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Complaint letter to U.S. Attorney General

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Honorable Eric Holder
United States Attorney General
Department of Justice
Office of Ethics Counsel
Washington, DC

Re: Complaint regarding Ethical Violations by United States Attorney's Office for the Northern District of Iowa

Dear Mr. Holder:

The United States Attorney's Office for the Northern District of Iowa conducted and assisted other government agencies in conducting a massive immigration raid on the Agriprocessors plant in Postville, Iowa, on May 12, 2008. Before, during, and after this raid, the USAO participated in egregious ethical violations, as well as serious violations of constitutional and civil rights.

First, there were overt and extensive *ex parte* communications between the USAO and U.S. District Judge Linda Reade of Cedar Rapids, who oversaw this case. Well in advance of the raids or any evidence being presented or defendant brought to court, they jointly coordinated to carry out the following fast-track prosecutorial plan:

1. Truncated criminal judicial proceedings, which severely prejudiced the rights of the defendants to meet with their attorneys, to fully consider and understand the various issues involved, to examine the evidence, to explore possible legal objections to the proceedings or to the charges, to challenge the evidence through such items as suppression motions, and otherwise undertake the normal duties usually exercised by defense counsel and defendants in criminal proceedings.

2. Moving the federal court and holding pens to an uncertified cattle auction site an hour north of the federal courthouse, covered by high security, restricting access to attorneys and the community, and removing the defendants to a place that undercut their dignity and the gravity of the proceedings. This curtailed the ability of the attorneys to meet with their clients in private, while heightening the defendants' sense of panic and trauma. The defendants were denied access to immigration specialists and community advocates for assisting in understanding the issues and finding conflict-free attorneys who could

actually fight their case. The USAO blocked attorneys from speaking with clients on the first days of the raid, when the clients were detained and incarcerated. It was during this same time that ICE agents were engaged in interrogating the clients. Several attorneys were demanding admission, having 147 signed G-28 *Notice of Entry of Appearance as Attorney* for many of these clients. I am directly aware of this, as I personally spoke with U.S. Attorney Matt Dummermuth, and he refused to allow them entry to meet with their clients as he indicated these attorneys would not be representing them in criminal charges. However, it must be noted that criminal charges had not even been brought at the time, and the clients were only under administrative detention. The fact that Matt Dummermuth blocked access to counsel calls into serious question the constitutional rights and protections provided these defendants. Evidently the U.S. attorney wished to ensure convictions regardless of justice, and further ensure that none of the immigrants would be able to exercise their constitutional rights in a timely manner, because their own attorneys were blocked from access at this very critical stage in the proceedings. Indeed, it may be constitutionally required that these criminal charges be dismissed and their records wiped clean.

3. Condoning extreme tactics against civilians. I have been involved as a private attorney in various immigration workplace raids since 1996. It was only recently that the Immigration Service began carrying out these raids as if they were going after heavily armed terrorist suspects. U.S. citizens were rounded up along with legal permanent residents and undocumented immigrants under threat of violence from the ICE agents, in disregard for the Fourth Amendment of the Constitution. Terror tactics included use of Blackhawk helicopters, black uniformed storm troopers, and military assault weapons; combing of school records for Hispanic last names; going house to house conducting ethnic searches and seizures in front of young children; use of heat-seeking devices to find the ethnic minority persons who might be hiding; threats, intimidation, and physical abuse; unnecessary use of force, abusive restraint methods, and other tactics in blatant violation of the United States Constitution and these individuals' civil and human rights, and in direct violation of established U.S. Supreme Court precedent in *INS v. Delgado,* 1466 U.S. 210 (1984).

4. Agreeing beforehand *ex parte* to give the identical sentence to almost 300 immigrants arrested in the raids without regard for individual cases, mitigating circumstances, the lack of criminal history, or any of the other usual sentencing consideration or safeguards, and absolutely without any exercise of informed independent judicial discretion. This agreement entered into pursuant to Rule 11 did not include input from any defense attorneys. Further, this agreement was entered into with a U.S. District Court Judge well in advance of any evidence being presented or any defendants even being arrested. The USAO had a scripted playbook already copied and ready to hand out to the chosen defense attorneys at a briefing on the day of the raid. It included the Rule 11 plea

agreement which had already been agreed to between the U.S. attorney and federal judge. The defense attorneys had no part in the prior arrangements or discussions regarding Rule 11 pleas – an obvious ethical and due process violation. Chief Judge Linda Reade and AUSA Stephanie Rose presided over that meeting.

