

**Testimony Before the
House Judiciary Committee
Subcommittee on Immigration and Border Security
For Hearing Entitled:**

Asylum Fraud: Abusing America's Compassion?

**Testimony of
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Mr. Chairman and Committee Members, it is an honor for me to be here today to contribute to efforts aimed at enhancing the integrity of this country's asylum program. Prior to proceeding with my testimony on asylum fraud, please allow me to provide you with some background information about myself.

I retired from public service in September 2011, after more than 35 years administering and enforcing immigration laws for both the Department of Justice (DOJ) and Department of Homeland Security (DHS). At the time of retirement, I was serving as the Associate Director of U.S. Citizenship and Immigration Services' (USCIS) Fraud Detection and National Security Directorate (FDNS), for which I was also the architect. Shortly after retirement, and given my ongoing passion to enhance the integrity of this country's legal immigration system, I created a small business consultancy named the *Immigration Integrity Group* to support government and business efforts aimed at improving the effectiveness and efficiency of current immigration programs and operations, and achieving comprehensive immigration reform.

When the legacy INS was abolished in 2003, I was the Director of the Baltimore Office, responsible for administering and enforcing immigration laws throughout the State of Maryland. As such, I managed the immigration benefits (services), air and seaport inspections, investigations, detention, and deportation programs (enforcement). Prior to that position, I served as legacy INS's Associate Commissioner of Examinations, which was rather somewhat analogous to USCIS, as I was the career senior executive responsible for immigration services-based policy and programs, and also had oversight authority of the Administrative Appeals Office.

Upon the abolishment of legacy INS and the birth of DHS, I was recruited by senior leaders in USCIS primarily because of my experience managing both immigration services and enforcement programs. I was specifically asked to research the impact of separating immigration enforcement and services, and placing the respective missions in three different agencies within DHS. The focus was on positioning USCIS to effectively detect and combat immigration benefit fraud in a post 9/11 environment.

In doing my research, I came across GAO-02-266 (January 2002), entitled *IMMIGRATION BENEFIT FRAUD: Focused Approach Is Needed to Address Problems*. Here, the Government Accountability Office reported that this Country's legal immigration system was being used to further illegal activities such as human and narcotics trafficking, and activities that threaten national security and public safety. It also pointed out that legacy INS did not have an anti-benefit fraud strategy, did not make combatting fraud a priority, and did not possess a mechanism in which to collect and report data aimed at identifying the volume and type of benefit fraud that existed. The recommendations in this report became the blueprint of USCIS's anti-fraud program. The key actions undertaken by USCIS were:

1. Developed a joint anti-fraud strategy and operation with Immigration and Customs Enforcement (ICE).
2. Developed the Fraud Detection and National Security Data System (FDNS-DS) to collect case and operational data.
3. Developed a background check program, inclusive of policies, procedures, and increasing electronic capabilities to screen all applicants, petitioners, and beneficiaries seeking immigration benefits.
4. Made anti-fraud and the screening of all persons seeking benefits an agency priority.

Another report that proved helpful in standing-up FDNS was the 9/11 Commission Report issued in July 2004, which cited asylum and other immigration benefit fraud as opportunities for terrorists to enter and embed themselves in the U.S. The following year (2005), a former 9/11 Commission counsel released a study reflecting that of the 94 foreign-born terrorist known to operate in the U.S. between the early 1990s and 2004, 59 (nearly two-thirds) committed immigration fraud, and they did so multiple times (79 instances).¹

Faced with the Congressional reporting requirement and no legacy INS data, FDNS developed a Benefit Fraud Assessment (BFA) Program² as a mechanism in which to collect and analyze data that would enable us to determine the types, volumes, and indicators of fraud by form type. In the absence of real data, we used a combination of anecdotal information and experience to identify the forms we felt posed the greatest risk. I realize this wasn't a very scientific approach, but it was the best we could do with what we had, and it served our internal purpose.

Between 2005 and 2008, FDNS completed field fraud assessments on eight form types³, but due to increasing internal differences of opinion and concerns about methodology, we were only able to finalize four. The asylum-based BFA, which I will address shortly, is one of the reports that did not get finalized. Before discussing that draft report, it's important to understand that the BFA Program was initially designed to be an internal tool not used for public dissemination. They were conducted to focus on the major areas of abuse and vulnerability, and assist in the preparation of field guidance and the development of business rules that would guide the development of analytics-based (automated) search engines.

