

Immigration Legal Initiatives

In This Issue

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The Executive Office for United States Attorneys' Involvement in Immigration Law Enforcement

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I. Introduction

The Executive Office for United States Attorneys (EOUSA) is actively involved in the issues relating to immigration law enforcement. Director of EOUSA, Ken Melson, has assembled a team that provides a significant value-added contribution to the work of the United States Attorneys' offices (USAOs) regarding this important issue. Acting Deputy Director and Counsel to the Director, Norman Wong; David Smith, the Counsel for the Legal Initiatives Staff; and Dan Villegas, the Counsel for Legal Programs and Policy have daily interaction with organizations and bureaus within the Department of Justice (Department) as well as with law enforcement partners regarding issues associated with criminal and civil immigration enforcement. Lisa Bevels, the Chief Financial Officer for EOUSA, along with members of her staff, have worked with the Justice Management Division and the Office of Management and Budget regarding the financial impact of immigration enforcement on the budget of the USAOs.

During 2006 and 2007, as Congress considered various bills pertaining to immigration matters—administrative, civil, and criminal EOUSA personnel worked closely with other stakeholders within the Department to develop an appropriate Departmental response to the proposed legislation. EOUSA worked with various United States Attorneys and Assistant United States Attorneys (AUSAs) to provide analysis of proposed legislation by subject-matter experts to the policy makers with the Department

and elsewhere. EOUSA has also provided briefings on various matters to members of Congress, their staffs, and committee staff regarding immigration-related issues such as material witnesses and various work-site enforcement operations. EOUSA staff also routinely attend meetings of various task forces and working groups, both formal and informal, as issues pertaining to immigration enforcement and policy are discussed.

As a part of this process, EOUSA ensures that a line of communication is maintained between the Department and the USAOs. EOUSA also supports the work of the Attorney General's Advisory Committee (AGAC), which includes the Border and Immigration Subcommittee (BIS). The BIS is made up of United States Attorneys with experience in border (northern, southwestern, and coastal/maritime) related immigration issues and interior immigration enforcement. The BIS also frequently holds joint meetings with the AGAC's Controlled Substances and Asset Forfeiture Subcommittee because of the overlap of border and controlled substances issues.

The integrity of a nation's borders and its immigration laws—to control who and what comes into and out of the country—is fundamental to any nation's security. This is why Congress has passed numerous acts related to border security, immigration, and work-site enforcement. For the same reason, the Attorney General has identified immigration enforcement as one of the Department's priorities.

II. Department of Justice's immigration enforcement policy

The immigration enforcement policy of the Department is comprehensive in scope.

- The Department recently prosecuted a violent smuggling organization case in Arizona where a defendant was sentenced to 20 years for holding 76 aliens hostage and using an assault rifle to intimidate and control them while they were held in three small bedrooms with little food or water. *Available at* <http://www.judiciary.house.gov/hearings/pdf/Rhodes080724.pdf> at 1.
- In San Diego, the kingpin of an organization that smuggled hundreds of people across the border was prosecuted and sentenced to 17+ years. *Id.* at 2.
- In Texas, the Department prosecuted a human trafficking organization. Eight defendants received sentences up to 15 years and were ordered to pay \$1.7 million to the 120 women who were victims of their labor and sex trafficking ring. *Id.*
- The Department prosecutes employers and corporations who knowingly hire illegal workers, such as the recent case in Connecticut involving a donut franchise. *Id.* and in Arizona involving the foreman of a drywall company. *Id.*
- Those who help others obtain false immigration documents are also prosecuted by the Department. There are charges currently pending against two supervisors at Agriprocessors. *Id.*
- Those who use false immigration and Social Security documents—identities that are often stolen from real people—are prosecuted to prevent the circumvention of immigration laws. *Id.*

Indeed, such prosecutions may allow investigators to work up the chain and obtain evidence from witnesses who can testify against document vendors, the employers, and corporations.

Earlier this year the Department increased civil fines by 25 percent, the maximum allowed by law and first such increase since 1999, for those employers who knowingly hire illegal immigrants. On July 16, 2008, in Las Vegas, Nevada, the Department announced guilty pleas in

a case involving a fast food franchise and two corporate executives on immigration charges. The company agreed to pay a \$1 million fine for encouraging illegal aliens to reside in the United States. *Available at* <http://www.usdoj.gov/opa/pr/2008/July/08-opa-616.html>.

III. Increased misdemeanor prosecutions along the southwest border

In addition to these important felony prosecutions, the Department and the USAOs have undertaken Operation Streamline to increase misdemeanor prosecutions along the southwest border, and Congress has appropriated \$22 million dollars to be used toward that effort. The Department is grateful for that assistance and is in the process of hiring 64 new prosecutors and approximately 100 new Deputy U.S. Marshals and other personnel to handle the increased cases—both misdemeanor and felony. The caseload of immigration misdemeanor offenses has grown from 18,311 in Fiscal Year (FY) 2000 to 35,260 in FY 2007. *Table M-2, Annual Report of the Director, Judicial Business of the United States Courts, Administrative Office of the United States Courts.* FY 2000 is available at <http://www.uscourts.gov/judbus2000/appendices/m02sep00.pdf>, and FY 2007 is available at <http://www.uscourts.gov/judbus2007/appendices/M02Sep07.pdf>.

Twenty-one new AUSA positions and additional contract support personnel have been allocated for the District of Arizona. This is a significant increase from the 133 AUSAs currently in the district. The Southern District of Texas was allocated an additional 13 AUSA positions. The Western District of Texas received 16 new AUSA positions in addition to the more than 130 AUSAs on staff. The District of New Mexico and the Southern District of California each received 7 more AUSAs as well. These new prosecutors will handle drug and gun smuggling, illegal entry and re-entry, work-site enforcement, and false documents cases. In addition to these funds, which are being used in the current fiscal year, the Department has requested, in its FY 2009 budget, another \$100 million to help fight

criminal activity along the border as part of the Southwest Border Enforcement Initiative.

The Department and the USAOs are assisted by attorneys from both Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) within the Department of Homeland Security (DHS) and have been cross designated as Special Assistant United States Attorneys (SAUSAs). These SAUSAs prosecute cases not only in unusual circumstances, such as a large work-site enforcement action, but also prosecute cases day-to-day in various locations such as Del Rio, Texas and Tucson, Arizona. The services these detailed attorneys provide is very much appreciated by the Department.

The Department and the southwest border USAOs have always pursued large-scale cases on the border. The Department remains committed to that effort. This new money and the positions it will fund means that more cases will be prosecuted than before.

Already the Department's efforts, and those of our DHS partners, are showing results. During the first 8 months of FY 2008, felony immigration prosecutions along the entire southwest border have increased by 19 percent over the prosecutions from FY 2007. At the same time, apprehensions along the southwest border have decreased by 21 percent from FY 2007. This is a remarkable change—in both directions—in a short period of time. This change suggests that immigration prosecutions at the southern border and in interior states, as well as the actions that DHS has taken, are having a deterrent effect on illegal immigration. Further, apprehensions are down in seven of the nine Border Patrol sectors and in all of the southwest border districts. The Department believes this drop is evidence that the success is due to a comprehensive immigration strategy which builds on itself and incorporates each of the efforts described.

IV. The prosecution of border-related federal offenses

The prosecution of border-related federal offenses is one of the top priorities of the

Department. Illegal immigration occurs throughout the United States, but it is the southwest border which generates the greatest public concern due to the extremely high number of crossings. The five USAOs along the southwest border (the Southern District of Texas, the Western District of Texas, the District of New Mexico, the District of Arizona, and the Southern District of California) are among the busiest of the 94 USAOs.

- In FY 2006, the five southwest border districts filed 11,820 felony immigration cases, which was 66 percent of the total for the ninety-four districts.
- Those 11,820 cases were filed against 12,910 felony defendants, which was 67 percent of the national total, with a 96.3 percent conviction rate.
- The vast majority (92.3 percent) of these 12,910 felony defendants received jail time.
- In FY 2007, the southwest border USAOs filed 11,996 cases, 66 percent of the national total, against 13,076 felony defendants, also 66 percent of the national total.
- In FY 2007, the offices had a 96 percent conviction rate and 93 percent of the defendants received jail time.

It is important to emphasize that these case and defendant counts do not include the tens of thousands of misdemeanor immigration cases, which again are principally filed by the southwest border USAOs.

V. Southwest border security

The FY 2008 Omnibus appropriation, which was signed in late December 2007, appropriated additional funds for the southwest border USAOs. In January 2008, the Director, Executive Office for United States Attorneys, held a Southwest Border Immigration Enforcement Summit in Washington. The meeting was attended by more than 70 people including:

- The Attorney General;
- The Deputy Attorney General;

- Five southwest border U.S. Attorneys;
- Most of the southwest border Marshals;
- The Chief of the U.S. Border Patrol;
- The Director, Investigations of ICE; and
- Representatives of the Administrative Office of the U.S. Courts

The meeting was designed to facilitate EOUSA's recommendations regarding the allotment of the new FY 2008 prosecution resources, to eliminate "stove pipes" among the participants, and to think strategically about a coordinated response to the problems each component and participant faces. A "stove pipe" occurs when the structure of the organization largely or entirely restricts the flow of information within the organization to up-down through lines of control but inhibits or prevents cross organizational communication. *Available at* [http://en.wikipedia.org/wiki/Stovepipe_\(organisation\)](http://en.wikipedia.org/wiki/Stovepipe_(organisation)). In other words the goal of the meeting was to increase the communications between various components involved with criminal immigration enforcement including the arresting agencies, prosecutors, and support agencies such as the Marshals Service, Courts, and the like.

In February 2008, the five southwest border United States Attorneys submitted multiyear strategic plans which detailed their district's specific approaches to border security, drug trafficking, and illegal immigration. EOUSA also designated a "National Immigration Coordinator" to maintain a high level of coordination and communication with the USAOs and their law enforcement partners investigating and prosecuting immigration and related crimes. The Director of EOUSA, Ken Melson, has also traveled to Yuma and Tucson, Arizona and to Del Rio, Texas to observe court proceedings and to talk to the U.S. Attorneys, Border Patrol, and federal judges regarding criminal immigration enforcement and related topics.

The USAOs in the southwest border states are prosecuting large numbers of misdemeanor entry without inspection (EWI) cases, as part of

increased law enforcement efforts along the southwest border. Among these efforts are the following:

- Operation Streamline in Del Rio, Texas, and similar programs in Laredo, Texas and Yuma, Arizona;
- Operation Arizona Denial in Tucson;
- New misdemeanor initiatives in Brownsville and McAllen, Texas;
- Operation Lockdown in Las Cruces; and
- Operation No Pass in El Paso.

Prosecuting multiple EWI cases each day places high demands on the resources and physical capacities of the USAOs, the United States Marshals Service, the Office of the Federal Detention Trustee, and the local court infrastructures.

VI. Recent immigration prosecutions

A few examples of recent and successful immigration prosecutions include the following:

- In the Southern District of Texas, a defendant was convicted of eight counts of conspiring to hold victims in a condition of forced labor and of smuggling and harboring aliens. The defendant and her codefendants smuggled female illegal aliens ranging in age from sixteen to thirty-eight from Central America to Houston, Texas, promising legitimate jobs in a restaurant. Once in Houston, however, the women and girls were held in a condition of servitude in bars owned by the conspirators until the women paid their smuggling debt to the defendants. The defendants used threats of physical violence to the women and their families to keep the women from escaping. Five other defendants were convicted of conspiracy and/or harboring charges, as well as obstruction of justice.

Available at <http://judiciary.house.gov/hearings/pdf/Melson080625.pdf> at 21.

