

Sworn Declaration

I, Richard L. Murphy, do declare:

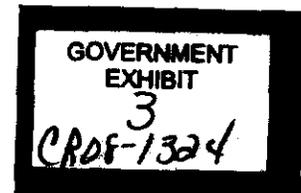
1. I am an Assistant United States Attorney for the Northern District of Iowa.

I have been an Assistant United States Attorney in the Northern District of Iowa for more than 26 years.

2. In the fall of 2007, I held the positions of First Assistant United States Attorney and Criminal Chief. Beginning about the end of January 2008, I only held the position of First Assistant United States Attorney. I held that position until earlier this year when I was assigned the position of Special Counsel to the United States Attorney.

3. During the fall of 2007 and continuing through May 12, 2008, I was personally involved in the planning leading up to the execution of federal warrants at Agriprocessors, Inc., in Postville, Iowa, and the subsequent processing and court proceedings at the National Cattle Congress (NCC) fairgrounds in Waterloo. As part of my responsibilities at the time, I participated in meetings and discussions with numerous people to help plan the enforcement operation and the response to the action. Some of those meetings and discussions were with, or included, Chief Judge Linda R. Reade or other Northern District of Iowa federal judges. However, the vast majority of these meetings and discussions involved non-judicial officers such as the Clerk of Court, United States Probation Officers, or other court personnel; the United States Marshal; a variety of law enforcement personnel from numerous law enforcement agencies; and other attorneys and staff from my office or other offices.

4. I have read defendant Sholom Rubashkin's (defendant's) Motion for New



Trial filed August 5, 2010.

5. The above-referenced meetings and discussions with the court and court personnel were directed toward ensuring the court would be prepared and able to respond to an enforcement operation that was anticipated to involve the presentment of more than 700 criminal complaints for the court's consideration, and the potential for the appearance in court of that many defendants in a short period of time. The court was advised the United States would be seeking a search warrant for an unnamed target and it was anticipated the defendants for whom criminal complaints would be sought would be primarily Spanish-speaking aliens.

6. An operation of this scope presented a number of concerns for the court, including: 1) the ability to safely, securely, and timely conduct court hearings for defendants; 2) the need to provide for a sufficient number of judicial officers, pretrial service officers, interpreters, defense attorneys, and other personnel and resources to accommodate potentially hundreds of criminal defendants; 3) the need to provide for adequate detention or holding facilities for detainees; 4) the need to provide appropriate resources and information to court staff, probation officers, and defense counsel who would be dealing with any criminal defendants; and 5) the need to provide information and access to the families and the public concerning the identities of those detained and the timing of court appearances.

7. As to the first category of concerns, I was aware from discussions in which I participated that Judge Reade, in consultation with the United States Marshal and other court officials, determined the antiquated federal courthouse in Cedar Rapids

could not safely and securely accommodate the timely processing by the Marshals and conducting of hearings by the court for potentially several hundred defendants. In addition, there were concerns that the antiquated public courthouse may not be able to efficiently accommodate the potentially large numbers of family or public that may wish to attend the court hearings. The court was told U.S. Immigration and Customs Enforcement (ICE) had planned to use the NCC fairgrounds in Waterloo to interview and temporarily house detainees. After being advised space could be made available at the same location for court proceedings, and further considering the matter, the court decided it would temporarily relocate judges and court personnel to Waterloo to conduct any necessary judicial proceedings at the same location being used by ICE.¹ The court was advised of the security and other logistical arrangements planned for the

¹ The temporary relocation of the court to an offsite facility is not unprecedented in this district. On April 9, 1996, INS conducted a worksite enforcement operation in Charles City, Iowa, and took 47 people into custody. Not unlike the instant case, prior arrangements had been made with the court (the Chief United States District Court Judge, Michael J. Melloy, now Judge of the Eighth Circuit Court of Appeals, and Chief United States Magistrate Judge John A. Jarvey, now United States District Court Judge, Southern District of Iowa), Clerk of Court, and United States Probation Office, to conduct judicial proceedings at the National Guard Armory in Charles City, Iowa. Defense counsel were notified to be available, although not advised of the location of the operation until after arrests had been made. Draft model plea agreements, sentencing documents, and a notice to each defendant were translated into Spanish in advance. Court proceedings started at noon on April 10, 1996, and by the afternoon of April 11, 1996, all 47 illegal aliens had pleaded guilty and been sentenced.

