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## GOVERNMENT'S MEMORANDUM REGARDING SENTENCING

The United States of America files this memorandum regarding sentencing.

### 1. Case Summary

#### a. Witnesses:

1. Elizabeth Billmeyer
2. Nichole Caguach-Hernandez
3. Laura Althouse
4. Alisha Arias
5. Juan Carlos Guerrero-Espinoza
6. Christopher Leman
7. Armando Ramiro Garcia-Arenales
8. Chad Root
9. Joe Watson
10. Terry Austin
11. SA Michael Fischels

#### b. Exhibits:

1. Exhibit list to be filed separately

#### c. Issues:

1. Whether the offense was committed other than for profit, and a three-level reduction should apply, under USSG §2L1.1(b)(1);
2. The number of unlawful aliens smuggled, transported, or harbored for purposes of USSG §2L1.1(b)(2);

3. Whether a three-level enhancement should apply for aggravating role in the offense pursuant to USSG §3B1.1(b);
4. Whether a two-level enhancement for obstruction of justice should apply pursuant to USSG §3C1.1;
5. Whether a three-level reduction for acceptance of responsibility should apply pursuant to USSG §3E1.1; and
6. Whether a guideline sentence is appropriate and determination of the appropriate sentence.

## **2. Factual Statement from Plea Agreement**

The parties have agreed as follows in their written plea agreement:

- A. During all times relevant to the Indictment in this case, defendant Hosam Amara was employed as a manager of the poultry side of Agriprocessors, Inc.'s (Agriprocessors) Postville facility. Agriprocessors's Postville facility was under the day-to-day control of Agriprocessors' Chief Executive Officer, S.R.
- B. During at least the five years preceding May 2008, in the Northern District of Iowa and elsewhere, defendant and others, including S.R., Agriprocessors' Human Resources Manager E.B., Agriprocessors' human resources employees L.A., K.F., S.M. and P.H., Agriprocessors' Operations Manager B.B., Agriprocessors' supervisors M.D., Z.L., and C.G., Agriprocessors' rabbi S.B., and Agriprocessors' employee N.C., did knowingly and willfully conspire to commit the following offenses for the purpose of commercial advantage: (a) harbor aliens at Agriprocessors' facility in Postville, Iowa, knowing and in reckless disregard of the fact such aliens had come to, entered, and remained in the United States in violation of law, and (b) encourage and induce aliens to reside in the United States knowing and in reckless disregard of the fact such residence was in violation of law.
- C. During at least the five years preceding May 2008, Agriprocessors, through several of its managers and employees, including but not limited to defendant, knowingly employed undocumented aliens at Agriprocessors' Postville facility and related facilities.

- D. In about the Fall of 2007, a U.S. Immigration Special Agent met with E.B. and told E.B. that the “pink” I-551 (Permanent Resident Alien Cards) were no longer being issued by the government and should no longer be accepted as a means of identification to gain employment. E.B. stopped accepting applicants who presented pink resident alien cards as proof of authorized employment. As a result, Agriprocessors had a shortage of workers. Knowing that E.B. was refusing to hire persons based upon their failure to present requisite proof of authorized employment, defendant complained to S.R. regarding the shortage of workers. In order to address the shortage of workers issue, S.R. caused L.A. and K.F. to hire undocumented alien workers and to place the workers on a payroll for a separate company, Hunt Enterprises. The workers were placed on the Hunt payroll for the purpose of making it appear the workers were not Agriprocessors’ employees. In fact, the workers performed work at Agriprocessors’ Postville plant. Knowing that Agriprocessors was hiring undocumented alien workers by placing them on the Hunt payroll, defendant told existing undocumented alien workers to encourage their family members to come to Agriprocessors for work, and defendant directed potential new employees to L.A. for hiring purposes.
- E. Defendant fled to Israel in the wake of a May 12, 2008, immigration enforcement action at Agriprocessors in Postville. S.R. encouraged defendant to leave, telling defendant, “[j]ust go ahead and leave and forget about everything here.” S.R. provided defendant with \$4,000 to use for expenses including plane fare. Defendant was extradited back to the United States in April 2013.

### **3. Supplemental Factual Statement**

In addition to the stipulated facts from the parties’ plea agreement, the government’s investigation of this matter has revealed the following information.<sup>1</sup>

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<sup>1</sup> Although defendant is not identified as having been personally involved in some of the conduct described below, the government submits the following is directly relevant to the proper application of the United States Sentencing Guidelines to defendant’s case. For example, such information is relevant to the foreseeability to defendant that 100 or more undocumented aliens were being harbored at Agriprocessors, and to the number of participants in and extent of the criminal activity for purposes of a role enhancement.

**a. Background**

**i. Agriprocessors and Personnel**

At all times relevant to the offense of conviction, Agriprocessors, Inc. (Agriprocessors) was engaged in the business of buying cattle and poultry for the purposes of slaughter, processing, and preparing meat for sale. (*See* PSR ¶ 5).

Agriprocessors' primary meatpacking facility was located in Postville, Iowa, where it processed both beef and poultry products. Prior to an immigration enforcement action on May 12, 2008, the Postville facility employed a labor force of approximately 900 to 1,000 persons at any given time. (*See* PSR ¶ 6).

Agriprocessors' owner's son, Sholom Rubashkin (Rubashkin), was a vice president of Agriprocessors and exercised day to day control over the Postville facility. Although a new Chief Executive Officer was publicly named in September 2008, Rubashkin continued to exercise day to day control over the Postville facility until approximately the time Agriprocessors filed for bankruptcy on or about November 4, 2008. (*See* PSR ¶ 7).

Production at Agriprocessors' Postville facility was primarily divided into the beef side and the poultry side. Each side of the facility operated under a tiered supervisory structure with each level designated by a different colored hard hat. The line supervisors were designated leadpersons or "green hats." The leadpersons reported to supervisors or "yellow hats." The supervisors reported to managers or "orange hats." The managers reported to one of two Operations Managers at the Postville facility. (*See* PSR ¶ 8).

Brent Beebe was one of two Operations Managers at the Postville facility. Among other responsibilities, Beebe oversaw all of the beef side production at the facility. He was also the manager of the “beef kill” department where cattle were killed to begin the beef processing procedure. Beebe reported directly to Rubashkin. (See PSR ¶ 9).

Defendant Hosam Amara was a manager on the poultry side of the Postville facility. Prior to a consolidation of shifts in approximately April 2008, defendant managed the poultry second shift. Defendant exercised substantial control over the poultry side production. (See PSR ¶ 10).

Z.L. was another manager on the poultry side of the Postville facility. Prior to the shift consolidation in approximately April 2008, Z.L. managed the poultry first shift. Z.L. reported to the poultry side Operations Manager. (See PSR ¶ 11).

Carlos Guerrero-Espinoza was a supervisor, or “yellow hat,” on the beef side of the Postville facility including the “beef kill” department. Guerrero-Espinoza supervised approximately 60 production employees including approximately three beef leadpersons or “green hats.” Guerrero-Espinoza reported to Beebe. Martin De La Rosa-Loera was a supervisor, or “yellow hat,” on the poultry side of the Postville facility. De La Rosa-Loera reported to Z.L. (See PSR ¶¶ 12-13).

Elizabeth Billmeyer was Agriprocessors’ Human Resources Manager at the Postville facility. Laura Althouse was an Agriprocessors’ employee responsible for Agriprocessors’ payroll. Althouse also performed other duties related to human resources. Althouse reported to Billmeyer. Penny Hanson was a human resources

assistant and reported to Billmeyer. Karina Freund was a human resources assistant and reported to Billmeyer. (See PSR ¶¶ 14-17).

**ii. The May 12, 2008, Enforcement Action**

On May 12, 2008, United States Immigration and Customs Enforcement (ICE) conducted a worksite enforcement action at Agriprocessors' Postville facility. Approximately 500 persons were encountered working at the facility. From that group, ICE agents arrested approximately 389 alien workers who were unlawfully present in the United States and unauthorized to work in the United States. (See PSR ¶ 20).

**b. The Harboring of Undocumented Aliens at Agriprocessors**

**i. Summary**

Rubashkin and several Agriprocessors' managers and employees, including but not limited to Beebe, defendant, Z.L., Billmeyer, Althouse, safety trainer S.M., Guerrero-Espinoza, De La Rosa-Loera, Penny Hanson, Karina Freund, and Nichole Caguach-Hernandez knowingly employed and aided in the employment of a large number of undocumented aliens at Agriprocessors' Postville facility and related facilities. In order to maintain a workforce that included a large number of undocumented aliens, Rubashkin and others took various measures in an attempt to conceal the workers' unlawful employment. (See PSR ¶¶ 21, 65-67).

Rubashkin caused certain undocumented alien workers to be paid off the books and in cash. The workers performed work at chicken growing facilities controlled by Rubashkin and Agriprocessors. In order to pay these workers in this

manner, Rubashkin caused checks to be written to R.W. and, later, to R.W.'s church so R.W. could then cash the checks and pay the workers in cash. Rubashkin did so, in part, to conceal the fact these undocumented alien workers were performing work on behalf of Agriprocessors and Rubashkin. (*See* PSR ¶ 22).

In the Fall of 2007, Rubashkin, defendant, Althouse and Freund caused approximately 86 undocumented alien workers to be placed on the payroll for a separate company, Hunt Enterprises. The placement of employees on the Hunt payroll was at the direction of Rubashkin and was done, initially, without the knowledge of Billmeyer. Rubashkin instructed Althouse and Freund to put the employees on the Hunt payroll, when Billmeyer was out of the office, and instructed them that Billmeyer did not need to know about it. This was done shortly after Billmeyer stopped accepting older "pink" resident alien cards from applicants. Rubashkin caused the workers to be placed on the Hunt payroll, knowing the workers did not have proper documentation authorizing them to work, for the purpose of making it appear the workers were not Agriprocessors' employees. In fact, the workers performed work at Agriprocessors' Postville plant. Rubashkin had a rabbi who worked at Agriprocessors' Postville plant, S.B., sign the I-9s for the approximately 86 employees. (*See* PSR ¶ 23).

In about the Spring of 2008, Rubashkin and others, including Beebe, defendant, Z.L., De La Rosa-Loera, Guerrero-Espinoza, and Althouse caused and encouraged undocumented alien workers, who were already working at Agriprocessors' Postville facility, to obtain new, false identification documents and

submit new application paperwork to Agriprocessors. Rubashkin and others had previously been presented with information indicating that hundreds of employees were working at Agriprocessors using fake identity documents. The week prior to the May 12, 2008, ICE enforcement action, Rubashkin, through Beebe and Guerrero-Espinoza, provided \$4,500 to be loaned to the workers for the purchase of the new, false identification documents. Rubashkin, Beebe, Guerrero-Espinoza and Althouse facilitated and oversaw the re-application process on Sunday, May 11, 2008. (*See* PSR ¶ 24).

## **ii. History and Background**

Elizabeth Billmeyer began employment at the company on January 3, 1989, when she had interviewed for a general office job. (*See* PSR ¶ 25). Rubashkin's brother was present at the company from the time it opened in January of 1989 and Rubashkin arrived a short time later. According to Billmeyer, Rubashkin's brother was and always has been in charge of company sales, while Rubashkin was in charge of the financial and operational aspects of the company. After Billmeyer returned to Agriprocessors from maternity leave in December of 1989, Billmeyer became responsible for duties such as worker's compensation, accounts payable, insurance, and payroll. Later, Billmeyer became responsible for payroll, personnel, hiring, insurance, and worker's compensation (but no longer accounts payable). (*See* PSR ¶ 26).

Accordingly to Billmeyer, when she became responsible for the hiring of new employees, a majority of the applicants were "American." She explained that she

would complete the I-9, Employment Eligibility Form, for new applicants along with tax forms and other hiring forms. She stated that the starting wages at Agriprocessors over the years has always been higher than the minimum wage until the minimum wage was raised to \$7.25 in 2008. When the minimum wage was raised to \$7.25, Agriprocessors was offering the minimum wage as their starting wage. (See PSR ¶ 27).

Agriprocessors expanded in 1993 to add the poultry department. An employee by the name of Stephanie Lucas was hired sometime before 1995 as the safety manager. After assuming the safety manager position, Lucas began reviewing employment applications and conducting the hiring process. Billmeyer continued to work with Lucas to place new employees once they were hired. Before Lucas took over the hiring process from Billmeyer, Billmeyer hired some nationals from Russia to work at Agriprocessors. According to Billmeyer, she did I-9 forms for all workers that had come from Russia. Billmeyer never received any formal training or instruction for completing the I-9 forms. (See PSR ¶ 28).