- In the District of Arizona, a defendant was sentenced to 45 months in custody after

pleading guilty to reentry after removal. The defendant had been convicted of six prior immigration offenses in the past 4 years. In this case, the defendant was sentenced to 24 months in prison on the substantive charge and received a consecutive sentence of 21 months for violating a previous term of supervised release. *Id.*

- In the District of New Mexico, a defendant who had been twice deported was charged with illegal re-entry. After being convicted at trial, and because of his extensive criminal history, the defendant received a sentence of 120 months, the top of the applicable guideline range. The sentence was affirmed on appeal and is one of the highest in New Mexico for a re-entry conviction. *Id.*
- In the Western District of Texas, a defendant was convicted of conspiring to transport hundreds of illegal aliens into the United States. The charges arose from the discovery of 32 aliens in a mobile home. The aliens were being detained by the defendant until additional fees were paid. One of the smuggled aliens became ill during the journey to the United States, was abandoned by the smugglers, and ultimately died of heatstroke. Over \$700,000 in cash receipts were discovered. The defendant was sentenced to 120 months. *Id.* at 21-22.
- In the Southern District of California, a defendant was sentenced to 60 months following his conviction for transporting five illegal aliens. The aliens were hidden in the bed of a pickup truck without safety belts or harnesses, and covered with a tarp. Fleeing from the Border Patrol, the defendant drove at a high rate of speed even though one of the tires was flat. The defendant ran through a series of red lights and struck multiple private vehicles. *Id.* at 22.

Immigration enforcement is not limited to the southwest border. The Criminal Alien Prosecution Initiative (CAP) is well underway and criminal prosecution of more aliens through an innovative team approach with the Office of Detention and Removal Operations (DRO) component of ICE

has resulted. CAP is being expanded to interior districts as well.

VII. The future of border security and immigration efforts

As the Department and USAOs look to FY 2009 and beyond, continued Congressional support is critical to the further success of border security and immigration efforts. New personnel must be hired and trained, new courthouses, prison beds, holding cells, and office space must be constructed or procured. It is also important to ensure that there are sufficient district and magistrate judges, support staff, marshals, and defense counsel to handle the rising caseload. These requirements will take time, advanced planning and cooperation, and careful coordination between governmental departments and branches to preserve the stability of the entire system.

VIII. Work-site enforcement

The issue of work-site enforcement remains a much discussed topic both in the media and by members of Congress. The USAOs are supportive of ICE work-site enforcement. Since 2005, most of the USAOs have criminally prosecuted one or more work-site cases. The most frequent charges related to work-site enforcement are:

- Harboring and transporting illegal aliens;
- Knowingly hiring illegal aliens;
- Illegal reentry after removal;
- Possession of false immigration documents; and
- Possession of false Social Security Cards.

The term work-site enforcement can include:

- The administrative removal of aliens from a job site;
- The criminal prosecution of those particular workers;
- The prosecution of a given company or corporate officers; and

- Some combination of all of those approaches or some different approach.

The Department realizes that there is no "one way" to investigate or prosecute criminal cases and one size does not fit all.

EOUSA has worked closely with USAOs as well as with ICE and other agencies in helping to coordinate multi-district work-site enforcement operations. One of the first large scale work-site enforcement operations was Operation Wagon Train in December 2006. Operation Wagon Train took place in six judicial districts: Colorado, Nebraska, Northern District of Texas, Utah, Southern District of Iowa, and Minnesota. The operation targeted Swift and Company, one of the nations largest processors of pork and beef. In total 1,297 aliens were administratively arrested in connection with the raids on December 12, 2006. Available at http://www.ice.gov/pi/news/news_releases/articles/070711washingtndc.htm. Subsequently 274 of those individuals were criminally prosecuted in either federal or state court. *Id.*

The numbers below come from e-mails sent to EOUSA which were compiled into a memorandum for the ODAG and EOUSA senior management. While some districts did a press release others did not. Most of the aliens who were administratively arrested were not federally prosecuted. In other instances, state offices did the bulk of the prosecutions for various state offenses.

- In Northern Texas, 295 people were administratively arrested and 53 were charged with various federal violations, typically related to fraudulent documents.
- In Minnesota, approximately 223 aliens were administratively arrested and 20 were criminally prosecuted, again usually for document-related offenses.
- In the Southern District of Iowa, about 38 people were criminally charged, most with document offenses. A union official and a human resources official with Swift were also prosecuted.

- In Nebraska, approximately 250 people were administratively detained and 28 were federally prosecuted.
- In Utah, 19 defendants were federally prosecuted and 133 were charged in state court with various identity theft and document related charges.
- In Colorado, about 260 people were administratively arrested, 1 was federally prosecuted, and 18 were prosecuted by state authorities.
- A large scale work-site enforcement operation was conducted targeting Pilgrims Pride (a poultry processing company) in April 2008. That operation occurred in five districts and was principally administrative in scope.
- In May 2008, a large operation was conducted at Agriprocessors in Postville, Iowa. In that raid, 389 aliens were administratively arrested and more than 300 were criminally prosecuted, again, most for document-related offenses.

Available at <http://judiciary.house.gov/hearings/pdf/Rhodes080724.pdf> at 4.

In late August 2008, ICE, in consultation with the USAO for the Southern District of Mississippi, raided Howard Industries, an electronic transformer plant in Laurel, Mississippi. Approximately 1,600 workers were encountered and interviewed. Of these, about 1,000 were United States citizens or lawful permanent resident aliens and approximately 600 were aliens illegally present and working in the United States. ICE said that the 600 illegal aliens arrested in a single work-site enforcement operation during 1 day may be a new record. Eight aliens were criminally prosecuted for various violations. Available at <http://www.ice.gov/pi/nr/0808/080826laurel.htm>. ❖

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Immigration Coordinator for EOUSA. He served as an AUSA in the Southern District of Texas, Brownsville Division from 1987 to 1997 and has been an AUSA in New Mexico assigned to the Las Cruces Branch Office since 1997. He has held a number of supervisory positions with the District of New Mexico including Branch Office Supervisor.

Immigration Enforcement and the Department of Justice

Trevor N. McFadden
Counsel to the Deputy Attorney General

"The ability to control who—and what—comes into and out of a country is one of the most important attributes of a sovereign government, and being able to do that is vital to our nation's security." Press Release Attorney General Michael B. Mukasey, State of the Border Press Briefing (Feb. 22, 2008) (on file with author).

Recognizing the growing importance of immigration issues to our national security, the Attorney General has identified immigration enforcement as one of the Department of Justice's (Department) key priorities. In addition to the obvious security threat illegal immigration poses, immigration enforcement encompasses concerns like human trafficking, drugs and weapons trafficking, border violence, worker abuse and mistreatment, and identity theft.

The Department's immigration enforcement policy is guided by two key insights. First, the Department recognizes that one size does not fit all. Flexibility is essential given the diversity of geography, threats, and resources among the districts. One United States Attorney's Office (USAO) may face serious border violence and need to focus on assaults of Border Patrol agents.

Another office may face a factory full of illegal aliens who have assumed other people's identities and need to address identity theft. A third district may face an increase in illegal border crossings and therefore focus on those who enter the country without inspection. Of course, the threats change over time; as the government pushes back on illegal border crossings in one area, border violence may increase there as a result.

Second, there is a flip-side to the need for flexibility. A successful national immigration enforcement strategy must be comprehensive. Unlike some crimes, immigration crimes transcend individual towns or districts. An immigration prosecution strategy put in place in one district may simply shift the problem to a neighboring district if careful planning and communication are neglected. Any issue as big and multifaceted as immigration enforcement implicates numerous agencies in multiple departments. Coordination is essential at the national and local levels.

The comprehensiveness of our immigration strategy is reflected in the variety of immigration enforcement operations found throughout the country. When appropriate, the Department prosecutes:

- Violent smuggling organizations, which often victimize their "clients" as well as anyone else who gets in their way;
- Human trafficking organizations and those who enslave other human beings;
- Employers and corporations who hire illegal aliens. We know that the supply of illegal workers is closely tied to the demand for their cheap labor and the potential for employers imposing harsh and often dangerous working conditions;
- "Document vendors," and those who help others obtain false immigration and identification documents;
- Those who use these false immigration and identification documents. The identities reflected in these documents are often stolen from other real people, causing them significant financial harm and emotional grief; and
- People entering the country illegally, whether they are criminal aliens found in the nation's jails, aliens with a history of previous deportations, or aliens who cross the border in a misdemeanor immigration prosecution program zone.

Decisions about the most effective way to tackle local problems are best made by the local prosecutors and agents who know the situation. Because of this, the Department does not micromanage local enforcement efforts from Washington or require enforcement initiatives that have been successful in certain areas to be replicated in areas where they may be less suitable.

This unprecedented array of immigration enforcement investigations and prosecution programs shows that the Federal Government is serious about attacking the problems associated with illegal immigration at all levels. And federal law enforcement efforts are showing results. During the first 8 months of Fiscal Year (FY) 2008, immigration prosecutions along the Southwest border increased by 19 percent over FY 2007. During the same time period,

apprehensions along the Southwest border decreased by 21 percent. Apprehensions are down in each of the Southwest border districts, not just in isolated areas. This remarkable change strongly suggests that the comprehensive immigration enforcement strategy is working.

The Department is taking a number of steps to increase coordination of immigration enforcement. This year, both the Attorney General and the Deputy Attorney General visited border districts to speak with the local prosecutors and agents and see firsthand the pressing issues facing the Department along the Southwest border. Earlier this year, the Executive Office for United States Attorneys (EOUSA) called together key officials from the Southwest border USAOs, relevant law enforcement agencies, policymakers, and court administrators, to discuss the Southwest border strategy. EOUSA and the United States Marshals Service (USMS) recently appointed Immigration Coordinators within their agencies to help facilitate immigration issues within the component and liaise with other agencies. Both the Attorney General's Advisory Committee and representatives from various Department components, led by the Office of the Deputy Attorney General, are meeting to discuss various immigration issues and consider further enhancements to the Department's immigration enforcement strategy.

Coordination efforts extend beyond the Department. Department personnel work closely with our partners at the Department of Homeland Security to execute the overlapping duties relating to immigration enforcement. Coordination with other federal, state, and local law enforcement agencies is also undertaken. Finally, the Department enjoys unprecedented cooperation from the Mexican government. Multiple high-level meetings between Department officials and their Mexican counterparts have taken place over the last couple of years, resulting in record numbers of extraditions from Mexico. The Mexican government is aggressively combating the drug cartels that are responsible for so much criminal activity in both countries.

Any effort of this size and complexity requires tremendous resources. On the Southwest border alone, Congress allocated an additional \$22 million last year for USAOs and the USMS. This money helped fund 64 new prosecutor slots, about 30 contract support staff, and approximately 100 new Marshal personnel. As part of the focus on flexibility, many of these positions are term-designated, so that resources can be reallocated later if needs change along the border. The Department has requested an additional \$100 million for the coming year to supplement the prosecutorial and law enforcement offices along the Southwest border.

As noted, immigration enforcement transcends the five Southwest border districts. Interior enforcement, ports of entry throughout the country, and the Northern border are all integral to an effective immigration enforcement strategy. That is why the Department seeks to address immigration issues throughout the country as well as the Southwest border cohesively, whether in the development of our immigration enforcement strategy or in our budgetary process.

With more resources and enhanced coordination, the Department expects to see even more progress in immigration enforcement efforts. The Department's flexible, yet comprehensive, response to immigration crimes is intended to allow prosecutors and agents at the local level to appropriately address the issues facing them while maintaining the overall coordination and cohesion that are necessary for an initiative of this size and scope. ❖

ABOUT THE AUTHOR

❑ **Trevor N. McFadden** is a Counsel to the Deputy Attorney General. Since joining the Department in 2007, he has advised the Deputy Attorney General on a variety of issues, including immigration, civil rights, prisons, identity theft, and tribal justice. ❖

Office of Immigration Litigation's District Court Section Offers Expertise in National Security Issues Involving Immigration

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Trial attorneys in the Office of Immigration Litigation's District Court Section (OIL-DCS) litigate several types of cases with national

security issues (NSI). Many of these cases arise in litigation challenging U.S. Citizenship and Immigration Service's (USCIS) delayed adjudication of applications for adjustment of status, delayed adjudication of naturalization applications, and decisions denying those and other immigration benefits.

