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von Werlhof, Emily E.

Monterey, CA; Naval Postgraduate School

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**MONTEREY, CALIFORNIA**

**THESIS**

**CARRY A BIG STICK: UTILIZING FEDERAL LAW  
ENFORCEMENT IN ASYLUM FRAUD DETERRENCE**

by

Emily E. von Werlhof

March 2023

Co-Advisors:

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**CARRY A BIG STICK: UTILIZING FEDERAL LAW ENFORCEMENT  
IN ASYLUM FRAUD DETERRENCE**

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## ABSTRACT

The United States Asylum Program of U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security offers protection to some of the world's most vulnerable populations. However, the program faces exploitation due to fraud. The government has yet to meaningfully incorporate federal law enforcement into asylum fraud deterrence because the government has not addressed disincentives for prosecutions and investigations. This thesis seeks to address how federal law enforcement can be better incentivized to prosecute asylum fraud. A case comparison method of international and domestic benefit-fraud prosecution initiatives against current asylum fraud-deterrence practices is utilized to understand how federal law enforcement can be better incorporated into asylum fraud-deterrence plans. The case comparison reveals several structural and resource issues currently disincentivizing asylum fraud prosecutions. This thesis recommends the establishment of a criminal immigration fraud section within the Department of Justice as well as the reprioritization of fraud in immigration law enforcement priorities to address those concerns. This research helps to address and highlight the lack of literature on asylum fraud and contributes to the consideration of a more comprehensive strategic asylum fraud deterrence plan.



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## LIST OF ACRONYMS AND ABBREVIATIONS

AUSA	Assistant United States Attorney
BFU	Benefit Fraud Unit
CBP	Customs and Border Protection
CIS	Citizenship and Immigration Services
DHS	Department of Homeland Security
DOD	Department of Defense
DOJ	Department of Justice
EOIR	Executive Office of Immigration Review
FBI	Federal Bureau of Investigation
FDNS	Fraud Detection National Security
FDU	Fraud Detection Unit
GAO	Government Accountability Office
HCFAC	Health Care Fraud and Abuse Control
HSI	Homeland Security Investigations
IC	Intelligence Community
ICE	Immigrations and Customs Enforcement
MOA	memorandum of agreement
OFW	Operation Fiction Writer
ROI	return on investment
USCIS	United States Citizenship and Immigration Services
VAWA	Violence Against Women Act

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## EXECUTIVE SUMMARY

The United States Asylum Program of U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security offers protection to some of the world's most vulnerable populations.<sup>1</sup> However, the program is vulnerable to fraud. Immigration and Customs Enforcement (ICE) noted that fraud

threaten[s] the national security and public safety of the U.S. by creating a vulnerability which potentially enables terrorists, other criminals and illegal aliens to gain entry to and remain in the United States. It also threatens the integrity of the lawful immigration system administered by U.S. Citizenship and Immigration Services (USCIS) through the adjudication of applications for immigration benefits.<sup>2</sup>

Fraud drains resources in an already taxed asylum system. USCIS already has had to pull available resources to meet the needs at the Southern border and other agency priorities, which takes away from the available workforce to handle the affirmative caseload.<sup>3</sup> Fraud introduces frivolous applications into a burdened system and drains time and resources. Fraud also impacts the overall mission of offering protection to those who face persecution, as it burdens the system and delays response time.<sup>4</sup> As a result, the integrity of the asylum program and surrounding stakeholders can be compromised.

The Government Accountability Office (GAO) issued a detailed report in 2015 regarding the government's ability to address fraud in the asylum system.<sup>5</sup> The GAO report

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<sup>1</sup> This thesis and drawn conclusions are based on open-source material. The author alone is responsible for the content of this thesis. This thesis does not reflect official positions by U.S. Citizenship and Immigration Services or any related U.S. government department.

<sup>2</sup> "Identity and Benefit Fraud: Leading Criminal Investigations into Document and Benefit Fraud," Immigration and Customs Enforcement, accessed October 15, 2021, <https://www.ice.gov/investigations/identity-benefit-fraud>.

<sup>3</sup> Michael Dougherty, *Citizenship and Immigration Services Annual Report 2020* (Washington, DC: Office of the Citizenship and Immigration Services Ombudsman, 2020), 45, [https://www.dhs.gov/sites/default/files/publications/20\\_0630\\_cisomb-2020-annual-report-to-congress.pdf](https://www.dhs.gov/sites/default/files/publications/20_0630_cisomb-2020-annual-report-to-congress.pdf).

<sup>4</sup> Joe Guzzardi, "Trump Administration's Overdue Asylum Guidelines," *Korea Times*, June 26, 2020, [https://www.koreatimes.co.kr/www/opinion/2021/10/197\\_291853.html](https://www.koreatimes.co.kr/www/opinion/2021/10/197_291853.html).

<sup>5</sup> Rebecca Gambler, *Asylum: Additional Actions Needed to Assess and Address Fraud Risks*, GAO-16-50 (Washington, DC: Government Accountability Office, 2015), <https://www.gao.gov/products/gao-16-50>.



noted that the Department of Justice (DOJ) and Immigration and Customs Enforcement's (ICE) Homeland Security Investigation (HSI), which USCIS relies on to carry out law enforcement functions such as prosecution, has previously neglected available remedies such as prosecution to address asylum fraud.<sup>6</sup> Congressional hearings regarding fraud further identify issues with the prosecution of asylum fraud.<sup>7</sup> This disinclination to prosecute sabotages the impact and effectiveness of law enforcement on asylum fraud mitigation. The existing literature superficially addresses the role and effectiveness of law enforcement in combatting asylum fraud. It largely ignores the DOJ, a significant stakeholder in the asylum environment, and its impact on fraud mitigation. This thesis seeks to understand how Federal Law Enforcement can be better incentivized to prosecute asylum fraud and contribute to a comprehensive strategic asylum fraud deterrence plan.

This thesis utilizes a case comparison method to investigate the incentivization of law enforcement in benefit fraud deterrence. Specifically, this thesis looks at New Zealand asylum fraud deterrence and U.S. Medicaid fraud prosecution. The case comparison finds that law enforcement in these areas has been incentivized to investigate and prosecute fraud when incorporated into a comprehensive structure with clear direction and resources. Conversely, the current state of asylum fraud prosecutions is impacted by structural and resource barriers. Getting an asylum fraud case to prosecution faces multiple bureaucratic layers, with each layer facing competing priorities and interests. To address the barriers that disincentivize prosecutions, this thesis recommends the establishment of a criminal immigration fraud office within the Department of Justice as well as the reprioritization of fraud in immigration law enforcement priorities to address those concerns. To create the necessary buy-in for the establishment of a new DOJ section, additional research will be required. As it stands right now, the impact of asylum fraud is ill-researched, and what little information is out there is out of date. Two reports need to be generated, one on the scope of fraud and another on the current state of the fraud investigation and prosecution process.

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<sup>6</sup> Gambler, 65–67.

<sup>7</sup> See, for example, *Aftermath of Fraud by Immigration Attorneys: Hearing before the Subcommittee on Immigration Policy and Enforcement of the Committee on the Judiciary, House of Representatives*, 112th Cong., 2nd sess. (2012), 25, [https://republicans-judiciary.house.gov/wp-content/uploads/2016/02/112-135\\_75309.pdf](https://republicans-judiciary.house.gov/wp-content/uploads/2016/02/112-135_75309.pdf).

A thorough report will help incorporate law enforcement into deterrence plans and provide a foundation for advocating for changes to resource and structural issues that disincentivize prosecutions and contribute to the development of a comprehensive strategic asylum fraud deterrence plan.

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## I. INTRODUCTION: THE CASE OF THE MISSING STICK

The United States Asylum Program of U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security offers protection to some of the world’s most vulnerable populations. However, the program faces exploitation due to fraud, as documented by various reports. For example, the Government Accountability Office (GAO) issued a detailed report in 2015 regarding the government’s ability to address fraud in the asylum system.<sup>1</sup>

The GAO report noted that the Department of Justice (DOJ) and Immigration and Customs Enforcement’s (ICE) Homeland Security Investigation (HSI), which USCIS relies on to carry out law enforcement functions such as prosecution, has previously neglected available remedies to address asylum fraud.<sup>2</sup> Specifically, the report found through interviews that law enforcement rarely pursues criminal prosecutions unless the fraud is large-scale.<sup>3</sup> The DOJ’s reluctance to be involved in asylum fraud issues caused a trickle-down effect throughout the system. Because the DOJ demonstrated disinterest in pursuing immigration fraud, HSI was even less likely to take fraud referrals from USCIS’s Fraud Detection and National Security (FDNS) unit since HSI had no interest in investigating a case the DOJ would decline to pursue.<sup>4</sup> The GAO reported FDNS concerns that HSI rarely accepted fraud referrals in the years preceding the report, and neither did the U.S. Attorney’s office.<sup>5</sup> This disinclination to prosecute sabotages the impact and effectiveness of law enforcement on asylum fraud mitigation.

Congressional hearings regarding fraud further identified issues with the prosecution of asylum fraud. Representative Zoe Lofgren, in 2014, called for “ensuring that ICE and DOJ dedicate appropriate resources to fully prosecute persons and groups that

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<sup>1</sup> Rebecca Gambler, *Asylum: Additional Actions Needed to Assess and Address Fraud Risks*, GAO-16-50 (Washington, DC: Government Accountability Office, 2015), <https://www.gao.gov/products/gao-16-50>.

<sup>2</sup> Gambler, 65–67.

<sup>3</sup> Gambler, 65–67.

<sup>4</sup> Gambler, 65–67.

<sup>5</sup> Gambler, 66–67.

defraud the immigration system.”<sup>6</sup> At a hearing in 2012, Chris Crane, the President of the National Immigration and Customs Enforcement Council, noted concerns among employees “that immigration fraud is . . . ignored by the Federal agencies tasked with enforcing United States immigration laws.”<sup>7</sup> The testimony at the hearings highlights areas for improvement to promote the effectiveness of law enforcement in deterrence.

The GAO report and Congressional hearings illustrate a central problem with addressing asylum fraud deterrence: the effectiveness of federal law enforcement. The government has yet to meaningfully incorporate federal law enforcement into asylum fraud deterrence because the government has not addressed disincentives for prosecutions and investigations. Even though the GAO report is the premiere document on addressing asylum fraud, the report offers no substantive recommendations for addressing the role of the DOJ and HSI in deterring asylum fraud. At the 2014 Congressional hearing, the discussion omitted any guidelines or recommendations for allocating appropriate resources to prosecution.<sup>8</sup> Not surprisingly, the representatives from ICE and USCIS at the 2012 hearing defend their organization’s actions against the allegations of Chris Crane, yet the 2015 GAO report undermines that defense.<sup>9</sup> Addressing how to incentivize Federal Law Enforcement to address and prosecute asylum fraud will require further research.

## **A. RESEARCH QUESTION**

How can Federal Law Enforcement be better incentivized to prosecute asylum fraud?

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<sup>6</sup> *Asylum Fraud: Abusing America’s Compassion: Hearing before the Subcommittee on Immigration and Border Security of the Committee on the Judiciary, House of Representatives*, 113th Cong., 2nd sess. (2014), 3–4, <https://www.govinfo.gov/content/pkg/CHRG-113hhrg86648/pdf/CHRG-113hhrg86648.pdf>.

<sup>7</sup> *Aftermath of Fraud by Immigration Attorneys: Hearing before the Subcommittee on Immigration Policy and Enforcement of the Committee on the Judiciary, House of Representatives*, 112th Cong., 2nd sess. (2012), 25, [https://republicans-judiciary.house.gov/wp-content/uploads/2016/02/112-135\\_75309.pdf](https://republicans-judiciary.house.gov/wp-content/uploads/2016/02/112-135_75309.pdf).

<sup>8</sup> See generally Gambler, *Asylum*.

<sup>9</sup> H.R., *Aftermath of Fraud by Immigration Attorneys*, 5, 18; Gambler, *Asylum*, 66–67.

