

BRIEF
TO
THE SENATE JUDICIARY COMMITTEE

REGARDING

THE NOMINATION OF AUSA STEPHANIE ROSE
FOR US ATTORNEY FOR THE NORTHERN DISTRICT OF IOWA

AND THE INQUIRY INTO
THE POSTVILLE PROSECUTIONS OF MAY 12-23, 2008

SUBMITTED BY

DR. ERIK CAMAYD-FREIXAS
CERTIFIED FEDERAL INTERPRETER
AT THE POSTVILLE PROSECUTIONS

NOVEMBER 4, 2009

Introduction

My name is Dr. Erik Camayd-Freixas. I was an interpreter at the judicial hearings on the Postville prosecutions, held at the National Cattle Congress in Waterloo, Iowa, May 12-23, 2008.

I do not know Ms. Stephanie Rose personally and have no opinion as to her professional fitness to serve as the next U.S. Attorney for the Northern District of Iowa.

This brief addresses instead some crucial areas of inquiry on ethical violations in the Postville prosecutions, which are nevertheless pertinent to Ms. Rose's nomination.

The Postville defense attorneys who sent a letter of support for AUSA Rose to Senator Harkin, who recommended her, have no specific knowledge of Rose's participation in confidential decisions of the U.S. Attorney's Office, and are not in a position to vouch for her as though there had been no problems with the proceedings or their participation in the defense. In fact, they have been severely criticized nationally by their colleagues for ineffective assistance of counsel, including taking on an average 17 defendants each, failing to provide accurate advice on immigration consequences, and failing to protect the human and due process rights of their clients. Their letter cannot replace a responsible inquiry into the serious allegations that follow.

After the cases were closed, other officers of the court, by the nature of their duties, were not free to voice their concern regarding the integrity of the judicial process. Realizing that no one else could, I undertook the burden of reporting the events as I saw them, so that the matter could be appropriately reviewed by the legal community.

As a result of such review, broad sectors of the legal community have independently condemned the Postville proceedings. This includes, among several others, the National Association of Criminal Defense Lawyers, the American Immigration Lawyers Association, the Society of American Law Teachers, the National Lawyers Guild, the American Bar Association, the Federal Bar Association, numerous law schools, the Congressional Hispanic Caucus, and numerous members of Congress, independent lawyers, and law professors. Their respective statements and resolutions are publicly available.¹

The review raised a number of questions that remain unanswered. Some of the aforementioned stakeholders have petitioned Attorney General Eric Holder to direct a full judicial investigation, in order to restore and preserve the integrity of our justice system.

¹ See for example: Kansas Public Defender's Office, "Ethical Issues in Postville-Style and Operation Streamline Prosecutions," available at: <http://www.ggandhlaw.com/CM/Speeches/Ethical%20issues%20in%20postville-style%20and%20operation%20streamline%20prosecutions.pdf>; Greenberg et al., "How ICE Threatens the Ethical Responsibilities of Key Players in Worksite Raids: Postville Study," available at: <http://www.wcl.american.edu/hrbrief/16/1martin.pdf?rd=1>.

The Nature of AUSA Stephanie Rose's Participation in the Postville Case

While this is a central area of inquiry for the Senate Judiciary Committee, there are four publicly available considerations to be kept in mind:

1. In her July 24, 2008, congressional testimony, Deputy Assistant Attorney General Deborah Rhodes stated that "all charging decisions were made by the career prosecutors in the local office."²
2. At the time of the Postville hearings, Ms. Rose was a 12-year veteran and Deputy Criminal Chief in the U.S. Attorney's Office.
3. In that capacity, Rose presided over the May 12, 2008 briefing of prospective attorneys in Cedar Rapids, where "defense manuals" scripting the proceedings were distributed.
4. As Deputy Criminal Chief, she played a key on-site role in the prosecutions, as liaison to the defense counsel. She described the operation as "a ton of good work."

Ethical Violations

While the entire proceedings and subsequent handling of material witnesses were marred by multiple irregularities, I will focus here only on three, particularly serious areas of inquiry:

1. Unethical collusion between the U.S. Attorney's Office and the Court before the hearings. In a letter to Congress explaining why he withdrew from the case on ethical grounds, Attorney Rockne Cole made the following statements about the briefing of prospective attorneys presided by Ms. Rose: "A Rule 11(c)(1)(C) [plea agreement] allows the court to be bound to the sentencing recommendations of the United States and defendant. [...] What I found most astonishing is that *apparently* Chief Judge Linda Reade *had already ratified these deals prior to* one lawyer even talking to his or her client. Judge Reade's presence at the meeting seemed to confirm as much. This directly violates Rule 11 plea procedure, which provides that the "court must not participate in these [plea] discussions." Moreover, this ratification appeared to be *ex parte* with the U.S. Attorney's office. Indeed, it had to have been *ex parte* because no lawyers had even met with their clients prior to these Rule 11(c)(1)(C) plea bargains being announced."³

Further, "A prosecutor should not engage in unauthorized *ex parte* discussions with or submission of material to a judge relating to a particular case which is or may come before the court" (Standard 3-2.8(c) Relations with the Courts and Bar).