In litigation, where USCIS has received the results of the FBI name check, or other security checks, OIL-DCS plays an active role in helping to assess the nature of the information and coordinate the litigation strategy. Many cases that are thought to implicate national security information are found to involve derogatory information based on investigations into criminal activity, document fraud, or marriage fraud. Other cases, however, do involve national security information. In such cases, OIL-DCS attorneys have found success by bringing all the players to the table as soon as possible in order to:

- Assess USCIS's intent to use the information in support of their adjudication;
- Decide whether the information can be used by USCIS in its present form, or whether it is necessary to begin the lengthy processes of requesting declassification, seeking the requisite permissions to present the information in camera and ex parte;
- Determine whether there are any objections to the final outcome of the adjudication (whether there is concern that the inability to disclose classified information would lead to the approval of a benefit, or whether the denial of a benefit might hinder an ongoing operation); and
- Plan the end game if a benefit is denied, including issuance of a Notice to Appear.

The newest litigation trend in USCIS cases being handled by OIL-DCS involves aliens who may have provided material support to terrorism. In these cases, the aliens have already obtained asylee status, but USCIS has placed on hold the ability of the asylees to adjust their status based on whether the asylees' have ties with, or membership in, Tier II or Tier III terrorist organizations. The list of Tier II terrorist organizations follows.

A "Tier III" group is one that is not listed or designated as a "terrorist organization" through any public process but is considered to be a "terrorist organization" for purposes of the INA because it "is a group of two or more individuals, whether organized or not, which engages in, or

has a subgroup that engages in" the INA's definition of what it means to "engage in terrorist activity" (INA § 212(a)(3)(B)(iv)), available at <http://www.humanrightsfirst.info/pdf/08130-asy-new-amendmensts-ina.pdf>. OIL-DCS attorneys have coordinated closely with USCIS to strategize on handling these cases in the face of challenges under the Administrative Procedure Act (APA) for unreasonable delay. In defending the agency's actions, OIL-DCS cites to the Consolidated Appropriations Act (CAA) of 2008 and the expanded discretionary authority the CAA provides to the Secretary of Homeland Security to exempt certain groups from inadmissibility resulting from their provision of material support to Tiers II and III groups. While administrative hold has the potential to result in a grant of adjustment, rushed adjudication is likelier than not to result in a denial of adjustment since adequate information about a group might be lacking in the near term to justify that group's exemption under the CAA of 2008.

OIL-DCS is well equipped to handle these immigration cases involving national security, and has set up a secure room sufficient for secure discussion of NSI matters up to the Secret Level. Inside the room are two secure phones and a secure fax machine, each secure up to the Top Secret level.❖

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Current List of Designated Foreign Terrorist Organizations – "Tier II" Terrorist Organizations

1. Afghan Support Committee (a.k.a. Ahya ul Turas; a.k.a. Jamiat Ayat-ur-Rhas al Islamia; a.k.a. Jamiat Ihya ul Turath al Islamia; a.k.a. Lajnat el Masa Eidatul Afghania)
2. Al Taqwa Trade, Property and Industry Company Ltd. (f.k.a. Al Taqwa Trade, Property and Industry; f.k.a. Al Taqwa Trade, Property and Industry Establishment; f.k.a. Himmat Establishment; a.k.a. Waldenberg, AG)
3. Al-Hamati Sweets Bakeries
4. Al-Ittihad al-Islami (AIAI)
5. Al-Manar
6. Al-Ma'unah
7. Al-Nur Honey Center
8. Al-Rashid Trust
9. Al-Shifa Honey Press for Industry and Commerce
10. Al-Wafa al-Igatha al-Islamia (a.k.a. Wafa Humanitarian Organization; a.k.a. Al Wafa; a.k.a. Al Wafa Organization)
11. Alex Boncayao Brigade (ABB)
12. Anarchist Faction for Overthrow
13. Army for the Liberation of Rwanda (ALIR) (a.k.a. Interahamwe, Former Armed Forces (EX-FAR))
14. Asbat al-Ansar
15. Babbar Khalsa International
16. Bank Al Taqwa Ltd. (a.k.a. Al Taqwa Bank; a.k.a. Bank Al Taqwa)
17. Black Star
18. Communist Party of Nepal (Maoist) (a.k.a. CPN(M); a.k.a. the United Revolutionary People's Council, a.k.a. the People's Liberation Army of Nepal)
19. Continuity Irish Republican Army (CIRA) (a.k.a. Continuity Army Council)
20. Darkazanli Company
21. Dhamat Houmet Daawa Salafia (a.k.a. Group Protectors of Salafist Preaching; a.k.a. Houmat Ed Daawa Es Salafiya; a.k.a. Katibat El Ahoual; a.k.a. Protectors of the Salafist Predication; a.k.a. El-Ahoual Battalion; a.k.a. Katibat El Ahouel; a.k.a. Houmate Ed-Daawa Es-Salafia; a.k.a. the Horror Squadron; a.k.a. Djamaat Houmat Eddawa Essalafia; a.k.a. Djamaatt Houmat Ed Daawa Es Salafiya; a.k.a. Salafist Call Protectors; a.k.a. Djamaat Houmat Ed Daawa Es Salafiya; a.k.a. Houmate el Da'awaa es-Salafiyya; a.k.a. Protectors of the Salafist Call; a.k.a. Houmat ed-Daaoua es-Salafia; a.k.a. Group of Supporters of the Salafiste Trend; a.k.a. Group of Supporters of the Salafist Trend)
22. Eastern Turkistan Islamic Movement (a.k.a. Eastern Turkistan Islamic Party; a.k.a. ETIM; a.k.a. ETIP)
23. First of October Antifascist Resistance Group (GRAPO) (a.k.a. Grupo de Resistencia Anti-Fascista Premero De Octubre)
24. Harakat ul Jihad i Islami (HUJI)
25. International Sikh Youth Federation
26. Islamic Army of Aden
27. Islamic Renewal and Reform Organization
28. Jamiat al-Ta'awun al-Islamiyya
29. Jamiat ul-Mujahideen (JUM)
30. Japanese Red Army (JRA)
31. Jaysh-e-Mohammed
32. Jayshullah
33. Jerusalem Warriors
34. Lashkar-e-Tayyiba (LET) (a.k.a. Army of the Righteous)
35. Libyan Islamic Fighting Group
36. Loyalist Volunteer Force (LVF)
37. Makhtab al-Khidmat
38. Moroccan Islamic Combatant Group (a.k.a. GICM; a.k.a. Groupe Islamique Combattant Marocain)
39. Nada Management Organization (f.k.a. Al Taqwa Management Organization SA)
40. New People's Army (NPA)
41. Orange Volunteers (OV)
42. People Against Gangsterism and Drugs (PAGAD)
43. Red Brigades-Combatant Communist Party (BR-PCC)
44. Red Hand Defenders (RHD)
45. Revival of Islamic Heritage Society (Pakistan and Afghanistan offices -- Kuwait office not designated) (a.k.a. Jamia Ihya ul Turath; a.k.a.

- Jamiat Ihia Al- Turath Al-Islamiya; a.k.a. Revival of Islamic Society Heritage on the African Continent)
46. Revolutionary Proletarian Nucleus
 47. Revolutionary United Front (RUF)
 48. Salafist Group for Call and Combat (GSPC)
 49. The Allied Democratic Forces (ADF)
 50. The Islamic International Brigade (a.k.a. International Battalion, a.k.a. Islamic Peacekeeping International Brigade, a.k.a. Peacekeeping Battalion, a.k.a. The International Brigade, a.k.a. The Islamic Peacekeeping Army, a.k.a. The Islamic Peacekeeping Brigade)
 51. The Lord's Resistance Army (LRA)
 52. The Pentagon Gang
 53. The Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs (a.k.a. Riyadus-Salikhin Reconnaissance and Sabotage Battalion, a.k.a. Riyadh-as-Saliheen, a.k.a. the Sabotage and Military Surveillance Group of the Riyadh al-Salihin Martyrs, a.k.a. Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Shahids (Martyrs))
 54. The Special Purpose Islamic Regiment (a.k.a. the Islamic Special Purpose Regiment, a.k.a. the al-Jihad-Fisi-Sabililah Special Islamic Regiment, a.k.a. Islamic Regiment of Special Meaning)
 55. Tunisian Combat Group (a.k.a. GCT, a.k.a. Groupe Combattant Tunisien, a.k.a. Jama'a Combattante Tunisien, a.k.a. JCT; a.k.a. Tunisian Combatant Group)
 56. Turkish Hizballah
 57. Ulster Defense Association (a.k.a. Ulster Freedom Fighters)
 58. Ummah Tameer E-Nau (UTN) (a.k.a. Foundation for Construction; a.k.a. Nation Building; a.k.a. Reconstruction Foundation; a.k.a. Reconstruction of the Islamic Community; a.k.a. Reconstruction of the Muslim Ummah; a.k.a. Ummah Tameer I-Nau; a.k.a. Ummah Tameer ENau; a.k.a. Ummah Tameer-I-Pau)
 59. Youssef M. Nada & Co. Gesellschaft M.B.H.

Large Scale Immigration Benefit Fraud: Prosecution Tips and Resources

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I. Introduction

Vast numbers of aliens are interested in coming to the United States to live and work. With limited lawful means of doing so, a large market exists to assist aliens in obtaining temporary and permanent benefits through fraud. Attorneys and immigration service-providers have earned substantial sums assisting aliens in

obtaining benefits from the government based on fraud.

Aliens and those assisting them have incentive to lie to obtain temporary employment-based non-immigrant visas, family-based immigrant visas, asylum, and lawful permanent residence. Large scale fraud also has been unearthed in the naturalization process. Prosecuting those involved in the business of obtaining immigration benefits through fraud is necessary to protect the integrity and restore public confidence in the immigration programs.

Prosecuting immigration fraud is no more daunting than prosecuting any other type of fraud. Substantial resources exist to help prosecutors understand the requirements of the immigration benefit at issue. Once the prosecutor understands how benefits are lawfully obtained and how the targets manipulate the system for their benefit, the prosecution is similar to other false statement cases.

This article addresses the aspects of immigration fraud prosecutions that are somewhat unusual, such as handling a pool of witnesses who are subject to deportation and addressing the administrative aftermath of prosecuting a widespread benefit fraud. This article also provides practice tips and identifies useful resources.

II. Prosecution model and examples

Benefit fraud refers to the knowing and willful misrepresentation of material fact on a petition or application to gain an immigrant benefit. An alien who successfully engages in such fraud receives an actual benefit, such as lawful permanent residence in the United States and is provided with government-issued documents.

In April 2006, to address widespread benefit fraud such as asylum fraud, labor-certification fraud, and marriage fraud, the Department of Homeland Security (DHS) created formal Document Benefit Fraud Task Forces to focus, identify, and correct vulnerabilities in the immigration process. According to DHS, 17 offices have formal task forces, including:

- Atlanta
- Baltimore
- Boston
- Chicago
- Dallas
- Denver
- Detroit
- Los Angeles

- Miami
- New York
- Newark
- Philadelphia
- Phoenix
- Saint Paul
- San Francisco
- Tampa
- Washington, D.C./Northern Virginia.

These formal task forces are a partnership between Immigration and Customs Enforcement (ICE) and other agencies. Routine members include:

- ICE;
- Fraud Detection and National Security Unit (FDNS) within Citizenship and Immigration Services (CIS);
- Department of Labor;
- Social Security Administration;
- Department of State;
- Diplomatic Security Service; and
- United States Postal Inspection Service.

