

To: jeevacation@gmail.com[jeevacation@gmail.com]
From: Aleph Institute - Advisory
Sent: Mon 3/29/2010 1:06:28 PM
Subject: CALL TO ACTION

Dear friends,

American Jewish leaders who have been working closely with Sholom Mordechai lawyers are very concerned about his incarceration and his upcoming sentencing, currently April 28. **This tragic case is at a critical juncture right now, and demands our attention even as we are all busy with Pesach preparations.**

In issuing this call to our friends and constituents, we are in no way condoning any conduct. However, as detailed in the memo below, prepared by a lawyer familiar with the that the federal government has been overly zealous in pursuing Mr. Rubashkin and has su considerably more severe restrictions and potential punishment than others in similar cases quite an eye-opener, well worth reading despite its length.

The bottom line is that Mr. Rubashkin is being kept in jail pending sentencing, a being allowed to go home for the Passover Seders despite his willingness to post a large full-time guard. With respect to the sentencing, he faces the possibility of life in prison(the Report prepared by the probation department tallied the sentencing guidelines to be life in probability of a 28 year sentence, - far beyond the sentences imposed on others whose significantly more severe than anything Mr. Rubashkin may have done.

We are therefore asking you, our friends and constituents, to take a few minutes your respectful concern over the handling of the Rubashkin case, and the excessive se considered.

Please make your concerns known to the Justice Department's Intergovernmental Liaison Office. Phone: 202-514-3465 Email oipl@usdoj.gov (please copy pr@justiceforsh suggestions for topics to be covered in your email or phone call:

- **Sholom Rubashkin shouldn't be in jail pending sentencing He has a right to a trial**
- **Stop treating Sholom Rubashkin more harshly than you have treated others**
- **Sholom Rubashkin should not be sentenced to a long prison term for his crime. He did not gain personally from the mistakes he made and had no intention causing any loss to anyone.**

These emails are critical and will be forwarded to the US Attorney handling the case.

are able, please sign the online petition available at <http://www.thepetitionsite.com/2/fair-and-equitable-treatment-for-sholom-rubashkin>. This petition will be forwarded to the U.S. Attorney's office in Iowa prosecuting the Rubashkin case. We are hopeful that this expression of public support will have an impact on the outcome of the case.

Please consider forwarding this to your family and friends as well.

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**MEMORANDUM REGARDING GROSS DISPARITY
IN PROSECUTORIAL TREATMENT OF SHOLOM RUBASHKIN**

(prepared by a lawyer familiar with the facts of the case)

Introduction

This Memorandum describes the gross disparity between usual procedures in federal prosecutions under the immigration and bank-fraud laws and how Iowa federal prosecutors handled the case of Sholom Rubashkin, the Orthodox Jewish Hasidic businessman who was arrested for law violations relating to the Agriprocessors plant in Iowa and was found guilty after a jury trial and failure to pay cattle owners promptly.

The enormous disparity between the treatment of Mr. Rubashkin and others who committed similar offenses began with the Immigration and Customs Enforcement ("ICE") raid on Agriprocessors on May 12, 2008, and has continued to this day.

1. Should ICE Have Conducted the Massive May 2008 Raid?

Because it was apparent from government activity in the neighborhood of Agriprocessors' plant that ICE might be planning a raid, Agri took the advice of the American Meat Institute services of Robert W. Kent, Esq., an attorney with the international law firm of Baker & McKenzie. Kent had represented Swift & Co. - a meat-packer that had been raided by ICE in six states in 2006 when approximately 1,297 illegal employees were found. When ICE sought to raid Swift & Co., Kent persuaded them to proceed without a raid and instead to examine Swift's employment practices to weed out the illegal immigrants. Kent called the Iowa prosecutors on May 9, 2008, and faxed letter the same day requesting a meeting and stating that Agri - which was "the largest meat production company in the country" -- wished to cooperate with ICE and avoid the dangers of a raid. Kent's requests were summarily denied and the raid took place.

Approximately 600 federal agents in heavy riot gear stormed the Agri plant on May 12, 2008, by Blackhawk military helicopters. A total of 389 illegal immigrants were arrested and entered the plant in production-line fashion after being told that they could be charged with a major federal crime. The Supreme Court held in 2009 (*Flores-Figueroa v. United States*, 129 S. Ct. 1886) was that the agents violated their constitutional rights by holding them incommunicado and without access to an attorney. The Department of Homeland Security reversed ICE's raid policy and announced on April 30, 2009, will conduct raids only in extremely limited circumstances.

