



**The 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**

**July 24, 2008**

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## **I. Introduction**

The American Civil Liberties Union (ACLU) commends the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law for conducting a hearing on July 24, 2008 regarding the Postville, Iowa immigration raid and criminal prosecutions. Many important facts and questions emerged from the oral and written testimony at the hearing. However, many disturbing aspects of this raid have not been fully addressed and many inconsistencies and critical questions remain unanswered.

The ACLU is a nationwide, non-partisan organization of more than 500,000 members dedicated to enforcing the fundamental rights of the Constitution and laws of the United States. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy and public education to enforce and protect the constitutional and civil rights of immigrants, including the rights of immigrant workers during immigration raids and in other contexts. The IRP is actively engaged in assessing the policies, practices and procedures related to the Postville raid and its aftermath; investigating its planning and implementation; and analyzing its consistency with constitutional values and principles.

The ACLU submits this statement to express its grave concern about the numerous unresolved questions regarding the planning, implementation and execution of the Postville raid and the subsequent criminal prosecutions of more than 300 immigrant workers. The instant statement does not attempt to assess every aspect of the raid. Rather, it is a preliminary statement that addresses some of the key facts and unanswered questions that we strongly believe warrant further investigation by this Subcommittee and others. In particular, we address key factors that by design or effect were used in combination to compromise, if not negate, meaningful legal representation, voluntary and knowledgeable waivers of rights and public confidence in a fair prosecutorial and judicial process. These factors include (1) appointment of too few defense counsel to represent multiple defendants; (2) the use of "exploding" seven-day plea offers; and (3) conditioning pleas upon defendants accepting stipulated judicial orders of deportation that compel waiver of all rights and protections under the immigration laws.

## **II. Background**

On May 12, 2008, U.S. Immigration and Customs Enforcement (ICE) conducted the largest single-site immigration raid in U.S. history at Agriprocessors, Inc., a kosher meatpacking plant in Postville, Iowa and the largest employer in northeast Iowa.<sup>1</sup> While the size of the raid alone is significant, the critical and novel element that sets Postville apart from prior ICE raids was the pre-planned and massive *criminal* prosecution of immigrant workers for allegedly using false documents to work. The prosecutions, designed and implemented to achieve high-pressure, mass processing of hundreds of indigent defendants in an extremely short period of time, raise profound and unanswered questions about the proper use and possible manipulation of the criminal justice system. The fairness, transparency, origins and impact of this plan remain in question.

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<sup>1</sup>Department of Justice and ICE Joint Press Release. "ICE and DOJ Joint Enforcement Action at Iowa Meatpacking Plant." May 12, 2008. <http://www.ice.gov/pi/news/newsreleases/articles/080512cedarrapids.html>.

ICE initially arrested 389 workers, the overwhelming majority of whom were Guatemalan nationals, for “administrative immigration violations.”<sup>2</sup> However, it is evident from subsequent events that the government intended from the outset to bring criminal charges against most or all of the arrested workers. Three days after the raid, on May 15, 2008, the U.S. Attorney’s Office in the Northern District of Iowa charged 306 of the arrested workers criminally for allegedly using false documents in relation to their employment.<sup>3</sup> Within seven days, 300 of the workers had pled guilty principally to knowingly using false Social Security numbers in violation of 42 U.S.C. § 408(a)(7)(B) or other false employment documents in violation of 18 U.S.C. § 1546(a).<sup>4</sup> Every defendant was immediately sentenced – the majority to five months in federal prison and three years of supervised release.<sup>5</sup> Within ten days of the raid, more than ten percent of Postville’s population was convicted based on pleas that had been obtained under an unprecedented combination of practices, policies and circumstances promulgated by the U.S. Departments of Justice and Homeland Security.<sup>6</sup>

### III. Unresolved Issues and Areas of Further Inquiry

The Postville raid processed hundreds of immigrant workers through the immigration and criminal justice systems with unprecedented speed and under unprecedented conditions. It has been widely recounted in news reports and firsthand accounts—such as the interpreter’s essay of Mr. Erik Camayd-Freixas—that the expedited process used to obtain guilty pleas from the defendants raises profound concerns and questions about the compromise of their due process and other constitutional rights.<sup>7</sup>

#### A. Appointment of Too Few Defense Counsel to Represent Multiple Defendants

One critical element of the Postville criminal prosecutions was the pre-determined decision to appoint a single criminal defense lawyer to represent large numbers of defendants. Only 18 criminal defense attorneys were appointed by the federal court to represent hundreds of defendants; every attorney represented 17 defendants on average.<sup>8</sup> It is unclear how the court

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<sup>2</sup> *Id.*

<sup>3</sup> DOJ Press Release. “Over 300 Criminal Arrests In Postville ICE Operation.” May 15, 2008. [http://www.usdoj.gov/usao/ian/press/May\\_08/5\\_15?08\\_Agriprocessors.html](http://www.usdoj.gov/usao/ian/press/May_08/5_15?08_Agriprocessors.html).

