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The Day Democracy Died:

The Postville Raid and the Criminalization of Migrants

Erik Camayd-Freixas, Ph.D.*

*“We must also find a sensible and humane way to deal with people here illegally. Illegal immigration is complicated, but it can be resolved. And it must be resolved in a way that upholds both our laws and our highest ideals.”*¹ – George W. Bush, State of the Union Address, January 28, 2008.

Introduction: The Postville Raid

It is impossible to overestimate the importance of Postville in contemporary American history and social policy. On May 12, 2008, this tiny Heartland farm town, secluded amid the rolling hills and cornfields of Northern Iowa, became the site of the largest immigration raid in U.S. history.² Of the 389 people arrested, three quarters were Kaq’chikel ethnic Mayans from the hills of Chimaltenango, Guatemala.³ Only five (1.2%) had minor criminal records.⁴ Yet they were all arraigned on felony charges of identity theft, making this an unprecedented criminalization of migrant workers. Despite begging to be deported, these Agriprocessors employees were jailed for five to 12 months, while their families suffered severe hardship. A decision made in Washington, D.C. destroyed the livelihood and hopes of hundreds of working families and sank well over a thousand children, from Iowa to Guatemala, deeper into poverty and malnutrition, while serving to perpetuate the generational cycle of labor migration.⁵

The direct cost of this raid to taxpayers, including prosecution and detention, exceeded 10 million dollars.⁶ But government expense dwarfed in comparison to the economic impact on the

tri-state region. Unable to replace its workforce, and facing mounting civil and criminal penalties, the employer, Agriprocessors kosher slaughterhouse, was forced into bankruptcy.⁷ This yielded 300 million dollars a year in regional loss of business for family farms and ordinary Americans, as well as an additional annual loss of \$7 million in remittances to some of the poorest families in Mexico and Guatemala.⁸ The raid will have lasting economic, social and political impacts at local, regional, national and international levels. It is a landmark case.

The Postville raid has profound implications for United States immigration and social policies at a time when a failed immigration reform bill has set the stage for the most far-reaching and divisive social conflict in decades. The immigration crisis threatens to become the 21st century equivalent of the abolition and civil rights struggles of the 19th and 20th centuries. Similarly to the United States' role in handling earlier civil rights struggles, currently, the United States may influence the immigration policies of other developed countries. Indeed, the criminalization of migrants in Postville may have influenced the European Union's draconian decision a month later to jail undocumented immigrants for up to a year and a half, a measure that drew harsh international criticism.⁹ A more constructive U.S. solution could become a model for a more enlightened management of migration as a global problem. Postville and its lessons are destined to become a fundamental case study in the development of Comprehensive Immigration Reform.

My own involvement in the Postville case began the very day of the raid. I flew in along with several colleagues to serve as a certified federal interpreter in the court hearings that extended for two weeks after the raid. My position as an expert linguist and impartial officer of the court afforded me an insider's view of each step in the judicial process, from government and judicial briefings and communications not accessible to the defense attorneys, to the attorney-

client interviews in jail, which prosecutors and judges never get to see. Only the interpreters are present at every step, get to see both sides up close, are familiar with both languages and cultures, and are given a comprehensive picture of the entire process. My experience left me so indignant at the injustice of these mass prosecutions and the excessive suffering they inflicted on hundreds of families, that after the cases were closed I wrote a detailed report of my observations for the judiciary, Congress, and the legal community.¹⁰

As I wrote my report, I conducted extensive research in order to understand the Postville case in a broader national context. As a Harvard-trained analyst, I used my knowledge of linguistics, law, social and critical theory to examine numerous documents, pronouncements and events, identify trends and interpreting the government's agenda in the Postville raid. Alarming though my findings were, I only scratched the surface. I have since conducted further research and consulted with legal experts, lawmakers, foreign diplomats, enforcement officers, social scientists and immigration researchers. I interviewed 94 of the Postville prisoners in federal jails before they were deported, visited Postville to better understand the social and economic impact of the raid and founded an interdisciplinary Research Initiative on Immigration Reform at Florida International University. I can now update my analysis of this protracted immigration crisis facing our country and our generation.

