

READY FOR A

Abel Arana clearly was not a fan of the immigration raid conducted at the Phoenix headquarters of Handyman Maintenance Inc. (HMI) in February. His son was one of 59 suspected undocumented HMI workers arrested in that shakedown by the Maricopa County Sheriff's Office.



RAID?

BY **MARTY WHITFORD** EDITOR-IN-CHIEF

Federal agents and local law enforcement clamp down on landscape contractors who hire undocumented workers/illegal immigrants.

PHOENIX-BASED Handyman Maintenance Inc. (HMI) is no stranger to “the morning circus” — getting its landscaping crews ready for the day’s work, ensuring they have their paperwork and project details in hand, and the people, trucks, equipment and materials to do their jobs. But HMI’s morning circus got a lot crazier on Feb. 11. »

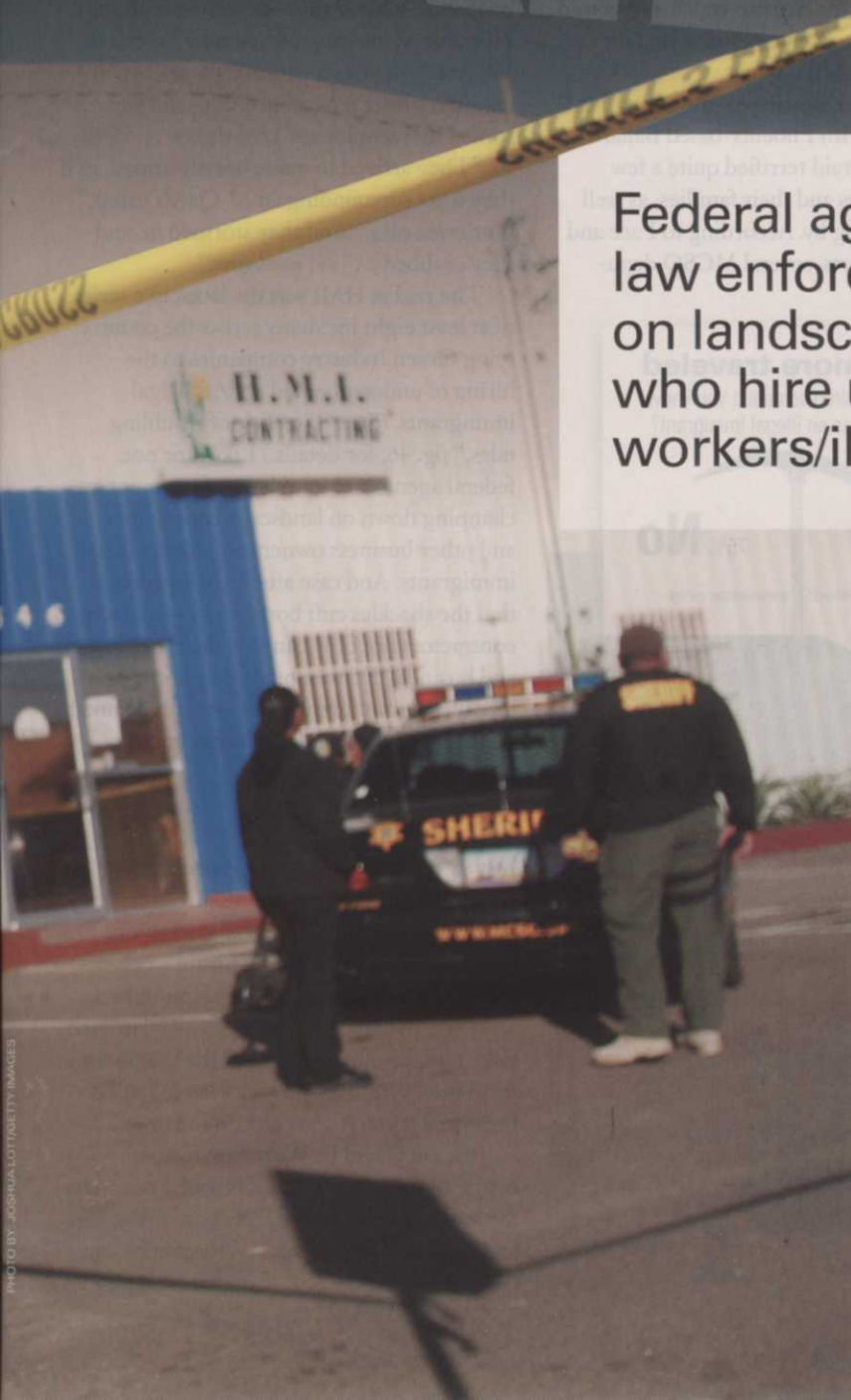


PHOTO BY JOSHUA LUTVALETTA IMAGES

Shortly before 6 a.m. that day, dozens of deputies from the Maricopa County (AZ) Sheriff's Office (MCSO) swarmed the site, executing search warrants in a raid aimed at apprehending suspected undocumented workers and/or illegal immigrants. What followed were several hours of questioning of more than 100 HMI employees ordered into single-file lines. The raid netted 59 workers suspected of violating immigration laws — 19 whom the MCSO turned over to U.S. Immigration and Customs Enforcement (ICE) and another 40 currently residing in MCSO Sheriff Joe Arpaio's much-publicized Tent City. They're first awaiting trial for felony identity theft charges.

Julie Pace, an attorney representing HMI and a partner with Phoenix-based Ballard Spahr, says the raid terrified quite a few HMI employees and their families, as well as people passing by. According to Pace and local news reports, several MCSO depu-

ties drew their guns, slamming some HMI employees against cars and pushing others to the ground, questioning whether they had their documentation — proof they are U.S. citizens or authorized to work in the United States — on their persons.

"When we're going into a place with 109 people, with [more than 60] suspected felons, into an area where we don't know what's behind the door, I will use any method to make sure my people are safe and protected," Arpaio adamantly maintains.

However, Alfredo Gutierrez, former Arizona state senator (now an activist with the Hispanic advocacy group Somos America/ We Are America Coalition), alleges MCSO deputies practice racial profiling and violated some HMI employees' civil rights.

"They arrived in mass, heavily armed, as if they were surrounding an Al-Qaeda camp," Gutierrez says. "And they stormed in, and they grabbed ... [59] gardeners!"

The raid at HMI was the latest in a series of at least eight incidents across the country tying Green Industry companies to the hiring of undocumented and/or illegal immigrants. (See "Timeline of troubling tales," pg. 46, for details.) Like it or not, federal agents and local law enforcement are clamping down on landscape contractors and other business owners employing illegal immigrants. And case after case is proving that the shackles cuff both ways — landscape contractors not only can lose their employees and business licenses, but if they knowingly hire illegal immigrants they also can be fined hundreds of thousands of dollars and serve several years in prison.

