

By Erik Camayd-Freixas

Illustration by Dushan Milic

A Matter of Interpretation



I arrived late in Waterloo, Iowa, Monday night, May 12, and missed the 8 p.m. interpreters' briefing. I was instructed by phone to meet the next morning at 7 a.m. in the hotel lobby and carpool to the National Cattle Congress, where we would begin our work.

The clerk's office of the U.S. District Court had contracted with me and twenty-five other federally certified interpreters the month before. We were told we were to go to a remote location as part of a "Continuity of Operation Exercise" just in case there was an emergency, which in Iowa is likely to be a tornado or flood. I was not prepared for a disaster of a different kind, one that was entirely man-made.

We arrived at the heavily guarded compound, went through security, and gathered inside the retro "Electric Park Ballroom," where a makeshift court had been set up. The clerk of court, who coordinated the interpreters, said: "Have you seen the news? There was an immigration raid yesterday at 10 a.m. They have some 400 detainees here. We'll be working late conducting initial appearances for the next few days."

The clerk was referring to the raid of Agriprocessors, Inc., the nation's largest kosher slaughterhouse and meat packing plant, located in the town of

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Postville, Iowa. Immigration officials boasted it was “the largest single-site operation of its kind in American history.”

The clerk gave us a cursory tour of the compound. The National Cattle Congress is a sixty-acre fairground that had been transformed into a sort of detention center. Fenced in behind the ballroom/courtroom were twenty-three trailers from federal authorities, including two set up as sentencing courts, various Homeland Security buses, and an “incident response” truck. Scores of Immigration and Customs Enforcement (ICE) agents and U.S. Marshals roamed about. And in the background stood two large buildings: a pavilion where agents and prosecutors had established a command center, and a gymnasium filled with tight rows of cots where some 300 male detainees were kept, the women being housed in county jails.

Then began the saddest procession I have ever witnessed, which the public would never see, because cameras were not allowed past the perimeter of the compound. Driven single-file in groups of ten, shackled at the wrists, waist, and ankles, chains dragging as they shuffled through, the slaughterhouse workers were brought in for arraignment. They sat and listened through headsets to the interpreted initial appearance before marching out again to be bused to different county jails, only to make room for the next row of ten. They appeared to be uniformly no more than five feet tall, mostly illiterate Guatemalan peasants with Mayan last names. Some were in tears; others bore faces of worry, fear, and embarrassment. They all spoke Spanish, a few rather laboriously. It dawned on me that, aside from their Guatemalan or Mexican nationality, which was imposed on them, they too were Native Americans, in shackles. They stood out in stark racial contrast to the rest of us as they started their slow penguin march across the makeshift court. They had all waived their right to be indicted by a grand jury and

accepted instead an *information*, or simple charging document by the U.S. Attorney, hoping to be quickly deported, since they had families to support back home.

But it was not to be. They were criminally charged with “aggravated identity theft” and “Social Security fraud”—charges they did not understand . . . and, frankly, neither could I.

We got off to a slow start that first day, because ICE’s barcode booking system malfunctioned, and the documents had to be manually sorted and processed with the help of the U.S. Attorney’s Office. Consequently, less than a third of the detainees were ready for arraignment that Tuesday. There were more than enough interpreters at that point, so we rotated in shifts of three interpreters per hearing. Court adjourned shortly after 4 p.m. However, the prosecution worked overnight, planning on a 7 a.m.-to-midnight court marathon the next day.

I was eager to get back to my hotel room to find out more about the case, since the day’s repetitive hearings afforded little information, and everyone there was mostly refraining from comment. There was frequent but sketchy news on local TV. A colleague had suggested *The Des Moines Register*. So I went to DesMoinesRegister.com and started reading all the articles, along with the fifty-seven-page “ICE Search Warrant Application.”

These were the vital statistics. Of Agriprocessors’ 968 employees, about 75 percent were illegal immigrants. There were 697 arrest warrants, but late-shift workers had not arrived, so “only” 390 were arrested: 314 men and 76 women, 290 Guatemalans, 93 Mexicans, 4 Ukrainians, and 3 Israelis who were not seen in court. Some were released on humanitarian grounds: 56—mostly mothers with unattended children, a few with medical reasons, and 12 juveniles—were temporarily released with ankle monitors or directly turned over for

deportation. In all, 306 were held for prosecution. Only 5 of the 390 originally arrested had any kind of prior criminal record. There remained 307 outstanding warrants.

