

# The May 12, 2008 Postville, Iowa Immigration Raid: A Human Rights Perspective

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I. INTRODUCTION .....	294
II. THE MAY 12, 2008 POSTVILLE, IOWA IMMIGRATION RAID .....	295
A. <i>The Largest Criminal Worksite Raid in U.S. History</i> .....	295
B. <i>Public Reactions to the Raid</i> .....	295
C. <i>Allegations Against Agriprocessors</i> .....	296
III. GOVERNMENT FAILURES .....	298
A. <i>Lack of Government Cooperation</i> .....	298
B. <i>Judicial Failures</i> .....	298
C. <i>Impetus for the Raid</i> .....	301
1. Prior Allegations Against Agriprocessors .....	301
2. U.S. Immigration Policy and Enforcement .....	302
3. Other Possible Motivations .....	304
IV. THE RAID AS A HUMAN RIGHTS FAILURE .....	306
A. <i>Immigrant Worker Rights as International Human Rights</i> .....	306
B. <i>U.S.-International Human Rights Cooperation Regarding Labor Standards</i> .....	306
C. <i>Domestic Statutory and Judicial Protection</i> .....	308
V. LESSONS LEARNED, PLANS, AND ALTERNATIVE STRATEGIES .....	310
A. <i>Facing Reality and Protecting the Vulnerable</i> .....	310
1. Failure of the Human Rights Movement to Incorporate Workers' Rights .....	311
B. <i>Human Rights Reform and the Broad Scope of Labor Laws</i> .....	311
VI. CONCLUSION .....	314

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## I. INTRODUCTION

“Remember, remember always that all of us, and you and I especially, are descended from immigrants and revolutionists.”<sup>1</sup> Franklin D. Roosevelt aptly describes the perspective from which this Note is written. The dramatic events of the May 12, 2008 immigration raid in Postville, Iowa implicated the lives of many individuals from communities around the world. Each of these individuals was present and working in the United States because of an inherent human desire to establish a better life. This Note argues that the May 12, 2008 immigration raid in Postville, Iowa marks a gross failure in government enforcement of international labor standards for immigrant workers in the United States. The Note further contends that the inadequate state and federal legal responses toward the executives and supervisors of Agriprocessors Inc. (“Agriprocessors”) illustrate the dire need to conceptualize immigrant labor rights as a human rights issue. The failure to do so often results in characterizing immigration raids as implicating only immigration or labor issues, to the detriment of the human rights of the many immigrant workers involved.

We should respect the human rights of immigrant workers regardless of our personal opinions about the enforcement of immigration laws. Working without legal authorization in the United States is extremely common despite the U.S. Immigration and Customs Enforcement (“ICE”) Agency’s enforcement efforts and the harsh penalties imposed. At first glance, this seems counterintuitive. However, “[g]iven that the U.S. is the first choice for most migrants less than optimal outcomes are accepted by many immigrants.”<sup>2</sup> For many individuals coming to the United States in search of work, the potential economic benefits outweigh the significant risks of being caught, arrested, and deported. Then, when these individuals settle in the United States more permanently, they often work without legal protection of their most fundamental human rights.

The need for respect of human rights is further illustrated both by ICE’s treatment of immigrant workers after the raid and by the U.S. government’s failure to ratify many international labor agreements protecting human rights. America’s immigration and labor policies should reflect the fact that immigration status bears no relationship to the human rights protections afforded workers. There are certain fundamental rights and protections that no employed human being should be denied, regardless of citizenship.

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<sup>1</sup> President Franklin D. Roosevelt, Address to the Daughters of the American Revolution in Washington, D.C. (Apr. 21, 1938), *available at* <http://www.thesunmagazine.org/issues/395/sunbeams>.

<sup>2</sup> Robyn Iredale, *Internationalisation of Professions and the Assessment of Skills: Australia, Canada and the U.S.*, in *NATION SKILLING: MIGRATION, LABOUR AND THE LAW* 138, 143 (Mary Crock & Kerry Lyon eds., 2002).

Furthermore, the United States should take the initiative to implement policies consistent with its status as a worldwide leader in human rights.

## II. THE MAY 12, 2008 POSTVILLE, IOWA IMMIGRATION RAID

### A. *The Largest Criminal Worksite Raid in U.S. History*

ICE made 389 arrests during the May 12, 2008 immigration raid at the Agriprocessors kosher slaughterhouse in Postville, Iowa.<sup>3</sup> This was both the largest immigration raid in Iowa's history and the nation's "largest criminal worksite enforcement operation" to date.<sup>4</sup> Although the public seemed surprised by the news of the May 12, 2008 arrests, ICE officials had been planning the Postville raid for months.<sup>5</sup> That morning, black helicopters circled the Postville plant as ICE led law enforcement agents from over sixteen federal, state, and local agencies in the raid on the slaughterhouse employees.<sup>6</sup> In a sad irony, the immigrants were brought from the slaughterhouse to the National Cattle Congress in Waterloo, Iowa, a "[f]acility normally used to show livestock . . . that served as a temporary detention facility and makeshift courthouse in the aftermath of the raid."<sup>7</sup>

### B. *Public Reactions to the Raid*

The 389 immigrants arrested amounted to almost 10 percent of Postville's population.<sup>8</sup> The Washington Post reported that "[h]alf of the school system's 600 students were absent [the day after the raid], including 90 percent of Hispanic children, because their parents were arrested or in hiding."<sup>9</sup> The Postville Community Schools Superintendent, David

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<sup>3</sup> Nigel Duara et al., *Claims of ID Fraud Lead to Largest Raid in State History*, DES MOINES REG., May 12, 2008, available at <http://www.desmoinesregister.com/article/20080512/NEWS/80512012/Claims-of-ID-fraud-lead-to-largest-raid-in-state-history> [hereinafter Duara, *ID Fraud*].

<sup>4</sup> News Release, U.S. Immigration & Customs Enforcement (May 15, 2008), available at <http://www.ice.gov/pi/news/newsreleases/articles/080515waterloo.htm> [hereinafter ICE News Release I].

<sup>5</sup> U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, WORKSITE ENFORCEMENT OVERVIEW 2 (2008), <http://www.ice.gov/doclib/pi/news/factsheets/worksite.pdf> [hereinafter ICE FACT SHEET].

<sup>6</sup> Spencer S. Hsu, *Immigration Raid Jars a Small Town: Critics Say Employers Should Be Targeted*, WASH. POST, May 18, 2008, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/17/AR2008051702474.html?referrer=emailarticle>; Duara, *ID Fraud*, *supra* note 3.

<sup>7</sup> *Statement of David Wolfe Leopold on Behalf of the American Immigration Lawyers Association: Hearing on the Arrest, Prosecution, and Conviction of Undocumented Workers in Postville, Iowa from May 12 to 22, 2008 Before the H. Subcomm. on Immigration, Citizenship, Refugees, Border Sec., and Int'l L., 110th Cong. 3* (2008), available at <http://judiciary.house.gov/hearings/pdf/Leopold080724.pdf> [hereinafter *Leopold*].