U.S. Immigration History: Political and Racial Responses to the Nation's Changing Labor Needs

U.S. immigration history shows that the Naturalization Act of 1790, the Alien Act of 1798, the Chinese Exclusion Act of 1882 and the Johnson-Reed Act of 1924 were all politically and racially motivated responses to the nation's changing labor needs. From the 1930s to the 1950s, immigration policy during the Great Depression, World War II and the Cold War invoked

the doctrine of expediency to brand Mexicans, Filipinos and Japanese residents as “illegal,” even though these residents entered the country legally, had been naturalized, and many were even U.S. born and were anywhere from first to third generation citizens. Those branded “illegal” were stripped of property and civil rights, and were interned or deported by the thousands. Only the Immigration Act Amendments of 1965, a product of the Civil Rights Movement, provided relief from the history of intolerant and racist immigration policies and ushered a period of relative normalcy.¹¹

In the 1980s, the U.S. sponsored Central American conflict, coupled with the economic neo-liberalism of the 1990s, displaced millions of peasants in Latin America and fueled immigration to the United States, a trend that has intensified in the last ten years under the free trade agreements.¹² The Immigration Reform and Control Act of 1986 (IRCA) provided amnesty for 2.7 million immigrants with continuous U.S. residence who entered prior to 1982, but made it illegal to hire undocumented migrants, laying the foundation for the current criminalization of migrant workers and the raiding of communities like Postville.

The root of the problem we face today is that the criminalization of migrant work coincides, and is exacerbated by, an increased demand for migrant workers in various sectors of the U.S. economy, which cannot survive without them. Until the 1980s, the U.S. followed the United Fruit Company model of shifting work to the source of cheap labor. But political conflict and changes in U.S. labor dynamics created a demand to bring cheap labor here on a *temporary* basis. As native born youth from rural towns like Postville migrated to big cities in search of opportunity, they created a severe labor shortage at home. Food processing plants, and other businesses that could not be shipped abroad, left larger cities and resettled in rural communities. This brought them closer to the livestock and cheaper real estate, and away from trade union

organizers. But it was also a movement away from the sources of American labor. As a result, the industry's competitiveness and survival began to depend on migrant labor, raising demand for imported workers, while depressing wages and making agribusiness jobs even more unappealing to city-bound American workers.

Through the mid 1990s, immigration regulation and enforcement remained limited, given the growing U.S. demand for cheap labor. Still, temporary seasonal laborers tended to stay beyond the period that the government had hoped for. There came a point where the supply of migrant workers began to meet – and in some cases exceed – the demand. The pressures of globalization brought an era of neo-liberalism and free trade agreements that proved disastrous for Mexico and Central America, displacing millions of workers and forcing them to migrate north to the United States. Initially, NAFTA was passed in 1993 as an agreement between the U.S. and Canada, and Mexico was later included under the assumption that it would lead to development and jobs South of the border, which would prevent migration North. Exactly the opposite happened. The free trade agreements allowed the U.S. to penetrate the weaker markets of our southern neighbors, displacing millions of workers and pressing them to migrate in order to survive. With the phase-out of tariffs under NAFTA, U.S. agricultural exports to Mexico grew 9.4% annually, according to the U.S. Department of Agriculture, reaching \$12.7 billion by 2007.¹³ Small local farmers could not compete with corn and other products dumped on the Mexican market by large U.S. producers, subsidized by the U.S. farm bill. These peasants simply could not sell their products for what it cost to produce them. As privatization of the public sector and the lifting of trade barriers for manufactured products eliminated thousands of jobs, the *campesinos* could not find work in Mexican cities either and were forced to migrate North.¹⁴

A similar process resulted from the Central American Free Trade Agreement (CAFTA), which included Guatemala. All 94 of the Postville workers I interviewed worked in agriculture back home in Guatemala or Mexico. They were displaced and either lost their land or left it idle. Those who grew carrots or broccoli could find no buyers even at cost. *Finqueros* (large farm owners, many of whom are foreign) drove up the prices of pesticide and fertilizer. Small farmers could not buy them, nor get loans or subsidies to continue farming. Work at the large farms paid only \$4 a day, not enough to support their families. So these workers were faced with little choice but to migrate.

The sharp increase in undocumented immigration since the mid-1990s is a legacy of our profitable free trade agreements. Before this mid-1990s migratory surge, immigration enforcement was sporadic, and virtually non-existent with respect to prosecution of employers. Yet criminal sanctions had been in place under IRCA since 1986, and were strengthened under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The use of phony work papers became commonplace for employers and workers alike, and verification requirements were extremely lax. For years the general attitude toward labor migrants had been one of tolerance, since the United States could profit from their labor and provide minimal social services to migrants.