## **B. LITERATURE REVIEW**

This literature review considers the varying perspectives on fraud deterrence in the asylum program and, specifically, the role of Federal Law Enforcement. Since government reports identify asylum fraud as a threat to homeland security and the immigration system, minimizing that threat requires reviewing the relevant literature on fraud deterrence.<sup>10</sup> However, the lack of literature and detailed reporting on asylum fraud and its deterrence requires a broader consideration of the immigration system and fraud deterrence. The review first analyzes literature that discusses how to address fraud and then reviews works on the role and effectiveness of law enforcement in its deterrence. It concludes that literature on incentivizing law enforcement involvement in asylum fraud deterrence belongs within a larger discussion on managing fraud in the asylum program.

### **1. Literature on How to Address Asylum Fraud**

The 2015 Government Accountability Office reviews the government’s ability to address fraud in the asylum program. It promotes the Framework for Managing Fraud Risks in Federal Programs with four objectives:

1. Commit to combating fraud
2. Assess risks to determine a fraud risk profile
3. Design and implement a strategy with specific control activities to mitigate assessed fraud risks . . . [and]
4. Evaluate outcomes using a risk-based approach and adapt activities to improve fraud risk management.<sup>11</sup>

This model represents the only specific framework in reviewing the literature that addresses asylum fraud. However, the GAO report fails to offer substantive discussion or recommendations to address the role and effectiveness of federal law enforcement in fraud deterrence. The report misses contributing to a thorough assessment of the risk posed by a lack of involvement of law enforcement in the fraud risk profile. By failing to fully

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<sup>10</sup> “Identity and Benefit Fraud: Leading Criminal Investigations into Document and Benefit Fraud,” Immigration and Customs Enforcement, accessed October 15, 2021, <https://www.ice.gov/investigations/identity-benefit-fraud>.

<sup>11</sup> Stephen Lord, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, DC: Government Accountability Office, 2015), 6, <https://www.gao.gov/assets/gao-15-593sp.pdf>. See also Gambler, *Asylum*, 35.



incorporate law enforcement into asylum fraud deterrence, the GAO report represents a missed opportunity to design and implement a comprehensive “strategy with specific control activities to mitigate assessed fraud risks.”<sup>12</sup>

Other research also falls short of thoroughly incorporating law enforcement into the discussion of asylum fraud. For example, Anja Freudenthal’s thesis on asylum fraud presents four solutions to potential asylum fraud.<sup>13</sup> Except for a recommendation on asylum terminations, which may incorporate a DOJ role, her suggestions make USCIS responsible for asylum fraud by ignoring the role of USCIS’s legal arm or attempting to restrict its involvement in the overall asylum system.<sup>14</sup> Furthermore, these recommendations do not contribute to a comprehensive design and implementation strategy to combat fraud and instead rely on a largely ad hoc approach that adds roles and responsibilities to the Asylum Division rather than addressing existing infrastructure. While Mildred Perdomo’s thesis does not focus on fraud within the asylum program, it briefly highlights prosecution issues within other immigration programs.<sup>15</sup> However, Perdomo’s thesis, like Freudenthal, places the burden on USCIS to address the fraud issue and does not fully explore the role of law enforcement in fraud deterrence.<sup>16</sup> The GAO report, along with Perdomo and Freudenthal’s theses, demonstrates that the literature includes little debate regarding the strength of fraud mitigation if the response to asylum fraud forgoes addressing incorporation and utilization of the law enforcement mechanism.

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<sup>12</sup> Lord, *A Framework for Managing Fraud Risks*, 6.

<sup>13</sup> Anja Freudenthal, “Reducing Homeland Insecurities: Ending Abuse of the Asylum and Credible Fear Program” (master’s thesis, Naval Postgraduate School, 2015), 77–84, <http://hdl.handle.net/10945/45188>.

<sup>14</sup> Freudenthal, 77–84.

<sup>15</sup> Mildred Perdomo, “Tainted Love, Crab Pickers, and Opportunities for Fraud: A Comparative Analysis of Deterrence Mechanisms in USCIS” (master’s thesis, Naval Postgraduate School, 2020), 49, 53, <http://hdl.handle.net/10945/66704>.

<sup>16</sup> Perdomo, 63–72.

## 2. Literature on the Role and Effectiveness of Law Enforcement in Asylum Deterrence

The available literature concurs that law enforcement plays a role in asylum fraud deterrence. The debatable question is one of the priorities and effectiveness of federal law enforcement in fulfilling the deterrence role. Congressional hearings covering immigration fraud raise questions as to the effectiveness of law enforcement in deterrence, especially when comparing the rhetoric from stakeholders during the hearings to the findings of the GAO report.<sup>17</sup> Since the GAO report casts doubt on the effectiveness of practice expressed in a 2012 hearing by key stakeholders, it suggests the need for improvement in USCIS's law enforcement arm. Furthermore, Congressional hearings in 2012 and 2014 alluded to structural and resource issues affecting asylum fraud mitigation efforts.<sup>18</sup> However, the Congressional testimony failed to include guidance on improving this area of concern.

The academic literature features little discussion on the role and effectiveness of law enforcement in asylum fraud deterrence from which to build recommendations. This effort requires a broader consideration of fraud deterrence. Available material identifies structure and resource issues as affecting the effectiveness of fraud deterrence measures. In their thesis on fraud within the Department of Defense (DOD), Michael Rowe and Gerald McLaughlin examine the impact of fines on the deterrence of fraud in DOD contracts.<sup>19</sup> The thesis also considers the different environmental factors within the DOD related to fraud. Specifically, the thesis identifies structural barriers influencing fraud actors and the effectiveness of fraud response.<sup>20</sup> Although the thesis looks more at the impact of civil remedy than criminal penalties, it proposes potential criminal penalties that may apply to asylum fraud and therefore help further the discussion on law enforcement's effectiveness in addressing asylum fraud.<sup>21</sup> Similarly, even though Rowe and McLaughlin

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<sup>17</sup> Gambler, *Asylum*, 66–67; H.R., *Aftermath of Fraud by Immigration Attorneys*, 4–5, 18, 47.

<sup>18</sup> H.R., *Aftermath of Fraud by Immigration Attorneys*, 25–26; H.R. *Asylum Fraud*, 3–4.

<sup>19</sup> Michael Rowe and Gerald McLaughlin, "Fraud in the DoD: Is the Current Fraud Penalty System an Effective Deterrence Tool?" (master's thesis, Naval Postgraduate School, 2019), <http://hdl.handle.net/10945/65741>.

<sup>20</sup> Rowe and McLaughlin, 4–18, 27–32.

<sup>21</sup> Rowe and McLaughlin, 11–13.

find that financial penalties do not discourage fraud for multimillion/billion-dollar companies because the size of the penalty has a negligible impact on them, such fines may affect small law firms or individuals engaging in asylum fraud.<sup>22</sup> The issues raised by the Rowe and McLaughlin thesis indicate that effectively combatting fraud will require an analysis of environmental resources and structural problems.

Although relatively brief, Bradley Sauer's note on fraud in government contracting explores the underutilization of law enforcement remedies in addressing fraud.<sup>23</sup> Specifically, Sauer looks at 18 U.S.C. § 287 (False Claims Act) about government procurement fraud.<sup>24</sup> It identifies structural and resource issues that have influenced the use of the False Claims Act. Sauer argues that law enforcement underuses the Act and advocates its consistent application to deter fraud.<sup>25</sup> Sauer echoes the work of Rowe and McLaughlin by identifying structural barriers as a central issue in law enforcement effectiveness in fraud deterrence.

Sauer, Rowe, and McLaughlin's works make substantive recommendations that could address the role and effectiveness of law enforcement in asylum fraud deterrence. Specifically, structural and resource issues require analysis to incentivize Federal Law Enforcement to prosecute asylum fraud. Based on a review of available literature, the government's response to the asylum system neglects to thoroughly explore issues that influence asylum fraud investigation and prosecution or enact measures to promote consistent investigations and prosecutions.

### **3. The Way Forward: Including Law Enforcement in Asylum Fraud Deterrence Plans**

The existing literature superficially addresses the role and effectiveness of law enforcement in combatting asylum fraud. It largely ignores the DOJ, a significant

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<sup>22</sup> Rowe and McLaughlin, 27.

<sup>23</sup> Bradley J. Sauer, "Deterring False Claims in Government Contracting: Making Consistent Use of 18 U.S.C. § 287," *Public Contract Law Journal* 39, no. 4 (Summer 2010): 897–917, <https://www.jstor.org/stable/25755794>.

<sup>24</sup> Sauer.

<sup>25</sup> Sauer, 897–99, 904–6, 908–17.

stakeholder in the asylum environment, and its impact on fraud mitigation. Specific research needs to analyze the asylum system to identify structural and resource issues that hamper the effectiveness of Federal Law Enforcement in addressing asylum fraud. Developing substantive recommendations to guide a comprehensive strategy to mitigate fraud risks in the asylum program depends on this analysis.

### **C. RESEARCH DESIGN AND CHAPTER OVERVIEW**

This thesis aims to analyze how to incentivize asylum fraud prosecutions. The analysis will only address the affirmative asylum process and does not quantify the scope of fraud in the asylum system. The focus of this thesis is on criminal prosecutions for violations of immigration law. However, there will be an acknowledgment of other legal remedies for asylum fraud. This thesis will rely on open-source information and use comparative policy analysis to provide recommendations and considerations for incentivizing law enforcement to prosecute asylum fraud.

The following chapter is a review of the current state of federal law enforcement in asylum fraud deterrence. This analysis will identify stakeholders who influence asylum fraud prosecution and the available statistics of fraud prosecution to highlight the underutilization of law enforcement prosecution to deter asylum fraud. I will first examine prosecution numbers compared to asylum application receipts and possible fraud rates. Given limited knowledge of the scope of asylum fraud, understanding the available statistical data will help establish the state of fraud prosecution and uncover potential explanations for the current environment. This section will also consider possible structural and resource barriers identified in available literature regarding fraud prosecution. This first chapter will serve as the foundation for understanding the importance of addressing fraud prosecutions and the recommendations and considerations in incentivizing law enforcement involvement in asylum fraud compared to alternative policies and procedures.

Chapter III contains case studies to support the overall policy analysis by reviewing international and domestic examples of fraud prosecution. I will compare international law enforcement policies on the prosecution of immigration fraud in New Zealand to identify practices that the United States can adopt to promote asylum fraud prosecution. Some of

the variables considered will include but are not limited to asylum receipts versus available fraud statistics, available resources, law enforcement priorities, legal remedies, and structure (workflow/stakeholders/etc.). I selected New Zealand because they belong to Migration 5: a coalition of the United States, Australia, Canada, the United Kingdom, and New Zealand to consult on border security and immigration.<sup>26</sup> Open-source information on asylum fraud and asylum fraud prosecutions is limited, even in the international context. In a search of the Migration 5 countries, New Zealand resulted in more research and reliable information on asylum fraud prosecutions. This thesis will also compare the DOJ's prosecution of Medicare fraud because it represents a benefit-based fraud prominently prosecuted by the DOJ.

Chapter IV identifies structural and resource issues that impact the incentivization of law enforcement prosecutions of asylum fraud. Finally, Chapter V will call upon the policies and practices identified throughout the paper to propose recommendations for incentivizing law enforcement prosecution and conclude by identifying further research needed in asylum fraud deterrence.

This thesis highlights the importance of Federal Law Enforcement involvement in asylum fraud deterrence. The research is primarily intended for USCIS and its law enforcement stakeholders, primarily the DOJ. As this thesis should evaluate the resource and structural issues that limit incentivizing fraud prosecution and effectively using law enforcement in asylum fraud mitigation, USCIS, and the DOJ may be able to implement and advocate for changes that deter fraud in the asylum system. However, the research also has a broader audience, including homeland security practitioners in general, who seek to deter fraud from various benefit programs.

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<sup>26</sup> Regulations Amending the Immigration and Refugee Protection Regulations, SOR/2018-128 (Can.), <https://gazette.gc.ca/rp-pr/p2/2018/2018-07-11/html/sor-dors128-eng.html>.