Lucas continued to conduct the hiring process at the company until Lucas left in 1999. At this point, Billmeyer began conducting the hiring process again. Before leaving, Lucas provided Billmeyer with some guidance as to what she should look for when reviewing identification documents presented by new applicants. Lucas instructed Billmeyer to pay attention to the photograph on the documents in addition to corresponding identification numbers. (See PSR ¶ 29).

According to Billmeyer, some hiring concerns began in 1999. Billmeyer stated that there was a decision made to avoid hiring Hispanics in 1999. She stated that this was due to talk amongst the Postville community that Hispanics residing in Postville were creating problems such as fighting. Billmeyer stated that the company's upper management did not want the Hispanics working at the company as they did not want to assume the image that the company was employing these trouble makers. The company later decided to stop avoiding the employment of Hispanics because they were expanding and the Hispanics were the only available labor pool. (See PSR ¶ 30).

### **iii. I-9 Certifications at Agriprocessors**

According to Althouse, she was ordered by her supervisor, Elizabeth Billmeyer, to sign I-9 certifications. She did not read the form before signing. In approximately 2003, Althouse claimed that she took the time to read the form. After reading the form and realizing the significance of her signature, she refused to certify any more I-9s. Billmeyer again ordered Althouse to sign the forms and she refused. (See PSR ¶ 31).

According to Althouse, Penny Hanson began certifying the I-9s for Billmeyer. Althouse stated she told Hanson that she should not sign the certifications without seeing the identification documents. Hanson later refused to sign the I-9s for the same reason as Althouse. After Hanson, Karina Freund took over the duty of signing I-9s at Billmeyer's direction (as noted below, the government is unaware of any I-9s signed by Freund). (See PSR ¶ 32).

According to Hanson, she was employed in the human resource department at Agriprocessors between about September 2003 and December 2006. Her duties included receiving applications and identification cards from applicants and delivering those items to Billmeyer. Billmeyer reviewed the documents and decided which applicants to hire and assigned those persons to work in particular departments. In most cases, Billmeyer made the determination without ever viewing the applicant. At the direction of Billmeyer, on many occasions, Hanson signed the certifications on the I-9s relating to the applicants. Hanson did so despite the fact that she had not made the required determinations. Hanson believed Billmeyer did not want to sign the certifications because many of the resident alien cards presented by the applicants were false. Hanson said that Billmeyer once told her that Billmeyer would never sign the I-9 forms. (See PSR ¶ 33).

According to Billmeyer, Hanson was certifying I-9 forms for a period but stopped signing the forms shortly before she left the company in the Spring of 2007. Billmeyer believed that Hanson stopped signing the I-9 forms because Hanson had received a subpoena to testify in court about an I-9 form that she had certified. Billmeyer stated that she did not become aware of the fact that Hanson had stopped signing I-9 forms until after Hanson had left the company. After Hanson left, Althouse told Billmeyer that Hanson had stopped signing and certifying I-9 forms before she left the company because Hanson became uncomfortable. Billmeyer stated there were a number of I-9 forms for employees that were not certified from

that time period and she did not go back and certify the forms herself. Billmeyer also clarified that although Hanson was certifying the I-9 forms, Billmeyer was the one responsible for reviewing and approving the validity of the actual identification documents presented by the applicants. (See PSR ¶ 34).

Of the Agriprocessors I-9s seized by law enforcement in May 12, 2008, approximately 128 were certified by Althouse, approximately 735 were certified by Billmeyer, and approximately 1026 were certified by Hanson. (See PSR ¶ 35).

#### **iv. Agriprocessors' Receipt of "No-Match" Letters**

Prior to May 12, 2008, Agriprocessors received several Social Security Administration (hereinafter "SSA") Employer Correction Request for Educational Correspondence (hereinafter "no match") letters. Billmeyer received the letters and discussed them with Rubashkin. These letters listed the discrepancies between employee names and the social security numbers reported by the employer on Wage and Tax statements (Forms W 2) for a specific tax year. This discrepancy, also known as "no match," normally means that the social security number and name provided by the employee to Agriprocessors did not match the name and social security number contained in the Social Security Administration's official records. It could also mean the number reported by Agriprocessors had not been issued to any person.

Agriprocessors was notified as follows:

<b>EDCOR Letter Dated:</b>	<b>For Tax Year:</b>	<b>Number of Discrepancies</b>
May 9, 2002	2001	22
May 19, 2005	2001	500 <sup>2</sup>
May 19, 2005	2002	500
May 19, 2005	2003	500
May 19, 2005	2004	500
May 19, 2005	2000	461
March 24, 2006	2000	24
March 24, 2006	2002	37
March 24, 2006	2003	42
March 24, 2006	2004	52
April 21, 2006	2005	68
May 5, 2006	2005	500

(See PSR ¶ 36).

Billmeyer recalled a time in 2000 when she had received a no-match letter from the Social Security Administration. Billmeyer stated that when this letter was received, Rubashkin told her that they needed to take care of it. Billmeyer explained that she met with less than 50 of the 100 employees and notified them of the no-match issue. She stated that she believed most of the 100 employees left the

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<sup>2</sup> SSA would list no more than 500 mismatched social security numbers on a single no-match letter.

company. One of the employees with whom Billmeyer met in 2000 told her that he had bought his social security card “fair and square.” She responded to the employee by telling him to go apply for a valid social security card. She did not remember conducting any follow up to these notifications.<sup>3</sup> (See PSR ¶ 37).

Billmeyer also recalled a time in 2005 or 2006 when she received several years’ worth of Social Security no-match letters from the Social Security Administration. Billmeyer explained that Agriprocessors had received these no match letters in bulk because the company had not submitted employee W-2 information for several years. The W-2 information had not been electronically submitted because the computer system at Agriprocessors was not compatible with the government system. (See PSR ¶ 38).

After receiving the no-match letters from the Social Security Administration in 2005 or 2006, at the direction of Rubashkin, Billmeyer worked with Penny Hanson to create a database system to determine which of the no-match social security numbers on the letters were being used by current employees as opposed to former employees. Billmeyer used her Agriprocessors employee database to match up employees with social security numbers listed on the no-match letters.

Billmeyer and Hanson created a no-match spreadsheet which revealed that the no-match letters contained approximately 200 to 300 social security numbers that had been used by current employees at Agriprocessors. Billmeyer presented the

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<sup>3</sup> An April 21, 2006, e-mail from the Social Security Administration to Billmeyer indicates the Social Security Administration recommended Agriprocessors consider using its BSO (Business Services Online) system to verify social security numbers because the company had over 900 social security “no matches.”

no-match spreadsheet to Rubashkin who told her, “don't worry about it, I will take care of it.” Billmeyer later followed up with Rubashkin regarding the no-match issue and was told by Rubashkin, “don't worry about it, this is my company and I will run it how I want to.” (See PSR ¶ 39).

According to Billmeyer, she attempted to follow up with Rubashkin again and was asked to go for a walk in the Agriprocessors' parking lot. Billmeyer stated she followed Rubashkin to the parking lot where he instructed her to wait near a loud cooling trailer while he met with Operations Manager Brent Beebe. Billmeyer observed the meeting between Rubashkin and Beebe but could not hear what was being discussed between the two. At some point awhile later, Billmeyer remembered asking Beebe what the conversation in the parking lot was about. Beebe told Billmeyer that the conversation was about the no-match issue and that the decision was that they were going to do nothing about the problem. Billmeyer recalled she may have told Penny Hanson about the meeting in the parking lot.<sup>4</sup> (See PSR ¶ 40).

Regarding the no-match letters received in 2005 or 2006, Billmeyer said that, in 2007, an Iowa law firm assisted Rubashkin with the creation of a letter template to be sent out to current employees whose social security numbers appeared on the no-match letters received from the Social Security Administration. The intention of

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<sup>4</sup> According to Hanson, about a week after starting the no-match spreadsheet project in December 2006, Hanson saw Billmeyer crying in the human resource office. When Hanson asked if Billmeyer was alright, Billmeyer responded that she was not going to jail for anyone. Billmeyer said that, about 10 years before, Billmeyer was approached by Rubashkin and Brent Beebe in the parking lot at Agriprocessors. Rubashkin and Beebe asked Billmeyer to “look the other way” when hiring employees. Billmeyer added that INS was coming, it was just a matter of time.

this letter was to notify the employee that the company had received notification from the Social Security Administration that their name and social security number did not match Social Security Administration records. The letter instructed the employee to resolve the discrepancy with the Social Security Administration within 60 days of the employee's receipt of the letter. Billmeyer also assisted with the letter template and originally created a final version of the letter with the signature line for Rubashkin to sign. Billmeyer stated that, when she presented this final version to Rubashkin, he told her to put her name at the bottom of the letter instead of his. Billmeyer did as instructed and created another final version of the letter with her name at the bottom. She said the letters were sent out to employees in two rounds. The first round of letters was sent out in April of 2007 and the second round was sent out in May of 2007. (See PSR ¶ 41).

Once the final version was completed, Billmeyer stated that the employee letters were to be sent out to every sixth or eighth employee on the no-match list. Billmeyer said she did not know who made the decision to only send the letters to every sixth or eighth employee on the list. Billmeyer said that, in March of 2007, Karina Freund was hired to replace Penny Hanson. Billmeyer said she had Freund assist her with mail merging employee names from the no-match list to construct the employee no-match letters. Billmeyer said she told Freund which employees on the no-match list would be receiving a letter. (See PSR ¶ 42).

Billmeyer said, in addition to sending out the second round of employee no-match letters, Rubashkin instructed her to send out an extension letter to

employees who received the first round of employee no-match letters. The extension letters granted the first round of recipients an additional 48 days to resolve the social security number problem. The second round of letters, including the extension letters, were sent out on May 4, 2007. (*See* PSR ¶ 43).

According to Hanson, in about the first week of December 2006, Billmeyer gave Hanson a list of names and social security numbers that was approximately 200 pages long. Billmeyer told Hanson to determine which employees on the list were active employees. Hanson determined that several hundred persons on the list were active employees.<sup>5</sup> (*See* PSR ¶ 44).

According to Althouse, approximately one year prior to her May 18, 2008, interview, Rubashkin gave her a list of approximately 200 employees who had a “no-match” problem according to the SSA. She was instructed to put a notice in their paychecks saying that if the problem was not fixed, they would be terminated. (*See* PSR ¶ 45).

Billmeyer said she would only attempt to verify applicant social security numbers by using the social security no-match list that was created after the company received multiple no-match letters from the Social Security Administration. Billmeyer also stated that she did not review the personnel files of former employees who came to the company to re-apply for employment. She stated that she did not attempt to verify if the former employee was attempting to use the same social security number or a different one for the re-application. Billmeyer said

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<sup>5</sup> According to Hanson, she submitted her two-week notice shortly afterward and quit. She returned to the quality control department at Agriprocessors in April 2008.

that if a former employee reapplied for employment at Agriprocessors and presented a different social security number than that person had used previously at the company, she would hire the applicant as long as the new social security number did not appear on the social security no-match list. She stated that the same applied to an applicant who reapplied with a different name than that person had previously used for employment at the company. Billmeyer again stated that if the social security number presented by the applicant did not appear on the social security no-match list, she would hire that person regardless of the social security number or name used. (See PSR ¶ 46).

Billmeyer recalled a time shortly after ICE Agent Spalding had visited her office (see below) when Rubashkin told her that if former employees come to the plant to apply for employment using different names than they had previously used, that she should hire them with their new name. After the employee no-match letters were sent out to the employees of Agriprocessors, Billmeyer recalled Rubashkin told her that, if employees who received the no-match letter came back to reapply for employment using different names and social security numbers, she should hire them. (See PSR ¶ 47).

Billmeyer said she preferred to use applicant resident alien numbers instead of social security numbers when verifying applicant identification documents. Billmeyer stated that it was easier for her to look at permanent resident alien cards than social security cards because most of the social security cards presented by job applicants appeared to be bogus. She stated that if an applicant presented her both

a social security card and permanent resident alien card, she would tell the applicant or other human resources employee that she only wanted to see the permanent resident alien card. She did not want to look at the social security cards because a majority of them appeared fraudulent. Billmeyer again recognized that she had the ability to call the Decorah Social Security Office at any given time to verify social security numbers but it was easier to hire employees in good faith by only looking at the applicant's permanent resident alien card. She stated "if the applicant shows me the social security card, I am probably not going to hire them." (See PSR ¶ 48).

#### **v. ICE Analysis of No-Match Information**

In February of 2008, ICE Special Agents obtained "no-match" information from the SSA for employees at Agriprocessors during the last two quarters of 2007 and analyzed that information. On February 20, 2008, ICE agents received social security "no-match" information from the SSA for 833 Agriprocessors' employees suspected of using invalid social security numbers or social security numbers belonging to other real people. These 833 employees were all reported as having earned wages while working at Agriprocessors during the third quarter of 2007. All 833 employees were found to have either used invalid social security numbers or social security numbers assigned to other people. (See PSR ¶ 49).