Risky business

Just 8% of *Landscape Management* readers responding to a recent online survey say they participate in the H2-B guest worker visa program. Yet 25% admit to hiring workers they know or suspect are illegal immigrants.

If you're among the 25% involved in such risky business, just remember the theme song from the 1970s TV show *Baretta*: "Don't do the crime if you if you can't do the time."

Just ask David E. Wortman, former owner of Cloudburst Underground Sprinkler Systems, a Grand Island, NE-based lawn care and irrigation contractor. Well actually, you

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Tunnel more traveled

Have you ever hired someone you knew or suspected was an illegal immigrant?

25% **Yes**

75% **No**

Source: March 2009 LMdirect! newsletter survey



Unauthorized U.S. residents by countries of origin (as of January 2007)



Source: U.S. Department of Homeland Security, Office of Immigration Statistics

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can't just pick up the phone and ask Wortman. He's sitting behind iron bars, doing 30 months for, among other things, knowingly hiring illegal immigrants.

But we can — and did — ask Bill Weinrich, Wortman's buddy from the seventh grade who worked for Cloudburst 1984-1998. Last June, Weinrich purchased much of Cloudburst's customer list and some of its equipment and vehicles, and formed BWJW Enterprises, which does business as Cloudburst Lawn & Sprinkler Co.

"It's tough to think that David's in prison and will be for at least two years," Weinrich says. "He's married and has two kids in college."

Surprisingly, Weinrich says the company hasn't lost any business due to the September 2007 raid by ICE and Wortman's subsequent conviction last December.

"All of Cloudburst's customers know what happened, but everyone's just concerned about David because he really was a good guy," Weinrich says. "David just got caught up in this labor thing — trying to mow 500 lawns a week and not being able to find good, legal, local help," Weinrich says.

How does *Weinrich* do it? He doesn't — at least not *all* of it. He focuses on the irrigation business.

"Cloudburst's lawn care equipment and customer base was sold to three or four local companies because I didn't want it, and not one of them could have handled the workload themselves — legally, that is," Weinrich adds.

Hirer beware

Pace claims HMI "went above and beyond all applicable employment requirements," and used the federal government's E-Verify to confirm the employment eligibility of every worker it hired after Jan. 1, 2008 — the day she says it became legal for HMI to use the system.