Postville, Iowa (pop. 2,273), where nearly half the people worked at Agriprocessors, had lost one-third of its population by Tuesday morning. Besides those arrested, many had fled the town in fear. Several families had taken refuge at St. Bridger’s Catholic Church, terrified, sleeping on pews and refusing to leave. At the local high school, only 3 of the 15 Latino students came back on Tuesday, while at the elementary and middle school, 120 of the 363 children were absent. Some of the children were born in the United States and thus American citizens. Sometimes one parent was deportable, other times both. “Hundreds of families were torn apart by this raid,” said a Catholic nun.

The more I found out, the more I felt blindsided into an assignment of which I wanted no part. Even though I understood the rationale for all the secrecy, I also knew that a contract interpreter has the right to refuse a job which conflicts with his moral intuitions. Now I was already there, far from home, and holding a half-spent \$1,800 plane ticket. So I faced a frustrating dilemma. I seriously considered withdrawing from the assignment for the first time in my twenty-three years as a federally certified interpreter, citing conflict of interest. In fact, I have both an ethical and contractual obligation to withdraw if a conflict of interest exists that compromises my neutrality. Appended to my contract are the *Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts*, where it states: “Interpreters shall disclose any real or perceived conflict of interest . . . and shall not serve in any matter in which they have a conflict of interest.” The question was, did I have one? In all my years as a court interpreter, I have taken a front row seat in countless criminal cases rang-

ing from rape, capital murder, and mayhem to terrorism, narcotics, and human trafficking. I am not the impressionable kind. Moreover, as a professor of interpreting, I have confronted my students with every possible conflict scenario, or so I thought. The truth is that nothing could have prepared me for the prospect of helping our government put hundreds of innocent people in jail. In my ignorance and disbelief, I reluctantly decided to stay the course and see what happened next.

Wednesday, May 14, our second day in court, was to be a long one. The interpreters were divided into two shifts, 8 a.m. to 3 p.m., and 3 p.m. to 10 p.m. I chose the latter. Through the day, the procession continued, ten by ten, hour after hour, the same charges, the same recitation from the magistrates, the same faces, chains, and shackles, on the defendants. There was little to remind us that they were actually 306 individuals, except that occasionally, as though to break the monotony, a detainee would dare to speak for the others and beg to be deported quickly so that they could feed their families back home.

Later in the day, three groups of women were brought in. One of them, whose husband was also arrested, was released to care for her children, ages two and five, as she was uncertain of their whereabouts. Several men and women were weeping, but two women were particularly grief stricken. The first was sobbing and would repeatedly struggle to bring a sleeve to her nose, but her wrists, shackled around her waist, simply would not reach, so she just dripped until she was taken away with the rest. The other one, a Ukrainian woman, was arraigned separately when a Russian telephonic interpreter came on. She spoke softly into a cellular phone, while the interpreter told her story in English over the speakerphone. Her young daughter, gravely ill, had lost her hair and was too weak to walk. She

had taken her to Moscow and Kiev but to no avail. She was told her child needed an operation or would soon die. She had come to America to work and raise the money to save her daughter back in Ukraine.

The next day we started early, at 6:45 a.m. We were told that we had to finish the hearings by 10 a.m. Thus far, the work had oddly resembled a judicial assembly line where the meat packers were mass processed. But things were about to get a lot more personal as we prepared to interpret for individual attorney-client conferences.

In those first three days, interpreters had been pairing up with defense attorneys to help interview their clients. Each of the eighteen court-appointed attorneys represented seventeen defendants on average. By now, the clients had been sent to several state and county prisons throughout eastern Iowa, so we had to interview them in jail. The attorney with whom I was working had clients in Des Moines and wanted to be there first thing in the morning. So a colleague and I drove the two-and-a-half hours that evening and stayed overnight in a hotel outside the city. We met the attorney in jail Friday morning, but the clients had not been accepted there and had been sent instead to a state penitentiary in Newton, another forty-five-minute drive. While we waited to be admitted, the attorney pointed out the reason why the prosecution wanted to finish arraignments by 10 a.m. Thursday: According to the writ of habeas corpus, they had seventy-two hours from Monday's raid to charge the prisoners or release them for deportation (only a handful would be so lucky). The right of habeas corpus, but of course! It dawned on me that we were paid overtime, adding hours to the day, in a mad rush to abridge habeas corpus, only to help put more workers in jail. Now I really felt bad. But it would soon get worse. I was about to bear the brunt of my conflict of interest.

It came with my first jail interview. The purpose was for the attorney to explain the uniform plea agreement that the government was offering. The explanation, which we repeated over and over to each client, went like this. There are three possibilities. If you plead guilty to the charge of "knowingly using a false Social Security number," the government will withdraw the heavier charge of "aggravated identity theft," and you will serve five months in jail, be deported without a hearing, and placed on supervised release for three years. If you plead not guilty, you could wait in jail six-to-eight months for a trial. Even if you win at trial, you will still be deported, and could end up waiting longer in jail than if you just pled guilty. You would also risk losing at trial and receiving a two-year minimum sentence before being deported. Some clients understood their "options" better than others.

