

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

UNITED STATES OF AMERICA,	)	No. CR 08-1324 LRR
)	
Plaintiff,	)	COUNT 1
	)	8 U.S.C. §§ 1324(a)(1)(A)(v)(I) and
vs.	)	1324(a)(1)(B)(i): Conspiracy to Harbor
	)	Undocumented Aliens for Profit
AGRIPROCESSORS, INC.,)	
SHOLOM RUBASHKIN,	)	COUNT 2
BRENT BEEBE,	)	8 U.S.C. §§ 1324(a)(1)(A)(iii),
HOSAM AMARA,	)	1324(a)(1)(A)(iv), 1324(a)(1)(A)(v)(II)
ZEEV LEVI, and	)	and 1324(a)(1)(B)(i): Harboring and
KARINA PILAR FREUND,	)	Aiding and Abetting the Harboring of
	)	Undocumented Aliens for Profit
Defendants.)	
	)	COUNT 3
	)	18 U.S.C. § 371: Conspiracy to
	)	Commit Document Fraud
)	
	)	COUNT 4
	)	18 U.S.C. §§ 1546(a) and 2: Aiding
	)	and Abetting Document Fraud
)	
	)	COUNTS 5-10
	)	18 U.S.C. §§ 1028A(a)(1) and 2:
	)	Aiding and Abetting Aggravated
	)	Identity Theft
)	
	)	COUNTS 11-12
	)	18 U.S.C. § 1344: Bank Fraud

SECOND SUPERSEDING INDICTMENT

PRESENTED IN OPEN COURT
BY THE
FOREMAN OF THE GRAND JURY
IN THE PRESENCE OF THE
GRAND JURY

And filed 11/20/08
ROBERT L. PHELPS, CLERK

COUNT 1

(Conspiracy to Harbor Undocumented Aliens)
(Agriprocessors, Inc., Sholom Rubashkin, Brent Beebe,
Hosam Amara, Zeev Levi, and Karina Pilar Freund)

Beginning on an unknown date and continuing to at least May 2008, in the Northern District of Iowa and elsewhere, defendants AGRIPROCESSORS, INC., SHOLOM RUBASHKIN, BRENT BEEBE, HOSAM AMARA, ZEEV LEVI, KARINA PILAR FREUND, and others known and unknown to the grand jury, did knowingly and willfully combine, conspire, and agree to commit the following offenses for the purpose of commercial advantage and private financial gain:

- (1) harbor one or more aliens at Agriprocessors, Inc.'s facility in Postville, Iowa, knowing and in reckless disregard of the fact that such aliens had come to, entered and remained in the United States in violation of law, in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(iii); and
- (2) encourage and induce one or more aliens to reside in the United States, knowing and in reckless disregard of the fact that such residence was in violation of law, in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(iv).

This was in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(v)(I) and 1324(a)(1)(B)(i).

COUNT 2

**(Harboring Undocumented Aliens)
(Agriprocessors, Inc., Sholom Rubashkin, Brent Beebe,
Hosam Amara, Zeev Levi, and Karina Pilar Freund)**

Beginning on an unknown date and continuing to at least May 2008, in the Northern District of Iowa and elsewhere, defendants AGRIPROCESSORS, INC., SHOLOM RUBASHKIN, BRENT BEEBE, HOSAM AMARA, ZEEV LEVI, and KARINA PILAR FREUND did, for the purpose of commercial advantage and private financial gain:

- (1) harbor, and aid and abet the harboring of, one or more aliens at Agriprocessors, Inc.'s facility in Postville, Iowa, knowing and in reckless disregard of the fact that such aliens had come to, entered and remained in the United States in violation of law; and
- (2) encourage and induce, and aid and abet the encouragement and inducement of, one or more aliens to reside in the United States, knowing and in reckless disregard of the fact that such residence was in violation of law.