A similar enforcement action was also conducted in Waterloo, Iowa, with about 50 defendants charged, pleading guilty, and being sentenced in August 1996 at a courtroom located within the Blackhawk County Jail in Waterloo.

NCC fairgrounds, to include the security of the temporary court facilities.² The court and U.S. Marshal were also reminded that districts along the southwest border routinely conduct court hearings with as many as fifty or more defendants at a time. I suggested the court and Marshal may wish to contact those districts to help better assess logistical and anticipated resource needs.

8. As to the second set of concerns, the court needed to know the number of individuals the United States expected it could seek to criminally charge. The court was also advised the United States expected the defendants would primarily be foreign nationals. This information was necessary for the court so it could begin to make arrangements for sufficient numbers of judges, pretrial service officers, interpreters, defense attorneys, and other personnel and resources. The Northern District of Iowa is a small district with limited resources.³

9. As to the third set of concerns, the court had several concerns ranging from concerns about the defendants' access to counsel; the defendants' housing conditions; and to affording defendants an opportunity to clean up and shower if

² I understood the court also viewed this as an opportunity to exercise its Continuity of Operations Plan (COOP). As things turned out, the court's decision was fortuitous. An epic flood in early June 2008 flooded the federal courthouse in Cedar Rapids, forcing the court to relocate to temporary quarters and to rely upon many of the lessons learned through the temporary relocation of court operations to the NCC fairgrounds. The court was not able to return to the federal courthouse after the flood and remains in temporary quarters pending the construction of a new federal courthouse.

³ It is important to note that Chief Judge Reade is one of only two non-senior judges in the district and had primary responsibility for criminal matters prosecuted in the eastern one-half of the district. The only other non-senior federal district court judge in the district is located in Sioux City, about 275 miles from Cedar Rapids.

necessary prior to appearing in court. The court was also interested in the length of time it would take defendants to be transported to and from court because of the large number of defendants anticipated and in order to ensure defendants could be timely presented in court. Because of these concerns, the court was advised generally of the arrangements being planned for the housing and transportation of any defendants facing court proceedings. The court was also told of plans being made by ICE for attorney/client meeting space at the NCC which included plans to provide access to counsel prior to the defendants first appearing in court.

10. As to the fourth set of concerns, the court was given information concerning the nature of charges that could be anticipated to be brought (generally, immigration, 8 U.S.C. § 1326; false claims to citizenship, 18 U.S.C. §§ 911, 1015(e); and fraudulent document charges, 18 U.S.C. §§ 1028A and 1546, and 42 U.S.C. § 408). The court was also advised the United States would be seeking judicial orders of removal. The court was advised we expected to propose binding plea agreements that could require defendants to serve a period of confinement and that we would be seeking approval for a so-called "fast-track" disposition program from the Department of Justice that would authorize us to grant more favorable concessions than we might otherwise grant upon conviction of crimes mandating a term of imprisonment. As I understood, this information was used to assess personnel and other needs for the court and to prepare resource materials for the use of the court, interpreters, and defense attorneys. The court also had the resource materials translated into Spanish,

given the government's belief that most of the detainees would speak Spanish.⁴ As I understood, the materials were designed to aid the court in handling a large number of similar cases and to aid defense counsel and defendants in understanding the nature of the charges and proceedings.

11. As to the fifth set of concerns, the court was advised of how ICE would make the names of the detainees available to families of the detainees and to the public. The court devised its own plans to keep the public apprised of court proceedings.

12. The timing of the execution of the search warrants was established by the local investigators in consultation with the United States Attorney's Office. The timing was dictated by considerations relating primarily to the progress of the criminal investigation, the availability of the NCC fairgrounds, and the need to finalize logistical arrangements for an operation of such magnitude. To be sure, to the extent possible, the operation would not have intentionally been planned to be conducted when the Chief Judge — one of only two full-time active federal district court judges in the district — was out of the district. However, the court did not dictate the date of the operation. It is not unusual for the court to notify our office of dates when the court will not be available. In a district with limited judicial resources, such communication is vital to ensuring defendants' rights, including the right to timely presentment before a judicial officer, are honored.

