

‘Political Asylum: Where Compassion and National Security Intersect’

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On Sunday, April 21, 2013, just hours after the arrest of Dzhokhar Tsarnaev, one of the bombing suspects in the horrific terrorist attacks carried out at the Boston Marathon and which spread to neighboring communities by the Brothers Tsarnaev, New York’s Senator Charles Schumer had the unmitigated chutzpah to once again step in front of the television cameras to proclaim that Comprehensive Immigration Reform was more important than ever before because it would, he asserted, protect Americans from the bad guys who are “hiding in the shadows.”

Neither Schumer nor the other seven members of the “Gang Of Eight,” or as I prefer to refer to them, the “Eight Gangsters,” could have foreseen that ten days after he made those remarks more evidence of ineptitude by the DHS Department of Homeland Security (DHS) would grab headlines across the United States. May 1, was rapidly approaching, but we will get to that shortly.

It is more than ironic that it was New York City that suffered the greatest harm during the terrorist attacks of September 11, 2001, a city that Schumer represents in the U.S. Senate. Those attacks were carried out by 19 aliens who had gamed the visa process and/or the immigration benefits program.

Alleged terrorists, Tamerlan Tsarnaev and Dzhokhar Tsarnaev, were not hiding in the shadows — they were hiding in plain sight! In fact, published reports indicated that they and their families may have gamed the immigration system by filing for political asylum even though there are reasons, with the benefit of 20/20 hindsight, to be skeptical about the validity of their application for political asylum.

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Consider this: The U.S. requires that aliens who seek political asylum attest to having “credible fear” that if they were to return to their home countries, they would face persecution or worse because of their race, religion, ethnicity, political beliefs, or other such factors. An alien who is granted political asylum becomes eligible to acquire lawful immigrant status and United States citizenship.

Political asylum must therefore be thought of as being a “Key to the Kingdom” with U.S. citizenship being considered “The Golden Key”!

According to published reports, the Tsarnaev family made their applications for asylum roughly a decade ago. There has been no regime change in Russia since they applied for and received asylum, yet they willingly returned to Russia of their own volition. The obvious question that this raises, is whether or not they were truly fearful about the potential consequences they would face upon being returned to Russia.

It is the responsibility of United States Citizenship and Immigration Services (USCIS), and in some instances, the Department of State, to make determinations about the veracity of claims made in such applications. The reality is that USCIS has an abysmal track record in weeding out fraud in all sorts of applications for the various immigration benefits it is charged with adjudicating. Among the benefits are applications for authorization for nonimmigrant aliens to extend their lawful period of stay in the U.S., authorization for such aliens to attend school, acquire lawful immigrant status as signified by the issuance of an Alien Registration Card (Green Card), or naturalization whereby citizenship is conferred upon aliens.

While the “Gang of Eight” has been touting their compromise to concoct “Comprehensive Immigration Reform” and discussing whether or not the Southern border that is supposed to separate the United States from Mexico should be made secure, before or after Comprehensive Immigration Reform is implemented, no one — not one of the “Gang of Eight” nor anyone in the administration — is willing to concede that the adjudicators at USCIS cannot effectively adjudicate the estimated six million or more applications that they now

deal with each year. Imagine what dumping millions or more likely tens of millions of additional applications onto the desks of the beleaguered adjudications officers would do to what shreds of integrity might still remain at that woebegone agency.

On April 21, 2013, less than a week after the terrorist attack, Senators Graham and Schumer appeared on the CNN news program, “State of the Union,” where, according to the Associated Press, they reiterated:

Sens. Graham and Schumer say Boston bombings no excuse for critics to stall immigration bill

The AP report noted, in part:

Republican Sen. Lindsey Graham of South Carolina said Sunday that the bombings that left three dead “should urge us to act quicker, not slower when it comes to getting the 11 million identified,” referring to the estimated number of immigrants living in the country illegally. Democratic Sen. Chuck Schumer of New York added “keeping the status quo is not a very good argument, given what happened” in Boston.

The level of dishonesty in these outrageous statements should boil the blood of every American, irrespective of their political orientation. National security is neither a “Liberal” or “Conservative” issue — national security is an American issue.

