

**STATEMENT
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**HOW THE IMMIGRATION AND NATURALIZATION SERVICE PROCESSES
PERSONS ARRESTED FOR ILLEGAL ENTRY INTO THE UNITED STATES
OUTSIDE PORTS OF ENTRY**

BEFORE THE

**PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

**TUESDAY, NOVEMBER 13, 2001
DIRKSEN SENATE OFFICE BUILDING
ROOM 342
9:30 AM**

Mr. Chairman and members of the Subcommittee, my name is Mark Hall. I am the President of Local 2499 of the National Border Patrol Council in Detroit, Michigan. My local union represents U.S. Border Patrol agents assigned to patrol the U.S.-Canada border throughout Michigan and Ohio. I have had the honor to proudly serve my country as a U.S. Border Patrol agent for over 17 years, 14 of them in Detroit, Michigan. I want to thank you for this opportunity to testify on how the Immigration and Naturalization Service (I&NS) processes persons arrested for illegal entry into the United States outside ports of entry.

In the aftermath of the tragic attacks that occurred on September 11, 2001, there is a compelling need to re-examine how the I&NS processes aliens arrested entering the United States illegally.

Unlike the U.S.-Mexico border, where the overwhelming majority of the illegal aliens who are apprehended are citizens of the contiguous country and can be returned there expeditiously, most of the illegal aliens apprehended on the northern border must be held for several days in order to secure the necessary travel documents and/or make travel arrangements to return them to their country of origin. In most of these locations, including Michigan, the I&NS does not have facilities to house such aliens, and must rely on available jail space with local agencies, which charge a high price for this space. Therefore, aliens are often released into local communities on their own recognizance in an effort by the I&NS to save money and remain within their budget.

This practice was commonplace before September 11th and has not changed since. Although it is expensive to detain and remove illegal aliens from our country, it is far more costly to release potential terrorists into our communities. Representatives of this union have often pleaded with local I&NS and Border Patrol management to reconsider this “catch and release” philosophy, but have been ignored. This policy, combined with a decided lack of attention to our northern border, has been an inviting beacon for illegal entry into our country.

The Canadian government allows citizens of more than 50 countries to enter Canada without a visa. The United States requires a visa for citizens of more than 20 of the 50 countries for which Canada has waived the visa requirements. The Criminal Intelligence Service of Canada stated in its 1998 annual report that many illegal aliens use Canada as a transit point on their way to the United States. In many cases, their entry is facilitated by the fact they do not need a visa to enter Canada.

Aliens attempting illegal entry into the United States from Canada have two basic choices when crossing our border. They can either try to fraudulently enter through a port of entry or attempt to enter illegally between ports of entry.

Aliens who attempt illegal entry by fraud or deceit at a port of entry will be interviewed by a U.S. Immigration Inspector or a U.S. Customs Inspector. If caught, they can be held in the United States on criminal charges or refused entry and sent back to Canada. If they are sent back to Canada, they face possible removal to their country by Canadian authorities.

The other, less risky, option available to the alien is to cross the nearly 4,000 miles of sparsely protected U.S.-Canadian border between the ports of entry. An alien risks little chance of apprehension by one of the 334 Border Patrol agents who patrol the border with Canada. In the Detroit Sector, when agents arrest aliens entering illegally, they transport the aliens back to their station and begin processing the aliens for an immigration hearing.

During the processing, it is the agents who decide which, if any, criminal checks they will run on the aliens. The I&NS has no policy mandating that any records checks must be completed on aliens who are arrested. Even if an agent decides to run such checks, the accuracy thereof is greatly compromised by the fact that it is difficult to positively identify aliens because they rarely carry a passport or other form of identification. Thus, agents must rely on aliens who have consciously chosen to break our immigration laws to provide honest information about themselves. In many cases, it is impossible to verify such information, as there is no biometric record from any previous encounters.

