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Testimony from Dept. of Justice on ICE conduct during raid

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Department of Justice

STATEMENT OF

**DEBORAH J. RHODES
SENIOR ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES,
BORDER SECURITY, AND INTERNATIONAL LAW**

HEARING ENTITLED

“IMMIGRATION RAIDS: POSTVILLE AND BEYOND”

PRESENTED

JULY 24, 2008

Good morning Chairman Lofgren, Ranking Member King, and Members of the Subcommittee. I am pleased to appear before you today to discuss the Justice Department's role and perspective regarding the enforcement action at the Agriprocessors plant in Postville, Iowa. Worksite enforcement is an important prong in our comprehensive immigration enforcement strategy, and I can assure you that the Department and our U.S. Attorneys in the field are fully committed to ensuring that the process employed comports with constitutional protections. Because this involves an ongoing investigation being directed by the U.S. Attorney's Office for the Northern District of Iowa and the Department of Homeland Security's United States Immigration and Customs Enforcement (ICE), I may be unable to answer questions relating to the pending matter. However, I will do what I can to assist this Subcommittee's understanding of the process that was employed.

Immigration Enforcement

Before discussing Agriprocessors, I believe it would be helpful to discuss immigration enforcement generally, which will set this operation in context. Let me begin with what I am sure is already obvious: The integrity of a nation's borders and of its immigration laws – to control who and what comes into and out of the country – is fundamental to any nation's security, including our own. That is why Congress has passed numerous Acts related to border security, immigration and worksite enforcement. For the same reason, the Attorney General has identified immigration enforcement as one of the Department's priorities.

Our immigration enforcement policy is comprehensive in scope. We prosecute violent smuggling organizations, like the recent cases in Arizona, where a defendant was sentenced to 20 years for holding 76 aliens hostage and using an assault rifle to intimidate and control them while

they were held in three small bedrooms with little food and water; and in San Diego where the kingpin of an organization that smuggled hundreds of people across the border was sentenced to 17 ½ years. We prosecute human trafficking organizations, like the one in Texas where eight defendants received sentences of up to 15 years and were ordered to pay \$1.7 million to the 120 women who were the victims of their labor and sex trafficking ring. We prosecute employers and corporations who knowingly hire illegal workers, like the recent cases in Connecticut involving a donut franchise and in Arizona involving the foreman of a drywall company. We prosecute those who help others obtain false immigration documents, like the charges currently pending against two supervisors at Agriprocessors. And we prosecute those who use false immigration or Social Security documents – identities that are often stolen from real people – to circumvent the immigration laws. Indeed, such prosecutions may allow investigators to work up the chain and obtain evidence from witnesses who can testify against the document vendors, the employers, and the corporations.

Earlier this year, we increased civil fines imposed on employers who knowingly hire illegal immigrants by 25 percent, the maximum allowed by law and the first such increase since 1999. Just a few weeks ago, in Las Vegas we announced guilty pleas in a case involving a fast food franchise and two corporate executives on immigration charges. The company agreed to pay a \$1 million fine for encouraging illegal aliens to reside in the United States.

In addition to these important felony prosecutions, we have undertaken programs like Operation Streamline to increase misdemeanor prosecutions along the Southwest Border and Congress has appropriated \$22 million dollars to be used toward that effort. We are grateful for this assistance and are currently using those funds to hire 64 new prosecutors and approximately

100 new deputies and other personnel for the U.S. Marshals to handle the increased cases – both misdemeanor and felony – along the Southwest Border.

Already, our efforts are showing results. During the first eight months of Fiscal Year (FY) 2008, immigration prosecutions along the Southwest Border increased by 19 percent over FY 2007. At the same time, apprehensions along the Southwest Border have decreased by 21 percent over FY 2007. This is a remarkable change – in both directions – in a short period of time. It suggests that immigration prosecutions, both in the border and interior States, as well as actions the Department of Homeland Security has taken, are having a deterrent effect on illegal immigration. Further, apprehensions are down, not in isolated areas, but in *each* one of the Southwest border districts. We believe this drop is further evidence that our success is due to a comprehensive immigration strategy, which builds upon itself and incorporates each of the efforts described above.

Agriprocessors

Investigation. The investigation in Postville, Iowa, which involved large scale document fraud and identity theft, is one of our most recent worksite enforcement operations. As you are aware, it was conducted by the local agents of ICE in coordination with the U.S. Attorney's Office for the Northern District of Iowa as well as other Federal agencies. Agriprocessors, a kosher meat processing complex, is the largest employer in Postville. For a period of several years, ICE had obtained information through a variety of means that Agriprocessors was hiring illegal aliens with fraudulent identification documents. Through interviews, documents, and the use of informants, ICE developed information indicating that the vast majority of Agriprocessor's thousand-plus workers were illegal immigrants and, further, that over 70 percent

were using fraudulent Social Security documents with stolen or fictitious identities. The information also indicated that the hiring was done with knowledge of the unlawful status and fraudulent documents

On May 12, 2008, ICE agents entered the Agriprocessors plant with a criminal search warrant for evidence relating to identity theft, fraudulent use of Social Security numbers, and other crimes, and with a civil search warrant for people illegally in the United States. During the search, the U.S. Department of Agriculture was present to address any health issues that might arise due to the meat processing. The U.S. Public Health Service was present to assist in determining workers who should be released for humanitarian reasons. A paramedic was on site to address any medical issues. The workers had access to restrooms and water and were provided a box lunch.

