

Testimony of  
**The Honorable Paul Charlton**

July 25, 2003

STATEMENT

OF

PAUL K. CHARLTON  
UNITED STATES ATTORNEY  
DISTRICT OF ARIZONA

BEFORE THE

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

CONCERNING

HUMAN TRAFFICKING AND ILLEGAL IMMIGRANT SMUGGLING

PRESENTED ON

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Concerning

HUMAN TRAFFICKING AND ILLEGAL IMMIGRANT SMUGGLING

Chairman Graham, Ranking Member Biden, and Members of the Subcommittee, I am Paul Charlton, the United States Attorney for the District of Arizona. I am honored to have the opportunity to appear before you today to recount recent cases in my District which illustrate the human tragedy of alien smuggling and which highlight the difficulties involved in prosecuting cases of this nature. These cases also raise concerns about the appropriateness of the penalties for alien smuggling under the current Sentencing Guidelines, particularly in cases that involve the risk of serious injury, death, or that actually result in injury or death. I understand that the Sentencing Commission is considering amending these penalties. I hope that the Department, the Commission, and the Congress can work together to make such that such crimes result in appropriate prison terms that reflect both the inherent risk of border smuggling, as well as the actual harm done in particular cases.

The District of Arizona faces especially daunting challenges in combating alien smuggling. The risks inherent in transporting human beings through the harsh and unforgiving desert of Southern Arizona, as well as the increasing violence of the industry, have resulted in a disturbing humanitarian crisis. The seriousness of this crisis cannot be underestimated, as illustrated by Arizona District Court Judge James A. Teilborg's emphatic admonition to an alien smuggling defendant that he was "practicing your own form of terrorism." Unfortunately, efforts by federal prosecutors to combat this "trafficking in human misery," as Judge Teilborg calls it, have been hindered by Sentencing Guidelines that inadequately address the level of suffering and risk which defendants involved in alien smuggling impose on their victims. I would like to bring to the subcommittee's attention two recent cases in my district which illustrate some of the inconsistencies and injustices resulting from the lack of sufficiently stringent Sentencing Guidelines for alien smuggling offenses.

In a recent victory, an Assistant United States Attorney successfully prosecuted Aquileo Melchor-Zaragoza, a member of an alien smuggling gang which had been stealing aliens at gunpoint from rival alien smugglers since 1999. After obtaining control over the aliens, the gang members would transport them to a safehouse where the smugglers would threaten both their lives and the lives of their families if their families did not agree to pay for their release. Although no deaths occurred in this case, because the prosecutor was able to charge the defendants with hostage taking and could therefore add counts of brandishing a weapon during and in relation to a crime of violence (18 U.S.C. § 924(c)) to the indictment, Melchor-Zaragoza was sentenced to the significant term of more than 34 years imprisonment. The sentence was a great victory and quite appropriate, not only because of the suffering imposed on the aliens in the smugglers' quest for profit, but because of the increased risk of injury or death the aliens faced as a result of the smugglers' use of firearms throughout the ordeal.

Unfortunately, in cases where no firearm is used, and thus no hostage taking or mandatory minimum 924(c) charge is available, it is much more difficult to obtain significant sentences, although the suffering of the aliens and the risks imposed upon them by the smugglers' behavior is at least as great as in the case described above, and often greater in cases where the smuggling results in deaths. The following alien smuggling tragedy and resulting sentences for those responsible provide a perfect illustration of this type of injustice.