² See Testimony adjoined on APPENDIX B: House of Representatives, Hearing before the Subcommittee on Immigration, *Immigration Raids: Postville and Beyond*, July 24, 2008 (Serial No. 110-198) pp. 64-68. Full hearing available at: <http://judiciary.house.gov/hearings/printers/110th/43682.PDF>.

³ Mr. Cole's letter is available at: <http://graphics8.nytimes.com/packages/pdf/national/ColeLetter.pdf>.

2. Withholding exculpatory evidence. 96 false IDs were found stashed at Agriprocessors' human-resources office during the May 12 raid. This was potentially exculpatory evidence for the workers, since document-fraud statutes require "intent to deceive." The prosecution withheld this evidence until the workers were convicted; then brought it out against the employers in following months.⁴

Further, "A prosecutor should make a timely disclosure to the defense, at the earliest opportunity, of the existence of evidence or information which tends to negate or mitigate the guilt of the defendant" (Standard 3-3.11 Disclosure of Evidence by the Prosecutor).

3. Violations of human and due process rights. Affidavits and independent statements by arrested workers recount physical, verbal and mental abuse in pre-court detention, under the watch of federal prosecutors. Workers say they were subjected to sleep deprivation for 48 hours, hunger, and cold; kept on five-point shackles for extended hours, even to eat and drink; and were taunted, denied counsel and threatened with more prison time if they did not waive grand-jury indictment - a logistical nightmare prosecutors tried to avoid at all costs.

These Affidavits, adjoined here in the following Appendix, prompted the attached letter from Rep. Zoe Lofgren to former Attorney General Mukasey and Secretary Chertoff, asking for an investigation into the "disturbing allegations of verbal, physical, and mental abuse of workers who were arrested" in the Postville case.

Respectfully submitted,



Dr. Erik Camayd-Freixas

⁴ News reports are available at:

http://failedmessiah.typepad.com/failed_messiahcom/2008/07/feds-found-and.html

http://www.desmoinesregister.com/article/20080730/NEWS/807300365/1001&theme=POSTVILLE_ICE_RAID

The US Attorney's Office press releases confirm it: <http://omaha.fbi.gov/dojpressrel/2008/om112108.htm>
"According to a previously filed complaint, approximately 96 fake resident alien cards and application paperwork were seized from the Agriprocessors human resources offices the following day. The complaint alleges approximately 90 of the fake resident alien cards contained resident alien numbers that were assigned to other people."

APPENDIX A: Letter from Rep. Zoe Lofgren and two Affidavits

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COMMITTEE ON THE JUDICIARY

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December 10, 2008

The Honorable Michael Mukasey
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 30530

Secretary Michael Chertoff
Department of Homeland Security
425 I Street NW, Room 7257
Washington, DC 20536

Dear Attorney General Mukasey and Secretary Chertoff:

I want to bring to your attention disturbing allegations of verbal, physical, and mental abuse of workers who were arrested and detained during the joint Department of Justice (DOJ) and Immigration and Customs Enforcement (ICE) enforcement action at the Agriprocessors meatpacking plant in Postville, Iowa on May 12, 2008. Enclosed are affidavits from Marvin Danilo Perez-Gomez and Mardoqueo Valle-Callejas, two of the 389 workers arrested and detained during the action.

In his affidavit, Mr. Perez-Gomez states that ICE agents yelled insults at the workers and mocked them in Spanish during the raid. He attests that agents hit the workers and kicked them to the ground. He further attests that agents had shackled some of the workers so tightly that "they ended up with swollen hands and ankles."

Mr. Perez-Gomez states and the other workers remained in shackles even after they arrived at the temporary detention facility at the National Cattle Congress in Waterloo, Iowa, and that he was not fed until 10:00 p.m. that night and had to eat and drink in shackles. Those who wanted to go to the bathroom were first told "not to be such a nuisance," then were only allowed to go "with four guards or chained, amid mockeries and humiliations."