This was in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(iii), 1324(a)(1)(A)(iv), 1324(a)(1)(A)(v)(II) and 1324(a)(1)(B)(i).

COUNT 3

**(Conspiracy to Commit Document Fraud)
(Agriprocessors, Inc., Sholom Rubashkin, Brent Beebe,
Hosam Amara, and Zeev Levi)**

In about April and May 2008, in the Northern District of Iowa and elsewhere, defendants AGRIPROCESSORS, INC., SHOLOM RUBASHKIN, BRENT BEEBE, HOSAM AMARA, ZEEV LEVI, and others known and unknown to the grand jury, did knowingly and willfully combine, conspire, and agree to use, possess, obtain, accept and receive documents prescribed by statute or regulation for entry into or as evidence of authorized stay and employment in the United States, that is, resident alien cards, knowing such cards to have been forged, counterfeited, altered, falsely made, procured by means of any false claim or statement, and to have been otherwise procured by fraud or unlawfully obtained, in violation of 18 U.S.C. § 1546(a).

In furtherance of the conspiracy and to effect the object of the conspiracy, the following overt acts, among others, were committed in the Northern District of Iowa and elsewhere:

(1) In about late April and early May 2008, defendants and Agriprocessors poultry managers HOSAM AMARA and ZEEV LEVI each told coconspirator and poultry supervisor Martin De La Rosa that several of the employees under his supervision were to be terminated because they were known to be working under bad employment documents. After several discussions, defendants AMARA and LEVI identified

approximately six such employees who they would allow to continue working at Agriprocessors if they obtained new documents. Defendant LEVI told De La Rosa to instruct the employees to obtain new documents as soon as possible.

(2) Shortly afterward, De La Rosa told a coconspirator and poultry leadperson (herein after "poultry leadperson") to obtain new documents as soon as possible and to tell the other five employees to do the same. As directed, the six employees each obtained fake social security cards and resident alien cards and caused the documents to be delivered to De La Rosa.

(3) Thereafter, De La Rosa gave the six employees' new fake documents to defendant LEVI, and defendant LEVI took the documents to Agriprocessors' Human Resources department. Defendant LEVI returned from the Human Resources department and told De La Rosa that there was a problem with the cards. Defendant LEVI gave the documents back to De La Rosa.

(4) Thereafter, De La Rosa returned the documents to the poultry leadperson so that the poultry leadperson could attempt to have them corrected by the seller. The poultry leadperson was not able to have the documents corrected and returned the documents to De La Rosa and defendant LEVI.

(5) Defendant LEVI took the documents to the Human Resources department again. Defendant LEVI returned and told De La Rosa the documents were no longer

needed, and the employees could continue working at Agriprocessors. LEVI gave the documents back De La Rosa who caused them to be returned to the employees.

(6) On or about May 8, 2008, defendant and Agriprocessors operations manager BRENT BEEBE met with coconspirator and Agriprocessors beef department supervisor Juan Carlos Guerrero-Espinoza to discuss employees in Guerrero-Espinoza's department who were known to be working under bad employment documents. Defendant BEEBE told Guerrero-Espinoza to meet with the employees and determine how to help them.

(7) Later that day, Guerrero-Espinoza met with several of the employees in his department including a coconspirator and beef leadperson (hereinafter "beef leadperson"). Guerrero-Espinoza told the employees that, in order to continue working at Agriprocessors, they would have to get new identification documents in new names.

(8) During the same meeting, the beef leadperson told the others that he could obtain the new documents for the employees but that it would cost each employee \$300. The beef leadperson later spoke to his fake document source and the cost was changed to \$200 due to the volume.

(9) After the meeting with the employees, Guerrero-Espinoza met with defendant BEEBE and reported that the employees needed help with money and the total cost to help the employees would be approximately \$4,500. Defendant BEEBE and Guerrero-Espinoza discussed trying to obtain a loan for the employees.