On February 28, 2008, ICE agents received additional social security "no-match" information from the SSA for an additional 22 Agriprocessors' employees suspected of using invalid social security numbers or social security

numbers belonging to other real people. These 22 employees were all reported as having earned wages while working at Agriprocessors during the fourth quarter of 2007. All 22 employees were reported by SSA to either have used invalid social security numbers or social security numbers assigned to other people. (See PSR ¶ 50).

Based on the no-match information received from the SSA for social security numbers used by Agriprocessors' employees during the third and fourth quarters of 2007, approximately 737 of the employees were determined to have been using a social security number not lawfully issued to that person. The 737 employees included: (a) approximately 147 who used social security numbers confirmed by the SSA as being invalid social security numbers (never issued to a person); and (b) approximately 590 who used valid social security numbers which did not match the name of the employee using the number as reported by Agriprocessors. (See PSR ¶ 51).

#### **vi. The Spring 2007 Walkout**

According to Juan Carlos Guererro-Espinoza, in the Spring of 2007, several poultry department employees walked off the job after receiving a letter from the company stating there was a problem with their social security numbers. The employees gathered outside the plant. Rubashkin asked Guererro-Espinoza to tell the employees that, if they went back to work, their problems would be taken care of. Eventually, the employees were persuaded to return to work. (See PSR ¶ 52).

According to Luis Eduardo Ixen-Tzuquen, the workers were upset because they had been told that they needed to change their social security numbers and names to continue working at the company. The workers were also told that they would “start over” working at the company earning the starting wage of \$6.25 per hour. Rubashkin asked Ixen to help him get the workers back inside the plant. Rubashkin told Ixen to tell the workers that they could remain at the same wage and would not have to drop back to \$6.25 per hour. Rubashkin told Ixen that the workers would just have to change their social security numbers and names. (*See* PSR ¶ 53).

According to Martin De La Rosa-Loera, a couple of days after the walkout, there was another meeting in which Rubashkin met with employees. Karina Freund served as a translator for Rubashkin at this meeting. Among other things, Rubashkin told the workers they needed to get new social security numbers. (*See* PSR ¶ 54).

According to poultry “green-hat” supervisor Nichole Caguach-Hernandez (Nichole), after the walkout, she asked Rubashkin whether he promised the employees \$10 per hour and whether he said he would pay the employees’ legal fees to get papers. He responded, “no,” that was not what he told the employees. He said he would re-evaluate the pay brackets for each job and that he had an attorney on retainer for anyone who had legal questions. (*See* PSR ¶ 56).<sup>6</sup>

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<sup>6</sup> Shortly after the walk out, Guerro-Espinoza saw a letter posted on the front door of the plant telling employees to go to a local church to discuss problems with their social security numbers. (*See* PSR ¶ 55).

According to Billmeyer, there was no follow-up by management or the human resources department regarding the no-match issue. She also stated that none of the employees who received a no-match letter came to her with a resolution to their social security number issue. She did not remember any of those employees being terminated for not resolving the no-match issue.<sup>7</sup> (See PSR ¶ 57).

#### **vii. ICE Agent Visits Agriprocessors**

ICE Special Agent Eric Spalding visited Agriprocessors in October of 2007. Billmeyer stated that Special Agent Spalding came to Agriprocessors and spoke with her about identification documents and I-9 forms. She remembered that Special Agent Spalding told her that the pink I-551 (Permanent Resident Alien Cards) were no longer being issued by the government and should no longer be accepted as a means of identification to gain employment. Billmeyer also remembered that Special Agent Spalding strongly encouraged Billmeyer to use the E-Verify system to verify identification documents presented by applicants. Billmeyer stated that she felt that Agent Spalding left a clear message with her and the company that Agriprocessors should work with the government to correct the problems the company had with fraudulent documents and undocumented alien workers. (See PSR ¶ 58).

After Agent Spalding visited with Billmeyer, she went to speak with Rubashkin about some of the issues that she and Agent Spalding spoke about. Billmeyer stated that she tried to convince Rubashkin to authorize the use of the

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<sup>7</sup> One Agriprocessors' employee stated that, shortly after the walkout, she met with an immigration lawyer who was provided by Agriprocessors.

E-Verify system as recommended by Agent Spalding. Billmeyer stated that Rubashkin responded and told her “not to worry about it” and asked what he had to gain by using the E-Verify system. Billmeyer said she mentioned the E-Verify system to Rubashkin prior to this occasion. (*See* PSR ¶ 59).

Billmeyer further stated that she suggested to Rubashkin that the company should go back and look at current employees who had presented the pink I-551 (Permanent Resident Alien Card) in an effort to make sure they had valid identification. Billmeyer stated that Rubashkin responded to her suggestion telling her not to worry about it. (*See* PSR ¶ 60).

Billmeyer recalled a time after she had been visited by ICE Special Agent Spalding when she was presented with an applicant’s permanent resident alien ID that did not contain the required hologram. Billmeyer stated that she took the ID to Rubashkin and told him that she believed that there were other IDs presented by current employees that did not contain the hologram. Billmeyer remembered that Rubashkin told her not to call the current employees back into her office and to “just let it be.” Billmeyer stated that Rubashkin also told her that if she cannot see the hologram on the photocopy of the ID then that ID is okay, and that the government would have to prove it. Billmeyer said she recalled Rubashkin telling her “as long as the IDs appear to be genuine, that is all you need.” (*See* PSR ¶ 61).

#### **viii. The Fall 2007 Hunt Payroll Scheme**

According to Althouse, in about the Fall of 2007, Rubashkin asked her to start putting new employees on the Hunt payroll because Elizabeth Billmeyer

would no longer hire applicants with the old “pink” resident alien cards. Rubashkin told Althouse that Billmeyer did not need to know about these new hires. Althouse hired the employees after 6:00 p.m. because Billmeyer was already gone for the day. Approximately 86 persons were placed on the Hunt payroll in this manner. The majority of the employees hired in this manner presented false “pink” resident alien cards, and Rabbi S.B. (who did not work in human resources) certified the I-9s for the employees. In March 2008, Rubashkin told Althouse that the Hunt employees needed to get their paperwork fixed and be transferred onto the Agriprocessors’ payroll. (*See* PSR ¶ 62).

Althouse sent the original Hunt payroll I-9s to Judy Hunt in New Jersey and kept copies. Around the time of the May 12, 2008, immigration enforcement action, Rubashkin gathered the copies of the I-9s from Althouse and either hid or destroyed them. (*See* PSR ¶ 63).

Freund described assisting Althouse by translating for employees who were being placed on the Hunt payroll in late 2007 after Elizabeth Billmeyer would no longer hire employees with the old “pink” resident alien cards. Freund said that she assisted Althouse with the Hunt payroll on two occasions when Elizabeth Billmeyer had already left for the day. Billmeyer later confronted Freund for hiring employees without telling her. Freund said that the Hunt payroll employees were later transitioned to the Agriprocessors’ payroll. (*See* PSR ¶ 64).

According to Nichole Caguach-Hernandez, in the Fall of 2007, defendant told her that Agriprocessors needed more employees. Defendant told Nichole and other

employees to spread the word that interested persons should come to Agriprocessors after 5:00 p.m. to gain employment at the company. This was done by defendant to avoid the hiring procedures of the human resources department. Defendant did not want Human Resources Manager Billmeyer to know of this hiring. (See PSR ¶ 65).<sup>8</sup>

On approximately three occasions that Nichole is aware of, Agriprocessors security officers called the poultry office after 5:00 p.m. to report that there were persons at security looking for jobs. At defendant's direction, Nichole met the persons at security and took them up to the human resources office to meet with Althouse. Nichole assisted Althouse in putting the employees on the "Hunt" payroll.<sup>9</sup> They filled out tax papers and provided contact information, but did not fill out applications. They also presented identification documents to Althouse so that I-9s could be completed. The employees were given security access devices but were not given time cards. Althouse and Nichole proceeded to take the employees to the laundry area to get them their equipment and put them on the equipment sign-in-and-out sheet. According to Nichole, the employees were later paid according to the laundry sheet. During the process, Althouse told Nichole that

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<sup>8</sup> In his Objection No. 4, defendant objects to PSR ¶ 65 and denies his role in the scheme was any greater than that of Nichole or any of the other supervisors.

<sup>9</sup> Other evidence has indicated that the "Hunt" payroll was used to pay persons working during the Jewish Sabbath. While Agriprocessors issues paychecks that are yellow in color, "Hunt" paychecks were blue in color. Other evidence indicates that Hunt Enterprises, Inc., was created in 2002 and Judy Hunt was president of the company. Judy's late husband, Don Hunt (who died in a hospital), was identified as working at Agriprocessors up until his death in 2003. Don Hunt was employed by Agriprocessors as part of upper management and was responsible for the purchasing of cattle.

Billmeyer could not know about the hiring or she “would blow her top.” (See PSR ¶ 66).<sup>10</sup>

According to Nichole, approximately two weeks later, defendant told Nichole “the cat’s out of the bag - the bitch knows.” Shortly afterward, Althouse told Nichole there were approximately 86 persons who had been placed on the Hunt payroll. They would have sixty days to get “appropriate IDs” and then they needed to bring the IDs upstairs and be transferred to the Agriprocessors’ payroll. (See PSR ¶ 67).<sup>11</sup>

According to safety trainer (and former human resource translator) S.M., she was aware of several employees coming through security who claimed to be working on poultry but were not on the Agriprocessors payroll. Concerned that these persons had not been trained, she talked to Althouse about them. Althouse told her that they were defendant’s employees and did not need training because they were contract employees. (See PSR ¶ 68).

According to Billmeyer, one night in late 2007, she was leaving to go home from work at Agriprocessors at approximately 5:30 or 6:00 p.m. when one of the security guards from the plant told her that there was a group of new employees that had just arrived at the plant. Billmeyer told the guard that she had not hired any new employees that day and she left to go home for the day. (See PSR ¶ 69).

A short time later, an Agriprocessors’ supervisor called Billmeyer and complained that defendant had been receiving new second shift poultry employees

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<sup>10</sup> In his Objection No. 5, defendant objects to PSR ¶ 66 and denies he was involved with putting people on the Hunt payroll.

<sup>11</sup> In his Objection No. 6, defendant objects to PSR ¶ 67 and denies saying “the cat’s out of the bag.”

and that the supervisors wanted additional employees also. Billmeyer told the supervisor that she did not know anything about these new second shift poultry employees. (*See* PSR ¶ 70).

Althouse and Freund told Billmeyer that they were instructed by Rubashkin to hire these new employees during the evenings after Billmeyer had left work to prevent Billmeyer from knowing about the Hunt Payroll hiring. They told Billmeyer that they had been instructed by Rubashkin to not tell Billmeyer about the Hunt payroll hiring. Althouse and Freund further noted that the hiring packets that they were completing for the new second shift poultry employees included I-9 forms that were being certified by an unknown Rabbi at the plant. Billmeyer noted that the Hunt Payroll hiring scheme began after she stopped accepting the pink resident alien card as a form of acceptable identification for hiring new applicants and employees. Billmeyer stated that, due to the fact that she was not hiring applicants who presented the pink resident alien card, the hiring numbers dropped and supervisors at the plant were complaining that they were not getting enough new employees assigned to their groups. Billmeyer believed that Rubashkin instructed Althouse and Freund to begin hiring second shift poultry employees using the Hunt Payroll to circumvent the normal Agriprocessors' hiring procedure managed by Billmeyer in an effort to enhance the employee numbers. (*See* PSR ¶ 71).

After learning of the Hunt Payroll hiring scheme, Billmeyer confronted Rubashkin about this hiring procedure that was being conducted without her

knowledge. She complained to Rubashkin about these employees being hired without her knowledge and Rubashkin told her, "don't worry about it." She stated that Rubashkin also told her, "what am I supposed to do, I need workers." Billmeyer stated that she obtained a list of the Hunt Payroll employees who had been hired to verify that they had not been previously terminated for cause. She recalled that the list contained names of more than 50 but less than 100 Hunt payroll employees recently hired under the Hunt Payroll hiring scheme. Billmeyer stated that she did not verify any of the hiring documents or identification used by these Hunt Payroll employees. (*See* PSR ¶ 72).

Agriprocessors' computer data seized on May 12, 2008, revealed a detailed e-mail from Billmeyer to Rubashkin complaining about the "Hunt" hiring scheme and noting its illegality. (*See* PSR ¶ 73).

