

# THE PRESENT SITUATION OF THE UNITED STATES RELATING TO TRAFFICKING IN HUMAN BEINGS AND SMUGGLING OF MIGRANTS

*Richard L. Hoffman\**



## I. HUMAN TRAFFICKING IN THE UNITED STATES

When the United States Congress enacted the Trafficking Victims Protection Act, which took effect on October 28, 2000, Congress made several important findings concerning human trafficking. Those findings provided the basis for the new statute, which represents a new approach to the human trafficking problem in the United States.

Here are some of those findings, which reflect the official views of the United States government on the crime of human trafficking:

- (1) As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.
- (2) Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.
- (3) Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.
- (4) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. Traffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models. Traffickers also buy children from poor families and sell them into prostitution or into various types of forced or bonded labor.

....

- (8) Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the United States and worldwide. Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.

---

\* Assistant U.S. Attorney,  
Department of Justice,  
U.S.A.

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

- (11) Trafficking exposes victims to serious health risks. Women and children trafficked in the sex industry are exposed to deadly diseases, including HIV and AIDS. Trafficking victims are sometimes worked or physically brutalized to death.
- (12) Trafficking in persons substantially affects interstate and foreign commerce. Trafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market. Within the context of slavery, servitude, and labor or services which are obtained or maintained through coercive conduct that amounts to a condition of servitude, victims are subjected to a range of violations.
- ....
- (21) Trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations.
- (22) One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. [Of course, we now recognize that this phrase means not just all “men,” but all human beings, including men, women, and children.] The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.
- (23) The United States and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international concern. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports.
- (24) Trafficking in persons is a transnational crime with national implications. To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses. The United States must work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action in multilateral fora to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking victims.

The estimated trafficking figures, and much of the background information, on which the United States Congress relied in making these findings, came from a report that was published in April 2000 by Amy O’Neill Richard, an analyst employed by the United States State Department. The Richard Report still provides the latest and most complete publicly available analysis of human trafficking into the United States. The report is available on the Internet.

Ms. Richard is currently serving as the Senior Coordinator for Reports in the State Department’s recently created Office to Monitor and Combat Trafficking in Persons. She was also involved in preparing the 2002 Trafficking in Persons Report, published by the State Department pursuant to the requirements of the Victims of Trafficking and Violence Protection Act of 2000.

The Richard Report defined human trafficking as including:

all acts involved in the recruitment, abduction, transport, harboring, transfer, sale or receipt of persons; within national or across international borders; through force, coercion, fraud or deception; to place persons in situations of slavery or slavery-like conditions, forced labor or services, such as

## RESOURCE MATERIAL SERIES No. 62

forced prostitution or sexual services, domestic servitude, bonded sweatshop labor or other debt bondage.

Statistics on human trafficking are difficult to obtain because of the covert nature of the crime. We can only estimate the number of instances of trafficking and the number of trafficking victims.

Ms. Richard estimated, based on approximately one year of research, travel, and consultations with law enforcement and other officials around the world for purposes of preparing her report, that 45,000 to 50,000 women and children are being trafficked into the United States each year. The Richard Report did not attempt to provide a separate figure for trafficked men because, although such trafficking is known to occur, and has been proven in some cases in the United States courts, there were fewer documented cases of male trafficking on which to base a national estimate.

As to the source regions from which women and children are trafficked into the United States, the Richard Report estimated that approximately 30,000 of the 45,000 to 50,000 women and children being trafficked into the U.S. annually were from Southeast Asia, 10,000 from Latin America, 4,000 from the Newly Independent States of the former Soviet Union, and 1,000 from other regions. There have been reports of human trafficking into, and within, at least 20 different states of the United States, with most of the reported cases occurring in New York, California, and Florida.

The primary source countries for people who are trafficked into the United States appear to be Thailand, Vietnam, China, Mexico, Russia, the Ukraine, and the Czech Republic. Other source countries for trafficking into the United States include the Philippines, Korea, Malaysia, Latvia, Hungary, Poland, Brazil, and Honduras. Within recent years, the Department of Justice has also brought cases charging trafficking of victims from Ghana, Indonesia, Uzbekistan, Cameroon, and Bangladesh.