## II. WHY A BIG STICK IS NEEDED: THE STATE OF FEDERAL LAW ENFORCEMENT IN ASYLUM FRAUD DETERRENCE

This chapter serves as a primer for understanding key concepts pertaining to asylum fraud and sets the foundation for why federal law enforcement needs to be fully incorporated into deterrence plans and incentivized to prosecute asylum fraud. In addition, the chapter identifies limitations to research based on the availability of current information. First, this chapter focuses on defining fraud and highlighting some of the dangers it poses to the immigration system. Next, stakeholders and their various interests in addressing asylum fraud are identified. This section of the chapter also looks at the difficulties surrounding scoping the asylum fraud program and argues that even though the scope of the problem is not agreed upon, it is still possible to illustrate the damage imposed upon the system by focusing on known variables. The chapter concludes by looking at the current state of asylum fraud prosecution.

### A. FRAUD IN THE ASYLUM PROGRAM

The Asylum Division is part of the homeland security enterprise, and it falls under the Refugee, Asylum, International Operations Directorate of USCIS.<sup>27</sup> USCIS is part of the Department of Homeland Security (DHS).<sup>28</sup> The Asylum Division of USCIS adjudicates the I-589 Application for Asylum and Withholding of Removal.<sup>29</sup> Asylum is granted to those who meet the refugee definition: individuals “who have been persecuted or fear they will be persecuted on account of race, religion, nationality, and/or membership

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<sup>27</sup> “Refugee, Asylum and International Operations Directorate,” U.S. Citizenship and Immigration Services,” accessed September 27, 2021, <https://www.uscis.gov/about-us/organization/directorates-and-program-offices/refugee-asylum-and-international-operations-directorate>.

<sup>28</sup> “DHS Organizational Chart,” Department of Homeland Security, 2021, [https://www.dhs.gov/sites/default/files/publications/21\\_0402\\_dhs-organizational-chart.pdf](https://www.dhs.gov/sites/default/files/publications/21_0402_dhs-organizational-chart.pdf).

<sup>29</sup> “I-589: Application for Asylum and for Withholding of Removal,” U.S. Citizenship and Immigration Services,” accessed October 13, 2021, <https://www.uscis.gov/i-589>; Department of Homeland Security, *Privacy Impact Assessment for the Pangaea: Pangaea Text*, DHS/USCIS/PIA-085 (Washington, DC: Department of Homeland Security, 2021), 1, [https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis085-pangea-january2021\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis085-pangea-january2021_0.pdf).

in a particular social group or political opinion.”<sup>30</sup> The two paths to receiving asylum are: (1) the affirmative process in front of USCIS or (2) the defensive process before the immigration court (U.S. Department of Justice’s Executive Office for Immigration Review-EOIR).<sup>31</sup> For purposes of this thesis, the focus will be on fraud in the affirmative context, with a nod to the spillover effect in court.

In the asylum context, at a minimum, fraud requires willful deception that pertains to an outcome-determinative element in support of an asylum claim.<sup>32</sup> For the purposes of this thesis, it is not necessary to understand every type of fraud scheme. Individuals applying for asylum are required to establish their identity and meet the definition of a refugee.<sup>33</sup> As fraud is defined as deception as to a material element, fraud in the asylum context tends to relate to the applicant’s identity or eligibility based on the refugee definition. Fraud may include document fraud, boilerplate statements (reusing others’ stories), and or falsified narratives/coaching to appear eligible for asylum.<sup>34</sup>

When it comes to the exploitation of the asylum system, there is a homeland security implication that makes fraud more serious. In addition to adjudicating the I-589 application, the Asylum Division is tasked under USCIS’s mandate to deter, detect, and address vulnerabilities within the immigration system to “safeguard the homeland.”<sup>35</sup> Immigration and Customs Enforcement (ICE) noted that fraud

threaten [s] the national security and public safety of the U.S. by creating a vulnerability which potentially enables terrorists, other criminals and illegal aliens to gain entry to and remain in the United States. It also threatens the

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<sup>30</sup> “Refugees and Asylum,” U.S. Citizenship and Immigration Services, accessed February 17, 2023, <https://www.uscis.gov/humanitarian/refugees-asylum>.

<sup>31</sup> Department of Homeland Security, *Privacy Impact Assessment for the Pangaea*, 1.

<sup>32</sup> U.S. Citizenship and Immigration Services, “Overview of Fraud and Willful Misrepresentation,” in *Policy Manual*, vol. 8, pt. J, *Fraud and Willful Misrepresentation* (Washington, DC: U.S. Citizenship and Immigration Services, 2019), <https://www.uscis.gov/policy-manual/volume-8-part-j-chapter-2>.

<sup>33</sup> Kristian Hollins, “Comparative International Approaches to Establishing Identity in Undocumented Asylum Seekers” (Sydney: Lowy Institute, 2018), <https://www.lowyinstitute.org/publications/comparative-international-approaches-establishing-identity-undocumented-asylum-seekers>; Gambler, *Asylum*, 10–11.

<sup>34</sup> Gambler, *Asylum*, 18.

<sup>35</sup> U.S. Citizenship and Immigration Services, *2019–2021 Strategic Plan* (Washington, DC: U.S. Citizenship and Immigration Services, 2019), 4, <https://www.hsdl.org/?abstract&did=823434>.

integrity of the lawful immigration system administered by U.S. Citizenship and Immigration Services (USCIS) through the adjudication of applications for immigration benefits.<sup>36</sup>

It is worth remembering that September 11, arguably the worst terrorist attack in American history, was facilitated in part by individuals and organizations engaged in immigration fraud.<sup>37</sup>

Granting a fraudulent asylum case has implications for security and resources. Applicants who were not entitled to a benefit receive one, thereby becoming entitled to various other benefits, such as applying for legal residence. Individuals, who may not have been adequately identified due to the fraud, are then legally authorized to stay in the United States.<sup>38</sup> Failure to properly identify these individuals raises security concerns due to the potential for an individual who has exploited the system, possibly intending to do the Homeland harm, to gain access and resources in the United States. This scenario triggers the interests of various stakeholders throughout the homeland security enterprise, not just those directly embedded or adjacent to the asylum environment.

## **1. The Stakeholders**

Three critical points can be identified in the I-589 process when addressing a fraud scheme, which I call: the introduction point, identification process, and impact. Introduction speaks for itself, as it is where fraud enters the asylum system through the filing of a fraudulent I-589 application. The identification stage is the process the I-589 application goes through after being introduced, which involves screenings and interviews meant in part to flag indicators of fraud. The impact point is the result of fraud. Either fraud is identified and weeded from the system with resulting action, or the fraud is not recognized, resulting in a potential grant of asylum by either USCIS or EOIR. Even when granted, if the fraud is later identified, addressing the fraud and rectifying the grant can

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<sup>36</sup> Immigration and Customs Enforcement, “Identity and Benefit Fraud.”

<sup>37</sup> See National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, DC: Government Printing Office, 2004), 169, 243, 384.

<sup>38</sup> “Types of Asylum Decisions,” U.S. Citizenship and Immigration Services,” accessed October 14, 2021, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/types-of-asylum-decisions>.



result in further expenditure of resources for stakeholders.<sup>39</sup> Figure 1 represents these three critical points in addressing a fraud scheme.

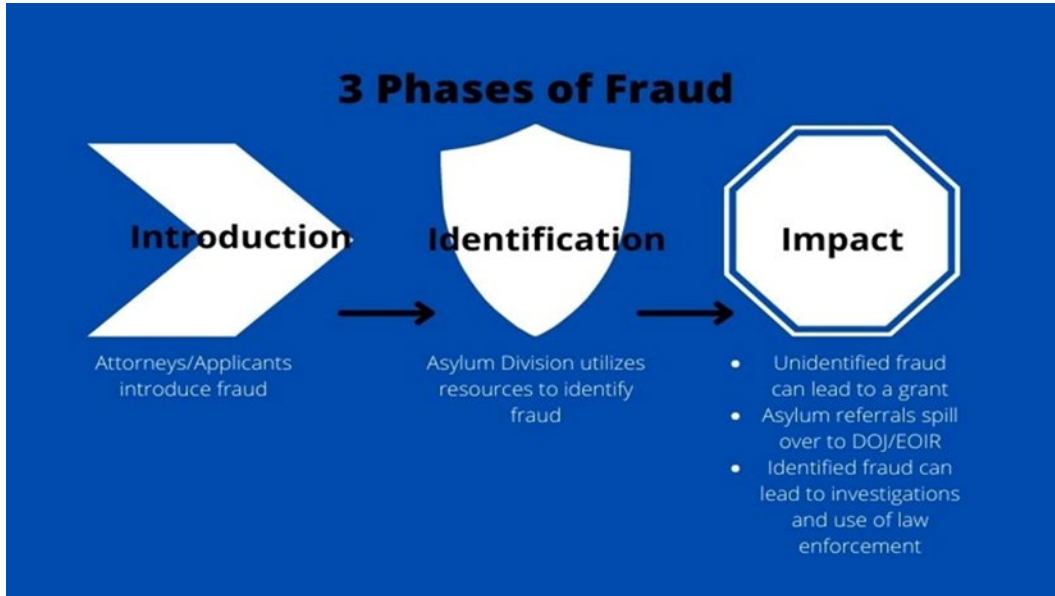


Figure 1. Three Critical Points in Addressing Fraud

From these three points, key stakeholders in addressing fraud in the asylum system are identified. Applicants or attorneys introduce fraud into the asylum system. When considering attorneys/applicants as stakeholders in fraud circumstances, the analysis is reversed due to the criminality aspect. In this instance, the attorney/applicant does not have an interest in actively remedying attorney fraud but rather perpetuating it. These individuals are paying attention to what the government is attempting to do to interfere with their ability to carry out the fraud scheme. Prior fraud schemes illustrate that attorneys and applicants conduct personal fraud risk assessments. These individuals factor in the risks of getting caught and how long they could continue the scheme without drawing the attention of authorities against the reward: money and or a grant of asylum.<sup>40</sup>

<sup>39</sup> Gambler, *Asylum*, 68–71.

<sup>40</sup> United States of America v. Liu, No. 12-CR-934-01 (RA) (S.D.N.Y. 2015).

Once applications are filed, the applications move onto the identification stage and the domain of USCIS. Therefore, USCIS becomes the subsequent key stakeholder in the analysis. Once accepted, applications are routed to the appropriate USCIS asylum field office with address jurisdiction over the applicant.<sup>41</sup> Applicants have biometrics taken and undergo background and security checks.<sup>42</sup> Interviews take place in front of a trained Asylum Officer and are reviewed by Supervisory Asylum Officers.<sup>43</sup> The Asylum Office’s Fraud Detection and National Security (FDNS) team may also be looped in at any point to review fraud or national security indicators identified during the adjudicative process along with HSI.<sup>44</sup> FDNS leads the efforts to “detect, deter, and combat fraud, national security, and public safety threats, and maximizes law enforcement and Intelligence Community (IC) partnerships.”<sup>45</sup>

The impact phase is the next point in the analysis. Once a decision is reached, applicants are notified of the decision.<sup>46</sup> Specifically, grants of asylum enable applicants to later apply through another division of USCIS for the I-485 Application to Register for Permanent Residence, or referrals result in a Notice to Appear before an Immigration Court for removal proceedings.<sup>47</sup> A Notice to Appear moves cases into the jurisdiction of the Department of Justice and loops in Immigration and Customs Enforcement. The Asylum Division relies on EOIR and ICE attorneys to litigate removals, including for those individuals charged with fraud.<sup>48</sup> It is important to note that the Asylum Division does not have law enforcement powers. Instead, USCIS relies on entities such as ICE and local

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<sup>41</sup> “The Affirmative Asylum Process,” U.S. Citizenship and Immigration Services, accessed September 27, 2021, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process>; “Service and Office Locator,” U.S. Citizenship and Immigration Services, accessed October 13, 2021, <https://egov.uscis.gov/office-locator/#/asy>.

<sup>42</sup> U.S. Citizenship and Immigration Services “The Affirmative Asylum Process.”

<sup>43</sup> U.S. Citizenship and Immigration Services.

<sup>44</sup> Department of Homeland Security, *Privacy Impact Assessment for the Pangaea*, 3–4.

<sup>45</sup> Department of Homeland Security, 3–4.

<sup>46</sup> U.S. Citizenship and Immigration Services, “Types of Asylum Decisions.”

<sup>47</sup> “Asylum,” U.S. Citizenship and Immigration Services, accessed January 8, 2023, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum>; U.S. Citizenship and Immigration Services, “Types of Asylum Decisions.”

