

Testimony of
Mr. John Malcomb

July 25, 2003

STATEMENT

OF

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DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON CRIME, CORRECTIONS, AND VICTIMS RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

ALIEN SMUGGLING AND HUMAN TRAFFICKING:

TWO DISTINCT CRIMES POSING CHALLENGES
FOR INTERNATIONAL LAW ENFORCEMENT

PRESENTED ON

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Mr. Chairman, Senator Biden, it is my privilege to appear today before this Subcommittee to discuss the problems of international alien smuggling and trafficking in persons, also referred to as human trafficking. These two serious crimes - distinct in their nature but related in their effects - are of great importance to the Department of Justice, because they present both national security and human rights concerns. Ultimately, alien smuggling and human trafficking subvert our sovereignty. Alien smuggling puts the decision about who enters our country into the hands of criminals, who may not know and probably do not care if their actions help terrorists or other criminals to enter our country. Both alien smuggling and trafficking in persons strain limited resources and penalize persons who wish to enter our country legally. These crimes also enable international criminal organizations to flourish throughout the world, and breed corruption -- often of border officials in other countries - thereby undermining respect for the rule of law and harming basic democratic institutions.

Some have argued that alien smuggling is a so-called "victimless" crime. I would like to put that pernicious myth to rest. Smuggled migrants are often subjected to violence and inhumane and dangerous conditions. Some are trafficked into sexual exploitation or forced labor. Others die every year from drowning, abandonment, accidents or brutality by smugglers. While it is not uncommon to find one or two bodies in the mountains or in the desert, it is only when a large number of people die that the danger that smuggled migrants face garners national attention. Even if migrants arrive at their intended destinations alive and unscathed, however, smugglers have been known to extort the payment of their exorbitant fees by forcing migrants into virtual slavery, including selling them into sexual exploitation, or by holding family members back in the home country for ransom.

Legislative and Law Enforcement Efforts Over The Past Several Years

By the early 1990s, the Department of Justice recognized that alien smuggling was becoming a major international organized criminal activity, and that additional law enforcement tools were needed to address the problem. With Congress's assistance, we were able to obtain additional statutory tools which significantly enhance our ability to enforce criminal immigration laws.

Over the last ten years, Congress has increased the statutory maximum penalties for alien smuggling and immigration document fraud, and the United States Sentencing Commission has increased the applicable penalties under the federal sentencing guidelines. Alien smuggling-related offenses were made predicate offenses for RICO and money laundering, and were also added to the list of offenses for which investigators can obtain court-authorized interception of wire, oral, or electronic communications. Additionally, the assets of alien smugglers are now subject to civil and criminal forfeiture.

Using these tools, the Department of Justice prosecutes a large number of alien smuggling cases every year. In Fiscal Year 2001, approximately 1,900 defendants were convicted of alien

smuggling offenses, 17 percent of the total number of immigration-related convictions that year. More recently, Congress greatly improved the Department's ability to prosecute human trafficking with the passage of the Trafficking Victims Protection Act (TVPA) of 2000. In enacting this ground-breaking new law, Congress recognized the growth and devastating impact of trafficking in persons around the globe. It saw that trafficking flourished where political turmoil and economic dislocation made people desperate for opportunity and, consequently, susceptible to the threats and schemes of traffickers promising passage to a better life. Congress also noted that trafficking flourishes because it is a profitable and relatively low-risk enterprise. Relying on the TVPA and a variety of other statutes, the Civil Rights and Criminal Divisions have moved forcefully to punish traffickers and to assist victims. As of July 15, 2003, there were approximately 122 open trafficking investigations - nearly twice as many as were open in January 2001. Over half of these have been initiated as a result of the Department of Justice's Trafficking in Persons and Worker Exploitation Task Force Complaint Line, established in February 2000, and many involve charges under the TVPA. This Act added new crimes, outlawing forced labor, sex trafficking of children, or of adults by force, fraud, or coercion, and document abuse. Together with pre-existing trafficking statutes such as 18 U.S.C. § 1584, which enforces the 13th Amendment's proscription against involuntary servitude, the TVPA enables the Department to prosecute those crimes in which threats of serious harm, physical restraint, or abuse of the legal process serve to obtain or maintain the labor or services of a trafficking victim, or where traffickers use force, fraud or coercion to cause their victims to engage in commercial sex. The Act also doubled the possible sentences that traffickers can receive. Prosecutorial guidance was sent to the field regarding these new crimes, and the U.S. Sentencing Commission has increased the applicable penalties accordingly.