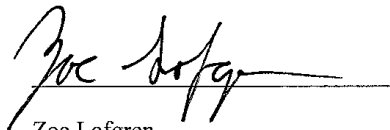
The attestation states that guards taunted the workers that they "look like clowns," because of how small they looked in the detention uniforms given by ICE, and that workers were kept barefoot and without warm clothes despite cold weather. Mr. Perez-Gomez states that the facility had cots for sleeping, but the lights remained on, and the guards would periodically wake up the workers to scan their bracelets.

Mr. Valle-Callejas's account of the raid and its aftermath is similar to that of Mr. Perez-Gomez. Mr. Valle-Callejas notes that that ICE agents yelled insults at the workers "in Spanish and bad words." He observes that "[t]hose who were hiding were beaten and shackled. One had his nose all crushed, because they threw him face first against the wall." When a worker tried to speak up for another worker who had been hurt, an ICE agent kicked him, threw him to the ground, and threatened "[i]f you meddle, I'm going to beat you up."

Mr. Valle-Callejas also attests that "[b]efore court, without a lawyer, they made us sign a paper in the middle of the night [Waiver of Grand Jury Indictment] under the threat of more time." Even though he said that he wanted to talk to a lawyer, someone asked him if he had money to pay the lawyer.

The events and conditions described by these two individuals violate ICE worksite enforcement guidelines and contradict the testimonies given by Deborah J. Rhodes, Senior Associate Deputy Attorney General, and Marcy M. Forman, Director, ICE Office of Investigations, at the Immigration Subcommittee hearing on July 24, 2008. I request an immediate and thorough investigation by DHS and DOJ into what happened in the enforcement action at the Agriprocessors plant and its aftermath. I would also appreciate an explanation of the discrepancies between the testimonies by SADG Rhodes and Director Forman and the sworn statements of Mr. Perez-Gomez and Mr. Valle-Callejas regarding treatment of the workers during the enforcement action and its aftermath.

Sincerely,

A handwritten signature in black ink, appearing to read "Zoe Lofgren", written over a horizontal line.

Zoe Lofgren
Chairwoman
Subcommittee on Immigration, Citizenship,
Refugees, Border Security, and International Law

AFFIDAVITS OF TWO GUATEMALAN PRISONERS FROM

THE POSTVILLE RAID OF MAY 12, 2008

MARVIN DANILO PEREZ-GOMEZ AND MARDOQUEO VALLE-CALLEJAS

WHO WERE RELEASED ON OCTOBER 11 AND DEPORTED ON OCTOBER 14, 2008

I, Dr. Erik Camayd-Freixas, acting as Academic Consultant to the Consul General of Guatemala, interviewed 94 Guatemalan prisoners at the Federal Correctional Institution and the Federal Detention Center in Miami, Florida, from October 3 through 8, 2008.

At the request of their immigration lawyer, I prepared these two affidavits in Spanish, following my interviews with Marvin Perez and Mardoqueo Valle at FCI Miami, on October 5, 2008. As their lawyer was denied access to the clients on the last few days before their release and deportation, they were unable to sign the affidavits before being deported. Through the Consulate and others I was able to send the affidavits to them in Guatemala, where after making any corrections they signed on November 15, 2008, before Attorney and Notary M.A. Sagastume-Gemmell, who notarized both documents on the same date.

Out of the 94 prisoners, approximately 80% were ethnic Cak'chikel Mayans from the region of Chimaltenango, Guatemala. The vast majority had their families and children in Guatemala. Approximately 60% of them had not had any contact with their families in the five months since their arrest, either because they had no money for a phone card or had not been given the opportunity to call. A total of 42 of them had not received their last paycheck from Agriprocessors. I forwarded a list of these to the counsel for the Iowa Department of Labor.

As an update, Mardoqueo Valle, one of the two affiants, has lost his house in Guatemala and is now boarding temporarily at a neighbor's, with his wife, mother, and his five children.

TRANSLATOR'S CERTIFICATE OF ACCURACY:

I, Dr. Erik Camayd-Freixas, certify that I am a federally certified interpreter, and that the following six pages are to the best of my ability a true, accurate, and complete translation, from Spanish into English, of the affidavits of Marvin Perez-Gomez and Mardoqueo Valle-Callejas, which were submitted to me in the original, and which I retain on file.