<sup>48</sup> Gambler, *Asylum*, 3, 65.

authorities to carry out law enforcement functions.<sup>49</sup> USCIS is also dependent on U.S. Attorney's Offices to prosecute criminal charges for U.S. attorneys and individuals involved in immigration fraud.<sup>50</sup> The stakeholders identified during the impact phase (but may still influence the earlier stages) make up critical components of USCIS's legal arm: DOJ (broken down into EOIR/U.S. District Attorneys) and ICE.

## 2. Why Stakeholders Have an Interest in Addressing Asylum Fraud

The stakeholders identified have an interest in addressing fraud from a resource, integrity, and security standpoint. Someone could argue that fraud investigations and cases do not significantly affect stakeholders because part of the system's job is identifying fraud. Fraud in the system has already been assumed, and the system did its job and role by identifying the various schemes. However, this argument would only partially ring true if the identification stage is successful and the fraud does not have its intended result: a grant of a benefit. Furthermore, if the ultimate objective is to enforce America's immigration laws, failure to prosecute for violations of said laws can undermine the entire integrity of the system.

Fraud drains resources in an already taxed system: "The general surge . . . on the Southern border, added to the receipts each fiscal year, and caused an exponential growth in pending caseload from 11,000 in 2012 to nearly 350,000 in 2020. . . . USCIS Asylum Division has struggled to maintain a workforce equipped to meet the surge of incoming receipts."<sup>51</sup> USCIS already has had to pull available resources to meet the needs at the Southern border and other agency priorities, which takes away from the available workforce to handle the affirmative caseload.<sup>52</sup> Fraud introduces frivolous applications into a burdened system and, as discussed below, strains time and resources. Fraud also impacts the overall mission of offering protection to those who face persecution, as it

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<sup>49</sup> Department of Homeland Security, *Privacy Impact Assessment for the Pangaea*, 3–4.

<sup>50</sup> Gambler, *Asylum*, 3, 65.

<sup>51</sup> Michael Dougherty, *Citizenship and Immigration Services Annual Report 2020* (Washington, DC: Office of the Citizenship and Immigration Services Ombudsman, 2020), 44–45, [https://www.dhs.gov/sites/default/files/publications/20\\_0630\\_cisomb-2020-annual-report-to-congress.pdf](https://www.dhs.gov/sites/default/files/publications/20_0630_cisomb-2020-annual-report-to-congress.pdf).

<sup>52</sup> Dougherty, 45.

burdens the system and delays response time.<sup>53</sup> As a result, the integrity of the asylum program can be compromised.

As seen with fraud investigations, the discovery of fraud leads to additional resource expenditures to rectify the error, and other stakeholders, such as EOIR, are impacted. For example, Operation Fiction Writer (OFW) out of New York had a significant spillover effect on EOIR. Based on data from 2015:

Attorneys and preparers charged in Operation Fiction Writer filed 5,773 affirmative asylum applications with USCIS, and USCIS granted asylum to 829 of those affirmative asylum applicants. According to EOIR data, 3,709 individuals who were connected to attorneys and preparers convicted in Operation Fiction Writer were granted asylum in immigration court; this [number] includes both affirmative asylum claims referred from USCIS as well as defensive asylum claims.<sup>54</sup>

Due to the spillover of applications into EOIR, EOIR was now significantly tied to the cleanup operation once the fraud was revealed. After OFW, if granted cases were flagged as fraudulent, ICE attorneys would have to file a motion to reopen with EOIR to review the decision.<sup>55</sup> If a case was still within the jurisdiction of USCIS, a review of the grant would involve the internal termination review process.<sup>56</sup> USCIS confirmed immigration officials had engaged in a mammoth undertaking following OFW by

reviewing 3,500 asylum cases handled years ago by the people convicted during Operation Fiction Writer. Immigration authorities also confirm that they are reviewing the asylum cases of more than 10,000 family members who were granted what is called “derivative asylum status.” Therefore, in total, more than 13,500 immigrants who were granted asylum before December 2012 could lose it.<sup>57</sup>

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<sup>53</sup> Joe Guzzardi, “Trump Administration’s Overdue Asylum Guidelines,” *Korea Times*, June 26, 2020, [https://www.koreatimes.co.kr/www/opinion/2021/10/197\\_291853.html](https://www.koreatimes.co.kr/www/opinion/2021/10/197_291853.html).

<sup>54</sup> Gambler, *Asylum*, 32–33.

<sup>55</sup> Ailsa Chang, “Thousands Could Be Deported as Government Targets Asylum Mills’ Clients,” National Public Radio, September 28, 2018, <https://www.npr.org/sections/money/2018/09/28/652218318/thousands-could-be-deported-as-government-targets-asylum-mills-clients>.

<sup>56</sup> Gambler, 70–71.

<sup>57</sup> Chang, “Thousands Could Be Deported.”

Operation Fiction Writer is a prime example of the burden fraud places on resources. It was a multi-year investigation, with the fallout still ongoing.<sup>58</sup> Investigating fraud cases costs the government significant resources and can require “substantial . . . time to investigate and prosecute.”<sup>59</sup> Furthermore, with every I-589, ample time is taken to review files and flag indicators of fraud, as applications and supporting documents are submitted in paper format and retained in physical files: “The existing process requires USCIS officers to visually review pages of the application packet and to navigate through a paper file, potentially multiple times throughout the course of the adjudication.”<sup>60</sup> The addition of frivolous applications only adds to this burden and can divide the set resources meant to screen for and address national security and public safety matters. During Operation Fiction Writer, the Deputy Director of the New York Asylum Office noted that “The volume of petitions has clogged the federal bureaucratic machinery, overwhelming asylum officers and judges” and “blamed fraud, in part, for the deluge, and said she had tripled her team of asylum officers to dig out of a two-year backlog of cases.”<sup>61</sup> However, there is no agreement on the actual scope of the fraud problem in the asylum program.

### **3. The Scope of the Fraud Problem**

Politicians and various officials routinely claim that the asylum program faces a serious fraud problem. However, I have been unable to find concrete numbers on the actual rate of fraud in the asylum system, and those that reference fraud tend to do so in general

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<sup>58</sup> Chang.

<sup>59</sup> H.R., *Aftermath of Fraud by Immigration Attorneys*, 2, 4.

<sup>60</sup> Department of Homeland Security, *Privacy Impact Assessment for the Pangaea*, 4.

<sup>61</sup> Kirk Semple, Joseph Goldstein, and Jeffrey E. Singer, “Asylum Fraud in Chinatown: An Industry of Lies,” *New York Times*, February 23, 2014, <https://www.nytimes.com/2014/02/23/nyregion/asylum-fraud-in-chinatown-industry-of-lies.html>.

terms.<sup>62</sup> The Government Accountability Office in 2006 indicated that fraud appears to be a serious problem in immigration benefit programs.<sup>63</sup> Others convolute non-meritorious claims with being fraudulent.<sup>64</sup> Several factors can account for this lack of statistics. First, there is also a difference between applications that have fraud indicators and confirmed fraud that impacts that adjudication decision. Second, one fraudster could be responsible for the filing of thousands of applications. Third, there has been a lack of accounting methods in place for the multiple overlapping agencies responsible for the investigation and prosecution of asylum fraud. Even a search of the Office of Immigration Statistics fails to reveal any detailed information on fraud statistics. For the purposes of this thesis, it is not necessary to have a definitive answer as to the actual rate of fraud. It is sufficient to have a conceptual understanding of how fraud can impact the asylum system to realize why it is important that fraud be sufficiently deterred to the best of the system's capability.

Other benefit programs have a difficulty in estimating fraud rates as well. Unemployment benefit fraud has been estimated to be anywhere from 10 to 30 percent.<sup>65</sup> The GAO notes that there is no reliable rate for Medicare fraud. However, fraud contributed to \$52 billion in improper payments in 2017.<sup>66</sup> Looking at another USCIS benefit program,

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<sup>62</sup> Andorra Bruno, *Immigration: U.S. Asylum Policy*, R45539 (Washington, DC: Congressional Research Service, 2019), 29–30, <https://crsreports.congress.gov/product/pdf/R/R45539>. According to Bruno, “The issue of frivolous asylum claims was highlighted by Attorney General Sessions in 2017 remarks, in which he described the asylum system as being ‘subject to rampant abuse and fraud.’ He further said, ‘And as this system becomes overloaded with fake claims, it cannot deal effectively with just claims.’ Similarly, in his May 2018 House testimony, USCIS Director Cissna stated, ‘The integrity of our entire immigration system is at risk because frivolous asylum applications impede our ability to help people who really need it.’”

<sup>63</sup> Paul L. Jones, *Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud* (Washington, DC: Government Accountability Office, 2006), 4, <https://www.gao.gov/assets/gao-06-259.pdf>.

<sup>64</sup> See generally Jason Hopkins, “Few Asylum Seekers Have Legitimate Claims, Latest Data Indicate,” *Daily Caller*, February 19, 2020, <https://dailycaller.com/2020/02/19/most-immigrant-asylum-claims-are-bogus/>. The source fails to recognize that asylum claims may fail on their merits, which does not necessarily indicate fraud or fraudulent intent.

<sup>65</sup> “OIG Oversight of the Unemployment Insurance Program,” Department of Labor, accessed July 24, 2022, <https://www.oig.dol.gov/doloiguooversightwork.htm>; Matt Weidinger, “Unemployment Benefit Fraud Could Be the Fourth Largest Stimulus ‘Program,’” *American Enterprise Institute*, March 17, 2021, <https://www.aei.org/poverty-studies/unemployment-benefit-fraud-could-be-the-fourth-largest-stimulus-program/>.

<sup>66</sup> Seto Bagdoyan, *Medicare: Actions Needed to Better Manage Fraud Risks*, GAO-18-660T (Washington, DC: Government Accountability Office, 2018), <https://www.gao.gov/products/gao-18-660t>.

the I-360, Petition for Amerasian, Widow(er), Special Immigrant, or Violence Against Women Act (VAWA) self-petition, USCIS has seen an increase in fraud referrals of about 305 percent.<sup>67</sup> Between 2014 and 2019, FDNS found fraud in 53 percent of the VAWA fraud cases that were investigated and closed (332 cases).<sup>68</sup> However, the report does not make it clear if these cases involved single instances of fraud or multiple filings condensed under one case. An audit of labor certification for immigration matters in 2001 found that over 54 percent contained false or suspected fraudulent information.<sup>69</sup> Previously reviewed religious worker applications were estimated to be 33 percent fraudulent.<sup>70</sup>

For illustrative purposes only, one can look at the impact on the asylum system if the fraud rate was determined to be 10 percent (likely a conservative estimate). From fiscal years 2016 to 2020, USCIS reported receiving 551,600 affirmatively filed I-589 applications.<sup>71</sup> During that same time, USCIS reported completing 299,000 cases.<sup>72</sup> A 10 percent fraud rate represents 55,160 applications over a 4-year time frame. Based on the completion rate during that time span, a minimum of 252,600 cases would have entered the backlog depending on the number of completed cases that came from the backlog prior to FY 2016. The number of fraud cases estimated for that time frame would represent approximately 20 percent contributed to the backlog. Today, the asylum backlog sits at over 430,000 pending cases.<sup>73</sup> In the most recent annual report, the USCIS Ombudsman noted that in addition to the unanticipated workloads, there are approximately 620

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<sup>67</sup> Rebecca Gambler and Rebecca Shea, *Immigration Benefits: Additional Actions Needed to Address Fraud Risks in Program for Foreign National Victims of Domestic Abuse*, GAO-19-676 (Washington, DC: Government Accountability Office, 2019), 35, <https://www.gao.gov/assets/gao-19-676.pdf>.

<sup>68</sup> Gambler and Shea, 36.

<sup>69</sup> Jones, *Immigration Benefits*, 16.

<sup>70</sup> Jones, 4.

<sup>71</sup> U.S. Citizenship and Immigration Services, *2020 USCIS Statistical Annual Report* (Washington, DC: Department of Homeland Security, 2021), 20, <https://cis.org/sites/default/files/2022-05/2020-USCIS-Statistical-Annual-Report.pdf>.

<sup>72</sup> U.S. Citizenship and Immigration Services, 20.

