



# Defending Human Rights & Due Process

A Policy Brief from the DHS-NGO Enforcement Working Group

Fall 2008

## Immigration Enforcement's Newest Strategy: Prosecution for Federal Crimes and Swift Deportation

Immigration enforcement has skyrocketed in recent years with worksite arrests jumping from approximately 500 in 2002 to 5,000 in 2007.<sup>1</sup> Most of the men, women and children who were caught up in these actions were charged with civil immigration charges, which carry severe consequences including family separation and deportation.

But in May 2008, federal officials raided Agriprocessors, Inc., a meatpacking plant in Postville, Iowa, and arrested nearly 400 workers. The raid was one of the largest single-worksite enforcement actions to date, and marked a much more aggressive approach by U.S. Immigration and Customs Enforcement (ICE), an arm of the Department of Homeland Security.

More than 300 men, women and children who were working at Agriprocessors were charged with federal crimes of identity theft and document fraud. A small number of juveniles and sole care providers were released, but the vast majority were herded through a “fast-track” system that made a mockery of the U.S. justice system. ♦

“Driven single-file in groups of 10, shackled at the wrists, waist and ankles, chains dragging as they shuffled through, the slaughterhouse workers were brought in for arraignment, sat and listened through headsets to the interpreted initial appearance, before marching out again to be bused to different county jails, only to make room for the next row of 10.”

— Erik Camayd-Freixas, Ph.D.

“Interpreting after the Largest ICE Raid in US History: A Personal Account”<sup>2</sup>

### Deprivations of Due Process and Human Rights in the Postville Raid

Legal proceedings following the Postville raid were inadequate, offering men and women little access to legal protections.

#### Pressured to Accept Charges

Federal prosecutors pressured the defendants to accept an “exploding plea” — an offer that was good for a maximum of seven days. Under the offer, defendants pled guilty to charges that required a five-month prison sentence and agreed to waive all rights to seek immigration status, effectively agreeing to automatic deportation after they served their prison time.

#### Limited Legal Protection

The court appointed federal defenders—with little to no immigration law expertise—to represent the defendants. Immigration law experts were kept largely at bay, unable to

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*The DHS-NGO Enforcement Working Group facilitates advocacy and open communication between the Department of Homeland Security (DHS) and human rights organizations, legal aid providers, and immigrant rights' groups. With a nationwide membership of more than three dozen organizations, the Working Group advocates for full protection of internationally recognized human rights, constitutional and statutory due process rights, and humane treatment of noncitizens. The Working Group is co-chaired by Heartland Alliance's National Immigrant Justice Center and the Chicago Bar Foundation.*

# ICE Conduct at Postville Violates Human Rights and the Spirit of the ICE Detention Standards

After the ICE raid in Postville, the men and women detainees were held at a cattle fairground in Waterloo, Iowa. Immigration attorneys traveled to the cattle ground to offer legal orientation presentations (LOPs), also called “Know Your Rights” presentations, and to offer *pro bono* legal services to those who might have a legal option to gain immigration status.

But even though international law and U.S. statutes and regulations require immigrants in custody to be provided access to counsel, ICE allowed only a few immigration attorneys to meet with workers.

## International Law Protections

The right to be free from arbitrary detention and the right to a hearing are guaranteed by the Universal Declaration of Human Rights (Article 9) and by the International Covenant on Civil and Political Rights (Article 9, Section 4). The Refugee Convention prohibits detention of asylum seekers except in strictly limited circumstances and states that detention should be subject to judicial review.

## The Immigration and Nationality Act (INA)

The U.S. INA provides certain rights to non-citizens to seek advice of legal counsel, to obtain lists of *pro bono* counsel<sup>3</sup>, and to be represented by counsel in proceedings.<sup>4</sup> To ignore these statutes is to undermine the intent of Congress.

