



Defending Human Rights & Due Process

A Policy Brief from Heartland Alliance's National Immigrant Justice Center

WINTER 2009

U.S. failed to recognize human rights of immigrants as it aggressively prosecuted Agriprocessors workers

Workers' lack of knowledge about legality of "working papers" raises questions about federal convictions

As the world celebrates the 60th anniversary of the Universal Declaration of Human Rights (UDHR), the "inherent dignity and ... inalienable rights"¹ of non-citizens in the United States are compromised all too often. Even though the United States championed the fight for the passage of the UDHR, 60 years later the government has failed to live up to its principles. In America's heartland, federal immigration enforcement actions have denied workers' basic rights: the right to migrate; to employment; to food, clothing, housing and medical care; to be free from arbitrary detention; to seek protection; and to a full and fair hearing, especially when faced with criminal charges.

In May 2008, U.S. Immigration and Customs Enforcement (ICE) raided Agriprocessors, Inc., a meatpacking plant in Postville, Iowa. Nearly 400 workers were arrested, and more than 300 charged with federal crimes of identity theft and document fraud. A majority of these workers accepted an "exploding plea" offer in which they pled guilty and agreed to be deported immediately after serving five-month criminal sentences.

Most of the workers were deported in October, but debate continues over the constitutionality of the aggravated identity theft charges that led to their deportation. The U.S. Supreme Court agreed to hear an appeal of a case raising similar issues, *United States v. Flores-Figueroa*. That case addresses the question of whether a charge of aggravated identity theft requires that suspects knew that the identity they used belonged to another person.

In interviews after the Agriprocessors raid, many of the workers convicted of aggravated identity theft said they did not know that the social security number they used belonged to another person. In fact, many expressed little understanding of the social security system. "The workers understood their papers were not official government documents, but the extent of their understanding was that this was just the plant's requirement," said Erik Camayd-Freixas, a Florida International University professor who

interpreted for Agriprocessors workers during legal proceedings. "They had no idea these papers would go to the U.S. government. They had no reason to make that link." According to Camayd-Freixas, of the nine workers for whom he interpreted during attorney interviews immediately following the raid:



- Five workers did not know what a social security number was.
- One worker did not have a social security card or any form of U.S. government-issued documentation. Rather, for his work identification the man used a consular identification card issued by the

Guatemalan Consulate.

- One worker had used his cousin's social security number for work after receiving his cousin's consent.
- Two workers knew what a social security number was, but did not know that the numbers they used belonged to others.

Attorney Sonia Parras Konrad represented many of the workers arrested in the raid who sought U Visa relief after ICE released them with ankle monitoring bracelets (see description of U Visas on page 2). She said that her clients' lack of understanding of the U.S. immigration process became clear when she asked to see the "*permisos*" (permits) some of the workers told her they had been given by border agents when they entered the United States. "They said that the *coyote* [smuggler] had told them that immigration officers would make them sign some papers and give them a permit that would allow them to come to Postville," Parras Konrad said. Eventually she realized that the "*permisos*" were Notices to Appear (NTAs), court documents that contained immigration charges. Some workers who were not English-speakers had carried their NTAs in their wallets for three years before Parras Konrad explained that the documents were orders to appear in court. ♦

Denying Access to Protection: Violation of the UDHR

Deported workers may have been eligible for immigration protections

Forty-four former Agriprocessors, Inc., workers who were not charged with federal crimes have received certification to apply for U Visas based on abuse they suffered at the plant. Yet many others who may have been subjected to the same abuses or may have been eligible for asylum were deported because they never had an opportunity to seek immigration legal counsel. While Article 14 of the UDHR provides that every individual has a right to seek asylum, ICE appears to have denied individuals this right following the Postville raid.

Legal proceedings following the raid effectively barred workers who were deported from pursuing immigration relief. Detained workers were denied access to immigration attorneys who could have identified forms of relief. The workers were given seven days to consider a non-negotiable “exploding plea” agreement and were told that fighting the charges would result in prolonged detention. As a result, most defendants accepted the agreement, pled guilty to federal charges and accepted a five-month prison sentence. They agreed to automatic deportation after they served their prison time, waiving their rights to seek immigration status.

“Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

— *Universal Declaration of Human Rights Article 14*

some cases rape. “The alleged retaliation [by supervisors against female workers] for not giving in to their sexual advances was to punish them with harder work,” she said.