Dr. Erik Camayd-Freixas, Translator

11/30/2008
Date

AFFIDAVIT

I, MARVIN DANILO PEREZ-GOMEZ, Bureau of Prisons # 10673-029, of 27 years of age, a native of Chimaltenango, Guatemala, attest to the following facts:

1. In Guatemala I only went to school up to 5th grade. I first worked in agriculture earning some \$4 a day. Lately I went to work for a workshop making fireworks and earning about \$35 a week. But it is the most dangerous job in the country. While I worked there, there were three explosions and two of my workmates died. Because now I have a wife and two small daughters, I could not continue risking myself there, and I had to migrate.
2. I first tried to come legally to the U.S. I borrowed money and paid \$2,000 to a recruiter who promised sure and legal work in the U.S. planting pine trees in Mississippi for \$30 each pine with an H2-B visa. The recruiter helped me with the paperwork and got me an interview at the American Embassy. When I went inside the embassy, I saw that there were more than 50 peasants, and that the American officers were laughing at us. They asked me if I had bank accounts, deeds, car, etc. Since I didn't have any, they denied my visa, just like they did with all who were there. I was only able to recover a part of the \$2,000, and I was left with a considerable debt that definitely forced me to migrate. Then, all the way to Iowa, you start accumulating more debt, such that the entire journey from Guatemala ends up costing about \$7,000.
3. I worked 3 years in Agriprocessors, in the area for deveining kosher beef. The rabbis who inspected the meat, if they found any little vein, they would throw the piece of meat to your face. They would not pay us for all the "overtime." On the contrary, they would deduct the laundering of the work clothes, the gloves, and the other equipment, the doctor's visit if we got sick or injured, and even the Tylenol or any other medication. You'd have to work even if you are sick or have a fever. They would make you sign a paper that the company was not responsible for any accident or injury, and that the medical expenses were on us. I did not know very much about what went on in the company. I did not know what a social security number was and I had never seen a resident card when I started working.

4. The raid started at 10:00am, right before the ½ hour for lunch. They yelled insults in Spanish at us. What is most upsetting is to be yelled at, and then the mockery. There was a Chicano agent who would yell: “This is our home. You go back to your countries.” And he would lift fistfuls of chains in both hands, offering them in mockery: “Let’s see, who wants shackles?” Those who ran they would hit and kick them to the ground, and shackle them. They sat many of us in the dining halls, and there they booked us during several hours. Then they took us out to the yard. There, at 2:00pm they shackled me until late at night. Upon getting on the bus, they made me kneel on the seat, they took off my rubber boots and they put chains on my ankles too, and left me like that, barefoot. On some they put the shackles backwards and very tight, and they ended up with swollen hands and ankles.
5. That day they had us suffering hunger. I had started my shift at 4:00am, and they didn’t give me anything to eat until 10:00pm. I felt my head was going to explode. In Waterloo [National Cattle Congress] they kept me sitting down without my sweatshirt and barefoot in the cold from 8:00pm to 2:00am, while they arranged the paperwork. Then they put me in one of the cages where they had the cots for sleeping. But they did not let us sleep at all for 48 hours. They kept coming every so often to run the scanner over the barcode of a bracelet they had put on us. They would come in shouting: “Wake up!” There were also cages with women. Those who asked to go to the bathroom were told not to be such a nuisance, and whenever they were finally taken, it was with four guards or chained, amid mockeries and humiliations. They made us eat and drink in shackles, and you had to lean way over sideways on the chair in order to sip a bit of water from the bottle. Then they would mock us for the way we walked with the chains, and since our clothes were too long on account of our short height, they would tell us “You look like clowns.” I, when they would tell me all of those insults and humiliations, all I could see were the faces of my daughters, and I would cry.
6. In these five months we’ve known nothing of our families. They haven’t given us even one minute to call. We don’t even have the money to buy a phone card. What little money we have you only get upon leaving each prison. I have been through four prisons, and some even through eight. And when you arrive to each prison, they strip you naked and inspect you. In the first jail in Newton, Iowa, before and after the lawyer’s visit, they would strip us naked. There have been many humiliations. We have spent five months of sheer suffering.

Here at FCI Miami [Federal Correctional Institution] they get me up at 4:00am to work in the cafeteria. The government takes money away from us and then punishes us. That has left a big mark on me. I don’t know how our families have managed to survive. That is the sorrow we carry.

To all of this I attest. Signed,
[Signature: Marvin Perez]

x _____

MARVIN PEREZ-GOMEZ

Date : 15-11-08 [November 15, 2008]

WITNESS :

In the city of Antigua, Guatemala, State of Sacatepequez, the Undersigned NOTARY, on this fifteenth day of November of the year two thousand and eight, ATTESTS that the preceding signature is AUTHENTIC having been affixed in my presence by MARVIN DANILO PEREZ GOMEZ, a person known to me, who signs again next to the Notary who certifies.