<sup>4</sup> U.S. Attorney’s Office Northern District of Iowa Press Release. “300 Now Convicted and Sentenced Following May Arrests in Postville.” June 10, 2008. [http://www.usdoj.gov/usao/ian/press/June\\_08/6\\_10?08\\_Postville.html](http://www.usdoj.gov/usao/ian/press/June_08/6_10?08_Postville.html).

<sup>5</sup> *Id.*

<sup>6</sup> Hsu, Spencer. “Immigration Raid Jars a Small Town” Washington Post. 5/18/08. Pg. A01. <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/17/AR2008051702474.html>.

<sup>7</sup> Camayd-Freixas, Erik. “Interpreting after the Largest ICE Raid in US History: A Personal Account.” 6/13/08. <http://graphics8.nytimes.com/images/2008/07/14/opinion/14ed-camayd.pdf>.

<sup>8</sup> Chishti, Muzaffar. “Iowa Raid Raises Questions about Stepped-Up Immigration Enforcement,” Migration Policy Institute. 6/16/08. Pg1. <http://www.migrationinformation.org/USFocus/display.cfm?ID=686>. Attorneys who represented the arrested workers were provided a pre-packaged “manual” at a meeting at the federal courthouse in Cedar Rapids in anticipation of the mass criminal prosecutions following the raid. It contained scripts for plea and sentencing hearings as well as documents providing for guilty pleas and waivers of rights. See July 24, 2008 Letter of Rockne Cole to Representative Zoe Lofgren. According to the Federal Courts’ June 2008 Newsletter, *Third Branch*, the district court assembled checklists and forms related to initial appearances, status conferences, pleas and sentences prior to the raid. The Third Branch, “Largest Ever Criminal Worksite Enforcement Operation Stretches Court,” Vol. 40 No. 6, June 2008. Pg 1. <http://www.uscourts.gov/ttb/2008-06/article01.cfm>.

decided to appoint that number, how the defendants-to-attorney ratio was determined and how the defense lawyers were selected or identified for appointment.<sup>9</sup>

No explanation has been offered as to why an insufficient number of defense attorneys were appointed to provide individualized representation in light of the court's recognized knowledge of the anticipated mass prosecutions in advance of the raid.<sup>10</sup> Individualized representation was especially critical given that the anticipated proceedings would involve complex questions of immigration law and where language, cultural and other barriers would likely impede communication between the client and counsel. The appointment of 26 Spanish-language interpreters to work with defense attorneys did not obviate the need for more defense attorneys.<sup>11</sup> Because most of the defendants were Guatemalan nationals of Mayan descent for whom Spanish was a second language, Spanish-language interpretation of legal concepts and other matters related to the defendants' prosecutions was likely inadequate. The need for more attorneys and necessary interpreters cannot be overstated and should be further investigated, particularly in light of the pre-planned "exploding" plea offers and expedited proceedings more generally.

## **B. "Exploding" Plea Offers and Waiver of Rights**

The problems associated with appointing a minimal number of defense counsel to represent numerous defendants were exacerbated by the U.S. Attorney's Office plea bargaining tactics. As has been widely reported, the U.S. Attorney's Office offered seven-day "exploding" plea agreements to all defendants. Under this practice, each defendant was compelled to decide whether to accept the offer within seven days. Under the standard plea offer, defendants in the majority of cases were required to decide whether to plead guilty to knowingly using a false Social Security number under 42 U.S.C. § 408(a)(7)(B) or knowingly using a false employment document under 18 U.S.C. § 1546(a), with a possible sentence of probation or five months incarceration, or be charged with "aggravated identify theft" under 18 U.S.C. § 1028(A)(a)(1) and face a mandatory minimum sentence of two years in prison. Under the circumstances of Postville, with multiple defendants represented by a single lawyer, complex immigration issues, and significant language, educational and cultural barriers, the extreme time limit made adequate legal defense, investigation and counseling almost impossible. Within days, defendants routinely waived all of their rights—including their right to indictment, to court reporters, to review the pre-sentence investigation report, and to appeal their convictions and sentences—and pled guilty, the vast majority with a judicial order of deportation, pursuant to Section 238(c)(5) of the Immigration and Nationality Act (INA), that makes *any* further immigration relief impossible. It