⁴ Similar resources have been available on the court's website in English for several years. www.iand.uscourts.gov/e-web/home.nsf/home.

13. Chief Judge Reade was not advised by our office, or any investigative agent or agency to my knowledge, of the target(s) of the specific federal charges or warrants or the location of the anticipated search in advance of the execution of those warrants. This information was not even provided to most employees of our office or to some law enforcement agencies in the area prior to the execution of the warrants. Only persons most directly involved in the investigation, the execution of the warrants, or the immediate response to the execution of the warrants were advised in advance of the target. Even then, some were not notified of the identity of the target until immediately prior to the execution of the warrants. Others were notified immediately after the execution of the warrants. The complaints and warrants were, of course, presented to and signed by Magistrate Judge Scoles on May 9, 2008, a few days before the warrants were executed, as is often done in criminal cases.

14. Chief Judge Reade was not shown by our office, or any investigative agent or agency to my knowledge, the power-point presentation, marked as Exhibit 10 to defendant's motion, at any time.

15. Chief Judge Reade was not updated by me or anyone else to my knowledge as "to the status of the investigation concerning Mr. Rubashkin and his plant." Chief Judge Reade was apprised of primarily logistical and legal matters affecting the court functions at the NCC. However, defendant Rubashkin was not identified to Chief Judge Reade prior to the May 12, 2008, execution of warrants as the "principal corporate executive targeted by the raid" as suggested at page 10 of defendant's memorandum. In fact, there was no warrant for defendant's arrest on May

12, 2008, nor was defendant arrested on that date. There was a warrant issued by Judge Scoles for another company official that was not executed May 12, 2008, and was later returned un-executed. However, that individual has never been apprehended and remains a fugitive on other charges. In short, prior to May 12, 2008, defendant was not identified to the court in any way as having any connection to the unnamed target(s) of the operation, other than in the warrant affidavits reviewed by Judge Scoles on about May 9, 2008.

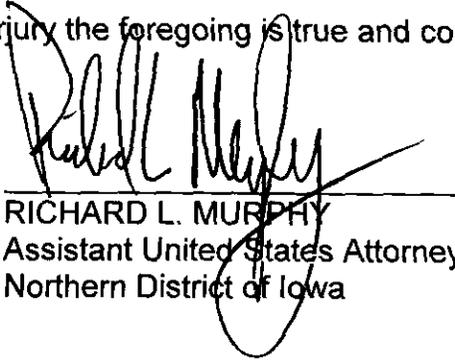
16. Chief Judge Reade did not determine any of the targets of the investigation, any of the charges brought against any defendant, or the terms of the individual plea agreements negotiated with the defendants. Those matters were established by our office, in consultation with the Department of Justice, and with the individual defense attorneys in each case.

17. Chief Judge Reade was never given a copy of the ICE operations plan by me or anyone else to my knowledge. Elements of the plan did relate to logistical and practical considerations such as security at the NCC fairgrounds, detainee housing and transportation, access to phones, access to counsel, and anticipated resource needs, about which Chief Judge Reade was appropriately concerned. I was advised the court was making plans for interpreters, judges, defense counsel, and other personnel and resources to meet its needs to respond to the anticipated arrests. I was also aware the court had blocked-off time on its busy court schedule and was arranging for others to do the same. Given the commitment of time and resources required by all involved, the court was interested to learn whether the date chosen for the start of the operation was

likely to change. In light of these concerns, I requested ICE finalize its operations plan in advance of an anticipated meeting with Chief Judge Reade on April 4, 2008, so that I could update Chief Judge Reade on the status of logistics and other planning affecting the court, and to advise the court as to the likelihood that the operation would be able to proceed on the dates previously planned. In requesting the ICE operations plan, I set a due date tied to my meeting with Chief Judge Reade. However, Chief Judge Reade never asked to see, nor was provided, the operations plan.

I declare under penalty of perjury the foregoing is true and correct.

Date: 08/23/10


RICHARD L. MURPHY
Assistant United States Attorney
Northern District of Iowa