In fact, the way the U.S. immigration system has always worked is that Congress regulates legal entry, but once inside, the executive branch has prosecutorial discretion to regulate the undocumented population, so as to maintain an exploitable labor pool. During the Bush Administration, worksite raids became the preferred method of attacking the “job magnets” suspected of drawing migrants across the border. Now the Obama Administration claims to focus on employers instead of vulnerable workers, but in reality it is the workers who suffer –and in

much greater numbers than before. Rather than militaristic raids, the new method is technocratic: expanding E-Verify, Social Security no-match rules, and employment Form I-9 audits. Such government-corporate inspection tactics have traditionally been used by employers against workers for union-busting, threat and retaliation purposes.¹⁵ A major offensive was launched July 1, 2009, when ICE served 652 employers, including the largest fast food chains, with Notices of Inspection to conduct I-9 audits.¹⁶ Within weeks, tens of thousands of workers, some with over 10 years' seniority, were terminated without severance pay.¹⁷ Regardless the means, poisoning the food source remains a particularly perverse method of population control. Further, this selective enforcement against second tier jobs pushes migrants underground into subhuman sweatshops and lowest tier sectors such as agriculture –which are spared from enforcement precisely because they absolutely depend on exploited migrant labor. This double standard makes all forms of worksite immigration enforcement part of a repressive mechanism that serves to secure nothing other than a national system of modern-day slavery.

The tide with respect to government tolerance had already turned by the late 1990s with IIRIRA, but there was no enforcement mechanism or political justification for criminalization and a mass deportation campaign to curb the immigration surge spurred by the Free Trade Agreement. Sadly, the excuse for this unprecedented crackdown on immigration was the attack of September 11, 2001.

One of the consequences of 9/11 was the urgency for government to respond with anything that could be perceived as commensurate with the scale of the catastrophe. This need for retribution demanded aggressive, massive action. Going to war, abroad and at home, appealed to the Bush Administration. This led to a centralization of enforcement and a doctrine of expediency that would soon justify excesses in the name of “national security.” In 2003, the

“War on Terror” first focused on Iraq and, in 2006, detoured to a new domestic war on immigration.

Post 9/11: The Bush Administration Creates the Department of Homeland Security and the Bureau of Immigration and Customs Enforcement

“Those who are willing to trade freedom for security deserve neither freedom nor security.”¹⁸

Criticism and blame after the 9/11 attacks resulted in the argument that federal agencies were fragmented and did not communicate adequately with each other. This gave the Bush Administration the perfect excuse for integrating the intelligence operations of the different agencies of the executive branch under a single directorship. The Department of Homeland Security (DHS) would control and oversee 22 government agencies, currently with over 200,000 employees and a \$40 billion budget, designed to protect America from a myriad of imaginable terrorist threats.¹⁹ The identification of numerous vulnerabilities led to a widening definition of “security” – which now includes immigration and domestic disturbances under the terrorism rubric. This led to a widening range of countermeasures, crossing the purview of very different federal agencies, such as immigration and customs, now centralized under Homeland Security, with the creation of Immigration and Customs Enforcement (ICE) in March 2003 as its main enforcement arm.

This government merger institutionalizes two un-American social tendencies for the sake of security: militarization and dehumanization. On March 1, 2003, the civil service aspects of the old Immigration and Naturalization Service (INS) and U.S. Customs Service were separated from their enforcement aspects. The civil side of INS became the U.S. Citizenship and Immigration Service (USCIS), while U.S. Customs passed from the Treasury Department to Homeland Security. No longer tempered by a civil mission and management, the enforcement

aspects were combined with other police agencies to form two paramilitary forces, U.S. Customs and Border Protection (CBP) and ICE. Recent proposals to merge CBP and ICE would further centralize this militarization. Later, we will see this process, and the Postville raid, as a rehearsal for martial law. Meanwhile, the blending of immigration (regulation of people) and customs (regulation of things) in an enforcement context results in the routine mishandling and treatment of people as chattel. This combination fosters objectification mechanisms conducive to the normalization of abusive dehumanizing practices such as human warehousing, the separation of families, and the proliferation of electronic monitoring devices and other forms of human tagging.

