

TESTIMONY OF

JAMES L. BUCK, DEPUTY COMMISSIONER  
IMMIGRATION AND NATURALIZATION SERVICE

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND  
INTERNATIONAL LAW

COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES

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DEPUTY COMMISSIONER, INS  
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Mr. Chairman and members of the Subcommittee:

I am pleased to appear before you today. However, in doing so, I must first note that this Administration has not yet completed a high level review of its policy with respect to exclusion and interdiction.

The number of aliens attempting to enter the United States illegally appears to have subsided since 1987, but continues to be a problem. The Bush Administration is committed to dealing effectively with this problem. Wishing to prevent repetition of the circumstances resulting from the Mariel and Haitian Boatlifts of 1980, the Government instituted a firm detention policy and interdiction program to deter boat arrivals of illegal aliens. The passage of the Immigration Reform and Control Act of 1986 (IRCA) and other measures have increased our ability to deter illegal immigration.

The Immigration Reform and Control Act of 1986 set in place a system of employer sanctions which has effectively reduced the magnet for illegal entries by imposing penalties on employers who hire illegal aliens. These sanctions have caused jobs to be

denied to those aliens without legal authorization to work in the United States. As a result, a 40% reduction in apprehensions at the border in three short years has been realized.

Furthermore, some aliens fraudulently claim marriage to a United States citizen, in order to gain permanent residence. To address this problem, Congress passed and implemented strong measures in the Marriage Fraud Amendments of 1986. These measures have been effective in eliminating fraud in this area while keeping adjustments on the basis of marriage available to those qualified.

Most recently, sizable numbers of Central American asylum seekers have attempted to enter the United States, many of whom we believe are fleeing for economic reasons without showing a well-founded fear of persecution. This was stopped by a policy of interdiction, apprehension and detention in South Texas. Again, a challenge to America's immigration laws was met by resolve to sustain the integrity of our immigration system.

On several occasions, we have testified before this Subcommittee and other Congressional committees on the subject of detention of excludable aliens. All excludable aliens, regardless of their nationality, are subject to detention during the pendency of their exclusion proceedings.

Excludable aliens, some of whom are without proper documents to enter the U.S., are not automatically eligible for release on bond. Release on parole of an alien in exclusion proceedings is considered on a case-by-case basis, at the discretion of the District Director, in the jurisdiction where the alien is being held. Exceptions to detention are usually made where humanitarian considerations dictate, as with minor children, pregnant women, or persons with a severe medical condition. Nationality is not a criterion in determining whether an alien is to be released.

#### EARLY HAITIAN MIGRATION

During the 1970's, INS began to see a pattern of Haitian migration to South Florida by boat. Around 1979, a dramatic increase in the number of Haitian nationals arriving in the United States occurred. Their arrival overlapped with the beginning of the Mariel boatlift from Cuba. While the mass entry of Cubans ended in October 1980, the migration of large numbers of Haitians continued until 1981.

The majority of the newly arrived Haitians filed asylum claims based on fear of persecution if they were returned to Haiti. In the subsequent adjudication of their claims by Service District Directors and Immigration Judges (as well as review by the Department of State for the provision of advisory opinions), the

applicants were deemed not to have a well-founded fear of persecution as required by the Refugee Act of 1980, for the granting of refugee status.

#### U.S. IMMIGRATION DETENTION POLICY

Prior to 1981, those excludable aliens not considered a security risk were frequently paroled into the United States while their cases were processed. From November 1977 to May 1981, excludable Haitians were usually paroled to voluntary organizations and granted authorization to work.

In May 1981, as part of the Government's program to discourage illegal entry into the U.S., administrative steps were taken to ensure that existing laws were firmly and fairly enforced. Among those laws is one (Section 235(b) of the INA) which authorizes that undocumented and otherwise excludable aliens attempting to come into the United States be detained until it is decided, through an exclusion hearing, whether they legally can enter.

This provision, which enables the Service to stop illegal alien migration, was more actively enforced after 1980. Before 1980, aliens were released into local communities, even though those communities were seriously burdened, and despite the fact that many who were released never returned for their hearings. Not surprisingly, all of this caused more illegal migration. To

correct this, the Service began to detain undocumented and otherwise excludable aliens, as authorized by law. This was done even-handedly with aliens of all countries.

Between January and November 1981, the number of Haitians arriving illegally ranged from 306 to 1,717 per month. The number of illegal Haitians encountered by the Service exceeded the number of illegal aliens of all other nationalities except Mexican. However, from November 1981 forward, illegal arrivals fell to less than 50 arrivals per month. This resulted from a combination of the firm detention policy and the stationing of a Coast Guard cutter to interdict those attempting to come by way of the Windward Passage.

Since 1981, the number of known excludable Haitians reaching the Florida coast and being detained has fluctuated. The total number of detained Haitians has ranged from 785 to 1,493 per year for fiscal years 1983 through 1988. In fiscal year 1989, we have again experienced an increase in arrivals by excludable Haitians. This time however, most are arriving via the Miami International Airport. Between October 1988 and February 1989, 1,097 Haitians were detained by INS. As of June 5, 1989, 387 Haitians were being held at the Krome detention facility. With the exception of a group arriving by boat on April 10, 1989, the majority have arrived by commercial airlines and often had in their possession fraudulent entry documents.