Nature Of The Offenses

Smugglers have been assisting people to cross illegally into the United States for as long as immigration has been regulated. Smugglers often conspire with traffickers essentially to enslave migrants once they arrive in the United States. However, it is only within the past fifteen years that we have seen the rise of organized, international alien smuggling and trafficking in persons networks. In addition to posing national security threats, some of these networks are highly sophisticated and generate millions of dollars. Globally, according to some estimates, alien smuggling and trafficking in persons generate billions of dollars per year. The demand created by people who seek illegal entry to work in the United States (and a handful of other desired destination countries) has created a lucrative market for smugglers, traffickers, and document vendors to exploit. In addition to being highly profitable, alien smuggling and human trafficking are relatively low risk when compared to other illicit conduct. One reason is that the laws and enforcement capabilities of many source and transit countries are weak or non-existent with regard to alien smuggling and document fraud. Often, the principals in smuggling organizations and networks never physically enter the United States (or other destination countries) themselves. In contrast, while traffickers often enter and reside in the United States, some disappear into ethnic communities and, once so ensconced, turn to further exploiting members of those ethnic communities. Whether operating within our borders or abroad, alien smugglers and human traffickers both operate in the netherworld of illegal aliens.

Evolution Of Trafficking And Smuggling Networks

In the early 1990's, prior to Congress's increasing penalties for alien smuggling, we noticed that some of the Asian street gangs in New York City, San Francisco, Boston and elsewhere were rapidly expanding their alien smuggling operations, precisely because of the high returns and

perceived low risks. A string of successful RICO prosecutions, which focused in part on violent activities linked to alien smuggling -- such as extortion and hostage taking -- broke the backs of the Chinatown street gangs. Unfortunately, it appears that the void has been filled by newer, more sophisticated smuggling networks.

Human trafficking is evolving in the wake of these sophisticated alien smuggling networks, but the Department is responding in kind. Using the new tools created by the TVPA, the Department has been able to reach a variety of trafficking schemes, falling into four main categories: trafficking for purposes of sex; forcing individuals to perform domestic service; forced labor in factories; and forced agricultural labor. Such cases have ranged from large-scale, multiple victim prosecutions, such as *United States v. Kil Soo Lee*, where over 200 victims were enslaved in a garment factory in American Samoa, to individual victims in cases which nonetheless have international implications, such as *United States v. Blackwell*, where a domestic servant was forced to perform labor through threats by, among others, a high-level Ghanaian government official.

Investigating And Prosecuting Alien Smuggling And Human Trafficking

The investigation and prosecution of both alien smuggling and trafficking cases can come about in a number of different ways. Some investigations are triggered by the discovery of smuggling operations or trafficking in persons situations in progress, such as the ongoing alien smuggling investigations and prosecutions stemming from the nineteen migrant deaths that occurred recently in the tractor trailer in Victoria, Texas. More typically, in smuggling cases, law enforcement officers will encounter a small group of persons along the border with a "coyote," the person designated to guide migrants over the border. In these situations, law enforcement officials must act immediately to identify suspects, identify possible witnesses or victims, and gather evidence before it is destroyed, or the trail goes cold. Some investigations develop based on intelligence derived from sources such as informant tips, information from foreign authorities, or evidence obtained during the investigation of other crimes. This type of investigation may be long-term, resource-intensive, and involve the use of cooperating individuals and/or undercover agents.

In the trafficking context, law enforcement officers are often tipped off by escaped victims and non-governmental groups. Such tips may be communicated directly to an officer on the street, or may be made through a confidential phone call to the Trafficking in Persons and Worker Exploitation Task Force's Complaint Line at the Department of Justice. Sometimes raids of illicit facilities (such as brothels) may result in the discovery of trafficking victims. Prosecutors and agents in smuggling and trafficking cases face difficult issues, not the least of which is deciding what to do with the affected migrants. Some may return, voluntarily or through removal, to their home country, while others may remain in the United States to assist in the investigation or prosecution. Trafficking victims may also apply to receive T non-immigrant status, if they are assisting to investigate or prosecute human traffickers. Prosecutors must develop leads and evidence to effectively prosecute smugglers and traffickers, while conserving scarce resources and avoiding inadvertently encouraging or "rewarding" illegal immigration.

