



**U.S. Citizenship
and Immigration
Services**

WRITTEN TESTIMONY

OF

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FOR A HEARING ON

**“Stopping the Daily Border Caravan: Time to
Build a Policy Wall”**

BEFORE

**THE HOUSE COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEE ON BORDER AND MARITIME SECURITY**

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INTRODUCTION

Chairwoman McSally, Ranking Member Vela and distinguished Members of the Subcommittee, I am pleased to be here today, along with my colleagues from U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), to speak with you about an integrated border security plan. My name is Francis Cissna, and I am the Director of U.S. Citizenship and Immigration Services (USCIS). My testimony will lay out problems that exist within our Nation's asylum system that compromise border security and the integrity of our nation's lawful immigration system, as well as steps that USCIS and other Department of Homeland Security (DHS) components are taking to address them. I will also suggest statutory changes in areas where only legislative action can provide the authorities needed to help secure our borders and keep our country safe. I am hopeful that the necessary changes will be realized, and I point to H.R. 4760, the Securing America's Future Act, as a blueprint for meaningful immigration reform. I further note that the Chairwoman, along with Congressmen Smith, Barletta, Rutherford, and Bacon on this Subcommittee are cosponsors of the Securing America's Future Act.

USCIS administers the nation's lawful immigration system, including the adjudication of affirmative asylum claims and applications for refugee status. USCIS officers work shoulder-to-shoulder with their ICE and CBP colleagues—from conducting protection screening interviews at detention centers to running real-time immigration record checks at the National Targeting Center. The closer we work together—and not just with our DHS partners but also with the Department of Defense and the states that are stepping up and temporarily deploying the National Guard—the better we secure our country. Stronger security requires multiple layers, from physical controls and surveillance along the border, to targeted interior enforcement, to a more aggressive crackdown on the immigration fraud and abuse that diminishes the integrity of our immigration system and harms American workers. It also includes working with our foreign partners to ensure that their immigration and enforcement policies and efforts reduce illegal flows from and through their territories to other nations, including the United States.

There is only so much we can do as a Department to enforce the rule of law when serious loopholes exist within current law. Congress must step in and give our officers the tools we need to better protect asylum seekers and the American people. Allow me to lay out the challenges we face, the actions USCIS has taken, and what more can be done, especially with your help.

First, the backlog in the USCIS asylum process has swelled over the last five years. The number of new asylum filings has more than tripled between Fiscal Year 2014 and Fiscal 2017; the number received in Fiscal Year (FY) 2017 (141,695 asylum applications) was the highest annual number of asylum claims received in over 20 years. USCIS currently faces an asylum backlog of over 318,000 cases—a backlog of critical proportions that cripples our ability to properly screen and vet applicants while they wait for a decision. A consequence of this 1,700% increase in the backlog of pending asylum cases over the last five years is that true asylum seekers are lost in a haystack of applications, many of them non-meritorious.

To stem the increase of frivolous filings and help those who truly fear persecution, USCIS began to schedule asylum interviews for recent applications ahead of older filings, beginning in February of this year. Delays in the timely processing of asylum applications are detrimental to

legitimate asylum seekers. Furthermore, lingering backlogs can be exploited and used to undermine national security and the integrity of the asylum system. The result is that true victims wait years to be processed. Those who file frivolous claims not only circumvent the legal immigration system, but they could pose a threat to public safety and national security.

Returning to a “last in, first out” interview schedule allows USCIS to focus quickly on those applications that should be approved while also identifying frivolous, fraudulent or otherwise non-meritorious asylum claims earlier and quickly place those individuals into removal proceedings. This priority approach is not new. It was first established by the asylum reforms of 1995 and was used for 20 years until 2014. The aim then, as now, was to deter those who might try to use a backlog as a means to obtain employment authorization and build equities in the United States. During the first three months that this revised scheduling approach has been in place, the number of new affirmative asylum applications received has fallen by approximately 30% from the number of filings received from November 2017 through January 2018. While it is still too early to call this a permanent trend, USCIS expects that this scheduling change will deter the filing of non-meritorious claims.

Congress can help in closing loopholes for frivolous and baseless asylum filings. The extended asylum processing times caused by the growing backlog have led to the issuance of more Employment Authorization Documents (EADs) and created an incentive (or pull factor) for individuals to apply for asylum solely to obtain work authorization. The current wait time for an asylum decision in the backlog varies between USCIS Asylum offices, but is roughly two years or longer over all. While the number of *mala fide* claims is difficult to estimate, experience from the 1990s indicates that a significant amount of the growth in receipts since FY 2014 may be linked to individuals pursuing work authorization and not necessarily asylum status. While just less than 55,000 EADs were issued to individuals with pending asylum applications in FY 2012, over 277,000 such EADs were issued during just the first three quarters of FY 2017.¹

Moreover, approximately 20% of the Asylum Division’s affirmative asylum backlog comprises cases in which, at the time of filing, 10 or more years had elapsed after the applicant’s last arrival in the United States. These applicants appear to be using the asylum process to gain access to removal proceedings so that they can then apply for cancellation of removal, a form of relief from removal that can presently only be sought while in removal proceedings. With the present backlog, these individuals can get authorization to work in the United States while they wait for their asylum case to be reviewed, have an asylum interview scheduled, and receive a decision to refer their application to removal proceedings before an immigration judge.

