

The Disposable Workforce of a U.S. Industry:

Examination of slaughterhouse employment practices and human rights



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A Human Rights Case Study

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“Below that cool green sea of money, millions and millions of people fight to live, search for pearls in the darkest depths of their dreams, hold their breath for years trying to cross poverty to just having something.”

- Jimmy Santiago Baca (Contemporary Author and Poet)

Introduction

Immigration policy is a longstanding controversial subject in American politics and while most agree that the current system is broken, the dispute lies with how it should be fixed. The debate is predominantly centered on policies associated with undocumented immigrants, in part due to the fact the vast and prosperous U.S. economy has incessantly attracted massive influxes of undocumented workers in search of more stable and promising livelihoods.¹ Because the sanctions of the nation’s contemporary policies have increased, the migrants who are pulled by the economic demand subject themselves to more legal risks than the previous waves of immigrants who walked in their shoes a century before them. Many arrive desperate, vulnerable, and willing to endure an immense amount of abuses in the workplace, too often surrendering their universal human rights to the employers who view them as disposable labor. This population of undocumented workers find themselves underprivileged, over-worked, and discriminated against as an underclass upholding the foundation of the economic wealth that led them here.

This case study closely examines the contemporary immigration system and its enforcement tactics, through a more micro point of view, by examining one of the recent Immigration and Customs Enforcement (ICE)² work raids, which occurred in a slaughterhouse in America’s heartland. First, all of the intricate layers of the case will be dissected and presented from a historical perspective in order to fully comprehend the incident. Next, the details of the case will be presented in chronological order followed by a discussion of the policy debates pertaining to the treatment and rights of the undocumented worker population. Then an analysis of the case is presented through a human rights lens using the Human Rights Based Approach (HRBA), which is an analytical model that recognizes and applies the international standards for universal human rights.³ The paper concludes with recommendations for pragmatic immigration policy reform.

A Historical Perspective

The Industrial Revolution transformed societies and particularly the way people worked. The 19th and 20th centuries marked the ever-increasing industrialization of the United States. Due to the immense growth of industries, the demand for low or unskilled jobs attracted waves of immigrants to America. The first wave of immigrants came predominately from northern and western Europe followed by southern and eastern Europeans. The onslaught of immigrants reached its peak between 1900 and 1910 when almost 1 million immigrants entered the country each year (Gibney & Handsen, 2005).

¹The Pew Hispanic Center, a nonpartisan research organization in D.C., estimates 11.9 million "unauthorized migrants" currently reside in the US, where 56% originate from Mexico and 22% from other Latin American countries, mainly in Central America. 13% are from Asia and the remaining 6% are split between Europe and Canada (Ohlemacher, 2006).

²“U.S. Immigration and Customs Enforcement (ICE) was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of five integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities” (ICE, 2008).

³The objective of incorporating the HRBA to the assessment of immigration policy and its enforcement is to examine them through a consistent human rights lens by applying both established discourse and theory.

Although the availability of work attracted these massive flows of immigrants, the reality of the work was not one of fame and fortune. Most of the industries in the U.S. were characterized by over-worked employees, with inadequate safety measures, and a disorganized workforce. More than 500,000 worker injuries were reported every year in the 1880s and 1890s, while many more injuries were left unreported (Gibney & Handsen, 2005). Factories were able to maintain this unsafe environment through the implementation of an ‘out with the old and in with the new’ policy, using the *newer* immigrants as strikebreakers when any of the senior workers attempted to organize. This disposition created ethnic and cultural tensions between *new* and *old* immigrants, in part due to the *new* immigrants’ willingness to accept lower wages and work in harsher conditions (Gibney & Handsen, 2005).⁴

This time period also coincided with the rise of child labor practices in the United States. Similar to immigrants, children were poor, uneducated, and vulnerable, which made them cheap assets to the employers who often made them work in appalling conditions. In 1810 an estimated two million children, some as young as five years old, worked 50 to 70 hour per week for pennies a day (Fried, 2008). The exploitation of child labor appeared in all facets of work including factories, mines, and agriculture. These practices commonly persisted for over a century, despite the many efforts that were made to pass national child labor laws. In 1924 the U.S. Congress proposed an amendment to the constitution to prohibit child labor, but it was not ratified by enough states to pass. It was not until the Fair Labor Standards Act passed in 1938 that national laws established fixed minimum ages for the work place (Fried, 2008).

The Jungle: Then and Now

One vocation that endured particularly hazardous and repugnant hardships during this era was the meatpacking industry, which was exposed in Upton Sinclair’s 1906 historic novel, *The Jungle*. He unveiled the shockingly unsanitary and dangerous conditions of America’s meatpacking plants. Sinclair’s novel sent meat sales into a tailspin and inspired breakthrough consumer-protection laws, which marked the first period of transformation in the industry. *The Pure Food and Drug Act* and *The Federal Meat Inspection Act* were both passed in 1906; mere months after Sinclair’s work had shocked the public. Since, it has been a well-known fact that slaughterhouses are among the most dangerous workplaces of all U.S. manufacturing industries and remains a risky environment even today.

Labor organizations began to improve the working conditions of the meatpacking employees. By the 1930s the newly established Congress of Industrial Organizations (CIO) began to organize workers from different industries and later more specific unions emerged, such as the United Packinghouse Workers of America (UPWA). The UPWA was able to achieve better wages, hours, benefits, and working conditions for the U.S. meatpacking employees. The wages stayed comparatively strong from the 1960s till the early 1980s, where the average wage for the meatpacking employees was 14 to 18 percent higher than other U.S. manufacturing sectors (UFCW, 2008).

⁴ The *older* immigrants from northern and western Europe felt threatened by the rising tide of immigrants from the southern and eastern European countries as well as the immigrants from Asia who were settling in the western region of the U.S. Organizations began to take shape that lobbied policies to restrict immigration and a series of laws passed, adding limitations to immigration policy. In 1924 the government approved the National Origins Act, which created a permanent immigration quota system to only 154,000 entries annually and reduced the limitation of each foreign-born nationality entries to 2 percent, using the 1890 census as the base, rather than the 1910 or 1920 census. This cut immigration from northern and western Europe by 29 percent and slashed the possibilities for new immigrants from southern and eastern Europe, whose numbers had grown significantly after 1890, and excluded immigration from the Far East entirely. Additionally, this immigration policy required everyone in the Eastern Hemisphere to obtain a visa before entering the U.S. However, this law did not apply to their neighboring countries because of the demand for laborers from Mexico. From 1924 to 1947, only 2.7 million foreigners migrated to the U.S., a total equal to any two-year period a few decades prior (Historical documents, 2007). In 1965 the U.S. adopted the Immigration and Naturalization Act (INA), which abolished the quota system based on national-origin from the Immigration Act of 1924. The INA introduced numeric limitations for the Western and Eastern Hemispheres by fixing set preferences, such as family-sponsorships, employment preferences, and immigrant diversity. The INA was modified by the 1990 Immigration Act (IMMACT), which increased the total number of immigrants to 700,000. Spouses, children, and parents of U.S. citizens are technically exempt from this number, yet it has been reported that immediate relatives of U.S. citizens account for over 40 percent of annual immigrant inflow today (Facchini, Mayda, & Mishra, 2008).

During this progressive period, the peak average hourly wage, adjusted for inflation, was twenty dollars an hour, which transformed these jobs into a fast track to the American middle class (UFCW, 2008).