(10) Later that evening, defendant BEEBE took Guerrero-Espinoza to meet with defendant and Agriprocessors vice president and chief executive officer SHOLOM RUBASHKIN near the barn area at Agriprocessors. Defendant RUBASHKIN, defendant BEEBE, and Guerrero-Espinoza discussed the employees in Guerrero-Espinoza's department needing \$4,500 in loans.

(11) On or about May 9, 2008, defendant BEEBE and defendant RUBASHKIN called Guerrero-Espinoza to a meeting in the area of defendant RUBASHKIN's office at Agriprocessors. Defendant RUBASHKIN, defendant BEEBE, and Guerrero-Espinoza again discussed the employees' need for \$4,500 in loans. Defendant RUBASHKIN agreed to loan the money. Defendant RUBASHKIN also suggested defendant BEEBE and Guerrero-Espinoza provide similar assistance to other employees from other departments at Agriprocessors.

(12) Later on or about May 9, 2008, defendant BEEBE delivered \$4,500 in cash to Guerrero-Espinoza to be used for loans to the employees.

(13) Later on or about May 9, 2008, Guerrero-Espinoza met with the beef leadperson and several Agriprocessors employees in the offices of the beef department. The employees provided money, photographs, fake names and dates of birth to the beef leadperson. Guerrero-Espinoza loaned a portion of the \$4,500 he had received from defendant BEEBE to some of the employees from Guerrero-Espinoza's department.

(14) On or about May 9, 2008, defendant RUBASHKIN asked coconspirator and Agriprocessors Human Resources department employee Laura Althouse to come

to work on May 11, 2008, to process new application paperwork for several people.

Althouse agreed.

(15) On or about May 10 and 11, 2008, the beef leadperson obtained new fake social security cards and fake resident alien cards for the Agriprocessors employees under Guerrero-Espinoza's supervision and many other Agriprocessors employees.

(16) On or about May 11, 2008, defendant BEEBE directed Guerrero-Espinoza to stop the beef kill approximately one hour earlier than usual.

(17) That afternoon, the beef leadperson returned to Agriprocessors with the new fake social security cards and fake resident alien cards. Guerrero-Espinoza and the beef leadperson passed out the new cards to the employees in the offices of the beef department.

(18) Also on or about May 11, 2008, after obtaining their new fake cards, an initial group of employees went to the Human Resources department. There, they met with defendant RUBASHKIN, defendant BEEBE and Althouse. Defendant RUBASHKIN inspected several of the new fake resident alien cards. Defendant BEEBE and Althouse assisted the employees in completing new application paperwork using the names and information on the fake resident alien cards. Guerrero-Espinoza arrived and assisted in the process.

This was in violation of Title 18, United States Code, Section 371.

COUNT 4

(Aiding and Abetting Document Fraud)
(Agriprocessors, Inc., Sholom Rubashkin, Brent Beebe,
Hosam Amara, and Zeev Levi)

In about April and May 2008, in the Northern District of Iowa, defendants AGRIPROCESSORS, INC., SHOLOM RUBASHKIN, BRENT BEEBE, HOSAM AMARA, and ZEEV LEVI aided and abetted Agriprocessors employees who did knowingly use, possess, obtain, accept, and receive resident alien cards. Defendants AGRIPROCESSORS, INC., SHOLOM RUBASHKIN, BRENT BEEBE, HOSAM AMARA, and ZEEV LEVI then and there well knew the resident alien cards to have been forged, counterfeited, altered, falsely made, procured by means of a false claim or statement, and to have been otherwise procured by fraud or unlawfully obtained. Resident alien cards are documents prescribed by statute or regulation for entry into or as evidence of authorized stay and employment in the United States.

This was in violation of Title 18, United States Code, Section 1546(a) and Section 2.