Pace warns landscape contractors that while E-Verify can provide a necessary background check, it is not a silver screening bullet.

"Several of my corporate clients across the country have had new hires pass E-Verify,

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TIMELINE OF TROUBLING TALES

Following are eight incidents that **Landscape Management** uncovered involving undocumented and/or illegal immigrants and the Green Industry:

Sept. 6, 2007 U.S. Immigration and Customs Enforcement (ICE) agents raided Grand Island, NE-based Cloudburst Underground Sprinkler Systems (also dba Cloudburst Lawn & Sprinkler), which ironically had done landscape/maintenance work for the local government since 2002. During the raid, ICE arrested 19 Cloudburst employees on suspicion of violating immigration laws. One month later, then-owner David E. Wortman pleaded guilty to harboring at least 26 illegal aliens between October 2002 and September 2007 — hiring the individuals without requesting any identification or proof they were eligible to work lawfully in the United States. Wortman further admitted to cashing customer checks totaling \$437,632 in such a way as to avoid federal reporting requirements for cash transactions totaling \$10,000 or more. On 45 separate and consecutive occasions between September 2005 and May 2007, Wortman cashed groups of customer checks ranging from 22 to 108 checks in amounts totaling more than \$9,000 but less than \$10,000. He also was charged with failing to pay overtime to employees as required by federal law. On Dec. 10, 2008, Wortman was sentenced to 30 months in prison and ordered to forfeit \$236,729 to the federal government and pay an additional \$200,903 to the Department of Labor so it could reimburse current and former Cloudburst employees for their overtime.

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only later to discover the individuals had beaten the system with counterfeit documents, names and/or Social Security Numbers," Pace says. "Identity theft is becoming increasingly common."

Pace has represented about 60 companies on employment compliance matters, including a dozen or so landscape contractors. Her

Convincing counterfeit documents bearing stolen Social Security Numbers and names place landscape contractors at increased risk.



firm has helped educate more than 2,500 people on employment requirements over the past two years, including speaking to Green Industry professionals at several Arizona Landscape Contractors Association meetings.

Labor-compliance legal assistance, according to Pace, typically costs \$1,500 to \$3,000 for a 20-employee company, and up to \$5,000 to \$8,000 for a landscape contractor employing more than 300 people. But Pace stresses that the potential costs of not having your business in order employment eligibility-wise — everything from losing your laborers, customers and business license to facing significant fines and prison time — demands landscape contractors' immediate attention.

"The landscaping industry has been subjected to an increasing number of employment inquiries and raids," Pace says. "ICE, the IRS, the Social Security Administration, the Department of Labor, state welfare and transportation departments, and local law enforcement are all getting in on the action."

"Employers beware: You better use E-Verify, have your I-9s in order, conduct training, and establish systems for immigration compliance and answering Social Security no-match letters and any number of other employment-related inquiries that are more and more likely to come your way every day," Pace adds.

While Arpaio adamantly denies allegations from some that MCSO practices racial profiling or any other unlawful activity, the sheriff did say that in addition to using

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Sept. 24, 2007

ICE raided three companies owned by Dean A. Hedges — Crestwood, KY-based Hedges Landscape Specialists, Exterior Designs and Performance Irrigation. One week later, Hedges pleaded guilty to knowingly employing at least 12 illegal immigrants. A former employee tipped off ICE, telling agents that under the direction of Hedges he/she was ordered to pay the illegal immigrants cash under the table. The informant claimed Hedges treated the illegal aliens as subclass workers, including paying them a flat rate regardless of the number of hours they worked each week.

April 25, 2008

ICE agents arrested 28 Mexican workers employed by Nash Gardens, a West El Paso, TX-based landscaping business and nursery. The U.S. Attorney's Office prosecuted 25 of the workers for using false documents and/or Social Security Numbers (SSNs) for employment purposes. The other three workers faced administrative charges for violating immigration laws. Some entered the United States legally with visas but did not have federal authorization to work here.

Aug. 27, 2008

Maricopa County Sheriff's Office (MCSO) deputies raided Artistic Land Management in Mesa, AZ, and arrested 29 workers suspected of being in the country illegally, including 20 suspected of identity theft for using false SSNs and counterfeit documents. The workers' cases are pending trial. City government in neighboring Chandler, AZ, has since received bad press because Artistic had a \$1.4 million contract to provide landscaping and maintenance for its parks.



Dubbed "America's toughest sheriff," Maricopa County (AZ) Sheriff Joe Arpaio says he's one of the few enforcing U.S. immigration laws.

E-Verify, business owners should not be afraid to use what he called "common sense."