BEFORE ME

[Signature Illegible]

x [Signature: Marvin Perez]

MARCO ANTONIO SAGASTUME GEMMELL

ATTORNEY AND NOTARY

[Stamped] [Notarized Document Stamps]

De todo esto doy fe. Firmado,

Marvin Perez

MARVIN PEREZ-GOMEZ

TESTIGO:

Fecha: 15-11-08

En la ciudad de Antigua-Guatemala del Departamento de Sacatepequez, el Infrascrito NOTARIO, a los quince días de noviembre del dos mil ocho, DA FE que la firma que antecede es AUTENTICA por haber sido puesta en mi presencia por MARVIN DANILO PEREZ GOMEZ, persona de mi conocimiento, quien firma de nuevo junto al Notario que autoriza.

ANTE MI

Marvin Perez

MARCO ANTONIO SAGASTUME GEMMELL
ABOGADO Y NOTARIO



AFFIDAVIT

I, MARDOQUEO VALLE-CALLEJAS, Bureau of Prisons # 10456-029, of 42 years of age, a native of Chimaltenango, Guatemala, attest to the following facts:

1. In Guatemala I used to work in agriculture for neighbors who had some land. I worked like that since I was 7 years old, because my father died when I was 6 years old. Back there what you earn in a day, you eat as you go along. I had no schooling. That is why I continued like that until I met my home companion. Then I started an egg business. I took out a loan to expand the business, but I failed. Then because of the debt I found myself forced to come to the U.S., so I wouldn't lose my house, where I lived with my wife, my mother, and my 5 children.
2. In order to come over I sold the car I had, to raise the cash to pay for the trip to the U.S. I took out a visa to travel to Mexico. I arrived in Mexico City and from there I went by bus to Monterey. At post 26 they caught us and sent us back to Guatemala. Fifteen days later I again took a bus all the way to Laredo, and I crossed the river on a raft with another 10 persons. I suffered humiliations all along the way. I walk for 8 hours from Laredo to San Antonio. I looked for Immigration to have them pick me up, but I couldn't find them. From there I took a bus to Dallas, and somebody gave me \$20 to eat. I spent two weeks planting trees in Houston, earning only \$180 a week. There was talk that you made good money in Postville, so I saved up for the trip. But here we all failed.
3. I got to work 3 years at Agriprocessors. At first they only gave 2 or 3 days of work per week, earning \$180 to \$200 a week. It was not enough to cover one's own expenses, send the remittance, and pay the debt. I spent 14 months like that. But afterwards they expanded and gave more work. So then I was able to begin paying the debt. They would start paying \$6.25 an hour. Every so many months they would raise you \$0.25, until you reached \$7.00 an hour. From there on they didn't pay any more than that. I got to work double shift, from 6:00am to 3:00pm and from 3:00pm to 1:00am. They only gave a 15 minute break to go to the bathroom and 30 minutes for lunch. But they would take from you between a ½ hour and 3 hours of "overtime" on many days, and it was no use complaining; it became something accepted. I got to work up to 86 hours a week, but they didn't want to recognize more than 60 hours by law. EVERYONE, even the bank, knew that we were undocumented.

4. When the raid started we didn't realize it, because of the noise of the machinery and that we had earplugs on. But then they stopped the production line, and everyone was running already. Those of us from the chicken area were running over to the cows, and those from the cows ran toward the chicken side. We were surrounded. They rounded us up toward the middle like a bunch of chickens. By then the women began to cry. The officers yelled insults in Spanish and bad words. I cannot speak them because I am a Christian. Some people started crawling up on the roof of the freezer, all squashed up there, shaking, and the girls all crying. And there was one that was almost fainted; I held her and I told her "Don't cry no more, because God will deliver us."
5. There was no cellular signal to call one's family. As the people came out to the yard, everyone was taking off their aprons and gloves. Those who were hiding were beaten and shackled. One had his nose all crushed, because they threw him face first against the wall. What hurts the most is that it was our very own, the "Chicano" policemen, the ones who treated us more worse. I never thought they would treat us like that. One worker was so nervous that he started running with his work knives. An agent pushed him to the ground, and the poor man stabbed himself in the leg. They shackled him just the same. Another one who was already chained told them "Can't you see that he is badly wounded?" Right then, that guy who defended him, the agent kicked him in the legs and threw him to the ground. "Who told you to speak?" he told him. "If you meddle, I'm going to beat you up."
6. Then in the bus we went all chained up. Even the hamburger they gave us you had to eat all chained up. When we got to Waterloo [National Cattle Congress] they stuck us in these cages, and they took away our sweatshirts that we had from the plant, and they left us to suffer cold, some barefoot. They gave little food, a piece of bread on a tray and a bottle of water, to eat and drink all chained up. And they would mock us and laugh at us. Then they wouldn't let us sleep at all. Between the cold and them coming to order us around, they kept us two days without sleeping. Before court, without a lawyer, they made us sign a paper in the middle of the night [Waiver of Grand Jury Indictment] under the threat of more time. I said that I wanted to talk to a lawyer, and they asked me if I had the money to pay. I said I didn't. So then they told me: "If you are going to put a lawyer, it's going to take two years. If you don't sign, you're going to be forgotten in this country." Later in jail they made us sign the paper of the 5 months, with the threat of giving us 2 to 10 years in prison and a \$250,000 fine. And us, like, how are we gonna be able to pay all that. Then, when we were going to court, the lawyer would tell us: "Say yes, yes, yes, to speed things up."