The May 2008 raid received national publicity and ultimately resulted in the bankruptcy of Agriprocessors. It demolished Postville's economic infrastructure, destroyed a legitimate business that was the town's employer, wiped out livelihoods of both legal and illegal employees, forced businesses to leave town, drove away residents. Postville's population has shrunk by half, and many of those who remain are unable to sell their homes. The town is nearly insolvent. And the raid also demolished the principal source of kosher beef and poultry in the United States, creating kosher meat shortages across the country.

2. Was the Post-Raid Treatment of Rubashkin Comparable to Other ICE Raids?

(a) Swift & Co. - Although Swift was a major employer of illegal workers in six states, no illegal employees were found on those premises in the December 2006 raids, neither the company nor any of its officials were criminally charged. In Iowa, for example, one United Food and Commercial Workers ("UFCW") official at Swift's Marshalltown, Iowa, plant was charged in an Iowa federal court with

illegal immigrants and was sentenced to one year and one day in prison and a \$2000 fine and ordered to pay a \$6,000 fine. Another Swift employee who had pleaded guilty was sentenced to 18 months' probation and a \$6,000 fine.

(b) Michael Bianco, Inc. ("MBI") - A manufacturer of leather goods and handbags in Bedford, Mass. was raided by ICE on March 6, 2007, after an undercover operation from ICE learned that Francesco Insolia, the owner, intentionally sought out illegal immigrants and employed them with punitive fines and terrible working conditions. Approximately 326 illegal workers were employed at the company during the raid. Insolia was sentenced in January 2009 to one year and one day in prison and fined \$1.51 million. The company was fined \$1.51 million and ordered to pay \$460,000 in restitution.

(c) Action Rags USA - A Houston, Texas clothing and rag exporter company was raided by ICE on June 25, 2008 - little more than a month after the Agri raid. Approximately 85% of the business at the company consisted of illegal Mexican immigrants, and approximately 150 immigrants were arrested. The owner, Mubarik Kahlon, was indicted on immigration charges in July 2008. A trial date was set for June 15, 2009, but on June 10, Kahlon and one manager pleaded guilty. Kahlon was sentenced to 18 months' probation and a \$6,000 fine.

(d) Miyako Sushi and Panda China Buffets - ICE raided these restaurants in Maryland in June 2007, on evidence that illegal workers were hired as below-minimum-wage workers (paid in cash) in the restaurants and were provided living accommodations in condominiums owned by the restaurant owners, Bo Hao Zhu and Siu Ping Cheng. The owners pleaded guilty to immigration violations and were sentenced on September 12, 2008, to 18 months' probation. Their companies were ordered to pay a \$50,000 fine.

(e) Rosenbaum-Cunningham International, Inc. ("RCI") - On February 22, 2007, ICE raided 17 locations in 17 states of a national janitorial service that provided cleaning crews for restaurants. RCI janitorial employees were illegal immigrants who had no documentation whatever, and were paid in cash. The owners, Richard M. Rosenbaum, Edward Scott Cunningham, and Christina A. Flocken, were charged not only with immigration-law violations, but also with defrauding the United States out of \$18 million in federal employment taxes. On March 4, 2008, Rosenbaum was sentenced to 18 months' imprisonment, Cunningham to 51 months, and Flocken to 30 months.

The cases described above are typical. No case following an ICE raid has even come close to the draconian threats and punishments imposed on Mr. Rubashkin.

3. Were Post-Raid Publicized Arrests and Imprisonment of Rubashkin Warranted?

Following the nationally publicized Agri raid, the Iowa federal prosecutors conducted a criminal investigation of Agri. The sworn complaint on which the raid was based had acknowledged that Rubashkin had screened job applicants and had, in fact, twice rejected an ICE undercover agent who had applied for employment with false identity papers. Only when ICE provided him with authentic documentation did Rubashkin hire him. Rubashkin denied that he had knowingly violated the immigration laws and Agri retained him to discuss the charges with the prosecutors.

The prosecutors made arrests and filed immigration-law charges against various Agri employees. Most of these steps were accompanied by substantial local and national publicity. For example, Agri and Rubashkin was in regular communication with the prosecutors to attempt a deal to avoid potential criminal charges against Agri and Rubashkin.