The Internal Revenue Service, Federal Bureau of Investigation (FBI), and Secret Service have also participated in task force investigations. Local police departments and sheriff's offices have provided substantial support, as have individual state departments of motor vehicles.

In many of the immigration benefit fraud cases prosecuted in the Eastern District of Virginia, prosecutors have charged a wide range of the participants by criminal complaint and in a single, detailed affidavit. The discovery provided in the affidavit generally has supplied defense attorneys with sufficient information to determine quickly whether cooperation without delay is in the clients' best interests. In almost every case using this model, the vast majority of defendants entered guilty pleas preindictment. The incentive to cooperate is quite high when members at all

levels of the conspiracy are charged together, and each can see the evidence against the other. This scenario sharpens the prisoner's dilemma.

This prosecution model focuses on the top level of the conspiracy, whether an immigration attorney or an immigration service-provider, sometimes referred to as a "notario." The middle-level conspirators also are included, as well as some of the aliens who used the services of the facilitating attorney or immigration service-provider. By charging some of the aliens who are likely to cooperate, the prosecutor establishes a base of witnesses and avoids having to secure material witness warrants to forestall deportation of the needed witnesses.

The majority of the larger benefit fraud cases involve both historical and active fraud. Immigration files are the main source of the evidence of historical fraud. Generally, if a conspiracy lasts long enough, a disgruntled alien client will provide a tip to the government about the fraud. That alien tipster can become an important witness or source. The information relayed by the tipster may lead to the discovery of other related frauds. In addition, officials within the United States Citizenship and Immigration Service's Office of Fraud Detection and National Security (FDNS) and/or CIS may notice an unusual pattern indicative of fraud and refer the matter to ICE for further investigation. A review of immigration files may solidify evidence of a historical fraud involving the same attorney or immigration service-provider.

The most successful prosecutions couple historical frauds documented in immigration files with the use of undercover agents or cooperating informants. These tools bolster the prosecution with recordings of the defendants engaged in an active fraud. In addition, the use of undercover agents or cooperating informants provides insight into the structure and operations of the conspiracy. Payment with traceable money orders or checks also assists with forfeiture. The historical fraud solidifies the scope of the conspiracy, brings pressure on the defendants to admit their guilt, and enhances the penalty, both the time in prison and the amount of forfeiture.

A. Asylum fraud

Asylum is a benefit that allows aliens present in the United States to avoid removal, secure lawful work status, obtain lawful permanent residence, and ultimately obtain United States citizenship. An alien is eligible for asylum if he or she suffered past persecution or has a well-founded fear of future persecution because of race, religion, nationality, membership in a particular social group, or political opinion. An alien can sustain his burden of proving eligibility for asylum with his testimony alone without corroborating documentary evidence. Because the events leading to the asylum claim typically happened overseas, lies can be difficult to identify or prove. Because lies are difficult to detect, the alien's risks are low relative to the possibility of success. Asylum fraud, therefore, is not uncommon.

An asylum fraud case may involve false claims of persecution overseas and false documentary evidence submitted to support the claim. One large asylum fraud scheme centered around the Chinese Indonesian American Society which advertised various immigration services to Indonesian immigrants. The leader attended immigration seminars to learn about immigration law. In exchange for a fee, he then prepared and filed hundreds of asylum applications. The applications included boilerplate language alleging that the alien had been subjected to various forms of persecution, including rape, arson, and physical assaults. The aliens were provided with interpreters, who met with the aliens and rehearsed the false stories contained in the asylum applications. Interpreters then accompanied the aliens to interviews and aided the aliens in remembering the false tales of persecution.

In this case, the prosecution focused on the leader of the conspiracy who prepared and filed the applications, those who assisted him in preparing the fraudulent applications, and the interpreters who helped the aliens lie during interviews. The investigation also uncovered a conspiracy to bring juveniles from Indonesia to engage in nude dancing and prostitution. In total,

more than 25 people pleaded guilty—all but 2 of the defendants entered pleas prior to indictment. A single, detailed affidavit laid out the evidence against each of the defendants. That information, coupled with invitations to review early discovery, was persuasive and appeared to fuel the decisions to plead guilty and cooperate.

B. Marriage fraud

Marriage fraud is an attractive route to lawful permanent residence and possibly to United States citizenship. Marriage to a citizen is one of the fastest routes to lawful permanent residence. Indeed, although Congress has limited the number of other types of visas available to aliens each year, no limit exists on the number of visas available for the alien-spouses of United States citizens.

A United States citizen who marries an alien may file a Petition for Alien Relative (Form I-130) to obtain a visa for an alien spouse. With such a visa, the alien may file an Application to Adjust Status (Form I-485). Typically, adjudicators within CIS will interview the couple. Those interviews may include questions about ordinary daily routines to determine whether the couple genuinely resides together.

A 2006 task force investigation into marriage fraud among Ghanaians began when an astute clerk at the courthouse in Arlington County, Virginia, noticed that the same man accompanied many couples to the courthouse to marry. The clerk also noticed that the couples appeared not to know each other and did not behave like a couple about to marry typically would.

The Arlington County Police Department conducted routine surveillance at the courthouse and identified a group of people who facilitated the marriages. ICE examined suspect immigration files and determined that many of the couples, in fact, did not reside together. CIS informed ICE when a couple appeared for an adjustment of status interview and appeared not to be genuinely married. Citizens involved in the sham marriages began to cooperate and provide information about who recruited them. Cooperating sources recorded conversations with those who facilitated the

marriages and completed the paperwork. In addition, undercover agents were introduced to the targets. One target encouraged an undercover officer to begin recruiting citizens to marry in exchange for a fee. Another target introduced the undercover agent to a Ghanaian and paid her to go to the courthouse to marry.

On September 7, 2006, nineteen people were charged in criminal complaints supported by a single affidavit. All pleaded guilty prior to indictment. Others were prosecuted and pleaded guilty following the first round of arrests. The defendants all agreed to cooperate. ICE and CIS interviewed cooperating defendants with the intention of using the information in administrative proceedings to deny benefits to the hundreds of aliens who participated in the marriage fraud scheme.

C. Labor certification fraud

An alien may obtain lawful permanent residence through employment-based visas to perform skilled or unskilled labor in the United States. The process involves multiple applications and involves a state's employment agency (to ensure an employer is offering to pay the prevailing wage), the Department of Labor, and DHS. During the process, both employers and aliens must sign forms under penalty of perjury certifying that the application and supporting evidence are true and correct. The prospective employer provides specific details about the position and wage, and must show that no U.S. workers are willing and available to fill the position. The alien must provide biographical data and describe his experience and qualifications for the position.

Labor certification prosecutions focus on immigration attorneys and nonattorney immigration service-providers. Labor certification fraud involves a variety of lies. In some instances, conspirators create a fake company to sponsor aliens. Conspirators may forge signatures so the company appears to sponsor the alien when, in truth, the company did not sponsor the alien and has no knowledge that an application was filed. Other cases involve schemes where a company earns money by pretending to employ aliens. The

company issues paychecks to the sponsored aliens so that it appears as if the aliens work for the company. The aliens cash the checks and return the money, plus an additional fee, to the company. Other schemes involve false resumes and letters so aliens appear to have the background, qualifications, and experience to qualify for the positions. Another common lie relates to the wage the purported employer intends to pay to match the required, prevailing wage. Similar schemes exist in the foreign labor-certification program involving temporary, seasonal employment visas.

D. Naturalization fraud

Naturalization fraud is perhaps the most serious of the benefit frauds. The alien obtains the appearance of citizenship. The harm is much more difficult to undo. Indeed, the denaturalization process is significantly more cumbersome than the administrative process of revoking lesser benefits such as lawful permanent residence or visas. Therefore, identifying and prosecuting naturalization fraud schemes as early as possible is vital.

The FBI, the DHS Office of Inspector General, and ICE recently uncovered a massive naturalization fraud perpetrated with the assistance of Robert Schofield, a senior supervisory adjudications officer for CIS. Aliens from China were provided with advanced parole letters so it would appear that they were returning to the United States with a pending application for benefits. In fact, the aliens were entering the United States for the first time and had no prior applications or status. Without ever obtaining lawful permanent residence or completing an Application for Naturalization (Form N-400), the aliens were provided with naturalization certificates. Schofield pleaded guilty to bribery, in violation of 18 U.S.C. § 201(1994), and naturalization fraud, in violation of 18 U.S.C. § 1425 (2002). He admitted assisting hundreds of aliens. *United States v. Schofield*, No. 1:06CR427 (E.D. Va. Nov. 30, 2006). A handful of brokers and aliens involved in the fraud also were prosecuted. A burdensome task remains to address the hundreds of aliens who hold naturalization certificates obtained through fraud. Those aliens

are cloaked with United States citizenship and carry United States passports.

III. Charging the fraud

A variety of statutes may apply in immigration benefit fraud cases. The two most common are 18 U.S.C. § 1546(a) (2002) and Section 274 of the Immigration and Nationality Act, 8 U.S.C. § 1324 (2005). The general conspiracy provision at 18 U.S.C. § 371 (2000) assists in prosecutions using 18 U.S.C. § 1546(a) (2002), while 8 U.S.C. § 1324 (2005) contains an internal conspiracy provision, along with an internal aiding and abetting provision. *See* 8 U.S.C. § 1324(a)(1)(A)(v)(I) and (II). Title 18 U.S.C. § 1546(a) applies to the possession of immigration documents obtained through fraud and the filing and presentation of materially false applications for immigration benefits. Title 8 U.S.C. § 1324 prohibits any person from encouraging or inducing aliens to come to, enter, or reside in the United States in violation of the law. A defendant may encourage and induce an illegal alien already present in the United States to reside here by offering to help them secure documents and benefits through fraud. *See United States v. Oloyede*, 982 F.2d 133 (4th Cir. 1992); *see also U.S. v. Ndiaye*, 434 F.3d 1270 (11th Cir. 2006).

A prosecutor may opt to charge both offenses. If forced to select one for purposes of a complaint or plea, both offer different advantages. For instance, if a defendant is a lawful permanent resident, charging 8 U.S.C. § 1324 provides a powerful tool. A conviction under § 1324 constitutes an "aggravated felony," pursuant to 8 U.S.C. § 1101(a)(43)(N) (2006), no matter how long the sentence of imprisonment. In contrast, a conviction pursuant to 18 U.S.C. § 1546 constitutes an "aggravated felony" pursuant to 8 U.S.C. § 1101(a)(43)(P) (2006), only if the defendant is sentenced to a term of imprisonment of at least one year. If removal of the defendant at the end of their imprisonment serves the government's interest, 8 U.S.C. § 1324 may be preferable.

The charge in 8 U.S.C. § 1324 also has another slight advantage. Section 2L1.1 of the U.S. Sentencing Guidelines Manual (2007) [hereinafter U.S.S.G.] applies to the offense and generally carries a base offense level of 12. In contrast, 18 U.S.C. § 1546 has a base offense level of 11 pursuant to U.S.S.G. § 2L2.1. The slightly higher base offense level may weigh in favor of the Title 8 offense. Both U.S.S.G. provisions provide an increase based on the number of aliens or documents involved in the scheme.

Despite those two slight advantages of charging 8 U.S.C. § 1324, 18 U.S.C. § 1546 may be preferable for other reasons. The breadth of 18 U.S.C. § 1546 is striking. Almost any immigration fraud case can be charged under that statute, which provides flexibility with respect to the statute of limitations and venue. The fourth paragraph of 18 U.S.C. § 1546(a) provides punishment for

[w]hoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact.

The fourth paragraph of 18 U.S.C. § 1546(a) reaches almost any immigration application and all of the evidence submitted in support of such application. The alien/applicant must sign most forms under penalty of perjury. An immigration application generally also includes a section where the preparer must identify him or herself. If the preparer knows the information on the application or in the supporting documents is false, the preparer has aided and abetted the violation of law pursuant to 18 U.S.C. § 2 (1951).