To all of this I attest. Signed,
[Signature: Mardoqueo Valle]

x _____
MARDOQUEO VALLE-CALLEJAS

Date : nobenber 15 2008 [sic]

WITNESS :

The Notary ATTESTS

In the city of Antigua, Guatemala, State of Sacatepequez, on this fifteenth day of November of the year two thousand and eight, the Undersigned Notary ATTESTS that the preceding signature is AUTHENTIC HAVING BEEN AFFIXED IN MY PRESENCE by MARDOQUEO VALLE CALLEJAS, a person known to me, who signs again next to the Notary who certifies.

BEFORE ME

[Signature Illegible]

x [Signature: Mardoqueo Valle]

MARCO ANTONIO SAGASTUME GEMMELL
ATTORNEY AND NOTARY

[Stamped] [Notarized Document Stamps]

De todo esto doy fe. Firmado,

x Mardoqueo Valle
MARDOQUEO VALLE-CALLEJAS

TESTIGO:

Fecha: noviembre 15 2008

Notario DA FE

En la ciudad de Antigua-Guatemala del Departamento de Sacatepequez, a los quince días de Noviembre del dos mil ocho, el Infrascrito Notario DA FE que la firma - que antecede es AUTENTICA POR HABER SIDO PUESTA EN MI PRESENCIA por MARDOQUEO VALLE CALLEJAS, persona de mi conocimiento, quien firma de nuevo junto al Notario

que autoriza. ante mi:

x Mardoqueo Valle

MARCO ANTONIO SAGASTUME GEMMELL
ABOGADO Y NOTARIO



APPENDIX B: Congressional Testimony of Deputy Assistant Attorney General Deborah Rhodes

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I would note that the Committee asked the U.S. attorney in Iowa Mr. Dummermuth to attend this hearing, and the Department of Justice sent you instead, and it is nice to see you here. But were you at—did you participate in these trials?

Ms. RHODES. No, I didn't.

Ms. LOFGREN. You weren't there?

Ms. RHODES. No. But I have spent hours on the phone with—

Ms. LOFGREN. No. I just have a simple question. You weren't there—

Ms. RHODES. No, I wasn't.

Ms. LOFGREN [continuing]. And I don't blame you, but I think it is disappointing that the department wouldn't send the U.S. attorney who was there, who we asked to attend, and I will just note that for the record.

I would like—and it may be that you don't know this information.

If so, I would like you to get it.

But I would like to know what information was provided by the Department of Justice, Department of Labor, Department of Homeland Security—any or all of them—to the Federal court in Iowa.

This was planned for a long time. When was the connection made with the court, and what measures were taken to ensure that the court's view of the cases would not be affected and that judicial neutrality would not be compromised?

Ms. RHODES. My understanding—primarily for logistical reasons.

That is not unusual. If there is going to be an enforcement operation that is going to bring a large number of cases to the court, it is not uncommon to give the court a head's up on that.

Ms. LOFGREN. So Judge Reade would have been contacted in advance?

I am not making a value judgment, I am just trying to find out what happened.

Ms. RHODES. That is correct.

Ms. LOFGREN. Now, we were—there have been accounts—and I don't know if they are accurate—that the U.S. District Courts for the Northern District of Iowa—Judge Reade—personally called defense lawyers asking them for favors and warning them not to tell anyone and then inviting them to attend a meeting in Cedar Rapids with other defense lawyers to take on the representation. Did anyone at DOJ ask Judge Reade to do this? Do you know if that report is accurate?

Ms. RHODES. I know that defense counsel were contacted somewhat in advance, at least some of them were.

Ms. LOFGREN. By Judge Reade?

Ms. RHODES. That is my understanding. I don't have all the details.

Ms. LOFGREN. Given the number of individuals apprehended in this raid, I am curious of who picked the ratio of the number of defendants to lawyer? You know, ordinarily, one has—you know, you are charged with a crime, you have your lawyer to represent you. But these were bunches of defendants with a single lawyer.

