

STATEMENT
OF
HIPOLITO M. ACOSTA
FORMER DISTRICT DIRECTOR
U.S. CITIZENSHIP & IMMIGRATION SERVICES AND
U.S. IMMIGRATION & NATURALIZATION SERVICE

REGARDING
A HEARING ON
ASYLUM FRAUD:
ABUSING AMERICA'S COMPASSION

BEFORE
THE SUBCOMMITTEE ON IMMIGRATION AND BORDER
SECURITY
THE COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

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Mr. Chairman and members of the Subcommittee, my name is Hipolito M. Acosta. In March 2005, I retired as the District Director of the U.S. Citizenship & Immigration Services (USCIS) Office in Houston, Texas after serving in various positions throughout the United States and two foreign countries during more than twenty-nine years of service. Prior to reporting to my last assignment, I served as the District Director of the U.S. Immigration & Naturalization Service office at the U.S. Embassy in Mexico City, a jurisdiction that covered Latin America and the Caribbean, including an INS office operating at the U.S. Interest Section in Havana, Cuba. Thank you for this opportunity to testify on our nation's asylum program.

Our nation has been a generous one in receiving immigrants from throughout the world who have sought protection from well-founded fears of persecution because of race, religion, nationality, membership in a particular social group or political opinion. In my long career in this field, I had the privilege of working on refugee and asylum matters as a front line officer as well as senior manager under the U.S. Immigration and Naturalization Service (INS). I bring to this hearing the unique perspective of having processed and adjudicated applications filed by Cubans during the Mariel Boatlift in 1980; Vietnamese applicants in Vietnam and the Philippines; served as the INS Officer in Charge of our processing team on the U.S. Naval Ship Comfort during the Haitian exodus in 1994 and finally, processed applicants at the INS office in Havana, Cuba in 1995. I will add that in addition to personally conducting credible fear interviews, as a senior officer of the agency I was tasked with reviewing all denial recommendations of other processing officers and signing off on the denials, a responsibility I took seriously as I knew very well the consequences applicants might face if we denied claims in error. I share with you my experience in the asylum field for a number of reasons, the most important being that lessons learned throughout those years are still valuable today as we see yet another surge in asylum applications, especially along our Southwest border.

CHALLENGES AND FRAUD IN ASYLUM PROCESSING

Adjudicating officers are tasked with an awesome responsibility that will have a lasting impact on the lives of those seeking asylum in our country. More importantly, they must take into account the security implications for our nation and communities when making those determinations. Oftentimes, those decisions are made with testimonial presentations and limited documentary evidence to assist them. Even when fraudulent documents are presented, that it itself is not sufficient to deny a credible fear claim.

There are many pros and cons to consider and discuss when addressing our asylum process and with limited time, I believe it important to address an area that poses not only a challenge when making these determinations but more importantly a factor that has often led to abuse of our generous policy – a lenient detention policy. In sum, my experience in this field and our history will show that a policy that includes the possibility of being paroled upon making a credible fear claim at our ports of entry or being granted relief while already inside the country is a huge magnet for aliens who would normally not qualify for other immigration benefits. This also provides a golden opportunity for individuals or organizations who want to profit from this activity, whether human smuggling or in assisting applicants with false claims. Please allow me to share with you my personal experiences that I believe will substantiate that position. This is a recent example of one such case.

A Honduran national was arrested and deported from the United States after residing in the country illegally for eight years. During that period, he established an extremely successful business enterprise and immediately upon arriving in his country, returned to the United States via Mexico using the services of a human smuggler to continue business operations. Two or three years after his illegal reentry, he sought the services of an immigration attorney to explore avenues available to legalize his status. For a huge fee and after having paid a large retainer, one of the options presented and recommended to him by the attorney was to file a credible fear claim. This despite the fact he had already been in country for more than one year. Since there was an actual deportation on file, the attorney offered that this record would be used to substantiate that he had departed the country and his illegal reentry date would be

based on what period they wanted to submit. Even more egregious was the recommendation by the attorney that cigarette burn marks would be placed upon him to be used as evidence of torture when he had been returned to Honduras and would likely be subjected to more torture because of his social class. Fortunately and despite the hefty retainer paid, he decided he wanted no part of this scheme, sought legal counsel elsewhere and reported the incident to authorities. While this is not the typical fraudulent type of claim, there are undoubtedly many more that would try to game the system.