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<sup>9</sup> Ms. Deborah R. Rhodes, Senior Associate Deputy Attorney General, suggested in her oral testimony before this Subcommittee that Chief Judge Linda R. Reade of the U.S. District Court for the Northern District of Iowa may have made this decision, but this is still unclear. Deborah Rhodes before this Subcommittee at July 24, 2008 hearing entitled "Immigration Raids: Postville and Beyond." <http://www.cq.com/login.do?jsessionid=4EBCF0615AB3C272F67CE390F33025DB.manono?jumpsto=http%3A%2F%2Fwww.cq.com%2Fdisplay.do%3Fdockey%3D%2Fcqonline%2Fprod%2Fdat...tml%40committees%26pub%3Dcongressionaltranscripts%26print%3Dtrue>.

<sup>10</sup> The Third Branch, "Largest Ever Criminal Worksite Enforcement Operation Stretches Court," Vol. 40 No. 6/6/08. <http://www.uscourts.gov/ttb/2008-06/article01.cfm>.

<sup>11</sup> See Camayd-Freixas, Erik. "Written Statement for July 24, 2008 House Judiciary Committee Hearing on Immigration Raids." Pg 2. <http://judiciary.house.gov/hearings/pdf/Camayd-Freixas080724.pdf>.

is still unclear whether and how the defendants were capable of making informed decisions about their rights and eligibility under these conditions.

Ms. Deborah Rhodes, Senior Associate Deputy Attorney General, testified at the House Immigration Subcommittee hearing on July 24, 2008 that “through interviews, documents, and use of informants, ICE developed information indicating that the vast majority of Agriprocessors workers were illegal immigrants,” and “further, that over 70 percent were using fraudulent Social Security documents with stolen or fictitious identities.”<sup>12</sup> Yet, as Representative Lofgren pointed out during the hearing, paragraph 85 of the government’s affidavit supporting the criminal search warrant refutes that assertion.<sup>13</sup> The affidavit states that 78.6% of the Social Security numbers inputted into the Accurant database “either did not appear to be associated with the person assigned to that social security number or the number did not reveal any person associated with that number.” Moreover, paragraph 86 of the affidavit provides that only one person assigned one of the Social Security numbers being used by an Agriprocessors employee reported his or her identity as being stolen. In short, it is far from clear whether the reportedly false numbers associated with individual defendants actually relate to a different person or may be fictitious numbers. With regard to the criminal process more generally, it is noteworthy and troubling that a press release, which is no longer available on the internet, issued by the court on the day of the raid characterized the workers as “numerous illegal aliens” before criminal charges had been adjudicated.<sup>14</sup>

Under the compressed seven-day ticking clock, it was nearly impossible for defense counsel to assess each case individually. Ms. Rhodes’s testimony described how defendants charged with the same offense and offered the same plea agreement were arranged in groups of ten and represented by the same attorney. This mechanism was designed to allow the attorney to explain common information to a group of similarly situated clients. According to Ms. Rhodes, the attorneys were “free to meet with clients individually.”<sup>15</sup> However, under the compressed seven-day time period, the process appears to have been designed to be a “mass” process, whereby each individual defendant’s defenses and equities could not have been fully explored under the circumstances. The plea hearings themselves also reveal the cursory nature of the process and cast serious doubt on whether all defendants voluntarily and knowingly entered into their plea agreements. Based on the court hearing minutes, it appears that most of the plea hearings, which involved the use of an interpreter for each defendant, lasted approximately one hour in total. The sentencing hearings, which were conducted immediately after the plea hearings, were usually completed in a shorter timeframe. Among other reasons for the speedy hearings, defendants were obliged to waive their right to review the pre-sentence investigation reports as part of the plea agreement and, therefore, sacrificed their opportunity to contest the

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<sup>12</sup> Rhodes, Deborah. Written Statement for July 24, 2008 House Judiciary Committee Hearing on Immigration Raids <http://judiciary.house.gov/hearings/pdf/Rhodes080724.pdf>.