The 1980s was seen as yet another transitional decade for the meatpacking industry, which led to a regression in the conditions and standards of their working environments. As improvements were made in distribution channels, such as refrigeration and packaging technology, slaughterhouses began to move out of union-dominated urban areas and relocated closer to livestock feedlots in the rural areas of the country. New industry powerhouses, such as Iowa Beef Processors (IBP), began to diminish competition by operating on low profit margins and increasing worker productivity. Additionally, their relocation to rural areas made it more difficult for laborers to organize due to the intentional recruitment of a largely Hispanic, often illegal, workforce and the increasingly high turnover rate in the plants. It has been argued that the industry was using the high turnover as a strategy to decrease the likelihood of organized laborers and eliminate their health-care costs for employees (Dyer, 2008). At the same time, labor costs fell drastically due to technology advancements. This combination of tactics caused industry consolidation, where the top four firms accounted for 80 percent of all beef production (UFCW, 2008).

During the industry's peak, its workforce was well organized with 80 percent of the workers union members in 1980 (Dyer, 2008). By the 1990s the industry regressed back to where it was a century prior, with an increase in hazards for laborers, a decrease in wages, and a renewed resistance to the organization to protect workers' rights. Due to the industry's consolidation and decline in real wages, it grew less appealing to the native-born citizens, as they became increasingly educated and enabled to seek broader career opportunities. The current number of union members has plummeted to less than 50 percent of the workforce to date (REAP Inc, 2008).

This decline in unionization also coincided with demographic shifts in the industry's workforce as the number of undocumented workers from Mexico and Central America grew. From 1980 to 2000 the number of non-Hispanic Whites employed by the meatpacking industry declined from 74 percent to 49 percent (Kandel, 2008). The increasing Hispanic population in the U.S has since met the demand for labor in meatpacking plants in the rural parts of the country. During the same period, the number of Hispanic meatpacking employees grew from 9 percent of the workforce to almost 29 percent while the number of the foreign-born Hispanic population rose from 50 to 82 percent (Kandel, 2008).

Today the meatpacking industry is the largest sector of the U.S. Agriculture industry, slaughtering and processing 8.5 billion cattle, hogs, chickens, sheep/lambs and turkeys last year alone. In 2007 the annual sales reached almost \$100 billion. The median salary for a meatpacking plant employee is approximately \$21,320 annually (UFCW, 2008). This is significantly less than the average pay for workers in all other manufacturing industries, which is around \$33, 500 per year (GAO, 2005). Similar to the companies, the government has also lacked support and protection for the industry's workforce. For example, in March 2001 the Bush Administration overturned the ergonomics standards that were not only accepted by the Occupational Safety and Health Administration (OSHA) and approved under the Clinton administration, but also commended by union leaders as an important step in improving protection from job related injuries (UFCW, 2008).

In 2005, Human Rights Watch (HRW) released a report entitled, *"Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants,"* which marked the first occurrence of this human rights organization's critique of a sector of U.S. industry. HRW labor rights researcher and the author of the report, Lance Compa, claimed, "Meatpacking is the most dangerous factory job in America" (Compa, 2005). He reported numerous physical threats that employees face while working in these hazardous conditions, such as commonly losing limbs and sometimes their lives. It was further reported that not only health and safety standards characterize this frightening reality, but also the majority of the companies deny workers compensation for job related injuries. Compa also stated that these "Dangerous conditions are cheaper for companies" and employers will intimidate and threaten the workers to keep them vulnerable and isolated in the workplace to keep their expenses at a minimum (Compa, 2005).

History is seemingly repeating itself as protection of the meatpackers labor rights began its regression to once again mimic the inhumane conditions that heavily infiltrated the slaughterhouses around the turn of the century. Contemporary laborers in meatpacking plants commonly find themselves working in unstable, unsanitary, and unsafe conditions, over extremely long hours, just as the newly immigrated populations had experienced in the past (Compa, 2005). Today meatpackers continue to toil in a world of long knives, massive saws, blood, flesh, bones, bitter cold, and sweltering heat, as they chop up the carcasses of an incessant line of cattle. The risks appear endless: cuts, stabs, burns, repetitive stress injuries, and amputations just to name a few. The U.S. Government

Accountability Office (GAO) reports the knife-wielding workers stand long hours on fast-moving lines and factory floors that are likely to be dark, loud, slippery, and at times subject to extreme hot and cold temperatures. Injuries and illnesses often go underreported because immigrants fear retaliation, loss of work, and/or pay (AP, 2006).

The Disposable Workforce

As previously discussed, many of the meatpacking plants are filled with workers who are not only foreign-born, but also residing here illegally (Compa, 2005). Although the demographic of the industry's workforce remains the same, the faces of the immigrants have changed over time. Some of the workers are refugees from Somalia, Sudan, and Vietnam, but the majority comes illegally from Central and South America (AP, 2006). According to the Bureau of Labor Statistics, in 2003, 42 percent of the workers in the meatpacking industry were Hispanic and 26 percent of workers were foreign-born non-citizens (GAO, 2005).

This population of undocumented workers struggle with a *catch-22* in their fight to earn a decent living in a country where it can be nearly impossible for them succeed. Employers who recognize the vulnerabilities of these desperate workers often take advantage of them, many times leading to the violation of their human rights. Undocumented workers often surrender to these conditions because they feel threatened by the possibility of incarceration and/or deportation. These susceptible circumstances act as a breeding ground for discrimination and oppression where numerous human rights violations can and do occur. The industry has been accused of exploiting immigrants, fighting against unions and providing a pitiful wage for hazardous work. In some cases, employers who operate these desperate and disturbing environments take advantage of undocumented immigrants who are under the age of eighteen years old and therefore legally considered minors (Fried, 2008; Compa, 2005).

The population of individuals whose human rights will be examined in this case study are all undocumented workers employed at the Agriprocessors meatpacking plant located in the small town of Postville, Iowa. More closely examined are the 389 plant employees who were detained during an ICE raid that took place at the plant in May of 2008.

The Case: Turmoil of a Midwestern Town

"Agriprocessors a great place to work!" – Front entrance of Agriprocessors

The tiny rural town of Postville sits in the corner of northwest Iowa, housing a population of 2,273. According to the 2000 Census, Postville was the fastest growing town in the state, experiencing a 54 percent population increase during the 1990s. Roughly 21 percent (469) of the town's total population was Hispanic or Latino by the year 2000. A total of 752 (33%) of the Postville residents are foreign born, 95 percent of whom moved to the town between 1990 and 2000. Additionally, 729 (97%) of the total foreign-born population are not citizens (U.S. Census 2000).

Postville has received an overwhelming amount of national media attention in the past six months due to the recent events of the notorious Agriprocessors meatpacking plant. The company's founder, Aaron Rubashkin, was a kosher butcher from Brooklyn, New York, who sought to bring mass-production to the kosher meat market. In 1987 Rubashkin purchased the former HyGrade meatpacking plant in Postville and opened the first kosher slaughterhouse in the country. Until recent events, he ran a successful operation with the help of his son, Sholom Rubashkin, who was recently serving as the plant's CEO (Agriprocessors, 2008).