On May 21, 2001, three men working for a large scale Mexican based smuggling operation guided a group of twenty-six Mexican nationals across the border into the United States near Lukeville, Arizona. The guides, including defendant Jesus Lopez-Ramos, intended to lead the group through the desert to a predetermined point on Arizona State Highway 85 just north of Ajo, Arizona where they were to be picked up and subsequently transported to their final destinations at various locations throughout the United States. Prior to embarking on their journey, the group was told that they would require only enough water for two days, as their walk through the desert would be completed in as much time. By the second day, most of the group members had exhausted their water supplies. Two of the aliens, along with one of the guides, abandoned the attempt and returned to Mexico. Defendant Lopez-Ramos and another guide, "Lauro," forged ahead, with Lopez-Ramos repeatedly assuring the group that they were a mere "two or three hours away." Lopez-Ramos, however, did not realize that he had taken a wrong turn and was heading not towards the town of Ajo, but away from it, into an uninhabited portion of the desert. Suffering from extreme heat stroke and dehydration, the condition of the aliens rapidly deteriorated. They demanded that the guides leave them to find and return with water. Lopez-Ramos, along with "Lauro," left in an attempt to find water and during that attempt, "Lauro" succumbed to the heat. Lopez-Ramos gave up shortly thereafter and was found by authorities in near-critical condition. On May 23, 2001, Border Patrol agents located five aliens from the group and upon learning that there were others, launched a large-scale rescue operation. In spite of these efforts, however, thirteen of the original twenty-six aliens, as well as the guide, "Lauro," died in the desert as a result of heat-related stress. Eleven other aliens were recovered in critical or near-critical condition suffering from severe dehydration and heat exposure.

Lopez-Ramos pled guilty to twenty-five felony counts of alien smuggling resulting in the deaths of fourteen illegal immigrants and serious bodily injury to eleven others. He was sentenced to 16 years in prison.

Over a period of two years, Francisco Vasquez-Torres, owner and operator of Vasquez Harvesting, a fruit harvesting business located in Lake Placid, Florida, had admittedly been using the Mexico-based smuggling organization responsible for this tragedy to bring Mexican nationals to work for his harvesting business. Vasquez-Torres had conspired and agreed with those in the smuggling organization to bring five of the Mexican nationals from La Paz, Baja, Mexico, to work at Vasquez Harvesting. Vasquez-Torres had, in fact, paid the smuggling fee for each of these five Mexican nationals, with the understanding that the nationals would later repay him from their wages while working for him. Vasquez-Torres's foreman, Joel Viveros-Flores, wired money from Florida to the aliens in Mexico to assist them while they waited to be smuggled into the United States.

Defendant Vasquez-Torres was convicted of conspiracy to bring to the United States for the purpose of commercial advantage or private financial gain certain persons, knowing that said persons were aliens, at a place other than a designated port of entry and at a place other than as designated by the Commissioner of the then-Immigration and Naturalization Service, which resulted in the death of one or more persons, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(i), (a)(1)(A)(v)(I) and (a)(1)(B)(i) and (iv). He was sentenced to 78 months in prison. Defendant Viveros-Flores was convicted of the same charge and sentenced to 18 months in prison.

It is difficult to fathom how in the Melchor-Zaragoza case, where no deaths resulted, a sentence exceeding 34 years was obtained, but in a similar case involving the tragic deaths of fourteen people, and serious bodily injury to eleven others, less than half of that sentence was imposed on Lopez-Ramos, the man who actually carried out the smuggling. Even more disturbing is the fact that the sixteen-year sentence Lopez-Ramos received was not actually prescribed by the Guidelines, but was instead the result of the prosecutors' request for an upward departure in which they argued that the case fell outside of the "heartland" of cases contemplated by the Sentencing Commission. The prosecutors requested an eight-level upward departure from the range provided for by the Sentencing Guidelines based on the large number of resultant deaths and physical injuries and the interruption of government functioning caused by the high costs related to the rescue mission. Indeed, had a departure not been granted in the case, the sentencing range would have been 97-121 months, a maximum of just over 10 years. As for Vasquez-Torres and Viveros-Flores, the men who provided the financial incentive for the smuggling to occur, mere 78 and 18 month sentences were imposed, respectively. All parties involved were aware of the incredible risks inherent in leading a large group of human beings into a largely uninhabited desert where weather conditions make it nearly impossible to survive a long journey on foot.