<sup>8</sup> Hsu, *supra* note 6.

<sup>9</sup> *Id.*

Strudthoff, compared the event to “a natural disaster—only this one [was] manmade.”<sup>10</sup> The ICE buses with state police escorts brought many of the immigrants to the temporary courthouse at the National Cattle Congress to begin the intake process for deportation and removal proceedings, and for criminal charges, including document fraud and identity theft.<sup>11</sup>

There has been a public outcry about the events leading up to and resulting in the May 12, 2008 raid at the Agriprocessors meat-packing plant. It is tragic that ICE officials swept in and decimated an entire community, turning it into a “ghost town” where people feared separation from their loved ones, imprisonment, and deportation.<sup>12</sup> A priest from the Immaculate Conception Parish in Cedar Rapids, which is heavily involved with the Hispanic community in Eastern Iowa, described the raid as “inhumane.”<sup>13</sup> Approximately 200 protestors who gathered outside of the National Cattle Congress in Waterloo chanted, “We have rights!” and waved signs reading “Honk for Human Rights” as arrestees arrived for processing.<sup>14</sup>

### C. Allegations Against Agriprocessors

On November 21, 2008, federal prosecutors indicted the former CEO, three company managers, and a human resources employee from Agriprocessors with twelve counts of labor, fraud, and immigration-related offenses.<sup>15</sup> Additionally, the Iowa Attorney General’s office alleged that Agriprocessors’ supervisors knowingly allowed minors to run dangerous power equipment, including meat grinders, circular saws, and power shears; expose themselves to dangerous chemicals; work during prohibited hours; and work more hours than legally permitted.<sup>16</sup> Furthermore, they failed to pay child workers for the overtime they performed and used hiring practices that “encouraged job applicants to submit identification documents which were forgeries and known to contain false information as to resident alien status, age and identity.”<sup>17</sup> Agriprocessors allegedly paid their workers below

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<sup>10</sup> *Id.*

<sup>11</sup> See Duara, *ID Fraud*, *supra* note 3.

<sup>12</sup> Hsu, *supra* note 6.

<sup>13</sup> *Id.*

<sup>14</sup> Duara, *ID Fraud*, *supra* note 3.

<sup>15</sup> News Release, U.S. Immigration & Customs Enforcement, Agriprocessors and Management Criminally Indicted: Charges Include Conspiracy, Harboring Illegal Aliens, Aggravated Identity Theft, Document Fraud and Bank Fraud (Nov. 21, 2008), *available at* <http://www.ice.gov/pi/nr/0811/081121cedarrapids.htm> [hereinafter ICE News Release II].

<sup>16</sup> Lynda Waddington, *Agriprocessors Charged with Over 9,000 Child Labor Law Violations*, IOWA INDEP., Sept. 9, 2008, *available at* <http://iowaindependent.com/5235/agriprocessors-charged-with-9000-child-labor-law-violations>.

<sup>17</sup> Rod Boshart, *Plant Faces 9,000 Labor Violations*, GAZETTE, Sept. 10, 2008, at 1A, *available at* <http://www.gazetteonline.com/apps/pbcs.dll/article?AID=/20080910/NEWS/709099>.

minimum wage, usually between five and six dollars per hour, even after the employees had worked at the plant for an extended period of time.<sup>18</sup> Finally, Agriprocessors' supervisors allegedly physically abused workers, including one notable case where a supervisor "covered the eyes of an employee with duct tape and struck him with a meat hook."<sup>19</sup>

Prosecutors charged Sholom Rubashkin, former Vice President of Agriprocessors, with "conspiracy to harbor illegal aliens for profit, harboring illegal aliens for profit, conspiring to commit document fraud, aiding and abetting document fraud, aiding and abetting aggravated identity theft, and bank fraud."<sup>20</sup> In January, prosecutors added charges of money laundering, immigration conspiracy, and "willful violation of an order of the U.S. secretary of agriculture."<sup>21</sup> Two managers of the plant, Hosam Amar and Zeev Levi, were both charged with a slightly shorter list of similar crimes, but have since fled the United States, prompting the Department of Homeland Security ("DHS") to declare them fugitives.<sup>22</sup> In March 2009, Chief Judge Reade sentenced former Agriprocessors supervisor, Martin De La Rosa-Loera, to twenty-three months in federal prison for aiding and abetting in "harboring illegal aliens," and for encouraging plant employees to acquire fraudulent employment authorization documents.<sup>23</sup> Later, the charges against Rubashkin and three plant managers were expanded to a 163-count indictment.<sup>24</sup> In November 2009, a federal jury convicted Rubashkin with eighty-six counts of business fraud in the first of two planned criminal trials; however, federal prosecutors dropped the seventy-two immigration-related charges shortly thereafter.<sup>25</sup>

Iowa Attorney General Tom Miller also charged the plant's operations manager, Brent Beebe, with a similar list of crimes.<sup>26</sup> In September 2008,

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<sup>18</sup> Duara, *ID Fraud*, *supra* note 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Lynda Waddington, *99 and Counting: More Charges Filed Against Rubashkin*, IOWA INDEP., Jan. 17, 2009, available at <http://iowaindependent.com/10658/99-and-counting-more-charges-filed-against-rubashkin>.

<sup>22</sup> *Id.*

<sup>23</sup> News Release, U.S. Immigration & Customs Enforcement (Mar. 4, 2009), available at <http://www.ice.gov/pi/nr/0903/090304cedarrapids.htm> [hereinafter ICE News Release III].

<sup>24</sup> Grant Schulte, *Judge Refuses to Delay Trial for Rubashkin*, DES MOINES REG., July 31, 2009, available at <http://www.desmoinesregister.com/article/20090731/NEWS/907310348/-1/BUSINESS04>.

<sup>25</sup> Grant Schulte & William Petroski, *Feds Dismiss Immigration Charges Against Former Iowa Kosher Slaughterhouse Manager Sholom Rubashkin*, DES MOINES REG., Nov. 19, 2009, available at <http://www.desmoinesregister.com/article/20091119/NEWS/91119015/Feds-dismiss-immigration-charges-against-former-iowa-kosher-slaughterhouse-manager-sholom-rubashkin>.