Given that the 9/11 terrorists were aliens who presented false papers or overstayed their visas, DHS mounted a propagandistic campaign linking “immigration” and “terrorism” under their new expanded definition of “security.” My essay on Postville argued that the war on terror provided the political justification for the war on immigration, while the war on immigration provided the statistics to justify the budget to finance the war on terror.²⁰ This political and economic codependence is not founded on reason, logic, or truth, but has been excused by a doctrine of expediency: the end justifies the means.

Operation Endgame became ICE’s foundational blueprint for transposing the doctrine of expediency, from the war on terror to the war on immigration, at a proportionate quantitative scale and qualitative harshness. Endgame is a 10-year master plan (2003-2012) for removing all deportable aliens from the U.S. – an estimated 12 million people. The ACLU uncovered the “smoking gun” document after a 2007 raid in New Bedford, Massachusetts, and warned in a *Boston Globe* editorial that it was perilously close to a recipe for ethnic cleansing.²¹ The

document and any communications referencing it were swiftly removed from government websites, but not before being downloaded and posted elsewhere on the internet.

Operation Endgame: A Plan to Deport All Undocumented Immigrants

“An evil exists that threatens every man, woman, and child of this great country. We must take steps to ensure our domestic security and protect our Homeland.”²²

More than likely, it is impossible to incarcerate and deport 12 million people, as well as prevent any new migration, without establishing a draconian police state (not to mention eroding our food industry). But the practical objective is twofold: first, to build government capability (removals for Fiscal Year 2008 were up to 350,000 while illegal entries were down to 500,000²³ – at this rate, zero sum may be a short time away); and second, to set the extreme Endgame as the standard for the maximized enforcement of existing immigration laws. Anything short of complete enforcement would presumably require “humanitarian concerns” and be represented as a concession or leniency for public relations.²⁴ The complete enforcement standard and the escalating raids effectively pressure moderate lawmakers into accepting any slanted version of immigration reform as an alternative to Endgame.

In conjunction with Operation Endgame, a series of security laws and administrative rules ushered by the Patriot Act has led to an alarming erosion of democratic principles, constitutional guarantees, and civil liberties, consistent with the “unitary executive” theory, also referred to as the Bush “Imperial Presidency,” given the Bush Administration’s penchant for exceeding constitutional limits.²⁵ The centralization of executive branch agencies meant a consolidation of power that gave Homeland Security jurisdiction over immigration and criminal statutes, plus the authority to issue administrative rules that have the force of law. With this powerful centralization came the ability to dictate policy, beyond congressional and even

presidential control, simply by using a strategic mix of existing immigration and criminal laws, reinforced by drafting new administrative regulations. Homeland Security's ICE can claim to simply be doing their duty of enforcing the law, and deny that they are really dictating immigration policy.

Homeland Security has been repeatedly criticized for encroaching on the role of the legislature.²⁶ In Postville, with the fast-track criminalization of workers, DHS/ICE was also seen to co-opt and gain deterministic control over the judiciary, circumventing the pillars of our democracy: the Bill of Rights, procedural due process, and the separation of powers. This unified executive agency operates outside the control of Congress, with great autonomy, considerable secrecy, and limited accountability: a government within a government, a growing authoritarian power inside the shell of a constitutional democracy. Postville exposes with unprecedented clarity the mechanisms of abuse of power, and is likely to become a landmark example of the undermining of firmly rooted constitutional principles.

Abusive Arrests and Deputizing Local Police as Immigration Agents

“This and no other is the root from which a tyrant springs; when he first appears, he is a protector.”²⁷

In addition to the raids, which are highly publicized, there are abusive arrests going on in communities across the country.²⁸ Because they involve only a few individuals at a time, these arrests tend to go unnoticed by the media. Yet in the aggregate they far exceed the impact of the raids. In the 2008 fiscal year alone, a record 356,739 individuals were arrested, interned, and removed, while only 5,184 of these came from worksite raids.²⁹ One of the most troubling aspects of this deportation campaign is the 287(g) program, which allows ICE to deputize dozens of local police precincts to conduct immigration enforcement.³⁰ This program has a cumulative

effect that can be more devastating on communities than the large raids. It also helps ICE to elude executive control and accountability.³¹ In fact, when the Obama Administration curtailed the highly visible worksite raids in late February 2009, ICE aggressively stepped up its door-to-door operations.³² Moreover, as a concession to the enforcement lobby and the most anti-immigrant counties, in exchange for stopping the larger raids, the Obama Administration approved the expansion of the controversial 287(g) program.³³

