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# The New Slave Trade: The International Crisis of Immigrant Smuggling

KEVIN TESSIER\*

When the Honduran-registered freighter the *Golden Venture* ran aground off the New York coast in June 1993, hundreds of Chinese immigrants attempting to enter the United States illegally were forced to plunge into the North Atlantic and swim to shore. Ten immigrants died trying to reach land.<sup>1</sup> The vivid scenes of illegal Chinese immigrants risking their lives to swim to freedom in the United States after enduring a lengthy voyage under deplorable conditions highlights the emerging global problem of immigrant smuggling. Since the *Golden Venture* incident, the immigrant smuggling problem has escalated, not only in the sheer magnitude of smuggling operations but also in the amount of human suffering. In fact, this underground trade in human beings exacts such an enormous toll in human misery that it has been called a modern version of the slave trade.<sup>2</sup>

Faced with poverty and deprivation in their home countries, many immigrants make deals with unscrupulous smugglers who secretly transport the immigrants into countries where their prospects seem brighter. Unfortunately, smuggling networks subject immigrants to deplorable conditions in transit, and then deliverer them to "a life of indentured servitude, torture, fear and extortion" until they can pay the exorbitant prices charged by their smugglers.<sup>3</sup> The immigrants' ability to raise sufficient funds in the underground economy to pay smugglers' exorbitant fees is so limited that it takes some immigrants years to pay off the balance. In a congressional hearing on immigrant smuggling, Congressman George Sangmeister noted, "Aliens from the People's Republic of China are selling themselves into virtual slavery for a boat ride to the United States."<sup>4</sup> Jonas Widgren, head of the International Centre for Migration Policy Development in Vienna, also claims

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1. Seth Faison, *Hunt Goes on For Smugglers in Fatal Trip*, N.Y. TIMES, July 18, 1993, at 27.

2. Tony Samstag, *Europe Swamped by New "Slave Traders,"* EVENING STANDARD, Jan. 11, 1995, at 24, available in LEXIS, World Library, CURNWS File.

3. *Alien Smuggling: Hearing Before the Subcomm. on International Law, Immigration, and Refugees of the House Comm. on the Judiciary*, 103d Cong., 1st Sess., 1, 60 (1993) (statement of Chris Sale, acting Commissioner, INS).

4. *Id.* at 7 (statement of Rep. George Sangmeister).

that immigrant smuggling represents a “new form of slavery” in which immigrants frequently are coerced “into a lifelong dependence to pay the smugglers.”<sup>5</sup>

The danger to immigrants who are involved with smugglers is increased by the criminal element involved in immigrant smuggling.<sup>6</sup> Organized crime, particularly Asian criminal gangs, controls the overwhelming majority of this illicit trade.<sup>7</sup> In what amounts to a \$5-7 billion industry annually,<sup>8</sup> immigrant smuggling generates a tremendous source of revenue which strengthens the power and influence of criminal organizations.<sup>9</sup> Recognizing this connection, one Washington official called immigrant smuggling “the single most important criminal threat to the United States.”<sup>10</sup>

In response to the unfolding immigrant smuggling crisis, the Clinton Administration promised an aggressive antismuggling plan,<sup>11</sup> but so far the U.S. response has been ineffective or nonexistent. In 1994 Congress debated a Crime Bill which included enhanced penalties for immigrant smuggling offenses, but when Congress finally passed the Bill, all the antismuggling provisions were dropped from the legislation.<sup>12</sup> Jack Shaw, the assistant Immigration and Naturalization Service (INS) commissioner for investigations, noted that antismuggling programs ceased to be a high priority with the INS. As a result, smugglers continue their operations with impunity.<sup>13</sup>

The U.S. response to immigrant smuggling is also complicated by interagency squabbling between the INS and the State Department.<sup>14</sup> This squabbling demonstrates that immigrant smuggling often presents a conflict between the law enforcement and diplomatic priorities of the United States.<sup>15</sup> Increased pressure on countries from which the smuggling routes originate,

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5. *The New Trade in Humans*, THE ECONOMIST, Aug. 5, 1995, at 45.

6. The most dramatic example of the dangers of the criminal element involved in immigrant smuggling is the abduction of two Chinese men in New York by a smuggling ring trying to force payment of smuggling fees. Indira A.R. Lakshaman, *Bostonians' Abduction Tied to Smuggler Ring*, BOSTON GLOBE, Jan. 23, 1995 at 13.

7. Pamela Burdman, *How Gangsters Cash in on Human Smuggling*, S.F. CHRON., Apr. 28, 1993, at A1.

8. *The New Trade in Humans*, *supra* note 5, at 45.