Venue may pose an interesting question in an immigration fraud case. The crime, pursuant to 18 U.S.C. § 1546, extends to the signing of a false

application under penalty of perjury. Proving where an application was signed is not easy. The alien's immigration file, however, should contain the envelope in which the application was mailed. The postmark on the envelope is useful in assessing venue. Furthermore, the statute extends to "presenting" a false application. An application likely is mailed to a regional center, in Vermont for instance, and then is routed to a local CIS office for adjudication. An alien then may be called to that office for an interview. The application is again "presented," as if true, at that office. Thus, venue for purposes of 18 U.S.C. § 1546(a) could lie in several locations. In theory, an application continues to be presented during removal proceedings before an immigration judge and at all stages of administrative and federal appellate review. Thus, venue also may lie where the immigration judge sits or in the Eastern District of Virginia, where the Board of Immigration Appeals is located, or where the applicable Circuit Court sits.

A 5-year statute of limitations applies to offenses under 18 U.S.C. § 1546. Fortunately, however, the statute makes it a crime to sign and present an application containing materially false information. The presentation of the false form arguably continues until the moment the form is adjudicated, without regard to whether it is granted or denied. The final adjudication can occur a substantial time after the initial filing—years can pass between filing and the final adjudication. In addition, if the application is granted and a visa or lawful permanent resident card is issued as a result, a new crime likely exists. Specifically, the first paragraph of 18 U.S.C. § 1546(a) makes it a crime to obtain or possess a visa, registration receipt card, or other document evidencing a period of lawful residence or employment status, if the document was "procured by means of any false claim or statement," or was "otherwise procured by fraud or unlawfully obtained." 18 U.S.C. § 1546(a) (2002). The crime of obtaining and possessing such document has a new statute of limitations. An immigration attorney or other conspirator who knowingly prepares or files the false application that leads to the issuance of a "green card,"

arguably has aided and abetted the alien who obtained and possesses that card.

A number of other Title 18 offenses and other subsections in 8 U.S.C. § 1324 may apply to an immigration benefit fraud case. The two described above simply are the most obvious. The most powerful tool is the mandatory minimums set forth in 8 U.S.C. § 1324(a)(2), for bringing aliens into the United States for commercial advantage or financial gain, knowing or in reckless disregard of the fact that the alien(s) has not received "prior official authorization." The first or second violation of that provision carries a sentence of not less than 3 years. A third violation or more carries a sentence of not less than 5 years. Importantly, each alien is treated as a violation, even if charged in a single indictment. *See United States v. Gonzalez-Torres*, 309 F.3d 594 (9th Cir. 2002); *United States v. Yeh*, 278 F.3d 9 (D.C. Cir. 2002). Most significantly for benefit fraud cases, if obtained through fraud or based on lies, a government-issued visa does not constitute "official authorization." *See United States v. Gasanova*, 332 F.3d 297 (5th Cir. 2003).

Finally, money laundering offenses may or may not be worth pursuing. In any case, however, forfeiture is likely worth pursuing. Both 18 U.S.C. § 1546 and 8 U.S.C. § 1324 are expressly named in the criminal forfeiture provision at 18 U.S.C. § 982(a)(6)(A) (2007), allowing the forfeiture of proceeds, facilitating property, and conveyances. In many cases, real property is forfeitable as the location where the fraud was conducted or the location where aliens were housed.

IV. Using witnesses who are removable

When prosecuting immigration fraud, removable aliens may be your best witnesses. They also likely are coconspirators. The prosecutor will quickly face the question of how to avoid losing key witnesses to deportation and removal from the United States. A variety of strategies exist:

- First, opt to charge some of the conspiring aliens. Faced with joining the organizing conspirators at trial or cooperating and pleading guilty, such aliens will have an

incentive to admit their guilt and cooperate. If the alien's presence in the United States is based on fraud, the prosecutor has a good argument for detaining the alien. By charging the alien and seeking detention, the prosecutor avoids losing the alien-witness to deportation.

- Second, opt against charging the alien and instead seek a material witness warrant pursuant to 18 U.S.C. § 3144 (1986). If the alien is detained, the alien's deportation is avoided and any risk of flight is reduced. A magistrate judge may or may not allow the prosecutor to keep the alien-witness in custody until the trial date. A court may order the prosecutor to depose the alien. Although live testimony is preferable, the alien's information is at least preserved in admissible form. Of course, aliens detained with a material witness warrant may become recalcitrant witnesses. Thus, if depositions are likely, the sooner the better.
- Third, ICE can offer temporary work authorization to a few key alien-witnesses. This option is best for aliens who have ties to the community and are unlikely to flee. The benefit to the alien, of course, must be disclosed to defense counsel. If the alien-witness is overseas, DHS can facilitate the parole of the alien into the United States to assist the government's case, whether for grand jury testimony or trial.
- Another option, the S visa, is available for a limited number of aliens per year who provide the most critical information. At present, only two-hundred S visas are available each fiscal year. The visa is available for aliens who provide critical, reliable information necessary to the successful investigation or prosecution of a criminal organization. An additional 50 S visas are available to aliens who provide critical information about terrorist organizations. The S visa not only enables the alien to remain in the country through trial but also creates a path to permanent residence. This benefit also must be disclosed to defense counsel.

In larger fraud cases, the government clearly cannot charge or take all of the conspiring aliens into custody with material witness warrants. The aliens know about the fraud and are subject to removal from the United States. Consequently, it may be prudent to send a letter to defense counsel warning that the aliens could be removed. The letter serves as an invitation to defense counsel to advise the prosecutor, without delay, if any of the aliens could be of use in building a defense. The letter could remind the defense attorney that a defendant can seek material witness warrants pursuant to 18 U.S.C. § 3144. Sending the letter may help later if the defendant attempts to argue that the government deported *Brady* witnesses. See generally *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982). The letter may suffice if the prosecutor does not have reason to believe the aliens are useful to the defendant. If, however, there is reason to believe an alien is useful to the defendant, the better course is to bring that alien to the defendant's attention and secure the alien's presence for trial through any of the above-mentioned means.

V. The administrative aftermath

A single fraud scheme could succeed in obtaining immigration benefits for many aliens. A district is unlikely to prosecute the leader, workers in the conspiracy, and many aliens who benefitted from the fraud. The criminal system simply is not the most efficient way to address this issue. The administrative system is better able to revoke the fraudulently obtained benefits and institute removal proceedings against the aliens, as appropriate.

Although the administrative system is better equipped to address the fraud perpetrated by uncharged aliens, it already has a substantial workload. Adding hundreds of cases increases the burden. Prosecutors and agents interested in easing the path for the administrative cleanup should engage officials within CIS as early as possible in the effort.

In one instance, CIS detailed asylum officers to interview the leader of an asylum fraud scheme who agreed to cooperate as part of his plea

agreement. He coached hundreds of aliens in inventing false stories alleging persecution. The CIS employees interviewed the cooperating defendant in prison and reviewed his files with him in order to identify his alien-clients who lied on applications and during asylum interviews. ICE's Office of the Principal Legal Advisor also provided support to the effort, as did the Executive Office for Immigration Review (EOIR). To truly redress a problem and undo the fraud's harm, prosecution is not enough. The prosecution team can serve the government well by engaging administrative officials early in the process.

VI. Useful resources

Resources are available to assist prosecutors in immigration benefit fraud cases. Understanding the requirements of a particular visa is necessary to evaluate the strength of a case. Ultimately the prosecutor needs to consult the Immigration and Nationality Act and the immigration regulations in Title 8 of the Code of Federal Regulations. Other resources provide more digestible summaries of the requirements.

A useful starting point in understanding the requirements associated with temporary, nonimmigrant visa categories is a CIS publication titled, "Temporary Migration," available on the CIS Web site at www.uscis.gov. Attorneys at CIS and ICE are available to discuss requirements of visas and the way various applications are adjudicated. Similarly, counsel in the Department of State are able to discuss overseas visa processing. In addition, Assistant United States Attorneys who prosecute immigration cases likely will share indictments or affidavits setting forth the requirements of obtaining certain benefits. The Domestic Security Section within the Criminal Division also has sample indictments outlining various types of visa or other immigration benefit fraud.

The EOIR will be of some assistance. EOIR houses the Immigration Judges who adjudicate removal proceedings and the appellate level Board of Immigration Appeals. These adjudicatory components within EOIR do not field questions. The prosecutor, however, may contact the fraud

prevention program within EOIR's Office of General Counsel. The fraud program serves as a centralized resource for the referral of suspected immigration fraud and refers such information, as appropriate, to law enforcement or disciplinary authorities. The mission includes encouraging and supporting fraud investigations and prosecutions of immigration benefit fraud perpetrated before EOIR's adjudicators.❖

ABOUT THE AUTHOR

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Combating International Criminal Travel Networks

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I. Introduction

As our polity struggles to reach a consensus on a fair, comprehensive, and effective national immigration policy, law enforcement officials face daily challenges trying to maintain control and some semblance of credibility with respect to what almost everyone agrees is a struggling immigration system. Globalization, new technologies, and post 9/11 realities further complicate law enforcement's task by constantly testing their capabilities and resolve. While the United States continues to be a prime destination country for illicit migration, other countries find themselves besieged by their own illegal immigration crisis. The European Union, for example, passed legislation this past June imposing more restrictive immigration measures to try to address their immigration crisis.

The public image of the immigration crisis is often associated with the surreptitious entry of persons into the country by sneaking across borders or using fake documents. The abuse of the legal immigration process is equally problematic. According to the Pew Hispanic Center, 45 percent of the illegal immigrant population in the United States initially entered the country legally.

The focus of this article is on a very important part of the U.S. Government's comprehensive efforts to address illegal immigration, organized crime, and national security. The government plans to disrupt and dismantle the international criminal travel networks (CTNs) that facilitate the movement of many foreigners entering the United States illegally each year.

CTNs generally follow a decentralized and highly efficient business model. They depend on multinational sets of connections between individuals, cells, and organizations, including:

- "Arrangers;"
- Document providers;
- Travel agencies;

- Transporters;
- Corrupt public officials;
- Financiers; and
- Others.

CTNs, like most criminal networks, are often ruthless and prey on the hopes and vulnerabilities of desperate human beings for profit. CTNs lie to their alien customers about the conditions under which they will travel, the costs, and what to expect when they arrive. The aliens generally travel through dangerous routes and by dangerous means, with many being injured or killed as a result of the conditions. Additionally, aliens may be robbed and assaulted during the journey. Female aliens are frequently sexually assaulted by those in the CTN. Finally, once at their destination in the United States, the aliens have a high potential for becoming trafficking victims exploited for sex and labor.

Moreover, the possible use of CTNs by terrorists and organized criminal elements seeking undetected entry into the United States is a pressing concern. Reports about the alleged use of alien smugglers by al Qaeda were noted in *9/11 and Terrorist Travel*, a Staff Report of the National Commission on Terrorist Attacks Upon the United States (2004), available at http://govinfo.library.unt.edu/911/staff_statements/911_TerrTrav_Monograph.pdf. The report also observed that one alien smuggler with suspected terrorist ties had been convicted in the United States. *United States v. Salim Boughader-Mucharrafille*, No. 3:02-CR-03048-W-1 (S.D. Cal. Jun. 19, 2003).

More recently, in the case of *United States v. Jalal Sadat Moheisen*, 1:06-CR-20001-JAL-3 (S.D. Fla. Feb. 28, 2008), the Criminal Division's Domestic Security Section (DSS) and the United States Attorney's Office (USAO) in the Southern District of Florida prosecuted several defendants who were convicted of alien smuggling and attempted material support to terrorists charges. The defendants smuggled four U.S. Government informants, whom the alien smugglers believed were Revolutionary Armed Forces of Columbia (FARC) guerillas, to Miami.