<sup>26</sup> *Id.*

Miller filed over 9000 counts of child labor violations against Agriprocessors' joint presidents and owners, Abraham Aaron Rubashkin and Sholom Rubashkin, as well as against management-level employees Elizabeth Billmeyer, Laura Althouse, and Karina Freund.<sup>27</sup> In Iowa, state child labor violations are simple misdemeanors and each daily violation is "punishable by up to 30 days in jail and a fine of \$65 to \$625 per count."<sup>28</sup> The state-level case is stayed until 2010.<sup>29</sup>

### III. GOVERNMENT FAILURES

#### A. *Lack of Government Cooperation*

ICE's lack of cooperation and information-sharing when conducting the Agriprocessors raid prevented and disrupted the U.S. Department of Labor's efforts to target Agriprocessors, management, and owners.<sup>30</sup> Mark Lauritsen, International Vice President of the United Food and Commercial Workers Union, argued that the ICE raid "disrupted a separate U.S. Labor Department investigation into alleged child labor law violations and other infractions."<sup>31</sup> Unfortunately, this means that the May 12, 2008 raid has been re-characterized as an immigration raid that was orchestrated and implemented by DHS and ICE. As the Des Moines Register aptly stated, "The largest workplace raid in Iowa history . . . reignited the debate over immigration."<sup>32</sup> If the public discussion focuses only on the immigration status of the employees who were involved in the raid, however, the U.S. government risks ignoring or inadequately appreciating the important human rights aspects of the issue.

#### B. *Judicial Failures*

Attorneys, the public, and the media have criticized the lack of legal representation provided to these detained workers.<sup>33</sup> A judicially imposed one-week deadline severely limited defense counsels' ability to diligently

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<sup>27</sup> Boshart, *supra* note 17.

<sup>28</sup> *Id.*

<sup>29</sup> Lynda Waddington, *Agriprocessors Child Labor Trial Pushed Off Until 2010*, IOWA INDEP., July 14, 2009, available at <http://iowaindependent.com/17434/agriprocessors-child-labor-trial-pushed-off-to-2010>.

<sup>30</sup> *Hearing Before the H. Comm. on the Judiciary, Subcomm. on Immigration, Citizenship, Refugees, Border Sec. and Int'l. L.*, 110th Cong. 2-4 (2008) (statement of Rep. Bruce Braley, 1st Dist., IA), available at <http://judiciary.house.gov/hearings/pdf/Braley080724.pdf> [hereinafter Braley].

<sup>31</sup> Hsu, *supra* note 6.

<sup>32</sup> Duara, *ID Fraud*, *supra* note 3.

<sup>33</sup> See Leopold, *supra* note 7; see also *The Postville 28*, FEMINISTING.COM, Sept. 30, 2008, <http://www.feministing.com/archives/011326.html> [hereinafter *The Postville 28*].

determine if any of their many clients had “colorable claims to immigration relief.”<sup>34</sup> An American Immigration Lawyers Association (“AILA”) representative described the situation facing appointed defense counsel:

[D]efense counsel were forced to recommend acceptance of a uniform plea agreement in seven (7) days without sufficient time to assess the case facts and forms of relief under the immigration law or expose their clients to significant jail time; and, mass hearings were conducted at which CJA defense counsel were called upon to represent 10 defendants at a time in a single, brief, proceeding, with some called on to do so on multiple occasions for multiple groups of defendants.<sup>35</sup>

This process, described as “expedited justice” or “fast tracking,” was criticized by Professor Erik Camayd-Freixas for treating immigrant workers “like the livestock prepared for slaughter at Agriprocessors . . . efficiently packaged, convicted, and ordered deported.”<sup>36</sup> As a result of the “efficient” processing of these workers, “ICE may be ‘deporting 390 witnesses’ to the labor investigation . . . This administration seems to place a larger value on big, splashy shows in this immigration raid than in vigorously enforcing other labor laws.”<sup>37</sup>

While ICE celebrated the efficient enforcement of immigration law, critics expressed concern that this “expedited justice . . . compromised the independence of the court and deprived the defendants of [their] due process” rights.<sup>38</sup> Many of Agriprocessors’ employees did not fully understand the effect of agreeing to the plea bargain.<sup>39</sup> As David Leopold argued in a House Judiciary Subcommittee hearing:

Stated simply, the Fast-Tracking system depended on threatening the workers with a two (2) year prison sentence, their inability to receive adequate attention from counsel, and their ignorance of the charges leveled against them . . . Faced with the choice of 5 months in prison and deportation, or 6 months in prison waiting for a trial which could lead to 2

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<sup>34</sup> *Immigration Raids: Postville and Beyond: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Sec., and Int’l L. of the H. Comm. on the Judiciary*, 110th Cong. 6 (2008) (written statement of the American Civil Liberties Union) [hereinafter ACLU].

<sup>35</sup> *Leopold*, *supra* note 7, at 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Hsu*, *supra* note 6.

<sup>38</sup> *Leopold*, *supra* note 7, at 3.

<sup>39</sup> *Id.* at 4.

years in prison and deportation, what choice did the workers really have?<sup>40</sup>

Without fully understanding the consequences of this plea bargain, hundreds of immigrants agreed to an arrangement that could prohibit their return to the United States at a later date.<sup>41</sup>

Part of the plea agreement required detained employees to agree to “stipulated judicial orders of deportation pursuant to 8 U.S.C. §1228(c)(5).”<sup>42</sup> These orders required the workers to waive their rights to many possible defenses, protections, or relief that might have been available to them under U.S. immigration law.<sup>43</sup> These orders required “an alien’s waiver of the right to an administrative hearing before an immigration judge, an administrative appeal, and judicial review of the final order of deportation.”<sup>44</sup> The stipulated judicial orders of deportation likely led immigrants to waive avenues for legal relief and temporary immigration benefits including asylum and withholding of removal, cancellation of removal for non-permanent residents, adjustment of status, and U and T visas for crime victims.<sup>45</sup>

A group of approximately twenty-eight women, who were released from detention at the National Cattle Congress because they were the sole-caregivers to their children, are still in custody today.<sup>46</sup> These women were given ankle bracelets with GPS tracking devices, to be monitored by ICE officials.<sup>47</sup> Many of these women are seeking relief through the U-Visa program, which provides temporary immigration benefits to individuals who have suffered substantial physical, emotional, or mental abuse as a result of certain violent domestic crimes, and have been helpful in the investigation or prosecution of said crime.<sup>48</sup>

Critics’ accusations also include violations of constitutional rights, such as “arbitrary and indefinite detention,”<sup>49</sup> and denial of “access to immigration

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 5–7.

<sup>42</sup> *Id.* at 7.

<sup>43</sup> *Leopold*, *supra* note 7, at 7.

<sup>44</sup> Memorandum from the Office of the U.S. Att’y Gen. on the Deportation of Crim. Aliens to All Fed. Prosecutors (Apr. 28, 1995), *available at* <http://www.usdoj.gov/ag/readingroom/deportation95.htm>.

<sup>45</sup> *Leopold*, *supra* note 7, at 8–11.

<sup>46</sup> *The Postville 28*, *supra* note 33.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*; U.S. Citizenship & Immigration Servs., *Instructions for Form I-918, Petition for U-Nonimmigrant Status*, <http://www.uscis.gov/files/form/I-918instr.pdf> (last visited Aug. 24, 2009).