Ports of entry along the Southern border and U.S. Border Patrol offices have reported large surges of individuals presenting credible fear claims, including large numbers by Mexican citizens fleeing violence or threats from vicious narcotics and criminal cartels operating throughout Mexico. It is undisputable that violence, extortion, kidnappings and other criminal activity has reached alarming levels in some Latin American countries but especially much more so in Mexico, where the great majority of organized criminal activity is controlled by the different Cartel groups. The criminal activity of the cartels is not limited to the aforementioned crimes, as smuggled aliens report that organizations involved in human smuggling are controlled by the cartels, oftentimes in collusion with law enforcement authorities.

With our enhanced border security and the cartel choke holds, the possibility of being allowed into the United States by making a credible fear claim and subsequently being released is an attractive magnet for citizens of Mexico and other Central American countries who would normally not qualify for non-immigrant visas. Why take a chance with an illegal border crossing when this option is available? This is also an attractive option for cartel members who fall out of favor within their own ranks, lose ground in some of the turf battles or simply want to continue their illicit activities in the United States but don't want to take the risk of apprehension by the U.S. Border Patrol while attempting illegal entry. The fact that many might have never been in the U.S. and would therefore not show up on any database check presents a huge problem for our officers when trying to make a determination on their claims. Our country has already experienced what the outcome can be when a lax detention policy is in place. These are important and expensive lessons that must not be allowed to repeat. I can share this through my personal involvement in one such surge in 1988.

SOUTH TEXAS – LATE EIGHTIES

Recent reports and statements have been made that aliens are arriving at “rates never seen before” claiming a “credible fear” of persecution while seeking to avoid being returned to their country of origin. These reports refer to the large surges of foreign nationals, largely from Central America and Mexico, claiming asylum at U.S. ports of entry and across our borders. These reports are not entirely correct as we have had larger numbers surge our borders using this same scheme as occurred in the later eighties. What’s important here is not the numbers of then and now but the reason for these surges.

The answer is rather simple – the ability to make a claim, whether genuine or not, that results in release and being able to continue travel into the United States to rejoin family members and in most cases, never report for any immigration hearings scheduled has been the magnet for those seeking entry into the United States.

In late 1988, the Harlingen, Texas District Office, facing budgetary restraints and limited detention space, instituted a policy of releasing on recognizance aliens from Central America who claimed they were fleeing violence and persecution in their homeland. Served with an Order to Show Cause with a time and date of the hearing to be set at a future date, the apprehended aliens were allowed into the community with instructions that they could not leave the border area. Not only did they not remain in the South Texas areas, the great, great majority of those released continue their northward treks with the assistance of smuggling organizations operating on both sides of the border.

As the Supervisory Special Agent in Charge of the U.S. Border Patrol Anti-Smuggling Unit in Brownsville, Texas I had received very reliable information through our contacts in Mexico and Central America that human smuggling organizations were recruiting heavily and planning to flood the border. Armed with this information, I immediately expressed my concerns through a memorandum I submitted through channels to our then Regional Commissioner, asking that the practice and policy be rescinded. My request was not heeded or addressed. As records will indicate, my concerns became a reality and South Texas was flooded with thousands of Central American aliens, many of whom would simply walk across the river and guided to the local U.S. Border Patrol office to turn themselves in for processing and release.

On numerous occasions, this number was over one thousand aliens encountered per day. References have been made that South Texas was flooded as a result of the 1986 Immigration Reform and Control Act and the amnesty provisions but that is far from true. What attracted these large numbers was the ability to evade detention and slip into the shadows in interior cities of the United States with the documents provided by our immigration authorities. Then and now, criminal organizations availed of our policy to profit. Could criminals have been included in those surges and could that happen today? Our experiences have already shown that smugglers, criminals and those that would harm our country would gladly avail of whatever method or scheme they can use to enter the United States. The following is an example of how this opportunity was used during the surges of 1988 and 1989.

