, the creation of a voluntary “Meatpacking Workers’ Bill of Rights” by Governor Johans in April, 2000 and implemented in June, 2000.