Ultimately, of the 389 people who were detained at the plant, approximately 306 were detained on criminal charges. Most of these people were using false Social Security or immigration cards belonging to other people. Since then, charges have been brought against two plant supervisors for aiding and abetting the fraudulent possession of a false resident alien card; and one of them was also charged with aggravated identity theft. Charges are also pending against a third person who currently is a fugitive. Significantly, the affidavits setting forth the factual basis for the underlying complaints include information provided by the illegal workers. I can assure you that this investigation is active and ongoing and that investigative leads will be pursued; however, for legal and ethical reasons, I am precluded from discussing it any further.

Booking. ICE transported the more than 300 detainees to a fairground in Waterloo, about two hours away, because the local court facilities could not accommodate the number of people. The fairground was selected because it had large public buildings, such as an auditorium, exhibition hall and ballroom, which ICE had built out to be used for booking and temporary detention. It was also used for the court appearances. A large auditorium was filled with processing stations for fingerprinting, photographing, etc. Each person was individually advised of his/her Miranda rights in Spanish, orally and in writing, before being interviewed regarding any criminal charges. Those who were not being processed were in another building which had been built out as a detention center with cots and a recreation space. The detainees had access to phones. Hot meals were served by a local caterer. Public health officials were on site. The atmosphere was calm and orderly.

Immigration Counsel. On the day the search warrants were executed, ICE officials notified various non-governmental organizations about the operation. The next day, a number of immigration attorneys came to the temporary detention facility with a list of names of potential clients. Many of the names on the lists were aliases, complicating and delaying the process of linking them with their clients, or were not in custody at all. While the immigration lawyers waited to see their clients, lawyers from ICE's Office of the Principal Legal Advisor and a member of the U.S. Attorney's Office advised them that the detainees would likely be charged criminally. The immigration lawyers were afforded the opportunity to meet with these individuals after they were located, and began meeting with them towards the end of the day. One immigration lawyer met with his client(s) that night and, the others met with their clients beginning on the next day. Thus, they were able to advise their clients before any guilty pleas were entered.

Defense Counsel and Discovery. Typically defense counsel is appointed to represent the defendant at the first court appearance; consequently, there is no opportunity to meet with defense counsel beforehand, to discuss the charges or to review the discovery materials. Here, however, most of the detainees began meeting with defense lawyers and receive their discovery materials before their first court appearance. Each of the defense lawyers was accompanied by a court certified interpreter.

Approximately 18 defense counsel were present at the fairgrounds to meet with the detainees. The attorneys had been briefed about the operation on the day of the search warrant. They were advised of the investigation, the potential charges, and the offer to plead to a lesser charge and sentence. The attorneys were provided a file for each defendant they represented that included the charges, the defendant's statement (if any), copies of the false documentation, the search warrant, other relevant discovery, a proposed written plea agreement, and relevant court documents. The plea agreement and relevant court documents were translated into Spanish. In most cases, this material was provided prior to the first appearance, which is earlier than the normal practice. Defendants who were charged with the same offense and offered the same plea agreement typically were arranged in groups of 10. This enabled the defense attorney (accompanied by an interpreter) to explain the common information to a group of similarly situated clients. Counsel were also free to meet with clients individually. The attorneys met with their clients in rooms specially built for this purpose and furnished with tables and chairs. After the first court appearance, many detainees had the opportunity to meet with their counsel again. Then they were transported to local jails where they were free to meet with defense counsel. Two additional attorneys assisted with advising the defendants at the local jails.

Consul and Congressional Staff. Representatives of the detainees' consulates were notified and were on site to meet with and advise their citizens. After touring the grounds, the Guatemalan consulate said he saw no evidence of human or civil rights violations and was encouraged by the tour. Congressional staff members for Congressman Braley and for Senators Grassley and Harkin also toured the facility.

Identity Theft and Immigration Charges. Most – but not all – of the 306 workers faced charges of aggravated identity theft because they were using immigration or Social Security cards with a number belonging to somebody else. These were not victimless crimes; there were real people whose identities were stolen. The Federal Trade Commission estimates that since 2005, 8.3 million Americans have been victims of identity theft. Even in cases in which an identity theft victim does not suffer out-of-pocket losses, significant time and frustration can be spent in re-securing one's personally identifying information. Identity theft strikes at one's sense of security and privacy. Post 9/11, we also recognize that identity theft poses a security risk to all of us. Because of the concern for identity theft, the harm it causes to individuals and the risk to our security as a nation, Congress has mandated a two-year or five-year sentence for anyone who knowingly transfers, possesses or uses the identification of another person in relation to certain specified felonies. *See* 18 U.S.C. § 1028A. Various immigration and Social Security offenses are included in the list of specified felonies that warrant a two-year sentence. This penalty is provided in addition to any sentence for the underlying immigration or Social Security offense. For example, the sentence could be five months for the underlying offense and two additional years for aggravated identity theft.