"Let's say you have two job candidates," Arpaio says. "One guy's clothes seem to be made in Mexico, and the individual can't speak a lick of English. The other guy is wearing a dress shirt and tie and has red hair. I don't know. You tell me: Which one looks suspicious?"

New united front

Some hold hope that the new Obama administration will slow down the brisk pace of worksite immigration raids.

House Speaker Nancy Pelosi recently told a group of mostly Hispanic immigrants and their families that enforcement of existing U.S. immigration laws is "un-American" as currently practiced.

"Who in this country would not want to change a policy of kicking in doors in the middle of the night and sending parents away from their families?" Pelosi asked the gathering at St. Anthony's Church in San Francisco. "It must be stopped."

Meanwhile, a sizable coalition of organi-

zations recently united to fight these worksite immigration sweeps. The group essentially is requesting a moratorium until more effective employment verification tools and comprehensive immigration reform are in place. The 75 organizations — which include the Professional Landcare Network (PLANET), the American Nursery & Landscape Association (ANLA) and about 18 other Green Industry associations — allied themselves in late March to co-author the following letter to Janet Napolitano, new Secretary of the Department of Homeland Security:

"Dear Secretary Napolitano: The business community calls on the Department of Homeland Security (DHS) to begin working with the employer community as well as with other interested parties in finding a reasonable and humanitarian solution to the issues surrounding worksite enforcement of immigration law. ... Also, there are strong legal arguments that the final rules on SSA's 'no-match' letters and the [Federal Acquisition Relations] Council's Basic Pilot plus mandate are illegal and, thus, were challenged in court.

The business community sees this as an opportunity

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PHOTO BY: JOSHUA LOITGETTY IMAGES

Sept. 2, 2008

ICE executed federal search warrants at The Sun Valley Group, one of California's major wholesale flower growers. ICE raided Sun Valley's headquarters in Arcata, CA, as well as the homes of several of its employees, taking 23 illegal alien workers from Mexico into custody on administrative immigration violations.

Oct. 1, 2008

David Wayne Decker and his wife, Nancy Mintle Decker, of Stanton, TX — co-owners of a local landscaping business and nine-hole golf course — pleaded guilty to visa fraud conspiracy. The couple admitted to submitting a series of false Form I-129s to U.S. Citizenship and Immigration Services (USCIS). The Deckers lied on the federal forms to illegally obtain about 420 guest worker visas for Mexican workers between 2003 and 2006. The owners of Deckers Farm Supply & Nursery and the Decker Golf Pro course admitted they had no intention of hiring the individuals they petitioned for when they filed their paperwork, and that the workers granted the H2-B visas actually worked for 10 other local companies. The Deckers accepted payments totaling more than \$150,000 from these neighboring employers as well as from the laborers themselves (another \$300 to \$1,000 in kickbacks per illegal immigrant). David Decker was sentenced to 30 months prison. His wife received three years' probation. The couple was ordered to pay \$150,000 in restitution. They each were facing up to five years in prison and another \$250,000 in fines.



Raids 'r us

Federal immigration agent worksite enforcement arrests

Fiscal year (ended Sept. 30)	Criminal arrests	Administrative arrests
FY02	25	485
FY03	72	445
FY04	160	685
FY05	176	1,116
FY06	716	3,667
FY07	863	4,077
FY08	1,101	5,173

Source: U.S. Immigration and Customs Enforcement (www.ice.gov)



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nity to move forward with DHS to create positive solutions in the realm of employment verification rather than more misguided policies. ... The current I-9 system for checking work authorization is not perfect, but it is fast and has led to a workforce that is 95% work authorized. Business, labor, and civil rights groups worked with the past administration and the 110th Congress in trying to find a solution to address the issue of the remaining 5% to no avail. Furthermore, employment verification is only one aspect of our broken immigration system. Thus, permanent reform of our employment verification laws should occur in conjunction with comprehensive immigration reform."

Small and seasonal businesses also are teaming to win back H2-B's returning worker exemption (H2-R visas), which in fiscal 2006 and 2007 did not count against the cap of 66,000 H2-B guest worker visas permitted each year.

H.R. Bill 1934, which if passed would reinstate H2-B's returning worker exemption, takes this position:

"This provision expired in 2007, and small and seasonal businesses across the country are now facing a labor shortage due to the temporary nature of these jobs and the unavailability of United States workers who are willing or able to consider these temporary seasonal positions. ... The Congress must take every step to preserve American jobs, and without immediate relief, many small and seasonal businesses could be forced out of business, thereby costing additional American jobs."