<sup>13</sup> See Application and Affidavit for Search Warrant, *In the Matter of the Search of Agriprocessors, Inc.*, No. 08-mj-00110-JSS (N.D. Iowa, signed May 9, 2008); Search Warrant and Affidavit available on the federal court password-required electronic website (PACER) or at the following: <http://www.gazetteonline.com/apps/pbcs.dll/article?AID=/20080513/NEWS/515835882/1006/news>.

<sup>14</sup> Leopold, David. “Written Statement for July 24, 2008 House Judiciary Committee Hearing on Immigration Raids.” <http://judiciary.house.gov/hearings/pdf/Leopold080724.pdf>.

<sup>15</sup> Rhodes, Deborah. “Written Statement for July 24, 2008 House Judiciary Committee Hearing on Immigration Raids.” Pg. 6. <http://judiciary.house.gov/hearings/pdf/Rhodes080724.pdf>.

sentences recommended by the government and routinely approved by the court. The plea agreement also required each defendant to waive his or her right to a court reporter at any of the hearings.

### **C. Judicial Orders of Deportation as Part of Plea Agreement**

In addition to the criminal prosecutions themselves, the formulaic guilty pleas demanded by prosecutors almost universally required defendants to accept mandatory stipulated judicial orders of deportation under Section 238(c)(5) of the INA, codified at 8 U.S.C. § 1228(c)(5). These orders barred any further consideration of defendants' immigration status or claims. Section 238(c)(5), which to the best of our knowledge has never been used in mass criminal prosecutions and in fact has rarely been invoked in ordinary criminal cases, was aggressively deployed against the Postville defendants.

Section 238(c)(5) requires that the U.S. Attorney seek the concurrence of the Department of Homeland Security before making a plea agreement which waives the right to notice and hearing before an immigration judge prior to removal from the United States and stipulates to the entry of a judicial order of deportation as part of the plea agreement or as a condition of probation and/or supervised release. Such a plea must comply with Rule 11 of the Federal Rules of Criminal Procedure and, therefore, must be made voluntarily and knowingly and must be supported by a factual basis. As explained in Mr. David Wolfe Leopold's written testimony to this Subcommittee, by its terms, stipulated removal orders of deportation are limited to removal orders against aliens who are "deportable" from the United States because of a criminal conviction. *See* 8 U.S.C. § 1228(c)(5).

Of critical significance, the use of Section 238(c)(5) requires a careful and comprehensive inquiry into an individual's immigration status and possible claims under the INA. Former Attorney General Janet Reno provided specific guidance on how 238(c)(5) should be applied. In a 1995 memorandum, the Attorney General admonished that "prior to engaging in plea negotiations with an alien defendant, prosecutors should contact the designated INS [now DHS] contact for an assessment of the defendant's alienage, deportability, and the possibility he will claim relief from deportation."<sup>16</sup>

For defense counsel to determine if their clients had any colorable claims to immigration relief, expertise in immigration law, a sufficient amount of time and the ability to engage in careful communication with each client were clear prerequisites. That was rendered virtually impossible in Postville by the arbitrary plea deadlines imposed by prosecutors; the federal court's appointment of many defendants to a single defense counsel; the lack of experience and expertise by many counsel with the complexities of immigration law; and the language, cultural and other barriers impeding communication between the client and counsel. Moreover, the plea deadlines made it impossible for defense counsel to verify that the U.S. Attorney's Office had met all of the 238(c)(5) procedural and substantive requirements, including determining whether each defendant was "deportable" and ineligible for immigration relief. This is particularly troublesome in light of the fact that the vast majority of defendants were Guatemalans, who may

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<sup>16</sup> Reno, Janet. "Memorandum to All Federal Prosecutors: Deportation of Criminal Aliens." April 28, 1995. <http://www.usdoj.gov/ag/readingroom/deportation95.htm>.

have had bona fide claims for asylum or potential relief under the Convention Against Torture that should have been carefully examined.