The informants told the defendants that they needed to travel to the United States to conduct business on behalf of the FARC, which is a State Department designated terrorist group.

II. Brief history of federal efforts against international alien smuggling

A growing unease about the increasing illegal immigration flow into the country was evident in Congress by the early 1970s, however, the prosecution of alien smuggling and immigration crimes was not a federal law enforcement priority. Rather, immigration enforcement was primarily an administrative and civil matter. An unparalleled boom in legal and illegal immigration fueled by civil wars, political repression, economic woes overseas, and several dramatic events during the eighties began to raise the profile of illegal immigration and the concern of federal officials.

In 1980, the Mariel boatlift, an unprecedented mass migration crisis in which 100,000 undocumented Cubans, including some hardcore criminals, arrived in South Florida, as well as an influx of Haitians, resulted in new interdiction and detention policies. Immigration reform legislation was passed in 1986 and 1990, the former particularly notable in providing for sanctions, including criminal penalties, against employers who hired illegal aliens.

In the early 1990s, a series of migrant maritime smuggling incidents involving Chinese nationals proved to be a turning point in federal law enforcement's view of the problem. During this time, evidence of organized criminal involvement began to emerge. Most notably, on June 6, 1993, a vessel (Golden Venture) loaded with almost 300 illegal aliens, ran aground off Rockaway Beach in Queens, New York. Ten aliens drowned as they attempted to swim to shore, and details of the inhumane conditions to which the aliens had been subjected during their 17,000 mile journey soon emerged. The financial backer of this smuggling event, Cheng Chui Ping, known as Sister Ping, was indicted but only caught in 2005. Convicted, she was sentenced in March 2006 to 35-years imprisonment by U.S.

District Court Judge Michael Mukasey on alien smuggling and money laundering charges.

United States v. Cheng Chui Ping, a/k/a Sister Ping, Slip Copy, 2007 WL4102736 (C.A. Nov. 19, 2007).

The Golden Venture tragedy spurred the issuance of Presidential Decision Directive (PDD) NSC-9 on June 18, 1993, available at <http://www.fas.org/irp/offdocs/pdd/index.html>, which announced a new policy to address "criminal syndicate alien smuggling." The policy directed, in part, a focus on disrupting and dismantling the criminal networks involved in alien smuggling by addressing the problem at its source, in transit, at U.S. borders and within the United States. It further assigned responsibility to the Department of Justice (Department) and the Immigration and Naturalization Service (INS), for conducting alien smuggling law enforcement operations and investigations outside the United States, pursuant to existing interagency arrangements. PDD-9 also aimed to increase the criminal penalties against alien smugglers. This goal was realized by subsequent legislation that increased the statutory maximum penalties for alien smuggling offenses. The policy enunciated in PDD-9, still in effect today, provided the impetus for the extraterritorial law enforcement alien smuggling initiatives that followed.

As smuggling organizations became more sophisticated, international, and powerful, the Attorney General created the Alien Smuggling Task Force (ASTF) within the Criminal Division in 2000. Focusing on international alien smuggling cases and policy issues, the ASTF undertook proactive interagency initiatives to identify and apprehend major alien smugglers. The 9/11 terrorist attacks added national security to the organized crime and humanitarian concerns underlying the aggressive strategy being pursued against foreign-based criminal organizations smuggling aliens to the United States. It also introduced a more robust interagency dimension to the work of the ASTF. Targeting major alien smuggling networks that posed a threat to national security became a priority. The intelligence community, the State Department, and federal law

enforcement cooperated in identifying and targeting the most dangerous networks.

In December 2002, the ASTF was merged into the newly-formed Domestic Security Section (DSS), as part of a reorganization of the Criminal Division to better meet post-9/11 challenges. DSS and the USAOs continued to collaborate closely with INS and its successor, Immigration and Customs Enforcement (ICE), in the investigation and prosecution of extraterritorial alien smuggling organizations. Other law enforcement entities are key partners, including:

- The FBI (particularly where there are organized crime or terrorism links);
- The Coast Guard;
- The State Department's Diplomatic Security Service;
- Customs and Border Protection;
- The Department of Labor; and
- The Internal Revenue Service.

The partnerships proved very successful, resulting in the disruption and dismantlement of numerous foreign-based alien smuggling organizations. Some of these successful prosecutions include:

- *United States v. Maher Jarad*, No. 1:02-00090 (D.D.C. Feb. 21, 2002). Ecuador-based Maher Jarad, a Palestinian national, was a prolific smuggler of U.S. bound Middle Eastern aliens. Jarad used maritime and land routes to move aliens after increased security measures were implemented at the U.S. border in response to the 9/11 attacks. His network included major Middle Eastern and Latin American smugglers. Jarad was prosecuted and convicted of alien smuggling in the United States after his arrest and expulsion from Ecuador. The U.S. Coast Guard discovered two of his loads on board alien smuggling-vessels on the high seas.
- *United States v. Mohammad Hussein Assadi*, No. 1:02-CR-00030 (D.D.C. Jan. 24, 2002). Iranian national Mohammad Assadi was a well-known Latin American based smuggler of Middle Eastern aliens to the United States.

Operating out of Ecuador and later Colombia, he was eventually arrested by Colombian authorities and expelled. Prosecuted and convicted of alien smuggling charges after trial in D.C., Assadi served a 30-month sentence before being deported to Iran.

- *United States v. Jose Delgado-Garcia*, No. 1:02-CR-00293 (D.D.C. Jul. 3, 2002). Delgado-Garcia was the captain of a smuggling vessel carrying 191 United States bound Ecuadorian aliens when it was intercepted by the U.S. Coast Guard in international waters. The Coast Guard boarded the vessel because of its obviously unsafe condition. Delgado-Garcia was convicted in D.C. and received a 5-year mandatory minimum sentence.
- *United States v. Ashraf Abdallah*, No. 1:01-CR-00465-RMU-1 (D.D.C. Dec. 12, 2001). Ashraf Abdallah headed an alien smuggling organization in Guatemala that specialized in smuggling aliens that he and his associates recruited in Egypt as well as other Middle East countries. Abdallah moved the aliens through various Latin American countries before staging them in Guatemala to be smuggled into the United States. Abdallah was successfully prosecuted and received a 48-month sentence.
- *United States v. Neeran Zaia*, No. 1:04-CR-00401 (D.D.C. Sept. 3, 2004). Neeran Zaia, a Detroit resident, headed an alien smuggling organization that operated front businesses in Canada and Jordan. Neeran Zaia recruited and smuggled Middle Eastern aliens to the United States. The Zaia organization moved and staged the aliens throughout Europe and several Latin American countries. They often demanded higher fees than what was initially agreed upon once the aliens were in transit and vulnerable. Zaia and three coconspirators were convicted of alien smuggling charges. Zaia is currently serving a 15-year sentence.

III. Challenges

The successful prosecution of the above cases, and other extraterritorial alien smuggling investigations undertaken in recent years, would have been impossible without the cooperation and support of foreign law enforcement officials. It is a collaboration that is often dependent on both the personal relationships built with our counterparts in the course of working a particular case, as well as the quality of the institutional relationships that the interagency community has been able to establish.

An always challenging endeavor, each extraterritorial alien smuggling investigation presents its own peculiar issues and difficulties. Many, if not most CTNs are run out of foreign countries, with their leaders never stepping foot in the United States. Respect for, and sensitivity to sovereign concerns and local laws is critical, as is a full appreciation of the political environment, the criminal justice system, and the law enforcement capabilities of the country at issue. The endemic political corruption in some countries is a constant challenge to the government's ability to forge effective, trustworthy relationships. Moreover, prosecutors and investigators must be willing to make a long-term commitment and invest a substantial amount of time and resources in the investigation, even though the ultimate outcome might be a foreign prosecution or other disruption of the CTN, rather than a U.S. prosecution.

Domestic challenges are present as well. Given the limited resources and the breadth of the criminal immigration problem, the decision as to which overseas targets merit the substantial investment of resources required for pursuit mandates the judicious assessment of the respective targets' activities and capabilities, the dangers they pose, and how their disruption and dismantlement advances U.S. government interests. In addition, the required U.S. nexus to maintain a viable U.S. prosecution can be difficult to establish the farther from the United States a particular individual or cell operates. Such cells focus on illegally moving persons from one intermediate destination to another. The cell is not always aware that the ultimate destination is the United States.

Another challenge presented is the relatively lenient sentences often applicable under the alien smuggling statutes. This is particularly frustrating given the intensive resources required by extraterritorial investigations and prosecutions. Nonetheless, significant sentences have been obtained where the government was able to bring other charges or has identified aggravating factors that can be used to argue for enhanced penalties. Most frequently, significant sentences have been obtained where sufficient evidence of the risks, injuries, or death of the smuggled aliens exists. Other enhancements may also apply. In the *Sadat Moheisan* case mentioned earlier, the principle defendants received a 70-month sentence due to the violation of the attempted material support statute. The 15-year sentence that alien smuggler Neeran Zaia received was based, in part, on evidence that she had attempted to smuggle a convicted felon into the United States.

IV. Enhancing law enforcement's response through dedicated resources

Notwithstanding the great successes achieved against several significant overseas-based alien-smuggling organizations, the complexities presented by such cases underscore the need for a sustained, integrated, and strategic program supported by dedicated investigative, analytical, and prosecutorial resources.

- First, although the operations of specific alien-smuggling targets were dismantled, the flow of aliens through the smuggling pipelines often were barely impacted. The CTNs with which the target alien-smuggling organizations are associated and which sustain the pipeline, are difficult to dismantle due to their loose but highly effective transnational alliances involving numerous players. As in many organized crime enterprises, the need to focus on disrupting the CTNs, rather than just individual alien smugglers or smuggling organizations is evident.
- Second, the effective disruption of the CTN itself requires the use of all available resources in a manner that complements the government's overall efforts to address the

problem and facilitates the development of the interagency and foreign partnerships necessary for long-term success.

In June 2006, the Criminal Division and ICE launched the Extraterritorial Criminal Travel (ECT) initiative as a pilot project. Encompassing both operational and policy objectives, and conceived as an intelligence-driven program, the ECT initiative targets and proactively seeks to disrupt and dismantle international criminal travel networks that pose national security concerns, through aggressive law enforcement action. The initiative builds upon the expertise that DSS and ICE have developed in their investigation and prosecution of extraterritorial alien-smuggling organizations. Existing law enforcement, intelligence, and policy-making resources are leveraged under the program to more effectively address the threat that such networks pose.

The ECT initiative has generated some significant successes during its initial phase, including the disruption of a major CTN that is a high priority interagency target. While some of the targets tied to the network await prosecution, efforts to maximize the disruption of this particular CTN continue with seven off-shoot investigations opened to date. One of the targeted organizations affiliated with the CTN appears to have ceased operations, in part, because of fears raised by the arrest, and pending U.S. prosecution of the other targets. The initiative's operational success is mirrored in an unparalleled fusion of law enforcement and intelligence capabilities that provided an unprecedented snapshot of alien-smuggling pipelines that pose possible national security concerns to the United States.

The success of the ECT pilot led the Criminal Division and ICE to decide to make ECT a permanent program. Current efforts to institutionalize and further improve the ECT program are underway as DSS and ICE work to:

- address targeted training needs of agents, analysts, and prosecutors working ECT cases;
- more effectively integrate intelligence capabilities into the program; and

- meet and expand ECT operational and policy objectives.

DSS anticipates reaching out to, and collaborating with, more USAOs as the program expands and U.S. prosecutions of such cases in their districts are developed.❖

ABOUT THE AUTHOR

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A Summary Update of Recent Successes and Developments in the Office of Investigations and the Office of the Principal Legal Advisor at United States Immigration and Customs Enforcement

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I. Introduction

We are pleased to have the opportunity to present a summary update of recent successes and developments in the Office of Investigations and the Office of the Principal Legal Advisor (OPLA) at U.S. Immigration and Customs Enforcement (ICE) for this edition of the United States Attorneys' Bulletin. ICE has been at the forefront

of prosecuting financial, narcotics, trade, and national security crimes and has worked closely with the Department of Justice (Department) to ensure that criminals are brought to justice. Attorneys within OPLA play a critical role in supporting and guiding the actions of ICE Special Agents in the Office of Investigations, who lead the investigations and conduct the eventual arrests of suspected criminals.

