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How ICE Threatens the Ethical Responsibilities of Key Players in Worksite Raids: Postville Study

by Amalia Greenberg and Shanti Martin*

Now we know who the architects were that spearheaded such a well crafted “fast-tracking” scheme, bogus charge and all, which had us all, down to the very judges, fall in line behind the shackled penguin march.

— Interpreter Dr. Erik Camayd-Freixas

INTRODUCTION

THE IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) RAID OF THE AGRIPROCESSORS, INC. (AGRIPROCESSORS) MEATPACKING PLANT IN POSTVILLE, IOWA, on May 12, 2008, was unprecedented in its execution. ICE orchestrated a raid of such large proportions and speedy processing that it could only succeed by compromising the ethics and responsibilities of key governmental and non-governmental “players.” In its raid, ICE involved and co-opted, to varying degrees, players such as the U.S. District Court for the Northern District of Iowa (the Court), the Court’s judges, defense attorneys, interpreters, local churches and non-governmental organizations (NGOs). ICE succeeded in arresting and criminally prosecuting hundreds of workers by using these players as participants and pawns. These systematic, expedited criminal prosecutions violated the civil and constitutional rights of most of the indigent defendants.

This article examines ICE’s manipulation of the criminal justice system by reviewing the roles of key players in the Postville raid. We will examine the conflicts between the ethical responsibilities of the judges, defense attorneys, and interpreters and their participation in the criminal prosecutions that resulted from the raid. The article concludes by encouraging more coordination and discussion among key players in efforts to prevent the violation of rights in future ICE raids and the resulting immigration and criminal prosecutions.

BACKGROUND

Although ICE continues orchestrating large workplace raids, the Postville raid was one of the most coordinated and efficient. Its criminal prosecutions were unprecedented in mass, speed, and content. Since the Postville raid, ICE has conducted two other workplace raids of similar proportions, arresting 600 workers in a transformer plant in Laurel, Mississippi, on August 25, 2008, and 300 workers in a chicken processing plant in Greenville, South Carolina, on October 7, 2008. Neither of these raids, however, have had the same criminal implications on the workers; less than a dozen workers faced criminal charges in each raid.

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Courtesy of Nikki Aden

Residents of Postville protest the recent ICE raids.

On the morning of May 12, 2008, hundreds of ICE agents surrounded and entered the Agriprocessors plant, questioned workers, and arrested 389 persons, most of whom were *Latino*. ICE agents shackled and transported the workers by bus to the National Cattle Congress, a 60-acre cattle fairground that had been rented weeks before and set up as a makeshift detention center and court. Within two weeks of their arrests, 297 of these workers pled guilty to federal felony charges, including use or possession of a false work authorization document (18 U.S.C. §1546) and representation of a false Social Security number (42 U.S.C. § 408(a)(7)(B)). Most of the plea agreements included a five-month prison sentence, which is a harsher sentence than the one they would have likely received if they had actually gone to trial for those charges.

The use of an “exploding” plea offer created the thrust of the individual rights’ violations. The U.S. Attorney’s Office offered the majority of the workers a plea that would eliminate the charge of aggravated identity theft, which carries a mandatory two-year sentence, as long as they agreed to removal and relinquish any rights for potential immigration relief.¹ This was considered an “exploding” plea offer because the workers had only seven days to accept it. At an orientation meeting for defense attorneys, the U.S. Attorney’s Office provided each defense counsel with a binder containing all the scripts and necessary paperwork for the plea. According to the *New York Times*, the Clerk of the Court, with the input of a U.S. Attorney, compiled the materials in the binders *ex parte* of any defense attorney. Each binder contained copies of the relevant criminal

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statutes, scripts for guilty plea hearings, as well as forms that waived the rights to indictment, consented to the judge's plea recommendation, and stipulated to judicial removal from the U.S. In other words, the government scripted the criminal proceedings through the mass-prepared plea agreements to ensure a high number of smoothly executed criminal convictions but, in effect, limited the defendants' defense options.