As word of the reports became public knowledge, particularly the high fraud rates, the demand for the reports grew, especially from certain members of congress and the media. Because of such demand, the agency decided to start preparing the BFCAs for public knowledge, beginning with the H1-B BFCA. As a result, the reports became more politicized, content and language changed, as did the ability to get corporate concurrence. USCIS policy required formal review and concurrence from Directorates, the Office of Policy and Strategy, and the Office of Chief Counsel before a report could be finalized and released. However, in order for there to be accountability and transparency, the accurate data and content must be provided to Congress and the public.

With regard to concerns about methodology, I do believe the draft BFAs could and should have been corporately approved and finalized, if for no other purpose than to be used to focus internal anti-fraud efforts. It must also be pointed out that FDNS did not proceed in a vacuum. We consulted and engaged the DHS Office of Statistics (OS) in the development of the random sampling methodology, which I understand consisted of a Rate of Occurrence not more than 20%, a Confidence Level of 95%, and a reliability factor of plus or minus 5%. FDNS also consulted OS during the BFA process, which included seeking review and feedback on individual findings and recommendations, and the language used to convey such. Even the GAO evaluated the

¹ See testimony of Janice Kephart, former counsel, National Commission on Terrorist Attacks Upon the U.S., before the Subcommittee on Immigration, Border Security, and Citizenship and the Subcommittee on Terrorism, Technology, and Homeland Security, Senate Judiciary Committee, March 14 2005.

² This program was later renamed the Benefit Fraud and Compliance Assessment Program to better distinguish fraud from non-compliance.

³ Those assessments were of religious worker petitions, applications to replace lost or stolen permanent resident cards, various nonimmigrant and immigrant employment-based petitions, marriage-based petitions, Yemini relative-based petitions, and asylum requests.

methodology and determined it provided a reasonable basis for projecting the frequency with which fraud was committed within the time period for which the samples were drawn. They also reported to have assessed the data derived from the USCIS Performance Analysis System (PAS) and determined that these data were sufficiently reliable for the purpose of the review. [See GAO-06-259⁴ (March 2006), entitled *IMMIGRATION BENEFITS: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud.*]

In the interest of advancing the BFCAs Program and recognizing that FDNS does not possess expertise in social science or advanced research and analysis (as they are immigration officers), I relinquished the lead of the BFCAs program to USCIS' Office of Policy and Strategy (OPS) in January 2010. I also authorized the transfer of FDNS resources to OP&S to hire the appropriate experts as well as obtain contract support. I understand that the USCIS OP&S recently published a solicitation for contract services that provide for the collection and analysis of data using a variety of methods, and the development of research and evaluation reports, papers, and services to be determined and has proposed to similar studies in the past. However, to date I am unaware of any immigration benefit fraud assessments, risk assessments, studies, or any other fraud-based research and analysis being performed since the last BFCAs was conducted in 2008. Nevertheless, I remain hopeful that similar assessments will be conducted in the future – either by the DHS's own impetus or at the will of Congress.

Critical to the integrity of any benefit or entitlement program is the ability to detect, confront, deter, and prevent fraud. To do this effectively, we must be both proactive and reactive; proactive in the sense of performing fraud and risk assessments, compliance and quality assurance reviews, and other studies and analyses, and reactive as in conducting investigations of individually suspected fraud cases. One of the reasons our legal immigration system is so abused is because DOJ and now DHS have chosen to be reactive, and even then, without the resources and other tools to be effective. Historically, immigration services components tend to be more focused and proactive on increasing production and reducing processing times, than enhancing quality and integrity. As found by both GAO and the 9/11 Commission, this is extremely dangerous in today's post 9/11 world.

USCIS must have this information to prepare guidance and train personnel, and develop the business rules needed to guide the development of analytics-based technology (fraud engines), so that fraud indicators and other risks can be identified electronically at the time of filing. It needs the right combination of experts to develop the methodologies, collect and analyze the data, and prepare the reports and analyses needed to render objective findings and recommendations. It needs less internal and external interference, and more objective and assertive support from senior leadership within DHS and Congress. Given the history of partisan politics and its influence on incumbent Administrations, I implore Congress to legislate the oversight and internal controls needed to instill integrity in our legal immigration system.

With regard to the draft asylum BFCAs, in that it is not designated under any of the three classification levels identified in Executive Order 13526, entitled "Classified National Security Information" (i.e., top secret, secret, confidential), I am willing to discuss it in the interest of national security and enhancing the integrity of this country's legal immigration system.