<sup>73</sup> Phyllis Coven, *Citizenship and Immigration Services Annual Report 2022* (Washington, DC: Office of the Citizenship and Immigration Services Ombudsman, 2022), ix, [https://www.dhs.gov/sites/default/files/2022-06/CIS\\_Ombudsman\\_2022\\_Annual\\_Report\\_0.pdf](https://www.dhs.gov/sites/default/files/2022-06/CIS_Ombudsman_2022_Annual_Report_0.pdf).

vacancies in the Asylum Division.<sup>74</sup> Fraud adds additional burdens to these operational challenges. The “CIS Ombudsman believes that further operational changes are needed to reduce the backlog.”<sup>75</sup> One such change should be to incentivize prosecutions of asylum fraud in order to fully incorporate law enforcement into deterrence plans.

## **B. PROSECUTIONS**

Prosecution information is difficult to discern for asylum fraud. Exact statistical data on fraud prosecution and investigation for evaluation is difficult to produce as it will depend on the charge as well as the subset of the immigration category being considered and the availability of information. Additionally, one charge may reflect one individual who was responsible for numerous fraudulent findings. One individual may also have multiple charges under different fraud statutes. Furthermore, available reports may refer to immigration fraud in general and not delineate the section of immigration, such as asylum. Statistical information on the U.S. courts as it pertains to immigration matters can be found through the Transactional Records Access Clearinghouse, which relies on the accuracy of data reported by the courts. Recently, the Transactional Records Access Clearinghouse has called into question the accuracy of the data certain courts provide and specifically highlighted asylum data.<sup>76</sup>

Prosecutions are an important part of deterrence. At a Congressional hearing in 2014, Professor Ting noted that regarding fraud, individuals “use cost-benefit analysis to decide what they are going to do, and if the costs are low and the benefits are high, it makes sense to do something. And if you do not want them to do that, you have to raise the costs and lower the benefits. It is simple economics.”<sup>77</sup> At the same 2014 Congressional hearing, Mr. Crocetti from the Immigration Integrity Group stated that “until we start really getting serious and holding people accountable for their representation, we are going to continue

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<sup>74</sup> Coven, 44–45.

<sup>75</sup> Coven, 45.

<sup>76</sup> “After EOIR Fixes Most Egregious Data Errors, TRAC Releases New Asylum Data—but with a Warning,” Transactional Records Access Clearinghouse, September 16, 2020, <https://trac.syr.edu/immigration/reports/624/>.

<sup>77</sup> H.R., *Asylum Fraud*, 63.



to encourage fraud.”<sup>78</sup> While not speaking direction on prosecution, an FDNS director noted,

Although an alien who commits immigration benefit fraud might be removable from the United States and, therefore, has some disincentive to commit fraud, U.S. citizens, if they are not prosecuted criminally, have little disincentive because without the enforcement of administrative sanctions they are not likely to be penalized, even if their violations are detected.<sup>79</sup>

The Chief of Staff for USCIS agreed that penalties are needed for successful deterrence.<sup>80</sup> A look at the current state of asylum fraud prosecution indicates that there is room for improving prosecution of asylum fraud.

### **1. The Current State of Asylum Fraud Prosecution**

The GAO report noted that DOJ and DHS were not engaging in their available remedies regarding addressing asylum fraud.<sup>81</sup> The majority of asylum fraud is not criminally investigated or prosecuted.<sup>82</sup>

The lack of a clear strategy for how and when to punish fraud perpetrators, which considers the nonfinancial benefit of deterrence and includes a mechanism for evaluating effectiveness, limits DHS’s ability to project a convincing message that those who commit fraud face a credible threat of punishment in one form or another.<sup>83</sup>

2019 saw a continued decline in criminal referrals to the DOJ.<sup>84</sup> USCIS and ICE have to refer criminal matters to the DOJ for decisions on prosecutions.<sup>85</sup> The law enforcement arm of USCIS can pursue charges against individuals who commit asylum fraud.<sup>86</sup>

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<sup>78</sup> H.R., 77.

<sup>79</sup> Jones, *Immigration Benefits*, 37.

<sup>80</sup> Jones, 37.

<sup>81</sup> Gambler, *Asylum*, 65–67.

<sup>82</sup> Jones, *Immigration Benefits*, 6.

<sup>83</sup> Jones, 6–7.

<sup>84</sup> “Sharp Decline in Criminal Immigration Prosecutions,” Transactional Records Access Clearinghouse, February 12, 2020, <https://trac.syr.edu/tracreports/crim/594/>.

<sup>85</sup> Transactional Records Access Clearinghouse.

<sup>86</sup> Gambler, *Asylum*, 65.

However, the GAO report found through interviews that criminal prosecutions are rarely pursued unless the fraud is large scale.<sup>87</sup> At the time of the report, it was noted that the DOJ was not generally interested in pursuing immigration fraud, and HSI was even less likely to take fraud referrals from FDNS, especially in cases of single-incident fraud.<sup>88</sup>

The understanding of these FDNS officers was that the U.S. Attorney's Office in that district prefers to have at least 100 asylum applicants connected to an asylum fraud case before the office will consider prosecution. According to FDNS officials, fraud cases associated with 100 or more asylum applicants provide for sentencing enhancements, which is one of the factors that influence the willingness of HSI and U.S. Attorney's Offices to accept a case. . . . HSI agents in all four of the locations we visited stated that they face challenges in investigating asylum fraud cases, such as competing priorities, confidentiality restrictions, and low interest from the U.S. Attorney's Offices that prosecute these immigration-related criminal cases. . . . According to HSI field office officials, asylum fraud prosecutions are time and labor-intensive and typically do not result in lengthy prison sentences.<sup>89</sup>

The GAO report also noted that EOIR's Disciplinary Counsel failed to publicly discipline attorneys involved in immigration fraud unless their state bar authority had already disbarred them.<sup>90</sup> As such, this is another example of USCIS's stakeholders not making use of active deterrent measures to dissuade the use of fraud.

However, the GAO fails to offer substantive discussion or recommendations to address the role and effectiveness of federal law enforcement in deterrence and instead primarily focuses on USCIS's role in asylum deterrence.<sup>91</sup> The GAO only makes one recommendation for the DOJ and declines to provide any for HSI, even though the report highlights how the DOJ and HSI create barriers in addressing asylum fraud by not employing available remedies.<sup>92</sup> Thus, the GAO shapes the limited literature as a narrative

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<sup>87</sup> Gambler, 65–67.

<sup>88</sup> Gambler, 65–67.

<sup>89</sup> Gambler, 66–67.

<sup>90</sup> Gambler, 67.

<sup>91</sup> See generally Gambler, *Asylum*.

<sup>92</sup> Gambler, 75–76.

of asylum fraud mitigation falling on the USCIS, disincentivizing stakeholders such as the DOJ from committing to address asylum fraud.

The report misses contributing to a thorough assessment of the risk posed by a lack of involvement of law enforcement in the fraud risk profile. Court documents pertaining to asylum fraud schemes have shown that individuals engaged in fraud were knowledgeable that unless their operations got too large and complex, they were unlikely to garner prosecution from authorities.<sup>93</sup> Changing that risk equation requires law enforcement's involvement. The GAO report suggests that no significant sanctions dissuade DOJ and HSI's interest in prosecuting fraud.<sup>94</sup> However, like the report's treatment of law enforcement, the GAO again neglects to offer guidance on overcoming barriers to the involvement of a significant stakeholder in addressing asylum fraud.<sup>95</sup>

Despite the shortcomings, the report highlights barriers to prosecution and is a stark contrast to the rhetoric from stakeholders as to the priority of addressing attorney fraud. During a 2012 Congressional hearing on attorney fraud, it was noted by The Associate Director of FDNS, Sarah Kendall, that there was a memorandum of agreement (MOA) between USCIS and ICE to investigate immigration fraud and act against attorneys engaged in fraud.<sup>96</sup> The then Deputy Assistant Director of Transnational Crime and Public Safety for Immigration and Customs Enforcement told the panel that they were implementing criminal and administrative penalties to deter individuals from engaging in fraud schemes.<sup>97</sup> The Associate Director of FDNS, Sarah Kendall, told the same panel that under the MOA, USCIS and ICE "prioritized attorney and preparer fraud as one of the priority case types" and that "under this initiative, FDNS refers to ICE for criminal investigation all fraudulent cases involving attorneys, notaries, interpreters and preparers, and those classified as major conspiracies."<sup>98</sup> The GAO report noted FDNS concerns that

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<sup>93</sup> *Liu*, No. 12-CR-934-01 (RA).

<sup>94</sup> Gambler, *Asylum*, 65–66.

<sup>95</sup> Gambler, 73–75.

<sup>96</sup> H.R., *Aftermath of Fraud by Immigration Attorneys*, 4.

<sup>97</sup> H.R., 5.

<sup>98</sup> H.R., 18.

HSI rarely accepted fraud referrals in the preceding years to the report and that the U.S. Attorney’s Office was much the same.<sup>99</sup>

At the hearing, Associate Director Kendall clarified that “preparer, attorney, and interpreter case fraud—is a priority, which is separate from conspiracy and multiple conspiracy fraud.”<sup>100</sup> In practice, however, the GAO found that “because HSI does not prioritize investigations of single instances of asylum fraud, FDNS immigration officers . . . stated that they generally do not submit single-scope cases, in which only one individual is implicated in the fraudulent activity, to HSI.”<sup>101</sup>

The findings in the GAO report more closely mirror the testimony at the same hearing on attorney fraud by Chris Crane, the President of the Union at the time. Mr. Crane noted that there were concerns amongst employees “that immigration fraud is widespread and ignored by the Federal agencies tasked with enforcing United States immigration laws.”<sup>102</sup> Specifically, he claimed that “no action is taken against private attorneys involved. Employees maintain that ICE and CIS will only take action in cases involving large-scale fraud or the media. . . . As a rule, there is no consequence to private attorneys . . . who engage in fraud, even when reported.”<sup>103</sup> Operation Fiction Writer (OFW) illustrates some of the difficulties with the prosecution of fraud. Looking back at OFW, The GAO report found that USCIS attempted to work with HSI to investigate the fraud scheme. However, HSI requested USCIS stop sending HSI information on OFW in 2009.<sup>104</sup> At that time, USCIS turned to the FBI for help.<sup>105</sup> The outcome of OFW illustrates that there have been consequences for private attorneys who engage in fraud;

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<sup>99</sup> Gambler, *Asylum*, 66–67.

<sup>100</sup> H.R., *Aftermath of Fraud by Immigration Attorneys*, 47.

<sup>101</sup> Gambler, *Asylum*, 66–67.

<sup>102</sup> H.R., *Aftermath of Fraud by Immigration Attorneys*, 25.

<sup>103</sup> H.R., 26.

<sup>104</sup> Gambler, *Asylum*, 65–67.

<sup>105</sup> Gambler, 65–67.

however, OFW was a large-scale fraud scheme that garnered media attention.<sup>106</sup> The fact that the GAO report, as well as known fraud cases, casts doubt about the validity of practice regarding the statements made at the hearing by key stakeholders indicated that there is an area for improvement in addressing attorney fraud when it comes to the involvement of USCIS's law enforcement arm.

One potential consequence of the immigration system only targeting large-scale operations is that individuals engaged in fraud adapt to the known variables. OFW illustrated that attorneys were aware that authorities were targeting large-scale operations and that OFW attorneys took steps to limit the visibility of their operations.<sup>107</sup> Small operations could be just as damaging if enough attorneys are engaging in such practices. Hypothetically, a situation could exist at one asylum field office in which two attorneys conspired together to submit 150 fraudulent applications. Authorities target this operation based on the factors illuminated in the GAO report and agency leaders: over 100 receipts and conspiracy.<sup>108</sup> However, in this same hypothetical, there are also six other unrelated attorneys sporadically submitting fraudulent applications to supplement their income, and they have each submitted 50 frivolous applications. Based on the prior thresholds observed by the DOJ for prosecution, as described above, these cases would not have been targeted for prosecution. The result is that those six attorneys cumulatively have contributed twice the number of fraudulent applications into a burdened system and caused finite resources to be expended.