## The Code of Federal Regulations (CFR)

The CFR provides for representation by counsel of an immigrant in deportation proceedings.<sup>5</sup>

## ICE Detention Standards

LOPs are authorized under the ICE detention standards, which state that “facilities are required to cooperate fully with authorized persons seeking to make such presentations.”<sup>6</sup>

**Advocates must hold ICE accountable for implementing its own standards, including guaranteeing prompt access to counsel, LOPs, and communication with family to ensure basic human rights are protected.**

## Who Was Arrested in Postville?

### 302 Workers

302 noncitizen workers were charged with federal crimes, primarily for identity theft or document fraud. A majority of these workers accepted the “exploding plea” offer and were sentenced to five months in jail. They will face immediate deportation after their sentences end in October 2008.

### 23 Juveniles

ICE released 23 juveniles and several dozen sole caregivers. Most of the adults released on humanitarian grounds were placed in a supervision program that required them to wear an ankle bracelet and prohibited them from working.



Agriprocessors human resources office. Photo by Robin A. Stone

### 2 Supervisors

Two Agriprocessors supervisors were arrested and pled guilty to hiring and/or harboring undocumented workers at the plant.

### 1 Owner & 4 Managers

The owner and four managers of Agriprocessors were charged with 9,311 state misdemeanor counts which alleged they hired more than 30 minors to work in the meat-processing plant. The charges represent one count for each day a particular violation is alleged for each worker. Two of the managers also were charged with helping to hire undocumented immigrants, a federal crime. The State of Iowa cited Agriprocessors for 31 alleged violations of workplace safety regulations. ♦

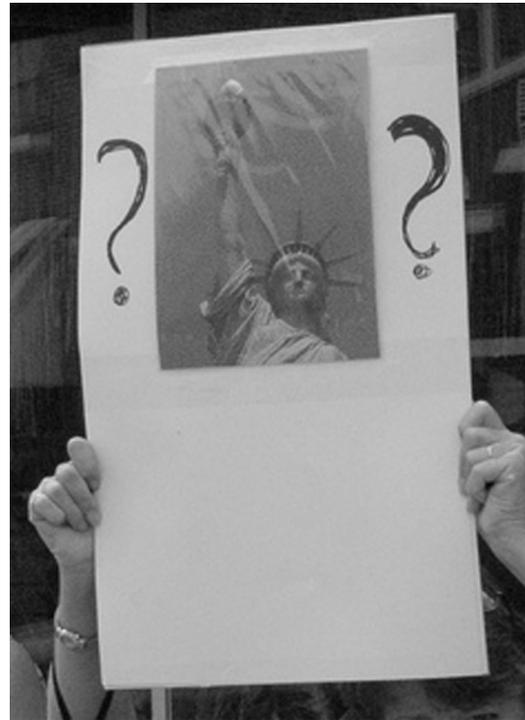
## Postville Proceedings: A New Trend in Immigration Enforcement?

Federal criminal charges for identity theft and document fraud were applied more broadly in Postville than in earlier worksite raids.

Even in Postville, evidence suggests that the workers did not demonstrate intent to commit identity theft or document fraud. Supervisors allegedly provided workers with fraudulent papers. Federal criminal charges with mandatory minimum jail time are grossly inappropriate under such circumstances.

ICE conducted another large raid in August 2008 in Laurel, Mississippi. There, ICE arrested 595 workers on immigration charges. Eight were charged with federal criminal charges. The smaller number of workers charged with federal crimes may indicate a shift in government practice, but it remains to be seen what evidence will be brought against the eight individuals.

**Advocates and legal aid providers must remain vigilant to ensure that federal charges are only applied to those workers for whom there is evidence that they intended to commit and did in fact commit the crime in question.**



Protester at rally in Postville in July.  
Photo by Matthew Walleser

## Problems with Immigrant Detention Persist After Mississippi Raid

Even though fewer workers received criminal charges in the Laurel, Mississippi, raid than in the Postville raid, the operation raised several due process and human rights concerns that continue to be endemic to large-scale raids.

ICE declined to release most of the immigrants who were arrested. Instead, ICE transferred these men and women to a detention center in Jena, Louisiana, a rural area with virtually no immigration attorneys.