<sup>49</sup> Hsu, *supra* note 6.

counsel.”<sup>50</sup> Iowa’s former Governor, Tom Vilsack, “accused federal officials of violating the workers’ Fourth Amendment rights against unreasonable searches and seizures.”<sup>51</sup> In a positive development, in May 2009 the U.S. Supreme Court ruled that “many of the convictions and sentences given to immigrant detainees from the Agriprocessors meatpacking plant in Postville were in error.”<sup>52</sup> This ruling may affect two immigrants who were sentenced to twelve months in federal prison; unfortunately, this ruling comes too late for most of the immigrants who were involved and who have already completed their five-month sentences or who have already been removed from the United States.<sup>53</sup>

### C. *Impetus for the Raid*

#### 1. Prior Allegations Against Agriprocessors

The raid was not the first time that Agriprocessors had been accused of exploitive business practices. A 2004 report from the U.S. Department of Agriculture documented Agriprocessors’ history of disregarding its legal obligations to customers and employees.<sup>54</sup> It documented “acts of inhumane slaughter” and other violations of customer trust after Jewish groups began attacking its treatment of employees.<sup>55</sup> Then in 2006, the corporation paid the Environmental Protection Agency \$600,000 to settle a wastewater pollution issue instead of implementing less polluting practices.<sup>56</sup> However, the list of violations does not end there.

In April 2008, Agriprocessors lost a case in a federal appellate court in which it sought to ignore the vote of its plant workers to unionize “on the grounds that those in favor were illegal immigrants.”<sup>57</sup> The National Labor Relations Board (“NLRB”) further charged Agriprocessors with violations of sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act for allegedly committing unfair labor practices against a union in its Brooklyn, New York distribution center.<sup>58</sup> The Court held that the 1986 Immigration Reform and

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<sup>50</sup> *Leopold*, *supra* note 7, at 3.

<sup>51</sup> Duara, *ID Fraud*, *supra* note 3.

<sup>52</sup> Lynda Waddington, *U.S. Supreme Court Slaps Postville Prosecutions*, IOWA INDEP., May 4, 2009, available at <http://iowaindependent.com/14786/us-supreme-court-slaps-postville-prosecutions> [hereinafter Waddington, *Supreme Court*].

<sup>53</sup> *Id.*

<sup>54</sup> Hsu, *supra* note 6.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Agriprocessors, Inc. v. Nat’l Labor Relations Bd.*, 514 F.3d. 1, 2 (D.C. Cir. 2008).

Control Act did not leave immigrant workers outside the protection of the National Labor Relations Act, and afforded them the right to join a union.<sup>59</sup>

The International Vice President of the United Food and Commercial Workers Union formerly said, "This employer has a long history of violating every law that's out there—labor laws, environmental laws, now immigration laws."<sup>60</sup> After the Postville raid, however, human rights laws and constitutional laws can be added to this list. Before it declared bankruptcy, Agriprocessors filed a petition for a writ of certiorari in June 2008,<sup>61</sup> which the NLRB opposed.<sup>62</sup> In October 2008, Agriprocessors filed a reply brief to the NLRB opposition.<sup>63</sup> It is unclear how far Agriprocessors will take its appeal of this decision.

State Labor Commissioner Dave Neil also alleged that Agriprocessors had committed "repeated violations of Iowa's wage laws from January 2006 to June 2008,"<sup>64</sup> and levied penalties totaling nearly \$10 million against Agriprocessors.<sup>65</sup> Taking into account both Agriprocessors' long history of repeatedly ignoring a wide variety of laws and the human rights violations that occurred at the Postville plant, Agriprocessors' liability in the May 12, 2008 raid will only reflect a portion of these crimes.

## 2. U.S. Immigration Policy and Enforcement

U.S. immigration policy during most of the Bush Administration was characterized by a lack of enforcement efforts targeting employers of illegal immigrants.<sup>66</sup> For many years before the creation of the Department of Homeland Security, the Immigration and Naturalization Service ("INS") was largely responsible for the enforcement of U.S. immigration law; U.S. immigration policy primarily focused on the criminal activities of

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<sup>59</sup> *See id.* at 1.

<sup>60</sup> Hsu, *supra* note 6.

<sup>61</sup> *See* Petition for Writ of Certiorari, *Agriprocessors, Inc. v. Nat'l Labor Relations Bd.*, 2008 WL 2620153 (June 30, 2008); *see* Brief for the National Labor Relations Board in Opposition, *Agriprocessors, Inc. v. Nat'l Labor Relations Bd.*, 2008 WL 4609696 (Oct. 16, 2008).

<sup>62</sup> *Id.*

<sup>63</sup> *See* Petitioner's Reply Brief, *Agriprocessors, Inc. v. Nat'l Labor Relations Bd.*, 2008 WL 4792474 (Oct. 31, 2008).

<sup>64</sup> *See* Petition for Writ of Certiorari, *Agriprocessors, Inc. v. Nat'l Labor Relations Bd.*, 2008 WL 2620153 (June 30, 2008); *see* Brief for the National Labor Relations Board in Opposition, *Agriprocessors, Inc. v. Nat'l Labor Relations Bd.*, 2008 WL 4609696 (Oct. 16, 2008).

<sup>65</sup> Nigel Duara, *State Fines Agriprocessors Nearly \$10 Million*, CHI. TRIB., Oct. 29, 2008, available at <http://mobile.chicagotribune.com/BETTER/detail.jsp?key=184001&rc=top&full=1>.

<sup>66</sup> Braley, *supra* note 30.

undocumented immigrants and illicit border crossings.<sup>67</sup> In March 2003, Congress established ICE to replace the INS as “the largest investigative arm of the Department of Homeland Security.”<sup>68</sup> Between 2002 and 2005, the INS, and subsequently ICE, made a total of only 433 criminal arrests and 2731 administrative arrests.<sup>69</sup> Due to this restructuring, ICE became responsible for “a number of key homeland security priorities,” resulting in the number of arrests sky-rocketing.<sup>70</sup> In fact, ICE announced that for fiscal year 2008 alone, it almost tripled the number of criminal arrests during the three-year period from 2002 to 2005 with a total of 1103 criminal arrests.<sup>71</sup> ICE also nearly doubled its administrative arrests since 2005, with a total of 5184 individuals arrested in fiscal year 2008 alone.<sup>72</sup>

ICE has explained this increase in arrests by saying that the agency “has taken an aggressive stance toward worksite enforcement by investigating and prosecuting employers who knowingly hire illegal aliens.”<sup>73</sup> On their face, these numbers seem to support ICE’s claims, but the drastic increase in total arrests actually resulted from a shift toward targeting immigrant workers rather than employers. While ICE workplace enforcement efforts targeted only four employers in 2004, this number has fluctuated little during the past five years.<sup>74</sup> Of the 1103 labor-related criminal arrests in 2008, only 135 of these individuals were “owners, managers, supervisors or human resources employees facing charges including harboring or knowingly hiring illegal aliens.”<sup>75</sup> This means that immigrant workers charged with aggravated identity theft and social security fraud amounted to almost 90 percent of ICE arrests made in fiscal year 2008.<sup>76</sup> In fact, “while workplace arrests have risen tenfold since 2002, from 510 to 4940, only 90 criminal arrests have involved company personnel officials.”<sup>77</sup>

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<sup>67</sup> Find Federal Agency, Immigration and Naturalization Services (INS), <http://findfederalagency.com/immigration-naturalization-service-ins#history> (last visited Aug. 24, 2009).