COUNT 5-10

(Aiding and Abetting Aggravated Identity Theft)
(Agriprocessors, Inc., Sholom Rubashkin, and Brent Beebe)

In about May 2008, in the Northern District of Iowa, defendants AGRIPROCESSORS, INC., SHOLOM RUBASHKIN, and BRENT BEEBE, during and in relation to the offenses set out in Counts 1, 2 and 4 above, did knowingly aid and abet the transfer, possession, and use of, without lawful authority, means of identification of

other persons. Specifically, defendants aided and abetted the transfer, possession and use of resident alien numbers which were then assigned to other persons. The resident alien numbers, identified by their last three digits and the names associated therewith, were as follows:

Count 5	645 (Ronald Sombra document)
Count 6	458 (Yesmi Loera document)
Count 7	790 (Lester Lopez document)
Count 8	373 (Reynaldo Lopez Nunez document)
Count 9	565 (Monica Hernandez document)
Count 10	598 (Lera Chernova document)

This was in violation of Title 18, United States Code, Section 1028A(a)(1) and Section 2.

COUNTS 11 and 12

(Bank Fraud)
(Agriprocessors, Inc. and Sholom Rubashkin)

Introduction

On or about September 23, 1999, defendant AGRIPROCESSORS, INC. (hereinafter "AGRIPROCESSORS") entered into a loan agreement with First Bank Business Capital, Inc. (FBBC), formerly known as FB Commercial Finance Inc. FBBC

is a subsidiary of First Bank, which is a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. FBBC receives its funding from First Bank. The original loan agreement was modified and amended. Under the most recent version, the agreement allowed defendant AGRIPROCESSORS to borrow up to a maximum of \$35,000,000. At all times relevant to Counts 11 and 12 of this Indictment, the actual amount of credit depended upon the amount of qualifying collateral defendant AGRIPROCESSORS had available at any given time. The allowable balance to be borrowed on the revolving loan was computed using a borrowing base formula which included 85% of accounts receivable and 50% of inventory on hand. Throughout 2008, defendant AGRIPROCESSORS consistently maintained a balance owed on this line of credit in excess of \$32,000,000.

Under the loan agreement, customer payments on accounts receivable constituted part of FBBC's collateral for the revolving loan. Accordingly, the loan agreement established a mandatory procedure for the immediate transfer of customer payments to FBBC. The loan agreement required defendant AGRIPROCESSORS to deposit in a depository account all collections on customer accounts immediately upon receipt thereof and in the form received. Until such payments were so deposited or otherwise delivered to FBBC, the payments were to be held in trust by defendant AGRIPROCESSORS for and as the property of FBBC. At all times relevant to Counts 11 and 12 of this Indictment, a depository account was established at Decorah Bank and Trust Company (the depository account) for the purpose of receiving such payments.

The loan agreement included certain representations and warranties on behalf of defendant AGRIPROCESSORS. Among them, defendant AGRIPROCESSORS represented and warranted that it was not in violation of any law, statute, or regulation applicable to defendant AGRIPROCESSORS, which violation would in any respect materially and adversely affect the collateral or defendant AGRIPROCESSORS' property, business, operations or condition (financial or otherwise). Each time defendant AGRIPROCESSORS requested an advance of funds on the revolving loan, an officer was required to certify that defendant AGRIPROCESSORS' representations and warranties in the loan agreement were true as of the date of the request. In addition, each time defendant AGRIPROCESSORS requested an advance on the revolving loan, an officer was required to certify the amount of available collateral.

At all times relevant to Counts 11 and 12 of this Indictment, defendant SHOLOM RUBASHKIN was a vice president of defendant AGRIPROCESSORS and exercised day to day control over its finances.

Defendant AGRIPROCESSORS requested an advance on the revolving loan nearly every business day during the life of the revolving loan.

The Scheme to Defraud

Beginning on a date unknown to the grand jury and continuing through about October 2008, in the Northern District of Iowa and elsewhere, defendants AGRIPROCESSORS and SHOLOM RUBASHKIN knowingly executed, and attempted to execute, a scheme to obtain funds under the control of First Bank and FBBC by means of fraudulent pretenses, representations and promises.