The Department of Justice maintains a list of volunteer attorneys, but only two nonprofit immigration aid providers (located 140 and 220 miles from Jena) serve the entire state of Louisiana.

As a result, local advocates recruited attorneys from around the nation to fly in and offer legal orientation presentations (LOPs) to the detainees.

**Forcing detainees to rely on distant nonprofit organizations for access to legal counsel is not fair. ICE should detain workers only in locations where basic human rights such as access to legal counsel and medical care are protected and where they have access to their families.**

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offer *pro bono* services. Immigration law is extraordinarily complex and consultation with an expert may have helped defendants build a case to seek legal status in the U.S.

### Language Barriers

While immigrants arrested in Postville were given Spanish-language interpreters, most were indigenous Guatemalans who spoke Mayan languages and had little understanding of Spanish. Even the interpreters complained that the immigrants did not understand the charges against them or the consequences of a plea agreement.

### Group Hearings

Because attorneys were assigned so many clients, defendants were forced to meet with them in groups to discuss the charges. Hearings before the judge were conducted in groups of 10 with the immigrant defendants chained and shackled. ♦

# How To Help Safeguard Human Rights

- Provide *pro bono* legal counsel or volunteer to give legal orientation presentations to detainees
- Translate for attorneys and others who help immigrants arrested in worksite actions
- Assist families of detainees with offers of food, clothing, transportation and other forms of support
- Share this information with others in your community

## Organizations assisting immigrants affected by the Postville and Laurel raids:

St. Bridget's Hispanic Fund  
c/o Sister Mary McCauley  
P.O. Box 369  
Postville, IA 52162

Mississippi Immigrants' Rights Alliance:  
[http://www.yourmira.org/HelpRaidVictims\\_appeal.pdf](http://www.yourmira.org/HelpRaidVictims_appeal.pdf)

## Resources

Testimony of Postville translators, criminal defense attorneys and immigration attorneys from the July 24, 2008, hearing of the House Judiciary Committee: "Immigration Raids: Postville and Beyond"  
[http://judiciary.house.gov/hearings/hear\\_072408.html](http://judiciary.house.gov/hearings/hear_072408.html)

ICE Detention Standards:  
<http://www.ice.gov/partners/dro/PBND/index.htm>

Sample letter to ICE to demand access to a detention facility to offer LOPs:  
<http://www.immigrantjustice.org/resources/attorneys/raid-response/post-raid-legal-orientation-presentation-request-letter.html>

NIJC's Know Your Rights Manual for adult detainees:  
<http://www.immigrantjustice.org/resources/immigrants/detaineesresources/know-your-rights-manual-for-adult-detainees.html>

National Immigration Law Center's "How to be Prepared for an Immigration Raid"  
[http://www.nilc.org/ce/nilc/immraidsprep\\_2007-02-27.pdf](http://www.nilc.org/ce/nilc/immraidsprep_2007-02-27.pdf)

National Lawyer's Guild's "Community Resource Kit: Information on ICE Enforcement, Detention, and Deportation"  
<http://www.nationalimmigrationproject.org/commresourcekit.html>

## Footnotes:

1. ICE Fact Sheets: FAQ About Worksite Enforcement, August 2008, available at <http://www.ice.gov/pi/news/factsheets/worksite.htm>
2. Essay published June 13, 2008 on *The New York Times* website. Available online at <http://graphics8.nytimes.com/packages/pdf/national/20080711IMMIG.pdf>.
3. See INA § 239(b), 8 USC 1229(b).
4. See INA § 240(b)(4)(A), 8 USC 1229a(b)(4)(A); and INA § 292, 8 USC 1362
5. See 8 CFR 1240.2. This section refers to immigration hearings, but in order for an immigrant to be represented at a hearing, he/she must be afforded the opportunity to obtain counsel prior to the hearing date.
6. ICE/DRO Detention Standard: Legal Right Group Presentations, available at [http://www.ice.gov/doclib/PBND/rtf/legal\\_rights\\_group\\_presentations.rtf](http://www.ice.gov/doclib/PBND/rtf/legal_rights_group_presentations.rtf).

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