Coordination With Foreign Law Enforcement

By definition, alien smuggling and international trafficking in persons involve more than one country. Every international criminal law investigation poses distinct challenges, and, depending on the country involved, some may be more difficult than others. United States law enforcement authorities operating abroad must always be cognizant of issues involving sovereignty and the application of foreign laws, and must also be prepared to deal with the capabilities and

limitations of local law enforcement authorities in the foreign country.

Individuals associated with terrorist organizations have been known to use existing smuggling organizations and document vendors to facilitate their travel in various parts of the world.

Consequently, the Department of Justice, in concert with the Department of Homeland Security (including the Bureau of Immigration and Customs Enforcement, the Bureau of Customs and Border Protection, and the Coast Guard), are moving aggressively to minimize threats to our national security. One such effort is to target major smuggling networks that pose a particular threat to national security.

Reorganization Of Resources Within The Justice Department

In 2000, the Department of Justice created the Alien Smuggling Task Force within the Criminal Division. Recently, the Department determined that it should institutionalize and expand the work of the Alien Smuggling Task Force, and in December 2002, the Task Force was incorporated within the newly-created Domestic Security Section of the Criminal Division.

Cases involving sex trafficking of juveniles are handled by the Criminal Division's Child Exploitation and Obscenity Section. The Civil Rights Division's Criminal Section, in conjunction with the United States Attorneys Offices, prosecutes trafficking cases involving sweat shops, domestic servitude, agricultural workers, and brothels. The Department, working with United States Attorney's Offices around the country, has mounted an intensified effort in recent years to combat this inhumane and often violent conduct. This intensified effort resulted in the creation of the multi-agency Trafficking in Persons and Worker Exploitation Task Force, begun in 1999.

Interagency and International Cooperation

To investigate and prosecute these offenses, the Criminal and Civil Rights Divisions work collaboratively with other U.S. agencies, such as with the FBI, the Department of Homeland Security, the Labor Department, and the State Department, as well as with foreign authorities. We also have worked, as part of the interagency community, to strengthen the laws of other countries and to make smuggling and trafficking extraditable offenses. We have assisted other countries in their efforts to remove corrupt officials who aid alien smuggling organizations, and have helped foreign counterparts to initiate their own prosecutions against targets deemed significant by the United States. We believe that the United States Government must continue to expand our international immigration enforcement efforts.

Significant Prosecutions

I would like to discuss just a few examples of alien smuggling and human trafficking prosecutions the Department has brought in the last few years. Last year, here in the District of Columbia, the Department prosecuted an Iranian national, Mohammed Hussein Assadi, for alien smuggling. He was convicted following a jury trial in October 2002. Assadi ran a large organization that smuggled aliens, generally from Middle Eastern or South Asian countries, into the United States via commercial airlines. Assadi's ring provided aliens with stolen, photo-substituted passports from those European countries that qualify for visa waiver privileges. As a result of interagency and international cooperation from other countries, Assadi was apprehended in the United States after being expelled from a foreign country. He ultimately was sentenced to 30 months.

Another successful prosecution, which was brought by the U.S. Attorney's Office in the Southern District of Texas, involved Kenny Feng and other members of his organization. Feng was a Taiwanese smuggling organizer, often referred to as a "snakehead," whose organization assisted in smuggling Chinese migrants to Latin America by boat. Feng affiliated with other smugglers to transport migrants from China to the coast of Guatemala, where the human cargo would be

offloaded and held in Guatemalan safe houses pending payment of smuggling fees. Those who paid the fee would be transferred to other smugglers, who then would bring them overland from Guatemala to the United States. The family of one female migrant paid \$15,000 to be smuggled into the United States. Upon her arrival in Guatemala, however, the woman learned that her fee had been raised to \$40,000. The victim was then held in Guatemala for more than fifteen months. Ultimately, the woman was sold to Mexican smugglers, who brought her into Texas. While being held in Houston by members of the Mexican organization, the woman broke her back during an attempt to escape through a second-story window. From her hospital bed, the woman cooperated with law enforcement. As a result of law enforcement efforts, Feng was expelled from a foreign country, and then arrested in the United States. Ultimately, a number of persons in the organization were apprehended and convicted for criminal offenses, including alien smuggling and hostage taking. The length of sentences varied, with the longest being a 27-year sentence. Just last week, on July 18, 2003, five Ecuadoran nationals pled guilty in the District of Columbia to conspiring to violate U.S. immigration laws. This prosecution arose out of the U.S. Coast Guard interdiction of two migrant smuggling vessels en route from Ecuador to Guatemala. The first was an unseaworthy fishing vessel with approximately 235 Ecuadorian migrants aboard. The second was a cargo vessel with 270 Ecuadorian and Indian migrants aboard. Food and water were limited, and the vessels were still days from reaching shore. As a result of the assistance of Ecuadorian and Mexican authorities, together with the close cooperation of the U.S. Coast Guard and the former Immigration and Naturalization Service (now the Bureau of Immigration and Customs Enforcement), this case was successfully prosecuted in the United States. The defendants face likely sentences of approximately three years.