Agriprocessors has had major impacts on the Postville community in its twenty years of operation. At first the local residents welcomed the Rubashkin family and their aspirations to pump life back into the meatpacking plant that had sat empty for nearly seven years. The company had several positive effects on the town's previously bleak economy, as the creation of jobs and benefits of the local farmers grew immensely. A less welcomed impact was the continued influx of Hasidic Jews as many families followed and began establishing themselves in the once homogeneous white, Lutheran community. University of Iowa Professor, Stephen G. Bloom's, wrote a book entitled, *Postville: A Clash of Cultures in Heartland America*, addressing the changes that the management of Agriprocessors brought to Postville and how hostilities grew into serious turmoil for the small town throughout the 1990s (Bloom, 2000).

On the Agriprocessors website⁵, the plant states their values and commitments are “Expressed in the kosher rituals and requirements...[and they] are reflected in everything that Agriprocessors does” (Agriprocessors, 2008). These commitments are as follows:

- An obsession with cleanliness and health
- The safety and welfare of our employees, colleagues and neighbors
- Stewardship of the environment
- A devotion to treating our animals humanely
- The success of our community

These commitments and values of the plant have been put into serious question by recent events. May 12th, 2008 marked the climax of an Immigration Customs Enforcement (ICE) criminal investigation of the Agriprocessors plant. ICE Special Agent in charge, Claude Arnold, led the investigation that began in October 2007. The U.S. Attorney for the Northern District of Iowa, Matt M. Dummermuth stated, “Agents and officers from federal, state, and local agencies [were] involved... The coordination and logistical planning efforts have been going on for months” (ICE, 5/12/08).

An astonishing 900 ICE agents raided the plant by questioning employees and seizing paperwork and company records (Hsu, 2008). A total of 389 undocumented immigrants working at that plant were rounded up and detained, making it the largest single-site immigration raid in U.S. history (Jackson, 9/9/08). Of the immigrants working at Agriprocessors and subsequently detained on site there were 290 Guatemalans, 93 Mexicans, 2 Israelis and 4 Ukrainians (Hsu, 2008). These individuals were rounded up and transported to the Waterloo fairgrounds, a town located 78 miles from the plant. Mobile trailers and a dance hall had been transformed into temporary courtrooms for the holding and mass sentencing of the undocumented workers. The shackled detainees were filed into the ‘courtrooms’ in groups of ten, where a Spanish interpreter instructed them to enter their pleas. Then they were shuffled into another room for sentencing. Those who accepted the plea bargain agreed to immediate deportation after they served five months in jail, which alleviated them from more serious charges (Preston, 5/24/08).

Of the 389 detainees, 305 were arrested on criminal charges for *aggravated identity theft* and other related crimes, rather than the usual administration violations (Hsu, 2008). A total of 297 of the detainees pleaded guilty and were sentenced on May 22nd, 2008 and 260 of them were sentenced to five months for using false documents. Two were sentenced to one year, and another eight were sentenced to prison for separate crimes, while the remaining twenty-seven received probation (Preston, 5/24/08). According to the ICE report, the criminal charges resulted in the following dispositions:

- 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;
- 8 defendants were sentenced to five months in prison and three years of supervision for illegally re-entering the United States after being deported;
- 2 defendants were sentenced to 12 months and a day in prison, and three years of 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;
- 2 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;
- 4 defendants were sentenced to five years of probation for illegally re-entering the United

⁵ “Agriprocessors Principles and Values.” <<http://www.agriprocessor.com>>

States after being deported.

(*Immigration Customs Enforcement Report, May 23rd, 2008*)

Additionally, 60 of the remaining workers taken into custody were released for humanitarian reasons and did not face charges. The 23 minors were either released or turned over to refugee resettlement (ICE, 5/15/08). Only five of the detainees did not enter the plea-bargain and their cases are pending (AP, 2008). The number of criminal charges reported was astonishing in comparison to the normal civil statutes that are typically given for the same offense. It was also reported that prosecutors threatened *felony identity theft charges* to those who did not agree to the plea bargain, which carries a mandatory two-year minimum jail sentence (Preston, 5/24/08).

The American Immigration Lawyers Association protested the mass sentencing, arguing the workers had been denied their right to meet with immigration lawyers and that additional "Claims under immigration law had been swept aside in unusual and speedy plea agreements" (Preston, 5/24/08). Additionally, Robert Rigg, President of the Iowa Association of Criminal Defense Lawyers, said his organization was not notified or consulted when prosecutors and court officials began their planning for the mass proceedings (Preston, 5/24/08).

Investigators found evidence that the plant's management was not oblivious to its employees' use of false paperwork. In fact, Agriprocessors was notified on five separate occasions, by the Social Security Administration, of 500 Social Security number discrepancies for every tax year from 2000 to 2005. Little action was taken after these numerous notifications were received because, according to the fourth-quarter payroll documents of 2007, approximately 78 percent of the 968 employees at Agriprocessors were using false or fraudulent Social Security numbers for their paperwork (Drash, 2008). To make matters worse, the Iowa Attorney General's Office found evidence that "The company encouraged job applicants to submit forged identification documents that contained false information about their resident status, age and identity" (Jackson, 9/9/08).

Human resources managers, Laura Althouse and Karina Freund, were charged with conspiring to harbor illegal immigrants for financial gain and aggravated identity theft (Schulte, 2008). Both Freund and Althouse pleaded not guilty to the misdemeanor charges (Waddington, 2008). However, Althouse changed her plea to guilty to the charges in federal court on October 29th, 2008, admitting she helped undocumented workers obtain fake resident visa numbers in order to work at the plant. Althouse faced a maximum sentence of twelve years on the harboring charge plus fines up to \$500,000 and a mandatory-two year minimum sentence for identity theft (Preston, 10/30/08).

As the story gained more and more media attention, the situation intensified when investigators discovered that a total of 32 Agriprocessors employees were under the age of 18, seven were under the age of 16, and a few were reported as young as 13 years old (Preston, 7/27/08). These children had worked on dangerous machinery strictly prohibited for anyone under the age of 18 years of age, such as conveyor belts, meat grinders, circular saws, power washers and power sheers. It was also discovered that they were working outside of legal working hours for minors (between 7am and 7pm). Furthermore, they were working more than the allotted amount of time each week and some working over 40-hours per week with no overtime (Preston, 9/10/08). Some of the minors reported working 12 to 17 hours, sometimes through the night, up to six nights a week (Preston, 7/27/08).

The Iowa Attorney General's Office filed 9,311 violations of Iowa child labor law against Agriprocessors. The defendants facing charges were Aaron Rubashkin, his son Sholom, and the human resource managers and associates, Elizabeth Billmeyer, Laura Althouse and Karina Freund (Iowa Dept. of Justice, 2008; Preston, 9/10/08). The investigation of the child labor accusations was led by the Federal Labor Department in collaboration with the Iowa Division of Labor Services and the State Attorney General's Office (Preston, 7/27/08). All of the charges were considered *simple misdemeanors*, each punishable up to 30 days in jail and/or a fine of \$65 to \$625.⁶ Additionally, the complaint and affidavit also enumerated over 1500 violations related to work hours and minors working before and after the specified time period of 7am to 7pm (Iowa Dept. of Justice, 2008).⁷

The lawyer representing the undocumented minors is Sonia Parras Konrad, a private practicing immigration lawyer in Des Moines. Konrad had assisted her clients as they sought *U-visas*, a four-year temporary visa offered to

⁶ Each charge was renewed for everyday the law was broken, as the violations for employing minors dated back to September 9th, 2007.