Billmeyer stated she did not know who made the decision to end the Hunt Payroll scheme. Billmeyer said Althouse told her that since Althouse had started the Hunt Payroll scheme at Rubashkin's direction, Althouse would handle it. Billmeyer stated that Althouse and Freund met with the Hunt Payroll scheme employees and instructed them that the Hunt Payroll was going to stop. Billmeyer assumed that the company needed to keep these Hunt employees to keep up production levels. Billmeyer remembered that some of the Hunt Payroll employees came back to reapply and that she placed them back on the second shift poultry department where they were previously working under the Hunt Payroll system. Billmeyer stated that she was given a list from Althouse that showed the second

shift poultry employees with a notation as to whether the employee was a prior Hunt payroll employee. Billmeyer clarified that this list was known as a “weekly needs” list to determine which departments were in need of employees. She also stated that the Hunt Payroll employees were not noted in Agriprocessors’ computer system, they were only noted on this list. (See PSR ¶ 74).

#### **ix. The Poultry Re-Identification Scheme**

According to Alisha Arias, she began working at Agriprocessors in about May 2005. She was a “green hat” supervisor in the poultry department. Most of the time she was supervised by defendant. During brief periods she was supervised by Z.L. and others. (See PSR ¶ 75).

Toward the end of April 2008, Agriprocessors lost its contract with Trader Joe’s. According to Arias, she was given a few number of paychecks to distribute to her crew that week. She was instructed to direct employees not receiving a paycheck to the human resources department. Billmeyer and Freund held meetings with employees not receiving checks. The employees were told they were being laid-off and given applications to reapply. (See PSR ¶ 76).

Less than a month prior to Arias’ May 29, 2008, statement, defendant came to the poultry office with a list of all the employees in poultry. The list had been highlighted and photocopied. Defendant said the highlighted names “had bad social security numbers.” Defendant told Arias to create separate lists of the indicated employees by department so that the lists could be given to the supervisors. (See PSR ¶ 77).

According to Arias, the persons highlighted on the list were later terminated, with four exceptions: J.L., L.O., C.C., and G.O. According to Arias, three additional people were terminated but allowed to return to work almost immediately: B.P., S.R. and P.H. Arias said that one additional employee, A.V., told her that he was told to change his resident alien card and social security card (although she did not remember A.V.'s name being highlighted on the list in the first place). (See PSR ¶ 78).

Defendant told Arias that Arias' husband's name was on the list and that she should leave his name and G.O.'s name off the lists she was to write out for the supervisors. Defendant said that they should drive up to Minneapolis with A.V. to get new documents because the IDs up there were the good ones. (See PSR ¶ 79).

Around that time, Arias overheard defendant tell G.O. that her social security number was bad and that she could go up to Minneapolis. He also told her she should talk to A.V. about going and should go on a Sunday. (See PSR ¶ 80).<sup>12</sup>

Also around that time, A.V. told Arias that defendant had given him a telephone number for a contact in Minneapolis who could get IDs. A.V. tried calling the number from the poultry office. The contact number was for J.G., a former Agriprocessors' supervisor who had worked under defendant. (See PSR ¶ 81).<sup>13</sup>

According to Arias, the following people took her car up to Minneapolis on a Sunday: A.V., G.O., P.H., P.H.'s boyfriend, and Arias' husband. Arias' husband brought back a new fake resident alien card and fake social security card which he

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<sup>12</sup> In his Objection No. 9, defendant denies PSR ¶ 80.

<sup>13</sup> In his Objection No. 9, defendant denies PSR ¶ 81.

obtained from J.G. The fake resident alien card was obtained by law enforcement. The card bore the same common features (including the same fingerprint) as 76 fake resident alien cards seized from the human resources department on May 12, 2008. (*See* PSR ¶ 82).

According to Martin De La Rosa-Loera, defendant told him that the company was not doing that well and they planned to combine the first and second poultry shifts. Defendant also told De La Rosa Loera to make a list of his best workers. (*See* PSR ¶ 83).

On or about April 27, 2008, according to De La Rosa-Loera, he arrived at work to find a piece of yellow paper stuck in his locker with a handwritten list of 20 names. He thought Arias wrote the names on the list. Poultry manager Z.L. told De La Rosa-Loera that the employees on the list had to be terminated. Z.L. explained that the employees on the list had bad social security numbers, and Agriprocessors needed to reduce workers and they were going to terminate the employees on the list. Defendant confirmed this. Defendant also told De La Rosa-Loera that all the employees had to be terminated because they had bad documents except for J.L. who ran the chicken plucking machine, a specialized skill. (*See* PSR ¶ 84).

According to De La Rosa-Loera, a couple of days after receiving the list of employees to be terminated, he observed an argument between defendant and Z.L. Z.L. wanted to keep five employees who were on the list. These were C.C., C.V.,

L.O., B.P., P.H., and S.R. Defendant wanted to keep only J.L. The disagreement continued for about a week and a half. (See PSR ¶ 85).

According to De La Rosa-Loera, on about May 9, 2008,<sup>14</sup> Z.L. told him that the six employees that they wanted to keep – C.C., C.V., L.O., P.H., S.R. and J.L. - needed to get new documents. Later in the day, defendant gave De La Rosa-Loera the same directive. (See PSR ¶ 86).

According to De La Rosa-Loera, on about May 10, 2008,<sup>15</sup> Z.L. told him to tell the six employees who had been kept to get new documents as soon as possible. He relayed this to green-hat-supervisor C.V. who told the other five. As a result, these employees obtained fake documents and brought the documents to De La Rosa-Loera. He gave the documents to Z.L. The documents consisted of a white resident alien card and a social security card. Z.L. took the documents to Billmeyer. Z.L. came back to De La Rosa-Loera and told him that Billmeyer said that documents were not right. She said that the front of the resident alien cards were okay but the backs were not right. De La Rosa-Loera returned the cards to C.V. and told him that the employees could continue to work for now. De La Rosa-Loera was aware that C.V. and others had obtained the documents in Des Moines and C.V. returned to Des Moines to have the document vendor correct the documents. C.V. again brought the documents to De La Rosa-Loera and Z.L. Z.L. took the documents to the front office. Z.L. came back and said the front office told him that the six did not need the documents and could continue to work. (See PSR ¶ 87).

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<sup>14</sup> De La Rosa-Loera's estimate regarding the date seems to be too late. Other evidence suggests this must have occurred earlier.

<sup>15</sup> Again, this date appears to be too late.

According to Alisha Arias, around the same time, she saw defendant, Z.L. and De La Rosa-Loera examining some identification cards in the poultry office. Defendant had one in his hand and was saying it was not good. (See PSR ¶ 88).

According to Billmeyer, in early 2008, Agriprocessors lost Trader Joe's as a customer and either Rubashkin or his brother told her that they were going to have to layoff employees due to the loss of the customer. She noted that when the company gained Trader Joe's as a customer, the company created a second shift and, since they lost the customer account, they would have to eliminate the second shift that had been created. Rubashkin told her that this was a good chance to deal with some of the employees that were on the social security no-match list. (See PSR ¶ 89).

Billmeyer stated that there were two rounds of layoffs, the first being on March 31, 2008. Billmeyer stated that she received a list of 13 to 15 current employees from someone that was to be used for the first round of layoffs. Billmeyer referred to this list as the manager's choice list as she did not pick the names of the employees and she believed that this list of employees may have been trouble makers or employees who actively supported attempts to gain union support. (See PSR ¶ 90).

Billmeyer said the second round of layoffs took place in April of 2008. She stated that this round of layoffs included employees from the poultry department and included 40 to 50 employees. Billmeyer stated that Rubashkin told her to create the second layoff list by using the names of active employees who appeared

on the previously received social security no-match list. An April 8, 2008, e-mail from Billmeyer to Rubashkin included the list of employees to be laid off during the second round of layoffs. Billmeyer stated that she had highlighted the names of the “green hats” or lead persons who appeared on the list. She stated that she highlighted these names to indicate to Rubashkin which of the employees on the layoff list were department lead persons. Billmeyer stated that she believes this list was then provided to the plant supervisors. (*See* PSR ¶ 91).

Shortly after this second layoff list was provided to the supervisors, Billmeyer stated that some employees began coming to her with questions. She specifically remembered that defendant was supposed to tell his employees who appeared on the list that there were problems with their papers. Poultry department employee G.O. went to Billmeyer and asked Billmeyer what she was supposed to do. Billmeyer told G.O. that she needed to fix her papers. Billmeyer stated that other employees also came to her wanting to know what they needed to do to fix their papers. Billmeyer stated that she told Rubashkin that employees were coming to her with these questions and she didn't know why they were coming to her. (*See* PSR ¶ 92).

Billmeyer stated that the paychecks for those employees who were to be laid off were held and that she notified these employees that they were being laid off. Billmeyer stated that she did not believe that the “green hats” or lead persons were ever laid off. (*See* PSR ¶ 93).

In an April 17, 2008, e-mail, Billmeyer instructed Freund to prepare layoff letters for the employees. Billmeyer noted that the “green hats” or lead persons from the poultry department were given more time to fix their papers while other employees were being laid off. (See PSR ¶ 94).

An April 29, 2008, e-mail from Billmeyer to Althouse indicated that the “green hats” or lead persons were given an extension to fix their papers and that Billmeyer was to consult with Rubashkin regarding the extension.<sup>16</sup> Billmeyer stated that shortly before the execution of the search warrant by ICE Agents on May 12, 2008, she had traveled to St. Louis for business. She noted that upon her departure to St. Louis, she believed that the “green hats” or lead persons from the poultry department were still employed at Agriprocessors. (See PSR ¶ 95).

#### **x. The Beef Re-Identification Scheme**

On about May 8, 2008, according to Guererro-Espinoza, he received a call from Althouse directing him to report to the human resources office to get a list of employees who were to be terminated due to bad social security numbers. Althouse gave Guererro-Espinoza a list and told him that the social security numbers did not match the names of the list. Althouse said that the employees were to be terminated on Friday, May 9th. At the end of the shift on May 8th,

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<sup>16</sup> Billmeyer’s contemporaneous handwritten notes (seized on May 12, 2008) state as follows:

- Hosam took list & was speaking w/ Alicia #s or ID's bad.
- Alicia went to people & told them ID's or #'s are bad.
- [G.O.] comes to me & asks what they need to do change #, ID or name
- Alicia tried to call Laura but she was gone.
- Sholom told Hosam take the list of people & pick who you want to keep. Highlighted ones were marked.
- Highlighted in orange the people on the list you want to keep

Guererro-Espinoza was approached by his employees and asked why they were being terminated. Guererro-Espinoza told the employees that they would meet in the new cafeteria. Before going to the meeting, Guererro-Espinoza contacted Beebe. He told Beebe that the employees being terminated were good employees and needed help. Beebe told him to go to the meeting and see what could be done for the employees. (See PSR ¶ 98).

Later on May 8, 2008, Guererro-Espinoza met with his employees in the new cafeteria. He told them that only the people on the list would be terminated since their names and social security numbers did not match. A.T. was present at the meeting. Guererro-Espinoza knew A.T. could get fake documents. A.T. told others at the meeting that he could get documents at the cost of \$300 each. A.T. also said that people needed to get a passport photograph taken at Wal-Mart in Decorah. A.T. told Guererro-Espinoza that he would call his contact to see if the price could be reduced due to volume. After the meeting, Guererro-Espinoza told Beebe that the employees needed approximately \$4,500 to pay for new documents. (See PSR ¶ 99).

Guererro-Espinoza accompanied Beebe to the barn area where Beebe said he was to meet with Rubashkin. At the barn area, Guererro-Espinoza saw Althouse's vehicle. Althouse was in the driver's seat with the window down. Rubashkin got out of the passenger's side and Beebe approached him and had a brief discussion. Beebe had Guererro-Espinoza come over and Rubashkin asked how much money the beef kill employees needed. Guererro-Espinoza responded \$4,500. Rubashkin

asked if they needed the money in cash to which Guererro-Espinoza and Beebe replied, yes. Rubashkin got back into Althouse's vehicle and the vehicle left. (See PSR ¶ 100).

The next morning, on about May 9, 2008, Beebe called Guererro-Espinoza and told him to report to the human resources department. Guererro-Espinoza arrived and waited while Beebe talked to Rubashkin in Rubashkin's office. Beebe and Rubashkin walked out of the office to talk to Guererro-Espinoza. Guererro-Espinoza again told Rubashkin that his employees needed \$4,500. Rubashkin agreed to loan the money but asked who would be responsible for paying him back. Guererro-Espinoza and Beebe replied that the employees would repay the loans. Beebe and Guererro-Espinoza also said they would repay any amount not repaid by the employees. Rubashkin asked why Guererro-Espinoza and Beebe were not loaning money to employees in other departments. Guererro-Espinoza and Beebe replied that they were only going to help their employees. (See PSR ¶ 101).