The local police officers deputized under 287(g) diverge from their ordinary duty of protecting the community, and instead arrest harmless people on the basis of federal immigration policy, rather than any suspected criminality. This selective enforcement tears the social fabric, erodes community trust, encourages racial profiling, and causes real crimes to go unreported. The scars may last a generation. Most local police departments across the nation are declining to participate in immigration enforcement. They believe this program sets neighbor against neighbor, dangerously dividing the nation. It has encouraged community denunciations, vigilantism, and even a wave of hate crimes. In August 2008, for example, a Dallas woman was reported by a hospital after applying for a cafeteria job.³⁴ Schools may be next. In Postville, ICE agents are suspected to have reviewed school rosters searching for Hispanic surnames.³⁵ This systematic profiling of a large sector of the population is beginning to affect millions of U.S. Latinos, regardless of immigration status.

Experience shows that it is impossible to conduct immigration investigations and enforcement without engaging in racial profiling. In the Laurel, Mississippi raid on August 25, 2008, Hispanics were lined up on one side of the factory hall and non-Hispanics on the other.³⁶ The agents proceeded to check the Hispanics for papers. Every day, local police are spotting Hispanic-looking drivers, stopping them under the pretext of a routine traffic check, and jailing

those who fail to produce documentation of citizenship.³⁷ There are scant funds for participation in 287(g); the incentive for local authorities is to put people in county jails. Then ICE pays the local contract prison an average \$141 a day per immigration detainee.³⁸ The 287(g) program combines federal surveillance methods with local neighborhood intelligence. Racially profiled Latinos are being routinely ambushed on their way to church, to pick their kids up from school, traveling by train or bus, returning home after work, or when their homes are invaded.³⁹ They are arrested without a warrant and detained indefinitely without a hearing.⁴⁰ Life for millions of profiled Latinos in the United States of America is now comparable to living under a totalitarian regime such as the People's Republic of China.⁴¹

*"If you don't have enough evidence to charge someone criminally but you think he is illegal, we [ICE] can make him disappear."*⁴²

The Strategic Criminalization of Undocumented Immigration: The Fall of Civil Service and the Rise of the Enforcement Regime

At a national level, the criminalization of migrants advances another expediency scheme. The current rate of arrests has greatly aggravated an already severe shortage of immigration judges, whose numbers have not increased since 2003. The 217 judges hearing cases in 51 jurisdictions handle an average of 1,400 to 1,800 cases per year. The busiest judges along the Border States are approaching 4,000 cases a year. Anything over 1,000 cases is considered excessive.⁴³ ICE is arresting people faster than they can be processed. As a result, the backlog is increasing at an alarming rate. Depending on the case, a disposition can take months and even years: the more you fight deportation, the longer you wait in jail. Meanwhile, the immigration detention population continues to skyrocket.

Three drastic measures are being pursued in response to the backlog: fast-tracking, ankle monitors, and expansion of detention facilities. "Fast-tracking" was once authorized only along

the border, essentially to turn back new entrants.⁴⁴ But it is now commonplace nationwide, resulting in abridgments of due process often against people who have lived in the U.S. for many years and have U.S. born children. Even though they may have good prospects for an adjustment of status, they are simply forced to renounce all rights and remedies or face long periods of incarceration. Tens of thousands of families are separated every year, and the social impact on communities and individuals grows without measure. Fast-track orders of removal have skyrocketed from 5,500 in 2004 to over 31,000 in 2007.⁴⁵ The Postville case, with its fast-track criminalization of 300 migrants, was unique only in that it was a single raid.

The second means of alleviating the backlog is the growing use of GPS ankle monitors as an alternative form of detention. Caretakers of children and “low-risk” detainees are fitted with these monitors and released to their homes pending a court date that may take more than a year. Although preferable to incarceration, these artifacts have a dehumanizing psychological impact on the person, the family, and the community. Six months after the Postville raid, the 56 women released with an ankle monitor, and their children, were suffering from depression, post-traumatic stress, ulceration, and a host of other disorders. Almost a year and a half after the May 2008 raid, there are still several women with these electronic shackles, despite doctors’ letters asking for their removal. The women need to spend two hours a day plugged to an outlet to recharge a bulky battery that overheats. In August 2009, a young Mexican mother came crying to the local church because she was getting jolted every time she plugged in. Immigration authorities rebuffed the church’s petition to remove the gadget by offering instead to put the woman in jail pending her deportation.⁴⁶ Forbidden to work or leave Postville, and forced to rely entirely on charity for their sustenance, these formerly productive members of society become a burden on the community, which resents the government and pities the workers and their

families. Thousands nationwide are currently tagged with electronic monitoring.⁴⁷ While those detained or deported are out of sight, the presence of these branded and needy individuals weighs heavily on the community and becomes an indictment of the government's growing disregard for human rights.