Knowing they would not be detained, smuggling was brazenly and completely done in the open. On one occasion, agents under my supervision and I witnessed two busloads of Central American aliens being off-loaded on the Mexican side of the river while being escorted by law enforcement officials. Ultimately, we detained approximately 110 aliens who had been transported through Mexico and directly to the river by human smugglers. We filed charges on 10 human smugglers, the owner of a local low-end hotel and seized a number of taxi-cabs being used by the smuggling operation.

Aliens and human smugglers from Latin American countries are not the only ones attracted by our generous detention policies when pursuing credible fear claims. In mid-2000, a small number of Iraqi nationals made their way through Mexico to the border city of Tijuana using the services of a Detroit based smuggling organization. Corrupt Mexican immigration officials at the airport in Mexico City facilitated their entry into the country. Once on the border, the small number of arrivals commenced making credible fear claims and soon word spread. Within a short period of time, over two hundred had arrived in Mexico. When four smugglers in the group were arrested by Mexican authorities, extensive media attention was given to the plight of the Iraqi nationals who all claimed had fled their homeland seeking refuge from persecution because of their Christian religion. Some of those encountered had actually been out of Iraq for several years. Also not known to the public was the fact that Mexican immigration authorities had arrested a large number trying to transit the Mexico City airport

and had arrested at least one of their own immigration officers with information we had provided them. Our agency made a determination that we would not oppose the Mexican government releasing the large number of Iraqis they had held in custody with the understanding that those released would have to depart Mexico within a ten day period. Those released did in fact leave Mexico City – proceeding directly to Tijuana where they ultimately would apply for admission based on their claims of a well-founded fear of persecution.

Of particular note is the fact that many of these claimants had been in different countries prior to using Mexico as a jumping point. I would not dispute the fear of religious persecution by the Iraqi applicants but the risk to our country – this is pre-9/11 – was that in some cases there was no way to verify the true identities or backgrounds of all those in this large group. Of equal importance is determining if any type of follow-up was ever done on those that were allowed into the country and granted status.

Reaching our borders or getting inside the country has generally proven to enhance the possibility of being allowed to remain when claiming credible fear, regardless of whether the persecution exists or not. Not being able to reach our shores however, is a different story. An excellent example is that of the Haitian nationals and Cubans.

Not unlike the Mexican situation of today, Haitians have long had issues with ensuring protection of its citizens. The random acts of violence are well known as are the disparity in social classes. In 1994, I served as the Officer-in-Charge of the INS processing team onboard the U.S. Naval Ship Comfort. The vessel was used as a processing facility for thousands of who had fled Haiti but were interdicted at sea by the U.S. Coast Guard. The approval rate for those processed was in the low twenty percent, yet no one could dispute the hardship and violence prevalent in Haiti but our officers were required to adjudicate with the statute regulating well-founded fears of persecution. Had the number of Haitians interdicted reached out shores or borders, it is unlikely that we would have been able to process and return them to the country as efficiently as we did. This factor coupled with the high denial rate resulted in a complete slowdown of the mass exodus.

DETECTING FRAUD OR CRIMINAL BACKGROUNDS WHEN DOCUMENTS ARE NOT AVAILABLE
CUBAN MARIEL BOATLIFT PROGRAM

During the early part of 1980, close to 125,000 Cubans arrived on our shores in what became known as the Cuban Mariel Boatlift. When interviewed at the various processing sites established throughout the United States, all sought to establish they were fleeing their homeland because of persecution or a well-founded fear of persecution because of race, religion, nationality, membership in a particular social group, or political opinion.

Assigned to our U.S. Immigration and Naturalization processing team in Ft. McCoy, Wisconsin, I had an opportunity to interview and process several hundred applicants and their families. I have no doubt that many did indeed suffer persecution as a result of their opposition to an oppressive regime or other factors that would qualify them as asylum applicants. It is also true however, that many simply wanted to join relatives already in the United States and in fact, the Cuban government used this opportunity to empty their prisons and place hardened criminals on the vessels departing Cuba. Smugglers in South Florida seized on the open invitation to enrich themselves by offering their services to relatives in the United States willing to pay to have their relatives smuggled.