⁷ See Appendix 1

immigrants to assist in the investigations and through the duration of the case (Preston, 9/10/08). In a statement made by the management of Agriprocessors, they claimed they did not knowingly employ anyone under the age of 18 years old. The New York Time's immigration reporter, Julia Preston, conducted an interview with Elmer L., who was one of the minors employed at the plant. Elmer, who requested that his last name remain anonymous, reported a gruesome incident of abuse inflicted upon him by his supervisor while working at Agriprocessors (Preston, 7/27/08). The five company officials charged, Elizabeth Billmeyer, Freund, Althouse, Aaron and Sholom Rubashkin, are scheduled to go to trial next April on the 9,311 charges alleging child labor violations at the plant (ICE, 11/21/08; Lorentzen, 2008).

Employing minors and using false identification was not the only violation that had occurred at Agriprocessors in recent years. In 2004 the USAD accused the meatpacking plant of *acts of inhumane slaughter* after the release of a video of a dying cow by an animal rights activist group. Then in 2006, Agriprocessors paid \$600,000 to the Environmental Protection Agency in a settlement to resolve wastewater pollution problems. In March of 2008 they assessed \$182,000 in fines for 39 state health, safety, and labor violations (Hsu, 2008). Additionally, the Department of Transportation found that one of the plant's supervisors was forcing workers to buy cars from him that he allegedly registered under falsified identities. The investigation revealed that 200 cars were sold in this manner (Drash, 2008).

On October 29th the picture grew even more austere when the child labor charges were followed up with nearly \$10 million in fines related to wage violations at the plant. Approximately \$9.6 million was for illegal deductions on the payroll for required uniforms and protection materials, in which investigators found 96,436 deductions from the paychecks of 2,100 employees, reducing the workers pay by more than \$192,000. Additionally, there were fines for illegally deducting a 'sales tax' of more than \$72,000 from paychecks of 1,073 workers and failure to produce final paychecks to 42 workers who were detained in the raid, owing nearly \$265,000 in back pay (Preston, 10/30/08).

The next day, October 30th, Sholom Rubashkin was arrested on several federal charges including conspiring to harbor illegal immigrants (Preston, 11/2/08). That same day a lawsuit was filed against the company by the First Bank Business Capital of St. Louis, claiming Agriprocessors defaulted on a \$35 million loan and had written \$1.4 million in bad checks. The bank also declared that the plant owed \$188,000 in electricity bills and cautioned that if electricity was cut off at the plant, millions of dollars in fresh and frozen food would spoil (Preston, 11/2/08).

The following week Agriprocessors filed Chapter 11 bankruptcy, listing 400 creditors that it owed and was forced to halt production at the plant. The creditors included 118 Iowan businesses ranging from small family operations to larger businesses and their debts ranged from \$50 to \$100 million. The company placed the blame for their financial disaster on the ICE raid. However, Senator Mark Ziemann states the financial problems accumulated long before the raid. Their bankrupt status meant that management continued to run everyday operations, while all major decision-making must fall under the supervision and approval of the bankruptcy court (Jordan & Schulte, 2008).

Agriprocessors' former CEO, Sholom Rubashkin, three managers, and a human resources employee were criminally indicted on November 21, 2008. The indictments charged Agriprocessors Inc. and Rubashkin with conspiring 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. Brent Beebe, the operations manager, faces the same charges as Rubashkin, minus bank fraud, as do two of the poultry managers, Hosam Amara and Zeev Levi, who have fled from officials and are currently fugitives. Karina Freund, the human resources employee, was charged with conspiring to harbor illegal aliens for profit and harboring illegal aliens for profit. The ICE report states the possible sentencing as follows:

Agriprocessors faces a possible penalty of a fine of the greater of \$500,000 or twice the financial gain for each of the conspiracy [charges], harboring, document fraud, and identity theft charges. On each of the bank fraud charges, it faces a fine of the greater of \$1 million or twice the loss caused.

Rubashkin faces a possible maximum sentence of 30 years in prison and a fine of the greater of \$1 million or twice the loss caused on each of the bank fraud charges. He faces a possible maximum penalty of 10 years in prison and a \$250,000 fine on each charge of conspiring to harbor illegal aliens, harboring illegal aliens, aiding and abetting document fraud. He faces five years in prison and a \$250,000 fine for conspiring to commit document fraud; and a mandatory consecutive two years in prison and a \$250,000 fine for each charge of aiding and abetting aggravated identity theft.

Beebe faces a possible penalty of 10 years in prison and a \$250,000 fine for each charge of conspiring to harbor illegal aliens, harboring illegal aliens, and aiding and abetting document fraud. He faces five years in prison and a \$250,000 fine for conspiring to commit document fraud; and a mandatory consecutive two years in prison and a \$250,000 fine for each count of aiding and abetting aggravated identity theft.

Amara faces a possible maximum penalty of 10 years in prison and a \$250,000 fine for each charge of conspiring to harbor illegal aliens, harboring illegal aliens, and aiding and abetting document fraud. He faces five years in prison and a \$250,000 fine on the charge of conspiring to commit document fraud.

Levi faces a possible maximum penalty of 10 years in prison and a \$250,000 fine for each charge of conspiring to harbor illegal aliens, harboring illegal aliens, and aiding and abetting document fraud. He faces five years in prison and a \$250,000 fine on the charge of conspiring to commit document fraud.

Freund faces a possible maximum penalty of 10 years in prison and a \$250,000 fine for each charge of conspiring to harbor illegal aliens and harboring illegal aliens.

(ICE Report, 11/21/08)

Rubashkin and Beebe pled not guilty to the charges and began their jury trial on January 20th, 2009. The judge ordered Rubashkin to be detained without bail until his trial and denied his request for more time to appeal his detention so he could assemble a team of lawyers to conduct additional research. Since the new charges were added to her case, Freund pled guilty to the misdemeanor counts of aiding “The unlawful employment of aliens knowing they were not authorized to work in the United States,” which she was previously indicted for in September (Lorentzen, 2008).

On December 3rd a bankruptcy trustee from New York, Joseph Sarachek, and a meager 250 to 300 workers, reopened the plant in an attempt to comfort the economically crippled town. The bankruptcy judge allocated \$2.5 million to run the plant until the following Friday. However, the masses of angry employees were demanding back pay from the previous two or more weeks before the plant shut down in mid-November. The budget given to Sarachek was not enough to cover the \$500,000 owed to the workers (Greenhouse, 2008).

Prior to the raid, the plant employed more than 900 people and raked in annual revenues of \$300 million. Losing Agriprocessors has and will continue to have devastating effects on the town of Postville, whose economy had become exceedingly dependent on the plant. State and local officials hope another company purchases the plant so production can continue. Economic Development Director, Michael Tramontina, stated “The permanent loss of... jobs is very harmful to Postville and the entire region from which employees and supplies are drawn” (Jordan & Schulte, 2008). Additionally, the town lost nearly one-third of its population due to another 300 undocumented workers fleeing town after the raid in fear of being penalized by law enforcement.

Postville officials said their town was dealing with a humanitarian crisis, with the closing of businesses, vacated homes, and the local churches unable to meet the need for donations of food and clothing (Jackson, 12/6/08). 150 people lined up at the local food pantry each day and crime was on the rise (Greenhouse, 2008; Drash, 2008). The churches served as shelter to the 30 Hispanic women who awaited deportation as well as the immigrants who had been ordered by prosecutors to wear G.P.S. ankle bracelets and testify against their former employer (Greenhouse, 2008). The aftermath of the raid on Agriprocessors has proved that these events were not only tragic for the 389 undocumented workers, their families, and the Agriprocessors management. In fact, this was a tragedy that had significantly damaged Postville’s greater community and economy.

