

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN/DUBUQUE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. CR 08-1324 LRR
	)	
vs.	)	
	)	
AGRIPROCESSORS, INC., and	)	
SHOLOM RUBASHKIN,	)	
	)	
Defendants.	)	

**MOTION FOR LEAVE TO DISMISS WITHOUT PREJUDICE**

The United States of America moves, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, for leave to dismiss without prejudice Counts 1 through 72 and the Forfeiture Allegation of the Seventh Superseding Indictment against defendants Agriprocessors, Inc., and Sholom Rubashkin.<sup>1</sup>

**I. INTRODUCTION**

Trial on Counts 1 through 72 and the Forfeiture Allegation with regard to defendants Agriprocessors, Inc., and Sholom Rubashkin is scheduled to begin on December 2, 2009, in Sioux Falls, South Dakota.<sup>2</sup> Counts 1 through 72 generally allege violations of immigration and document fraud laws.

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<sup>1</sup>This motion seeks no relief with regard to counts and allegations against defendant Brent Beebe who is scheduled for trial beginning on January 19, 2010, in Cedar Rapids.

<sup>2</sup>The trial has been moved to Sioux Falls as a result of defendants' motion to change venue due to pretrial publicity.

## **II. DEFENDANT SHOLOM RUBASHKIN**

On November 12, 2009, following a nearly month-long trial in Sioux Falls, South Dakota, a jury returned guilty verdicts on 86 of 91 financial fraud and related counts against defendant Sholom Rubashkin. Defendant was convicted on 14 counts of bank fraud, 24 counts of making false statements to a bank, 14 counts of wire fraud, 9 counts of mail fraud, 10 counts of money laundering, and 15 counts of violating an order of the Secretary of Agriculture to timely pay suppliers of livestock. Defendant was acquitted on five counts of violating an order of the Secretary of Agriculture to timely pay suppliers of livestock.

Because the immigration and document fraud counts (Counts 1-72) were severed from the financial counts at defendant's request, none of the 91 counts at issue in the first trial alleged direct violations of alien harboring laws. However, the jury's verdicts on several of the fraud and false statement counts were premised, at least in part, upon defendant knowingly making false statements to the bank with regard to the harboring of undocumented aliens at Agriprocessors, Inc.

On several of the counts of fraud and making false statements to a bank, the jury answered interrogatories that identified multiple bases for finding defendant had defrauded or made false statements to the bank. With regard to 18 of those counts, the jury found, unanimously and beyond a reasonable doubt, defendant committed his crimes "by falsely stating Agriprocessors was in compliance with all laws when Agriprocessors and its employees were harboring or conspiring to harbor

undocumented aliens.” (Verdict Form, Document #736, renumbered<sup>3</sup> Counts 1-9 and 39-47). Similarly, with regard to nine counts, the jury found, unanimously and beyond a reasonable doubt, defendant committed his crimes by making a “false statement or statements about Agriprocessors, Inc. knowingly harboring and conspiring to harbor illegal aliens.” (Verdict Form, Document #736, renumbered Counts 15-23). In addition, as to renumbered Count 29, the jury found, unanimously and beyond a reasonable doubt, defendant was guilty of falsely stating to a bank “that during the time period leading up to the arrests of approximately 389 undocumented alien workers at Agriprocessors, Inc. on May 12, 2008, the defendant had been unaware that such alien workers were undocumented.” (Verdict Form, Document #736, renumbered Count 29; see Final Jury Instruction 14).

According to the government’s calculation of the sentencing guidelines, due in large part to the amount of loss associated with defendant’s fraud and false statement convictions, any convictions with regard to Counts 1 through 72 would be entirely eclipsed by defendant’s recommended guideline sentence on the counts for which he has already been convicted. This is not to minimize the importance of those counts, but at least for the purposes of the advisory sentencing guideline range, any convictions on Counts 1 through 72 would have no impact upon defendant’s sentence. However, any evidence of immigration violations would be relevant conduct that the Court could consider at sentencing even without a second trial.

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<sup>3</sup>Although charged as Counts 73 through 163 in the Seventh Superseding Indictment, the counts were renumbered as Counts 1 through 91 for the purposes of the trial that concluded on November 12, 2009.

In the government's estimation, now that defendant has been convicted on the most serious offenses charged in the pending indictment (in terms of potential penalties), and given that a jury has determined defendant committed crimes by making false statements about the harboring of undocumented aliens at Agriprocessors, Inc., and his knowledge of undocumented workers at Agriprocessors, Inc., dismissal without prejudice of Counts 1 through 72 and the forfeiture allegation is the most appropriate and efficient manner in which to proceed in this case. Dismissal will avoid an extended and expensive trial, conserve limited judicial and prosecutorial resources, and lessen the inconvenience to witnesses. The public interest has been substantially served because of the convictions and jury findings noted above. The government asks that such dismissal be without prejudice so criminal charges and the forfeiture allegation could be reinitiated based upon a change in circumstances or a reevaluation of present circumstances.

Counsel for defendant Sholom Rubashkin has no objection to dismissal without prejudice of Counts 1 through 72 and the forfeiture allegation.

### **III. DEFENDANT AGRIPROCESSORS, INC.**

The government understands that, through the bankruptcy process<sup>4</sup>, defendant Agriprocessors, Inc., has been effectively divested of all property. This would include all property that would be subject to forfeiture and could otherwise be used to satisfy a criminal financial penalty or restitution order if defendant were convicted. In addition, the government understands that, also as a result of the bankruptcy process,

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<sup>4</sup>See *In re Agriprocessors, Inc.*, Northern District of Iowa Bankruptcy No. 08-2751.

Agriprocessors, Inc., has ceased doing any business in Iowa or elsewhere. Of course, as a corporate entity, the only criminal penalties that could be imposed upon Agriprocessors, Inc., in the event of a criminal conviction would be monetary or injunctive in nature.

In the government's estimation, given the current financial condition of defendant Agriprocessors, Inc., and the fact it is an empty shell, dismissal without prejudice of Counts 1 through 72 and the forfeiture allegation is the most appropriate and efficient manner in which to proceed in this case. The government asks that such dismissal be without prejudice so criminal charges and the forfeiture allegation could be reinitiated based upon a change in circumstances or a reevaluation of present circumstances. By seeking dismissal without prejudice, the government reserves the option of pursuing a criminal conviction and judgment of forfeiture, if necessary, to aid an appropriate disposition of assets.

Counsel for defendant Agriprocessors, Inc., has no objection to dismissal without prejudice of Counts 1 through 72 and the forfeiture allegation.

#### **IV. CONCLUSION**

Accordingly, given the unique circumstances of this case, the government requests the Court grant leave to dismiss without prejudice Counts 1 through 72 and the forfeiture allegation of the Seventh Superseding Indictment against defendants Agriprocessors, Inc., and Sholom Rubashkin.

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 November 19, 2009.

UNITED STATES ATTORNEY

BY: s/ S. Van Weelden

COPIES TO: Counsel of Record