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June 22, 2010

Hon. Michael E. Gans
Clerk, United States Court of Appeals for the Eighth Circuit
111 South 10th Street, Suite 24.329
St. Louis, MO 63102

Re: *United States v. Rubashkin*,
Nos. 10-2487 and 10-3580

Dear Mr. Gans:

As counsel for the Appellant in the above cases I presented oral argument on Wednesday, June 15, 2011, before a panel consisting of Chief Judge Riley and Circuit Judges Murphy and Smith. Certain responses I gave to questions from the Court regarding facts in the record warrant clarification in this letter.

(1) Chief Judge Riley asked me about the two target letters sent to Mr. Rubashkin and inquired about the lapse of time between them. I mistakenly said that there were several months between them. In fact, Defense Exhibit 6561 contains both letters and they are enclosed as Appendix A. The first target letter relates to immigration offenses and is dated May 20, 2008. The second target letter relates to bank fraud and is dated the following day – May 21, 2008. The immigration raid occurred on May 12, 2008.

(2) During my argument I referred to the “Executive Summary” included in the Immigration and Customs Enforcement e-mails. Counsel for the Government asked what the “Executive Summary” was and said that he had not “seen” it. The “Executive Summary” appears at App. 294-295 and App. 306-307. An ICE e-mail on App. 293 says: “The Exec summary of the op will satisfy Richard Murphy’s requirement to brief the judge.”

(3) Government counsel questioned my statement that Judge Reade had at least 12 meetings with the Office of the United States Attorney. These meetings are reflected in the ICE e-mails as follows: (a) App. 268 (October 10, 2007); (b) App. 269 (October 16, 2007); (c) App. 271 (October 29, 2007); (d) App. 273 (November 14, 2007); (e) App. 276 (January 28, 2008); (f) App. 278 (March 17, 2008); (g) App. 280 (April 4, 2008); (h) App. 281 (March 20, 2008); (i)

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App. 302 (no date specified) ; (j) App. 308 (April 11, 2008); (k) App. 309 (weekly meetings); (l) App. 310 (April 24, 2008).

Please distribute copies of this letter and Appendix A to Chief Judge Riley and Circuit Judges Murphy and Smith.

Many thanks for your cooperation.

Sincerely yours,



Nathan Lewin

cc: AUSA Peter Deegan

APPENDIX A

JAN-14-2005 01:27



U.S. Department of Justice

P. 01/02

United States Attorneys Office

Northern District of Iowa

401 First Street S.E.

319-363-6333

Suite 400

319-363-1990 (fax)

Cedar Rapids, Iowa 52401-1825

319-286-9258 (tty)

May 20, 2008

VIA FACSIMILE [(563) 864-7899]

Mr. Sholom Rubashkin

Re: Criminal Investigation

Dear Mr. Rubashkin:

Immigration and Customs Enforcement is conducting an investigation into potential federal criminal violations occurring at Agriprocessors, Inc. Potential violations include but are not limited to conspiracy; the knowing fraudulent use of Social Security numbers; the knowing manufacture, possession, and use of counterfeit alien registration cards; aggravated identity theft; knowing falsification of I-9s; knowing acceptance of false documents, including Social Security cards, alien registration cards, and other forms of identification for purposes of employment; engaging in a pattern or practice of hiring and continuing to employ undocumented aliens; harboring undocumented aliens; money laundering; and aiding and abetting.

Based upon review of the evidence accumulated thus far, the United States Attorney's Office for the Northern District of Iowa has concluded you are a target of this criminal investigation. Please retain counsel and have counsel contact me.

As you are aware, over 380 employees were administratively arrested at Agriprocessors, Inc. on May 12, 2008. Many of those arrested agreed to be interviewed by law enforcement agents. By this letter, the United States Attorney's Office ("USAO") is notifying you that it will immediately make available for examination by you or your counsel in the USAO's Cedar Rapids Office the written interviews of the employees who face removal from the United States sometime within the next week or two. If you or your counsel would like to review these interviews, please contact Special Agent Mike Fischels at (319) 364-3280 to make arrangements. At least some of these interviewed employees are represented by counsel. Please contact Special Agent Fischels if you need additional information.

Sincerely,

MATT M. DUMMERMUTH
United States Attorney

By. *Sean Berry*

SEAN R. BERRY
Assistant United States Attorney
Chief, Criminal Division

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U.S. Department of Justice

United States Attorneys Office

Northern District of Iowa

401 First Street S.E.
Suite 400
Cedar Rapids, Iowa 52401-1825

319-363-6333
319-363-1990 (fax)
319-286-9258 (tty)

May 21, 2008

VIA FACSIMILE [(563) 864-7899]

Mr. Sholom Rubashkin

Re: Criminal Bank Fraud Investigation

Dear Mr. Rubashkin:

The Federal Bureau of Investigation is conducting an investigation into potential federal criminal violations occurring in connection with Agriprocessors, Inc.'s bank accounts at Citizens State Bank. Such potential violations include but are not limited to bank fraud; misapplication of bank funds; false statements to obtain credit from the bank; money laundering; aiding and abetting; and witness tampering. Based upon our review of the evidence accumulated thus far, the United States Attorney's Office for the Northern District of Iowa now considers you to be a target of this criminal investigation.

Sincerely,

MATT M. DUMMERMUTH
United States Attorney

By, *Sean Berry*

SEAN R. BERRY
Assistant United States Attorney
Chief, Criminal Division

TOTAL P.01