Additionally, the United States has had a history of being reluctant to even go after applicants for fraud, instead focusing efforts on preparers of fraudulent applications.<sup>109</sup> This is a hole in existing prosecution efforts. The reason for the reluctance to pursue applicants is speculative in nature, but it may be because there are alternate routes to pursue

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<sup>106</sup> See, for example, Ailsa Chang, "Special Report: Asylum Crackdown," National Public Radio, September 28, 2018, <https://www.npr.org/transcripts/652864415>.

<sup>107</sup> *Liu*, No. 12-CR-934-01 (RA).

<sup>108</sup> See, for example, Gambler, *Asylum*, 66–67; H.R., *Aftermath of Fraud by Immigration Attorneys*, 47.

<sup>109</sup> Chang, "Thousands Could Be Deported"; Joel Gehrke, "DOJ Refuses to Investigate 3,700 Asylum Claims Filed by Fraudsters," *Washington Examiner*, August 18, 2016, <https://www.washingtonexaminer.com/doj-refuses-to-investigate-3-700-asylum-claims-filed-by-fraudsters>.

applicants by charging them with fraud in EOIR, which has immigration ramifications.<sup>110</sup> EOIR court proceedings are beyond the scope of this thesis. However, it appears that fraud charges in EOIR are rarely pursued compared to other immigration charges in deportation proceedings.<sup>111</sup> Even though there are applicants taken advantage of by preparers and attorneys, there are applicants that are fully aware of the fraud scheme and actively participate in order to secure a benefit they do not qualify for. One such preparer from Operation Fiction Writer revealed:

Everything that happened, Lawrence says, happened out in the open. “I realized this is open secret in Chinese immigrant community . . . many Chinese people making asylum fraud,” he says. . . . Lawrence compared the office to a factory, with each worker having a designated task, whether it be translating, coaching or story-writing.<sup>112</sup>

There is a disconnect between USCIS and law enforcement stakeholders on criminally prosecuting asylum fraud which prevents a cohesive fraud deterrence strategy. This gap between fraud and prosecution becomes even more apparent when looking into available statistics and cases.

## 2. The Story of Numbers: Prosecuting Fraud

While exact numbers as to the overall impact of fraud may not be available, what is observable is that the immigration system shows little signs of change despite the known issues of fraud. The DOJ continues to focus on large-scale cases. For example, in 2021, the Department of Justice announced two separate indictments charging nine individuals

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<sup>110</sup> Gambler, *Asylum*, 65; U.S. Citizenship and Immigration Services, “Overview of Fraud and Willful Misrepresentation”; Jones, *Immigration Benefits*, 36.

<sup>111</sup> See “Charges Asserted in Deportation Proceedings in the Immigration Courts: FY 2002–FY 2011 (through July 26, 2011),” Transactional Records Access Clearinghouse, accessed November 12, 2022, <https://trac.syr.edu/immigration/reports/260/include/detailchg.html>. Of the 2,594,910 charge counts in deportation proceedings in immigration courts from FY 2002 to FY 2011, charges for fraud or willful misrepresentation to procure a visa, documentation, or admission into the United States represented 1.36 percent (35,269 counts). This number was for the entire immigration scheme. Asylum represents a subset, and as noted earlier in this chapter, a 10 percent fraud rate in asylum would represent approximately 55,160 applications over four years.

<sup>112</sup> Chang, “Thousands Could Be Deported.”

(including multiple attorneys) with asylum fraud in a similar conspiracy to OFW.<sup>113</sup> EOIR “fraud unit opened just three asylum fraud investigations in 2013 and only seven in 2014—the two years immediately after the New York City bust.”<sup>114</sup> As noted earlier, USCIS works with HSI under ICE when it comes to asylum fraud. However, the GAO report noted several issues with this process in that the DOJ’s disinterest in asylum fraud caused ripple effects in the referral process. ICE conducts most criminal investigations under immigration law and is responsible for nearly all referrals for federal criminal prosecutions to the DOJ.<sup>115</sup> If DOJ is not going to be interested in the case, ICE’s resources are going to be better spent elsewhere. Looking at cases prosecuted over the last 10 years, a few key points as to the current status of asylum fraud prosecutions emerge.

Even a cursory case review corroborates literature findings that asylum fraud is rarely prosecuted, and there is, at best, an ad hoc approach to bringing perpetrators to justice.<sup>116</sup> The appendix contains a chart meant for illustrative purposes of various criminal prosecutions of affirmative asylum fraud schemes over the last 10 years and is not held out to be a definitive list. While the focus was on the Federal level, I also included state cases that came up in the search. The results in the appendix are limited to cases/schemes that I was able to find open-source internet materials on, and the search was limited to States that have an asylum office.<sup>117</sup> The majority of cases prosecuted by far come out of New York, even though there are asylum offices with tasked FDNS around the country.

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<sup>113</sup> U.S. Attorney’s Office, Southern District of New York, “Attorneys and Managers of Fraudulent Asylum Scheme Charged in Manhattan Federal Court,” Department of Justice, February 18, 2021, <https://www.justice.gov/usao-sdny/pr/attorneys-and-managers-fraudulent-asylum-scheme-charged-manhattan-federal-court>.

<sup>114</sup> Stephen Dinan, “Chinese Illegal Immigrants Still in U.S. Years after N.Y. Asylum Fraud Ring Busted,” *Washington Times*, August 17, 2016, <https://www.washingtontimes.com/news/2016/aug/17/chinese-illegal-immigrants-still-in-us-years-after/>.

<sup>115</sup> “Immigration Prosecutions for October 2021,” Transactional Records Access Clearinghouse, December 3, 2021, <https://trac.syr.edu/tracreports/bulletins/immigration/monthlyoct21/fil/>.

<sup>116</sup> Gambler, *Asylum*, 65–67. See the appendix.

<sup>117</sup> See Appendix. These cases may involve multiple defendants under the same or related fraud scheme, as well as hundreds to thousands of alleged fraudulent applications. The exact number of fraudulent applications filed by defendants is unknown. A few cases represent individuals posing as attorneys and scamming applicants and not necessarily fraud in the merits of the application; however, some of the cases were filed without the applicant’s knowledge.

Cases that appear in Federal court typically carry a charge under Title 18 U.S.C. §1546(a).<sup>118</sup> This charge carries a maximum of 10 years with penalty enhancements if drugs or terrorism are involved.<sup>119</sup> However, conspiracy to commit the act only carries a maximum of 5 years.<sup>120</sup> Looking at the appendix chart, when cases are prosecuted, there is a high success rate of conviction or plea deals. Many of the Federal cases listed in the appendix contain pleas to the lesser charge of conspiracy. Since there is no specific criminal division that handles immigration fraud under the DOJ, asylum fraud cases have been handled by various offices such as the Offices for Money Laundering and Transnational Enterprises.<sup>121</sup> More recently, cases with asylum fraud ties have been successfully brought in State courts. One of these cases included a 20-year sentence.<sup>122</sup> Even though the cases in the appendix are not being held out as a definitive list, from the cases that were able to be identified over the last ten years based on the above criteria: the number of cases prosecuted (even if each case represented 1k fraudulently filed applications) appears to be a significantly small fraction of the approximately 13,790 fraudulent applications filed a year if the fraud rate was determined to be 10 percent.<sup>123</sup> These numbers raise questions as to the reasons for such low prosecution numbers and indicate that there is room for improvement in fraud deterrence by focusing more on law enforcement methods.

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<sup>118</sup> Fraud and Misuse of Visas, Permits, and Other Documents, 18 U.S.C. § 1546(a) (2020), <https://www.govinfo.gov/content/pkg/USCODE-2020-title18/pdf/USCODE-2020-title18-part1-chap75-sec1546.pdf>. This section of the *U.S. Code* is generally referred to as the immigration fraud provision and delineates the types of immigration fraud and can pertain to “asylum fraud.”

<sup>119</sup> Fraud and Misuse of Visas, Permits, and Other Documents.

<sup>120</sup> Conspiracy to Commit Offense or to Defraud United States, 18 U.S.C. § 371 (2021), <https://www.govinfo.gov/content/pkg/USCODE-2021-title18/pdf/USCODE-2021-title18-part1-chap19-sec371.pdf>.

<sup>121</sup> U.S. Attorney’s Office, Southern District of New York, “Attorneys and Managers of Fraudulent Asylum Scheme Charged.”

<sup>122</sup> “Phony Immigration Attorney Who Filed Hundreds of Fraudulent Asylum Applications Sentenced to More than 20 Years in Federal Prison,” U.S. Attorney’s Office, Middle District of Florida, April 12, 2021, <https://www.justice.gov/usao-mdfl/pr/phony-immigration-attorney-who-filed-hundreds-fraudulent-asylum-applications-sentenced>.

<sup>123</sup> See U.S. Citizenship and Immigration Services, *2020 USCIS Statistical Annual Report*, 20. From FY 2016 to FY 2020, USCIS reported receiving 551,600 affirmatively filed I-589 applications, which translates roughly to 137,900 affirmative cases a year. A 10 percent fraud rate would be approximately 13,790 cases a year.



A look at international and domestic examples of fraud deterrence in benefit programs highlights issues impacting fraud prosecutions. The comparisons provide insight as to how the Asylum Division and its stakeholders can incorporate law enforcement in a deterrence strategy and incentivize prosecution to capitalize on prior success.

### **III. BIG STICKS DO EXIST: CASE STUDIES ON HOW TO INCENTIVIZE LAW ENFORCEMENT INVOLVEMENT IN ASYLUM FRAUD DETERRENCE**

The issues involved in using law enforcement in fraud deterrence are not unique to the Asylum Division or the United States. This chapter looks at international and domestic examples of benefit fraud prosecution to analyze incentivization issues for fraud case prosecution. The information identified in this chapter serves as the foundation for analysis and recommendations for addressing fraud prosecution to effectively use law enforcement remedies to promote a comprehensive fraud deterrence strategy.<sup>124</sup> First, this chapter looks at how New Zealand investigates and prosecutes fraud in its immigration program. Next, the chapter looks at a domestic example of fraud prosecution in which the Department of Justice has deployed a more consistent application of law enforcement remedies to address benefit fraud, namely Medicare fraud. This chapter finds that sufficient resources and a collaborative structure are needed to incentivize asylum fraud prosecution.

#### **A. INTERNATIONAL EXAMPLE OF IMMIGRATION FRAUD PROSECUTION: NEW ZEALAND**

New Zealand is part of the Migration 5 Council alongside the United States. Asylum falls under the immigration scheme overseen by Immigration New Zealand, and the country deploys a specialized team of investigators to prosecute immigration fraud in general.<sup>125</sup> Immigration New Zealand makes it clear on its websites that the punishment for immigration fraud can be up to seven years imprisonment and a fine of NZ \$100,000.<sup>126</sup> Furthermore, the website highlights up front that those who became residents or citizens through immigration fraud can be deported and denaturalized.<sup>127</sup> New Zealand Immigration Law is codified under the Immigration Act 2009 (the Act), which includes

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<sup>124</sup> See Lord, *A Framework for Managing Fraud Risks*, 6.

<sup>125</sup> “Immigration Fraud,” New Zealand Immigration, accessed May 20, 2022, <https://www.immigration.govt.nz/about-us/policy-and-law/integrity-of-the-immigration-system/immigration-fraud>.

<sup>126</sup> New Zealand Immigration.

<sup>127</sup> New Zealand Immigration.

criminal offenses relating to immigration fraud.<sup>128</sup> From the outset, New Zealand highlights that fraud will be taken seriously.

Like the United States, New Zealand has a comprehensive immigration program that offers protection to asylum seekers. As of 2012, Immigration New Zealand falls under the Ministry of Business, Innovation, and Employment.<sup>129</sup> Asylum seekers can lodge a claim for refugee or protection status in New Zealand and are referred to as refugee and protection claimants.<sup>130</sup> Claims are heard by the Refugee Status Unit/Branch.<sup>131</sup> If a claim is denied, it can be appealed to The Immigration and Protection Tribunal under the Ministry of Justice.<sup>132</sup> If a claimant is unsuccessful in their appeal, they must leave New Zealand.<sup>133</sup> Successful claimants may apply for resident visas and, eventually, citizenship.<sup>134</sup> However, the Refugee Status Unit may cancel protection status for any claimant they determined derived their status through fraud.<sup>135</sup> Part 6 of the Act includes deportation provisions for persons who obtained immigration status through fraud.<sup>136</sup> The immigration system developed by New Zealand anticipates the presence of fraud and provides remedies for correcting prior decisions when fraud is uncovered.