⁴ This review was conducted upon the request of the Subcommittee on Immigration, Border Security, and Claims Committee on the Judiciary to determine what actions had been taken since the 2002 to address immigration benefit fraud.

OVERVIEW OF ASYLUM BFCA

General Eligibility for Asylum

- Physically present in the U.S.,
- Applies for asylum within one year of arrival, and
- Seeks protection on the basis of having been persecuted or having a well-founded fear of persecution upon return to his/her country *on account of race, religion, nationality, membership in a particular social group, or political opinion.*

Standard of Proof

- Low burden and standard of proof
 - *More likely than not* to be persecuted.
 - *If what he/she is saying is true*, and no evidence exists to the contrary...
- Decision is discretionary, but applicant must establish eligibility and present a persuasive claim.
- No actual documentary requirements.
- Mere possession of fraudulent identity and other documents, or misrepresentations made in obtaining a passport or visa to travel to the U.S. doesn't automatically render an applicant ineligible as refugees fleeing persecution tend to do what they can to escape the persecution.

Objective of BFCA

- To determine the scope and types of fraud, and the application and utility of existing fraud detection methods.
- INTERNALLY: To identify weaknesses and vulnerabilities, and propose/undertake corrective action.

Study Population

- Random sampling of pending and completed (approved/referred) cases with USCIS between May 1 and October 31, 2005; that population being 8,555 applications.
- Known as “affirmative filings” in that they filed with USCIS and are not in removal proceedings (“defensive filings”) before an immigration judge (EOIR).
- Worked with DHS/OS and utilized General Principals of Accounting in determining sampling size, which was 239 cases.
- Applicants represented more than 50 countries.
- Highest representation was from China, Haiti, Colombia, and Mexico.

Case Review Process / Methodology

- Stage One:
 - FDNS Immigration Officers (IOs) reviewed applicants USCIS file(s), i.e. application, supporting documents, and other available documents and records.
 - FDNS IO conducted a battery of government and open source (commercial/public) systems checks (Databases utilized should include CIS, SC-CLAIMS/CLAIMS 3, RAPS, FDNS-DS, IBIS/TECS, SEVIS, ADIS, USVISIT/IDENT, DOS-CCD, LexisNexis, Accurint, Choicepoint, and Canadian Immigration Systems.)
 - If no derogatory/negative information was disclosed, case was categorized as “*No Fraud Indicators*” and forwarded to Headquarters (HQ) for review (Stage Two).

- If inconsistencies, derogatory, or negative information (*fraud indicators*) were disclosed and the IO believed said suspicion could be confirmed overseas, he/she would prepare an Overseas Verification Requests (OVR).
- If the FDNS IO concluded sufficient evidence existed to categorize the case as “*Proven Fraud*” without an OVR, he/she would do so and then forward the case to HQ for review (Stage Two).
- If the FDNS IO concluded that an OVR wasn’t likely to be of value and/or it didn’t meet the OVR criteria, notwithstanding the presence of derogatory information, he/she would categorize the case as containing “*Indicators of Possible Fraud*”, and then forward it to HQ for review (Stage Two).
- Stage Two consisted of a team of more senior immigration officers, attorneys, and managers reviewing the cases and findings of the FDNS IOs.

Key Findings

- Of the 239 randomly selected cases, 29 (12%) were determined to be fraudulent.
 - 12 (41%) of the 29 fraud cases (5% of the study population) were granted prior to the BFCAs.
- 72 (30%) cases did not contain any fraud indicators.
- 138 (58%) of the 239 exhibited possible indicators of fraud
- 165 (69%), when including 27 uncompleted OVRs.
- 59 (25%) of the 239 cases containing fraud indicators were sent overseas for event/information verification by either USCIS or DOS personnel.
- 26 (44%) of 59 OVRs were completed; 17 (65%) resulted in a finding of fraud.
- Initially all 59 OVR cases were determined to contain fraud indicators, but in second review phase, HQ re-categorized 6 as “no fraud found”.
- 105 (76%) of the 138 fraud cases were placed in removal proceedings where the claim was to be reviewed by an immigration judge. [Do not have results of other agency/department (EOIR) data.]