Although he was served with a letter identifying him as a "target" of the investigation, Rubashkin himself remained in his Postville, Iowa, home during the almost six months following the raid. He made a brief trip to Canada to visit a sick friend and returned promptly to Postville. There is not a scintilla of evidence that he made any effort to flee.

It was clear that Rubashkin would surrender voluntarily if notified of any charges. The prosecutors had him arrested without advance warning, to the accompaniment of great publicity. For example, on October 30, 2008, Page A14 of *The New York Times* of October 31, 2008, for example, had a headline "Arrest Made in Iowa Plant Case" and a photograph - coverage that would not

had counsel been requested, as is customary in such cases, to bring in his client to answer the charges.

An indictment charging one violation of the immigration laws was returned. At Rubashkin's hearing on the indictment, the prosecutors and the Magistrate Judge permitted him to be released on a \$1 million bond and with an ankle bracelet and electronic monitoring. Individual employers charged with immigration-law prosecutions have been released either on personal recognizance or on the condition of a nominal bond. No other employer accused of violating the immigration laws has ever been required to wear an electronic bracelet or required to post a bond of \$1 million.

On the day following his release, the Iowa prosecutors had Rubashkin arrested again on the allegation that he had committed bank fraud after his first arrest. Their claim was that, in the course of his certifications that Agri made to the St. Louis bank with which it had a \$35 million line of credit, Rubashkin represented that it was in compliance with the law when, in fact, it was harboring illegal immigrants. The prosecutors asserted that Agri had failed to deposit all checks it received from customers in the "sweep account" used to provide security for the bank loan and had temporarily used (but had subsequently reimbursed) money from the local school in Postville that Agri was administering.

Although there was no proof that the bank was actually misled by this conduct or that the bank, which timely interest payments continued to be made even after the raid, was imperiled by the conduct, the Iowa prosecutors asserted that this conduct by Rubashkin constituted "non-compliance" with the law. The defense attorney representing Rubashkin's release on bail and asked that he be denied bail and imprisoned.

Among other arguments for denying bail to Rubashkin, the prosecutors asserted that Rubashkin could flee to Israel because he is Jewish, although there was no evidence whatever that he had ever traveled to Israel. This same specious contention would justify the imprisonment of any Jew who had been arrested on any charge. In his opinion denying bail, the Magistrate Judge accepted the low probability of flight claim regarding flight to Israel.

Rubashkin spent the next 76 days in prison. No other individual accused of an immigration violation and no other non-violent and non-threatening person charged with nothing more serious than a bank loan violation has ever been held in prison pending trial for a violation that compromised the security of a bank loan that was otherwise being kept current has ever been held in prison prior to trial on such a charge unless he was apprehended while actually attempting to flee.

4. Why Were Seven Superseding Indictments Filed With Inflated Allegations and What Was the Demand?

After a hearing held in January 2009, the District Judge found insufficient evidence to hold Rubashkin in prison as a "flight risk" and ordered his release pending trial. In the meantime, the prosecutors had begun ballooning the immigration and bank-fraud charges with a series of seven superseding indictments.

The following is a list of the dates and number of counts of the superseding indictments:

First Indictment	November 13, 2008
Second Superseding Indictment	November 20, 2008
Third Superseding Indictment	December 11, 2008
Fourth Superseding Indictment	January 15, 2009
Fifth Superseding Indictment	March 31, 2009
Sixth Superseding Indictment	May 14, 2009
Seventh Superseding Indictment	July 16, 2009

The basic charges of immigration-law violations and bank fraud remained the same in the entire series of indictments. In the Third Superseding Indictment the prosecutors added the demand that the entire Agri business be forfeited to the United States. That demand - for the forfeiture of a company because some of its employees were illegal immigrants - was not made in any other case in the history of the immigration laws.

The Fourth Superseding Indictment added the allegation under 7 U.S.C. § 195 that Rubashkin failed to make prompt payments to cattle owners in violation of an Agriculture Department regulation because his payments were, on occasion, several days late. This was the first time in the history of federal law enforcement that such a criminal charge has ever been made.