Fast-tracking and ankle monitors negatively impact the agency's public relations. The government's preferred alternative solution is also the cruelest: the incarceration of thousands of innocent men, women, and children through criminalization policies. Immigration detention beds have nearly doubled between 2005 and 2008.⁴⁸ Their number currently stands at 33,400, and they are full to capacity on any given day.⁴⁹ In fact, the only restraint on ICE raids and arrests is the limit posed by the processing, monitoring, and detention capacity of an already overloaded system. The prevailing evidence decodes the fast-track criminalization of the 300 Postville workers as a policy decision based on expediency rather than legal reasoning. By forcing the Postville workers to plead guilty to felony charges, the agency was able to route them to county, state, and federal prison systems as common criminals, thereby alleviating the immigration detention network. By forcing detainees to accept deportation without a hearing as part of their Plea Agreements, ICE lightened the caseload for immigration judges. By framing them as felony cases, ICE effectively circumvented the immigration system and its remedies as prescribed by Congress. This pilot operation would have become the norm around the country, significantly increasing the capacity for additional raids and arrests, had it not backfired due to its flagrant abuse of due process. Finally, on May 4, 2009 the U.S. Supreme Court slammed the abusive charge of identity theft against migrants in a historic 9-0 decision.⁵⁰

There is yet a deeper significance to unmasking this legal manipulation. In addition to being a pilot project, the Postville case was part of a broader and more dangerous political trend:

the normalization of extremist enforcement, under the guise of terrorism prevention, within the discourse of national security. Applied to security, the doctrine of expediency has led to not only preventive laws but to preventive enforcement, meaning that enforcement is centered on the possibility that a crime could be committed, rather than a crime actually being committed. Criminalization of non-criminal behavior allows for potentially anyone to be imprisoned as a means of preventing crimes against national security. This is why Postville workers were criminalized by accusations of purposeful “identity theft” and treated as potential terrorists. Regardless of the Supreme Court decision, undocumented workers are jailed by the thousands.⁵¹ Even when they are not criminally charged, they can be held indefinitely in immigration detention, without charges or habeas corpus, sometimes under deplorable conditions. More than 80 people have died in immigration detention since 2003.⁵² Major prisons in Texas and Pennsylvania are now designated for family detention, and currently hold hundreds of children.⁵³

Congress delegated enormous power to DHS and ICE for the express purpose of fighting the war on terror. Now ICE is using that same power to wage an unauthorized war on immigration, circumventing congressional control and immigration reform through the self-serving application of administrative laws. Like the imaginary weapons of mass destruction in Iraq, the false charge of “identity theft” was the pretext to criminalize poor working parents, meatpackers, crop-pickers, sweat-shoppers, and cleaning ladies as potential terrorists, and to justify raids, chains and shackles, ankle monitors, racial profiling, home invasions, denial of due process, indefinite detention, separation of families, and thinly-veiled methods of population control, all of which have been codified into law. In the name of “national security” and “the rule of law,” ICE has carried out a detention and removal campaign in flagrant violation of human

rights, against poor people of color, displaced by famine, violence, and civil war, often created or fostered by our own government policies.

The Constitution of the United States: An Obstacle to National Security

*“If Tyranny and Oppression come to this land it will be in the guise of fighting a foreign enemy. If our nation is ever taken over, it will be taken over from within.”*⁵⁴

This systematic violence against migrants may go unnoticed by many Americans, were it not for its direct assault on our most precious democratic principles and institutions. What your government does to others, one day it will do to you. Just ask the people of Postville. The response to 9/11 has been a growing militarization in foreign, domestic, and immigration policies. In addition to Operation Endgame, national security expediency has been invoked to justify laws and measures that provide an avenue for the absolute power of the State.