It was part of the scheme that defendant RUBASHKIN caused false certifications to be sent to FBBC on behalf of defendant AGRIPROCESSORS regarding defendant AGRIPROCESSORS' compliance with laws and regulations. Defendant RUBASHKIN certified defendant AGRIPROCESSORS' compliance with laws and regulations even though, as defendant RUBASHKIN well knew, defendant AGRIPROCESSORS was knowingly harboring undocumented aliens.

It was also part of the scheme to defraud that defendant RUBASHKIN, on behalf of defendant AGRIPROCESSORS, and contrary to the terms of the loan agreement, diverted customer payments on accounts receivable. Defendant RUBASHKIN then hid from FBBC the fact that the customer payments had been received by, among other things, causing defendant AGRIPROCESSORS' books to inaccurately reflect that no such payments had been received. By doing this, defendant RUBASHKIN caused defendant AGRIPROCESSORS' books to inaccurately reflect that customers owed inflated amounts of money on their accounts. As a result, defendant RUBASHKIN caused false certifications to be sent to FBBC on behalf of defendant AGRIPROCESSORS regarding the amount of defendant AGRIPROCESSORS' accounts receivable. Eventually, and in order to hide this portion of the scheme, defendant RUBASHKIN caused checks of AGRIPROCESSORS and third party entities he controlled to be drafted payable to defendant AGRIPROCESSORS and then presented to FBBC in such a way that they fraudulently appeared to be from a customer of defendant AGRIPROCESSORS.

The Execution of the Scheme to Defraud

On or about the dates set forth below, defendants SHOLOM RUBASHKIN and AGRIPROCESSORS, in execution and in furtherance of the scheme to obtain money and funds owned by and under the custody and control of First Bank and FBBC, knowingly caused the execution of the scheme as follows:

Count 11

On or about February 29, 2008, defendant SHOLOM RUBASHKIN, on behalf of defendant AGRIPROCESSORS, falsely certified to FBBC that defendant AGRIPROCESSORS' representations and warranties stated in the loan agreement were true as of that date. In fact, as defendant RUBASHKIN then knew, the representations and warranties were not true as of that date because defendant AGRIPROCESSORS was knowingly employing hundreds of illegal workers in violation of law and regulations.

Count 12

In about September 2008, without FBBC's knowledge, defendant AGRIPROCESSORS received customer payments from its customer, C.M.P., in an account other than the depository account. Defendant SHOLOM RUBASHKIN, on behalf of defendant AGRIPROCESSORS, delayed the deposit of those customer payments into the depository account. During the period of delay, defendant AGRIPROCESSORS used the money for its own benefit. Defendant RUBASHKIN, on behalf of defendant AGRIPROCESSORS, caused defendant AGRIPROCESSORS' books to inaccurately reflect that such payments had not been received, and caused

false certifications to be sent to FBBC which inaccurately stated the inflated amount of defendant AGRIPROCESSORS' accounts receivable.

This was in violation of Title 18, United States Code, Section 1344.

A TRUE BILL

/s/ Foreperson

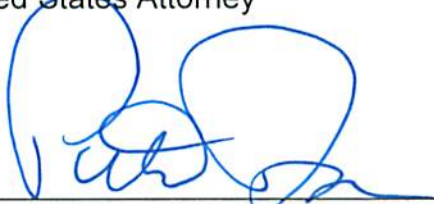
FOREPERSON

11/20/08

Date

MATT M. DUMMERMUTH
United States Attorney

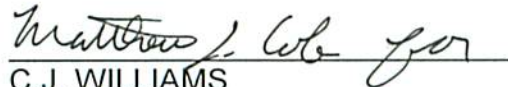
By:



PETER E. DEEGAN, JR.
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MATTHEW J. COLE
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C.J. WILLIAMS
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