Policy Debates: *Scaling the case of Postville to a national level*

Postville has been named the ground zero of the national immigration debate in recent months. The residents of Postville complained about the ICE raid and the enormous number of immigration agents who invaded their town. Many felt it was a demonstration of brutal force that was an unnecessary way of addressing the issue of undocumented residents living and working in their town. They have defended the Hispanic residents as productive members of the community who had been living in Postville for several years, arguing that immigration officials should have acted long before their roots were settled and families torn apart in the raid aftermath (Drash, 2008).

The residents directly affected by the raid at Agriprocessors were not the only critics of how the undocumented workers were treated. The national media attention this case received was much more extensive and rapid than similar raids in months prior to and after May 12, 2008. The majority of the media reported on the treatment of the undocumented workers and some reporters unveiled the fact that there were minors employed at the plant (Preston, 9/11/08). Criticism of the overall operation ranged from how speedy the prosecution process was to the harsh and criminalizing charges the workers faced (Drash, 2008; Hsu, 2008; Orcinus, 2008; Preston, 2008).

Some critics denounced the ICE investigation for their rapid punishment of the undocumented workers and their initial lack of legal action against the plant's management (Hsu, 2008). U.S. Congressman, Bruce Braley, said "Until we enforce our immigration laws equally against both employers and employees who break the law, we will continue to have a problem" (Hsu, 2008). James Spero, Deputy Assistant Director of the ICE, defended his organization's intentions for the case as he explained that proper investigations of the employers often take more time. Spero said, "The goal for our worksite operations is to target and develop cases against the egregious employers who are committing violations" (AP, 2008). Charges were eventually brought against the company, its owner, and management as reported previously. Even so, according to a national statistic, workplace arrests have risen tenfold from 510 to 4,940, since 2002, but only 90 criminal arrests have involved employers (Hsu, 2008).

Frank Sharry, the Executive Director of the immigration reform group America's Voice, explained that these types of raids are designed to make headlines and give the impression that the federal government is cracking down on illegal immigrants. Sharry feels that people who believe the current enforcement practices, such as the ICE raids, are the answers to the 12 million illegal immigrants in the U.S. are sadly mistaken. A spokesman for Representative Tom Latham, James Carstensen, said, "It's a tragedy of an immigration system that is absolutely broken, and the tragedy of an enforcement system that is probably not working as effectively as promised by the Bush administration" (AP Press, 2008).

Broken System

Making more reasonable and realistic immigration policies is challenging because too often the debates are marked by exaggerated claims, making it difficult to win a majority of public support. The debates also generally find themselves conducted in absolute terms, where one side is pro-immigration and the other is anti-immigration and there is no in-between (Martin & Martin, 2001). Many factors including national resources, jobs, taxes, educational system, health care, and human rights are represented on both sides of the issue. It appears that despite their many differences, both sides often agree on one thing, which is that the current immigration policies are broken. How they should be fixed and the proposals for solving the outdated system differ immensely.

A common anti-immigrant position argues that the broken system is due to lack of border enforcement and the U.S. government has lost control of its southern border. The opposition tends to view undocumented workers as poor, uneducated, and unskilled. They argue that this population's contribution to the national wealth is deficient in comparison to what they cost the taxpayers for their health care, education of their children, and their incarceration. In the book, *The Immigration Solution: A Better Plan Than Today's*, Heather MacDonald, Victor Davis Hanson, and Steven Malanga argue the need for better security of U.S. borders by implementing a policy that admits skilled and educated people on the basis of how they will enrich the country and not what the country can do for them. MacDonald argues that there is a creation of a permanent underclass and believes there is a need for harsher punishments for employers and property owners who knowingly contract undocumented immigrants and violate the law (MacDonald, Hanson, & Malanga, 2007).

The pro-immigration side argues that the immigration policies in the U.S. are flawed because of the difficulties that immigrants face to obtain legal status through work visas, permanent residency, and/or citizenship. Deepak Bhargava, the Executive Director of the Center for Community Change in Washington D.C., claims the U.S. has a "Fundamentally broken immigration system," which is in desperate need of the implementation of a workable path to citizenship with sensible policy reform (Bhargava, 2008). He argues that there is a great need for anti-poverty and social justice policy on immigration and human rights in this country. Bhargava claims fixing the overall policies and attitudes towards immigrants in the U.S. could lead to the greatest human rights victory of the century (Bhargava, 2008). The United Food and Commercial Workers International Union (UFCW) agrees that immigration policies are outdated and further argues that U.S. trade policies and their effects on workers in other countries are another root cause of this failed immigration system that fuels the labor flight to the U.S. (UFCW, 2008).

Willing Workers Left Without Options

Many Americans ask why so many immigrants come to the U.S. illegally when they could apply for a green card and come legitimately. The Immigration Policy Center (IPC) argues that the answer is simple. U.S. immigration policies have not been updated in nearly twenty years and are grossly out of date, straggling far behind the demands of the growing economy. According to the IPC opinion survey of undocumented workers, 98 percent would prefer to live and work in the U.S. legally if they could. However, there are factors that keep them out of the qualified group of green card applicants. For starters, the majority does not have family ties that would increase the likelihood of legal entry. Even if they did, the waiting time for a visa can be years or decades, which is simply unrealistic for someone who lives in poverty due to economic instability in their home country. Additionally, illegal immigrants generally do not qualify for refugee status because they are not facing persecution politically, but rather economically. Lastly and most relevant, undocumented immigrants tend to be low-skilled workers in professions that do not qualify them for green cards. The IPC reports that an estimated 500,000 undocumented immigrants enter the U.S. annually to fulfill the demand for low-skilled workers in the manufacturing and service sectors. Yet the actual number of green cards granted to low-skilled workers is 5,000 per year, a grossly insufficient figure for America's vast economy, which depends on workers of all skill levels (Waslin, 2008).

As discussed previously, the demand for individuals who are willing to work these jobs consistently increases as the native population's interest in or willingness to take these jobs continues to diminish. Fifty years ago 50 percent of the U.S. workforce had not graduated from high school and today this number has decreased to 12 percent. While Americans become increasingly educated, fewer are willing to work unskilled, low paying jobs, which correlates with the rise in demand for immigrant workers. Due to the fact that only a meager 5,000 unskilled workers are granted green cards, the majority of migrants who will continue to fill the gap in the demand for workers will do so illegally (Waslin, 2008). Therefore, immigration, legal or not, is the result of a combination of economic push and pull factors, evolving in a manner that requires flexible policies. Our current fixed policies cannot respond efficiently to the demands of employers for the supply of migrant workers (Martin & Martin, 2001).

Moreover, the demographic of undocumented workers populating small towns in the mid-west has demonstrated a successful design of a \$100 billion industry, specifically created to capitalize on high turnover and cheap labor to increase profits. However, it is now a strategy that has the meatpacking industry planted in the middle of America's immigration debate (Dyer, 2006). As previously stated in discussion of the Postville case, the recent federal enforcement strategies have proven more harmful than helpful to the communities where they unfold. The raids are also expensive for the meatpacking companies, costing as much as \$50 million due to delays in production, which can at times result in a deficit supply of meat products. Companies have also struggled to fill the jobs necessary to run their plants after the raids taint their business, which can result in pay increases for workers in efforts to attract and retain legal laborers. Both of these factors potentially lead to higher consumer prices, affecting the overall economy (Jackson, 2008). These are only a few factors pointing to the inefficiency of ICE worksite raids.

