

**To:** jeevacation@gmail.com[jeevacation@gmail.com]  
**From:** Mendy Katz  
**Sent:** Mon 4/12/2010 7:23:56 PM  
**Subject:** CALL TO ACTION

Late Friday afternoon the United States Attorney's office of the Northern District of Iowa filed their sentencing memorandum with the court and in it asked that the Court should impose a sentence consistent with the "guideline range calculated by the U.S. Probation Office." The Probation office calculated the total offense level at 45; but since the Sentencing Table caps at level 43, the Probation office calculated the total offense level at 43. An offense level of 43 provides for a life sentence under the sentencing guidelines.

Most Jews in America today truly want to believe that Anti-Semitism is not really a problem in this country. We talk about the growing Anti-Semitism in Europe, in countries like France and England. Most responsible Jewish leaders are so afraid to use those two dirty words. They say "we can't prove it and we have to stop with the victim mentality". Sorry to break the news to you , Anti-Semitism is alive and well in the United States of America .

Prosecutors just came out with their official recommendation to the court in the sentencing of Sholom Rubashkin and they are asking for a sentence of Life In Prison. Those unfamiliar with the case might think this is a murder case, a child rape case or a case involving a repeat violent offender. Wrong again. This is the case of a Chasidic Jew who is a first time nonviolent offender. His crime submitting false reports to the bank regarding the security for the bank's loan which ultimately caused the bank to lose 27 million dollars.

No one is condoning his criminal behavior. No one is above the law. If you commit the crime you have to do the time, however the punishment has to fit the crime. In addition, every case is different and the details and circumstances of the crime and the purpose and scope of the crime have to be part of the punishment equation. Even the prosecutors agree that Mr. Rubashkin did not gain personally from this crime and that the only reason why he committed the crime was to try to save his father's business from going under after the government decimated the company with an Immigration and Customs Enforcement raid.

To put the sentence being sought in the Rubashkin case in perspective, one can look at the case of Mark Turckan, the president of a St. Louis bank, pleaded guilty in early 2009 to a 21-year cover-up of misapplying funds. He was found to have caused a 25-million dollar loss, the prosecutors asked for a 63 to 78-month sentence, and he was sentenced in a Missouri federal court in June 2009 to one year and a day in prison!

So you may be wondering why is it that the government is asking for life in prison in this case ? The answer unfortunately is the two words no one wants to hear: Anti-Semitism. Of course it is a lot more complicated and detailed and no one called anyone a dirty Jew or painted a swastika so of course there is no proof. However no one needs swastika's to know that Mr. Rubashkin is being treated differently because he is a Chasidic Jew living in LA.

So we have two choices we can continue to shake our heads and stay silent and do nothing about this injustice or we can make our voices heard. We can make believe this is not Anti-Semitism or we can call a spade a spade. We must voice our opinions and to exercise our right to freedom of speech and demand that the Attorney General of the United States of America stop this insanity now. Where are all the fighters for freedom and Democracy and equal treatment for all. Where are all the politicians that scream about racism, and bigotry ?

**Here is what you can do today:**

1. Please send out emails to your email lists asking them to help in this effort.
2. Please sign an online petition available at <http://www.thepetitionsite.com/2/fair-and-equal-justice-for-sholom-rubashkin>
3. Please call the Justice Department's Intergovernmental and Public Liaison Office 202-514-3465 and express your reservations and concerns and ask them to give your message to Attorney General Holder. They will be counting every phone call that comes in.
4. Please email or send a fax to the Department of Justice at [oipl@usdoj.gov](mailto:oipl@usdoj.gov) or 202 514 2504 and ask them to forward your email to Attorney General Eric Holder. Each and every email or fax that comes in will be counted and read. It is also very important that you blind copy [pr@justiceforsholom.org](mailto:pr@justiceforsholom.org) and send copies of your faxed letters to 212 918 3468 and ask them to forward your email to Attorney General Holder. (It is also very important that you blind copy [pr@justiceforsholom.org](mailto:pr@justiceforsholom.org) as we will be requesting that those who wrote well written emails forward their email directly to the US Attorney of Iowa.)