The expedited, bulk prosecutions of the Agriprocessors workers resulted in due process and Sixth Amendment violations. First, due process violations occurred through the apparent collaboration between the Court and the U.S. Attorney's Office in devising the plea agreements prior to the arrests of the Agriprocessors workers and without consulting the defendants' attorneys. Many defendants spoke neither Spanish nor English as their first language and could not have knowingly, voluntarily, and intelligently understood the terms of the plea agreements or any other available options before pleading guilty. This is especially true given the lack of individual attention each worker received due to the number of workers each defense attorney had to represent within the seven-day limit. Second, the expedited criminal processing violated the defendants' Sixth Amendment rights by depriving them of individualized representation. In sum, the pleas deprived the defendants of their liberty interests by coercing them into accepting a five-month imprisonment and deportation despite the availability of other avenues of criminal and immigration relief.

Through the unjust criminal prosecutions and their aftermath, ICE, along with the U.S. Attorney's Office, overwhelmed and co-opted the Court, the judges, community, defense attorneys, interpreters, churches, and NGOs. Many felt they played parts in enabling the prosecution, while others helplessly observed the defendants' deprivation of rights. While the Court received warning of the raid and collaborated in the preparations and subsequent criminal prosecutions, ICE's tactics surprised the remaining players and prevented them from making fully informed and thoughtful decisions about their involvement. Months after the Postville raid, many of the players continue to deliberate how their involvement could have protected the defendants' rights instead of facilitating ICE's rights-violating projects. Congress recognizes the need to examine the Postville raid and has conducted an investigation and a hearing in which several of the key players testified.

THE COURT

. . . [T]he Iowa federal district court was driving the train, fatally compromising its own integrity as an independent branch of government.

— American Immigration Lawyers Association President Charles Kuck

The Court, with Chief Judge Reade presiding, violated the Agriprocessors defendants' rights to (1) an impartial judge who is not predisposed to side with the prosecution and (2) assistance to counsel as required under the Sixth Amendment. First, under 28 U.S.C. § 455(a), "[a]ny justice, judge, or magistrate judge of the United States shall disqualify [her]self in any proceeding in which [her] impartiality might reasonably be questioned." Judges must recuse themselves when they have a personal bias or prejudice concerning a proceeding or when a reasonable person finds that a judge has the "appearance of bias or partiality."²

The Court demonstrated its partiality through its collaboration with ICE and the U.S. Attorney's Office in preparing for the raid and the subsequent criminal prosecutions. The U.S. Attorney's office secretly notified the Court almost six months prior to the raid to not only prepare for potentially 700 arrests but to also develop the plea agreement scripts and binders for the defendants and their attorneys. The Court also attended the orientation meeting for the defense attorneys held at the courthouse. In preparation for the raid, the Court hired twenty-six interpreters from around the country. Once the raid commenced, the Court held extended hours and agreed to process defendants in groups to enable fast-tracked processing — up to 94 defendants per day.³ The Court's pre-approval of the plea agreement and preparations for the hearings gave the appearance of cooperating with and being partial to the prosecution.⁴ Public defender Rockne Cole wrote a letter to Congress after declining to represent any of the Agriprocessors defendants because he found a "breath-taking level of coordination between the United States District Court Judge and the Department of Justice" that gave a reasonable appearance of partiality in the Court.

Second, the Court violated the defendants' Sixth Amendment rights to an attorney. Defense attorneys did not have adequate time to review and negotiate their clients' plea agreements and other defense options, and, in turn, defendants received limited individualized attention. Excluded from the pre-raid prepara-

tions, the defense attorneys could not influence the terms of the plea agreements. Generally, a prosecutor and defense attorney determine the terms of a plea agreement after a defendant is charged and outside of the court's presence; the court is normally not involved until after the defense-prosecution negotiations. Rather than follow the standard protocol, which ensures due process of law, the U.S. Attorney's Office and the Court collaborated to create the plea agreements before even arresting the defendants.⁵



Courtesy of Nikki Aden

A Postville law enforcement officer keeps watch over the protestors.