The 2007 National Defense Authorization Act gives the executive the power to declare martial law.⁵⁵ At the same time, the White House decreed the National Security Presidential Directive 51, giving the president absolute power to ensure “continuity of government” in the event of a “catastrophic emergency.”⁵⁶ The Military Commissions Act of 2006 provides for indefinite imprisonment of anyone linked to “terrorist” organizations or states, legalizing the martial-court treatment of civilians. The Violent Radicalization and Homegrown Terrorism Prevention Act of 2007 expands the domestic investigative authority of the Patriot Act. What is most troubling about this trend is the domestic expansion of the definition of “terrorist,” as signaled by the Animal Enterprise Terrorism Act of 2006, which targets animal rights and environmental activists. The label “terrorist” can now easily be expanded to anyone who opposes the growing authoritarianism of the State, and in particular to immigration activists. The current conflation of immigration and terrorism by DHS and ICE has already expanded the

designation of “potential terrorists” to all undocumented immigrants, as we saw earlier. Then the increasingly “preventive” design of the new laws makes the designation expandable to anyone who opposes the State, as someone “potentially” prone to violent protest, and hence to “homegrown terrorism.”

This pattern provides a window into the strategic reason behind the creation of Homeland Security/ICE, leading to the Postville raid. Lawmakers since the American Civil War have abhorred the domestic use of military force as a major threat to democracy. To protect the Constitution after the Civil War, they enacted the Posse Comitatus Act of 1878, which prohibits military deployment in law enforcement, domestic raids and property seizures. A safeguard that stood for over a century and survived two world wars, the Great Depression, and the Cold War, came to be seen as an obstacle to national security soon after 9/11. A Justice Department memo of October 23, 2001, declassified in March 2009, argued that the president was authorized to use the military domestically against terrorists and enemy combatants, because it served a national security rather than a law enforcement purpose. A year later, in 2002, the memo was invoked by Vice-President Chaney and some security advisors to propose using the military to arrest six terrorist suspects outside Buffalo. Other top officials strongly opposed it, and President Bush ended up sending the FBI instead.⁵⁷ The following year, in March 2003, DHS/ICE was created as a domestic paramilitary force, essentially to circumvent Posse Comitatus. Preparations for martial law had also intensified after 9/11. Two years after the attacks, General Tommy Franks speculated in an interview that a new catastrophic attack could mean the end of the Constitution and the rapid militarization of our society.⁵⁸ In this sense, DHS and ICE were strategically conceived as an alternative to martial law. The Postville raid was its dressed rehearsal.

Conclusion: American Values and Enlightened Immigration Reform

“Behind the ostensible government sits enthroned an invisible government owing no allegiance and acknowledging no responsibility to the people.”⁵⁹

At present we have seen systematic repression applied mostly to immigrants, but the mechanisms and the infrastructure are in place to turn it against citizens as well. Thus far we have considered only the legal mechanisms, but the most significant byproduct of the present war on immigration is that it establishes tactical and strategic mechanisms of enforcement, and builds personnel and infrastructure capacity for implementation. Now we have a growing domestic paramilitary force and a rapidly expanding network of government and privately-owned and operated prisons. The U.S. prison population has tripled since 1987. Ironically, we now have the highest incarceration rate in the world (762 per every 100,000); up to eight times the rate in Canada and Western Europe.⁶⁰ The private prison industry in the United States is booming under Homeland Security at a rate of nearly 30% per year, led by the Corrections Corporation of America, Geo Group (formerly Wackenhut), and KBR (formerly part of Halliburton).⁶¹ ICE detention and processing centers have doubled in capacity since 2004, to 33,000 beds, with a yearly operational cost of \$1.7 billion.⁶² According to KBR’s 2006 single-bid “Indefinite Delivery/Indefinite Quantity” (IDIQ) contract, the purpose of this buildup is to provide ICE detention support “in the event of an immigration emergency, as well as the development of a plan to react to a national emergency.”⁶³ In short, the war on immigration provides the pretext to justify, finance, build and exercise a growing domestic paramilitary force and an expansive prison infrastructure to guarantee the readiness and security of the State against all perils.

Rather than “Homeland” Security, this seems like “State” Security; that is, security for the government, not the people. Nowhere is this more evident than in Postville, where the

survival of a community was jeopardized for the sake of piloting a new method of deployment, detention, and fast-track prosecution. The government's escalating raids continued under the Bush-Chaney platform despite public outrage and vigorous opposition by civil society, including the legal community, religious groups of all denominations, labor, schools, civic organizations, the media and many members of Congress. Indeed, after Postville, the August 25, 2008 raid in Laurel, Mississippi, which netted a new record of 595 prisoners, was conducted in apparent disdain of public opinion. In the wake of 9/11, the patriotic connotation of "Homeland" Security seems to now demand submission to the policies of State, however abusive. In this emerging brave new world the State *is* our Homeland.