Influencing Factors

- Unlike other immigration benefit seeking applications (form types); there are no petitioners or beneficiaries to question, nor job offers, academic degrees, or experience to verify.
- Claims are sensitive and confidential, so the types of inquiries and verifications that could be made were very limited.
- Not easy to discern legitimate claims from illegitimate, absent conflicting and otherwise derogatory information that destroys or weakens the applicant’s credibility.
- Scarcity of resources
 - Insufficient personnel overseas to verify documents, events, and other information. [Couldn’t even perform 27 overseas verifications.]
 - OVRs very time-consuming and capabilities vary from country to country.
 - Due to competing priorities and limited resources, DOS wasn’t as helpful as we had hoped.

Criteria/Factors Used to Determine Credibility

- Identity established? Documented? Questionable?
 - Claim consistent with country conditions?
 - Evidence present to support claim?
 - Events and/or other information verifiable?
 - Past residences and travels an issue?
 - Applicant or systems checks disclose any fraud or criminal activity?
 - Any inconsistencies, questionable, or negative information?
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What can be done to more effectively combat and deter fraud?

- 1) Technology
 - Engage analytics-based technology that electronically, upon filing, identifies known and suspected fraud indicators, including boilerplate language, conflicting records, and other questionable associations. Include EOIR cases.
- 2) Screening / Systems Checks
 - Expand asylum applicant screening to include all of the checks done for BFCA.
- 3) Overseas Verifications
 - Enhance capability of USCIS to verify information overseas within 30 days; NTE one week for credible fear determinations.
- 4) Interpreters
 - Contract and manage interpreters.
 - Require background checks and perform periodic financial, travel, and other checks.
- 5) Country Conditions
 - Create an Intelligence Program responsible for preparing ongoing asylum and refugee-based intelligence reports and analyses focused on recent world events, travel, and other patterns.
 - Prioritize focus on top five countries for which their nationals are seeking asylum.
- 6) Internal Controls
 - Legislate specific internal controls such as compliance reviews, fraud assessments, and other studies and analyses.
 - Require annual reports to Congress.
- 7) Information Sharing and Collaboration
 - Enhance interagency (EOIR/ICE/USCIS) information sharing and anti-fraud efforts.
 - Develop an FDNS Program in EOIR.
 - Have EOIR FDNS officers partner with ICE, USCIS, and CBP anti-fraud and intelligence programs.
 - Require annual reports from DOJ (EOIR) and DHS. (CBP/ICE/USCIS).

8) Re-engineer Removal Proceedings

- The current administrative removal system is not structured or equipped to deal effectively with the number of individuals unlawfully present in the U.S. Adding more judges and courtrooms is not going to fix the problem, nor is the ever-increasing exercise of prosecutorial discretion. We need to totally revamp the system to more effectively remove those who pose a threat to national security and public safety, deter persons from willfully violating immigration laws, and ensure those entitled to some form of relief receive the consideration they deserve. We accomplish very little with the current system.
- Recommend expanding the use of expeditious removal authority by allowing the establishment of alienage and unlawful presence to be sufficient grounds to remove unauthorized foreign nationals who do not possess a fear of persecution or torture upon return and who lack any other form of statutory relief.

9) Deterrence / Prevention / Sanctions

- Require all foreign nationals desiring to work in this country, whether temporarily or permanently, to have their biometrics collected, background checks conducted, and upon being determined to be eligible, issued a secure identity and employment authorization card. Require the possession of this card to work in this country without exception. Eliminate the magnet that encourages unauthorized persons to enter and/or remain in this country in violation of immigration laws.
- Administrative Sanctions
 - Issue monetary fines.
 - Prohibit those proven to have committed or supported the commitment of immigration fraud from applying for and receiving immigration benefits for a specified period of time.
 - Require payment of fine and demonstration of rehabilitation prior to lifting bar.
 - Don't just penalize the applicant or beneficiary, but also the petitioner, and if represented, lawyers and other representatives proven to have engaged in fraud.
- Increase requirements and controls on those authorized to provide legal and other services, including preparers and interpreters. Establish a formal application and registration process; require minimum educational and training requirements, including continuing legal education.

10) Enhance National Security Checks

- Define and standardize national security check, so that when it's done, it's the same quality check (databases, etc.), regardless of the agency requesting it.
- To overcome barriers associated with the sharing of information with non-law enforcement agencies, legislate the recognition of USCIS' FDNS Directorate as a law enforcement agency for the purpose of combatting immigration fraud and screening persons seeking immigration benefits to ensure they do not pose a threat to national security and/or public safety.
- Require recurrent checks of the Terrorist Screening Data Base (TSDB) on all persons granted immigration benefits, both temporary and permanent, up to the fifth year anniversary of naturalization.