What guided you on the ratio? Do you know what the—

Ms. RHODES. I don't know who selected that ratio—

Ms. LOFGREN. Was it the judge, do you think?

Ms. RHODES. I don't know. I do know that she contacted the lawyers to keep the date available. I don't—

Ms. LOFGREN. I am sorry.

Ms. RHODES. It is not uncommon in immigration cases—

Ms. LOFGREN. Well, these were prosecution of crime, though. These were not immigration cases.

Ms. RHODES. Excuse me. It is not uncommon in immigration—criminal immigration cases to have a defense lawyer represent most—

Ms. LOFGREN. But this was not a prosecution for a criminal immigration matter. It was an identity theft prosecution.

Ms. RHODES. The pleas that were actually conducted were not on identity theft. They were on other documents so it was a violation—

Ms. LOFGREN. Right. That was the plea, but the—

Ms. RHODES. That is correct. My point is simply this, not to quibble over the charges but to simply say in these kinds of cases it is not uncommon to have defense lawyers represent multiple clients.

Ms. LOFGREN. Let me ask you, in terms of the—during the raid, it has been reported—I don't know if it is true—that the ICE officers arrested and interviewed each of the arrested workers before they had access to criminal defense counsel. Were they Mirandized, and, also, was any of the information obtained in those interviews used in the prosecution—the later criminal prosecution?

Ms. RHODES. They were Mirandized.

Ms. LOFGREN. By the ICE interviewers?

Ms. RHODES. Yes.

Ms. LOFGREN. Did the decision to threaten the workers with aggravated identity theft charges that would require prison time of mandatory minimum of 2 years come from main Department of Justice, or was the final decision made in the U.S. Attorney's Office, and is this a new policy at DOJ?

Ms. RHODES. You know, all of the charging decisions were made by the career prosecutors in the local office.

Ms. LOFGREN. So DOJ didn't have anything to do with it? The main office?

Ms. RHODES. DOJ was consulted because of the size of the operation and to ensure that all constitutional protections would be afforded. It was also consulted because it was a fast-track operation and—

Ms. LOFGREN. Well, let me be more precise on my question.

The decision to charge them with a criminal offense, as opposed to what has often been the case to administratively process and deport these individuals, was that a DOJ—

Ms. RHODES. That was—

Ms. LOFGREN [continuing]. Main—

Ms. RHODES [continuing]. Made by the career prosecutors in Iowa, and it was made primarily for two reasons: in order to obtain cooperation and also because there was a case that they were—

Ms. LOFGREN. Cooperation in what?

Ms. RHODES. Because a part of every one of the plea agreements was that they would continue to cooperate in the government's ongoing investigation.

Ms. LOFGREN. But aren't they going to be deported? They are not going to be here to cooperate with you.

Ms. RHODES. They are here for the next 5 months, and there is a case where—a case in the district of Nebraska, which is the same circuit, which dismissed a case against a corporation precisely because the workers were no longer available—

Ms. LOFGREN. So it may be the government's intention that I am to keep these individuals here past their sentence as material witnesses to the ongoing—is that what you are telling me?

Ms. RHODES. I can't speak to that, but I can say that the investigation is ongoing and that cooperation was a key component to the criminal plea agreements.

Ms. LOFGREN. But let me ask a final question because my time is expiring. But were any of the defendants notified of their right to contact their consular officers, as required under the Vienna Treaty?

Ms. RHODES. Members of the consulate from all of the countries were present on location.

Ms. LOFGREN. Okay. So they were all there.

I am going to turn now to Mr. Gutierrez for his 5 minutes, and as I mentioned earlier, we may have a second round of questions since there aren't that many Members here and we have lots of issues and material that we would like to learn about.

Mr. GUTIERREZ. Thank you very much.

I would like to ask Ms. Rhodes, is this—I am going to read something, and tell me whether it is true or not.

"If you plead guilty to the charge of knowingly using a false Social Security number, the government will withdraw the heavier charge of aggravated identity theft, and you will receive a term of 5 months in jail, be deported without a hearing, and placed on supervised release for 3 years. If you plead not guilty, you could wait 6 to 8 months for a trial without right to bail since you are an immigration detainer. If you win at trial, you will still be deported and could wind up waiting longer in jail than if you plead guilty. You would also risk losing at trial and receiving a 2-year minimum sentence before being deported."

Is this is a copy of the interpretation of what was asked to be interpreted to the 300-and-some-odd detainees. Is that an accurate interpretation?

Ms. RHODES. Well, I understand that that was the interpreter's rendition of what the choices were. What I would say is—

Mr. GUTIERREZ. Could you give—I am the detainee.

Ms. RHODES. Right.