Women trafficked into the United States have been used primarily in various aspects of the commercial sex business, including prostitution, strip shows, and massage parlors. They have also been used for sweatshop labor, domestic servitude, and agricultural work. Women have been recruited in their home countries to be trafficked into the United States most often through false promises of jobs in the U.S. as waitresses, nannies, models, factory workers, and exotic dancers, and through false promises of the high wages, good working conditions, and a wonderful life that they supposedly could expect to enjoy in the U.S. Recruiters in the source countries have reached these women through advertisements, through employment, travel, modeling, and matchmaking agencies, through the Internet, and sometimes through the women's own friends and acquaintances.

Women are trafficked across the borders into the United States in three main ways: by the illegal use of legitimate travel documents, by the use of false travel documents, and by illegal transportation across the borders without inspection. Many have entered the country on business and tourist visas, or on student, fiancée, and entertainer visas, and then have stayed beyond the time limits of their visas, and have become illegal immigrants in that way. Traffickers on occasion have succeeded in using the same travel documents over and over to bring in several different women. Traffickers have used and abused travel agencies in countries where such agencies are permitted to assist governments in processing visas. Traffickers have caused women to be brought into the United States pretending to be members of otherwise legitimate tour groups. Traffickers have taken advantage of corrupt government officials, who are paid by the traffickers to issue false travel documents, or just to look the other way, in the source country or the transit country. There have also been reported instances where this has occurred in the destination country, the United States. Other traffickers have made their own false travel documents, or have obtained the false papers from other sources.

The major ports of entry for women and children being trafficked into the United States over recent years have been the country's major commercial airports: Los Angeles International Airport, the John F. Kennedy Airport in New York, Miami International Airport, the O'Hare Airport in Chicago, and the San Francisco International Airport. Other significant entry ports have been in Atlanta, Georgia, Cleveland, Ohio, Houston, Texas, Orlando, Florida, and Washington's Dulles International Airport. Traffickers have flown women into Toronto and Vancouver in Canada, and then have transported the

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

women overland into the United States. Others have brought women into the Northern Marianas Islands of Guam and Saipan. Once the women are inside the United States, traffickers have moved them around from city to city, or from town to town, in a circuit of cities that has included New York, Miami, Las Vegas, Houston, Reno, Seattle, Los Angeles, and San Francisco, among others.

Some trafficked persons, after having begun their trips to the United States voluntarily, have discovered, only after they arrived in the United States, that they were not free to move around or to change jobs. They have discovered that they were required to become prostitutes instead of working in the legitimate occupations that they had been led to expect. In one recent case, a girl was trafficked into the United States believing that she was going to be pursuing educational opportunities, only to discover that the family that she was relying upon wanted her to be its domestic slave instead.

Victims' travel documents, which may have been either legitimate or false, are often taken from them by traffickers. In cases where they had agreed to pay money to the traffickers to bring them into the United States illegally, their wages are often withheld until they can repay their smuggling fees. Those fees are often so large that, as a practical matter, they can never be repaid, particularly when traffickers, or illicit employers, keep adding new charges to the victims' debts, and fail to credit the payments that they have received from the trafficking victims. Traffickers have prevented women from leaving by using armed guards, violence, threats to harm the women themselves, threats to harm the women's families in the U.S. or in their home countries, and debt bondage. Traffickers have made examples of escapees who have been recaptured, by punishing them in front of other victims as a warning against attempting to escape. In addition to physical brutality, traffickers have threatened the women that if they do succeed in escaping, they will be treated as criminals by the U.S. government, arrested and deported.

The information gathered in the Richard Report indicated that most human trafficking into the United States had been done in the past by small crime rings, and loosely connected criminal networks. However, the Report also indicated that larger organized crime groups have been heavily involved in the human trafficking business outside of the United States, and that the involvement of these larger organized crime groups was likely to increase within the United States as well.

The Federal Bureau of Investigation -- the "FBI" -- has reported the involvement of Asian criminal enterprises in the migrant smuggling portion of the human trafficking business, with the most frequent involvement having been by Chinese, Vietnamese, and Korean criminal groups. Participation by Japanese, Filipino, Thai, Laotian, Cambodian, and Polynesian criminal groups has also been reported.