The Urban Institute and the National Council of La Raza (NCLR) conducted a study that closely examined three separate ICE raids where a total of 900 undocumented workers were arrested. The focus of the study was how the enforcement policies impacted the children of the undocumented workers, who are commonly American citizens. In all three cases combined, the raids affected over 500 children, more than half of the number of arrested adults. 80 percent of the children were under ten years of age. The study found these raids to cause inherent separation of families for various periods of time, which has long-term economic and psychological impacts such as feelings of uncertainty, abandonment, and emotional trauma. In most communities, the churches were used as a safe haven and source of temporary economic relief for families affected by the raids. However, the study points out that the church-based assistance is inadequate because it generally lacks efficient resources and staff (IPC, 2008). UFCW says the raids at the meatpacking plants are disruptive to families, workplaces, communities and the overall economy (UFCW, 2008).

Possible Solutions

Temporary worker visas have been a proposed solution to the undocumented worker dilemma. This solution is supported by the meatpacking industry. The companies claim they want a more legal and stable workforce, as it helps increase business productivity. The temporary visa proposal also reiterates the disposable workforce policy of the employers as it lessens the likelihood of companies giving pay raises and legitimate health benefits over an increased period of time (Martin & Martin, 2001).

A more critical view of these temporary worker programs is that they emulate the current situation of the illegal workforce, where the foreign laborers are dependent on the employer because loss of employment could result in deportation and this dependency and vulnerability leads to lower wages and horrid working conditions (Martin & Martin, 2001). In other words, it takes away the legal complications of hiring undocumented workers from the employers while still holding the population of workers in a vulnerable state with no long-term promises of permanent residency (Martin & Martin, 2001).

In 2004 President Bush proposed a large-scale guest worker plan where every year 300,000 illegal immigrants and workers from abroad would be eligible to apply for a three-year work visa. This work permit would allow the individual to move to and from different lines of work and could be extended for an additional three years, for a total of a six-year work visa. Bill Ong Hing, professor of Asian-American Studies and the School of Law at the University of California-Davis, thinks that with additional modifications, Bush's guest worker program is on the right track. Ong Hing favors facilitating the flow of immigrants from Mexico who seek employment opportunity in the U.S. because he believes this flow will continue with or without legal supervision. He argues that "We have demonized the undocumented, rather than seen them for what they are: human beings entering our country for a better life who have been manipulated by globalization, regional economies, and social structures that have operated for decades" (Ong Hing, 2006).

However, Ong Hing explains that the missing ingredient of the proposal is an automatic route to legalization or path toward citizenship for the guest workers. Legalizing the majority of the undocumented workforce would help ease pressures at the border and address the labor needs of manufacturing and service industries. Bringing the undocumented immigrants out of the dark corners and crevasses of the economy would allow them to seek a more economically stable life. "Only through a path to legalization can these individuals, upon whom we have depended for generations, attain a sense of enfranchisement and freedom from political subjugation and servitude" (Ong Hing, 2006).

The UFCW argues that guest worker programs, absent of a path to legalization, "Create an underclass of workers and engenders racial and other discriminatory attitudes toward individuals who are afforded neither full rights on the job nor participation in our society" (UFCW, 2008). Specifically, the meatpacking industry has been known to use and dispose of workers due to high injury rates. The UFCW secretary-treasurer in Dodge City, Kansas, Martin Rosas, said "It is common practice now; it would be even worse" with the implementation of a guest worker program (UFCW, 2008).

The UFCW considers the creation of a path to permanent residency and legalization as a more constructive immigration reform. They point out that undocumented workers are making significant contributions to their communities, but denied proper protection of their rights to work and due process. They argue that this legalization process would not be arbitrary amnesty, but rather the candidates should have to meet specific legal, language, culture, and community service requirements (UFCW, 2008).

This proposed solution of legalization is not solely beneficial for this population of workers. Expanding legal channels for these willing workers by reforming the immigration policies would also have extremely beneficial effects on the nation's economy. These benefits include, eliminating the risk of employers hiring undocumented workers and facing penalties as seen in the case of Agriprocessors, exposing the black market of identity theft and false documentation, and improving the overall working conditions and wages for the legal workforce as well (Griswold, 2002).

By international standards, all human beings bear the right to freedom of movement and the right to change their nationality. However, the U.S. immigration policies and current methods of enforcement have acted within a selective and discriminatory process, making it nearly impossible for people to employ their right to movement. The proposed expansion of legality would help assure this right entitled to the population of undocumented workers. It would also immensely contribute to the abolishment of the numerous human rights violations that have infiltrated all aspects of the lives of undocumented workers in the U.S., adults and children alike. Additionally, the legalization of the undocumented workforce would help eliminate the human rights violations that occur in the meatpacking industry, as they would no longer have a disposable workforce of illegal immigrants to exploit.

Relevant Human Rights

“A right is not what someone gives you; it's what no one can take from you.”

–Ramsey Clark (Former U.S. Attorney General)

The Rights of the Workers

The human rights pertaining to workers are stated in several major international human rights declarations, covenants and conventions.⁸ The *Universal Declaration of Human Rights* (UDHR) declares entitlement to all rights set forth in the declaration without discrimination of any kind with a specific mention of the national origin, birth status, and international status. The UDHR discusses several aspects pertaining to the right to work including the right to favorable work conditions, equal pay, and right to form and join trade unions for protection of interests. The UDHR also declares the freedom of movement and the right to leave any country including your own and the right to change your nationality (UDHR; 1948).⁹

The *International Convention on Economic Social and Cultural Rights* (ICESCR), provides a more detailed description of the human rights of workers, which includes the right to just and favorable work environments, the right to safe and healthy work conditions, reasonable limitation of working hours, and the right to form and join trade unions for the promotion and protection of their economic and social interests. The *International Convention on Civil and Political Rights* (ICCPR) also states the worker's right to join trade unions (ICESCR, 1966; ICCPR, 1966).¹⁰

The *Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live* was adopted by the United Nations in 1985, which defined *aliens*, as individuals who are not nationals of the country in which they reside, as a specific population of right holders. This declaration identifies the relevant rights of alien workers including the rights to a fair, safe, and healthy work environment. It defines the minimum age of employment as well as the freedom to form and join trade unions, with the intentions to protect their economic, social cultural and other interests (UNHCHR, 1985).¹¹

In 2003 the United Nations held the *International Migration Convention* where it adopted the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. This convention did not seek the creation of a new human rights platform for migrant workers, but rather the attention of the international community's need to address the rights of the population still suffering from the deprivation of their human rights. Here the definition of the term *migrant worker* is a “Person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State to which he or she is not a national” (UNESCO, 2003). The inclusion of people who are deserving of the rights set forth in this convention was further defined as it is specifically stated non-documented workers are considered right holders within the migrant worker population (UNESCO, 2003).¹² The convention also states that migrant workers should be protected from cruel, inhuman or degrading treatment and the second identifies the entitlement to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or private persons (UNESCO, 2003).¹³

⁸ UDHR; ICESCR; ICCPR; The Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live; The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; The International Migration Convention; and the ILO all declare human rights pertaining to the worker and eligibility for these rights.