5. The Rubashkin family is also looking for politicians or respected members of the legal profession to weigh in on this matter before sentencing. If you know of any law Professors, former Judges, former US Attorneys, former state prosecutors or former law enforcement officials and or Justice officials who are willing to write letters or sign on to a letter on Sholom Rubashkin's behalf, please email [pr@justiceforsholom.org](mailto:pr@justiceforsholom.org)

**The following are some of the details of how it came to be that the United States Government of America is seeking a life sentence from a nonviolent first time offender in a 32 million dollar fraud case.**

**MEMORANDUM REGARDING GROSS DISPARITY IN PROSECUTORIAL TREATMENT OF SHOLOM RUBASHKIN (prepared by a lawyer familiar with the facts of the case)**

This Memorandum describes the gross disparity between usual procedures in federal criminal prosecutions under the immigration and bank-fraud laws and how Iowa federal prosecutors treated the case of Sholom Rubashkin, the Orthodox Jewish Hasidic businessman who was arrested on immigration-law violations relating to the Agriprocessors plant in Iowa and was found guilty after a jury trial of bank fraud 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 ("Agri") 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' Postville plant that ICE might be planning a raid, Agri took the advice of the American Meat Institute and retained the services of Robert W. Kent, Esq., an attorney with the international law firm of Baker & McKenzie. Mr. Kent had represented Swift & Co. - a meat-packer that had been raided by ICE in six states in December 2006, when approximately 1,297 illegal employees were found. When ICE sought to raid Swift again in Texas, Kent persuaded them to proceed without a raid and instead to examine Swift's employment records and weed out the illegal immigrants. Kent called the Iowa prosecutors on May 9, 2008, and followed up with a faxed letter the same day requesting a meeting

and stating that Agri - which was "the largest kosher meat production company in the country" -- wished to cooperate with ICE and avoid the dangers and disruption 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, supported by Blackhawk military helicopters. A total of 389 illegal immigrants were arrested and entered guilty pleas in production-line fashion after being told that they could be charged with a major federal criminal felony that the Supreme Court held in 2009 (*Flores-Figueroa v. United States*, 129 S. Ct. 1886) was inapplicable to their situations. The Department of Homeland Security reversed ICE's raid policy and, since an announcement made 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 Agri. It demolished Postville's economic infrastructure, destroyed a legitimate business that was the town's major employer, wiped out livelihoods of both legal and illegal employees, forced businesses to shut down, and 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 Raid Targets?**

(a) Swift & Co. - Although Swift was a major employer of illegal workers in six states and 1,297 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 harboring illegal immigrants and was sentenced to one year and one day in prison and a \$2000 fine after being found guilty by a jury. Another Swift employee who had pleaded guilty was sentenced to probation.

(b) Michael Bianco, Inc. ("MBI") - A manufacturer of leather goods and handbags in New Bedford, Mass. was raided by ICE on March 6, 2007, after an undercover operation from which it was learned that Francesco Insolita, the owner, intentionally sought out illegal immigrants and exploited them with punitive fines and terrible working conditions. Approximately 326 illegal workers were detained in the raid. Insolita was sentenced in January 2009 to one year and one day in prison and fined \$30,000. 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' workforce consisted of illegal Mexican immigrants, and approximately 150 immigrants were arrested. The owner, Mubarik Kahlon, and two managers were indicted on immigration charges in July 2008. A jury trial was set for June 15, 2009, but on June 10, Kahlon and one manager pleaded guilty. Kahlon was sentenced to two years' probation and a \$6,000 fine.

(d) Miyako Sushi and Panda China Buffets - ICE raided these restaurants in Ocean City, Maryland in June 2007, on evidence that illegal workers were hired as below-minimum-wage employees (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-law violations and were sentenced on September 12, 2008, to 18 months' probation. Their partnership was ordered to pay a \$50,000 fine.

(e) Rosenbaum-Cunningham International, Inc. ("RCI") - On February 22, 2007, ICE raided 63 locations in 17 states of a national janitorial service that provided cleaning crews for restaurants. Almost all RCI janitorial employees were illegal immigrants who had no documentation whatever, and they 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 of more than \$18 million in federal employment taxes. On March 4, 2008, Rosenbaum was sentenced to 10 years 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 remotely 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 an investigation of Agri. The sworn complaint on which the raid was based had acknowledged that Agri had screened job applicants and had, in fact, twice rejected an ICE undercover agent who tried to gain employment with false identity papers. Only when ICE provided him with authentic documentation was he hired. Rubashkin denied that he had knowingly violated the immigration laws and Agri retained Robert Kent to discuss the charges with the prosecutors. The prosecutors made arrests and filed immigration-law charges against various company employees. Most of these steps were accompanied by substantial local and national publicity. Counsel for Agri and Rubashkin was in regular communication with the prosecutors to attempt a resolution of 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 one 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, but the local prosecutors had him arrested without advance warning, to the accompaniment of great publicity, on October 30, 2008. Page A14 of The New York Times of October 31, 2008, for example, had a story headlined "Arrest Made in Iowa Plant Case" and a photograph - coverage that would not have appeared had counsel been requested, as is customary in such cases, to bring in his client to answer charges.