Some of these same criminal organizations have been found to be involved in the illegal prostitution business in the United States. The U.S. Immigration and Naturalization Service has found ties in some American cities, including Los Angeles, San Francisco, Sacramento, Las Vegas, and Dallas, among Asian organized crime figures, prostitution businesses, and Asian street gangs, where, for example, the local Asian street gangs have been employed by organized crime figures to protect and provide security for prostitution houses. It also appears clear that Russian organized crime groups have been involved not only in smuggling women, but also in trafficking them into and within the United States.

Recent investigations have confirmed that women are being moved around the United States in an apparently organized way, for purposes of prostitution. As Ms. Richard observed in her report, however, it has often been difficult to establish the existence and control of a central, organized, criminal authority in these cases, as opposed to looser, more informal, criminal networks. Such networks may consist of criminals who may simply know each other and trust each other, and therefore may choose to work together to make money in various different criminal enterprises, without answering to any common, higher level, criminal organization.

Although Ms. Richard found less data to support it, Ms. Richard's Report also discussed the trafficking of children into and within the United States, both for purposes of the sex industry and for labor. She cited instances of trafficking of Asian and Mexican girls in the sex industry, and trafficking of Haitian, Nigerian, Estonian, and South Asian children for purposes of domestic labor.

## RESOURCE MATERIAL SERIES No. 62

The Richard Report did not attempt to quantify the total profits being earned by the criminal human trafficking business in the United States. Ms. Richard reported upon and summarized a series of prosecuted cases, however, indicating that the profits from human trafficking were, and are, enormous. In just one example, a case where approximately 100 deaf and mute Mexican men and women were trafficked into New York City, and then forced to beg and sell trinkets, the profits over a four and one-half year period were estimated at roughly eight million dollars.

The International Crime Threat Assessment published in December 2000 by a United States government interagency working group is publicly available on the Internet. There has been no such publicly disclosed criminal threat assessment of this type since December 2000. The 2000 Threat Assessment described human trafficking as one of the major criminal threats to the United States.

The 2002 Trafficking in Persons Report (hereafter, the "TIP Report"), published by the United States State Department in June of this year pursuant to the requirements of the Victims of Trafficking and Violence Protection Act, is also available on the Internet. The TIP Report contains a country-by-country analysis of trafficking, based upon information collected from and through U.S. embassies and consulates around the world, non-governmental organizations, law enforcement agencies, the press, and many other sources.

Because of the statutory requirements pursuant to which the 2002 TIP Report was produced, the Report focused primarily upon countries outside of the United States. The Report indicated in its country-by-country listings the countries that are believed to be sources, or transit points, for persons being trafficked into the United States and into United States possessions. For the most part, the TIP Report agreed with the Richard Report's conclusions on this subject.

United States prosecutors, who are also called "federal" prosecutors, have used many different statutes over the years in their efforts to prosecute those involved in the trafficking of human beings.

Prior to the enactment of the Trafficking Victims Protection Act, United States federal prosecutors had a certain measure of success relying upon pre-Act federal laws to prosecute human traffickers, such as the law prohibiting conspiracies to violate constitutional rights, the law prohibiting involuntary servitude, the law prohibiting traveling in interstate or foreign commerce for purposes of prostitution, as well as the money laundering and racketeering laws when there were sufficient facts to support use of those statutes. Among the primary reasons for the enactment of the Victims of Trafficking and Violence Protection Act were the problems that arose in these prosecutions under other statutes. Problems arose both in terms of the elements that had to be proven for convictions on these other offenses and the difficulties that prosecutors had in obtaining the necessary witnesses, and in persuading those witnesses to testify against the traffickers, because of the witnesses' fears of retaliation against themselves and their families both in the United States and in the witnesses' home countries.

As you may know, the United States has two almost entirely separate legal systems. One system, in which I am involved as a federal prosecutor, functions at the national/federal level. The other system functions at the state and local level, and is administered for the most part separately by the prosecutors and courts of each state. Many criminal offenses violate both federal and state laws. Certain crimes related to human trafficking, such as prostitution, are prosecuted at the state level. There is often cooperation between federal and state prosecutors and investigators in deciding how particular cases should be handled.