The Department has also actively prosecuted human traffickers. Since January 2001, the Department of Justice has charged, convicted, or secured sentences for 106 human traffickers in 32 cases. The Department and USAOs have prosecuted seventeen cases involving 46 traffickers under statutes created in the TVPA.

Specific cases of note include *United States v. Kil Soo Lee*, which I mentioned earlier, involving sweatshop labor. In that case, Department of Labor, INS, and FBI investigators worked tirelessly and collaboratively to investigate a trafficking case involving 200 Vietnamese and Chinese nationals, mostly young women, whom the defendants brought from Vietnam to American Samoa to work as sewing machine operators in a Daewoosa garment factory in American Samoa. The victims, some of whom were held for up to two years, were forced to work through extreme food deprivation, beatings and physical restraint. The victims were held in barracks on a guarded company compound, and were threatened with confiscation of their passports, deportation, economic bankruptcy, severe economic hardship to family members, false arrest, and a host of other punishments and abuses. One victim had an eye gouged out by a defendant who struck her with a jagged pipe in order to punish her for refusing to comply with the defendants' orders. On February 21, 2003, a jury convicted Lee, the owner of the factory and leader of the operation, on nearly all counts. Two other defendants pled guilty. Lee faces a substantial prison term. Sentencing is expected in December 2003.

Several cases illustrate the inroads made by the Department in combating trafficking of domestic servants. In *United States v. Satia and Nanji*, two defendants were convicted of holding a teenage Cameroonian girl in involuntary servitude and illegally harboring her in their home to use her as their domestic servant. These criminals were each sentenced to 108 months in prison and ordered to pay \$105,306.64 restitution to the victim. The defendants were convicted of involuntary servitude, conspiracy, and harboring the victim for their own financial benefit. The defendants

recruited the girl to the United States with false promises of attending a U.S. school. Once she arrived here, she was isolated in the defendants' home and forced through threats, sexual assaults, and physical abuse to work for them for several years as their personal servant.

Recently, in *United States v. Blackwell*, the Department prosecuted three defendants, including a high-level Ghanaian government official, for tricking a young Ghanaian woman into working as a domestic servant in their home, under abominable working conditions. As a result of this important prosecution, two defendants were convicted. The Ghanaian government official remains in Ghana; however, she was stripped of the Cabinet post she held in her native country. The Department's efforts in combating trafficking in farm workers is exemplified by *United States v. Lee*, in which three defendants pleaded guilty to rounding up and enslaving homeless and drug-addicted African-American men in Fort Pierce, Florida, and forcing them to pick oranges against their will by threats and violence, and by using crack-cocaine as a reward. In the realm of sex trafficking, the Department made ground-breaking strides in *United States v. Jimenez-Calderon*, where the Civil Rights and Criminal Divisions, in collaboration with the United States Attorney's Office for the District of New Jersey, secured one of the first convictions under 18 U.S.C. § 1591. In this case, five defendants were charged on September 26, 2002, with conspiring to lure and transport young Mexican girls into the United States under false pretenses, and then forcing them into prostitution, using physical violence and threats to maintain strict control over them. In addition to the five indicted defendants, three other traffickers entered guilty pleas to sex trafficking charges in September and October 2002. Earlier this year, on the eve of trial, three of the five remaining defendants entered guilty pleas to various offenses, including conspiracy, sex trafficking by force, fraud or coercion, and conspiracy to obstruct justice. The final two defendants are fugitives.