⁹ UDHR Article 2 declares the entitlement to all rights set forth in the Declaration without discrimination of any kind; Article 23 discusses the right to work; Article 13 declares the freedom of movement and Article 14 states the right to leave any country including your own

¹⁰ ICESCR Article 6 & 7; ICCPR Article 22

¹¹ *The Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live* Article 8

¹² *The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* Article 2 & 5

¹³ *International Migration Convention* Article 10, 16, 25, & 26

Additionally, the *International Labor Organization* (ILO) has been fighting to secure and maintain a fair deal for all workers, including migrant workers and their families since 1919. The organization has accomplished this in two major ways. This first is through their conventions and recommendations, which set a path for national laws. There are two major ILO conventions concerning migrant workers, one of which is the *Migration for Employment Convention of 1949 (No. 97)*, which requires nations to treat migrants as their own national when applying laws relating to working life, without discrimination of specific mention of nationality (ILO, 2008).

Another relevant ILO convention is *The Migrant Workers Convention (No. 143)* created in 1975 and declares that the countries that ratified the convention must enforce policy to secure equality of treatment in matters such as employment and trade union. In 1998 the ILO adopted the *Declaration of Fundamental Principles and Rights at Work*, which was created to identify “Core labor standards and its more than 180 conventions” covering freedom of association, child labor, forced labor, and discrimination (Compa, 2005). Additionally, the ILO works to secure the human rights of migrant workers through its technical cooperation projects, where they have developed an interregional project focusing on industrialized migrant receiving states, to combat discrimination against migrant workers (ILO, 2008).

Worker rights have trickled into the laws in the U.S. through the *Fair Labor Standards Act* (FLSA). Similar rights spelled out by the international community to protect workers’ rights are found in the FLSA, such as rights to fair wages and working hours. The U.S. Department of Labor (DOL) acts as the federal agency that upholds the state’s obligation of protecting these essential human rights by monitoring and enforcing the rights of the worker, including the rights of undocumented and child workers (DOL, 2008).

The Rights of the Child

The exploitation of child labor that allegedly occurred at Agriprocessors violates the standard human rights pertaining to the child set forth in the *Convention on the Rights of the Child* (CRC) and other human rights documents of the international community.¹⁴ According to this convention, a child is defined as any human being below the age of eighteen years of age and declares the enforcement of these rights shall be provided to children without discrimination of any kind, including their national origin. The CRC declares the protection of children from economic exploitation and from performing any work that is likely to be hazardous or to disrupt their education, or harmful to their physical, mental, spiritual, moral or social development. The convention also declares the right to appropriate regulations of hours and conditions of employment and appropriate penalties or sanctions to ensure enforcement (CRC, 1990).¹⁵ Similar rights of the child are identified in the ICESCR, which states that children should be protected from economic and social exploitation and that employment of children harmful to their mental and physical well being is punishable by law. This covenant also declares appropriate age requirements for employment (ICESCR, 1966).¹⁶

The U.S. is one of the only two countries that have not ratified the CRC. However, it has adopted many of the rights of the child in relation to child labor in legislation at both the national and state levels. The *Fair Labor Standards Act* (FLSA) identifies the rights and limitations on child workers (DOL, 2008). Additionally, the *Office of Child Labor, Forced Labor, and Human Trafficking* (OCFT) was created in 1993 and is part of the *U.S. Department of Labor's Bureau of International Labor Affairs* (ILAB). As domestic and international concern about child labor grew, this office was created as a request by the U.S. Congress to investigate and report on child labor around the world (DOL, 2008).

¹⁴ ICESCR Article 10; ICCPR Article 24

¹⁵ *The Convention on the Rights of the Child* Article 1 states “A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” Article 2 gives entitlement to rights to all children, without discrimination of any kind, including their national origin and birth or other status. Article 10 states the child’s right to leave their country of origin. Article 32 identifies the protection of children from economic exploitation and from performing any work that is likely to be hazardous or to disrupt their education, or harmful to their physical, mental, spiritual, moral or social development, and the right to appropriate regulations of hours and conditions of employment and appropriate penalties or sanctions to ensure enforcement.

¹⁶ ICESCR Article 10 states the child’s right be protected from economic and social exploitation, “Their employment in work harmful to their morals, or health or dangerous to life work or likely to hamper their normal development should be punished by law.”

Applying the Human Rights Principles

“The care of human life and happiness, and not their destruction, is the first and only object of good government.”

–Thomas Jefferson

The objective of the Human Rights Based Approach (HRBA) to this analysis is to consider the events and policies pertaining to the case using the entirety of the human rights discourse and theory. The HRBA emphasizes that rights empower individuals to make claims on society. The state acts as a duty-bearer of all rights and is obligated to assure their realization. This involves not only the responsiveness of the duty-bearers to the claims of rights-holders but also an implementation of additional human rights principles, such as non-discrimination and equality, empowerment and participation of individuals within the communities, and respect for the indivisibility and interdependency of all rights (OHCHR, 2004; Fukuda-Parr, 2007). In an effort to have a clearer understanding of the violation of rights, which took place at Agriprocessors, particular focus on the disadvantages of this population of undocumented workers and the discrimination they faced will be used in this analysis. Finally, the analysis will draw upon solutions for how these human rights can be achieved.

Rights holders and duty-bearers

The human rights concepts of rights-holders and duty-bearers are among the most distinguishing factors of any human rights approach. All people have rights that they are entitled to claim and are considered right-holders by international human right standards. These rights correspond with obligations of the duty-bearers, normally the state, who are required to take appropriate actions by implementing policies to see that individuals' rights are respected, protected and fulfilled (UNDP, 2000; Donnelly, 2003).

In the case of Agriprocessors, the undocumented workers employed at the plant are the legitimate right holders. They are entitled to all universal human rights and the duty-bearer that is obligated to respect, protect, and fulfill their rights is primarily the U.S. federal government. Another duty-bearer in this case is the employer, Agriprocessors, who is obligated to respect, protect, and promote the human rights specifically pertaining to labor, set forth in documents produced by the international community discussed in the previous section.

It is obvious that Agriprocessors did not fulfill its obligation to respect, protect, and promote the rights of their employees. Investigations in recent months exposed that Agriprocessors was lacking respect and protection of workers' rights. In fact, Agriprocessors committed serious human rights violations such as denying the rights to favorable working conditions, fair wages, reasonable shifts, and humane treatment of workers. Additionally, Agriprocessors was allegedly violating other federal laws, including knowingly employing undocumented workers, including minors.

The government, also accountable as a duty-bearer of these workers' rights, has played an interesting role bringing justice to this specific case. They intervened through the immigration enforcement by first punishing the undocumented workers and later the company's management for illegally withholding employee wages, employing undocumented workers and violating child labor laws. However, the government has, thus far, failed to respect, protect, and promote other essential rights of the undocumented workers that allegedly suffered abuse in the workplace, such as the right to be protected against inhumane or degrading treatment.

Right to equality and non-discrimination

The principles of equality and non-discrimination are a constant theme in the human rights framework and well established in the UDHR, covenants, and other important human rights documentation. The principle of non-discrimination obligates states to uphold the equal treatment of individuals and groups by ensuring their rights to equal opportunities to all members of society (OHCHR, 2004). From the perspective of the human rights principle of non-discrimination, the undocumented migrants were entitled to the same treatment and fulfillment of their human rights in the workplace as the legal workers. On a more macro scale the undocumented workers are entitled to equal treatment and fulfillment of rights within the greater society.