5. Assigning an average of 17 defendants to each defense attorney, without any consideration of possible conflicts of interest, adequate representation, possible use of the defendant as witness in other federal or state criminal prosecutions, and without adequate time to explore individual cases to see if there were extenuating circumstances or potential legal remedies for sentence reduction or even dismissal.

6. Threatening shackled and mistreated detainees with extended incarceration if they failed to sign away, without the advice of counsel, their right to be indicted by a grand jury on felony charges –a right they did not even understand. This was done to assure fast-tracking prosecution, conviction, and sentencing of 304 individuals within 4 to 10 days.

7. Requiring the defendants to waive their statutory right to a deportation hearing before a federal immigration judge and failing to provide adequate time or resources to consider those legal avenues for immigration relief which have been provided by Congress. This was an improper use of the waiver of a deportation hearing in a manner not authorized by law.

8. Conducting mass chain-gang pleas and sentences that removed the discretion of the sentencing judge and further denigrated the dignity of these racial-minority defendants, in a manner unseen in our country since the mass prosecutions of runaway slaves.

9. Use of "exploding" plea offers under a biased interpretation of a federal identity theft statute (§1028A) unanimously disallowed by the United States Supreme Court decision of May 4, 2009 in *Flores-Figueroa v. U.S.* (08-108). This "exploding" plea agreement was designed to preempt any constitutional challenge to the initial seizure, the evidence, or the terms of the plea itself. The U.S. attorney gave the defendants only seven days to take it or leave it — to either accept the plea or to go to trial with a possible two year mandatory minimum on aggravated identity theft. Forcing these defendants to accept or reject a plea bargain within seven days was a Fifth Amendment due process violation.

10. Cherry-picking defense attorneys and rejecting those who did not agree with the pre-arranged Rule 11 plea agreements is both a violation of due process and of the right to competent counsel. One private attorney who raised objections to the procedure was ejected from the defense briefing, had his playbook confiscated, and was not appointed to represent any defendants. Essentially, the USAO conspired with the federal court to deprive these defendants of their Sixth Amendment right to *effective* assistance of counsel. Only those attorneys who were compliant with the USAO and the federal judge

were subsequently appointed to represent defendants, essentially ensuring no dissent. Other lawyers not pre-approved in this manner were denied access to their clients.

11. Failing to provide adequate time and conditions for defense counsel to meet privately with clients on an individual basis, eviscerating the attorney-client privilege and the attorney-client relationship. Multiple defendants were forced to meet at the same time with the single defense attorney, inside plywood cubicles and chain-link cages under constant surveillance by numerous armed agents. Attorney and client were prevented from communicating about crucial issues such as domestic violence, labor law violations, abuse by plant managers, or abusive tactics by ICE officials, as well as the myriad of other issues that routinely arise within the confidentiality and protection of the attorney-client relationship, essentially denying the Sixth Amendment right to *effective* counsel.

12. Failing to protect the rights and dignity of juvenile detainees.

13. Conspiring with the Department of Homeland Security to make an example of these defendants in order to terrorize Hispanics across the United States, for the sake of racially-based population control, thereby playing to a prejudiced public opinion and exploiting it for political gains. This was evidenced in the overt pursuit of intimidation strategies specifically designed to denigrate the dignity of these ethnic minority defendants in a manner that would never be tolerated for white English-speaking Americans. This includes paramilitary assault, mass round-ups and interrogations, with black uniforms, assault weapons, and helicopters; herding these ethnic poor into a cattle auction site for use as a federal kangaroo court, held incommunicado from family, community, and counsel; cruel, abusive, and public use of 5-point shackle restraints for extended hours, in violation of federal norms of detention and restraint.

It is important to point out that the U.S. attorney targeted the impoverished workers rather than the employer responsible for the abuses. The Postville operation trampled a U.S. Department of Labor investigation of numerous wage and safety violations, including child labor and sexual harassment in the workplace. Further, the essential witnesses were sent to federal prison and their testimonial value seriously impeached by the ensuing sentences. Indeed, only after the Iowa Attorney General began prosecution against the employer for numerous wage, safety, and child labor violations did the USAO finally undertake legal action against the management.

These and other outrageous and egregious abuses too numerous to mention were committed by or under the approval and supervision of the U.S. Attorney for the Northern District of Iowa, Matt Dummermuth, and assisted by the other attorneys in his office. No one from that office appears to have raised the slightest objection.

I would further point out that the ethics rules are quite clear that prosecutors actually have a higher duty than other attorneys to ensure that justice is done, especially due to their

overwhelming power. The fact that the U.S. attorney simply ignored this ethical admonition is an abomination to the practice of law and justice in the United States and the state of Iowa.

