

**Closing Statement of Michael W. Cutler, Senior Special Agent, INS (Ret.) for
Senate Judiciary Committee Hearing on March 20, 2013 on the topic:
“Building an Immigration System Worthy of American Values”**

Having listened to the testimony of all of the witnesses who testified at the hearing and the questions that they were asked along with the responses that they provided, I believe it is critical to provide my perspectives that I did not have the opportunity to provide at the hearing- I therefore thank Senator Coons for providing me with this opportunity.

In his opening remarks, Senator Coons, who acted as chairman of the hearing, noted how much money has been spent on DHS to enforce the immigration laws and that there are high numbers of aliens currently being removed from the United States. It is important to note that simply throwing lots of money a problem will not solve the problem. It is estimated that well over one billion dollars has been spent on the implementation of US-VISIT a program that was essentially mandated by the 9/11 Commission to track the entry and departure of aliens in the United States and yet, nearly a decade later, this important system is still dysfunctional. The goal of government should not be to spend as much money on an issue as possible but to spend money wisely.

As for the removal of aliens from the United States, I believe it is of critical importance to point out that there is a bit of semantics involved in deciphering the statistics. There is a world of difference between an alien who voluntarily departs from the United States as compared with an alien who is formally ordered deported and is subsequently removed. Prior to the current use of jargon, there was a clear distinction in the language that described these situations. Today, any alien who leaves the United States, whether voluntarily or as the result of an order of deportation being imposed by an Immigration Judge are both considered to have been “removed.”

An alien who is formally deported and then unlawfully reenters the United States is, in that act of unlawful reentry committing a felony. If the alien has no criminal convictions that violation of law carries a maximum of 2 years in prison while aliens who have serious criminal convictions may face up to 20 years in prison for that crime of unlawful reentry (as an aggravated felon).

However, an alien who voluntarily departs from the United States would face no criminal charges for unlawful reentry. The artful use of language has muddied the waters in terms of assessing the circumstances under which aliens who violate the provisions of the Immigration and Nationality Act ultimately leave the United States.

It was evident from some of the testimony and ensuing questions, that there are serious concerns about instances where aliens who had been taken into custody for violations of the provisions of the Immigration and Nationality Act and through a lack of proper representation were remanded into custody and in some instances, deported to their home countries where they faced life threatening situations. The impression conveyed by some of the testimony was that there are instances where such aliens might have properly applied for and received political asylum.

As someone whose family suffered greatly because of anti-semitism during the Holocaust at the hands of the Nazi regime during the Second World War, I was, in fact, named for my mother's mother (my grandmother) who was killed during the Holocaust in Poland, I am certainly very concerned about the

issue of people facing life threatening situations because of similar situations today. However, what was not discussed during the hearing is the process by which enforcement personnel of the INS, when I worked for that agency and now ICE and CBP question aliens who are taken into custody to make certain that reasonable efforts are made to rule out the removal or deportation of aliens who would face such situations were they to be returned to their native countries.

In point of fact, when I was an INS special agent I was required to not simply look to arrest aliens suspected of being illegally present in the United States or subject to deportation from the United States, but to ask appropriate questions to determine whether the aliens we arrested were eligible for relief from deportation. What must be understood is that enforcement personnel are law enforcement officers who are charged with enforcing the laws, in their entirety, as they exist. It would be as appropriate to release an alien from custody who is eligible for relief from deportation as it would be to detain an alien who had no such eligibility.

While a couple of the witnesses testified about a few cases where they believed that justice was not served, I believe that these examples are not representative of how decisions are generally made. While it is unfortunate when such situations arise, law and policy should never be made on the basis of non-representative exceptional cases. Measures should certainly be taken to try to eliminate such cases but most likely the best way of achieving this goal should be focused on the way that enforcement personnel are trained and instructed as to how to best carry out their official duties especially when interviewing aliens that they arrest.

It should be noted that there have been significant instances where terrorists and criminals have managed to defraud the immigration benefits program, in general, and the process by which political asylum applications are adjudicated in particular as an embedding tactic.

I will provide a few examples where this did, in fact, occur. These examples can be found in Table 4 that was provided in a USDOJ-OIG Report that was entitled:

The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders

**Report Number I-2003-004
February 2003**

**Table 4
Terrorists Who Applied for Asylum**

Ahmad Ajaj and Ramzi Yousef - These individuals entered the United States seeking asylum in 1991 and 1992, respectively. In 1993, they helped commit the first World Trade Center bombing which killed six people. Ajaj left the country and returned in 1992 with a fraudulent passport. He was convicted of passport fraud and did not complete the asylum process prior to his conviction. Yousef completed the required INS paperwork and was given a date and time for his asylum hearing; however, his application was pending when the World Trade Center was bombed.