Prior to September 11th, Border Patrol agents very seldom received terrorist look-out lists. In one case several years ago, I assisted the U.S. Coast Guard in the arrest of six Syrians who attempted entry illegally into Detroit. Only at that point did I learn that they, along with 14 others, were on a suspected terrorist look-out list. The Coast Guard had the list, but the Border Patrol did not.

As the processing continues, the agents, who have little verified information in hand, serve the aliens a form delineating the section(s) of the immigration law they are alleged to have violated. A box marked "own recognizance" is usually checked, and the aliens are then allowed to walk out the door into our communities. Very seldom does the alien even provide a U.S. address or phone number. Before they vanish into our communities, they are asked to send the I&NS their U.S. address when they take up residence. Of course, they rarely do.

Unfortunately, the practice of "catching and releasing" even extends to criminal aliens at times. In one recent case, a Detroit Sector Border Patrol agent tracked down and arrested an illegal alien who had been convicted of drug trafficking at least five times. When arrested, he had identifications and driver's licenses from seven different states. The agent naively thought the alien would be held without bond for his immigration hearing, as provided by law. The agent was wrong. The illegal alien felon was ordered released by local Border Patrol management over the strong protests of the arresting agent.

In 1996, Blaine, Washington Border Patrol agents arrested terrorist Abu Mezer not once, but three times entering the U.S. illegally. Even after his third arrest, Mezer was released. Several months later Mezer was shot by New York City Police just hours before his planned attack on the New York subway system.

Aliens and smugglers are well aware of the practice of “catch and release.” This is demonstrated by one particular case at the freight train tunnel connecting Detroit, Michigan and Windsor, Ontario, Canada. The aliens, entering illegally, walked through the tunnel from Canada and neared the exit on the U.S. side. The agents illuminated them with their flashlights and identified themselves as Border Patrol agents. Instead of turning and running, the aliens simply continued to the exit and surrendered to the waiting agents. Clearly there was little if any fear by the aliens of being held and deported. Sure enough, the aliens were processed and released on their own recognizance within a few hours.

In some instances, aliens are arrested by Border Patrol agents and a determination is made to hold them pending the posting of a cash bond. The aliens are then turned over to the I&NS’ Detention and Deportation Section. Frequently though, the Deportation Section will rescind these bonds and release the aliens on their own recognizance. This dangerous practice continues today.

When illegal aliens are released, we send a disturbing message. The aliens quickly pass along the word about how easy it is to enter this country illegally and remain here. This practice is devastating to a sound border enforcement strategy. It has also negatively affected employee morale, leaving agents with little sense of accomplishment and job satisfaction.

Rather than recognize and address any shortcomings, our local managers’ response has been to threaten those who speak out. As a result of speaking to the press recently in my capacity as a Union official, they have proposed to demote me for one year and suspend me without pay for 90 days. On a broader scale, some high-level Border Patrol managers support proposals to remove the Border Patrol from the I&NS in the hope that the union will be dismantled as a result of such reorganization. It is my hope that the new I&NS Commissioner will act quickly to redirect the energies of some of his subordinates in more positive directions. I am encouraged by his support of rank-and-file employees on such issues as the pay structure of Border Patrol agents, and hope that this will translate into a willingness to work with the union on other issues of mutual concern.

I am proud to be a member of the United States Border Patrol. As a member and officer of this union, I am constrained to voice my belief that local I&NS managers have not allowed us to protect this great nation’s sovereignty to the best of our abilities. In fact, on September 11th and the following days, local Border Patrol managers

emphasized that it was “business as usual” despite the fact that acts of terror had been perpetrated against our country.

Without detention and removal, there is no deterrent to stem the flow of aliens, some of whom seek to destroy the freedoms and way of life that we cherish. I therefore urge the members of this Subcommittee to aid us in performing our job by providing us with the resources and direction to fully enforce our nation’s immigration laws.

Mr. Chairman and members of the Subcommittee, I thank you again for this opportunity to testify, and will be pleased to answer any questions that you might have.