New Zealand has a set of policies that support fraud investigation and prosecution and incorporate law enforcement into deterrence plans. New Zealand utilizes a dedicated

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<sup>128</sup> Immigration Act 2009 (N.Z.), <https://www.legislation.govt.nz/act/public/2009/0051/latest/DLM1440303.html>.

<sup>129</sup> Michael Flynn, *Immigration Detention in New Zealand* (Geneva: Global Detention Project, 2014), 4, [https://www.globaldetentionproject.org/wp-content/uploads/2016/06/NZ\\_report\\_v2.pdf](https://www.globaldetentionproject.org/wp-content/uploads/2016/06/NZ_report_v2.pdf).

<sup>130</sup> “Information for Asylum Seekers,” New Zealand Immigration, accessed July 5, 2022, <https://www.immigration.govt.nz/audiences/supporting-refugees-and-asylum-seekers/asylum-seekers>.

<sup>131</sup> New Zealand Immigration, *Claiming Refugee and Protection Status in New Zealand* (Wellington: Ministry of Business, Innovation and Employment, 2022), 7, <https://www.immigration.govt.nz/documents/forms-and-guides/claiming-refugee-and-protection-status-in-new-zealand-march-2021>.

<sup>132</sup> New Zealand Immigration, 7.

<sup>133</sup> New Zealand Immigration, 14.

<sup>134</sup> New Zealand Immigration, *Claiming Refugee and Protection Status in New Zealand*, 13; “Immigration Factsheets Refugee and Asylum Seekers,” New Zealand Immigration, September 2018, <https://www.beehive.govt.nz/sites/default/files/2018-09/Refugees%20and%20asylum%20seekers%20factsheet.pdf>.

<sup>135</sup> New Zealand Immigration, *Claiming Refugee and Protection Status in New Zealand*, 14.

<sup>136</sup> Flynn, *Immigration Detention in New Zealand*, 10.

unit to investigate and prosecute fraud, which includes a team of investigators and solicitors specifically tasked to the unit.<sup>137</sup> Those with police backgrounds are sought after to join the fraud team based on their investigatory experience with the goal of focusing on bringing cases to prosecution.<sup>138</sup> Where sufficient evidence of fraud is uncovered, the case can proceed to prosecution.<sup>139</sup> However, cases can still proceed to a Refugee Cancellation Team if the higher evidentiary burden needed for prosecution is not met.<sup>140</sup> When it comes to protection cases, this Cancellation Team also carries out fraud investigations.<sup>141</sup> If the Team finds that status was granted based on fraud, the status can be revoked.<sup>142</sup> If the team uncovers sufficient evidence of fraud, the case can likewise be referred to the fraud branch for further investigation and prosecution.<sup>143</sup> Both the Fraud Branch and Cancellation Team follow manuals that lay out frameworks for conducting investigation and prosecution or revocation.<sup>144</sup> The inclusion of law enforcement in investigation and prosecution provides a comprehensive approach to fraud deterrence.

The Fraud Branch and Refugee Cancellation Team have methods of prioritizing investigations:

The Fraud Branch receives investigation referrals, and the Refugee Cancellation Team receives prejudicial information on people with refugee status, from a range of different sources within the Workforce Group and from external sources such as the New Zealand Police. . . . The Fraud Branch prioritizes investigations, depending on the nature and gravity of the alleged offending and the likelihood of a successful criminal investigation. . . . The Refugee Cancellation Team prioritizes investigations depending on the nature and quality of the prejudicial information or evidence received.

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<sup>137</sup> See Lianne Dalziel, “Immigration Fraud Conference,” Official Website of the New Zealand Government, July 16, 2003, <https://www.beehive.govt.nz/speech/immigration-fraud-conference>.

<sup>138</sup> New Zealand Office of the Auditor-General, *Department of Labour: Management of Immigration Identity Fraud* (Wellington: New Zealand Office of the Auditor-General, 2007), 45, <https://oag.parliament.nz/2007/immigration/docs/oag-immigration.pdf>.

<sup>139</sup> New Zealand Office of the Auditor-General, 45.

<sup>140</sup> New Zealand Office of the Auditor-General, 45.

<sup>141</sup> New Zealand Office of the Auditor-General, 43.

<sup>142</sup> New Zealand Office of the Auditor-General, 43.

<sup>143</sup> New Zealand Office of the Auditor-General, 45.

<sup>144</sup> New Zealand Office of the Auditor-General, 45.

An initial risk assessment of the prejudicial information or evidence is carried out by the Refugee Cancellation Team manager. This [risk assessment] is used to categorize and prioritize the case according to risk, and allocate the case to a refugee status officer to investigate.<sup>145</sup>

Both units maintain robust relationships with external agencies to assist with investigations and prosecutions. For example, the Fraud Branch attends Combined Law Agency Group meetings, and the teams also work with overseas agencies and embassies, the New Zealand Security Intelligence Service, and the New Zealand Police.<sup>146</sup>

New Zealand has steadily increased its fraud investigation and prosecution capabilities over the years. It has done so by increasing the size of investigation teams and the budget.<sup>147</sup> As Figure 2 and 3 show, this growth led to a significant jump in fraud prosecutions in the early 2000s and have since leveled off:

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<sup>145</sup> New Zealand Office of the Auditor-General, 47.

<sup>146</sup> New Zealand Office of the Auditor-General, 48–49.

<sup>147</sup> See, for example, Daniel Cunliffe, “National’s Shameful Record with Immigration Fraud,” Official Website of the New Zealand Government, June 29, 2007, <https://www.beehive.govt.nz/release/nationals-shameful-record-immigration-fraud>.

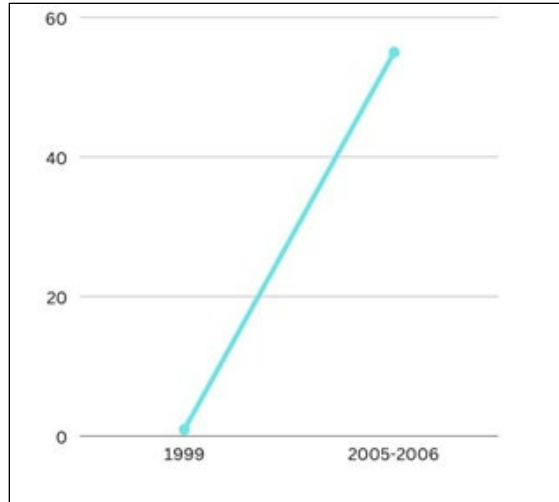


Figure 2. Fraud Prosecution.<sup>148</sup>

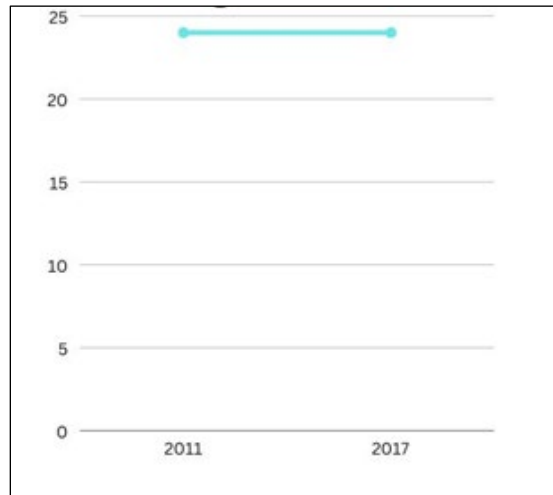


Figure 3. Average Prosecutions.<sup>149</sup>

These numbers are for immigration cases in general and not just refugee and protection claims.<sup>150</sup> Immigration New Zealand’s compliance and investigation staff

<sup>148</sup> Adapted from Cunliffe, “National’s Shameful Record with Immigration Fraud”; Nicola Hogg, “OIA Response Fraud,” File No. DOIA 1718-0763 (redacted letter, Wellington: Ministry of Business, Innovation and Employment, 2018), <https://www.mbie.govt.nz/dmsdocument/3165-doia-1718-0763-oia-response-fraud-pdf>.

<sup>149</sup> Adapted from Cunliffe, “National’s Shameful Record with Immigration Fraud”; Hogg, “OIA Response Fraud.”

<sup>150</sup> Hogg, “OIA Response Fraud.”

numbers in 2017 sat at 64.<sup>151</sup> During 2016–2017, Immigration New Zealand received 2,617 allegations of fraud, and approximately half of those cases were accepted for investigation.<sup>152</sup> Not all of those cases resulted in prosecution as the case may not have reached evidentiary thresholds, there was a lack of resources, or Immigration New Zealand proceeded with pursuing alternate outcomes such as deportation.<sup>153</sup>

Evidence indicates that New Zealand may be suffering from a lack of will when it comes to fraud prosecutions. Self-proclaimed investigative journalists claim that, lately, little political priority has been placed on investigating and prosecuting offenders.<sup>154</sup> As a result, general immigration scams operate openly with the knowledge they are unlikely to be prosecuted, as Immigration New Zealand has had to focus solely on large-scale cases in hopes of acting as a deterrent.<sup>155</sup> However, this gap has left smaller fraud trends to operate unchecked.<sup>156</sup> The impact of political priority on case investigations indicates that political will is an additional factor when considering how to incentivize law enforcement involvement in fraud deterrence.

A comparison of the United States and New Zealand is a useful exercise despite several differences in their respective asylum programs. First, looking at sheer receipts alone, the United States dwarfs New Zealand’s asylum program. In FY 21, the U.S. received 62,800 applications for asylum compared to New Zealand’s 494 Refugee and Protection claims.<sup>157</sup> The difference becomes even more pronounced if you were to look at the overall immigration structure. However, the size differential makes New Zealand’s

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<sup>151</sup> Hogg.

<sup>152</sup> Hogg.

<sup>153</sup> Hogg.

<sup>154</sup> Steve Kilgallon and Dileepa Fonseka, “The Big Scam: Our Immigration System Is Broken,” Stuff, December 21, 2018, <https://www.stuff.co.nz/national/crime/108921008/the-big-scam-our-immigration-system-is-broken>.

<sup>155</sup> Kilgallon and Fonseka.

<sup>156</sup> Kilgallon and Fonseka.

<sup>157</sup> New Zealand Immigration, *Refugee and Protection Statistics* (Wellington: Ministry of Business, Innovation and Employment, 2022), 3–4, <https://www.immigration.govt.nz/documents/statistics/statistics-refugee-and-protection.pdf>; U.S. Citizenship and Immigration Services, *Annual Statistical Report FY 2021* (Washington, DC: U.S. Citizenship and Immigration Services, 2021), 27, <https://www.uscis.gov/sites/default/files/document/reports/2021%20USCIS%20Statistical%20Annual%20Report.pdf>.

fraud prosecution numbers stand out.<sup>158</sup> As mentioned above, New Zealand was averaging 24 prosecuted cases of general immigration fraud a year. For the United States, there were 17 charges for violations of 18 USC 1001 (Fraud/False Statements or entries generally) in relation to immigration matters filed with U.S. District Courts in October of 2021.<sup>159</sup> This number is up 1000 percent compared to five years ago.<sup>160</sup> Despite the growth, this number is still low when considering the size of the overall U.S. immigration system and the fact that asylum alone could be responsible for approximately 13,790 cases of fraud a year if the fraud rate was determined to be 10 percent.<sup>161</sup> When looking at asylum fraud prosecution, these case numbers get smaller as asylum is a subset of the overall immigration scheme. A search of open-source material indicates around 13 affirmative asylum fraud cases/schemes criminally prosecuted by the DOJ as well as a few State courts over the last 10 years.<sup>162</sup> New Zealand’s fraud prosecutions as it pertains directly to asylum is undetermined at this time. When looking closely at the two programs, structural and resource issues come to light that pertains to the integration and utilization of law enforcement in asylum fraud deterrence that the United States should consider.