Sheik Umar Abd ar-Rahman - Abd ar-Rahman sought asylum to avoid being deported to Egypt. He helped plan a "day of terror" for June 1993 in which New York City landmarks such as the United Nations' building, the FBI's Headquarters

in lower Manhattan, and the Lincoln and Holland Tunnels were to be bombed.

Hesham Mohamed Hadayet - Hadayet applied for asylum in 1992, telling the INS that Egyptian authorities falsely accused and arrested him for being a member of the Islamic Group Gama'a al-Islamiyya, which is on the U.S. Department of State's Foreign Terrorist Organizations list. The INS denied his asylum request and Hadayet was placed in removal proceedings. After Hadayet did not receive the notice of his immigration hearing date due to an incorrect mailing address, the EOIR terminated the proceeding. On July 4, 2002, Hadayet shot and killed two people at the Los Angeles airport before he was killed by an El Al Airlines security guard.

Mir Aimal Kansi - Kansi entered the United States in 1991 and applied for political asylum in 1992. The INS Asylum office did not interview him or schedule an immigration court date since his application was in the pending backlog. On January 25, 1993, Kansi murdered two and wounded two CIA employees.

Gazi Ibrahim Abu Mezer - The INS voluntarily returned Mezer to Canada after he was apprehended twice in June 1996. After Mezer's third apprehension in January 1997, the INS began formal removal proceedings because Canada refused to accept him a third time. In April 1997, Mezer filed for asylum, in which he claimed that he suffered a fear of persecution if he returned to Israel. In June 1997, Mezer withdrew his application and told his attorney that he had returned to Canada. Subsequently, Mezer was convicted and sentenced to life in prison for planning to bomb the New York City subway system.

This is the link to that USDOJ/OIG report:

<http://www.justice.gov/oig/reports/INS/e0304/results.htm>

[The 9/11 Commission Staff Report on Terrorist Travel](#) detailed numerous examples of instances where terrorists not only made use of visa and immigration benefit fraud to enter the United States but to also embed themselves in the United States.

To cite an example, page 47 of the above-noted report contained the following paragraph:

*“Once terrorists had entered the United States, their next challenge was to find a way to remain here. Their primary method was immigration fraud. For example, Yousef and Ajaj concocted bogus political asylum stories when they arrived in the United States. Mahmoud Abouhalima, involved in both the World Trade Center and landmarks plots, received temporary residence under the **Seasonal Agricultural Workers (SAW) program**, after falsely claiming that he picked beans in Florida.*

“Mohammed Salameh, who rented the truck used in the bombing, overstayed his tourist visa. He then applied for permanent residency under the agricultural workers program, but was rejected.

“Eyad Mahmoud Ismail, who drove the van containing the bomb, took English-language classes at Wichita State University in Kansas on a student visa; after he dropped out, he remained in the United States out of status.”

Although I made note of this in my prepared testimony, for purposes of placing emphasis on this highly significant vulnerability, especially as political pressure appears to be building for the enactment of “Comprehensive Immigration Reform,” a massive amnesty program for unknown millions of illegal aliens present in the United States where there are no resources to routinely conduct face-to-face, in person interviews with these aliens. These aliens seek various immigration benefits that would include providing “undocumented” aliens with official identity documents even though there is no realistic way of determining their true identities or backgrounds or true intentions for entering the United States in violation of law.

In my prepared testimony I quoted from the 9/11 Commission Staff Report on Terrorist Travel and I am compelled to provide these two brief quotes once again:

First of all, here is the first paragraph from the preface of that report:

"It is perhaps obvious to state that terrorists cannot plan and carry out attacks in the United States if they are unable to enter the country. Yet prior to September 11, while there were efforts to enhance border security, no agency of the U.S. government thought of border security as a tool in the counterterrorism arsenal. Indeed, even after 19 hijackers demonstrated the relative ease of obtaining a U.S. visa and gaining admission into the United States, border security still is not considered a cornerstone of national security policy. We believe, for reasons we discuss in the following pages, that it must be made one."

Here is a paragraph under the title "Immigration Benefits" found on page 98:

"Terrorists in the 1990s, as well as the September 11 hijackers, needed to find a way to stay in or embed themselves in the United States if their operational plans were to come to fruition. As already discussed, this could be accomplished legally by marrying an American citizen, achieving temporary worker status, or applying for asylum after entering. In many cases, the act of filing for an immigration benefit sufficed to permit the alien to remain in the country until the petition was adjudicated. Terrorists were free to conduct surveillance, coordinate operations, obtain and receive funding, go to school and learn English, make contacts in the United States, acquire necessary materials, and execute an attack."