What is broken about the immigration system is its pervasive lack of integrity, created by an abject lack of resources and a lack of political will to enforce the immigration laws that are already on the books.

The immigration laws have been enacted to achieve two primary goals: protect innocent lives by enhancing national security and community safety, and protect the jobs of American workers.

Clearly the immigration system failed abysmally at the Boston Marathon on April 15, 2013, but not the way that Schumer and his fellow gangsters would have you believe or come to understand.

Then, on May 1, 2013, the second shoe dropped. *The New York Times* published a report that was repeated by just about every other news agency about the arrest of three friends of the Tsarnaev brothers. The *NYTs* revealed:

The two Kazakhs, Dias Kadyrbayev and Azamat Tazhayakov, were charged on Wednesday with destroying evidence to obstruct the federal inquiry into the marathon bombings. Their American friend, Robel K. Phillipos, was charged with lying to impede the investigation. (“Three Are Accused of Impeding Boston Bombing Inquiry,” *New York Times*, May 1, 2013).

It is worth noting that according to published reports, Phillipos is a naturalized United States citizen and his mother, who emigrated from Ethiopia, has purportedly worked to assist political refugees in the United States.



Senators Lindsey Graham (SC) and Charles Schumer (NY)

Furthermore it has been reported that Azamat Tazhayakov left the United States in December 2012 and then was re-admitted on January 20, 2013 on his student visa. The problem was that he was allegedly no longer attending the school for which he had been issued a visa. Purportedly his student status was revoked on January 3, 2013. The bottom line is that he never should have been re-admitted into the United States with that student visa if, in fact, he was no longer a student.

There is a computerized program, SEVIS (Student and Exchange Visitor Information System), that is run by DHS and should have flagged Mr. Tazhayakov as no longer entitled to his non-immigrant student status in the United States, but it failed.

Oops!

The administration has been adamant about protecting women who suffer spousal abuse. The Violence Against Victims Act has provisions that create incentives for aliens who are deceiving their United States citizen spouses to lie about being abused to be able to self-petition for residency, thereby creating a nightmare, in some instances, for their American husbands and some instances, their American wives.

Yet the elder Tsarnaev, according to news reports, had been charged with spousal abuse against his United States citizen wife, but was never deported.

Today, under the auspices of the DACA (Deferred Action Childhood Admission), aliens who would have qualified under the DREAM Act, had that ill-conceived, wrong-headed legislation passed, are being granted temporary lawful status and employment authorization even

though the immigration laws still deem them to be aliens who are illegally present in the United States. Nothing has changed their status except for the swish of the Presidential pen on an executive order that makes a mockery of our immigration laws and our Constitutionally mandated system of government that calls for checks and balances.

The *Washington Times*, and other sources, report that aliens participating in this program have a 99.5 percent approval rate, which certainly should raise red flags about the integrity of the adjudications process. As of this spring, more than 250,000 illegal aliens have, thus far, participated in this program.

Furthermore, it is important to note that essentially no face-to-face interviews are being conducted, and yet these illegal aliens are being granted official identity documents even though the true names, entry data, and other such vital information cannot be verified! These identity documents can be used to acquire driver's licenses, Social Security cards, credit cards, library cards (thereby providing access to the internet) and employment possibilities at jobs that may have critical infrastructure implications if not national security implications. Jobs, I might add, that millions of unemployed American and lawful immigrants workers desperately need.

Aliens who are determined to enter the U.S. for illegal purposes will use any ploy they can to realize their goal.

The obvious path that receives the lion's share of the attention is taken by the aliens who run our nation's borders and evade the inspections process that is supposed to prevent the entry of aliens whose presence would be problematic.

Time and again we are told that the United States has four border states—California, New Mexico, Arizona, and Texas. In point of fact, as I have noted on every possible occasion, the United States actually has 50 border states. Any state that has an international airport or a seaport is as much a border state as are those states that lie along America's northern and southern borders.

Every year tens of millions of aliens enter the United States for nonimmigrant purposes, through ports of entry to be found along America's northern and southern land borders, international airports, or seaports. A non-immigrant alien is one who has not abandoned his/her domicile in their native country and seeks temporary admission into the United States for tourism, business, education, or other such lawful purpose.