Florida Immigrant Advocacy Center Attorney Jennifer Hill interviewed workers who were sent to federal jails in Florida to serve their criminal sentences after the raid. One woman told Hill she was sexually assaulted by a supervisor while working at the plant. But from Florida, Hill was unable to locate any Iowa law enforcement authorities who would provide the certification necessary for the woman to apply for a U Visa. The woman was deported when her criminal sentence ended in October. Attorney

The U Visa:
This visa allows immigrants who are victims of certain crimes to remain legally in the United States if they cooperate in the prosecution or investigation of a crime.

The women and children who received U visa certification were granted humanitarian release immediately following the ICE raid and have stayed in Postville. Attorney Sonia Parras Konrad said that the women have told her they suffered abuse such as acute sexual harassment, and in

How Agriprocessors workers obtained “working papers”

A 12-count federal indictment against Agriprocessors, Inc., alleges that the plant’s owners and managers knowingly helped the workers obtain fraudulent resident alien cards, or “green cards.”³ Many workers who were convicted and deported for using the false documents told lawyers and advocates that they did not know the documents were fraudulent.

Professor Erik Camayd-Freixas interviewed 94 workers who were sent to federal jails in Florida to serve their criminal sentences. According to Camayd-Freixas, many workers offered similar descriptions of the process they went through to obtain “working papers,” which included social security numbers and green cards:

- ✓ When men and women initially arrived at the plant, they were told they needed to obtain “papers” to work.
- ✓ Either Agriprocessors employees inside the plant or individuals outside the plant allegedly approached new workers and told them where they could buy their “working papers.”
- ✓ As instructed, workers went to a local house, paid \$350, and were photographed. A few days later they returned to pick up the papers, including social security cards.
- ✓ Workers who could not afford to pay the \$350 often worked overtime and the money allegedly was deducted from their paychecks.
- ✓ In a lawsuit filed shortly after the raid, workers alleged that Agriprocessors withheld money from their paychecks for “immigration fees.”⁴
- ✓ When Agriprocessors received “no-match” letters indicating that workers’ names and social security numbers were flagged as inconsistent in a government database, company supervisors allegedly confiscated the workers’ papers and told them to return to the local house to buy new papers.⁵ ♦

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Former Workers in Postville Struggle to Survive: A Humanitarian Crisis

Denied the right to a standard of living adequate for their health and well-being

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

— *Universal Declaration of Human Rights Article 25*

rights to work, housing, and food. These workers now rely on support from the Postville community for groceries, and to pay for rent and heat because they are not permitted to work.

Rev. Paul Ouderkirk of St. Bridget’s Catholic Church said in December 2008 that the church was spending about \$80,000 per month to assist the workers with rent and heat. The church also operates a food pantry stocked with donations from the community. According to Attorney Sonia Parras Konrad, about 70 people were granted humanitarian release by ICE soon after

The government’s actions in Postville left the workers unable to work and provide for themselves and their families. Article 25 of the UDHR recognizes that every human has the right to a standard of living adequate for health and well-being. In Postville, dozens of former workers with pending immigration cases or who are serving as witnesses for federal cases against the company have been denied their dignity and access to basic human

the raid because they were primary caregivers or suffered from medical conditions. Seventeen had returned to their native countries voluntarily, 44 had applied for U Visas, and a handful were pursuing other forms of immigration relief.

The U Visa applicants have faced significant obstacles. In December, many still wore the ankle monitoring bracelets issued in May. The women continued to report to ICE under the terms of their release, but Parras Konrad’s requests to remove the bracelets had been denied. Until the U Visas are approved, the women will be ineligible to work and have become totally dependent on the charity of St. Bridget’s. On average, it takes 12 to 24 months to complete a U Visa case.

In November, about 30 workers who had completed criminal sentences were brought back to Iowa by federal prosecutors to serve as witnesses in the federal cases against Agriprocessors’ management. These were the same individuals that were pressured to sign plea agreements in May 2008 waiving their rights to immigration relief and stipulating their own deportation at the end of five-month criminal sentences. Many were anxious to be deported to their native countries so they could find work again and provide for the basic needs of their families. Some had obtained temporary work permits or were living in other Iowa towns, but 14 young men who had not received work permits as of December relied on the the Postville community for food and housing assistance. ♦

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Wendi Adelson of the Center for the Advancement of Human Rights at Florida State University interviewed women serving their sentence at a federal prison in Tallahassee, Florida. She reported that two women alleged they had suffered sexual harassment, and possibly sexual assault, by supervisors.