Rubashkin provided Beebe with \$4,500 in cash. Later, during the day on about Friday, May 9, 2008, Beebe approached Guererro-Espinoza on the beef kill floor and handed him \$4,500 in cash. Guererro-Espinoza used about \$1,800 to \$2,000 of the cash to help beef kill employees obtain new, fake resident alien cards through A.T. (See PSR ¶ 103). He returned the remaining money to Beebe. (See PSR ¶ 106). A.T. obtained the new fake resident alien cards from J.G. in Minneapolis. (See PSR ¶ 105).

At about 2:00 p.m. on Sunday, May 11, 2008, A.T. returned from Minneapolis with the fake documents. A.T. used Guererro-Espinoza's office to distribute the documents to about 39 or 40 employees from his and other departments. (See PSR ¶ 107).

After obtaining their new false cards, an initial group of employees went to the Human Resources department. There, they met with Rubashkin, Beebe, and Althouse. Rubashkin inspected several of the new false resident alien cards and indicated the people should be hired. He also indicated the documents looked good and that he would sign the I-9s (although Rubashkin did not sign any I-9s). Beebe and Althouse assisted the employees in completing new application paperwork using the names and information on the false resident alien cards.

Guerrero-Espinoza arrived and assisted in the employment paperwork process. (See PSR ¶ 108).

That afternoon, safety trainer S.M. asked Rubashkin whether she could train half of the people that day and finish the other half the next. Rubashkin responded, “[S.M., S.M.], please, please. Don't make me take four aspirin. I'll have a headache with that woman. You know how that woman is.” S.M. understood “that woman” to be Billmeyer. (See PSR ¶ 116).

At approximately 9:00 p.m., Althouse became upset and said, “that is enough.” She instructed the employees who were still waiting to go home and come back at 6:00 or 7:00 am on Monday, May 12th. (See PSR ¶ 109).

According to Billmeyer, on Wednesday, May 7, 2008, Billmeyer left Postville and Agriprocessors to attend workers compensation training in St. Louis, Missouri. While in St. Louis, Billmeyer recalled that Althouse called her on Thursday, May 8th or Friday, May 9th and told Billmeyer that Rubashkin needed to get into Billmeyer's office at the plant. Althouse also told Billmeyer that Rubashkin was nervous and needed to get the Trader Joe's layoff/no-match list out of Billmeyer's office. Billmeyer told Althouse how Rubashkin could get into her office and where the list was located.<sup>17</sup> (See PSR ¶ 122).

On Monday, May 12, 2008, Billmeyer returned to work at Agriprocessors at approximately 5:00 a.m. She stated that she was the first one to arrive at the office and that Althouse arrived at approximately 6:30 a.m. When Althouse arrived at work on Monday morning, she told Billmeyer that there was hiring done on the previous day, Sunday, May 11, 2008, and that more needed to be done that day, Monday, May 12, 2008. Althouse told Billmeyer that Rubashkin had told Althouse that he would be signing the I-9 forms for the employees hired on Sunday, May 11, 2008. Billmeyer noted that there was a stack of applications with identification cards attached found on her desk on that Monday morning. She believed these applications and identification cards to be from the Sunday, May 11, 2008, applicants. (See PSR ¶ 124).

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<sup>17</sup> According to Althouse, Rubashkin had Althouse place a letter in the listed employees' paychecks instructing them that they needed to fix their mismatched social security numbers. Rubashkin also instructed Althouse that when she came to work on May 11, 2008, she would be processing new application paperwork for several people.

Billmeyer also stated that on the morning of Monday, May 12, 2008, Operations Manager Brent Beebe came to her and told her to look at the news because Immigration and Customs Enforcement were set up at the National Cattle Congress in Waterloo, Iowa. Beebe also told Billmeyer that Immigration and Customs Enforcement had rented the National Cattle Congress and was planning on a raid at a food business in Waterloo. Billmeyer stated that Beebe also told her that Immigration and Customs Enforcement would probably also be at Agriprocessors to conduct a raid on Wednesday, May 14, 2008. (See PSR ¶ 125).

Billmeyer stated that, shortly after her conversations with Althouse and Beebe on the morning of Monday, May 12, 2008, a large number of applicants arrived at the Human Resources Office at Agriprocessors. Billmeyer told Althouse and Karina Freund to tell the applicants to go home and come back later. Billmeyer stated that she had learned that these applicants had previously been told to come to the office between 8:00 a.m. and 9:00 a.m. on Monday morning. (See PSR ¶ 126).

Billmeyer said, on the morning of Monday, May 12, 2008, she examined some of the identification documents (permanent resident alien cards) that were attached to applications found sitting on her desk. Billmeyer stated that she found approximately six of the resident alien cards that did not appear to be valid. Billmeyer stated that she spoke with an attorney from the Iowa law firm (who was present at Agriprocessors that day) about the validity of these cards. Billmeyer stated that she told Althouse that the top parts of those resident alien cards were blurry. Billmeyer stated that shortly after examining these cards, the spouse of an

Agriprocessors' employee called the employee from Castalia, Iowa. The employee's spouse was in Castalia and had seen a large number of what appeared to be government vehicles traveling toward Postville, Iowa. Billmeyer said that she was outside smoking when she saw Immigration and Customs Enforcement vehicles enter the plant to execute the search warrant. (*See* PSR ¶ 127).

At approximately 10:00 a.m. on May 12, 2008, law enforcement agents executed two search warrants at Agriprocessors. (*See* PSR ¶ 128).

**c. The May 12, 2008, Search**

During the execution of the May 12, 2008, search, ICE Agents encountered approximately 389 undocumented aliens who were working at the plant. Most of the undocumented alien workers were Guatemalan nationals. None of the undocumented alien workers were in possession of documents allowing them to work or reside in the United States legally. The 389 illegal alien workers constituted a large majority of the workers encountered at Agriprocessors on May 12, 2008. Agents only encountered approximately 100 other persons during the search. (*See* PSR ¶ 129).

During the execution of the search, agents discovered and seized dozens of fraudulent permanent resident alien cards from offices in the human resources department at Agriprocessors. Most of the cards were attached to application paperwork dated May 11 or May 12, 2008. Additional resident alien cards were grouped in a box and not yet attached to any paperwork. From Althouse's desk, agents seized: 26 fraudulent resident alien cards with attached application

paperwork; and 7 additional fraudulent resident alien cards from a cardboard paperclip box marked "IDs." (See PSR ¶ 130).

From Billmeyer's desk, agents seized: 61 fraudulent resident alien cards (as well as an Iowa drivers' license with a fake social security card) with attached application paperwork. (See PSR ¶ 131).

Based upon common features (including the same fingerprint on the front of the cards) ICE agents determined that 76 out of the 96 fraudulent resident alien cards came from the same manufacturer. In addition, out of 96 fraudulent resident alien cards, 90 exhibited alien registration numbers which were then assigned to other actual persons. (See PSR ¶ 132).

At least thirteen of the fraudulent resident alien cards seized from the offices within the Human Resources Department exhibited photographs of undocumented aliens who were determined to have been working at Agriprocessors prior to May 11, 2008. All but two of those cards exhibited names that were different than the names the employees had been working under. (See PSR ¶ 133).

During the execution of the search on May 12, 2008, ICE Agents seized employee personnel files from the Human Resources Department at Agriprocessors. A review of these personnel files has revealed that several of the personnel files contain multiple I-9 forms showing the same employee name with different social security numbers. Agents also seized sets of binders which purport to contain all the I-9s for current and previous employees. Out of 2,735 I-9s in the binders, the certification was blank on 832 of them. (See PSR ¶ 134).

#### **d. Post-Search Harboring Conduct**

##### **i. Attempts to Get Workers to Return to Agriprocessors**

According to Guerro-Espinoza, on about Wednesday, May 14, 2008, Rubashkin told Guerro-Espinoza to go to St. Bridget's Catholic Church in Postville and encourage people to come back to work. Guerro-Espinoza estimated approximately 200-300 people were living at the church at the time because they were undocumented and were afraid of being arrested. Shortly after arriving at the church, defendant arrived. Guerro-Espinoza translated for defendant. Defendant told the people that Immigration was gone and Rubashkin sent him to tell them that they could come back to work. (*See* PSR ¶ 135).<sup>18</sup>

##### **ii. Post-Search Hiring**

After May 12, 2008, Billmeyer stated that she was told by Rubashkin's brother that she would no longer be signing I-9 Forms. Within weeks of the search, law enforcement obtained copies of I-9s for employees hired since the search. The certification was blank on the vast majority of the I-9s. (*See* PSR ¶ 136).

Billmeyer stated the starting wage at Agriprocessors after ICE executed the search warrant on May 12, 2008 was \$11.00 per hour. (*See* PSR ¶ 137).

##### **iii. Defendant's Flight**

Defendant fled to Israel in the wake of the May 12, 2008, immigration raid. During a March 5, 2009, recorded telephone conversation with ICE Special Agent Mike Fischels, defendant said that Rubashkin encouraged him to leave. During a follow-up recorded telephone conversation on March 10, 2009, defendant said that

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<sup>18</sup> In his Objection No. 13, defendant denies attending the meeting at the church.

Rubashkin provided him with \$4,000 to use for plane fare. The government obtained a June 3, 2008, check for \$4,000 to defendant, written on an Agriprocessors' account, signed by Rubashkin. \$1,000 from the check was deposited into defendant's account, and the remaining \$3,000 was taken in cash. (See PSR ¶ 138; Plea Agreement ¶ 6(E)).<sup>19</sup>

#### **iv. Payments to Cooperating Witnesses**

Following the May 12, 2008, search, Rubashkin directed Laura Althouse to create Agriprocessors "employee status forms" which purported to promise "severance" pay to Althouse, Billmeyer and Beebe during any time which they would be in prison. The forms designate an annual salary figure, followed by an "x", with the number of years' incarceration to be filled in once established. Beebe signed the forms and Rubashkin stamped them with a signature stamp bearing his brother's signature. Agriprocessors continued to pay Guerrero-Espinoza during the time he was incarcerated until approximately the time of the bankruptcy. (See PSR ¶ 140).

#### **e. Defendant's Financial Exploitation of Undocumented Alien Workers**

During at least the five years preceding May 2008, defendant sold vehicles to several Agriprocessors' employees he knew to be unlawful aliens, and defendant profited from the sales. In at least some instances, defendant arranged for the sales

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<sup>19</sup> Rubashkin also assisted and funded the absence of Rabbi S.B. in the wake of the May 12, 2008, immigration raid (S.B. was the individual Rubashkin had sign the I-9s as part of the Hunt payroll scheme). On May 29, 2008, Rubashkin's Agriprocessors' credit card was used to purchase plane tickets to Israel for S.B. and seven of his family members. The travel occurred on June 1, 2008. (See PSR ¶ 139).

paperwork for the vehicles to reflect that the Agriprocessors' employees purchased the vehicles directly from a used vehicle dealership in Cedar Rapids, Iowa (Cedar Rapids used car dealer). Agriprocessors' employee C.C. further assisted the employees in registering at least some of the vehicles under false and fraudulent pretenses. To register the vehicles, C.C. mailed registration applications for the vehicles to Al Garcia at Garcia's post office box in Burlington, Iowa. Garcia then fraudulently registered the vehicles in Des Moines County, Iowa. Garcia profited approximately \$50 to \$75 for each fraudulent title he arranged on behalf of an unlawful alien. Garcia acknowledged that, over a year's time, he fraudulently registered more than 200 vehicles for individuals in Postville. (See PSR ¶ 141).<sup>20</sup>

In the Fall of 2005, the Iowa Department of Transportation (DOT) conducted an investigation into a large number of vehicles in Allamakee County being registered out of Des Moines County. DOT Investigators determined a large number of the vehicles in question were being used by employees of Agriprocessors. Defendant's name came up in the investigation as someone who had been to the police department to retrieve impounded vehicles. Defendant also had mentioned, by name, the Cedar Rapids used car dealer during a traffic stop in Postville. (See PSR ¶ 142).