After 9/11, we have fulfilled the terrorists' designs --internalizing fear, allowing it to rule our foreign, domestic, and immigration policies, embodying their demonizing claims. We are doing the terrorists' work for them. This is becoming an institutionalized trend that may not be easily reversed. The new Obama Administration has inherited an enthroned superstructure of laws and an infrastructure of paramilitary enforcement and prisons that cannot be easily undone. It will take sustained pressure and the concerted effort of civil society to reverse the erosion of our democracy and to restore our civil liberties and the national values we previously thought ingrained and enduring.

To solve the most serious social crisis of our generation, we must first understand that migration, in the modern world, is propelled by enormous forces of supply and demand in global labor markets. The lack of jobs and abject poverty among our neighbors is coupled with a strong U.S. demand for workers in low-paying, labor-intensive sectors, such as agribusiness, construction, maintenance, and low-skilled manufacturing. These jobs are fundamental to our

economy, and yet they are often unappealing to those with access to broader opportunities. Still, they can be a lifesaver for migrant workers and their families.

There are five major areas to Comprehensive Immigration Reform: (1) immediate decriminalization and a prioritized path to legalization; (2) expansion of visa processing and family reunification quotas; (3) a free-trade workers protection program; (4) redefinition of legitimate security and enforcement; and (5) the mitigation of the root socio-economic causes of forced migration, through managed cooperation, foreign aid, and targeted community development programs. A strong need on both sides of our borders suggests the opportunity for mutual benefit. That is the basis for enlightened immigration reform, and the road to the restoration of American values in our lifetime.

“I hold the right of expatriation to be inherent in every man by the laws of nature, and incapable of being rightfully taken from him even by the united will of every other person in the nation. If the laws have provided no particular mode by which the right of expatriation may be exercised, the individual may do it by any effectual and unequivocal act or declaration.” –Thomas Jefferson⁶⁴

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⁴ Interview with Assistant U.S. Attorney in Waterloo, Iowa (May 22, 2008).

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⁸ *Id.*; Personal interview with Agriprocessors' Comptroller in Decorah, Iowa (Oct. 22, 2008).

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¹⁰ Erik Camayd-Freixas, *Interpreting After the Largest ICE Raid in U.S. History: A Personal Account*, N.Y. TIMES, June 13, 2008; *Hearing on the Arrest, Prosecution and Conviction of 297 Undocumented Workers in Postville, Iowa Before the Subcomm. on Immigration, Citizenship, Border Sec., and Int'l Law of the H. Comm. on the Judiciary*, 110th Cong. (2008) (statement of Erik Camayd-Freixas, Federally Certified Interpreter); Erik Camayd-Freixas, *A Matter of Interpretation*, PROGRESSIVE, Nov. 2008, at 18, 18-23.

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³² John Stark, “[Napolitano orders review of Bellingham immigration raid](#),” *The Bellingham Herald*, Feb. 25, 2009.

³³ Democracy Now!, *Obama Admin Expands Law Enforcement Program 287(g), Criticized for Targeting Immigrants and Increasing Racial Profiling*, July 29, 2009.

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⁴⁶ "Interview: As Ankle Bracelets Make Former Agriprocessors Workers Ill, ICE Threatens Jail And Deportation," *FailedMessiah.com*, August 19, 2009.

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⁶³ Press Release, KBR, KBR Awarded U.S. Department of Homeland Security Contingency Support Project for Emergency Support Services (Jan. 24, 2006).

⁶⁴ Letter to Albert Gallatin (1806) in WRITINGS, at 8:458 (Ford Edition, 10 vols. Paul Leicester Ford 1892-99). Jefferson held to this view throughout his political career. In 1774 he stated: “Our ancestors... possessed a right, which nature has given to all men, of departing from the country in which chance, not choice, has placed them, of going in quest of new habitations.” See Rights of British America, in WRITINGS 1:185 (Memorial Edition, 20 vols. Lipscomb and Bergh 1903-04). In 1821 he added: “Expatriation [is] a natural right, and acted on as such by all nations in all ages.” See AUTOBIOGRAPHY, reprinted in WRITINGS, at 1:12, (Memorial Edition, 20 vols. Lipscomb and Bergh 1903-04).