<sup>68</sup> ICE FACT SHEET, *supra* note 5, at 3.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> ICE FACT SHEET, *supra* note 5, at 1.

<sup>74</sup> Braley, *supra* note 30, at 4.

<sup>75</sup> ICE FACT SHEET, *supra* note 5, at 3.

<sup>76</sup> *Id.*

<sup>77</sup> Hsu, *supra* note 6.

### 3. Other Possible Motivations

The Postville raid represented a monumental ICE effort to enforce workplace immigration laws; however, the impact of this effort was most significant for the immigrant workers. Officials have filed over 700 complaints against the employees of the kosher slaughterhouse for alleged violations of immigration and criminal laws.<sup>78</sup> The U.S. legal response to the Postville raid is particularly concerning in light of credible allegations that the owners, supervisors, and management of Agriprocessors engaged in egregious human rights violations for years, the bulk of which centered on rampant child labor law violations.<sup>79</sup> There is little or no evidence to suggest that human rights and labor rights motivated ICE to arrest 290 Guatemalans, ninety-three Mexicans, four Ukrainians, and two Israelis, then deport many of them.<sup>80</sup>

An ICE news release celebrated the following results from these criminal charges:

- 230 defendants were sentenced to five months in prison and three years of supervision for using false identification to obtain employment after admitting to using an actual person's identity;
- 30 defendants were sentenced to five months in prison and three years of supervision for falsely using a social security number or card after admitting to using an actual person's social security number;
- eight defendants were sentenced to five months in prison and three years supervision for illegally re-entering the United States after being deported;
- two defendants were sentenced to 12 months and a day in prison, and three years supervision for using false identification to obtain employment after admitting to using an actual person's identity;
- 21 defendants were sentenced to five years of probation for using false identification to obtain employment using fraudulent documents that did not belong to an actual person;
- two defendants were sentenced to five years of probation for falsely using a social security number or card where the number did not belong to an actual person; [and]

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<sup>78</sup> *Id.*

<sup>79</sup> See Duara, *ID Fraud*, *supra* note 3.

<sup>80</sup> See Hsu, *supra* note 6.

- four defendants were sentenced to five years of probation for illegally re-entering the United States after being deported.<sup>81</sup>

ICE quickly initiated the process of removing most of the individuals who had served five months in prison and who would have been released under supervision.<sup>82</sup> Within only ten days of their arrests, almost 300 immigrants who pled guilty to one of the aforementioned crimes received sentences.<sup>83</sup>

One DHS official stated that the Postville raid “reflects the [Bush] administration’s decision to put pressure on companies with large numbers of illegal immigrant workers, particularly in the meat industry.”<sup>84</sup> This answer leaves much to be desired, however, particularly in light of the disproportionate number of employee arrests. While the Bush Administration directed ICE to increase enforcement efforts targeting employers, it failed to consider the implications that this would have for their immigrant employees. By comparing these numbers and the progress made in criminally charging Agriprocessors’ owners, managers, and supervisors, it is evident that federal prosecutors have focused most of their attention on the undocumented workers rather than on the plant’s management.<sup>85</sup>

While both federal and state actions against the owners, supervisors, and managers of Agriprocessors have increased and improved since the raid, these agencies continue to overlook the broader pattern of longstanding human rights abuses. In spite of what ICE claims that its motivation for the raid was, many critics worry that “in the end, it is the greater population that will suffer and the workforce that will be held accountable.”<sup>86</sup> Although ICE’s motivation has not been confirmed, it is clear that addressing labor violations and other human rights violations on the part of the Agriprocessors owners, supervisors, and management was not its primary goal.

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<sup>81</sup> ICE News Release I, *supra* note 4.

<sup>82</sup> *Largest Ever Criminal Worksite Enforcement Operation Stretches Court*, THIRD BRANCH: NEWSLETTER FED. CTS. (Admin. Office of the U.S. Cts. Office of Public Affairs), June 1, 2008, available at <http://www.uscourts.gov/ttb/2008-06/article01.cfm> [hereinafter THIRD BRANCH].

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Julia Preston, *After Iowa Raid, Immigrants Fuel Labor Inquiries*, CHI. TRIB., July 27, 2008, available at <http://archives.chicagotribune.com/2008/jul/27/nation/chi-immigrants-child-laborjul27>.

<sup>86</sup> *Id.*

## IV. THE RAID AS A HUMAN RIGHTS FAILURE

A. *Immigrant Worker Rights as International Human Rights*

As author Philip Alston aptly stated, “[G]lobalization has given rise to widespread abuses, including child labor, punishingly long days, harsh discipline, hazardous work conditions, sexual predation, and suppression of the freedom to associate and organize.”<sup>87</sup> This quotation illustrates that protecting workers’ rights is a central tenet of human rights. However, as the May 12, 2008 immigration raid demonstrates, this connection is often ignored to the detriment of immigrant workers. There are certain rights that should be protected for every human being involved in the workforce, regardless of one’s citizenship status. The following list illustrates the importance of workers’ rights in the context of human rights:

[T]he catalogue of international human rights includes numerous rights relating to work: The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and especially the conventions adopted by the International Labor Organization, which enshrine the right of association (the right to form and join trade unions), the right to free choice of employment, the right to equal remuneration for work of equal value, and the right to just and favorable conditions of work and which prohibit forced labor and discrimination in employment.<sup>88</sup>

In the case of the Postville raid, public attention tended to focus on the immigration and labor rights issues. Unfortunately, this has resulted in a lack of attention to how the raid’s impact on labor rights was a larger human rights issue.

B. *U.S.-International Human Rights Cooperation Regarding Labor Standards*

The Universal Declaration of Human Rights provides protections for:

[T]he right to be free from slavery. This is broadly defined as the right to non-discrimination and equal protection, the right to freedom of association, the right to work, to free choice of

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<sup>87</sup> Philip Alston, *Labor Rights as Human Rights: The Not So Happy State of the Art*, in LABOR RIGHTS AS HUMAN RIGHTS 2, 2 (Philip Alston ed., 2005) (quoting Charles Sabel et al., *Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace* 4 (John F. Kennedy Sch. of Gov’t Faculty Research Working Paper Series, Paper No. 00-010, 2000), available at <http://nature.berkeley.edu/orourke/PDF/RLS21.pdf>).