The depth and breadth of these ethical violations are appalling. As a long-time member of the Iowa bar and an experienced criminal defense attorney in both state and federal court, as well as many years as an immigration attorney, I have never in my life thought I would witness such an abdication of the most basic principles of justice, fairness, and due process that every attorney holds dear, especially in federal court here in Iowa. It was even more appalling that these brutal violations occurred against a powerless singular ethnic minority, and that the scheme was meticulously calculated in every detail to strike the maximum amount of terror into this very vulnerable and disfavored minority group of working parents. It even exceeds the Department of Justice's behavior in *Korematsu v. United States*, 584 F. Supp. 1406 (N.S. Cal. 1984).

There is no excuse for these actions. I defended a former Nazi concentration camp guard in denaturalization proceedings here in Iowa. Like in Postville, the German judiciary became an arm of the prosecution, and defense attorneys had to roll over or be sidelined. The massive terrorizing raids against a singular ethnic minority, the black uniforms, the paramilitary assault against a civilian population, the harsh and denigrating tactics, the use of cattle auction facilities, the judicial collusion, the pre-determined sentences, the use of scientific instruments to find terrorized individuals trembling in closets, the very extreme callousness and inhumanity of the entire operation – all combine to condemn the Postville raid and criminal prosecutions in the same verdict with the entire infamous history of tyranny and ethnic persecutions of which it is part and parcel.

It must be remembered that many of these immigrants come from a country where the police carried out extensive massacres and genocide, under military dictatorships backed by the United States and the CIA. The Guatemalans endured 36 years of horrible civil war, in which the Mayan population was one of the main targets of extermination.

What we saw in Postville is conduct unbecoming of our nation. When combined with the justification of torture and the abrogation of Geneva Convention protections for prisoners-of-war, devised by the Justice Department attorneys for the War on Terror, these events sound a fearful warning to the concept of justice in a free society. If we will so lightly dispense with basic human rights and constitutional principles for a racial and ethnic minority such as those arrested at Postville, how long can our nation stand enshrined with the principles recited by its school children of "Freedom and Justice to All"?

This constitutes as well a dark blotch on Iowa's otherwise outstanding legal history. In the first case decided by the Iowa Supreme Court (*In re Ralph*, Morris 1, 1839 WL 2764; Iowa Terr. 1839) our Justices came down on the opposite side from the U.S. Supreme Court in its infamous *Dredd Scott* decision. The Iowa Supreme Court stated quite plainly that the ownership of human slaves was not recognized in Iowa, and any property rights sought by a purported owner would

not and could not be enforced. In 1869, Iowa was the first state to admit a woman to the practice of law. Iowa is likewise proud of the fact that we contributed more soldiers per capita to the union cause to fight for emancipation of African slaves than any other state in the union. Iowa is also the birthplace of the National Bar Association, which began because the American Bar Association refused to allow black barristers as members.

Iowa is rightfully proud of its legal heritage of standing up for the poor and minorities and oppressed. This proud heritage was woefully betrayed by the U.S. Attorney's Office in the Postville raid and the subsequent federal prosecution.

I am requesting that your office investigate and prosecute any legal or ethical violations by U.S. Attorney for the Northern District of Iowa Matt Dummermuth or any other U.S. attorney working under his direction. Additionally, should any other attorneys from either the Department of Justice or Homeland Security be so involved, that they likewise be investigated and appropriately sanctioned in a manner befitting attorneys who have taken an oath to uphold the Constitution of the United States.

Please give this matter your highest attention. If you have any questions, please call.

I appreciate your cooperation in this matter.

Respectfully,
BENZONI LAW OFFICE, P.L.C.

James A. Benzoni

JAB:pjw
cc:
President Barack Obama
Honorable Tom Vilsack, Secretary U.S. Dept. of Agriculture & former Governor of Iowa
Honorable Hilda Solis, Secretary, U.S. Department of Labor
Governor Chet Culver, State of Iowa
Janet Napolitano, Secretary, U.S. Department of Homeland Security
David Leopold, President, American Immigration Lawyers Association (AILA)
Ben Stone, Attorney at Law, Iowa Civil Liberties Union
Senator Tom Harkin
Senator Chuck Grassley
Congressman Jim Bailey
Congressman Luis Gutierrez
Morris Dees, Southern Poverty Law Center
John Norris, Attorney at Law and Chief of Staff for Sec. of Agriculture Vilsack