To those who might be skeptical about the relevance of a DOJ/OIG report that is a decade old, I would offer DOJ News Release I have copied below. Here is the link to the news release which was issued on March 30, 2010:

<http://www.justice.gov/opa/pr/2010/March/10-crm-343.html>

I will provide comments beneath the copy of the press release.



JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, March 30, 2010

Eritrean Man Pleads Guilty to Alien Smuggling

WASHINGTON - Samuel Abrahaley Fessahazion, 23, an Eritrean national, has pleaded guilty to helping smuggle illegal aliens to the United States for private financial gain, announced Assistant Attorney General Lanny A. Breuer of the Criminal Division, U.S. Attorney José Angel Moreno of the Southern District of Texas and U.S. Immigration and Customs Enforcement (ICE) Assistant Secretary John Morton.

Fessahazion, aka "Sami," aka "Sammy," aka "Alex" and aka "Alex Williams" pleaded guilty yesterday in Houston before U.S. District Court Judge Nancy A. Atlas to one count of conspiracy, and two counts of encouraging and inducing aliens to come to, enter or reside in the United States in violation of law for the purpose of private financial gain.

"By bringing this smuggler to justice, we have broken a chain that runs from Africa to South and Central America, directly into the United States," said Assistant Attorney General Lanny A. Breuer. "We will not allow these dangerous smuggling organizations to profit from bringing people illegally into the United States."

"This prosecution strikes a significant blow to a criminal organization engaged in a sophisticated international alien smuggling operation," said U.S. Attorney José Angel Moreno of the Southern District of Texas, "and highlights the continuing cooperation and success of multiple law enforcement agencies in interdicting such activities."

“Breaking this global alien smuggling network puts smugglers on notice that we are coming after them and we will shut them down,” said ICE Assistant Secretary John Morton. “ICE will continue to identify the most dangerous international human smuggling organizations for investigation and prosecution.”

According to plea documents, from at least June 2007 until approximately January 2008, Fessahazion was the Guatemalan link of an alien smuggling network that spans East Africa, Central and South America. Specifically, according to the court documents, Fessahazion illegally entered the United States at McAllen, Texas, on March 20, 2008. He applied for asylum on Sept. 30, 2008, claiming in his application that he was traveling across Africa in 2007 and 2008, fleeing persecution in Eritrea. However, according to court documents, Fessahazion was actually in Guatemala during that period facilitating the smuggling of East African aliens to the United States. Fessahazion was granted asylum by the United States on Nov. 13, 2008.

Fessahazion admitted that for profit, he encouraged or induced at least six and up to 24 illegal aliens, primarily East Africans, to come to, enter, or reside in the United States knowing that they were not authorized to do so. Fessahazion admitted he moved aliens from Honduras through Guatemala and into Mexico illegally, at which point he referred aliens to a smuggler who brought the aliens into the United States.

In one instance, according to court documents, Fessahazion and his co-conspirators moved two illegal aliens from South Africa to Sao Paulo, Brazil, then through Venezuela to Honduras where they were instructed to contact Fessahazion. Once in contact, Fessahazion sent a driver to pick up the two aliens and bring them to Guatemala City, Guatemala. In exchange for \$800, Fessahazion took the two aliens by bus to a house bordering Guatemala and Mexico. There, working with a co-conspirator, Fessahazion provided information to the couple on how to cross the border into Mexico illegally and how to proceed once in Mexico to the United States border. Fessahazion and the co-conspirator provided the couple with a guide who physically took them into Mexico and provided contact information for an unidentified smuggler known only by the alias “Matamoros,” who would in turn take the two aliens to the United States from Reynosa, Mexico. In February 2008, the couple was illegally brought to the United States by guides working for “Matamoros.” According to court documents, the guides carried guns and ferried the couple across the river on the Mexico/U.S. border in inner tubes.

In another example, an alien was moved from Dubai to Brazil, then to Honduras via Colombia and Costa Rica. According to court documents, a co-conspirator told the alien he could get him from Dubai to Brazil, at which point others would assist the alien each step of the way to the United States in a “chain like” fashion.