In order to fully address these loopholes, new legislation is needed. In order to deter frivolous filings, individuals who make them should face penalties beyond simply having their application denied. Under the statute, individuals who are found to have filed frivolous asylum applications are permanently barred from receiving any future immigration benefits, yet this finding is rarely made because the definition of “frivolous” is too narrow and the notice requirements too

¹ USCIS News Alert (Oct. 12, 2017), “USCIS Makes Additional Data on Employment-Based Visa Programs Available in Support of ‘Hire American’ Executive Order”; EADs by Classification and Statutory Eligibility, Oct. 1, 2012 - June 29, 2017 (<https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/eads-by-statutory-eligibility.pdf>)

unwieldy. Expanding the definition of “frivolous” to capture the types of abusive claims we are currently seeing and amending notice requirements, for instance, would send a strong and clear message that individuals are no longer welcome to abuse our asylum processes. USCIS stands ready to provide technical assistance, as needed, to the Congress as you consider remedies.

Attention also needs to be given to expedited removal and the credible fear screening process—especially as they relate to the Southern Border. The simple reality is that those who wish to gain access to or remain in the United States know they can likely effect that access and then delay their removal by simply saying the “magic words” of “fear” or “asylum.” The standard for credible fear screenings at the border has been set so low that nearly everyone meets it.

Those with legitimate claims of asylum must be protected; however, many of those seeking to enter this country illegally, and the smuggling organizations who profit from them, know that a few key words are all it takes to keep an alien in the country longer. Unfortunately, there is no significant downside to making a false claim of “credible fear”. Additionally, family units who arrive at our border are nearly always released from ICE custody into the interior of the United States as recent rulings in the *Flores* consent decree litigation constrain ICE’s authority to detain an entire family unit. These rulings require that children be released from DHS custody within a few days of arrival if they are not removed. In FY 2017, approximately 71,500 members of family units were apprehended at the southern border..

With continued claims of credible fear, and an immigration court backlog of more than 650,000 cases, it is clear that we must elevate the threshold of proof in credible fear screenings. Aliens who falsely claim credible fear in expectation of parole are placing a strain on Department resources, and preventing or delaying legitimate asylum cases from being adjudicated. DHS and the Department of Justice (DOJ) are working together to explore options for addressing this increasing threat to the security of our border.

Current law also prevents the government from promptly removing some unaccompanied alien children (UACs) who arrive in the country illegally. Rather than being expeditiously removed to their home countries, these minors are instead placed in full removal proceedings before immigration judges and, pursuant to federal law, are referred to the U.S. Department of Health and Human Services (HHS) at taxpayer expense, and subsequently released to the custody of a sponsor – sometimes even a family member or friend who often lacks lawful immigration status in the United States. As has been reported, violent street gangs such as MS-13 have targeted UACs and other Central American immigrant youth for recruitment. Dozens of suspected gang members arrested in recent successful anti-gang operations, such as ICE Homeland Security Investigations’ “*Operation Raging Bull*,” were found to have originally entered this country as UACs. We must come to terms with the effects of UACs on our orderly immigration processes. Without reform, border security will remain elusive.

The significant increase over the last few months in the number of family units and UACs coming across the border illegally highlights the urgent need for Congress to immediately pass legislation that:

- Ensures the expeditious return of UACs and family units who are not granted protection;
- Tightens the credible fear standard; and
- Closes loopholes that encourage and enable illegal immigration and create a corresponding backlog in the courts.

The integrity of our entire immigration system is at risk because frivolous asylum applications impede our ability to help people who really need it. In order to address this, we need legislation that:

- Imposes and enforces penalties for the filing of frivolous asylum applications;
- Closes any loopholes that allow serious criminals, gang members, or terrorists to receive asylum in our country;
- Guarantees the prompt removal of individuals whose claims for protection are denied; and
- Makes it easier to terminate asylum for anyone who takes advantage of our generosity by claiming asylum but then returns to their home country absent a material change in circumstances or country conditions, especially when they are engaged in activities that threaten the security of our country, the very nation that gave them refuge.

Asylum is about protecting people who are at risk of persecution in their home country—that is, singled out for persecution on one of five specific statutory bases; it is not about providing a way around the regular immigration rules to pick and choose the country where you would most like to live.

We are, and will continue to be, a nation that provides protection to those truly in need. We honor our international legal obligations just as we expect other countries to honor theirs. To have border security, however, we must have an asylum system with integrity that puts the safety and security of the American people first.

We must work toward a comprehensive border security solution that deters illegal immigrants from abusing our laws while ensuring that we live up to our national promise of providing safe harbor to those who need it. By fixing the asylum system, we can protect true asylum seekers while also strengthening our immigration system for generations to come.

CONCLUSION

This President has made it clear that we will protect our borders and our sovereignty. Secretary Nielsen has called on Congress to work with her to quickly pass legislation to close the legal loopholes that are being exploited by the smugglers, traffickers, criminals, and those who want to ignore or bypass established immigration processes. Deficiencies in the law prevent us from securing our borders and protecting Americans. Like Secretary Nielsen, I stand ready to work with any Member who seeks to support DHS’ mission and secure our country. I believe that Congress has a very good start on that work, as evidenced in H.R. 4760.

Border security is more than just the much-needed wall and “boots on the ground.” A system that allows individuals to make dubious claims of asylum primarily so that they can live and

work in the United States undermines all of the time, effort, and resources that go into physical security. We at USCIS look forward to continuing to assist Congress, working closely with staff from both the Senate and the House to provide technical assistance to the language of any legislation that will address asylum loopholes and other vulnerabilities.

Once again, I appreciate the opportunity to be here today. I am happy to answer any questions you may have. Thank you.