I can provide you with statistics with respect to federal prosecutions of human trafficking offenses. In March 2001, the United States Attorney General, John Ashcroft, announced that combating trafficking in persons would be a top civil rights priority of the U.S. Justice Department. Since then, federal prosecutions in this area have significantly increased. According to figures provided to me by the Civil Rights Division of the Justice Department, in fiscal year 2001, the United States Department of Justice prosecuted 34 human traffickers. That was four times as many as had been prosecuted in fiscal year 2000. In fiscal year 2002, up to July of this year, the Department had prosecuted 37 additional human traffickers.

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

As of July 2002, there were 120 open human trafficking investigations, which represents a 50% increase over the number of federal human trafficking investigations that were underway one year ago, and a four-fold increase over the number underway two years ago. From January 2001 to July 2002, the Department of Justice charged, convicted, or received sentences for 85 human traffickers in 18 different cases. From January 2001 to July 2002, the Department of Justice has charged, convicted, or received sentences for approximately 58 traffickers in 11 cases involving sexual exploitation.

As of July 2002, the Department of Justice had prosecuted 26 traffickers under the statutes created by the Trafficking Victims Protection Act of 2000, which I may sometimes refer to hereafter as the "TVPA." Fifteen of these traffickers are charged with having sexually exploited their victims. There have been 6 separate cases using the new TVPA statutes, 4 of which involved sexual exploitation. Under the United States Constitution, the Justice Department cannot use criminal statutes added by the TVPA to prosecute conduct that occurred prior to the enactment date in October 2000.

## II. MIGRANT SMUGGLING IN THE U.S.

I will turn now to the present situation in the United States with respect to migrant smuggling.

The United States Immigration and Naturalization Service, which I may sometimes refer to hereafter as the "INS," estimates the number of persons illegally present in the United States at about 7 million. Data in the year 2000 United States Census suggests that the number may be at least 8 million. A study conducted by Northeastern University in Boston estimated that the number could actually be significantly higher than 8 million. INS officials have estimated that between 40 and 50 percent of the persons illegally present in the United States entered legally as temporary visitors, but then failed to depart the United States when their visas expired, when they were otherwise supposed to leave, or when they were ordered to leave. The portion of the illegal immigrant population entering legally, and then remaining illegally, in the United States was recently estimated to be increasing by at least 125,000 per year.

The INS and its uniformed law enforcement arm, the United States Border Patrol, do not publish current statistics that distinguish between illegal migrants who are smuggled into the United States, and migrants who have entered the United States illegally, or who remain in the United States illegally, without the assistance of smugglers. The INS and the Border Patrol do publish periodic reports relating to apprehensions of persons attempting to enter the United States illegally. The Border Patrol reports that since 1994, it has apprehended more than 11.3 million persons nationwide. The latest INS report shows that during the fiscal year that began on October 1, 2001, through the end of June 2002, more than 702,000 people were apprehended attempting to enter the United States by crossing the United States' southwestern border, which continues to be the most popular attempted illegal entry area in the country. More than 78 thousand apprehensions were made along that border during the month of June 2002 alone. During fiscal year 2001, which ended on September 30, 2001, a total of more than 1.2 million people were apprehended attempting to cross the Southwestern border. The INS and the Border Patrol apprehend thousands of migrant smugglers each year. The United States Coast Guard, which is responsible for interdictions at sea along the coasts of the United States, reports a total of approximately 4,000 interdictions at sea during fiscal year 2001, and approximately the same number thus far in fiscal year 2002.

As an interesting point of comparison, the INS reported in August 2002 that a total of 1,064,318 persons legally immigrated to the United States during fiscal year 2001. That figure includes 411,059 newly arriving persons who obtained immigrant visas outside the United States through the Department of State, and 653,259 persons already living in the United States who became permanent residents by applying for adjustment of their status. According to the INS, five countries accounted for 40 percent of the total number of legal immigrants, in the following descending order: Mexico (206,426), India (70,290), The People's Republic of China (56,426), the Philippines (53,154), and Vietnam (35,531). The United States, perhaps more than any other, is a nation of immigrants. An interesting recent study conducted by researchers at Northeastern University in Boston reported that as a result of waves of immigration, the foreign born population of the United States was nearly 15 percent in 1910, fell to 4.7 percent over the succeeding 60 years, and then has been rising steadily since

that time, with particularly strong gains in the 1980s and 1990s, to an estimated 12.4 percent in 2000. In the ten states with the largest estimated immigrant populations, the percentage of foreign born residents ranges from a low of 13.8 percent to a high, in the state of California, estimated at 27 percent of the population.