That first interview, though, took three hours. The client, a Guatemalan peasant afraid for his family, spent most of that time weeping at our table, in a corner of the crowded jailhouse visiting room.

How did he come here from Guatemala?

"I walked."

What?

"I walked for a month and ten days until I crossed the river."

He crossed alone, met other immigrants, and hitched a truck ride to Dallas, then Postville, where he heard there was sure work. He slept in an apartment hallway with other immigrants until employed. He had been working only a couple of months when he was arrested. (Maybe he was lucky: Another man who began that Monday had been working for only twenty minutes.) His children, wife, mother, and sister depended on him back home. He was their sole support and did not know how they were going to make it with him in jail for five months.

"I just wanted to work a year or two, save, and then go back to my

family, but it was not to be," the Guatemalan man said. "The Good Lord knows I was just working and not doing anyone any harm."

This man, like many others, was in fact *not* guilty. The statute defining identity theft says someone committing that crime "knowingly uses a means of identification of another person with the intent to commit any unlawful activity or felony." "Knowingly" and "intent" are necessary elements of the charges, but most of the clients we interviewed did not even know what a Social Security number was or what purpose it served. This worker simply had the papers filled out for him at the plant, since he could not read or write Spanish, let alone English. But the lawyer still had to advise him that pleading guilty was in his best interest.

He was unable to make a decision.

"You all do and undo," he said. "So you can do whatever you want with me."

None of the "options" really mattered to him. Caught between despair and hopelessness, he just wept. He had failed his family, and was devastated.

I went for some napkins, but he refused them. I offered him a cup of soda, which he superstitiously declined, saying it could be "poisoned."

His spirit was broken, and he could no longer think. He stared for a while at the signature page pretending to read it, although I knew he was actually praying for guidance and protection.

Before he signed with a scribble, he said: "God knows you are just doing your job to support your families, and that job is to keep me from supporting mine."

There was my conflict of interest, well put by a weeping, illiterate man.

We worked that day for as long as our emotional fortitude allowed, and we had to come back to a full day on Sunday to interview the rest of the clients.

One of them, a nineteen-year-old, said his parents were too old to work and had no other means of supporting themselves.

Another client, a young Mexican, had an altogether different case. He had worked at the plant for ten years and had two American-born daughters, a two-year-old and a new baby. He had a good case with Immigra-

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tion for an adjustment of status, which would allow him to stay. But if he took the plea agreement, he would lose that chance and face deportation as a felon convicted of a crime of "moral turpitude." On the other hand, if he pled "not guilty" he had to wait several months in jail for trial and risk getting a two-year sentence. After an agonizing decision, he concluded that he had to take the five-month deal and deportation, because as he put it, "I cannot be away from my children for so long." His case was complicated; it needed research in immigration law, a change in the plea agreement, and, above all, more time.

Immigration lawyers were alarmed that the detainees were being rushed into a plea without adequate consultation on the consequences. The criminal defense attorneys had insufficient opportunity to meet with clients: In jail, there were limited visiting hours; at the compound, there was little time before and after hearings, and little privacy due to the constant presence

of agents. There were seventeen cases for each attorney, and the plea offer was good for only seven days. In addition, criminal attorneys are not familiar with immigration work, but had to make do since immigration lawyers were denied access to these "criminal" proceedings.

The prosecutors would not accept any changes to the plea agreement. In fact, some lawyers, seeing that many of their clients were not guilty, requested an Alford Plea, whereby defendants can plead guilty in order to accept the prosecution's offer, but without having to lie under oath and admit to something they did not do. That would not have changed the five-month sentence, but at least would have preserved the person's integrity and dignity. The proposal was rejected. Of course, if they allowed Alford Pleas to go on public record, the incongruence of the charges would be exposed and find their way into the media.

Many of these workers were sole earners begging to be deported, desperate to feed their families, for whom every day counted. "If you want to see your children or don't want your family to starve, sign here"—that is what their deal amounted to. Their plea agreement was coerced.

We began week two on Monday, May 19. Those interpreters who left after the first week were spared the sentencing hearings that went on through Thursday. Those who came in fresh the second week were spared the jail visits over the weekend. Those of us who stayed both weeks came back from the different jails burdened by a close personal contact that judges and prosecutors do not get to experience: each individual tragedy multiplied by 306 cases.