Those aliens who remain in INS custody are in various stages of the hearing and appeal process. The average stay in custody for Haitians of 60 days is consistent with other large populations of detainees, such as Nicaraguans and Salvadorans.

#### INS AND INTERDICTION

The Alien Migrant Interdiction Operation (AMIO), previously called the Haitian Migrant Interdiction Operation (HMIO), was instituted as a result of a bilateral agreement between the Government of Haiti and the U.S. and Executive Order 12324, dated September 29, 1981. This Order authorized the suspension of entry of undocumented aliens from the high seas finding that the continuing migration by sea of large numbers of undocumented aliens into the U.S. was detrimental to the interests of the country. Since that date, the Immigration and Naturalization Service with the cooperation of the Coast Guard, has taken steps in accordance with this Order, to ensure the enforcement of our immigration laws while strictly observing our international obligations concerning those who are genuinely fleeing persecution in their homeland.

Since the Interdiction Operation began in October 1981, more than 350 vessels carrying over 20,000 persons have been interdicted. Of that figure, only a handful of these persons were found to

have a possible claim of persecution and were brought to the U.S. to pursue their asylum claims before an Immigration Judge. During Fiscal Year 1988, 4,386 persons and 48 vessels were interdicted.

In the actual Operation, an assigned Coast Guard cutter intercepts a vessel on the high seas which has usually sailed from the island comprising Haiti and the Dominican Republic in route to southeastern United States. The great majority of these vessels encountered are structurally unsound and lack proper navigational, safety, and medical equipment. Consequently, the interdiction is usually tantamount to a rescue at sea. Once the vessel is boarded and all persons transferred to the cutter, an Immigration Officer, who is specially trained and assisted by a Creole interpreter, individually asks all the persons the reason for departing their homeland, why they wish to go the U.S., and if they have any fear of returning to their country. Those who express a fear which might possibly amount to persecution are brought to the United States where they may pursue an application for asylum.

It should be clearly understood that the Service is not adjudicating asylum claims on the high seas but only making a preliminary determination as to whether an interdicted person may have a legitimate claim to political asylum that could be pursued once in the U.S. There are also those persons who are

determined by the Coast Guard medical staff to be in need of immediate medical attention and they are evacuated to the United States by helicopter. Many of these persons have also filed for asylum although we do not have any information on the outcome of these claims. All persons not brought to the U.S., along with the vessel they were on, if seaworthy, are returned by the Coast Guard to the country of embarkation.

All persons who are on vessels interdicted within the three nautical miles of the U.S. coastline are brought to the United States and are processed for exclusion under section 236 of the Immigration and Nationality Act(INA), as amended. All persons brought to the United States as a result of the Interdiction Operation are detained pursuant to section 235(b) of the INA, as amended to await either the processing of an asylum claim or a decision in exclusion proceedings.

With a growing number of Haitians who are lawful permanent residents in the U.S., either writing or returning to Haiti and making known the opportunities that exist in this country, the incentive to risk everything and attempt to reach our shores grows stronger. This is equally true of other countries around the world, especially Central America. This factor coupled with the apparent loosening of Haitian government control over vessel departures from that country have been responsible for increased numbers of people using the high seas as an avenue to enter the

United States illegally. This is evidenced by the increasing number of interceptions during the past two years by the AMIO, particularly during the month of March 1989, when 16 vessels containing 1,400 persons were interdicted. The Alien Migrant Interdiction Operation is a success because it has saved an untold number of lives and prevented a substantial number of persons from illegally entering the United States.

#### INSPECTIONS PROGRAM

The principal port of entry for most Haitians is Miami. During Fiscal Year 1987, 345 intending immigrants were intercepted, and 38 were deemed ineligible (i.e. unacceptable risk) for the Transit Without Visa (TWOV) privilege. This TWOV category is for aliens who are in immediate and continuous transit through the U.S. to a third country. Aliens falling into this category must (1) have a confirmed flight to their onward destination, (2) be brought into the U.S. by a carrier signatory to a TWOV agreement with the U.S., and; (3) be otherwise admissible into the U.S. In FY 1988, the numbers nearly doubled to 614 intercepts (178% increase) and 83 ineligible (218% increase) for TWOV. Mid-way through FY 1989, the numbers have already surpassed the 1988 figures; 843 intercepts plus 129 TWOV ineligibles, representing a projected 274% and 310% increase by years end, respectively. In addition, Immigration Officers

processed 388 Haitians who arrived without documents aboard three private vessels which had eluded the Coast Guard.

Haitians whose admissibility is questioned by an INS Officer can exercise their right to a hearing before an Immigration Judge where a claim to political asylum can be made.

We are of the opinion, and experience has shown, that the problem with intending immigrants from Haiti is serious and growing . It is our belief that the interdiction program is a viable and worthwhile deterrent and that the costs of processing and detention would be immense were it not for this program.

#### CONCLUSION

In response to a very real need to reduce the number of aliens attempting to enter the U.S. illegally, the Government has fairly and equitably initiated measures to deter illegal entry. The Congress and the INS have made some tough yet necessary decisions to maintain the Government's control over who may enter the United States. Strengthening our detention policies and active involvement in the Alien Migrant Interdiction Operation have produced measurable results. We are a nation of laws. Through the firm and fair enforcement of our immigration laws against those who would abuse them, we are able to maintain our nation's tradition as a nation of immigrants and a land of opportunity for

all. Thank you Mr. Chairman and I will be happy to take any questions from the Subcommittee at this time.