Mr. GUTIERREZ. Tell me. Give me the plea agreement.

Ms. RHODES. That they could—that they were charged with two offenses originally. They were charged with the underlying document offense because they had a false document. They were also charged with aggravated identity theft because the documents belonged to real people, and each one of the people who pled guilty admitted to that. And so, yes, those were the two choices that they faced.

Mr. GUTIERREZ. And if I go to—so but I was offered a lesser of two charges?

Ms. RHODES. Right.

Mr. GUTIERREZ. Okay. And if I didn't accept the lesser of two charges, then I would be—wait in jail 6 to 8 months, possibly for

a trial, and then the minimum, if I am convicted, is 2 years under the aggravated identity theft?

Ms. RHODES. They can go to trial, and they can fight the offense and take whatever verdict the jury gave them.

Mr. GUTIERREZ. But you did tell them they would be deported nonetheless whether they win or lose?

Ms. RHODES. Well, that wasn't—as I understand that, that wasn't a conversation the government—

Mr. GUTIERREZ. Well, you know what, then, you see, there is a big flaw here because if the interpreter—who hired the interpreter?

Ms. RHODES. The interpreter was arranged by the court. There were—

Mr. GUTIERREZ. By the court. So this is an officer of the court.

Ms. RHODES. That is correct. But they are interpreting what the defense counsel is saying to the client.

Mr. GUTIERREZ. Okay. So then we have—okay. So we still have a problem. We still have a problem with this proceeding because, if I am the detainee and the interpreter is there—and the interpreter is pretty knowledgeable because these interpreters, this isn't their first trial. Many of these interpreters have gone through hundreds of trials; isn't that true?

Ms. RHODES. And so have the defense counsel.

Mr. GUTIERREZ. And so have the defense attorneys. Good. So we have defense attorneys who know what they are doing—according to you, your testimony—and interpreters who know what they are doing.

So if the interpreter is telling us that this is what he was asked to interpret, we have a problem here because that is not your—that is not what you are offering; right?

You are contesting that this interpretation—right—is what was the offer to the detainee.

Ms. RHODES. No. I think it was consistent. They would have—

Mr. GUTIERREZ. It was consistent. So basically what you have done—now, did you make the decision to charge them—the Department of Justice—or did Homeland Security make the decision to charge them with aggravated identity theft?

Ms. RHODES. The charging decisions were made by the career prosecutors in the office in Iowa.

Mr. GUTIERREZ. From the Department of Justice?

Ms. RHODES. Yes.

Mr. GUTIERREZ. They are the ones that made the decision.

Was there any information given from Homeland Security that well over 100 of the Social Security numbers really didn't match to anyone.

Ms. RHODES. No. For everybody who pled guilty, Social Security confirmed that the Social Security number did in fact belong to a real person.

Mr. GUTIERREZ. Okay. Did in fact belong to a real person.

Ms. RHODES. That is correct.

Mr. GUTIERREZ. So were there any in the underlying indictment or charges that you made to the 400—were there any Social Security numbers that didn't belong to anybody? That really weren't useful Social Security numbers?

Ms. RHODES. There were some that—

Mr. GUTIERREZ. There were some?

Ms. RHODES. Yes.

Mr. GUTIERREZ. Okay. So what you did is you carefully went back—now, when—you said there were two charges; right? Could you explain the two charges? There was aggravated identity theft, and what was the other one?

Ms. RHODES. Whatever they were charged with as an underlying crime. For some it was submitting a false document to obtain employment. For some it was having a false immigration document. There were a few underlying charges that were used.

And let me correct if I misspoke. It wasn't 100 percent of the 306 people that had a real person's identity. It was the vast majority.

There were a few that—

Mr. GUTIERREZ. Okay. Okay. So it wasn't 100—so then these people basically lied to the court when they admitted to knowingly—right?—having a false identity since I cannot knowingly have a false identity to an identity that I created myself.

Ms. RHODES. Well, no. Then they would have—they would not have pled to that.

Mr. GUTIERREZ. But you said that some of them didn't have a—

Ms. RHODES. Right. But—

Mr. GUTIERREZ [continuing]. Social security number. I mean, I would ask the court reporter to repeat what you said, but you just stated that some of them did not have a Social Security number which indeed was being used by someone.

Ms. RHODES. Right. It was a Social Security number not being used by somebody, but the charges would have been—they would not—those people would not have been asked to admit something false.

Mr. GUTIERREZ. Well, you know, we have—my 5 minutes are up, but what I gathered was—from your testimony—that there were some people. First, you corrected yourself twice.

Ms. LOFGREN. The gentleman's time has expired.