DOT Investigators conducted a dealer audit at the Cedar Rapids used car dealer in Cedar Rapids, Iowa, and spoke to the two proprietors (the proprietors). The proprietors stated defendant was a friend of theirs and they sold a large number of vehicles through defendant in the Postville area. The proprietors stated

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<sup>20</sup> In his Objection No. 14, defendant denies PSR ¶ 141.

that, frequently, defendant came to their business to pick up the vehicles or brought the customers to the business to get the vehicles.<sup>21</sup> The proprietors provided documentation showing more than 50 sales designated into the Postville area in 2005. The proprietors confirmed a DOT investigator's estimate that 90% or more of their business had been in Postville with defendant's help. The proprietors indicated this had been going on for a couple of years. (See PSR ¶ 143).<sup>22</sup>

The proprietors stated that defendant made a non-specific amount of money on each vehicle sold, saying it appeared to be between \$100 and \$500 per vehicle. The proprietors said defendant would call and ask for a specific kind of car and the proprietors would buy the car at auction. Then defendant would pay for the car up front, pick it up, and sell it to the customer. The proprietors had comprehensive records relating to the sales, including applications records, purchase agreements, and copies of resident alien or social security cards. The proprietors said that, more often than not, they did not meet with the customers and defendant provided the proprietors with the paperwork required by Iowa law. The proprietors denied any knowledge of the vehicles being fraudulently registered in other counties. (See PSR ¶ 144).<sup>23</sup>

According to the DOT Investigator's report, a Postville Police Officer said that Clayton County Sheriff Deputy Terry Austin told him that defendant said he had \$80,000 in personal money loaned out to the purchasers of vehicles in Postville.

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<sup>21</sup> Such off-premises sales were determined to be in violation of Iowa law.

<sup>22</sup> In his Objection No. 15, defendant "objects to [PSR ¶ 143] as he always took the customers with him to pick up the car." (PSR p. 75).

<sup>23</sup> In his Objection No. 16, defendant "objects to [PSR ¶ 144] as he received only \$100 per vehicle and he always took the customers with him to pick up the car." (PSR p. 76).

Later, then Postville Police Officer Terry Austin confirmed the same information to the DOT Investigator. (See PSR ¶ 145).<sup>24</sup>

According to one Agriprocessors employee, Armando Ramiro Garcia-Arenales (Garcia-Arenales), in 2002, he heard defendant would hire the family members of illegal workers if the illegal workers would pay defendant \$500. According to Garcia-Arenales, defendant knew these individuals were illegal. Garcia-Arenales said defendant treated illegal workers worse than legal workers by giving the illegal workers harder jobs and yelling at the illegal workers to work faster. According to Garcia-Arenales, approximately 15 workers received a job by paying defendant \$500.<sup>25</sup> (See PSR ¶ 146).<sup>26</sup>

Garcia-Arenales said that, in 2003, Agriprocessors, Inc. stopped running a second shift and many workers lost their jobs. Garcia-Arenales said defendant treated the illegal workers like “slaves” requiring them to process approximately 60 chickens a minute. Garcia-Arenales felt the breaks given were not sufficient considering the amount of time worked. (See PSR ¶ 147).<sup>27</sup>

Also according to Garcia-Arenales, in 2002, defendant sold cars to Agriprocessors’ employees who worked in the chicken and beef processing areas for more money than the cars were worth. Garcia-Arenales needed a car because he could not get one because he lacked identification papers. Defendant came to

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<sup>24</sup> In his Objection No. 17, defendant “objects to the entirety of [PSR ¶ 145].” (PSR p. 76).

<sup>25</sup> Garcia-Arenales stated he was first hired at Agriprocessors in October 2001. It appears he did not pay defendant \$500 for his job.

<sup>26</sup> In his Objection No. 18, defendant “objects to [PSR ¶ 146] and denies the allegations contained in this paragraph.” (PSR p. 76).

<sup>27</sup> In his Objection No. 19, defendant denies the allegations in PSR ¶ 147.

Garcia-Arenales's house and offered Garcia-Arenales a car for \$4,000.<sup>28</sup> Garcia-Arenales felt he had to buy the car to keep his job. This was around the time of the end of the second shift and Garcia-Arenales knew the shift was going to get cut because the workers say new machinery was being installed. According to Garcia-Arenales, the machinery would allow the same amount of processing in only one shift, and he believed defendant would be more likely to keep Garcia-Arenales employed if Garcia-Arenales owed defendant money. (See PSR ¶ 148).<sup>29</sup>

Garcia-Arenales collected \$1,500 from his brothers for a down payment. He then went to defendant's residence and bought the car from defendant. Defendant gave Garcia-Arenales the keys and the title. According to Garcia-Arenales, defendant was not the owner listed on the title. Garcia-Arenales agreed to pay defendant approximately \$200 a week cash for the rest of the \$4,000 cost of the car. Garcia-Arenales said he was not charged interest and completed the purchase of the car in approximately five months. Garcia-Arenales did not have any issues with defendant during the purchase of the car, but said defendant would grab employees, including Garcia-Arenales, from behind and yell at them. Garcia-Arenales said he did not sign the title, but rather, paid a friend \$100 to register the car in the friend's name.<sup>30</sup> Garcia-Arenales said approximately 15 workers in Garcia-Arenales's group at Agriprocessors bought cars from defendant. (See PSR ¶ 149).<sup>31</sup>

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<sup>28</sup> Garcia-Arenales said the car was a green 1993 Dodge Intrepid.

<sup>29</sup> In his Objection No. 20, defendant denies the allegations in PSR ¶ 148.

<sup>30</sup> Garcia-Arenales stated he did not know Al Garcia. Although he heard of C.C. by his first name, he only knew C.C. worked in the "chicken area."

<sup>31</sup> In his Objection No. 21, defendant denies the allegations in PSR ¶ 149.

Chad Root gave an interview to law enforcement on August 6, 2013. Root stated he heard that, within one month of hiring, an employee would have to buy a car from defendant at a marked up price. (*See* PSR ¶ 150).<sup>32</sup>

**f. Defendant’s Sexual Exploitation of Undocumented Alien Workers**

During his interview with law enforcement on August 6, 2013, Garcia-Arenales said it was known at Agriprocessors that, if a female employee slept with defendant, that employee could get an easier job. Garcia-Arenales said he knew one or two Mexican females from the second shift that got better jobs by giving defendant sexual favors. According to Garcia-Arenales, a Mexican female, hereinafter referred to as Employee A,<sup>33</sup> went from a “gold” hat to a “green” hat (supervisor). Garcia-Arenales said that other workers at Agriprocessors said Employee A was pregnant with defendant’s child. According to Garcia-Arenales, Employee A’s husband worked in shipping during the day shift. Due to Employee A’s relationship with defendant, Employee A’s brother was hired at Agriprocessors and promoted to a “green hat” in approximately two weeks. (*See* PSR ¶ 151).<sup>34</sup>

Documentation associated with the government’s investigation revealed Employee A left Agriprocessors in about August 2002 to have a baby. Employee A’s husband worked in shipping. Employee A’s brother was a green hat supervisor. (*See* PSR ¶ 152).

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<sup>32</sup> In his Objection No. 22, defendant denies the allegations in PSR ¶ 150.

<sup>33</sup> Garcia-Arenales referred to Employee A by her first name.

<sup>34</sup> In his Objection No. 22, defendant denies the allegations in PSR ¶ 151.

On August 6, 2013, former Agriprocessors' employee Chad Root gave an interview to law enforcement. According to Root, approximately one or two weeks after Root started working at Agriprocessors,<sup>35</sup> Root witnessed defendant fighting with a Mexican individual at the entrance of Agriprocessors in front of the security office. Other employees at Agriprocessors told Root that the Mexican individual initiated the fight with defendant because defendant caused the Mexican individual's wife to become pregnant. According to Root, the fight was one sided and defendant ended up on top of the Mexican individual, punching and kicking him. Root left when the fight was still in progress, but heard later that the police were called and that Rubashkin's brother came and took defendant away before the police arrived. (*See* PSR ¶ 153).<sup>36</sup>

According to Root, sometime before the year 2006, Root heard rumors concerning sexual coercion involving defendant and female employees in the plant. Root stated he heard that, if a female wanted a promotion or a raise, they would have to do a sexual favor for defendant. In the Summer of 2004, Root went with Joe Watson to the "chicken office" for a maintenance issue. When the two entered the office, they saw defendant receiving oral sex from an unknown Mexican female.<sup>37</sup> The "chicken office" was located off the main floor on the "chicken side." Defendant yelled at Root and Watson to get out. (*See* PSR ¶ 154).<sup>38</sup>

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<sup>35</sup> Root stated he first started working at Agriprocessors in approximately March of 2004.

<sup>36</sup> In his Objection No. 23, defendant denies the allegations in PSR ¶ 153.

<sup>37</sup> Root was unaware if the female involved in the incident received a raise or a promotion.

<sup>38</sup> In his Objection No. 24, defendant denies the allegations in PSR ¶ 154.

Also according to Root, in the Fall of 2006, he was talking to defendant in the “chicken soak and salt room” when a Russian female known as “Chicken Luba” interrupted the two men. Defendant called the woman a “fucking bitch.” Subsequently, defendant and Root left the “chicken soak and salt room” and entered the “chicken cut up room” where defendant walked down the line of workers and said to Root, in English, and in a voice loud enough to be heard by the workers, which female on the line “put out.” Defendant indicated approximately 15 or 20 of the workers “put out.” The workers on the “chicken cut up room” line were mostly Mexican long term employees with approximately half the employees being men and half female. Root did not know if any of the workers understood what defendant was saying, but said that he observed no reaction. (See PSR ¶ 155).<sup>39</sup>

Employee A was interviewed by law enforcement on August 20, 2013. Employee A said she worked at Agriprocessors for a little under one year beginning in 2001 and finishing in 2002. Employee A said she worked the night shift in the chicken processing area and started out as a “blue hat.” Employee A said that, after a few weeks, she was moved up to a “gold hat” because she spoke a good amount of English and was able to assist management in communicating with the workers. Employee A said she was promoted to “green hat” or supervisor after approximately one month due to her diligence at work. Employee A said, at the time, her husband also worked at Agriprocessors in the shipping department. Employee A said her father and brother also worked at Agriprocessors. (See PSR ¶¶ 156-157, 159).

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<sup>39</sup> In his Objection No. 24, defendant denies the allegations in PSR ¶ 155.

Employee A said defendant was the overall supervisor of chicken processing at Agriprocessors for both the day and night shifts. Employee A said she quit working at Agriprocessors after passing out at work and finding out she was pregnant with defendant's child. Employee A said she decided to quit working in the interest of protecting her baby. (See PSR ¶¶ 158, 160, 179).<sup>40</sup>

#### 4. The Offense was Committed for Profit

Defendant asks the Court to apply a three-level decrease in his offense level claiming his offense was committed "other than for profit" under USSG §2L1.1(b)(1). However, defendant is not eligible for the reduction as defendant specifically profited from harboring by, at least,<sup>41</sup> selling vehicles, for profit, to undocumented alien workers.

##### a. Legal Standards

Defendant bears the burden of proof to establish his eligibility for a sentencing reduction under section 2L1.1(b)(1). See *United States v. Compton*, 295 Fed.Appx. 674, 676 (5<sup>th</sup> Cir. 2008) (unpublished) (citing *United States v. Cuellar-Flores*, 891 F.2d 92, 93 (5<sup>th</sup> Cir. 1989)). Regarding a section 2L1.1(b)(1) reduction, defendant must show the offense was committed for reasons other than

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<sup>40</sup> Due to Employee A's privacy concerns and her unwillingness to testify (see PSR pp. 68-69), and in view of the resulting proof issues, the government is not relying upon the additional information in presentence report paragraphs 160-164, and 179-183, and asks the Court not to consider such information for purposes of sentencing. The government notes defendant's acknowledgment, in his Objection No. 33, of his relationship with Employee A.

<sup>41</sup> As argued below, the government submits harboring at Agriprocessors was "for profit" in that the company made money from the work performed by the harbored workers, and those responsible for the harboring "profit[ed]" by receiving an income. The Court has, thus far, declined to deny a three-level reduction under USSG §2L1.1(b)(1) on these bases. See *United States v. Juan Carlos Guerrero-Espinoza*, 08-CR-1314 LRR.

profit. *Cuellar-Flores*, 891 F.2d at 93; see also *United States v. Perez-Torres*, 384 Fed.Appx. 370 (5<sup>th</sup> Cir. 2010) (unpublished).

Section 2L1.1(b)(1) reads:

If (A) the offense was committed other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child), and (B) the base offense level is determined under subsection (a)(3), decrease by 3 levels.

USSG §2L1.1(b)(1).<sup>42</sup> Application Note 1 notes "other than profit" means "there was no payment or expectation of payment for the smuggling, transporting, or harboring of any of the unlawful aliens." USSG §2L1.1, comment. (n 1).

#### **b. Argument**

Here, defendant not only expected payment, he received payment in more than one form. Accordingly, he is not entitled to a reduction for the offense being "other than for profit."