In this case, the U.S. Attorney's Office offered the defendants the opportunity to plead guilty only to the underlying offense and to have the more serious identity theft charge dismissed. In exchange for the benefit of pleading to the lesser charge and receiving a lighter sentence, the defendants agreed, upon the advice of counsel, to cooperate with the Government in the ongoing investigation, waive appeal and stipulate to a deportation order, pursuant to a standard plea agreement. Each of the defendants had the advice of experienced and capable defense counsel prior to making any decision. Plea agreements like this one are often used because they promote judicial and governmental economy and are a common and even essential part of the criminal justice system. At the same time, these agreements also benefit defendants by allowing them to plead to a vastly reduced charge, spend less time in custody and be rewarded for their cooperation and for accepting responsibility for their misconduct.

Court Hearings.

All of the court hearings were open to the public and were attended by the defendants' friends and families as well as the media. As is the normal course, in the first court appearance the magistrate or district court judges advised defendants of the charges against them, their rights under the Constitution, formally appointed a lawyer, and set a date for a status hearing.

The defendants were given seven days from the date of their first appearance to consider whether or not they wanted to take advantage of the five-month or other plea offer. During that time, the U.S. Marshals Service sought to house together those defendants represented by the same counsel and facing the same charges in order to facilitate group and individual meetings with counsel. Although counsel had seven days from the date of the first court appearance to consult with their clients concerning the plea agreement, in most cases defense counsel returned

the signed plea agreements much earlier. Indeed, after consulting with counsel, all of the defendants facing criminal charges decided to plead guilty.

Defendants appeared before a federal magistrate or district court judge to plead guilty. During the plea hearing, the magistrate judge engaged in a lengthy colloquy, typically with a group of approximately 10 defendants who were each pleading guilty to the same charge. The court addressed the defendants, often individually, throughout the course of the hearing and, as is the normal course and is required, determined that *each individual defendant*: had a copy of the charges in the Information, waived indictment, wanted to plead guilty, consented to a pleading before a magistrate, had the mental capacity to understand what was happening during the proceedings, was satisfied with the representation of defense counsel, understood his/her constitutional rights and wanted to waive those rights, had a copy of the plea agreement in court, had signed the plea agreement, had reviewed the plea agreement with his/her attorney before signing it, understood all of the terms in the plea agreement, agreed to be bound by the terms of the plea agreement, agreed that the factual allegations establishing guilt were true and accurate, understood the penalties for the charge, understood the penalty provided in the plea agreement, had waived a right to appeal, and was entering the plea voluntarily.

Further, the court specifically asked each defense counsel: whether defendant had waived the right to indictment, whether counsel had any reason to believe that their client was not competent to enter a guilty plea at that time, whether counsel believed that their client understood the elements of the charges, whether counsel believed there was a factual basis for the guilty plea to the charges, whether counsel knew of any possible defense that had not been considered and discussed with the client, whether counsel believed that the client was pleading

voluntarily, whether counsel knew of any legal reason why the plea should not be accepted, and whether counsel knew of anything that the court had omitted which could affect the validity of the plea.

Only after receiving answers to all of these questions from both the defendant and the defense attorney did the court accept the defendant's guilty plea.

Those defendants who pled guilty before a magistrate judge then appeared before a federal district court judge. The district court judge also addressed each defendant individually and confirmed that he/she recalled pleading guilty to the charge, knew the maximum penalty, understood that he/she was about to be sentenced, and still admitted to being guilty of the crime. The defendant was also provided an opportunity to address the court before sentencing. Only then did the court accept the guilty plea and sentence the defendant.

Ultimately, 271 defendants were sentenced to five months in prison and three years of supervised release: 233 for use of false identification to obtain employment after admitting the use of an actual person's identity; 30 for false use of Social Security number or card after admitting the use of an actual person's Social Security number; eight for illegal reentry to the United States. Two defendants were sentenced to 12 months and a day in prison and three years of supervised release for use of false identification to obtain employment after admitting the use of an actual person's identity. Nearly all of the defendants sentenced to serve time had admitted using identification information that belonged to other people. These were not victimless crimes.

Twenty-seven defendants were sentenced to five years of probation for use of false identification or Social Security number/card that did not belong to an actual person or for illegal reentry.

Those who enter this country, even to work, must do so lawfully, under their true name, and without using someone else's Social Security number. While the sheer number of illegal aliens in this unusual case presented challenges that we do not often face, we believe that the defendants' constitutional rights were carefully protected and exercised throughout the operation and that each defendant was treated fairly and with respect and dignity. These rights were not only taken into consideration by the Government's lawyers and ICE in the planning and execution of the operation, they were also safeguarded by defense counsel, immigration lawyers, consulate officials, magistrate judges, and district judges throughout the process.

Thank you again for the opportunity to testify here today, and I will be happy to answer any questions that I can.