

**TESTIMONY OF MICHAEL W. CUTLER  
FOR THE HEARING TO BE HELD ON  
March 15, 2007  
“CROSSING THE BORDER: IMMIGRANTS IN DETENTION AND VICTIMS  
OF TRAFFICKING”  
BEFORE THE HOUSE COMMITTEE ON HOMELAND SECURITY**

Chairman Thompson, Ranking Member King members of Congress, ladies and gentlemen, it is an honor to testify before this committee on the important issue of the detention of aliens seeking political asylum in the United States. I hope that my perspectives based on my many years working at the former INS can be helpful to you as you consider the critical issues concerning the issue of the detention of illegal aliens in the United States as they apply for political asylum.

Our nation has a proud tradition of providing refuge to people fleeing persecution in their respective native countries; however, we also know that those who would enter our country to do harm to our country have found in our kindness, potential weakness. While our nation's porous borders, especially the border that separates the United States from Mexico has received quite a bit of attention, the reality is that it is estimated that perhaps as many as 40% of the illegal aliens who are present in the United States did not gain entry into our country by running our nation's borders and circumventing the inspections process at a port of entry, but did, in fact enter our country through a port of entry and then went on to violate the terms of their admission into the United States by overstaying their authorized period of admission, securing illegal employment or becoming involved in criminal activities.

Immigration benefit fraud is a huge problem within the immigration bureaucracy and one that has been documented in a number of GAO and OIG reports. False claims concerning political asylum are simply a category of such fraud. There have been numerous instances where an alien will apply for political asylum in a last ditch effort to avoid deportation. In some cases, aliens apply for political asylum as a strategy to overcome his inability to secure a visa for the United States. Among those who have gamed the system to gain access to our country have been terrorists.

Janice Kephart, a former counsel to the 911 Commission testified before the Senate Committee on the Judiciary on March 4, 2005 at a hearing entitled, "Strengthening Enforcement and Border Security: The 9/11 Commission Staff Report on Terrorist Travel. She made a couple of statements at that hearing about political asylum worth considering today as we consider issues relating to political asylum:

“Political asylum and naturalization are two of the benefits most rampantly abused by terrorists.”

“In my recent study of 118 terrorists, 23 who lacked proper travel documents or sought to avoid deportation claimed political asylum”

To cite just a few of many examples of terrorists who exploited political asylum to attempt to avoid being deported from the United States I would ask you to consider four prominent cases:

On July 31, 1997 Gazi Ibrahim Abu Mezer and an accomplice were arrested by members of the New York City Police Department when they received information that Mezer and his roommate had constructed bombs they were planning to use in a suicide bombing of the New York City subway. Prior to Mezer's arrest, while out on bail he posted in conjunction with an arrest by the INS, he filed an application for political asylum in an effort to remain in the United States. Mezer was subsequently found guilty of a number of serious crimes including:

- 18 USC § 2332; conspiracy to kill a U.S. citizen;
- 18 USC § 924; knowingly and intentionally use and carry a firearm during and in relation to a crime of violence;
- 18 USC §§ 1546 and 3551; knowingly and intentionally possess counterfeit alien registration receipt card.

As a result of his conviction he was sentenced to life imprisonment.

On January 25, 1993 Mir Aimal Kansi, a citizen of Pakistan who had applied for political asylum, waited outside the headquarters of the CIA in Virginia and opened fire on vehicles driven by CIA employees arriving for work. He killed two of those employees and wounded three others. After a world-wide Manhunt he was arrested, brought to the United States, tried, convicted and ultimately executed.

Ramsi Yousef, the mastermind of the first attack on the World Trade Center complex on February 26, 1993 and Sheik Omar Abdel Rahman, the spiritual leader of the terrorists involved in that attack had more in common than the attack on the World Trade Center that left 6 people dead, hundreds injured and approximately a half billion dollars in damages inflicted on that iconic landmark and surrounding buildings; they had both applied for political asylum.

While the “Catch and Release” program implemented along our nation's Southern Border has received much publicity with the administration finally addressing that huge gap in the Border Patrol operation, seeking to provide more detention space for illegal aliens apprehended by the Border Patrol and the more expeditious removal of aliens arrested by the Border Patrol along the Southern Border. However, the “Catch and Release” program has not only plagued our nation's efforts to remove illegal aliens apprehended by the Border Patrol, it also is a factor in the interior enforcement program for which ICE bears the responsibility.

Statistically, at least 85% of illegal aliens who are released fail to appear when they are required to do so, either to show up for an immigration hearing or to present themselves for removal once they have been ordered deported. The Notice To Appear, the administrative instrument that initiates a removal proceeding for an illegal alien is often referred to as a "Notice to Disappear" by cynical immigration enforcement personnel. It is essential that we provide adequate detention facilities to make certain that aliens, who would likely abscond if they had the opportunity, be denied that opportunity to abscond.

Because of the inherent risks to the safety and well being of our nation and our citizens, I would strongly urge that aliens who apply for political asylum be kept in a detention facility until their true identities can be determined along with a proper determination being made of their credible fear should they be returned to their home country. I believe, however that it is essential to provide comfortable detention facilities for these aliens who are illegally in the United States and have applied for political asylum, especially if they are accompanied by their families. In this perilous era, it is my judgment that while our officials conduct investigations of the bona fides of claims of credible fear articulated by applicants for political asylum, that we have the way to detain such aliens until they are determined to pose no threat to our country and have, indeed, met the requirements to be eligible to be granted political asylum. However, should an alien be proven to not be eligible to be granted political asylum wither because he committed fraud or because he actually poses a threat to our national security, retaining such an alien in custody would deny him the ability to abscond and embed himself in our country.

When we look back into the history of the enforcement of the immigration laws of our country, Ellis Island was the gateway to our country for so many of our forebears. Indeed, my own mother first set foot on American soil when she stepped off the ship that brought her to this country and she stepped onto Ellis Island, a few short years before the start of the Holocaust in Europe that resulted in the death of many members of my own family including my grandmother for whom I was named. Ellis Island was, in effect, the waiting room for the United States that provided our immigration inspectors, public health officers and other officials with ample opportunity to properly screen aliens seeking to begin their lives anew in this magnificent land of opportunity. Our nation still needs to properly screen those who wish to share the American Dream to make certain that we would have an opportunity to seek for those who might be hiding among them and who, given the opportunity, would create an American nightmare.

I look forward to your questions.