First, defendant is not eligible for the reduction as the entire scheme to "harbor" by employment was for profit. Agriprocessors was a business which was intended to make a profit. Agriprocessors did so, in large part, on the basis of cheap, undocumented alien labor. Compensation is payment, no matter what form it is given. *United States v. Juan-Manuel*, 222 F.3d 480, 485 (8<sup>th</sup> Cir. 2000); but see *United States v. Kim*, 193 F.3d 567, 577 (2<sup>d</sup> Cir. 1999) (stating in dicta that "the government did not present evidence that [the defendant] received or expected to

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<sup>42</sup> This guideline has read the same substantively from at least 2005 (the date of the DOT audit) to the present. The Guideline appears to have last changed in 1997 in order to narrow the class of cases qualifying for reduction. *United States v. Nasser*, 555 F.3d 722, 732 (9<sup>th</sup> Cir. 2009). Further, the offense did not involve defendant's spouse or family so he could only be eligible for the reduction under the "other than for profit" theory.

receive payment for harboring” where the defendant knowingly employed an undocumented alien).

Defendant also harbored illegal aliens and profited personally as well – at least by way of his compensation from Agriprocessors. However, regardless of whether defendant personally received financial compensation for his involvement, he nonetheless is ineligible for the reduction if the conspiracy itself was committed for profit. *United States v. Torres-Cobas*, 422 Fed.Appx. 841, 847 (11<sup>th</sup> Cir. 2011) (unpublished) (“the overall conspiracy was committed for profit, even if [defendants] did not receive any financial compensation for their involvement.”); *see also United States v. Li*, 206 F.3d 78, 90-91 (1<sup>st</sup> Cir. 2000) (defendant denied reduction where defendant found to be a “knowing participant in a conspiracy that was expected to yield profits to some members of the conspiracy” and court inferred their high level of responsibility they would be compensated).

Second, defendant specifically profited from “harboring” – in the sense of providing transportation – when he sold automobiles to undocumented aliens. Defendant admits he received \$100 from each vehicle. (*See* PSR ¶ 144; Defendant’s Objection No. 16).<sup>43</sup> Defendant denies, however, that he knew the purchasers were undocumented. (*See* PSR ¶ 141; Defendant’s Objection No. 14). The government submits that, in view of the widespread use of undocumented labor at Agriprocessors, defendant’s level of participation in the criminal conduct, and his

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<sup>43</sup> The fact that defendant may not have received all the payments he was owed or promised does not affect whether he should be denied the reduction. *See Juan-Manuel*, 222 F.3d at 482 (defendant’s debt was not considered paid when he was arrested before he could successfully transport illegal aliens to Florida).

opportunity to know the persons he was selling cars to, defendant's claim is untenable. When two permissible explanations of the evidence exist, the court is free to choose which explanation to believe. *United States v. Ndiaye*, 434 F.3d 1270, 1305 (11<sup>th</sup> Cir. 2006). The Court is not required to accept his explanations "made with the purpose of reducing his sentence, about the circumstances of his crime." *See Compton*, 295 Fed.Appx. at 676 (quoting *United States v. Buenrostro*, 868 F.2d 135, 138 (5<sup>th</sup> Cir. 1989)),<sup>44</sup>

Thus, defendant is not eligible for a three-level reduction under USSG §2L1.1(b)(1).

**5. The Offense Involved the Transporting or Harboring of 100 or More Unlawful Aliens**

Defendant objects to the PSR's assessment of a nine-level increase for harboring 100 or more illegal aliens under USSG §2L1.1(b)(2)(C). The probation officer correctly increased defendant's offense level for this specific offense characteristic.

**a. Legal Standards**

United States Sentencing Guideline Section 2L1.1(b)(2) provides, if the "offense involved the smuggling, transporting, or harboring of six or more aliens," the defendant's sentence is increased based upon the number of aliens involved in the relevant conduct of the offense of conviction. For an offense involving 100 or more unlawful aliens, the sentence is increased nine levels. USSG §2L1.1(b)(2)(C).

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<sup>44</sup> Finally, to the extent defendant accepted cash payments or sexual favors from undocumented workers in exchange for jobs or promotions, no reduction under USSG §2L1.1(b)(1) should apply. (See PSR ¶¶ 146 and 151).

Specific offense characteristics under USSG §2L1.1 are determined based upon “all acts or omissions [further specified in USSG §§1B1.3(a)(1)(A) and (B)] that were part of the same course of conduct or common scheme or plan as the offense of conviction.” USSG §1B1.3(a)(2); see also USSG §3D1.2(d) (listing §2L1.1 as an “offense[] of a character for which §3D1.2(d) would require grouping of multiple counts”). Such “acts or omissions” include “all reasonably foreseeable acts and omissions of others in furtherance of [] jointly undertaken criminal activity.” USSG §3B1.3(a)(1)(B). Accordingly, in determining the application of specific offense characteristics for the purposes of USSG §2L1.1, the Court must consider all harboring activity committed by defendant and, to the extent reasonably foreseeable by defendant, all harboring activity committed by defendant’s coconspirators, charged and uncharged.

**b. Argument**

Because it was foreseeable to defendant that 100 or more unlawful aliens were employed at Agriprocessors, a nine-level enhancement properly applies.

Defendant was a poultry-side manager at Agriprocessors (PSR ¶ 10; Plea Agreement ¶ 6(B)) at time when the vast majority of its workforce was comprised of undocumented alien workers. (*See, e.g.*, PSR ¶ 129 (389 illegal alien workers arrested at Agriprocessors on May 12, 2008, with approximately 100 other persons present)). It was in this capacity, at least, that defendant committed his offense of conviction. In his plea agreement, defendant acknowledged:

During at least the five years preceding May 2008, Agriprocessors, through several of its managers and employees, including but not limited to defendant,

knowingly employed undocumented aliens at Agriprocessors' Postville facility and related facilities.

(Plea Agreement ¶ 6(C)). As a knowing participant in the "common scheme or plan" to harbor undocumented alien workers at Agriprocessors, defendant is responsible for all undocumented aliens employed as part of the scheme, limited only to the extent that the number of undocumented aliens was unforeseeable.

The fact that Agriprocessors employed hundreds of undocumented aliens appears to have been a matter of common knowledge – including among Agriprocessors' managers. In a March 5, 2009, telephone interview with Special Agent Fischels, defendant acknowledged "everybody knew" the employees at Agriprocessors were illegal aliens. The following exchange occurred during that phone call:

S/A: ...what do you think? Do you think Mister Rubashkin knew that these people on the Hunt payroll or any of the employees at Agriprocessors are illegal aliens?

[Static]

AMARA: Um... [Static] let... let me tell you something, I mean, they gonna be, you know, whatever you're gonna ask, he don't know this illegal aliens, he gonna lie to you; he gonna say, "No", he gonna lie to you.

S/A: Right. Right.

AMARA: You know, everybody knew that.

S/A: Sure.

AMARA: I mean... I mean uh... it's... it's not a secret, you know.

[Voices overlap]

AMARA: [U/I]...

S/A: ...to anybody, but nobody's gonna tell you, "Yes, we have illegal aliens."

AMARA: No, nobody gonna tell you that. No.

S/A: Right.

AMARA: Everybody gonna tell you he have a... a... for me is a good... is a Resident Card, Social Security number, he's have this document [sic] so he's okay for me.

S/A: Okay. But, the fact is that there's over 600 illegal aliens working there and Mister Rubashkin knows [Static] that.

AMARA: Uh... I think he know it.

(Government Exhibit (GE) 1 pp. 22-23 (transcript of March 5, 2009, telephone call)).

In addition to defendant's general knowledge as acknowledged in the March 5, 2009, telephone call, defendant was in a position on several occasions to gain specific knowledge indicating large numbers of Agriprocessors' employees were undocumented.

- Defendant knew of and participated in the Hunt Payroll Scheme – whereby defendant and his co-schemers put 86 undocumented aliens on a separate payroll after Agriprocessors' Human Resources Manager refused to hire them because their documents were bad. (PSR ¶¶ 62-74). At a minimum, defendant knew that the scheme involved directing the "green hats" to have their relatives come to Agriprocessors for work after 6:00 p.m. when Billmeyer was gone for the day. (See PSR ¶ 65). In his plea agreement,

defendant admitted telling existing undocumented alien workers to tell their relatives to come to Agriprocessors for work, knowing undocumented workers were being placed in the Hunt payroll. (Plea Agreement ¶ 6(D)).

- The 86 employees hired as part of the Hunt Payroll Scheme were placed on defendant's shift – while other managers went without new employees. (See PSR ¶¶ 65-66, 68).
- Defendant was aware that the practice of placing employees on the Hunt payroll ended shortly after Billmeyer found out about the scheme. (See PSR ¶ 67).
- Defendant knew of and participated in a scheme to get poultry employees new fake resident alien cards. (See PSR ¶¶ 75-95).
- In the weeks leading up to the May 12, 2008, search, defendant received a highlighted list of all poultry employees. Defendant knew the highlighted employees “had bad social security numbers.”<sup>45</sup> Defendant directed a subordinate, Alisha Arias, to ask the human resources department if the highlighted employees “needed to also change their resident alien card or just their social security number.” (PSR ¶ 77). Defendant told Arias to leave two employees' names off the lists she was creating for the supervisors so the employees could get new fake documents. (PSR ¶ 79; see also PSR ¶¶ 92 and 95 (n.9)).
- Although defendant seems to deny it, Arias reported that defendant provided a telephone number for a fake document vender in Minneapolis. (See PSR ¶81). Arias' husband and four others traveled to Minneapolis to obtain fake documents from the vendor. Arias' husband's card was later examined by law enforcement and matched (right down to the fingerprint) 76 other fake resident alien cards seized from the human resources offices on May 12, 2008. (PSR ¶ 82). The 76 other cards were obtained as part of the Beef Re-Identification Scheme. (See PSR ¶¶ 96-128, 132).
- Defendant told Martin De La Rosa-Loera that, among those on a list of poultry employees with bad social security numbers, one such person need not be terminated because he ran a chicken plucking machine and, accordingly, had a specialized skill. (PSR ¶ 84). Later, defendant repeated a directive from another Agriprocessors' manager that five additional employees on the list could continue to be employed. (PSR ¶ 86).<sup>46</sup>

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<sup>45</sup> The highlighted list was created by the human resources department in response to Agriprocessors' receipt of no-match letters. (See PSR ¶ 39).

<sup>46</sup> Defendant was later seen in the poultry office with two other managers examining identification cards and noting one of the cards was “not good.” (PSR ¶ 88).

- Although he denies it, on May 14, 2008, defendant went to a Postville church and told between approximately 200 and 300 undocumented aliens that “ICE was gone and that Sholom Rubashkin had sent him to tell them that they could come back to work.” (PSR ¶ 135).

Defendant was a knowing and active participant in a conspiracy to harbor hundreds of undocumented aliens at Agriprocessors. His claim that it was not foreseeable to him that his crime involved at least 100 undocumented aliens is untenable. The Court should assess a nine-level enhancement under USSG §2L1.1(b)(2)(C).

**6. Defendant was a Manager or Supervisor in the Offense and the Criminal Activity Involved Five or More Participants and was Otherwise Extensive**

A three-level role enhancement should apply under USSG §3B1.1(b).

**a. Legal Standards**

The sentencing guidelines provide for a three-level enhancement where “the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive.” USSG §3B1.1(b).

*The determination of a defendant’s role in the offense is to be made on the basis of all conduct within the scope of section 1B1.3 (Relevant Conduct), i.e., all conduct included under §1B1.3(a)(1)-(4), and not solely on the basis of elements and acts cited in the count of conviction.*

USSG §3B1.1, introductory commentary. In addition, Application Note 2 to USSG §2L1.1 provides:

*For the purposes of §3B1.1 (Aggravating Role), the aliens smuggled, transported, or harbored are not considered participants unless they actively assisted in the smuggling, transporting, or harboring of others. In large scale*

*smuggling, transporting, or harboring cases, an additional adjustment from §3B1.1 typically will apply.*

USSG §2L1.1, comment. (n.2).

**b. Argument**

Here, defendant did far more than supervise undocumented alien workers at Agriprocessors. Defendant was an upper-level manager who directed other participants under his supervision to effectuate the harboring of the workers.

Regarding the Hunt Payroll Scheme (PSR ¶¶ 62-74), defendant directed the activities of Nichole Caguach-Hernandez (Nichole). Specifically, defendant directed Nichole to “tell other ‘green hats’ to spread the word that interested persons should come to Agriprocessors after 5:00 p.m. to gain employment.” (PSR ¶ 65). Although defendant equivocates in his Objection No. 4 regarding whether he or Sholom Rubashkin directed Nichole’s actions, he admitted in his plea agreement that he “told existing undocumented alien workers to encourage their family members to come to Agriprocessors for work . . . .” (Plea Agreement ¶ 6(D)). In addition, defendant directed Nichole to escort prospective employees, who had arrived after 5:00 p.m., up to the human resources office to meet with Althouse. (PSR ¶ 66).