When aliens fail to depart the United States within the authorized time limit or when they fail to meet one of the other requirements of their temporary admission, such as failing to attend the school that they were admitted to attend, fail to show up for a job for which they

were issued a temporary work visa, work on a job they are not authorized to work at, or commit crimes, they become deportable aliens.

Additionally, every year more than one million aliens are accorded lawful immigrant status, which means that they have abandoned their home countries for the United States and are immediately placed on the pathway to United States citizenship. These aliens may legally live in the United States for their entire lives and work at any job that they are qualified to do. However, if these aliens are convicted of crimes, they may also be rendered deportable.

It is estimated that 40 percent of all illegal aliens (deportable aliens) did not run the borders of the United States but rather violated the terms of their admission into the United States.

The problem is that most of the terrorists who have attacked or sought to attack our nation were admitted into the United States, and although they all committed visa fraud when they secured their visas and a number of them overstayed their authorized period of admission, nothing was done to take them into custody, and nothing of consequence has been done to plug this gaping hole in the system.

Now that Comprehensive Immigration Reform is, once again, rearing its ugly head in Washington, it is unfathomable that the "Gang of Eight," the senators who have sequestered themselves behind closed doors to concoct their "witches brew" of elements of Comprehensive Immigration Reform, have not added any resources to enforce the immigration laws from within the interior of the United States. They have done nothing to combat the endemic fraud that permeates the visa process and immigration benefits program to attempt to deter fraud and restore even a semblance of integrity to these programs that have a clear nexus to national security. As noted previously, they have engaged in a cynical "debate" about whether or not the U.S./Mexican border should be made secure before Comprehensive Immigration Reform should be implemented, to distract those who might want to consider the other failing components of what should *and must* be a coordinated system.

They have managed to bamboozle most of their colleagues and nearly all of the journalists into participating in this sham debate over only one of ever so many failed components of the immigration system. Furthermore, in so doing, they have blithely ignored the findings and recommendations of the 9/11 Commission that made it clear that the 9/11 terrorists, as well as other terrorists who were identified as operating in the United States in the decade leading up to the terrorist attacks of September 11, 2001, used visa fraud and immigration fraud in order to enter and then embed themselves in the United States.

The 9/11 Commission found that of 94 terrorists who were identified as operating in our country in the decade leading up to the terrorist attacks of September 11, some 59 or roughly two-thirds were found to have committed immigration fraud to enter and/or embed themselves in our country.

Immigration benefits include the conferring of lawful immigrant status and United States citizenship upon aliens. They also includes the granting of political asylum to aliens who are able to establish that, because of their race, religion, ethnicity, or political orientation, that they have a “credible fear” that should they return to their home countries, they would be subject to dire circumstances — persecution, imprisonment, torture or death.

There have been numerous instances where criminals and terrorists who have seen in America’s kindness, weakness. They have come to understand that the easiest way to set up shop in the United States is to make their way to the United States, either by running our borders or by entering via a port of entry and then claiming political asylum.

By not investigating these applications and other applications for a wide array of immigration benefits, the U.S. has provided ample opportunities for criminals and terrorists to gain entry into the United States and subsequently enable them to embed themselves in towns and cities across America.

The 9/11 Commission Staff Report on Terrorist Travel detailed numerous examples of terrorists, who not only made use of visa and immigration benefit fraud to enter but to also to embed themselves in the United States.

As the Commission stated in the preface of their report:

Under the title “Immigration Benefits” (page 98):

Terrorists in the 1990s, as well as the September 11 hijackers, needed to find a way to stay in or embed themselves in the United States if their operational plans were to come to fruition. As already discussed, this could be accomplished legally by marrying an American citizen, achieving temporary worker status, or applying for asylum after entering. In many cases, the act of filing for an immigration benefit sufficed to permit the alien to remain in the country until the petition was adjudicated. Terrorists were free to conduct surveillance, coordinate operations, obtain and receive funding, go to school and learn English, make contacts in the United States, acquire necessary materials, and execute an attack.