Other potential forms of immigration relief may have also been available to some defendants. The U visa, for example, is available to non-citizens who have suffered substantial physical or mental abuse resulting from criminal activity and are likely to be helpful with the investigation or prosecution of the crime.<sup>17</sup> According to Ms. Rhodes's testimony before this Subcommittee, the criminal investigation of Agriprocessors, Inc. is still pending and the cooperation of the non-citizens workers is required pursuant to the plea agreement.<sup>18</sup> In addition, the ICE affidavit supporting the criminal search warrant executed at Agriprocessors, Inc. on May 12, 2008 contains many examples of labor and other workplace violations at the Agriprocessors plant.<sup>19</sup> The affidavit, for example, states that undocumented workers from Guatemala and Mexico were paid below the minimum wage; that supervisors made a side business of selling workers used vehicles, sometimes threatening them with loss of employment if they did not purchase one; and that in at least one instance a supervisor duct-taped the eyes of an employee who was then hit with a meat hook.<sup>20</sup> Earlier in the year and prior to the raid, the Des Moines office of the U.S. Department of Labor's Wage and Hours Division had launched an investigation of the Agriprocessors plant in connection with possible violations of federal labor law.<sup>21</sup> Thus, based on these facts, the arrested workers may have been eligible for other forms of immigration relief.

Notwithstanding the use of stipulated judicial orders of deportation as a standard term of the uniform plea agreement, immigration lawyers were reportedly not afforded the opportunity to meet with defendants. Ms. Rhodes's testimony that immigration lawyers were given access to detainees even during the booking process, and that there were joint meetings held between criminal and immigration lawyers, has been rebutted by immigration and criminal defense lawyers who were actually present during the processing.<sup>22</sup>

Finally, the Reno memorandum states that “[a]t least 30 days prior to the date set for sentencing, a document charging alienage and identifying the crime that causes the alien to be

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<sup>17</sup> INA § 101(a)(15)(U); 8 U.S.C. § 1101 (a)(15)(U).

<sup>18</sup> Deborah Rhodes before this Subcommittee at July 24, 2008 hearing entitled “Immigration Raids: Postville and Beyond.”

<http://www.cq.com/login.do;jsessionid=4EBCF0615AB3C272F67CE390F33025DB.manono?jumpto=http%3A%2F%2Fwww.cq.com%2Fdisplay.do%3Fdockey%3D%2Fcqonline%2Fprod%2Fdat...tml%40committees%26pub%3Dcongressionaltranscripts%26print%3Dtrue>

<sup>19</sup> See Application and Affidavit for Search Warrant, *In the Matter of the Search of Agriprocessors, Inc.*, No. 08-mj-00110-JSS (N.D. Iowa, signed May 9, 2008); Search Warrant and Affidavit available on the federal court password-required electronic website (PACER) or at the following: <http://www.gazetteonline.com/apps/pbcs.dll/article?AID=/20080513/NEWS/515835882/1006/news>.

<sup>20</sup> *Id.*

<sup>21</sup> Representative Bruce Braley (D-IA) before this Subcommittee at July 24, 2008 hearing entitled “Immigration Raids: Postville and Beyond.”

<http://www.cq.com/login.do;jsessionid=4EBCF0615AB3C272F67CE390F33025DB.manono?jumpto=http%3A%2F%2Fwww.cq.com%2Fdisplay.do%3Fdockey%3D%2Fcqonline%2Fprod%2Fdat...tml%40committees%26pub%3Dcongressionaltranscripts%26print%3Dtrue>.

<sup>22</sup> See Leopold, David. “Written Statement for July 24, 2008 House Judiciary Committee Hearing on Immigration Raids.” <http://judiciary.house.gov/hearings/pdf/Leopold080724.pdf>.

deportable under 8 U.S.C. § 1251(a)(2)(A) [now 8 U.S.C. § 1227(a)(2)(A)] must be filed.”<sup>23</sup> Compliance with this provision appears impossible given the compressed time frame under which the Postville guilty pleas were obtained. Among the issues that warrant further investigation are whether authorities complied with the Reno memorandum and whether the Department of Justice or the Attorney General has issued any subsequent guidance with regard to 238(c)(5) orders.

#### **IV. Conclusion**

The Postville raid and mass prosecutions raise many troubling questions that compel further investigation by this Subcommittee and others. The ACLU commends the Subcommittee for conducting a hearing and urges it to continue this inquiry into the planning and execution of this operation by the Department of Justice, the Department of Homeland Security and the federal district court, as well as into the subsequent actions of DOJ and DHS with regard to the workers who were arrested.

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<sup>23</sup> Reno, Janet. “Memorandum to All Federal Prosecutors: Deportation of Criminal Aliens.” April 28, 1995. <http://www.usdoj.gov/ag/readingroom/deportation95.htm>.