

71

DOJ LIMITED OFFICIAL USE**U.S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE****THE IMMIGRATION EMERGENCY****Definition of the Problem:**

The United States is currently experiencing a mass migration of nationals of the People's Republic of China (PRC) who are being smuggled to the United States by criminal organizations. PRC nationals pay from \$15,000 to \$30,000 to smugglers for a hazardous journey that may end in indentured servitude, or participation in other criminal activities, in an effort to repay smuggling debts.

Organized alien smugglers, who relied until recently on air and land transportation, have begun to use fishing trawlers and cargo vessels to transport ever larger numbers of aliens. This influx of smuggled aliens threatens to overwhelm INS enforcement capabilities and to severely strain many other aspects of United States government operations.

The PRC alien smuggling crisis is both a cause and a symptom of a broader immigration emergency. A surge in illegal applicants for admission to the United States has placed an unanticipated and extraordinary burden on INS detention facilities and on the immigration adjudication process. Because only a tiny fraction of these illegal applicants can be detained throughout their immigration proceedings, the vast majority can live and work in the United States during the months or years it may take to complete these proceedings. Undocumented aliens who evade INS inspection -- as well as persons who are legally admitted but who overstay or otherwise violate the conditions of their immigration status -- may file unmeritorious applications for asylum and thereby gain work authorization during the years it may take to adjudicate such applications. The worldwide notoriety of this situation operates as a powerful magnet, attracting even more illegal immigrants who overload adjudication and detention resources even further.

Summary of PRC Alien Smuggling:

The first known vessel carrying large numbers of undocumented PRC nationals to the United States arrived in September 1991. Fourteen vessels arrived during 1992. Two vessels were interdicted during

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the first quarter of 1993, and three more have been identified during the present quarter.

Some of these vessels have attempted to off-load their passengers in the United States, either at a port or by means of a high-seas rendezvous with a smaller vessel. At least two arrived in Mexico, with the passengers then crossing into the United States over the land border.

The United States Coast Guard has intercepted two of these vessels before they were able to reach the United States. The East Wood, a Panamanian flag vessel carrying over 500 PRC nationals, was intercepted and directed to the Marshall Islands in February 1993. The passengers were ultimately repatriated to the PRC. A Honduran flag fishing trawler identified as the Mermaid 01 was escorted into Honduras on May 11, 1993, with 237 PRC nationals on board. Most of the passengers on the Mermaid have stated to the United Nations High Commission on Refugees that they are not willing to return voluntarily to China. The Honduran government is requesting that the United States Government pay for the repatriation of these persons.

The smuggling of PRC nationals by vessel into the United States is not the only method being used by alien smugglers. Undocumented PRC nationals continue to arrive in the United States via commercial airlines, usually at New York's John F. Kennedy International Airport (JFK). Like other smuggled aliens, many of these people use fraudulent documents to board a common carrier and then destroy these documents enroute. According to the Department of State, there are now approximately 1,000 PRC nationals in Moscow waiting to be smuggled to the United States.

The use of Caribbean and Central American smuggling routes to move large numbers of Chinese aliens is increasing. Apprehensions by INS in Puerto Rico of PRC nationals attempting entry in small boats from the Dominican Republic, for instance, has increased from three in Fiscal Year 1992, to 80 thus far in Fiscal Year 1993. INS estimates that there are 700 PRC Nationals in the Dominican Republic awaiting entry into the United States. The Border Patrol is also apprehending an unprecedented number of PRC nationals (74 during the five-day period May 4 through May 9, 1993) as vessels arrive in Mexico.

PRC smuggling organizations are an international multi-million dollar enterprise. Current alien smuggling laws available to combat this phenomenon are inadequate. Under existing law and federal sentencing guidelines, a first-time offender will be incarcerated for only 18 to 24 months. A minor penalty not only is

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inconsistent with the seriousness of large-scale alien smuggling, but also operates to thwart future investigative actions by reducing the incentive for apprehended smugglers to provide evidence against their co-conspirators. INS also lacks the statutory authority to seize money and real property that were used or acquired in smuggling operations.

Projections:

On the basis of information obtained from foreign police agencies, confidential informants and INS offices in Hong Kong, Bangkok, and along the East and West coasts, and the United States Coast Guard, 55 vessels likely alien smuggling vessels have been identified. The INS officer in charge in Hong Kong has reported 28 vessels outfitted for PRC smuggling in Hong Kong alone. On May 10, INS Headquarters was advised by the INS Officer in Charge in Hong Kong that 25 of the 28 vessels had left port. If each of these 25 vessels were to carry 200 persons -- a conservative estimate based on experience with other such vessels -- 5,000 aliens could reach the United States by vessel within the next three months. All 55 vessels would carry at least 11,000 illegal aliens.