Sentencing And Penalty Issues

The Department realizes the importance of sentencing issues in alien smuggling and trafficking in persons cases. The Department is taking steps to ensure the Sentencing Guidelines are applied as intended, while still taking into account the difficult issues faced by the large number of alien smuggling cases handled by some districts, particularly those along the Southwest Border. In trafficking cases, we have obtained significant penalties. In *United States v. Tecum*, the defendants, husband and wife, used fraudulent identity documents to smuggle a young Guatemalan woman into the United States through Arizona. Defendant Jose Tecum persuaded her to live as his wife, despite the fact that he already had a wife in Florida, and forced her to perform both housework and agricultural labor in California and Florida in order to pay off her smuggling debt. The defendant was convicted on charges of involuntary servitude, alien smuggling, kidnapping and document fraud and sentenced to 108 months in prison. In *United States v. Lakireddy*, a sex-trafficking case involving the largest and wealthiest landlord in Berkeley, California, who trafficked young girls and women into the United States from India for his sexual gratification, the lead defendant was sentenced to 97 months in prison and ordered to pay \$2 million in restitution to his victims. Trafficking in persons are some of the most time- and labor-intensive cases the Department faces. Particular prosecutorial and sentencing challenges arise in the context of consent of aliens to be smuggled into the United States, but then they end up in an exploitative sexual or labor situation. Nonetheless, as detailed above, we have received significant sentences for traffickers.

We have also obtained significant sentences in a number of smuggling cases, particularly in those egregious crimes that result in injury or death. For example, earlier this year, Ruben Patrick Valdes, head of a smuggling organization who specialized in bringing large numbers of persons

into the United States in tractor-trailers, and whose operation resulted in at least two known deaths, received a 27-year sentence. In another significant case, in 2002, Jorge Aleman, a ruthless smuggler whose dangerous maritime smuggling operation between Cuba and the United States resulted in at least one death, was convicted in the Southern District of Florida and sentenced to life imprisonment. When being chased by Cuban border guards, Aleman's practice was to throw migrants overboard so that the guards were forced to curtail the chase in order to rescue the migrants in the water.

In general, the sentences in most alien smuggling cases are much less, particularly where the United States does not have specific evidence to establish that the smuggler knew that the persons smuggled were criminals or where the migrants were not subject to significant risk of injury or death. For Fiscal Year 2001, of the 1,900 convicted alien smuggling defendants, approximately 87 percent of alien smuggling defendants received prison sentences, and the average sentence for those who went to prison was sixteen months. In human trafficking cases, in Fiscal Year 2001 there were thirteen defendants, ten of whom were convicted. Of these, four received a prison terms and six received probation. The average prison term for the four cases was 128.5 months with a range of 60-240 months. For the six that received probation, the average probation term imposed was 30 months, ranging from twelve to 36 months.

We have learned from experience that trafficking cases involve enormous commitments of time and resources. These cases often involve large numbers of victims, language barriers, multiple investigating agencies, international investigations and, frequently, victims who have suffered severe physical and psychological trauma. Despite such obstacles, the Department continues to bring these cases in greater numbers than ever before, having tripled the number of prosecutions in FY 2002 and FY 2001 as compared to the previous two fiscal years. Fortunately, the TVPA created new protections for trafficking victims that allow us to ensure that they are treated as victims and not as criminals. Victims can now qualify for refugee services and, in appropriate instances, immigration relief in the form of T non-immigrant status that allow victims to remain in the United States for three years. The coordination of victim services has demanded time, resources and commitment, particularly in cases involving large numbers of victims.

I note that the Trafficking Victims Protection Reauthorization Act (TVPRA), introduced in the House, includes jurisdictional fixes to 18 U.S.C. § 1591 which should assist our ability to prosecute sex trafficking cases. We will monitor sentencing results and work closely with Congress and the Sentencing Commission to ensure that appropriate sentences result for heinous traffickers.

Further, it is my understanding that the Sentencing Commission has put on its agenda for the upcoming year a review of immigration-related guidelines. The Criminal Division looks forward to working with this Subcommittee and the Sentencing Commission on these issues. In particular, as noted above and as will be highlighted in the testimony of United States Attorney Charlton, we believe that the sentences in alien smuggling cases do not always appropriately reflect the seriousness of the crime. We also look forward to working with the Subcommittee on review, improvement and potential expansion of our current alien smuggling laws. We believe that such a review could assist the government's efforts to discourage illegal migration generally, and to prosecute smugglers specifically.

I would be happy to answer any questions that the Subcommittee might have.