The number of charges was increased by the Iowa prosecutors not because any new charges were discovered. Rather, the basic bank fraud allegation was multiplied because each month's advances of funds to Agri under the \$35 million line of credit and each month's report to the bank that was charged as a separate offense. Money laundering was also alleged to have been committed. Rubashkin deposited some funds received from customers to the accounts of a local kosher grocery store and religious school that Agri was maintaining in Postville.

The effect of this deliberate fragmentation of charges was that Rubashkin was tried on 91 counts before a jury not on one basic charge of submitting false reports to the bank regarding the use of the bank's loan, but on 91 counts of bank fraud, money laundering, and failure to pay cattle dealers. The jury found him guilty on 86 counts.

5. Why Did Prosecutors Prove Immigration-Law Violations at the Bank-Fraud Trial?

Recognizing that the jury would be prejudiced against Rubashkin in considering the immigration allegations if it heard evidence regarding immigration-law violations, the District Judge severed the 72 immigration violations in the Seventh Superseding Indictment from the 91 bank-fraud counts. Nonetheless, contending that he committed bank fraud when he represented to the bank that he was complying with the law, the Iowa prosecutors presented more than two days of highly inflammatory testimony regarding the immigration allegations during the bank-fraud trial. The District Judge denied repeated defense requests for a mistrial.

6. Why Was Rubashkin Denied Release on Bail Pending Sentencing?

During the almost ten months between his pretrial release (after 76 days in prison) and sentencing, Rubashkin complied punctiliously with all the bail conditions. His probation officer even testified that on one occasion when his electronic ankle bracelet became dislodged, "he alerted her immediately to allow him to go to the hospital for repair." The District Judge found "that Defendant took great pains to comply with the terms of his release."

Nonetheless, when the jury returned a guilty verdict, Rubashkin was immediately returned to prison. In a hearing on the Iowa prosecutors' request that he be denied release pending sentencing, the defense offered to post as security approximately \$8 million in the equity of 43 supporters of the defense and to pay for a 24-hour armed guard that would prevent him from leaving his home without a judge's authorization. The District Judge granted the Iowa prosecutors' request, and Rubashkin has remained in the Linn County Jail for more than 130 days, in addition to the 76 days he spent in prison between November 2008 and January 2009.

The law regarding release pending sentencing (the Bail Reform Act of 1984, 18 U.S.C. § 3142) does not authorize the pre-sentencing imprisonment of a defendant who is not a danger to society, he is not a "flight risk" and his future presence can be assured by any conditions of release. The District Judge stated no reason for imprisoning him other than her unsupported concluding statement that he was a "flight risk." The Court of Appeals denied bail also without stating any reason. These unexpected denials of bail violate the provision of the Bail Reform Act that requires "a written statement of reasons for the denial of bail." 18 U.S.C. § 1342(i)(1).

7. Why Has Release for Passover Seders Been Opposed?

Although Rubashkin's counsel believe that any detention of Rubashkin before sentence and are applying to the Supreme Court to reverse the rulings of the District Court and the Court of Appeals, they filed on March 18, 2010, a motion to permit him to observe the first two days of Passover (March 29 and 31) at home. The motion was opposed by the Iowa prosecutors and was denied by the Court of Appeals on the day after it was filed.

Federal law (the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 and the Religious Freedom of Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a)) protect the religious right of an inmate to observe his religion in federal custody unless the Government has a "compelling interest" in denying the religious practice, taking the "least restrictive alternative" in enforcing that interest. Neither of these standards has been met by the Iowa prosecutors or the District Court in denying permission to Rubashkin to observe the Passover seders in his home.

8. Why Is an Excessively Severe Prison Term Being Urged?

The jury found in a special interrogatory that Rubashkin did not profit personally from his employment at Agri, Inc. and that he did not owe any money to the lending bank. Evidence of his very modest lifestyle and his extraordinary religious beliefs were proffered at his trial but objected to by the Iowa prosecutors and excluded by the District Court. Rubashkin is a father of 10 children, including an autistic teenage boy who depends on him. Nonetheless, the Iowa prosecutors have indicated that they view an appropriate prison sentence as being in the range of 15 to 20 years.

Although they dismissed the 72 immigration-law counts after the jury's verdict on the 100 other counts, the Iowa prosecutors have submitted to the probation office more than 30 pages of inflammatory allegations regarding the employment of illegal workers at Agri. These assertions - which Rubashkin has never had any opportunity to challenge and disprove - are designed to prejudice the Judge against Rubashkin and increase his sentence.