I by no means intend to suggest that the sentence in the former case was inappropriate. To the contrary, I believe that sentence to have been quite appropriate. The sentences in the latter case, however, which involved far greater losses to victims, were terribly insufficient. Presumably, it is the increased risk to the victim which results when a gun is used during the commission of a crime of violence which increases the culpability of the defendant and thus warrants his increased sentence. The same, if not greater, risks are present each time an alien smuggler brings a group of illegal aliens across the border to embark on an ill-fated attempt to cross the desert, knowing that such attempts result in death in a staggering percentage of cases. Alien smugglers persist in their endeavors in spite of their awareness of this grave risk and do so for the purpose of personal financial gain. This behavior is at least as culpable as brandishing a gun during the commission of a crime of violence with reckless disregard for the risks to the victims which inhere in such behavior, and I am of the opinion that the Guidelines should reflect this proportionality in culpability.

In addition to the lack of severe penalties for the alien smugglers themselves, the above case illustrates the difficulty with bringing to justice those who do not themselves physically carry out the smuggling, but bear responsibility for its occurrence by seeking the aliens out for labor and paying the smugglers to bring them to the United States in order to work for them. These individuals are every bit as culpable, if not more, as those guiding the ill-fated journeys across the desert. Currently, prosecutors must pursue a conspiratorial or aiding and abetting theory of liability in order to obtain any punishment at all for these individuals. And, as evidenced by the sentences of Francisco Vasquez-Torres and Joel Viveros-Flores, that punishment is incredibly slight in comparison to the immense amount suffering for which they are responsible.

In addition to this disturbing comparison, countless instances of unjust and inadequate sentences in alien smuggling cases abound. For instance, in the case of *United States v. Miguel and Johnson*, the prosecuting Assistant United States Attorney charged the defendants with three counts of Alien Smuggling Involving Risk of Death, where they had transported three minor children in the trunk of a vehicle during a hot July afternoon in Tucson, Arizona. One of the

minors was found unconscious, unresponsive and had to be revived by medical personnel called out to the scene. The defendants pled guilty to the indictment with no plea offer and were sentenced to 21 and 37 months, respectively.

In another case, *United States v. Alderette-Moreno and Loera-Chavez*, two defendants smuggling nineteen illegal aliens instructed the aliens to get into a van, where they were required to lie on the floor of the vehicle and literally pile on top of one another for lack of room, and where the van door was broken and did not close, so that one of the aliens had to hold the door closed while in motion. When one of the van's tires blew, the vehicle rolled, killing the man who had been holding the door, permanently paralyzing another from the neck down, and seriously injuring other occupants of the van. The defendants pleaded guilty, without a plea agreement to Conspiracy to Transport Illegal Aliens and Alien Smuggling where Death Resulted or Placing in Jeopardy Life of Alien. One defendant was sentenced to 48 months, and the other 57.

Finally, in *U.S. v. Diego Gallegos Castillo*, after walking four to eight hours in the desert to a dry wash area on the Tohono O'Odham Reservation in Sells, Arizona and remaining in the wash for a full day and night, a large group of aliens was picked up by smugglers who instructed them to pile into a pickup truck. Approximately eleven aliens piled into the bed of the truck while three entered the extended cab, which did not have a seat, with a fourteen-year old laying across their laps. While traveling approximately 87-93 mph, the truck flipped over into a wash, resulting in the deaths of four of the aliens. Serious injuries were sustained by the surviving aliens. A jury found the defendant guilty of eleven counts of Transportation of Illegal Aliens Resulting in Death and/or Serious Bodily Injury. The defendant was sentenced to 72 months in prison.

I hope the cases I have presented for your review have been helpful for evaluation of the current state of the Sentencing Guidelines with respect to alien smuggling offenses.

Thank you for your time and attention. I appreciate the opportunity to speak on this important and timely matter. I would be pleased to answer any questions the members might have.