We had seen attorneys hold back tears and then weep alongside their clients. We would see judges, prosecutors, clerks, and marshals do their duty, sometimes with a heavy heart,

sometimes at least with mixed feelings, but always with a particular solemnity not accorded to the common criminals we all are used to encountering in the judicial system. Everyone was extremely professional and outwardly appreciative of the interpreters. Still, that Monday morning I felt downtrodden by the sheer magnitude of the events. Unexpectedly, a sentencing hearing lifted my spirits.

I decided to do sentences with a judge I knew from real criminal trials in Iowa. The defendants were brought in five at a time, because there was not enough room for ten. The judge verified that they still wanted to plead guilty, and asked counsel to confirm their plea agreement. The defense attorney said that he had expected a much lower sentence, but that he was forced to accept the agreement in the best interest of his clients. That vague objection, which was all that the attorney could put on record, spoke volumes. After accepting the plea agreement and before imposing sentence, the judge gave the defendants the right of allocution. Most of them chose not to say anything, but one said humbly: "Your honor, you know that we are here because of the need of our families. I beg that you find it in your heart to send us home before too long, because we have a responsibility to our children, to give them an education, clothing, shelter, and food."

The good judge explained that unfortunately he was not free to depart from the sentence provided for by their plea agreement. His hands were tied, but in closing he said very deliberately: "I appreciate the fact that you are very hardworking people, who have come here to do no harm. And I thank you for coming to this country to work hard. Unfortunately, you broke a law in the process, and now I have the obligation to give you this sentence. But I hope that the U.S. government has at least treated you kindly and with respect, and that this time goes by quickly for you, so that soon you may be reunited with your family and friends."

The defendants thanked him, and I saw their faces change from shame to admiration, their dignity restored.

Before the judge left that afternoon, I went up to him.

"Your honor," I said, "I am concerned from my attorney-client interviews that many of these people are clearly not guilty, and yet they have no choice but to plead out."

He understood immediately and, not surprisingly, the seasoned U.S. District Court judge spoke as someone who had already wrestled with all the angles. He said: "You know, I don't agree with any of this or with the way it is being done. In fact, I ruled in a previous case that to charge somebody with identity theft, the person had to at least know of the real owner of the Social Security number. But I was reversed in another district and yet upheld in a third." The charge of identity theft seemed from the beginning incongruous to me as an informed, impartial layperson, but now a U.S. District Court judge agreed. As we bade each other farewell, I kept thinking of what he said. I soon realized that he had given me, as it were, the last piece of the puzzle.

It worked like this. By handing down the inflated charge of "aggravated identity theft," which carries a mandatory minimum sentence of two years in prison, the government forced the defendants into pleading guilty to the lesser charge and accepting five months in jail. Clearly, without the inflated charge, the government had no bargaining leverage, because the lesser charge by itself, using a false Social Security number, carries only a discretionary sentence of zero-to-six months. The judges would be free to impose sentences within those guidelines, depending on the circumstances of each case and any prior record. Virtually all the defendants would have received only probation and been immediately deported. In fact, the government's offer at the higher end of the guidelines (one month shy of

the maximum sentence) was indeed no bargain. What is worse, the inflated charge reduced the judges to mere bureaucrats, pronouncing the same litany over and over for the record in order to legalize the proceedings, but having absolutely no discretion or decision-making power after the plea agreement was signed. As a citizen, I want our judges, not immigration agents, to administer justice.

As it was, the process resembled a lottery of justice. If the Social Security number belonged to someone else, you were charged with identity theft and went to jail. If by luck it was a vacant number, you would get only Social Security fraud and were released for deportation. In this manner, out of 297 who were charged on time, 270 went to jail.

Bothered by the arbitrariness of that heavier charge, I went back to the ICE Search Warrant Application, and what I found was astonishing. On February 20, 2008, ICE agents received Social Security "no match" information for 737 employees, including 147 using numbers confirmed as invalid (never issued to a person) and 590 using a valid Social Security number but that "did not match the name of the employee reported by Agriprocessors." The application said, "This analysis would not account for the possibility that a person may have falsely used the identity of an actual person's name and SSN." ICE agents checked Accurint, the powerful identity database used by law enforcement, and found that 983 employees that year had non-matching Social Security numbers. Then they conducted a search of the FTC Consumer Sentinel Network for reporting incidents of identity theft. "The search revealed that a person who was assigned *one* of the Social Security numbers used by *an employee* of Agriprocessors has reported his/her identity being stolen." (The emphasis is mine.) That is, out of 983 Social Security numbers, only one happened to coincide by chance with a reported identity theft. The mass charge of