The defense attorneys were unable to give their clients individualized attention due to the fast-tracking process used by the prosecution and the size of the defense attorneys' caseloads — up to seventeen cases each. Furthermore, the inclusion of sentence terms in the plea agreements eliminated the judges' discretion to alter sentences during the criminal proceeding.⁶ The experience of one federal judge in the Postville proceedings demonstrates that the criminal-immigration proceedings inadvertently co-opted even judges who disagreed with ICE's process. According to an interpreter, Dr. Erik Camayd-Freixas, the judge complained that the proceedings obligated him to accept the plea agreements even though he disagreed with the Eighth Circuit's binding interpretation of the aggravated identity theft statute and would have found most of the workers innocent of that charge. The mass prosecution of Agriprocessors workers, in effect, coerced judges and defense attorneys alike to forego individual review of each defendant, and instead instituted bulk processing of the defendants according to ICE's and the U.S. Attorneys' design.

DEFENSE ATTORNEYS

I visualized walking into the Cattle Congress grounds and seeing the individual faces of the family members, and I would have felt like a government agent.

— Defense Attorney Rockne Cole

Defense attorneys played an important, yet conflicting, role in the expedited criminal prosecutions. The government counted on only 18 public defenders and defense attorneys to represent on average 17 Agriprocessors workers per attorney. The large number of clients appointed per attorney raises questions of due process and Sixth Amendment violations because of (1) the limited time and attention available to each client, (2) the language and cultural barriers between the clients and attorneys, and (3) the lack of information about other immigration and criminal options.

First, 18 public defenders and defense attorneys represented over 270 workers, an average of 17 Agriprocessors workers per attorney. As a result, the defense lawyers had limited ability to provide zealous advocacy and personalized attention to their clients. To avoid compromising his ethical responsibilities to his client, Defense Attorney Cole declined to represent any of the Agriprocessors workers. In the defense of Agriprocessors workers, every client was a potential witness, whether favorable or not, to the criminal prosecution of every other client; representing multiple workers, therefore, presented both a conflict of interest and, with the limited time, an inability to zealously advocate for the clients.

Second, as the ACLU wrote in a statement to Congress, without individualized attention, other barriers, including linguistic and cultural, “likely impede[d] communication between the client and counsel.” Detained in the Cattle Congress grounds and quickly transferred to other locations, defendants were not easily accessible to their defense attorneys, interpreters, immigration attorneys, or other persons who could provide assistance.

Third, defense attorneys generally had neither immigration expertise nor the time to consult immigration attorneys. The seven-day deadline of the “exploding” plea agreements limited the defense attorneys' time to review each client's background and criminal and immigration options. As a result, defense attorneys were unable to fully consider the immigration consequences of accepting the plea agreement. Defense attorneys ideally should have explored potential immigration alternatives available that would have questioned the decision to sign the plea agreement that waived all rights to pursue any forms of immigration relief. The defendants may have been eligible for protection under U.S. asylum law or through the U Visa, which is available to non-citizen victims of crime.

Defense attorneys, in essence, became an arm of the U.S. Attorney's office in executing the government-prepared plea agreements and, thus, faced an ethical predicament. Declining to defend the workers would leave a poorer attorney-client ratio and less individualized attention. By complying with the government's procedure, however, defense attorneys risked compromising their ethical responsibilities to zealously advocate for clients.

In hindsight, one could view the defense attorneys' participation with some criticism, despite their admirable efforts to defend such large numbers of workers. Now, defense attorneys have had the opportunity to reflect on their roles in the raid

Coordination will not only make key players accountable to each other but will also strengthen advocacy for better immigration enforcement practices that keep our communities and workplaces safe from raids that violate civil and constitutional rights.

and what future actions can be taken to ensure that their clients receive adequate and ethically-sound legal service. Continuing the conversation at a national and local level can enhance the representation of workers arrested and detained in future ICE raids.

INTERPRETERS

The more I found out, the more I felt blindsided into an assignment of which I wanted no part.