Once terrorists had entered the United States, their next challenge was to find a way to

remain here. Their primary method was immigration fraud. For example, Yousef and Ajaj concocted bogus political asylum stories when they arrived in the United States. Mahmoud Abouhalima, involved in both the [1993] World Trade Center and landmarks plots, received temporary residence under the Seasonal Agricultural Workers (SAW) program, after falsely claiming that he picked beans in Florida.

Mohammed Salameh, who rented the truck used in the bombing, overstayed his tourist visa. He then applied for permanent residency under the agricultural workers program, but was rejected.

Eyad Mahmoud Ismail, who drove the van containing the bomb, took English-language classes at Wichita State University in Kansas on a student visa; after he dropped out, he remained in the United States out of status. [p. 47]

In January 1993, a Pakistani national by the name of Mir Aimal Kansi stood outside CIA Headquarters armed with an AK-47 and opened fire on the vehicles of CIA officials reporting for work on that cold January morning in Virginia. When the smoke dissipated, two CIA officers lay dead and three others were seriously wounded.

Kansi had previously filed a fraud-laden application for political asylum before those attacks — this application enabled him to remain in the United States and seek gainful employment.

According to published reports, in the weeks before the attacks, he worked as a driver for a courier service which provided him ample opportunities to scope out the CIA complex without calling attention to himself.

Following his brutal attack, Kansi fled the United States but was ultimately brought back to stand trial. He was found guilty and executed for his crimes.

While the federal government was quick to embrace the use of all sorts of expensive equipment, much of which subsequently proved not to be effective, the federal government has shown no interest in combating visa fraud or immigration benefit fraud.

The quest for national security has been cited as an excuse to violate our historic expectations of privacy for citizens of the United States. But resources have never been provided to truly seek to identify, investigate, and prosecute immigration benefit fraud. In fact, under the current administration, illegal aliens who may have run our borders or violated the terms of their admission into the United States are encouraged to step out of the “shadows” and receive official identity documents and employment authorization, even though there is no reli-

able way to know their true identities, backgrounds, or intentions!

There have been numerous examples of immigration fraud being ignored by the federal government. One egregious case illustrates this point. On March 30, 2010, the Department of Justice issued a press release: *Eritrean Man Pleads Guilty to Alien Smuggling*

As the DOJ revealed, a citizen of Eritrea pleaded guilty to smuggling illegal aliens into the United States. The aliens came from as far away as South Africa and East Africa via Latin America and, finally arrived in Texas from Mexico. Along the way, his “Magical Mystery Tour,” on some smuggling runs, passed through Brazil and Venezuela, the latter, a nation not considered a friend of the U.S. It causes me to wonder if the government of Venezuela offered any assistance to the smuggler, Samuel Abrahaley Fessahazion, aka “Sami,” aka “Sammy,” aka “Alex,” and aka “Alex Williams.”

What is of further concern to me, is the fact that Fessahazion was able to game the immigration system and successfully commit immigration fraud, obtaining political asylum by making false statements in conjunction with his application for political asylum.

Consider what the DOJ disclosed in their press release:

According to plea documents, from at least June 2007 until approximately January 2008, Fessahazion was the Guatemalan link of an alien smuggling network that spans East Africa, Central and South America. Specifically, Fessahazion illegally entered the United States at McAllen, Texas, on March 20, 2008. He applied for asylum on Sept. 30, 2008, claiming in his application that he was traveling across Africa in 2007 and 2008, fleeing persecution in Eritrea. However, Fessahazion was actually in Guatemala during that period facilitating the smuggling of East African aliens to the United States.

Fessahazion was granted asylum by the United States on Nov. 13, 2008.

Think about it: if he had not been able to con the bureaucracy at USCIS, it is entirely possible he would not have been able to remain in the United States or travel freely across our borders, an ability he gained when the agency charged with maintaining the integrity of the immigration benefits program failed, yet again!

According to the DOJ, Fessahazion, himself, ran our nation’s border on March 20, 2008, and then applied for political asylum roughly 6 months later. He had either studied our immigration “system” or had been well coached. In any event, Fessahazion was granted political asylum just 6 weeks after he applied for asy-

lum, even though he claimed to have been facing persecution in Eritrea, nearly half way around the world!