<sup>88</sup> Virginia A. Leary, *The Paradox of Workers’ Rights as Human Rights*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE 22, 22 (Lance A. Compa & Stephen F. Diamond eds., 1996).

employment, to just and favourable conditions of work, the right to equal pay for equal work, and the right to reasonable limitation of working hours.<sup>89</sup>

Moreover, although the United States was a central actor in drafting the Universal Declaration of Human Rights in 1948, and in developing international human rights law generally, it has failed to ratify a number of essential human rights conventions.<sup>90</sup> The United States has signed the International Covenant on Economic, Social and Cultural Rights, and has signed and ratified the International Covenant on Civil and Political Rights and the Convention Against Torture.<sup>91</sup> However, it has neither signed nor ratified any of the following international human rights treaties relating more specifically to the rights of laborers: Freedom of Association and Protection of the Right to Organise Convention, Right to Organise and Collective Bargaining Convention, Convention Concerning Forced or Compulsory Labor, Equal Remuneration Convention, Discrimination (Employment and Occupation) Convention, Employment Policy Convention, Convention Concerning Occupational Safety and Health and the Working Environment, and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>92</sup>

The U.S. government's support of the human rights of workers has been unenthusiastic. This is illustrated further by the fact that it is a member state of the International Labour Organization ("ILO"),<sup>93</sup> but has ratified only some of the ILO's conventions.<sup>94</sup>

As of 2004, the United States only ratified 14 of the 162 active ILO Conventions. In addition, *the United States has only signed two out of eight conventions that the ILO describes as fundamental to the human rights of workers*. The ILO Committee of Experts, in 2002, stated that the United States was not in compliance with one of the few conventions it had

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<sup>89</sup> Alston, *supra* note 87, at 2.

<sup>90</sup> FEMINIST MAJORITY FOUND., FACTSHEET: UNITED STATES FAILURE TO RATIFY KEY INTERNATIONAL CONVENTIONS, TREATIES AND LAWS 1, *available at* [http://www.feministcampus.org/fmla/printable-materials/global\\_project/ratify\\_factsheet.pdf](http://www.feministcampus.org/fmla/printable-materials/global_project/ratify_factsheet.pdf) (last visited Feb. 12, 2010) [hereinafter FMF FACTSHEET].

<sup>91</sup> University of Minnesota Human Rights Library, Ratification of International Human Rights Treaties—USA, <http://www1.umn.edu/humanrts/research/ratification-USA.html> (last visited Aug. 24, 2009) [hereinafter Human Rights Library].

<sup>92</sup> *Id.*

<sup>93</sup> International Labour Organization, Official Relations Branch, Alphabetical List of ILO Member Countries (183 Countries), <http://www.ilo.org/public/english/standards/relm/country.htm> (last visited Aug. 24, 2009).

<sup>94</sup> FMF FACTSHEET, *supra* note 90.

ratified: Convention 105, The Abolition of Forced Labor Convention that the United States ratified in 1991.<sup>95</sup>

For example, the United States ratified Convention No. 105 on the Abolition of Forced Labor and No. 182 on the Worst Forms of Child Labor in 1991, but has not ratified Conventions Nos. 87 or 98, both of which relate to the right to organize.<sup>96</sup>

This pick-and-choose approach toward the ratification of these fundamentally interrelated international human rights agreements on labor rights undermines U.S. credibility. This inconsistency affects how the international community perceives whether the United States is adhering to the treaties and whether it is acting as a global leader in the area. It also signals to the world that workers' rights are only important under some circumstances or for some people. Critics note that even if the United States signs or ratifies these treaties, its insistence on including debilitating reservations, declarations, and understandings renders the treaties forceless and relatively futile.<sup>97</sup>

### C. Domestic Statutory and Judicial Protection

Human rights advocates criticize U.S. law for providing inadequate protection from employers who abuse immigrant workers. For example, in the 1984 *Sure-Tan* case, the U.S. Supreme Court held that a corporation violated the National Labor Relations Act when it retaliated against undocumented employees for participating in union activities by reporting them to the INS.<sup>98</sup> More recently, however, in the 2002 *Hoffman Plastics* case, the Court held that the NLRB cannot award back pay as a remedy to unauthorized workers who had been retaliated against and unlawfully discharged under the National Labor Relations Act.<sup>99</sup> The ILO Committee on the Freedom of Association issued a 2002 report that criticized the *Hoffman* decision for leaving immigrant workers open to exploitation and without adequate legal recourse.<sup>100</sup>

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<sup>95</sup> *Id.* (emphasis in original).

<sup>96</sup> SAMUEL ESTREICHER, GLOBAL ISSUES IN LABOR LAW 59, 59 (2007); Freedom of Association and Protection of the Right to Organise Convention (ILO No. 87), July 9, 1948, 68 U.N.T.S., 17, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>; Right to Organise and Collective Bargaining Convention (ILO No. 98), July 1, 1949, 96 U.N.T.S. 257, available at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

<sup>97</sup> See, e.g., Kenneth Roth, *The Charade of US Ratification of International Human Rights Treaties*, 1 CHI. J. INT'L L. 347 (2000), available at <http://www.globalpolicy.org/component/content/article/157/26883.html>.

<sup>98</sup> *Sure-Tan, Inc. v. Nat'l Labor Relations Bd.*, 467 U.S. 883, 895–98 (1984).

<sup>99</sup> *Hoffman Plastics Compound v. Nat'l Labor Review Bd.*, 535 U.S. 137, 140 (2002).

<sup>100</sup> ILO Committee on Freedom of Association, Complaints Against the Government of the United States Presented by the American Federation of Labor and Congress of Industrial Organization

Although general labor standards exist in the United States, the judiciary's interpretation of these laws and their application to undocumented immigrant workers leaves these individuals in a grey area. While they are entitled to some of the protections afforded U.S. citizens in the National Labor Relations Act, such as protection against retaliation for union activity, they are not entitled to a fundamental remedy against their employers, i.e., back pay.<sup>101</sup> Without any powerful remedy at their disposal, undocumented workers in the United States are left on uneven footing. Living in constant fear of being reported and removed or deported, undocumented workers are subjected to substandard working conditions and are denied some of their most fundamental human rights. It is difficult to determine what type of recourse would be most effective in getting employers to respect their immigrant workers' fundamental human rights, because there is very little empirical information available to date on the success of attempted reform strategies.