According to court documents, once the alien arrived in Honduras, Fessahazion sent a driver to retrieve him and bring him to Guatemala City. In exchange for \$700, Fessahazion took the alien to the Guatemala/Mexico border and, along with a co-conspirator, gave the alien information on how to cross the border into Mexico illegally and how to proceed once in Mexico to the United States border, including contact information for “Matamoros.” The alien then traveled into Mexico, contacted “Matamoros” and traveled to Reynosa as “Matamoros” instructed. In December 2007, according to court documents, guides working for “Matamoros” took the alien and others to the United States illegally by ferrying them across the river on the Mexican/U.S. border in inner tubes. Shortly after crossing the border into the United States, the alien and others were apprehended.

At sentencing, scheduled for June 14, 2010, Fessahazion faces a maximum penalty of 10 years in prison and a \$250,000 fine.

The case was prosecuted by Trial Attorney Pragna Soni of the Criminal Division’s Domestic Security

Section, with the assistance of Assistant U.S. Attorneys Edward Gallagher and Douglas Davis of the Southern District of Texas.

The investigation was conducted by the ICE Special Agent in Charge (SAC) Washington, with the assistance of SAC San Francisco, the ICE Human Smuggling and Trafficking Unit, ICE Office of Intelligence, ICE Office of International Affairs and U.S. Custom and Border Protection's Office of Alien Smuggling Interdiction.

10-343
Criminal Division

First of all, as the title of the press release notes, a citizen of Eritrea (defendant Samuel Fessahazion) pleaded guilty to smuggling illegal aliens into the United States. The aliens came from a wide variety of countries and all were ultimately brought into the United States by circumventing the inspections process along the border that is *supposed* to separate the United States from Mexico.

In order to get these aliens into the United States from as far away as South Africa and East Africa via Latin America and, finally, into the United States in Texas. His sophisticated and circuitous route, on some smuggling runs, included passing through Brazil and Venezuela, the latter, a nation certainly not considered a friend of the United States. It causes me to wonder if the government of Venezuela offered any assistance to the smuggler, Samuel Abrahaley Fessahazion, aka "Sami," aka "Sammy," aka "Alex" and aka "Alex Williams."

This is of particular concern because it has been widely reported that Iran has been flying members of their Qudz Forces (Shock Troops) directly into Caracas, Venezuela.

However, the news release made no mention of any efforts to properly identify, locate and arrest the smuggled aliens whose illegal entry was facilitated by Fessahazion.

What is of further concern to me, is the fact that Fessahazion was able to game the immigration system and successfully commit immigration fraud by obtaining political asylum by making a false statements in conjunction with his application for political asylum.

Consider this passage from the press release:

According to plea documents, from at least June 2007 until approximately January 2008, Fessahazion was the Guatemalan link of an alien smuggling network that spans East Africa, Central and South America. Specifically, Fessahazion illegally entered the United States at McAllen, Texas, on March 20, 2008. He applied for asylum on Sept. 30, 2008, claiming in his application that he was traveling across Africa in 2007 and 2008, fleeing persecution in Eritrea. However, Fessahazion was actually in Guatemala during that period facilitating the smuggling of East African aliens to the United States.

Fessahazion was granted asylum by the United States on Nov. 13, 2008.

Fessahazion used his obvious false claim of “credible fear” to acquire political asylum by fraud. Had not been able to con the bureaucracy at USCIS (United States Citizenship and Immigration Services) he would not have been able to remain in the United States or travel freely across our borders, an ability he gained when the agency charged with maintaining the integrity of the immigration benefits program failed, as it has on so many previous occasions, yet again.

According to the press release, Fessahazion, himself, ran our nation's border on March 20, 2008 and then he applied for political asylum roughly 6 months later. He had either studied our immigration "system" or had been well coached. In any event, in under six weeks he was granted political asylum!

Incredibly, Fessahazion was granted political asylum just 6 weeks after he applied for asylum even though he claimed to have been facing persecution in Eritrea, nearly half way around the world!

Meanwhile the investigation disclosed that while he claimed he was fleeing persecution in Eritrea, he was apparently dodging law enforcement in Guatemala as he smuggled East African aliens through that country en route to the United States!

It is clear that he committed fraud on his application for political asylum, yet there was not a word in the press release about any consideration being given to prosecuting him for committing immigration fraud in his application for political asylum, nor is there any indication that efforts will be made to strip him of his lawful status based on his fraudulent application for political asylum. This is extremely important because as an individual who had been granted political asylum, it is unlikely that any efforts will be made to deport him from the United States after he serves his prison sentence for alien smuggling (presuming he is sentenced to serve jail time.)