A brief summary of some of the major new and ongoing operations as well as recent Office of Investigations accomplishments follow. Some of the highlights include:

- The recent arrest and conviction of a Chinese national attempting to export devices that measure high-power explosives to China,

United States v. Qing Li, 2008 U.S. Dist. LEXIS 22283 (S.D. Cal. March 20, 2008);

- A joint operation with Mexico that allows the open sharing of trade data to monitor the flow of goods between countries and reduce trade-based money laundering and fraud;
- An expanded gang operation out of the United States;
- Foreign attaché offices targeting violent alien gang members from Latin America; and
- The opening of ICE's new Intellectual Property Rights Coordination Center.

II. Export enforcement

ICE has led law enforcement efforts in export enforcement for approximately 30 years utilizing the broadest export authorities within the U.S. government. In fiscal year (FY) 2007, ICE investigations resulted in 188 arrests, 178 indictments, and 127 convictions for export-related criminal violations, more than any other U.S. federal law enforcement agency. These efforts significantly contributed to preventing sensitive U.S. technologies as well as weapons from reaching the hands of terrorists, hostile countries, and violent criminal organizations.

On June 9, 2008, in the Southern District of California, Qing Li pleaded guilty to one count of Conspiracy to Violate Title 18, United States Code, Section 554 (Smuggling Goods from the United States), for her role in a scheme to illegally transfer a military-grade accelerometer to the People's Republic of China (PRC). These accelerometers are used in various applications to include developing/measuring high power explosives, including nuclear explosives. This guilty plea is the result of a criminal investigation conducted by ICE in San Diego, California. *United States v. Qing Li*, 2008 U.S. Dist. LEXIS 22283 (S.D. Cal. filed March 20, 2008)

ICE agents identified Li, a citizen of the PRC and a legal permanent resident (LPR) of the United States, and initiated contact in an undercover capacity as a supplier who could assist her in filling her requirements. In October 2007, ICE arrested Li at JFK International Airport when she attempted to leave for the PRC.

In another matter, ICE initiated Operation Armas Cruzadas in order to combat the smuggling of weapons from the United States into Mexico. As part of this initiative, the Department of Homeland Security (DHS) and Government of Mexico (GoM) will partner in unprecedented bilateral interdiction, investigation, and intelligence-sharing activities to identify, disrupt, and dismantle transborder criminal networks that smuggle weapons from the United States into Mexico. Operation Armas Cruzadas implements key strategies that enhance a timely systematic process to use intelligence to drive interdictions, which initiate investigations and perpetuate the cycle, such as:

- Providing training in appropriate export and weapons laws and methods used to combat transborder smuggling;
- Expanding the ICE Project Shield America outreach program;
- Implementing a Weapons Virtual Task Force comprised of United States and GoM personnel;
- Creating a United States-vetted GoM Arms Trafficking Group; and
- Creating an ICE Border Violence Intelligence Cell located at the El Paso Intelligence Center

As the primary investigative agency responsible for cross-border smuggling, ICE is uniquely equipped to stem the flow of firearms smuggled internationally through border-search authority, numerous long-term undercover platforms, 50 foreign attaché offices, and expertise and authorities to conduct weapons export investigations, including the identification of networks involved in illicit activity.

III. Student and Exchange Visitor Program—Certified School Fraud investigations

Student and Exchange Visitor Program (SEVP) Certified School Fraud is a systemic vulnerability that, if exploited, threatens national security. SEVP maintains the Student and Exchange Visitor Information System (SEVIS), a

Web-based program designed to monitor the status of foreign students. Foreign students are granted admission to the United States for a long period of time and may lawfully travel both domestically and internationally. School fraud schemes can generate millions of dollars of illicit income for those operating the institution.

The SEVP model places a large amount of trust and responsibility in designated school officials (DSO). DSOs are nongovernmental employees of the SEVP-certified institutions and are responsible for updating and maintaining the SEVIS records of nonimmigrant students enrolled at the institution. School fraud schemes generally involve corrupt DSOs. These schemes may also include the institution. At corrupt institutions the Primary Designated School Official (PDSO) is often also the owner. In the cases of institutional corruption the institution often operates as a shell with few or no legitimate students. The current major trend is in establishing English language schools for which a "student" may attend for an open-ended period to prepare the student for attendance at a bachelor degree producing college where classes are offered in English. In some schemes there will be more than one institution created for the purpose of shifting students around and obscuring the activities of the corrupt PDSO/DSOs. In the case of corrupt individuals it is the DSO that is gaining the illicit income. In the case of corrupt institutions it is the corrupt owner/PDSO that is retaining the illicit income. SEVP School Fraud investigations typically focus on criminal charges relating to visa fraud, alien smuggling, false statements, money laundering and others. These investigations are currently being prosecuted by the Office of the United States Attorney in Los Angeles and San Diego, CA and New York, NY.

In February 2005, ICE began Operation Community Shield, a national law enforcement initiative that targets violent transnational street gangs through the use of ICE's broad law enforcement powers to identify, locate, arrest, prosecute, and ultimately remove gang leaders, members, and associates from our communities.

Under Operation Community Shield, ICE:

- Partners with federal, state, and local law enforcement agencies in the United States and abroad, to develop a comprehensive and integrated approach to conducting criminal investigations and other law enforcement operations against violent street gangs and others who pose a threat to public safety;
- Identifies violent street gangs and develops intelligence with respect to their membership, associates, criminal activities, and international movements;
- Deters, disrupts, and dismantles gang operations by tracing and seizing cash, weapons, and other assets derived from criminal activities;
- Seeks prosecution and/or removal of alien gang members from the United States; and
- Works closely with our attaché offices throughout Latin America and foreign law enforcement counterparts in gathering intelligence, sharing information, and conducting coordinated enforcement operations.

Initially, the focus of ICE's efforts were directed toward the Mara Salvatrucha organization, commonly referred to as MS-13, one of the most violent and rapidly growing transnational street gangs. In May 2005, ICE expanded Operation Community Shield to include all transnational criminal street gangs and prison gangs. Since inception, ICE agents working in conjunction with other federal, state, and local law enforcement agencies nationwide have arrested more than 10,000 gang members.

IV. Trade-Based money laundering

The primary mission of the ICE Trade Transparency Unit (TTU) is to aggressively target trade-based money laundering and commercial fraud. To assist with this mission, ICE began creating TTUs with foreign trading partners. The core component of the TTU initiative is the exchange of trade data with foreign counterparts, which is facilitated by existing Customs Mutual

Assistance Agreements. Through the TTU initiative, ICE is the only federal law enforcement agency exchanging trade data with foreign governments.

The ICE TTU currently has established TTUs in Argentina, Brazil, Colombia, Paraguay, and Mexico. The Mexico TTU, which officially opened in May 2008, is TTU's largest project to date, as Mexico is the United States' third largest trading partner. The United States and its foreign TTU partners exchange trade data that, for the first time, allows both countries to see the import and export data of commodities entering and leaving their countries. This allows for trade transparency and assists in the identification and investigation of international commercial fraud and money laundering organizations.

These investigations are ultimately prosecuted by both the United States and/or foreign counterparts. To date, several investigations have been referred to the Narcotics and Dangerous Drugs and Asset Forfeiture and Money Laundering Divisions at the Department.

A. Data Analysis & Research for Trade Transparency System analytical computer system

The exchanged trade data is placed in the Data Analysis & Research for Trade Transparency System (DARTTS) for further analysis. DARTTS is a specialized ICE analytical computer system that helps special agents and analysts detect and track money laundering, contraband smuggling, and trade fraud by analyzing data in ways not previously feasible. The ICE TTU installs, updates, and maintains the DARTTS computer systems in foreign TTUs and trains law enforcement officials in the use of DARTTS and commercial fraud and money laundering best practices.

B. Recognizing the threat posed by trade-based money laundering

The ICE TTUs bring worldwide recognition to the threat of trade-based money laundering and ICE's efforts to combat and prevent this threat. Recognized as the best mechanism to combat

trade-based money laundering, TTUs have been highlighted in numerous U.S. Government publications including *The National Money Laundering Threat Assessment*, available at <http://www.ustreas.gov/offices/enforcement/pdf/mlta.pdf>; the *National Money Laundering Strategy*, available at <http://www.ustreas.gov/press/releases/docs/nmls.pdf>; and the Department of State's *International Narcotics Control Strategy Reports*, available at <http://www.state.gov/p/inl/rls/nrcrpt>.

C. Bulk cash smuggling

Approximately 60 percent of ICE bulk cash smuggling (BCS) (31 U.S.C. § 5332) indictments are of foreign nationals and over 20 percent of the indictments stem from BCS seizures that occur away from the border. Operation Firewall, which began in August 2005, is a joint strategy designed to address various smuggling techniques, including commercial and private passenger vehicles, commercial air cargo shipments, commercial airline passengers, and pedestrians transiting the U.S. border. ICE BCS initiatives and follow-up investigations have resulted in 588 arrests, 588 indictments, 430 convictions and 2,912 seizures totaling over \$290 million.

D. Money Service Businesses

To address the vulnerabilities inherent in unlicensed Money Service Businesses (MSBs), ICE has launched a Money Services Business-Informal Value Transfer System identification, enforcement, and outreach initiative. The goal of this initiative is to identify as many unlicensed MSBs as possible, prosecute those meeting federal prosecutorial guidelines utilizing 18 U.S.C. § 1960, and bring those unlicensed MSBs not meeting prosecutorial guidelines into compliance. This initiative encompasses enforcement efforts against licensed MSBs in order to ensure that they are operating within the scope of their license. Through this initiative over 430 unlicensed MSBs have been identified and nearly 300 criminal investigations have been initiated.

E. Operation Paycheck

ICE launched Operation Paycheck, an enforcement initiative designed to identify, disrupt, and eliminate organizations seeking to exploit our financial industry by facilitating the employment of illegal aliens. These arrangements enable the employment of illegal aliens and further criminal activity such as human smuggling and trafficking. These schemes typically involve conspiracies with MSBs in direct violation of 18 U.S.C. § 1960. The use of this statute to prosecute MSBs conspiring with companies for the purpose of paying illegal alien workers is highly beneficial in ICE financial investigations. Operation Paycheck has resulted in over 150 criminal investigations, the seizure of over \$11.5 million in cash, monetary instruments, and miscellaneous property, 233 administrative arrests, 62 criminal arrests, 68 indictments, and 33 convictions.

F. Foreign corruption and money laundering

In 2003 ICE established the only dedicated federal Foreign Corruption Investigations Group, which conducts investigations into the laundering of proceeds emanating from foreign public corruption, bribery, or embezzlement. The investigations are worked jointly with representatives of the victimized foreign government. The objective is to prevent foreign-derived, ill-gotten gains from entering the United States' financial infrastructure, to seize identified assets in the United States, and repatriate these funds to the victimized governments. The authority to investigate foreign corruption has been enhanced by the new enforcement provisions provided for by the USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272 (2001), specifically §§ 315 (Foreign Corruption Offenses), 317 (Long-Arm Jurisdiction over Foreign Money Launderers), 319 (Subpoena and Summons Authority over Corresponding Accounts) and 320 (Proceeds of Foreign Crimes).

V. Human rights violations

ICE maintains two complementary headquarters units to target foreign human rights violators:

- The Human Rights Violators and War Crimes Unit (HRVWCU), which has national oversight of investigations of individuals alleged to have committed crimes including genocide, war crimes, torture, suppression of religious freedom, and persecution; and
- The Human Rights Law Division (HRLD), which provides legal advice and litigation support to prosecute and remove human rights violators.