In his essay about the post-raid legal proceedings, Erik Caymay-Freixas described the dilemma one man faced when deciding whether to accept the plea agreement or pursue his case for immigration relief:

He had worked at the plant for ten years and had two American-born daughters, a 2-year-old and a newborn. He had a good case with Immigration for an adjustment of status which would allow him to stay. But if he took the Plea Agreement, he would

lose that chance and face deportation as a felon convicted of a crime of “moral turpitude.” On the other hand, if he pled “not guilty” he had to wait several months in jail for trial, and risk getting a 2-year sentence. After an agonizing decision, he concluded that he had to take the 5-month deal and deportation, because as he put it, “I cannot be away from my children for so long.” His case was complicated; it needed research in immigration law, a change in the Plea Agreement, and, above all, more time.²

The lack of due process in the Agriprocessors raid jeopardizes American ideals of fairness in the judicial system and runs afoul of international human rights standards requiring full and fair due process. ♦

Take Action to Safeguard Human Rights

Humanitarian and legal aid for Postville families:

St. Bridget's Catholic Church has spent about \$80,000 per month to care for Postville families and may run out of money by January 2009.

Additionally, about 20 former Agriprocessors workers who were not aware of previous removal orders must pay \$110 to reopen their court cases to apply for U Visa protection. Donations to help cover court filing costs must be designated "for legal representation."

Donations to assist with rent, heat, and court fees for Postville families can be sent to:

Hispanic Ministry
c/o St. Bridget's Catholic Church
135 West Williams
Postville, Iowa 52162

Support Humane Immigration Reform in 2009:

The treatment of Agriprocessors workers threatens America's proud history as a nation of immigrants. ICE's increasingly harsh immigration enforcement policies separate families into isolated jails, with insufficient access to legal counsel. These violations put all Americans at risk.

The Protect Citizens and Residents from Unlawful Raids and Detention Act, S. 3594, would improve the humanitarian and due process protections available to those affected by enforcement actions.

Tell Congress to make humane immigration reform a priority in 2009. Call the U.S. Capitol Switchboard and ask for your senators' and representatives' offices: (202) 224-3121.

Resources

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

The Des Moines Register continuing coverage of the aftermath of the raid. http://www.desmoinesregister.com/apps/pbcs.dll/section?category=NEWS&theme=POSTVILLE_ICE_RAID&template=theme

Federal indictment against Agriprocessors. <http://www.desmoinesregister.com/assets/pdf/AgriprocessorsIndictment.pdf>

The Iowa Independent continuing coverage of the aftermath of the raid. <http://iowaindependent.com/tag/postville>

Moyers, Peter. "Butchering Statutes: The Postville Raid and the Misinterpretation of Federal Law." Scheduled for publication in the *Seattle University Law Review* in April 2009. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1306747

NIJC's Fall 2008 Edition of the *Defending Due Process and Human Rights* Policy Brief: "Immigration Enforcement's Newest Strategy: Prosecution for Federal Crimes and Swift Deportation." <http://www.immigrantjustice.org/resources/policy/nijcpolicybrief>

Footnotes:

1. Preamble to the Universal Declaration of Human Rights
2. Camayd-Freixas, Erik. (June 2008). "Interpreting after the Largest ICE Raid in US History: A Personal Account." <http://graphics8.nytimes.com/images/2008/07/14/opinion/14ed-camayd.pdf>
3. Federal indictment against Agriprocessors. <http://www.desmoinesregister.com/assets/pdf/AgriprocessorsIndictment.pdf>
4. Schulte, Grant. (May 2008). "Detainees allege abuses by company." *The Des Moines Register*. <http://www.desmoinesregister.com/apps/pbcs.dll/article?AID=/20080516/NEWS/80516003>
5. Federal indictment against Agriprocessors and Camayd-Freixas interview



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Contact:

Heartland Alliance's National Immigrant Justice Center
Tara Magner, Director of Policy
(312) 660-1363; tmagner@heartlandalliance.org
www.immigrantjustice.org

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