Returning now to the figures on illegal immigration, nationals from 188 different countries were apprehended by the INS and the Border Patrol during fiscal year 2000, which is the most recent year for which I was able to obtain this kind of information. Migrants from Mexico alone accounted for 96 percent of that total number. The next largest source countries whose nationals were apprehended by the INS and Border Patrol were Honduras, El Salvador, Guatemala, the Dominican Republic, Cuba, Canada, Colombia, Jamaica, The People's Republic of China, Ecuador, and Brazil. The Coast Guard during fiscal years 2001 and 2002 reported significant numbers of interdictions at sea of migrants from Ecuador, Haiti, Cuba, the Dominican Republic, the People's Republic of China, and Mexico.

Of course, despite increased enforcement efforts, migrants continue to desire to enter the United States in large numbers, and are apparently willing to pay large amounts of money -- some reportedly as much as \$60,000 to \$70,000 -- to be smuggled into the United States. As the INS and Border Patrol, patrolling the land borders, and the United States Coast Guard, operating at sea and along the seacoasts, increase their activities along one part of the United States' borders, or target particular modes of entry, migrant smugglers and would-be immigrants move to other areas, and constantly seek to discover new and different ways of crossing the border without being detected. As a result, many illegal migrants, with and without the assistance of smugglers, are not apprehended, and many continue to cross the southwestern border, and all of the other borders, of the United States.

The lengths to which migrants will go, and the dangers that they face, either willingly or unwillingly, in the course of their efforts to enter the United States, are sometimes remarkable. As you know, people have died in the United States, as well as in other countries, while they were trapped inside of commercial shipping containers. Two recently died inside a large abandoned truck trailer in Texas. Many have died, and many others have barely survived the abuse and the horrible conditions that they experienced, while trying to enter the United States by sea after having paid, or contracted to pay, large smuggling fees to Chinese "snakeheads" and other similar smugglers. Many would-be immigrants have died when smugglers abandoned them in the dangerous deserts, mountains, rivers, and canals located along the southwestern border of the United States. As of September 12, 2002, INS reported that a total of 289 migrants attempting to enter the United States had died so far this year. Most of the dead were Mexicans attempting to cross the southwestern border with the help of smugglers known in that area as "coyotes."

The INS described one case to me in which a man seeking, unsuccessfully as it turned out, to cross the southwestern border had himself actually sewn into the seat of a motor vehicle. The press has also reported cases of persons who have been caught trying to enter the United States from the north, over the Canadian/U.S. border, by crawling under railroad bridges high above the extremely dangerous waters of Niagara Falls.

The December 2000 International Crime Threat Assessment described migrant smuggling (which is called "Alien Smuggling" in the Threat Assessment) as one of the major types of international crime affecting the interests of the United States. The Threat Assessment described countries "under economic or demographic stress -- particularly China, India, and Pakistan in Asia, and Mexico, the Caribbean Island nations, and Central American states in the Western Hemisphere," as the major sources of illegal migrants to the United States. It reported that more than half of the illegal migrants currently in the United States are from Mexico, and that nearly 80 percent of foreign nationals illegally living or working in the United States are concentrated in the states of California, Texas, New York, Florida, and Illinois, with 40 percent living in California alone.

According to the 2000 Threat Assessment, an estimated 500,000 illegal migrants are brought into the United States annually by organized migrant smuggling networks, while an equal number of migrants enter the United States each year without the assistance of smugglers. Most of these illegal immigrants cross the border into the United States from Mexico or Canada. Most of them come from

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

Mexico and Central America. As of 1999, the government estimated that 30,000 to 40,000 Chinese were being smuggled into the United States per year, either by ships that landed, or that were met by smaller smuggling boats, off the United States coasts, or by routes that brought the migrants through South and Central America, Mexico, and Canada.

The Threat Assessment listed several of the reasons why migrant smuggling and illegal immigration constitute “threats” to the United States. These included strains caused by these crimes upon social and economic resources and the undermining of wages and working conditions for legal employees. There are also concerns that organized crime groups, including Nigerian, Chinese, and Russian groups, employ illegal migrants, after they are smuggled into the country, to conduct other dangerous criminal activities within the United States. More recent concerns, which have been a particular focus of investigation and public debate over the past couple of years, relate to the links between migrant smuggling and illegal immigration, on the one hand, and terrorism on the other.