INS intelligence sources also expect that more vessels may arrive in Ensenada, Baja California, Mexico, and that passengers from these vessels may attempt to enter the United States over the land border near San Diego.

ELEMENTS OF THE SOLUTION

1) Repatriation As A Deterrent:

Direct repatriation from third countries is among the most effective deterrents to a mass illegal migration. United States assistance in the East Wood repatriation included funding for all aspects of the operation, including temporary maintenance and travel costs.

Successful repatriation efforts require establishing cooperative agreements with countries receiving interdicted vessels or aliens who have landed en route to the United States, as well as with the countries of vessel registry. Arrangements should also be made with international organizations for refugee screening so that no genuine refugees are repatriated.

The cost of repatriation assistance by the United States is estimated at \$1,000 to \$2,500 per person. If 55 boats were to arrive with 200 persons on each boat, the total cost would be between \$11,000,000 and \$27,000,000.

DOJ LIMITED OFFICIAL USE

2301

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An important difficulty with the third-country repatriation option is that it assumes not only the interception of the vessel and/or its passengers outside the United States, but also the co-operation of the flag state, the country in which the vessel has landed, and/or some other country to which a vessel intercepted on the high seas can be directed without endangering the safety of life at sea. Although at least one of these conditions has been met for three of the four most recent vessels, it cannot be assumed that all --- or even most --- such vessels can be diverted from their intended destinations in the United States.

2) Detention As A Deterrent:

In cases where repatriation assistance is not a practical option, detention within the United States would be the next best option for deterring mass arrivals. The usual goal of illegal migrants is to gain entry to the United States, establish residence, and enter the work force. If such persons are detained upon arrival, maintained in detention throughout the administrative hearing process, and ultimately removed from the United States without ever having been at large and able to work, illegal migration by others is discouraged.

Present resource constraints require that most aliens in deportation and exclusion proceedings, even those with no colorable claim to asylum or other relief, be released on parole or bond during the administrative hearing process. This greatly reduces the deterrent effect of immigration law enforcement. Frequently, smugglers anticipate apprehension and include the cost of an immigration bond in the smuggling fee. Historically, many of the aliens released from detention fail to appear for hearings and abscond into established communities within the United States. Efforts to locate and apprehend these aliens after release from detention is extremely costly and most often unsuccessful.

3) Projected Detention Costs:

The estimates below are based on 55 vessels, each carrying 200 PRC nationals to the United States (11,000 persons). These are conservative cost estimates, and are exclusive of additional personnel, overtime, court costs, medical costs, escort officers, translators, and local transportation. The estimates are based on the assumption that the aliens will be detained an average of 90 days per person. Under current statutes and regulations, however, the administrative hearing process frequently takes even longer.

The average cost that INS must bear if a vessel lands on U.S. territory for detention in non-service state and local facilities

DOJ LIMITED OFFICIAL USE

DOJ LIMITED OFFICIAL USE

is \$54.00 per day. Transportation and welfare costs will average \$1,000 per person. Detention for 90 days plus an airline ticket home would cost \$5,700 per alien. The worst case estimate of 11,000 aliens would cost \$63 million.

This estimate assumes the availability of 11,000 bed-spaces in the United States. A recent survey of non-service state and local facilities located approximately 2,500 available spaces. Should excessive numbers of PRC nationals arrive in the United States, military assistance and use of military installations for detention should be considered.

4) Asylum Adjudication Costs:

The PRC alien smuggling crisis is intertwined with the broader crisis in the asylum adjudication system. Undocumented aliens who succeed in entering the United States are able, under law, to file asylum claims and thus receive employment authorization. The current asylum process has a large backlog, which allows persons making frivolous claims the opportunity to remain and work in the United States for several years. At the current rate of receipts (April 1993), 120,000 asylum claims will be filed annually. Existing and prospective backlogs as of the end of Fiscal Year (FY) 1993 will consist of:

- 80,000 still active pre-FY 1992 cases following completion of the initiative to offer re-interview opportunities to a substantially larger pre-existing backlog;
- 100,000 active FY 1992-1993 cases;
- 150,000 cases to be filed or re-filed under the American Baptist Church vs. Thornburgh settlement agreement of December 1990.

The unprecedented influx of PRC nationals is already causing the INS to transfer resources which would otherwise be devoted to dealing with the asylum backlog. The INS anticipates even further strain on its resources as this large influx of PRC nationals seek entry. Furthermore, as a result of the PRC alien smuggling crisis