With respect to the May 12, 2008 Postville raid, the Iowa Attorney General's Office filed human rights related charges under the state's Child Labor Statute.<sup>102</sup> The 9311 counts of child labor violations filed against Agriprocessors included violations of the following Iowa Code sections: 92.7, which regulates the number of hours a minor can work; 92.6(6), which prohibits allowing minors to operate certain power machines; 92.8(9), which prohibits employment of anyone under the age of eighteen in a slaughterhouse; and 92.8(19), which prohibits exposing minors to certain dangerous chemicals.<sup>103</sup> All of these crimes are only simple misdemeanors, however, and carry "a maximum penalty of 30 days in jail and a fine of \$65 to \$625."<sup>104</sup> The federal charges against Agriprocessors could result in fines and jail time for the company and its supervisors. However, these threats seem unlikely to deter many U.S. employers because the chance that they would be targeted by ICE is too remote for them to forego the profits that stem from cheap labor and the violation of their vulnerable workers' human rights.

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(AFL-CIO) and Confederation of Mexican Workers (CTM), Case No. 2227, in 332nd Report of the Committee on Freedom of Association, ILO Doc. GB.288/7, para. 607 (Oct. 2003), available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb288>.

<sup>101</sup> See Preston, *supra* note 85.

<sup>102</sup> See IOWA CODE § 92 (2008), available at <http://www.legis.state.ia.us/IACODE/2003SUPPLEMENT/92>.

<sup>103</sup> Boshart, *supra* note 17; IOWA CODE §§ 92.6(6), 92.7, 92.8(9), 92.8(19) (2008).

<sup>104</sup> Henry C. Jackson, *Iowa Files Child Labor Charges Against Agriprocessors Meatpacking Plant Raided by Feds*, STAR TRIB. (Minneapolis), Sept. 9, 2008, available at <http://www.midwesthumanrights.org/iowa-files-child-labor-charges-against-agriprocessors-meatpacking-plant-raided-feds>.

## V. LESSONS LEARNED, PLANS, AND ALTERNATIVE STRATEGIES

A. *Facing Reality and Protecting the Vulnerable*

The United States should not and cannot ignore the labor rights and human rights of immigrant workers within its borders. Globalization has resulted in a highly mobile population and a workforce that includes people from around the globe.<sup>105</sup> Regardless of one's opinion on the right of these workers to be in the United States, these individuals are already here. Our choices in response to this fact are either to protect or to ignore their fundamental human rights as laborers.

The ILO Committee on Freedom of Association has vocally criticized the level of U.S. protection of labor standards.<sup>106</sup> It has argued that existing remedies for immigrant workers "are insufficient to protect foreign workers' freedom of association rights" and that "either employers intimidate foreign workers into not exercising these rights or . . . these workers are quite simply too frightened to even try to exercise this basic right."<sup>107</sup> Instead of ignoring this problem, the U.S. Congress should provide adequate remedies to immigrants seeking recourse for the human rights violations that the current legal system has failed to provide.

The United States should not blindly ignore the human rights violations of employers while pursuing enforcement of immigration and criminal laws against employees. When looking at the status quo, it is impossible to ignore the following fundamental questions: How can a free and democratic nation founded by immigrants justify herding illegal immigrants onto busses, sending them to American prisons, and then deporting them? Why are U.S. corporations allowed to benefit from the exploitation of undocumented immigrant workers with little fear of repercussions while those workers are likely subject to imprisonment and deportation? Why does the U.S. government disregard international human rights labor standards? Iowa Congressman Bruce Braley has commented, "Until we enforce our immigration laws equally against both employers and employees who break the law, we will continue to have a problem."<sup>108</sup>

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<sup>105</sup> See generally John Craig & Michael Lynk, *Introduction to GLOBALIZATION AND THE FUTURE OF LABOUR LAW* 1, 1–12 (John D.R. Craig & S. Michael Lynk eds., 2006).

<sup>106</sup> ESTREICHER, *supra* note 96, at 70.

<sup>107</sup> *Id.*

<sup>108</sup> Hsu, *supra* note 6.

1. Failure of the Human Rights Movement to Incorporate Workers' Rights

"Workers' rights are human rights, yet the international human rights movement devotes little attention to the rights of workers."<sup>109</sup> Unfortunately, the labor rights movement rarely incorporates human rights messages into its platforms.<sup>110</sup> Often these two struggles, despite their parallel goals and similar problems, remain distinct.<sup>111</sup> This paradigm has resulted in a situation in which only one major U.S. human rights group, Amnesty International, attends the annual ILO human rights conference. Amnesty International is also the "only major human rights NGO that has developed a strategy for working with the ILO."<sup>112</sup> Human rights organizations have not exhibited a serious concern for the ratification of the human rights based ILO conventions that would protect the rights of workers.<sup>113</sup> On the other side of the relationship, "[l]abor advocates and trade unions tend to rely on their own organizations for promoting and protecting worker rights and to ignore the additional support that could be provided by well-known human rights organizations."<sup>114</sup> Immigrant worker rights comprise a separate discussion in the government, the media, and the public.

*B. Human Rights Reform and the Broad Scope of Labor Laws*

Reform is possible at many levels, individually and simultaneously, making any conversation about the best solution to these problems incredibly complex. Every imaginable interest group has formed proposals for reform of the complex web of immigration laws and regulations, criminal law enforcement, international and domestic labor standards, and international human rights law. Successful reform must account for and acknowledge this complexity. It is important to craft a solution that will avoid the problems encountered in the Postville raid, where the interests of those seeking to enforce and apply the law in one area directly conflict with those seeking to uphold legal rights and protections in another.

Some proposed labor reforms are promulgated by private businesses and implemented through the free market.<sup>115</sup> These solutions depend on the

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<sup>109</sup> Leary, *supra* note 88, at 22.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 24.

<sup>113</sup> *Id.* at 25.

<sup>114</sup> Leary, *supra* note 88, at 25.

<sup>115</sup> See, e.g., Steve Charnovitz, *The Labor Dimension of the Emerging Free Trade Area of the Americas*, in *LABOR RIGHTS AS HUMAN RIGHTS* 143, 155–56 (Philip Alston ed., 2005); see also Lance A. Compa & Tashia Hinchliffe Darricarrere, *Private Labor Rights Enforcement Through*

market and the fundamental concepts of both profit and consumer spending power to motivate responsible business practices that protect the fundamental human rights of immigrant workers.<sup>116</sup> Those who advocate for these private sector solutions argue that this is an efficient way to “facilitate efforts by consumers to seek more socially responsive practices by businesses.”<sup>117</sup> For example, the Nike Code of Conduct provides standards regarding forced labor, child labor, compensation, benefits, hours of work, overtime, health and safety, documentation, and inspection.<sup>118</sup> This Code not only affects the way consumers view Nike, but arguably allows Nike to bind contractors to uphold the code, shape an ethical framework for operation, and strengthen voluntary access to independent monitoring and certification organizations like the Fair Labor Association.<sup>119</sup> These private codes of conduct may allow corporations to police themselves in a more efficient manner than could the government.<sup>120</sup>

Ultimately, this kind of solution seems to have obvious limitations. When it is up to multinational corporations to influence consumer decision-making with advertising, brand power, and the dollar, the voluntary, unregulated, opaque, and unofficial nature of these corporate codes creates a significant potential for abuse. Corporations may use codes of conduct as a façade to manipulate consumer loyalty. If the government cannot monitor or enforce these corporate codes of conduct, human rights violations could occur without any recourse or public knowledge. Independent and voluntary monitoring organizations might be effective if enough companies participated in such a scheme. However, nongovernmental organizations do not rival the government’s ability to provide immediate relief to victims of human rights abuses.