9. Burdman, *supra* note 7, at A1.

10. Marlowe Hood, *The Taiwan Connection*, L.A. TIMES MAG., Oct. 9, 1994, at 20, 21 [hereinafter Hood, *The Taiwan Connection*].

11. Paul Richter & Ronald J. Ostrow, *U.S. Plan Targets Alien Smuggling*, L.A. TIMES, June 19, 1993, at A1.

12. Hood, *The Taiwan Connection*, *supra* note 10, at 44.

13. *Id.* at 46.

14. *Id.*

15. *Id.*

such as Taiwan and China, may contribute to a reduction in smuggling, but such pressure may hamper diplomatic relations with these countries. A renewed effort to combat immigrant smuggling may become a priority after the U.S. Commission on Immigration Reform in its September 1994 report advocated expanded enforcement authority, intelligence gathering, and diplomatic efforts to deter smuggling.<sup>16</sup>

Many immigrants caught up in the smuggling trade are from China, notably the Fujian province.<sup>17</sup> Although China has taken only belated steps to remedy the flow of Chinese immigrants smuggled into other countries,<sup>18</sup> some critics charge that U.S. asylum policy is responsible for encouraging immigrant smuggling from China to the United States.<sup>19</sup> In 1990, President Bush issued an executive order expanding the definition of refugee to include those persons fearing persecution from coercive population control policies such as China's "one couple, one child" policy.<sup>20</sup> Recently, however, U.S. courts have narrowed the scope of President Bush's executive order. The courts now reject asylum claims based on China's population policy absent a particularized showing of a well-founded fear of persecution relating to China's population policy.<sup>21</sup>

Smuggled immigrants come from a host of countries other than China, including Romania, India, Pakistan, Sri Lanka, Iran, Iraq, and the Sudan.<sup>22</sup> Their destinations include not only the United States, but also Western Europe. In the last two years alone, estimates indicate that more than half a million

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16. U.S. COMM'N ON IMMIGRATION REFORM, U.S. IMMIGRATION POLICY: RESTORING CREDIBILITY, 1994 REPORT TO CONGRESS, 104th Cong., 3d Sess. 47-50 (1994).

17. Joseph Kahn, *China Province Swells U.S. Immigrant Tide*, DALLAS MORNING NEWS, June 21, 1993, at A1 (noting as much as 90% of the Chinese immigrants entering the United States illegally come from the Fujian province). Experts estimate Chinese immigrants alone account for approximately 20% of the smuggling trade. Josh Friedman & Anthony M. Destefano, *Their Cargo is Human: Smugglers Exact Profits While Immigrants Suffer*, NEWSDAY, June 12, 1994, at A5, available in LEXIS, News Library, CURNWS File.

18. *National People's Congress Standing Committee, Severely Punishing the Crimes of Organizing Illegal Crossings by, and Illegal Carrying, of Persons Across the National Border (Frontier) Supplementary Provisions*, 7 CHINA L. & PRAC. 08 (1994) (specifying penalties of imprisonment and fines for individuals who organize immigrant smuggling).

19. Malcolm Gladwell & Rachel E. Stassen-Berger, *U.S. Policy Seen Encouraging Wave of Chinese Immigration*, WASH. POST, June 13, 1993, at A25 (arguing U.S. asylum policy regarding China's coercive population control policy has contributed to a success rate of 85% for the asylum claims of Chinese immigrants, almost three times higher than the rate for immigrants from other countries).

20. Exec. Order No. 12,711, 55 Fed. Reg. 13,897 (1990). Virtually all Chinese immigrants who do claim asylum in the United States base their claims under the terms of President Bush's executive order. Brian Duffy et. al., *Coming to America*, U.S. NEWS & WORLD REP., June 21, 1993, at 26, 30.

21. See, e.g., *Chen Zhou Chai v. Carroll*, 48 F.3d 1331 (4th Cir. 1995) (denying asylum to a Chinese immigrant based on China's coercive population control policy).