An indictment charging one violation of the immigration laws was returned. At Rubashkin's bail 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 in all other immigration-law prosecutions have been released either on personal recognizance or on the submission of a nominal bond. No other employer accused of violating the immigration laws has ever been restricted with 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 an allegation that he had committed bank fraud after his first arrest. Their claim was that, in the routine certifications that Agri made to the St. Louis bank with which it had a \$35 million line of credit, it had falsely represented that it was in compliance with the law when, in fact, it was harboring illegal immigrants, and that Agri had failed to deposit all checks it received from customers in the "sweep account" that was security for the bank loan and had temporarily used (but had subsequently reimbursed) money for a store and school in Postville that Agri was administering.

Although there was no proof that the bank was actually misled by this conduct or that its loan, on which timely interest payments continued to be made even after the raid, was imperiled in any way, the Iowa prosecutors asserted that this conduct by Rubashkin constituted "non-compliance" with the terms of 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 sought to travel to Israel. This same specious contention would justify the imprisonment of any Jewish person ever arrested on any charge. In his opinion denying bail, the Magistrate Judge accepted the Iowa prosecutors' claim regarding flight to Israel.

Rubashkin spent the next 76 days in prison. No other individual accused of an immigration-law violation and no other non-violent and non-threatening person charged with nothing more than having compromised the security of a bank loan that was otherwise being kept current has ever been denied bail 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 a Forfeiture Demand?**

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

superseding indictments.

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

First Indictment November 13, 2008 3 Counts Second Superseding Indictment November 20, 2008 12 Counts Third Superseding Indictment December 11, 2008 13 Counts Fourth Superseding Indictment January 15, 2009 97 Counts Fifth Superseding Indictment March 31, 2009 79 Counts Sixth Superseding Indictment May 14, 2009 142 Counts Seventh Superseding Indictment July 16, 2009 163 Counts

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

The Fourth Superseding Indictment added the allegation under 7 U.S.C. § 195 that Rubashkin had 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 offenses were discovered. Rather, the basic bank fraud allegation was multiplied because each of the bank's advances of funds to Agri under the \$35 million line of credit and each month's report to the bank by Agri was charged as a separate offense. Money laundering was also alleged to have been committed when 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 ultimately tried before a jury not on one basic charge of submitting false reports to the bank regarding the security for 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 Bring in Immigration-Law Violations at the Bank-Fraud Trial**

Recognizing that the jury would be prejudiced against Rubashkin in considering the bank-fraud allegations if it heard evidence regarding immigration-law violations, the District Judge severed the trial of the 72 immigration violations in the Seventh Superseding Indictment from the 91 bank-fraud charges. Nonetheless, contending that he committed bank fraud when he represented to the bank that Agri 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), 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 for its expedient repair." The District Judge found "that Defendant took great pains to comply with the terms of his pretrial release."

Nonetheless, when the jury returned a guilty verdict, Rubashkin was immediately remanded 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 Mr. Rubashkin and to pay for a 24-hour armed guard that would prevent him from leaving his home without prior authorization. The District Judge granted the Iowa prosecutors' request, and Rubashkin has now been 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. § 3143(a)) does not authorize the pre-sentencing imprisonment of a defendant who is not a danger to the community if 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 is a "flight risk." The Court of Appeals denied bail also without stating

any reason. These unexplained denials of bail violate the provision of the Bail Reform Act that requires "a written statement of reasons for the detention." 18 U.S.C. § 1342(i)(1).

#### **7. Why Is an Excessively Severe Prison Term Being Urged?**

The jury found in a special interrogatory that Rubashkin did not profit personally from false invoices presented to the lending bank. Evidence of his very modest lifestyle and his extraordinary charity was proffered at his trial but objected to by the Iowa prosecutors and excluded by the District Judge. He is the father of 10 children, including an autistic teenage boy who depends on him.

Nonetheless, the Iowa prosecutors are advocating for a LIFE SENTENCE.

Although they dismissed the 72 immigration-law counts after the jury's verdict on the bank-fraud allegations, the Iowa prosecutors have submitted to the probation office more than 30 pages of unproved 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 District Judge against Rubashkin and increase his sentence.