Migrant smuggling also raises serious human rights concerns. Migrants who desire to come to the United States, and even pay large amounts of money to smugglers to bring them to the United States, are often misled by smugglers as to what they should expect, abused by the smugglers during transit, and then exploited by the smugglers and by employers, sometimes working with the smugglers, after their arrival in the United States. The smuggled migrants are particularly vulnerable to such abuse because the migrants know that they are undocumented, and therefore, they may believe that they have no legal rights, or they may be fearful of asserting any such rights. Of course, it is at this point where migrant smuggling and human trafficking intersect, that is, where persons who have willingly entered the United States illegally, and often have paid large sums of money to do so, are tricked, threatened, coerced, or otherwise forced to work and live inside the United States in conditions resembling slavery.

The 2000 Threat Assessment reported that migrant smuggling into the United States, facilitated by organized migrant smuggling networks, was increasing, helped along by such factors as the easing of national border controls worldwide, the growth of commercial travel options, the wide availability of new technology capable of creating false, but legitimate appearing, identification and travel documents, and the rising sophistication of global criminal networks. The vast numbers of people seeking new economic opportunities in the United States, coupled with diminished opportunities for legal migration into prosperous developed countries that are seeking to control the flow of immigration, and increased border enforcement and interdiction of illegal migrants, have all contributed to the growth of the criminal migrant smuggling business.

Until the last few years, in the United States and elsewhere, migrant smuggling was treated by the criminal statutes and criminal sentencing guidelines as less serious, and therefore was viewed by the criminals as much less risky, than trafficking in other forms of contraband, such as illegal drugs. Migrant smuggling is also very profitable, and that fact has not escaped the notice of international organized crime, which increasingly has been adding migrant smuggling to its repertoire.

United States prosecutors have used several different statutes to prosecute those involved in migrant smuggling. The statute specifically directed at migrant smugglers covers unlawfully bringing migrants into the United States other than at a legal port of entry, bringing them anywhere in the United States, knowing that they are not authorized to enter, transporting them within the United States, harboring or concealing them, and encouraging or inducing them to enter illegally. Other statutes prohibit the employment of smuggled migrants, and the importation of aliens for prostitution or other immoral purposes. Federal prosecutors also use other statutes that apply to certain migrant smuggling cases depending upon additional facts that may be learned by the government during the investigation. These include the mail and wire fraud statutes, and the money laundering and racketeering laws.

In January 1999, the INS adopted a new so-called “interior enforcement strategy,” which focused on assessing and attacking what the INS at the time perceived as the greatest harms resulting from illegal immigration in the United States. The INS sought to target the infrastructure that supported illegal migration, large-scale smuggling organizations, fraud conspiracies, employers involved in widespread



immigration violations, and significant local law enforcement problems created by the arrival of illegal immigrants into a community. Applying that strategy, as of June 2002, INS had conducted approximately 50 major migrant smuggling investigations.

These investigations included the Robert Porges case, where an attorney was indicted and charged with conspiring with mainland Chinese smuggling organizations for nearly a decade to file over 6,000 fraudulent asylum applications in New York City. That case was prosecuted under the racketeering law. Mr. Porges pleaded guilty earlier this year, and agreed to forfeit 2 million dollars in cash that had been seized by the government, and additional millions of dollars in proceeds from the scheme.

In October 2000, an INS investigation called "Operation Forerunner," which at that time was the largest multi-national, anti-smuggling investigation ever conducted in the Western Hemisphere, resulted in the interdiction of 3,500 illegal migrants destined to the United States, and the arrest of 38 smugglers, including Jose Leon Castillo, whose organization was charged with responsibility for the smuggling of thousands of migrants into the United States during the previous five years.

During a 12-day period in June 2001, 75 migrant smugglers and illegal document vendors were identified, and 52 were detained for prosecution, outside of the United States in connection with an investigation called "Operation Crossroads International." In that investigation, initiated by the INS office in Mexico City, the INS assisted law enforcement agencies in 12 Latin American and Caribbean nations. The investigation led to the interdiction of 7,891 migrants from 39 different countries. All of the migrants had been headed for the United States and Canada. Almost 5,000 of the people interdicted during the investigation were non-Mexicans who were interdicted in Mexico as they attempted to travel through Mexico on their way to the United States.