22. Friedman & Destefano, *supra* note 17, at A5.

illegal immigrants were smuggled into Western Europe.<sup>23</sup> Japan has also experienced an increase in the number of illegal immigrants smuggled into its borders.<sup>24</sup> Currently, thousands of immigrants are waiting in transit stations throughout various smuggling networks for the voyage to their final destinations. The estimated number of Chinese immigrants awaiting shipment to third countries totals 60,000 people in Moscow alone.<sup>25</sup> Romania also has emerged as an important transit point. Approximately 80,000 immigrants wait within its borders to be smuggled into other countries.<sup>26</sup>

The problem of immigrant smuggling is exacerbated by the trend in immigrant-receiving countries to adopt more restrictive immigration laws. Instead of reducing the flow of immigration, adoption of these laws serves as a catalyst for either the expansion of immigrant smuggling networks<sup>27</sup> or a shift in smuggling routes to other destinations.<sup>28</sup> This effect belies the claim made by John Wright, an INS official who supervises immigrant smuggling investigations, that immigrant smuggling is "a global issue, not just a U.S. issue."<sup>29</sup> Despite the fact that many other countries have recognized that the problem of immigrant smuggling exists, international cooperation to combat the smuggling has been stymied.<sup>30</sup> Receiving countries are often unwilling to share intelligence with immigrant-sending countries because evidence exists to show that government corruption in these sending countries contributes to the problem. Receiving countries fear that the information shared with sending countries will eventually be passed to the smugglers themselves.<sup>31</sup>

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23. Samstag, *supra* note 2, at 24.

24. *Japan Warns of Upsurge of Illegal Immigrants*, Reuters World Service, Oct. 28, 1994, available in LEXIS, World Library, CURNWS File (reporting Chinese organized crime has teamed up with their Japanese counterparts to smuggle immigrants into Japan).

25. Friedman & Destefano, *supra* note 17, at A5.

26. *Id.*

27. Marlowe Hood, *Trafficking in Humans: Big Business in Europe; Light Penalties and Huge Profits Spell a Boon for Organized Crime*, INT'L HERALD TRIB., Jan. 3, 1995, available in LEXIS, World Library, CURNWS File (noting more restrictive immigration laws passed by European Union countries have fueled demand for smugglers rather than deterred immigration); Susan Morgan, *Darkness Hides Migrant Flood into Italian Underworld*, THE INDEPENDENT, Jan. 8, 1995, at 16, available in LEXIS, World Library, CURNWS File (citing evidence that measures which toughen immigration laws have not reduced the flow of immigration, but instead, have increased the demand for immigrant smugglers).

28. Friedman & Destefano, *supra* note 17, at A5 (noting restrictive immigration policies in the United States and Western Europe have resulted in a shift to smuggling immigrants to other regions such as Eastern Europe, Latin America, and Asia).

29. *Id.*

30. *Id.*

31. *Id.* The Chinese government confirmed suspicions that Chinese government officials have aided smugglers when in 1993 it announced a number of officials had been punished. Pamela Burdman, *Inside the Chinese Smuggling Rings: "Snakeheads" Operating a Global Crime Network*, S. F. CHRON., Aug. 23, 1993, at A1. Government corruption in Taiwan also has been documented. Hood, *The Taiwan Connection*,

The United Nations International Maritime Organization (IMO) has recognized the seriousness of the immigrant smuggling problem and recently established a working group to investigate the problem.<sup>32</sup> A high priority for the IMO working group must be to rectify the shortcomings of the International Convention Relating to Stowaways.<sup>33</sup> This 1957 treaty has proven virtually unenforceable due to the multi-national nature of the shipping industry.<sup>34</sup> The IMO working group hopes to issue draft recommendations in March 1996 for a new agreement which will effectively address immigrant smuggling.<sup>35</sup> A coordinated international commitment to combat immigrant smuggling is the best step to eliminate what is essentially a global underground trade in human beings.<sup>36</sup> Given the strong criminal element involved in smuggling operations, an international commitment to combat immigrant smuggling clearly is in the best interest, not only of sending and receiving countries, but also of the immigrants themselves.

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*supra* note 10, at 23 (concluding, "Whether or not senior Taiwan officials are involved, corruption is undoubtedly what greases the ever-shifting pathways of migrant smuggling . . ."). Corruption is not limited only to immigrant sending countries. Official corruption in the INS has also been documented. *Id.*

32. *Refugees: Stowaways Risk Life and Limb to Escape War, Poverty*, Inter Press Service, Dec. 10, 1994, available in LEXIS, World Library, CURNWS File [hereinafter *Stowaways*].

33. International Convention Relating to Stowaways, Oct. 10, 1957, reprinted in NAGENDRA SINGH, 8 BRITISH SHIPPING LAWS: INTERNATIONAL CONVENTIONS OF MERCHANT SHIPPING 1354 (2d. ed. 1973). For a discussion of the Stowaway Convention from a United States perspective, see generally Beate Anna Ort, Comment, *International and U.S. Obligations Toward Stowaway Asylum Seekers*, 140 U. PA. L. REV. 285 (1991).

34. *Stowaways*, *supra* note 32.

35. *Id.*

36. See notes 26-28 and accompanying text.