— Interpreter Dr. Erik Camayd-Freixas

The interpreters also faced ethical dilemmas. First, with far fewer interpreters available than defendants, the interpreters could not fully provide individualized interpretation. Initially, twenty-six interpreters mediated communication between the 389 workers and the judges, public defenders, and prosecutors, but, by the end of the proceedings, only sixteen interpreters remained. Second, interpreters translated in Spanish to some defendants whose native language was not Spanish. Most of the workers were Guatemalan nationals of Mayan descent who spoke an indigenous language as their native language.

Camayd-Freixas, perhaps one of the most well-known and vocal protesting participants, wrote a detailed, first-hand account of the role interpreters played. Camayd-Freixas was astutely aware of his ethical dilemma throughout the proceedings. When he arrived at the Cattle Congress grounds and learned about ICE's mission, Camayd-Freixas feared his participation would threaten his ethics and morals. "The truth is that nothing could have prepared me for the prospect of helping our government put hundreds of innocent people in jail. In my ignorance and disbelief, I reluctantly decided to stay the course and see what happened next." According to Camayd-Freixas, the other Postville interpreters felt the same way. When they learned their roles, their collective heart sank.

What would have happened if all the interpreters had refused to assist? The prosecution had only 72 hours to bring all 389 workers in front of a judge; finding replacements for all the interpreters may have led to the release of most of the workers due to the resulting delay in proceedings. The interpreters' resignations, however, also could have led to lengthy detentions

without the workers receiving an explanation in a language they could understand. As raids become more frequent, federal interpreters nationwide will face this ethical quandary.

CHURCHES AND NON-PROFIT ORGANIZATIONS

There is no "legal" or "illegal" to God.

— Archbishop Jerome Hanus of the
Archdiocese of Dubuque

The religious community and community-based organizations in Postville and surrounding areas played a heroic and essential role in the raid's aftermath. Prior to the raid, rumors alerted local organizations of a potential ICE raid in the area. Two leaders at St. Bridget's Catholic Church (the Church) attempted to plan ahead for a large raid. Unfortunately, the raid began an hour before a scheduled planning meeting.⁷ This meeting, though unsuccessful, demonstrates the proactive role that religious community leaders can take by observing, planning, organizing, and intervening where possible. After the raid, hundreds of families sought refuge in the Church as word about the raid spread.⁸ The Church served as a shelter, resource center, and information hub.⁹ Donors provided shelter, food, clothing, information, and legal and financial support to detainees' families. The Church also spent the first twenty-four hours after the raid compiling a list of all the Agriprocessors workers reported missing.¹⁰

Religious communities in Postville and the surrounding area continue providing support to the detainees and their families. Luther College Pastor David Vásquez, who worked full-time for six weeks in Postville following the raid, continues to provide support to Agriprocessors defendants and their families. The government released or deported many workers when their five-month sentences ended in October 2008. Others are still detained past the five-month sentence mark for unknown reasons.¹¹ Family members come to the Church for help locating their loved ones and present a myriad of problems. In addition to dealing with the frenzy surrounding the release of the workers, the Church responds to the needs of the replacement workforce.

The Agriprocessors detainees and their families were particularly vulnerable in the raid and its aftermath because they lacked the resources and legal services needed to navigate the criminal and immigration system. The detainees feared imprisonment for long periods of time, a loss of work and income, and the isolation and stigma resulting from the raid. With so many families affected in a raid of this size, victims of workplace raids depended on organizations and church-based groups to assist in their immediate needs. National response networks of NGOs, churches, and community associations continue to coordinate and plan how to respond more efficiently and effectively to future ICE workplace raids.

WORKING TOGETHER

Several players we interviewed suggested that raid-response efforts require coordination. Working together allows for efficient satisfaction of the humanitarian, emotional, and legal needs of the detainees and their families. Coordination and communication also create accountability and joint resistance to the pressures that lead to violations of ethical convictions and standards. With coordination among the different players, immigrants' rights advocates can work to provide the best services for victims of raids, their families, and their communities.