Considering that Fessahzion lied on his application for political asylum, there would be no reason to not deport (remove him) from the United States if he lost his status as an alien who had been granted asylum. Therefore I am deeply concerned that inasmuch as there was no mention in the news release that he had been prosecuted for committing fraud in his application for political asylum, that this significant crime went unpunished. Consequently, if this is the case, he will likely not be deported when he completes his prison sentence- enjoying the protection afforded by political asylum, even though he is not truly eligible for this relief from deportation.

Two factors to be considered are how his application for political asylum was adjudicated in the first place and then, why apparently no action is being taken to strip him of the protection that his status as an alien who has been granted political asylum provides him.

It must be presumed that his is not an isolated case- just one that was well documented in, of all things, a USDOJ news release.

Once again, I thank you for this opportunity to address additional issues that arose during the hearing but were among issues I did not have the immediate opportunity to respond to at the hearing.

Closing Statement to the Committee on the Judiciary
United States Senate
Supplementing Testimony of Wednesday, March 20, 2013
Submitted by Jan C. Ting¹

Mr. Chairman and Committee Members: Thank you for the opportunity to submit a closing statement supplementing testimony submitted for the March 20, 2013, hearing on “Building an Immigration System Worthy of American Values.” I would like to make three additional points in response to the questions from the committee and the comments of my fellow panelists, and one clarification.

First, regarding the proposal to provide taxpayer-funded legal counsel for non-citizens in immigration proceedings: There is a historic distinction in the law between criminal proceedings which propose to punish a defendant, and civil proceedings such as immigration removal which do not propose to punish anyone, but merely seek to resolve civil disputes.

As someone in the business of training young lawyers preparing to enter the employment market, it would be very difficult for me to oppose a properly labeled “Lawyers Full Employment Act of 2013.” But if I were sitting as a member of Congress (and I tried once to become one), I would be wary of advocating taxpayer-funded lawyers for foreigners in civil immigration proceedings when no such counsel is offered to United States citizens even in high stakes civil litigation over foreclosure on their homes, or removal of their child custody, or wrongful loss of their jobs.

A removal order issued by an immigration judge is usually required to remove an alien from the United States. Immigration judges are required to conduct proceedings to determine whether an alien is removable. During those hearings immigration judges have broad authority to determine and insure that

¹ Professor of Law, Temple University Beasley School of Law. B.A. Oberlin College, 1970. M.A. University of Hawaii, 1972. J.D. Harvard Law School, 1975. Former Assistant Commissioner (1990-1993), Immigration and Naturalization Service, U.S. Department of Justice.

justice is done, including power “to interrogate, examine, and cross-examine the alien and any witnesses.”²

Second, regarding proposals for alternatives to detention of aliens prior to hearings and removal: The 1996 immigration reforms, including mandatory detention for certain aliens prior to hearings and removal, were enacted by Congress to insure the appearance of aliens for removal hearings and removals. Congress was dissatisfied with the high rate of no-shows from non-detained aliens, and the resulting low rate of actual removals.

Alternatives to detention that result in increased numbers of no-shows for immigration hearings and removal must be rejected if the integrity of the immigration enforcement system is to be maintained. The burden must be placed on the proponents of proposed alternatives to detention to prove that those proposed alternatives will not delay the enforcement of U.S. immigration law.

Third, regarding prosecutorial discretion: If motivated by limited resources, prosecutorial discretion should be based on priorities for prosecution, without putting any legal cases off-limits for political or unilateral policy reasons. If motivated by the backlog in immigration court dockets, that’s a management issue for the Executive Branch in which the immigration courts reside. The purpose for administrative immigration judges was to expeditiously process immigration cases without burdening Article 3 federal courts.

The backlog in immigration court dockets is a manifestation of the failure to deter illegal immigration through enforcement. Cases should not be delayed and kept open because of pending visa applications. They should be decided on the merits, and then Immigration and Customs Enforcement can decide whether prosecutorial discretion is warranted in deferring removal.

Finally, a clarification on the DREAM Act intended to provide immigration relief to certain childhood arrivals: I believe the DREAM Act, if reintroduced as an alternative to amnesty and so-called Comprehensive Immigration Reform, would likely pass both houses of Congress in the current political environment. But as a policy matter, it should be restricted to benefit only the intended

² 8 U.S.C. Sec. 1229(b); I.N.A. Sec. 240(b).

beneficiaries, who were brought as children to the United States in violation of U.S. immigration law. It should not benefit the parents or other relatives of those children responsible for violating U.S. immigration law. It should be amended to make clear that beneficiaries once legalized cannot sponsor older relatives (except a spouse) for immigration benefits.

This concludes my closing statement, and I again thank the chairman and members of the Senate Judiciary Committee for the invitation to testify.