Meanwhile the investigation disclosed that while he claimed he was fleeing persecution in Eritrea, he was dodging law enforcement in Guatemala as he smuggled East African aliens through that country en route to the United States!

It is clear that he committed fraud on his application for political asylum, yet there was not a word in the press release about any consideration being given to prosecuting him for committing immigration fraud in his application for political asylum, nor is there any indication that efforts will be made to strip him of his lawful status based on his fraudulent application for political asylum. This is extremely important because, as an individual who had been granted political asylum, it is unlikely that any efforts will be made to deport him from the United States after he serves his prison sentence for alien smuggling (presuming he is sentenced to serve jail time.)

Considering that it had been determined that Fessahazion lied on his application for political asylum, there would be no reason not to deport (remove) him from the United States. All that would be needed was to prosecute him for lying on his application for political asylum. Once found guilty of this crime, he would have lost his status as an alien who had been granted asylum.

In order to apply for political asylum, an alien must establish “credible fear.” How could USCIS conduct its investigation into Fessahazion’s claim to “credible fear” in just 6 weeks? Clearly the investigation — *if* there was an investigation — was fatally flawed.

Federal authorities are apparently more concerned with keeping the bureaucratic production line moving at warp speed rather than making certain that meaningful efforts are made to see to it that the process has integrity. The GAO and OIG have documented just how rife fraud is throughout the entire immigration benefits program, a program that is administered by USCIS. This is the very beleaguered agency that would be required to administer Comprehensive Immigration Reform, if it ever becomes law.

The Fessahazion case raises a number of serious questions:

- Who are Fessahazion’s co-conspirators in the smuggling ring and where are they now? Are they in custody? Do federal authorities even know their identities?
- Whatever became of the aliens who Fessahazion smuggled into the United States? Are they in custody? If Fessahazion is being charged with conspiracy, is anyone else being prosecuted for entering into the conspiracy? As the saying goes, “It takes two to tango!” You cannot enter a conspiracy by yourself!

The others who engaged in the smuggling enterprise would certainly be co-conspirators, as would the aliens he smuggled. They entered into a conspiracy with him or his partners. All too often our government has taken to the bizarre tactic of referring to smuggled aliens as “victims of human trafficking.”

When a person is moved across international borders against his (her) will, that person is most certainly a “victim of human trafficking.” Often we see this sort of reprehensible crime being conducted when women are smuggled into a country for the purpose of engaging in prostitution. However, an alien who pays a smuggler to enable him (her) to enter a country without inspection is not a victim but is a co-conspirator!

The bottom line is that while the U.S. may legitimately offer “safe harbor” for those who flee persecution, it must adhere to the advice we give to our children—“Safety first!” The U.S. must never permit those who would harm us to see weakness in our kindness. As I reiterated in the conclusion of my testimony for a hearing on immigration conducted by the Senate Judiciary Committee on March 20, 2013:

Law enforcement is at its best when it creates a climate of deterrence to convince those who might be contemplating violating the law that such an effort is likely to be discovered, and, that if discovered, adverse consequences will result for the law violators. Current policies and statements by the administration, in my view, encourage aspir-

ing illegal aliens around the world to head for the United States. In effect the starter’s pistol has been fired, and for these folks, the finish line to this race is the border of the United States.

If political asylum and other benefits that enable aliens to become a part of the U.S. are thought of as being a “Key to the Kingdom,” with U.S. citizenship being considered “The Golden Key,” then USCIS could be thought of as the “Locksmith for the United States,” charged with handing out keys to those who, under our laws, qualify to receive such a key.

The time has long since come to secure our borders and enforce immigration laws seriously. The stakes are far too high for our government to ignore the extremely costly lessons that the failures should have taught us.

Gene Kranz is the Flight Director for NASA who, with his team, was confronted with the crisis of bringing the Apollo 13 astronauts home safely from their moon mission, after their spacecraft suffered damage from an explosion. He titled his account “Failure is not an option!” Back then the lives of three valiant astronauts hung in the balance. Today, more than 300 million American lives hang in the balance!

More than ever, America’s borders must be effectively secured, its immigration laws must be effectively enforced from within the interior of the U.S., and integrity must be given the highest priority in the processes by which aliens are given visas and granted immigration benefits — failure is not an option! ■