In December 2001, a federal grand jury in Tennessee returned a 36-count indictment charging Tyson Foods, Incorporated, a major food processing company, with conspiracy to import and transport illegal aliens to work in Tyson's plants throughout the United States. The case includes forfeiture allegations covering 40 to 50 million dollars in illegal proceeds.

Also in December 2001, a Los Angeles-based commercial bus company, Golden State Transportation, and more than 30 employees of that company, were indicted in Arizona and charged with conspiring with migrant smugglers to move hundreds of illegal migrants from the southwest border to locations around the United States. A superseding indictment just returned by the grand jury in the Golden State Transportation case added money laundering charges to the initially indicted migrant smuggling charges, and also alleged forfeiture of a large amount of property. The Tyson Foods indictment culminated a two and a half-year investigation.

That, and the other investigations that I have just briefly described, have thus focused on disrupting and dismantling the larger of the corrupt and criminal organizations, both inside and outside the United States, that conduct and benefit from migrant smuggling into the United States.

### **III. EFFECT OF TERRORIST ATTACKS OF SEPTEMBER 2001**

On October 26, 2001, within weeks after the September 2001 terrorist attacks upon the United States, Congress enacted the USA PATRIOT Act, which had several provisions affecting immigrants and immigration procedures, either directly or indirectly. Among other things, the Act contained provisions designed to increase and improve law enforcement scrutiny of the northern border of the United States, to increase and improve the monitoring of persons in the United States on student visas and of the status of other non-resident immigrants within the United States, and provisions designed to protect legal immigrants from the loss of benefits as a result of the attacks. The Act also contained findings of Congress condemning "backlash" attacks against Arab Americans, Muslim Americans, Americans from South Asia, and Sikh Americans.

One recent example of the ongoing public debate relating to the government's efforts to address the terrorism threat in the immigration context appeared in the published transcript of a hearing held by the Immigration and Claims Subcommittee of the United States House of Representatives Judiciary

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

Committee, on June 19, 2002, as reported by Federal News Service. That transcript is available electronically via Lexis/Nexis.

As Joseph R. Greene, INS Assistant Commissioner for Investigations, testified during that hearing, the INS and Border Patrol, working with limited numbers of agents and officers, have had to revise their strategies, and have had to devote their resources in different ways, since September 2001, in an effort to focus upon investigations and enforcement operations deemed necessary in the effort to safeguard the nation and to prevent further terrorist attacks. There has been much public discussion about plans to move the INS and Border Patrol, along with certain other agencies and functions, into a new department of Homeland Security. There have been public announcements by the President, the Attorney General, and other high United States government officials concerning the devotion of federal investigative and law enforcement resources within the United States and elsewhere to similar terrorism-related tasks.

There has also been considerable public discussion of the efforts by the United States government to address civil rights issues that have arisen since September 2001. Issues relating to complaints arising from terrorism-related changes in migration procedures, and terrorism-related investigations, arrests, and detentions, are being addressed both in ongoing public debate and in the courts. Issues relating to prejudiced acts, described as "backlash" offenses, against persons belonging, or appearing to belong, to the same racial and ethnic groups as those believed to have perpetrated the attacks are also being addressed. As Ralph Boyd, the Assistant Attorney General for Civil Rights in the U.S. Department of Justice, testified to Congress in May 2002, the government is both prosecuting such backlash offenses aggressively and making efforts to assist the communities affected by them.

Thus, the events of September 2001 have affected the situation in the United States pertaining to human trafficking and migrant smuggling. Other than the obvious and publicly discussed effects bearing upon the government's allocation of its investigative and law enforcement resources, details of the present effects, and of tactical and strategic plans to address them, cannot be disclosed at this point. The long-term effects have yet to be seen and calculated.

Recent INS reports have shown some decline in illegal entry attempts over the past year. However, it is not clear whether this change is due to the would-be migrants' fears of increased law enforcement, or due to perceived problems in the U.S. economy, which may have made the U.S. seem to be a less attractive destination for those seeking economic opportunities.