Discrimination seems to play the most significant role in cases dealing with the population of undocumented workers. As previously discussed in great length, this is a population known for being vulnerable and easily exploitable, and thus discriminated against. These same characteristics have contributed to the intentional use of their labor and devaluation of their legitimate rights. This exploitation benefits the employers by decreasing the cost and investment in their workforce and therefore increasing their overall profits.

True participation and empowerment

True participation refers to the active and well-informed collaboration of individuals within a community. Likewise, empowerment is enabling individuals to make choices concerning their own livelihood. In many cases, empowerment takes shape as a process where one must break through the many factors that create powerlessness, such as the lack of individual security and/or political participation, to create conditions where people are more enabled to lead their lives as they see fit (OHCHR, 2004). The concept of rights, accompanied by the obligations of duty-bearers, aids the empowerment of people by legitimizing their demands on society and the state. All individuals are to be rights-holders demanding that the duty-bearers live up to their obligations. This process of empowerment can be especially effective when rights become codified into law, thus giving rights-holders a legal, moral, and ethical claim to their individual rights (OHCHR, 2004; Donnelly, 2003).

In evaluating the case of Agriprocessors it is obvious that the undocumented workers did not benefit from the human rights principles of true-participation or empowerment because they were, and have remained, marginalized within the greater society. These undocumented workers face discrimination in the workplace because they lack proper protection under laws implemented on the federal and state level.

Indivisibility and interdependence of rights

The principles of indivisibility and interdependence hold that all human rights are important and indeed necessary for the pursuit of a more dignified life and that trade-offs between them are unacceptable. The “universal, indivisible, interdependent and interrelated” nature of human rights summarizes the emerging consensus in the human rights arena that there should be no separation between the civil and political rights and the economic, social and cultural rights (Donnelly, 2003).

In the case of Agriprocessors, the principle of indivisibility is exceedingly apparent when examining the population of undocumented workers and the numerous human rights violations they endured due to the lack of proper protection as legitimate members of society. Likewise, the principle of interdependency is evident in relation to the violation of the rights and exploitation of children among this subjugated population of immigrants.

Conclusion: Lessons Learned

After analyzing the meatpacking industry’s relationship to the population of undocumented workers with the HRBA, it is evident that current policies and practices in the U.S. are not contributing effectively to the protection of human rights pertaining to undocumented workers. On the contrary, they are reinforcing the disadvantages of this workforce by allowing them to maintain such a marginalized status, as well as continuing to be subjected to discriminatory practices by employers who will undoubtedly continue to exploit and violate the rights of these individuals for their economic gain.

The recent fixes of small scaled enforcement strategy has proven to be at best a temporary scare to undocumented workers that will do nothing to address the much broader issues the U.S. faces with its illegal population. After comparatively evaluating the pros and cons of raids, it is fair to say that they cause more harm to their communities and the larger society. Furthermore, the majority of immigration to the U.S. is the result of push/pull economic factors, which require flexible policies. The outdated immigration policies have proven to be inefficient for these current political and economic times.

The HRBA used in the analysis of this case strongly supports the need for the U.S. government to revise its current immigration policies in order to rid undocumented workers of the stigma as an underclass. Until the fundamental

principle of non-discrimination is fulfilled, this population will remain powerless and non-participants in society, lacking efficient protection of their universal human rights.

Potential HRBA solutions

A possible solution based on the HRBA is the incorporation of human rights principles into national legislation. This means that the federal government would do a better job of recognizing its roles and obligations as a duty-bearer to respect and work to achieve the protection and fulfillment of human rights of all individuals within its jurisdiction. This also requires the government to recognize the crippling role that discrimination plays in hindering the realization of rights for all people, including the marginalized populations such as undocumented workers.

Effective strategies that could be used to avoid cases like Agriprocessors need to consider a more systematic approach to solving the problem. There is a vital need for an immigration system that is economically equipped, humane and fair for all people. *Recognizing* the demand for this immigrant workforce is a necessary step towards *embracing* the need for pragmatic policy reform. The expansion of legality for unauthorized workers would help assure rights entitled to this population and put an end to their “disposability”. It would also immensely contribute to the abolishment of the numerous human rights violations that have infiltrated all aspects of the lives of undocumented workers in the U.S., adults and children alike. More specifically, the legalization of unauthorized workers would help eliminate the human rights violations that occur in the meatpacking industry, as they would no longer have vulnerable, undocumented immigrants to exploit. Other relevant rights, such as fair wages fulfilled by the employer, would likely follow under this protection through interdependence of rights.

The government needs to take the necessary steps to utilize policies that will treat immigrant workers as respected right-holders and empower them through integration and true participation within the greater society. A modified version of a guest worker proposal, inclusive of a paved path toward legalization and citizenship for the undocumented workforce, is a very realistic step towards a solution to achieving better human rights practices through national policies. Legalizing the majority of the unauthorized workforce would help address the labor needs of manufacturing and service industries, while bringing the undocumented immigrants out of the shadows, where there is greater potential for the realization of their human rights. These individuals would no longer be stigmatized as a part of a disposable workforce and instead recognized as legitimate right-holders, empowered by the law and as true-participants within the society in which they live.

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Appendix 1

The five sections of the Iowa Child Labor Law of the Iowa Code Ch. 92 that Argriprocessors was accused of violating are as follows:¹⁷

The Child Labor statute, Iowa Code Ch. 92, specifies that “every day during which any violation of this chapter continues shall constitute a separate and distinct offense,” and that “the employment of any person in violation of this chapter shall. . . constitute a separate and distinct offense.” Violations are simple misdemeanors. (Iowa Code sec. 92.20.)

The Complaint alleged 9,311 counts of child labor violations, as follows:

Iowa Code sec. 92.8 (9) -- prohibited occupations under age 18, meat packing plant: 3,857 violations. (“No person under eighteen years of age shall be employed or permitted to work with or without compensation at any of the following occupations or business establishments: . . . (9.) Occupations in or about slaughtering and meat packing establishments and rendering plants.”)

Iowa Code sec. 92.8 (19) -- prohibited occupations under age 18, exposure to dangerous chemicals: 3,857 violations. (“No person under eighteen years of age shall be employed or permitted to work with or without compensation at any of the following occupations or business establishments: . . . (19.) Occupations involving exposure to lead fumes or its compounds, or to dangerous or poisonous dyes or chemicals.”)

Iowa Code sec. 92.7 -- hours permitted for persons under age 16: 677 violations of hours-per-day limits or working during prohibited hours, and 130 violations of hours-per-week limits. (“A person under sixteen years of age shall not be employed with or without compensation, except as provided in sections 92.2 and 92.3, before the hour of seven a.m. or after seven p.m., except during the period from June 1 through Labor Day when the hours may be extended to nine p.m. If such person is employed for a period of five hours or more each day, an intermission of not less than thirty minutes shall be given. Such a person shall not be employed for more than eight hours in one day, exclusive of intermission, and shall not be employed for more than forty hours in one week. The hours of work of persons under sixteen years of age employed outside school hours shall not exceed four in one day or twenty-eight in one week while school is in session.”)

Iowa Code sec. 92.6 (6) -- occupations not permitted for persons under age 16, operating power machinery: 790 violations. (“Persons fourteen and fifteen years of age may not be employed in: . . . (6.) Operation or tending of hoisting apparatus or of any power-driven machinery, other than office machines and machines in retail, food service, and gasoline service establishments which are specified in section 92.”)

¹⁷ (From Iowa Department of Justice, Office of Attorney General, 2008)