The Save Our Small and Seasonal Businesses Act of 2009 (S. 388) also seeks to reinstate H2-B's returning worker exemption.

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Nov. 28, 2008

Bensalem, PA, police reported that an intoxicated, revengeful illegal immigrant working for Green Tree Landscaping struck and killed a local bartender with one of the company's Ford F-150s. Just a few minutes prior to the homicide, the victim had refused to serve alcohol to the illegal alien, saying he had had enough, and then had escorted him out of the establishment after he argued loudly with staff and patrons. Unlawfully living in the United States the past six years, the Ecuadorian shortly thereafter pinned the bar employee, then standing just outside the bar's door, between the building and the F-150. The local landscaping company maintained the illegal immigrant who had no driver's license was not authorized to use the company vehicle.

Feb. 11, 2009

In another raid of an Arizona landscaping business, MCSO arrested 59 employees of Phoenix-based Handyman Maintenance Inc. (HMI), under suspicion they are undocumented and/or illegal immigrants. Sheriff Arpaio said MCSO turned over 19 HMI workers to ICE and the remaining 40 are awaiting trial for felony identity theft charges. This raid stemmed from a four-month investigation following a tip last October from a former HMI employee. — MW

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Not backing down

Pace and other industry insiders say they foresee a continuation — if not an uptick — in immigration worksite raids.

They point toward unemployment hitting a 25-year high — 8.5% nationwide and climbing — as justification for the crack-downs. Some say the United States no longer can afford to look the other way as many of the nation's estimated 11.78 million illegal immigrants take jobs in the face of 13.2 million unemployed U.S. citizens.

Some say the continued loss of H2-B's returning worker exemption makes contractors even more susceptible to hiring undocumented/illegal immigrants and, therefore, also to worksite raids. Nearly 70,000 H2-R visas were issued to returning guest workers in fiscal 2007, but that labor pool evaporated after Congress let that exception lapse.

The enforcers leave little doubt as to what the future holds. ICE spokesman Richard Rocha says ICE raids in fiscal 2008 resulted in 12 times more arrests than they did six years earlier (6,274 combined criminal and administrative arrests versus 510).

"ICE targets all criminal activity and employers who hire unauthorized workers," Rocha says. "No industry, regardless of size, location or type is immune from complying with the law."

Rocha says employment is a primary driving force behind illegal immigration. By working with employers to ensure a legal work force, ICE is able to stem the tide of those who cross America's borders illegally or unlawfully remain in the country to work.

"Responsible employers who seek to conduct their business lawfully are put at an unfair disadvantage as they try to compete with unscrupulous businesses," Rocha adds. "Such businesses gain a competitive edge by paying illegal alien workers low wages. ICE's goal is to help those companies that want to obey the law, and to use our investigative and regulatory authority to stop those companies that do not."

Dubbed "America's toughest sheriff," Arpaio has a bit of ICE running through his veins as well.

"Before I came here, I spent 12 years defending both sides of America's borders, working for the U.S. Drug Enforcement Agency in Phoenix, San Antonio and Mexico City," Arpaio says. "Do you think I'm gonna back down just because we have a new administration and the Maricopa County Board of Supervisors — which by the way is one of HMI's biggest clients — is having the U.S. Justice Department investigate our Office and now is threatening to withhold \$1.4 million in funding? No way."

MCSO has about 160 officers trained to enforce federal immigration laws and over the past two years has apprehended about 25,000 illegal immigrants, including hundreds from at least 16 worksite raids, Arpaio notes.

"I've been in law enforcement 48 years," Arpaio concludes. "Things have changed quite a bit, but right is still right, and wrong is still wrong."

But Pace says there are degrees of culpability.

"I would prefer that we focus these raids on the companies that aren't paying worker's compensation, that aren't paying unemployment, that are paying cash under the table, are not using E-Verify and are not completing I-9s (federal Employment Eligibility Verification forms)," Pace adds. "There are a lot of them still out there, and I think it's a better use of our resources." LM

2-PART SERIES

In May, we'll cover the fallout from the loss of H2-B's returning worker exemption, and our industry's persistent problems attracting Americans to fill seasonal positions — even with unemployment at 8.5% nationwide.

E-Verify: A dozen subscribing states

Twelve states require the use of E-Verify for public and/or private employers, nine through legislation and three through executive orders. One state, Illinois, enacted legislation to limit the use of E-Verify until the database accuracy is improved and also created privacy and antidiscrimination protections. At least one state, Tennessee, encourages its use by providing a safe harbor from state penalties for employers enrolled in E-Verify.