As we wrote this article, we wondered how all the players could be held accountable to the victims of the raids and to each other. Without the participation of each of these players, ICE could not have successfully executed such a large and controversial raid. The Court, defense attorneys, interpreters, churches, and NGOs contributed to ICE's ability to arrest and deport large numbers of immigrant workers by providing the necessary courtrooms and clerks, legal representation, language interpretation, and humanitarian assistance. We recognize that most of those players worked to the point of exhaustion to provide for and represent the workers and respect their humanity. Continued reflection on the past, however, allows the development of creative and coordinated responses to future raids.

A recognized, multi-organizational, coordinating body, possibly a church, local NGO, or even a national clearinghouse, would meet several needs during and following a raid. This coordination will require an organizer to respond immediately to raids and coordinate a humane response. The organizers should evaluate the needs of victims and their communities and devise a strategy to divide the work. By using the specialty of each assisting organization and delegating tasks accordingly, no single player or organization would overstretch itself or duplicate efforts. Churches can cover the humanitarian needs, and subject-specialized local and national legal organizations can cover the immigration, constitutional, and poverty law needs.

The organizers should focus on increasing the accountability and support that comes from working as a coordinated body instead of as separate players. For example, defense attorneys would turn to immigration attorneys and NGOs in the network to provide more accurate immigration-related information to their clients. Networking defense attorneys with immigration specialists and other immigrant defense attorneys will improve information-sharing, efficiency in responding to clients' legal needs, and trust among these players. By communicating with each other, the different players may realize that others are also questioning their participation and wondering how to act ethically. In numbers, they are more likely to challenge the orchestrated human rights violations. Coordination will not only make key players accountable to each other but will also strengthen advocacy for better immigration enforcement practices that keep our communities and workplaces safe from raids that violate civil and constitutional rights. By working together, immigrant advocates have the best hope of thwarting ICE's rampant human rights violations.

HRB

ENDNOTES: How ICE Threatens the Ethical Responsibilities of Key Players in Worksite Raids

¹ American Civil Liberties Union, *Written Statement for a Hearing on Immigration Raids: Postville and Beyond*. Submitted to the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, June 24, 2008, 6.

² *United States v. Tucker*, 78 F.3d 1313, 1324 (8th Cir. 1996); see also *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859-60 (1988); see also *Memorandum in Support of the Motion for Recusal Pursuant to 28 USC §455(a)*, U.S. v. Martin de la Rosa-Loera, Aug. 13, 2008.

³ *Memorandum in Support of the Motion for Recusal* at 9.

⁴ "Re: Lack of legal representation in current process of criminal prosecution — Agriprocessors, Inc. immigration cases;" *AILA Letter to Judge Meade*, May 19, 2008 (www.aila.org/content/default.aspx?docid=25440).

⁵ "Largest Ever Criminal Worksite Enforcement Operation Stretches Court," *The Third Branch: Newsletter of the Federal Courts* (<http://www.uscourts.gov/ttb/2008-06/article01.cfm>).

⁶ Julia Preston, *N.Y. Times*, "Immigrants' Speedy Trials After Raid Become Issue," <http://www.nytimes.com/2008/08/09/us/09immig.html?partner=rssnyt&emc=rss> (Aug. 8, 2008).

⁷ Adam Belz, *The [Cedar Rapids, Iowa] Gazette*, "'She's an angel': Language is no barrier for nun," (May 24, 2008).

⁸ Samuel G. Freedman, *N.Y. Times*, "Immigrants Find Solace After Storm of Arrests," (July 12, 2008) at A9.

⁹ Laura Grevas and Karen Heinselman, *Waterloo-Cedar Falls Courier*, "Archbishop attends Postville Mass," (May 18, 2008).

¹⁰ Abe Tekippe, *Decorah Newspapers*, "Luther pastor David Vasquez a fixture in post-raid Postville," <http://www.decorahnewspapers.com/main.asp?SectionID=2&SubSectionID=10&ArticleID=18059> (July 2008).

¹¹ Interview with Pastor David Vasquez, Luther College (Oct. 21, 2008).