Regarding the Poultry Re-Identification Scheme (PSR ¶¶ 75-95), defendant directed the activities of Alisha Arias and other participants in at least the following instances:

- Regarding a list of employees with bad social security numbers, defendant directed Arias to ask the human resources department if the employees “needed to also change their resident alien card or just their social security number.” (PSR ¶ 77). Defendant’s instruction to Arias is best understood to be part of defendant’s effort to determine how undocumented alien employees

might be able to continue to work at Agriprocessors by obtaining new fake identification documents.

- Defendant instructed Arias to leave her husband's and one other undocumented employees' name off the list of names to go to the supervisors. (PSR ¶ 79). Defendant did so in an obvious effort to keep two undocumented aliens from being terminated for having bad social security numbers.
- Although he seems to deny it, according to Arias, defendant provided contact information for a fake document vendor in Minneapolis to A.V. (PSR ¶¶ 79-81). Defendant suggested Arias' husband and one other undocumented employee drive to Minneapolis with A. V. to get "new" documents because the Minneapolis documents "were the good ones." (PSR ¶ 79). The trip – in Arias' car – resulted in Arias' husband receiving a new fake resident alien card. (PSR ¶ 82). The same vendor supplied 76 fake resident alien cards later seized from the human resources office. (See PSR ¶ 132).
- When Agriprocessors was preparing to terminate workers with bad social security numbers, defendant instructed Martin De La Rosa-Loera to "make a list of his best workers." (PSR ¶ 83). Later, defendant told De La Rosa-Loera that one particularly valuable employee could stay. (PSR ¶ 84). Later still, defendant confirmed a directive to De La Rosa-Loera from another Agriprocessors' manager that four additional employees could stay. (PSR ¶¶ 85-86). By directing De La Rosa-Loera regarding which undocumented aliens could stay, defendant was playing a supervisory role in his offense of conviction.

Finally, following the May 12, 2008, search, participant Carlos Guerrerro-Espinoza translated for defendant as defendant attempted to persuade 200 to 300 undocumented aliens to come back to work at Agriprocessors. (PSR ¶ 135). Defendant denies this conduct, but this event constitutes another instance of defendant playing a supervisory role over another participant in the conspiracy.

Regarding the number of participants, as indicated in PSR paragraph 172, there were at least five in this case. That is, at a minimum, (1) defendant, (2) Sholom Rubashkin, (3) Brent Beebe, (4) A.T. (5) Laura Althouse, (6), Carlos Guerrerro-Espinoza, (7) Martin De La Rosa-Loera, (8) Nichole Caguach-Hernandez,

(9) Alisha Arias, (10) Z.L., (11) Rabbi S.B., (12) Elizabeth Billmeyer, (13) training officer S.M., (14) Penny Hanson, and (15) Karina Freund participated in the conspiracy to harbor undocumented aliens at Agriprocessors. Indeed, (1) defendant, (2) Rubashkin, (3) Beebe, (4) Althouse, (5) Guererro-Espinoza, (6) De La Rosa-Loera, (7) Billmeyer, and (8) Hanson were all convicted of harboring-related felonies as part of this investigation, and (9) Freund was convicted of a harboring-related misdemeanor. (*See* PSR p. 2 (listing codefendants, related cases, and case numbers)).

Moreover, the criminal activity in this case was clearly “otherwise extensive” within the meaning of USSG §3B1.1(b). As noted in Application Note 2 to section 2L1.1, “[i]n large scale ... harboring cases, an additional adjustment from §3B1.1 typically will apply.” USSG §2L1.1, comment. (n.2). Here, when the Court considers Agriprocessors’ receipt of the no-match letters (PSR ¶¶ 36-48), its response to the May 2007 walkout (PSR ¶¶ 52-57), the Fall 2007 Hunt payroll scheme (PSR ¶¶ 62-74), the re-identification schemes involving both beef and poultry workers and a common source for fake documents (PSR ¶¶ 75-128, 132), and the arrests of 389 undocumented alien workers on May 12, 2008 (*see* PSR ¶ 129), the criminal activity can only be described as “extensive.”

For the above reasons, a three-level role enhancement should apply under USSG §3B1.1(b).

## 7. Defendant Attempted to and Did Obstruct Justice by Fleeing

Because defendant's flight to Israel constituted a calculated evasion of the law, a two-level enhancement for obstruction of justice should apply.

### a. Legal Standards

Section 3C1.1 provides a two-level upward adjustment:

[i]f (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct . . . .

USSG §3C1.1. Although "avoiding or fleeing from arrest" is conduct ordinarily not covered by section 3C1.1 (*see* USSG §3C1.1 comment. (n.5(D))), a number of cases distinguish "panicked, instinctive flight," which does not warrant an enhancement, and "calculated evasion," which does. *See United States v. Arceo*, 535 F.3d 679, 687 (7<sup>th</sup> Cir. 2008).

### b. Argument

An enhancement for obstruction of justice should apply under USSG §3C1.1. Shortly after the May 12, 2008, search at Agriprocessors, at the encouragement and with the assistance of Sholom Rubashkin, defendant fled to Israel. (*See* PSR ¶¶ 3,4, and 138; Plea Agreement ¶ 6(E)). Prior to fleeing, defendant was photographed by law enforcement pursuant at the United States Attorney's Office. (*See* GE 1, p. 3).

Here, defendant's flight with his family to Israel was a "calculated" maneuver to avoid apprehension and avoid having to potentially give testimony against others. Such conduct warrants imposition of the obstruction of justice adjustment

pursuant to USSG §3C1.1. *See Arceo*, 535 F.3d at 687 (finding adjustment warranted where defendant could have suspected he would be charged with a crime, yet fled to Mexico where he remained for several years, eventually returning to the United States under an assumed name); *United States v. Porter*, 145 F.3d 897, 904 (7<sup>th</sup> Cir. 1998) (finding enhancement warranted even though defendant had not yet been charged with any crime and his conduct was not shown to have hindered prosecution, yet defendant sold assets, fled out of state, used false identity and changed color of his hair); *cf. United States v. Alexander*, 53 F.3d 888, 891 (8<sup>th</sup> Cir. 1995) (financing a co-defendant's flight helped place co-defendant beyond the reach of the government as a witness and constituted obstruction of justice); *United States v. Rudisil*, 187 F.3d 1260, 1264 (11<sup>th</sup> Cir. 1999) (convincing and assisting another to flee by providing them cash, warranted obstruction enhancement).

Further, where the conduct would violate an obstruction of justice statute under Title 18 of the United States Code, the enhancement is warranted. USSG §3C1.1, comment. (n.4(I)). Title 18, United States Code, section 1073, makes it unlawful to travel in interstate or foreign commerce to avoid or attempt to avoid prosecution or giving testimony in a criminal proceeding. 18 U.S.C. § 1073. Defendant fled the jurisdiction to avoid apprehension and avoid having to potentially testify in a criminal proceeding. Such conduct qualifies as obstructive conduct.

For the above reasons, a two-level enhancement for obstruction of justice should apply.

## 8. Acceptance of Responsibility

Because defendant obstructed justice, and because he appears to be frivolously contesting relevant conduct, the Court should deny defendant a reduction for acceptance of responsibility.<sup>47</sup>

### a. Legal Standards

Defendant is entitled to an adjustment for Acceptance of Responsibility pursuant to USSG §3E1.1 only if he “clearly demonstrates acceptance of responsibility for his offense.” Defendant bears the burden of demonstrating he has accepted responsibility.

Application Note 1(A) to USSG § 3E1.1 provides that a defendant who falsely denies or frivolously contests relevant conduct the Court determines to be true has acted in a manner inconsistent with acceptance of responsibility. USSG §3E1.1, comment. (n.1(A)). Moreover, as noted in Application Note 4 to USSG §3E1.1, conduct resulting in an adjustment for Obstruction of Justice under USSG §3C1.1 “ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct.” The sentencing guidelines recognize, however, there may be “extraordinary cases in which adjustments under both §§3C1.1 and 3E1.1 may apply.” USSG §3E1.1 comment. (n.4). The applicable standard for applying both the obstruction and acceptance adjustments simultaneously has been described by the Eighth Circuit Court of Appeals:

We apply a “totality of the circumstances” analysis to determine whether a case is an “extraordinary case” for purposes of applying the exception. *United*

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<sup>47</sup> In the event the Court applies a two-level reduction under USSG §3E1.1(a), the government agrees an additional one-level reduction applies under USSG §3E1.1(b).

*States v. Honken*, 184 F.3d 961, 968-69 (8<sup>th</sup> Cir. 1999). The district court should consider, among other things, whether the obstructive conduct was an isolated incident, whether it was voluntarily or involuntarily terminated, whether the defendant admitted and recanted his obstructive conduct, and to what degree he accepted responsibility and aided the prosecution. *Id.* The phrase “extraordinary cases” refers to a narrow set of occurrences that are “extremely rare and highly exceptional.” *Id.* at 969-70. It is not generally extraordinary when a defendant “merely cease[s] obstructive conduct.” *Id.* at 970. A defendant must earn an adjustment for acceptance of responsibility by performing positive actions that counter his negative ones. *Id.* at 973.

*United States v. Muro*, 357 F.3d 743, 745 (8<sup>th</sup> Cir. 2004).

Where an obstruction of justice enhancement applies, defendant bears the burden to demonstrate his is an extraordinary case warranting both the application of the obstruction and acceptance adjustments. Defendant’s guilty plea and admission of relevant conduct constitutes “significant evidence of acceptance of responsibility,” but it does not end the inquiry, particularly where the defendant has obstructed justice. USSG §3E1.1, comment. (n.3).

#### **b. Argument**

Here, defendant obstructed justice by fleeing to Israel. Accordingly, he bears the burden of proving entitlement to an acceptance of responsibility reduction under Application Note 4 and the factors articulated in *Honken*. In this regard, defendant has pled guilty. In addition, to his credit, defendant has admitted the underlying obstructive conduct. (*See* Plea Agreement ¶ 6(E)). However, he contests both the application of an obstruction enhancement under USSG §3C1.1, and he has, thus far, denied and otherwise contests several instances of relevant conduct – most significantly conduct going to his role in the offense and the foreseeability that the offense involved 100 or more undocumented aliens.

Accordingly, it appears defendant has failed and will fail to establish his entitlement to an acceptance of responsibility adjustment under USSG §3E1.1(a).

## 9. Summary of Guidelines Calculation

In accordance with the above, the government submits the United States Sentencing Guidelines should be calculated as follows:

**Base Offense Level:** The appropriate guideline is USSG §2L1.1 which has a base offense level of 12.

**Other Than Profit:** Defendant should not be assessed a 3-level downward adjustment under §2L1.1(b)(1) for the offense being committed other than for profit.

**Number of Aliens:** An adjustment of 9-levels should apply under §2L1.1(b)(2) based upon the offense involving the harboring of at least 100 unlawful aliens (the parties have agreed an upward adjustment of at least 3 levels should apply under §2L1.1(b)(2) based upon the offense involving the harboring of at least 6 unlawful aliens).

**Role:** A 3-level upward adjustment should apply for aggravating role under §3B1.1 based upon the defendant being a manager or supervisor and the criminal activity involving five or more participants and otherwise being extensive.

**Obstruction of Justice:** Defendant should be assessed a 2-level upward adjustment under §3C1.1 for obstruction of justice.

**Acceptance of Responsibility:** No acceptance of responsibility reduction should apply under USSG §3E1.1(a). The United States agrees for purposes of USSG §3E1.1(b) that defendant timely notified authorities of defendant's intention to enter a guilty plea.

**Advisory Guideline Sentence:** With a Criminal History Category of I, and assuming no reduction for acceptance of responsibility, defendant's total offense level would be 26, for an advisory guidelines sentence of 63 to 78 months' imprisonment.

## **10. The Appropriate Sentence**

The government asks the Court to sentence defendant in accordance with the above and any additional record made at the time of sentencing. To the extent the Court calculates defendant's advisory guidelines sentence in a manner other than as recommended by the government, the government reserves the option of seeking an upward variance from the guidelines range in order to achieve an adequate sentence under the factors set forth in 18 U.S.C. § 3553(a). The government specifically asks that the Court consider and account for defendant's financial and sexual exploitation of undocumented alien workers in arriving at an appropriate sentence.

## **11. Conclusion**

Therefore, the United States of America respectfully requests that the Court sentence defendant in accordance with the above and any additional record made at the time of sentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically served a copy of the foregoing document to which this certificate is attached to the parties or attorneys of record, shown below, on December 13, 2013.

UNITED STATES ATTORNEY

BY: s/ S. Van Weelden

COPIES TO: Counsel of Record