Another possible solution lies in the North American Agreement on Labor Cooperation. Commentators describe the Agreement as “remarkable” because it “evidences agreement between three countries . . . that a country’s failure to enforce *its own* labor laws could lead to an unfair competitive advantage for its firms,” and also because it “evidences the great difficulty involved in reaching any sort of consensus on” common standards.<sup>121</sup> There are limits to this type of solution, however, as evidenced by its focus on fair competition as

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*Corporate Codes of Conduct*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE, 181–98 (1996).

<sup>116</sup> See, e.g., Charnovitz, *supra* note 115; see also Compa & Darricarrere, *supra* note 115.

<sup>117</sup> Charnovitz, *supra* note 115, at 152.

<sup>118</sup> ESTREICHER, *supra* note 96, at 65–66.

<sup>119</sup> *Id.* at 66–67.

<sup>120</sup> See Compa & Darricarrere, *supra* note 115, at 193.

<sup>121</sup> R. Michael Gadbaw & Michael T. Medwig, *Multinational Enterprises and International Labor Standards*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE 141, 154 (Lance A. Compa & Stephen F. Diamond eds., 1996).

opposed to the enforcement of labor standards as a means of protecting immigrant workers' human rights.

Finally, another proposed reform relies on the power of the U.S. judiciary to provide relief to immigrant workers. If the U.S. government refuses to ratify important international human rights treaties regarding labor standards, then perhaps it is possible to seek some form of equitable relief within the U.S. judicial system. In the 2004 case, *Sosa v. Alvarez-Machain*, the Supreme Court held that the Alien Tort Claims Act "incorporated a limited private cause of action for torts in violations of international law."<sup>122</sup> In *Sosa*, the Court indicated that this only applies to laws that "rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms we have recognized."<sup>123</sup> The U.S. courts can now hear cases involving torts against foreigners that correspond to "Blackstone's three primary offenses: violation of safe conducts, infringement of the rights of ambassadors, and piracy."<sup>124</sup>

The potential limit to this type of judicial solution is how difficult it is for plaintiffs to establish justiciability. The Alien Tort Claims Act is "a jurisdictional statute creating no new causes of action,"<sup>125</sup> and only provides possible protection to immigrants "for a tort . . . committed in violation of the law of nations or a treaty of the United States."<sup>126</sup> *Sosa* relied on violations of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to establish subject-matter jurisdiction under the Alien Tort Claims Act.<sup>127</sup> However, in the end, the Court held that "a single illegal detention of less than a day . . . violates no norm of customary international law so well defined as to support the creation of a federal remedy."<sup>128</sup>

It seems unlikely that a statute giving such limited subject matter jurisdiction to the courts will be inclusive enough to provide meaningful protection to immigrant workers.<sup>129</sup> If the United States will not ratify human rights treaties that protect immigrant workers, it appears that these workers will not find relief under the Alien Tort Claims Act unless the tort that they suffer is a more serious violation of customary international law

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<sup>122</sup> ESTREICHER, *supra* note 96, at 139; Alien Tort Claims Act, 28 U.S.C. § 1350 (2008).

<sup>123</sup> *Sosa v. Alvarez-Machain*, 542 U.S. 692, 725 (2004).

<sup>124</sup> *Id.* at 724.

<sup>125</sup> *Id.*

<sup>126</sup> Alien Tort Claims Act, 28 U.S.C. § 1350 (2008).

<sup>127</sup> *Sosa*, 542 U.S. at 734.

<sup>128</sup> *Id.* at 738.

<sup>129</sup> See ESTREICHER, *supra* note 96, at 141.

than arbitrary detention. It is certainly possible that U.S. policymakers will experience a change of heart with regard to international human rights treaties during the Obama presidency, but a policy shift would almost certainly require substantial political capital to accomplish this significant legal change.

One overarching criticism of these proposed solutions lies in the U.S. government's failure to protect the human rights of immigrant workers. At the heart of this failure is the government's abrogation of important human rights treaties. The United States should not make debilitating reservations to the human rights treaties to which it is a party. Rather, it should sign and ratify additional international treaties and conventions protecting the rights of immigrant workers in the United States, such as the ILO conventions, the Freedom of Association and the Right to Organise Convention (No. 87), and the Right to Organise and Collective Bargaining Convention (No. 98).<sup>130</sup> The United States faces the aftermath of a financial crisis, serious problems in healthcare, energy security, education, and numerous other issues. Unfortunately, this is not necessarily a time when citizens are concerned with the plights of Guatemalan immigrants to the United States, or the deportation of meatpacking plant workers in Iowa.

Ultimately, however, the need to empathize with victims of human rights abuses exists regardless of a nation's political and economic climate. It is important that U.S. employers and policymakers step outside of themselves and view the world from another's eyes. If Americans do not stand up for their fellow human beings, the competition between political parties, social groups, and economic forces will shape the proposed solutions to satisfy their own interests.

## VI. CONCLUSION

The May 12, 2008 Postville, Iowa raid was a human rights disaster that resulted in the swift criminal prosecution and deportation of hundreds of immigrant workers from the United States. The raid illustrates a failure by both the Agriprocessor management and the U.S. government to protect the labor rights of immigrant workers in the United States. The United States needs to re-conceptualize labor rights as human rights; the rights of workers should not hinge on a person's nationality. This re-conceptualization will allow for a new strategy in the enforcement of immigration law and in the enforcement of human rights and labor standards. Enforcement of labor rights and human rights should no longer be a reactionary move after immigration laws are enforced. The United States should enforce immigration and labor laws through a human rights framework, so that the power of one agency does not prohibit the protective capabilities of another.

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<sup>130</sup> Freedom of Association and the Right to Organise Convention, *supra* note 96; Right to Organise and Collective Bargaining Convention, *supra* note 96.

There is no doubt that shifting the U.S. public's perspective on immigration and labor rights to a human rights-based approach will be an incredibly complex task. However, the U.S. government needs to make sure that nothing like the May 12, 2008 Postville immigration raid ever happens again. If an American company is exploiting undocumented immigrant laborers, the federal government should step in and protect workers' fundamental human rights before the problem escalates.