A. ICE combined authorities

In pursuing suspected foreign human rights abusers or war criminals, the ICE Office of Investigations is uniquely situated to employ its combined authorities under both the United States' criminal and administrative laws to locate, prosecute, and remove human rights offenders from the United States. Under existing criminal statutes, where the United States can exercise jurisdiction over the foreign offenses (such as torture or genocide) outside U.S. territorial jurisdiction, ICE works with our partners in the Department to pursue legal action.

B. ICE partnerships

ICE's key partners include the Department's Criminal Division, as well as United States Attorneys' offices (USAOs) nationwide, the U.S. Department of State, U.S. Citizenship and Immigration Services and CBP. ICE facilitates these investigations from its U.S. headquarters and field offices, as well as through its attaché offices in over 39 countries. ICE maintains partnerships with a variety of foreign law enforcement organizations or judicial bodies who share ICE's goals with respect to identifying and prosecuting serious human rights abusers.

C. Training

From April 29 through May 2, 2008, the Department sponsored training on investigating and prosecuting human rights abusers involved in

genocide, torture, and the violation of other criminal statutes. The training focused on the work of ICE agents and Assistant United States Attorneys (AUSAs) and took place at the National Advocacy Center in Columbia, SC. Future training is planned for fiscal year 2009.

VI. The National Intellectual Property Rights Coordination Center

The National Intellectual Property Rights Coordination Center (IPR Center) was created by Executive Order in 1998, Exec. Order No. 13,439, 72 Fed. Reg. 40,053 (July 18, 2007) and mandated to provide a unified government response to the growing threat of counterfeiting. The IPR Center became operational in 2000 and provides critical information to both government and intellectual property (IP) industries, serving as the liaison for DHS to all federal agencies, the Executive branch, Congress, and media outlets regarding IP-related issues. The ICE-led IPR Center stands as a focal point in the U.S. government's fight against counterfeiting and the flow of counterfeit goods into the commerce of the United States. As part of its original mandate, the IPR Center continues to foster IP industry-government partnerships to generate IP investigative referrals for ICE field offices.

The IPR Center was restructured and relocated to a new state of the art facility in Arlington, VA, to more effectively counter the introduction of counterfeit/hazardous products by coordinating and leading the U.S. government's response to these threats. The new IPR Center opened to industry and the public on July 10, 2008, and employs a task force model to optimize the roles and enforcement efforts of the member agencies. The new IPR Center structure consists of Operations, Programs, and Outreach/Training Units, and includes embedded interagency representation from CBP, the Federal Bureau of Investigation (FBI), the Food and Drug Administration-Office of Criminal Investigations (FDA-OCI), the Department of Justice Computer Crimes and Intellectual Property Section (CCIPS), the U.S. Postal Inspection Service (USPIS), the

Department of Commerce, and the U.S. Patent & Trademark Office.

In July 2007, President Bush established, by Executive Order, an Interagency Working Group on Import Safety, *available at* <http://www.whitehouse.gov/news/releases/2007/07/20070718-4.html>. As a result of ICE's participation in the Working Group, ICE developed a long-term response identified as Operation Guardian.

Operation Guardian is a comprehensive enforcement initiative to combat the increasing importation of substandard, tainted, and counterfeit products that pose health and safety risks to consumers. Operation Guardian grew to include the expertise of CBP, the FDA-OCI, the FBI, the USPIS, the CCIPS, and the Consumer Product Safety Commission. The collaborative targeting and investigative efforts of Operation Guardian member agencies has led to the seizure of commodities that include, but are not limited to, pharmaceuticals, circuit breakers, extension cords, surge protectors, tainted honey, tainted shrimp, condoms, and toys. As of July 31, 2008, there were a total of 166 active Operation Guardian cases within ICE.

Included under the Operation Guardian initiative is ICE's Operation Apothecary, which consists of monthly foreign mail surge operations that are conducted at various International Mail Branches (IMB) and International Courier Hubs (ICH) throughout the United States. Apothecary's role is to identify, measure, and assess potential vulnerabilities in the entry process for the smuggling of commercial quantities of unapproved, counterfeit, and/or adulterated pharmaceuticals through IMBs, ICHs, and across land borders. Operation Apothecary combines the expertise of ICE, CBP, FDA-OCI, and USPIS.

VII. Human Smuggling and Trafficking Unit

A. Trafficking

ICE is the lead agency for investigating complaints of trafficking in persons involving foreign nationals. ICE places equal emphasis on rescuing the victims and on punishing the

violators. It is important to note that it is vital that ICE be contacted by USAOs upon receipt of a trafficking allegation as ICE is the only agency that can provide short-term immigration relief to victims of trafficking. Additionally, ICE must interview any potential victims of trafficking because victim status cannot be conferred without ICE concurrence.

B. Smuggling

ICE is concerned about mitigating the risk presented by those who illegally smuggle aliens into the United States. Those who engage in alien smuggling circumvent the processes put in place to prevent the entry of unauthorized individuals. This vulnerability was highlighted by the report of the 9/11 Commission. Alien smuggling cases should be considered for prosecution based upon their individual merits rather than relying on a threshold level of activity. When considering a case for prosecution, a smuggler who only moves a few aliens may, in fact, present a more serious threat than a smuggler moving a large number of aliens, based on the potential of the aliens to harm the United States or its interests.

VIII. Document and Benefit Fraud Task Forces and the USAOs—a partnership for success

Aliens engaged in document and benefit fraud pose a severe threat to national security and public safety. Residency, citizenship, and the opportunity to reside in the United States for any period of time are sought-after benefits throughout the world. Aliens ineligible to come to the United States, due to a terrorist or other criminal background, will often use document or benefit fraud as a means to enter and remain in the country. Together, ICE and the USAOs can target and dismantle criminal organizations involved in this fraud, as well as to serve as an effective deterrent to those that would consider such criminal activity.

A. Benefit fraud

Benefit fraud is the knowing and willful misrepresentation of a material fact on a petition

or application to gain an immigration benefit. These fraudulent representations may occur on the actual applications or in the documents submitted in support of benefit petitions. Benefit fraud presents a particular risk to national security and the integrity of the U.S. immigration system in that the perpetrator receives an actual benefit, such as lawful permanent residence in the United States. Once such a benefit is obtained, the perpetrator is eligible to receive government issued identity documents containing a photograph and the biographical information they provided. These documents, in turn, may be used to obtain other government issued documents, such as a driver's license.

Identity documents obtained as a result of benefit fraud provide the freedom of movement, societal access, and appearance of legitimate status sought by terrorists and other criminals. Immigration status and accompanying documents can be used to obtain employment at critical infrastructure sites, open bank accounts, board airplanes, and gain access to public buildings. With fraudulently obtained immigration status, a perpetrator may move throughout the United States and avoid law enforcement scrutiny. Additionally, aliens who receive an immigration benefit through fraud often have the ability to petition for supposed family members or other individuals. In effect, the alien who engages in benefit fraud has the residual risk of being a fraud multiplier and the beneficiaries of these petitions may also have the intent to harm the United States.

B. Document fraud

Document fraud refers to the manufacture, sale, or use of counterfeit identity documents—such as counterfeit driver's licenses, birth certificates, social security cards, or passports—for immigration fraud or other criminal activity. Fraudulent identity documents can be procured from a variety of sources: an individual computer user, online, in back rooms of shops, street vendors, gangs, or international criminal enterprises.

Document fraud also involves efforts to obtain genuine identity documents through

fraudulent means. Fraudulently obtained genuine identity documents, such as a driver's license, represent a particular danger in that they may help terrorists and other criminals avoid detection and scrutiny when encountered by law enforcement. Such was the case with 9/11 hijackers Abdulaziz Alomar and Ahmed Al Ghamdi, who used fraudulently obtained Virginia identification cards to clear airport security and board the aircraft.

Regardless of whether the perpetrator utilizes fake or fraudulently obtained genuine documents, identity theft is a core element of this fraud. When a genuine identity document, such as a birth certificate or social security card, is stolen and sold to an individual, the true possessor of that identity is injured. Document fraud is not a victimless crime.

C. Document and Benefit Fraud Task Forces (DBFTFs)

In an effort to better combat immigration-related fraud, ICE established 17 DBFTFs nationwide. DBFTFs are currently located in: Atlanta, Baltimore, Boston, Chicago, Dallas, Denver, Detroit, Los Angeles, Miami, New York, Newark, Philadelphia, Phoenix, Saint Paul, San Francisco, Tampa, and Washington, D.C. The ICE-led task forces are comprised of federal, state, and local agencies.

The DBFTFs utilize comprehensive investigations and prosecutions, asset forfeiture, and public education to detect, deter, and dismantle organizations that facilitate fraud. The task forces investigate immigration benefit fraud, other fraud schemes involving aliens (taxes, bank loans, health care), identity theft schemes, and document fraud (immigration documents, passports, social security cards, state identity documents, and drivers' licenses).

These task forces were modeled after the Immigration and Visa Fraud Task Force established by the Eastern District of Virginia United States Attorney's Office in 2003. The purpose of the District's task force was to create a standing group of agents and prosecutors to identify, investigate, and prosecute large immigration, visa, and identity document fraud

schemes. This task force aimed to restore integrity to the immigration process and prevent the entry of terrorist and other criminals into the United States. The District requested that ICE take the lead on this task force. The success in Virginia demonstrated that the task force approach was an extremely effective mechanism to combat fraud.

In creating the DBFTFs, ICE evaluated the Eastern District of Virginia USAO's model and determined that the active presence of an AUSA was a key component of the overall success of the program. Accordingly, prior to establishing any DBFTF, ICE has secured, and will continue to secure, not only the support but the participation of the USAO where the task forces are formed.

In addition to the Department, many other federal agencies/departments work together as members of the DBFTFs, including:

- U.S. Citizenship and Immigration Services (USCIS);
- U.S. Department of Labor, Office of the Inspector General;
- U.S. Department of State, Diplomatic Security Service;
- U.S. Department of State, Office of the Inspector General;
- U.S. Postal Inspection Service; and
- Various state and local law enforcement agencies.

The task forces build upon the partners' mutual interest in the prevention of fraud and the enforcement of immigration laws. They are successful because they maximize resources and promote information sharing. The formation of a unified law enforcement body allows the DBFTFs to work more intelligently and efficiently to combat fraud. By collaborating and coordinating across traditional boundaries, the DBFTFs leverage the assets, resources, and experience of their members. The combined skills, knowledge, and authorities enable the DBFTFs to conduct and manage more complex and cross-cutting investigations.

The DBFTFs utilize a comprehensive strategy that focuses on several different layers of the problem simultaneously. First, they seek criminal penalties for the fraud facilitators. Second, they identify and seize the assets that fraud facilitators derive from their schemes, in order to remove the financial incentive. They also work with their DBFTF partner, USCIS, to ensure that the beneficiaries of the fraud schemes have their pending status denied or their current status revoked. Finally, DBFTFs work with the Office of Public Affairs to ensure that a strong message of deterrence is conveyed to the general public. Criminal and administrative remedies, combined with public education, ensure that the fraud is stopped, the profit is removed, and others are deterred from perpetrating similar crimes.

As of July 31, 2008, the task forces have been responsible for 1,048 criminal indictments, 1,226 criminal arrests, 776 convictions, and the initiation of 1,427 investigations.

D. Challenges ahead

The DBFTFs face many challenges. In particular, the task forces will have to address the following trends that have been seen in the areas of document and benefit fraud: 1) the scope of this problem is pervasive and growing; 2) the sophistication of the fraud schemes has increased with new technology; and 3) the substantial profits from these fraud schemes are attracting professionals. ICE, with the support of and partnership with USAOs, believes that the DBFTFs can meet these challenges. ♦

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NOTES

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