During interviews of applicants and their families, INS interviewing officers could easily determine the applicants had been coached prior to their interview. Their stories were consistently the same and in fact, we determined that when applicants were notified that they had been approved and sent to the waiting area, through sign language known to many of those who had been imprisoned in Cuba, would communicate what presentations or claims were being accepted to those still waiting to be interviewed. Through sources we developed inside the housing area, a second INS officer and I were able to learn the sign language used and would often surprise applicants with what story they were going to present as they commenced their credible fear claim interviews. Once confronted with this information, they readily admitted to the coaching.

Of particular concern was the large number of applicants who had spent years in Cuban prisons but not for political activity or oppression as many claimed. They had been sent to prison for criminal activity that included theft, rape, robberies, murder, etc. These applicants too were coached on how to claim asylum. Fortunately, we developed sources who provided information on a great number of these criminals and through interviews, were able to establish that they were a danger to our communities were they to be released.

Laureano Buffuartue was one of these asylum applicants. Detained in Cuba at the age of twelve for theft, he did not see freedom again until placed on one of the vessels destined for the United States. With information provided by confidential sources, I interviewed Mr. Buffuartue who readily admitted to killing three men during his prison time. Had this information not been developed, there is likelihood that through appropriate coaching, Mr. Buffuartue would have made a fraudulent claim and if approved, would have ended in one of our communities. Like Mr. Buffuartue, there were hundreds of other asylum seekers who were detained but many more that number who ultimately were released.

The discovery of Mr. Buffuartue occurred in 1980 but I am sure this could happen today with the influx of asylum seekers at our Ports of Entry or those detained along our border who make a claim to credible fear. These could include criminals for which no background check, including FBI checks or those done through other data-bases would disclose their identity or true background. This type of information would only be revealed through the interview conducted by an officer with the skills, knowledge and time to pursue this matter or from information from foreign agencies.

The persecution claims presented by the Cubans in Mt. McCoy, Wisconsin were not limited to asylum applicants already in the United States. In 1996, I conducted refugee interviews at the U.S. Interest Section in Havana, Cuba and found that many of the same stories were presented to adjudicating officers. When additional documents were requested, applicants had no problems in obtaining those documents through the Cuban authorities. It was also not uncommon to discover that the documents obtained in many cases contained fraudulent information that would benefit an applicant in pursuing his credible fear claim.

During one interview with a family unit that consisted of sixteen family members, I informed the principal applicant that he had not met the criteria to establish a well-founded fear of persecution based on his testimony and documentation. He and his immediate family however, qualified for parole into the United States based on an immigrant visa petition filed by relatives in the country already. He and the family members refused the offer of parole and chose to stay in Cuba because they would not qualify for benefits granted to refugee entrants and would have to pay for their transportation. Had they really feared persecution, there is no doubt they would have fled at this opportunity.

CONCLUSION AND RECOMMENDATIONS

The examples of fraudulent claims in the asylum process I mention in my presentation are just a few of many that have occurred throughout the years. Studies conducted have shown the vulnerabilities in the process and what is necessary in combating this fraud. I urge that some of the measures I mention here are continued or expanded to assist USCIS in making the asylum determinations:

The close and continued cooperation between USCIS, ICE and DOJ is crucial in pursuing prosecution of immigration service providers involved in massive fraud and misrepresentation such as in the example earlier in this document of an attorney suggesting that a client consider having burn marks placed on his body as evidence of torture. Prosecution is crucial not only of the immigration service providers but the applicants themselves who conspired and assisted with the Service providers in submitting their fraudulent claims to obtain benefits. Action against the applicants should include detention and deportation as a result of filing fraudulent applications.

Extensive data-base checks must continue and as in previous case studies indicate, must be completed before a benefit is granted.

Overseas verification of documents is crucial when fraud indicators are present and can best be addressed through a timely response from overseas offices. These requests must be

given high priority by the receiving office and if a response is not received within a mandated time period, call-up measures must be implemented.

Finally, extensive studies should be conducted on a yearly basis to analyze and identify fraud patterns and practices. This information is vital for adjudicators in making their determinations and in identifying vulnerabilities in the program.