Compared to the United States, New Zealand has actively addressed and promoted law enforcement prosecution as part of fraud deterrence within the immigration structure. The United States and New Zealand released reports as to their respective countries’ ability to combat fraud in immigration. The United States specifically focused on the asylum

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<sup>158</sup> Exact statistical data on fraud prosecutions and investigations for comparison are difficult to produce as they depend on the charges as well as the immigration category being considered and the availability of information. Additionally, one charge may reflect one individual responsible for numerous fraudulent findings. One individual may also have multiple charges under different fraud statutes. Statistical information on the U.S. courts in immigration matters is generally found through the Transactional Records Access Clearinghouse, which relies on data reported by the courts. Recently, the Transactional Records Access Clearinghouse has called into question the accuracy of the data that certain courts provide, specifically highlighting asylum data. See Transactional Records Access Clearinghouse, “TRAC Releases New Asylum Data—but with a Warning.”

<sup>159</sup> Transactional Records Access Clearinghouse, “Immigration Prosecutions for October 2021.”

<sup>160</sup> Transactional Records Access Clearinghouse.

<sup>161</sup> See U.S. Citizenship and Immigration Services, *2020 USCIS Statistical Annual Report*, 20.

<sup>162</sup> These cases may involve multiple defendants under the same or related fraud scheme, as well as hundreds to thousands of alleged fraudulent applications. Two of the cases represent individuals posing as attorneys and scamming applicants and not necessarily fraud in the merits of the application. See the appendix.



program, whereas New Zealand looked at the immigration program more generally in terms of identity fraud but specifically referenced the refugee and protection claim program.<sup>163</sup> As has already been mentioned, the U.S. report briefly highlights that the DOJ and ICE were not engaging in fraud remedies as well as collaboration difficulties; however, the report failed to issue any substantive recommendations for addressing these concerns.<sup>164</sup> Comparatively, the New Zealand report addresses what deterrence incorporates and the expectation for the immigration structure when it comes to prosecution and investigations. For example:

The Department has stated that prevention is defined and guided by policies and legislation, application procedures, deterrent prosecutions, staff training, and international liaison and relationship building. . . . We expected the Department to have . . . a high conversion rate from investigation to prosecution . . . [and] effective operational relationships with all relevant external agencies with responsibilities for investigating identity fraud.<sup>165</sup>

The Fraud Branch would be comparable to the United States USCIS FDNS. Like New Zealand, the GAO report highlighted steps to improve fraud detection by their fraud service, but New Zealand's report still emphasizes prosecutions.<sup>166</sup> By emphasizing prosecution, New Zealand is incorporating law enforcement into its deterrence plans and provides a foundation to incentivize law enforcement's participation.

However, ICE and DOJ act as the law enforcement arm of USCIS and are different agencies inside and outside the Department of Homeland Security.

Virtually all federal criminal prosecutions for immigration offenses in October 2021 (99 percent) were referred by the Department of Homeland Security (DHS). The two lead investigative agencies in DHS are Customs and Border Protection (CBP) whose border patrol agencies guard the county's borders, and Immigration and Customs Enforcement (ICE),

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<sup>163</sup> New Zealand Office of the Auditor-General, *Management of Immigration Identity Fraud*; Gambler, *Asylum*.

<sup>164</sup> Gambler, *Asylum*, 65–67.

<sup>165</sup> New Zealand Office of the Auditor-General, *Management of Immigration Identity Fraud*, 23, 43.

<sup>166</sup> See New Zealand Office of the Auditor-General, 44.

responsible for conducting most immigration criminal investigations under the immigration laws.<sup>167</sup>

This structure adds bureaucratic layers and compatibility issues that were highlighted in the GAO report.<sup>168</sup> The United States faces additional structural issues as the Immigration Court can also hear asylum claims as defensive applications, whereas New Zealand's Refugee Status Branch "decides all claims for refugee or protection status at first instance."<sup>169</sup> Additionally, New Zealand utilizes an incorporated fraud team that includes a dedicated legal solicitor.<sup>170</sup> It is also interesting to note that the immigration structure in New Zealand falls outside of a national security department and is instead under the Ministry of Business, Innovation, and Employment.<sup>171</sup> USCIS's FDNS has a broader mandate than the New Zealand Fraud Branch as it is also tasked with national security investigations and not just fraud.<sup>172</sup>

Fraud prosecutions reflect not only resources but also the political will to prioritize such crimes. As noted earlier, a few U.S. Congressional hearings have referenced the need for law enforcement to have sufficient resources but have failed to follow up with substantive action to address these concerns.<sup>173</sup> In New Zealand, reports indicate that the country took steps in the early 2000s to grow the size of the fraud branch, including budgeting and manpower.<sup>174</sup> However, some resources indicate that the Fraud Branch is now suffering from a lack of political backing.<sup>175</sup> As such, the Fraud Branch is having to make do with available resources, leaving smaller cases untouched, which may be fostering

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<sup>167</sup> Transactional Records Access Clearinghouse, "Immigration Prosecutions for October 2021."

<sup>168</sup> See generally Gambler, *Asylum*.

<sup>169</sup> New Zealand Immigration, "Immigration Factsheets Refugee and Asylum Seekers."

<sup>170</sup> See Dalziel, "Immigration Fraud Conference."

<sup>171</sup> Flynn, *Immigration Detention in New Zealand*, 4.

<sup>172</sup> Jones, *Immigration Benefits*, 10–11.

<sup>173</sup> H.R., *Asylum Fraud*, 3–4.

<sup>174</sup> Dalziel, "Immigration Fraud Conference." See also Cunliffe, "National's Shameful Record with Immigration Fraud."

<sup>175</sup> See Kilgallon and Fonseca, "The Big Scam."

a culture of fraud.<sup>176</sup> Similarly, the United States lacks the wherewithal to see fraud addressed in the immigration system. On January 20, 2021, President Biden removed fraud from the categories of immigration law enforcement priorities.<sup>177</sup> This removal brings into question “the extent to which resource limitations and policy preferences may inform enforcement priorities. . . . [T]he Biden Administration’s new immigration enforcement guidelines could exempt many removable aliens from enforcement efforts.”<sup>178</sup> New Zealand’s fraud statistics indicate that they do pursue individual applicants for fraud, and even if they may not pursue them criminally, they may opt for alternative recourses such as deportation.<sup>179</sup> However, as noted earlier, the United States has had a history of being reluctant to even go after applicants for fraud, instead focusing efforts on preparers of fraudulent applications.<sup>180</sup> Given the current law enforcement priorities, resource issues, and reluctance by the DOJ to actively pursue immigration fraud, especially by applicants, FDNS could flag every fraudulent application, but perpetrators know they are unlikely to be held accountable. The failure to rigorously pursue fraud amounts to a failure to uphold the integrity of the immigration system.

Comparing the United States and New Zealand’s immigration fraud entities, it becomes apparent that structural and resource issues influence the incentivization of prosecutions. The same issues appear when looking at domestic examples of benefit fraud prosecution.

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<sup>176</sup> Kilgallon and Fonseca.

<sup>177</sup> Hillel Smith, *The Biden Administration’s Immigration Enforcement Priorities: Background and Legal Considerations* (Washington, DC: Congressional Research Service, 2021), 3, <https://crsreports.congress.gov/product/pdf/LSB/LSB10578>.

<sup>178</sup> Smith, 5.

<sup>179</sup> Hogg, “OIA Response Fraud.”

<sup>180</sup> Chang, “Thousands Could Be Deported”; Gehrke, “DOJ Refuses to Investigate Asylum Claims.”

## **B. DOMESTIC EXAMPLE OF BENEFIT FRAUD PROSECUTION: MEDICARE FRAUD**

Fraud prosecution depends on regulation and a commitment to address such crime. The national Health Care Fraud and Abuse Control Program was established due to The Health Insurance Portability and Accountability Act of 1996 (HIPAA).<sup>181</sup> This Program provided mechanisms for the Department of Justice and related stakeholders to rigorously pursue fraud within the Medicare/Medicaid programs. Medicare fraud is an example of the Department of Justice and related stakeholders actively and consistently pursuing law enforcement remedies. The United States spends over \$800 billion per year on Medicare and Medicaid, but it is believed that “between 3 and 10 percent of this spending is lost to waste, fraud, and abuse. Even at the low end, that amounts to \$25 billion lost in 2008 alone.”<sup>182</sup> In needing to address Medicare fraud, Sheri Ferrar, the Executive Director of the Special Investigations Department for the Health Care Service Corporation, noted that:

Health care fraud cases are some of the most complex white-collar crime cases handled by prosecutors, necessitating dedicated staff. . . . In many jurisdictions, limited prosecutorial resources impact the ability to dedicate staff accordingly. Additionally, health care fraud cases compete with other investigative programs that are deemed higher priority.<sup>183</sup>

Malcolm Sparrow, a Professor of Practice of Public Management, told members of Congress that the weakness of fraud control as it pertains to the health care system lies with the perpetrator’s perception that they are unlikely to be caught or convicted.<sup>184</sup> He also noted that there was a lack of resources being directed toward the issue and that it could be addressed by pinpointing exact program loss rates due to fraud.<sup>185</sup> This indicates that

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<sup>181</sup> Department of Justice and Department of Health and Human Services, *Annual Report of the Departments of Health and Human Services and Justice: Health Care Fraud and Abuse Control Program FY 2020* (Washington, DC: Department of Justice and Department of Health and Human Services, 2021), 1, <https://www.justice.gov/criminal-fraud/file/1411906/download>.

<sup>182</sup> *Criminal Prosecution as a Deterrent to Health Care Fraud: Hearing before the Subcommittee on Crime and Drugs of the Committee on the Judiciary, United States Senate*, 111th Cong., 1st sess. (2009), 3, <https://www.govinfo.gov/content/pkg/CHRG-111shrg55465/html/CHRG-111shrg55465.htm>.

<sup>183</sup> S., 16.

<sup>184</sup> S., 13.

<sup>185</sup> S., 13.

having specific data on hand regarding the impact of fraud can help justify the allocation of resources to deterrence efforts. Lanny Breuer, an Assistant Attorney General for the Criminal Division of the DOJ, agreed that substantial prison sentences for health care fraud were needed as it goes to the “very foundation of deterrence” and that the DOJ was committed to deterrence.<sup>186</sup> Furthermore, Breuer noted that “greater investment in enforcement will pay significant [attention] to deter fraud.”<sup>187</sup> To accomplish that deterrence goal, the DOJ and related stakeholders settled on a “collaborative approach to identify and prosecute the most egregious instances of health care fraud, to prevent future fraud and abuse, and to protect program beneficiaries.”<sup>188</sup> The decision indicates that a team-based collaborative approach amongst stakeholders that incorporates law enforcement and has sufficient resources allocated to the cause is needed for incentivizing fraud prosecution.

The DOJ, along with Health and Human Services, stood up the Medicare Fraud Strike Forces in May of 2007.<sup>189</sup> The Strike Forces comprise:

Inter-agency teams made up of investigators and prosecutors that focus on the worst offenders in regions with the highest known concentration of fraudulent activities. The Strike Force uses advanced data analysis techniques to identify aberrant billing levels in health care fraud hot spots—cities with high levels of billing fraud—and target suspicious billing patterns, as well as emerging schemes and schemes that migrate from one community to another.<sup>190</sup>

The teams utilize a comprehensive approach and pursue both criminal and civil remedies for health care fraud.<sup>191</sup> For example, U.S. Attorney’s Offices have coordinators for both civil and criminal health care fraud to promote a comprehensive deterrence plan.<sup>192</sup> The

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<sup>186</sup> S., 6–7.

<sup>187</sup> S., 3.

<sup>188</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 1.

<sup>189</sup> S., *Criminal Prosecution as a Deterrent to Health Care Fraud*, 3.

<sup>190</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 8.

<sup>191</sup> S., *Criminal Prosecution as a Deterrent to Health Care Fraud*, 10.

<sup>192</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 96.

Strike Force model has enabled improved data and information sharing between stakeholders “to get critical data and information into the hands of law enforcement to track patterns of fraud and abuse and increase efficiency in investigating and prosecuting complex health care fraud cases.”<sup>193</sup> The model has been deemed largely effective as the teams have resulted in a record of success in identifying fraud and bringing it to prosecution.<sup>194</sup> District-specific Strike Forces currently operate in 16 geographical areas.<sup>195</sup> Agencies involved in Strike Forces include, but are not limited to, on the Federal side, the DOJ Fraud Section and U.S. Attorney’s Offices, FBI, Health and Human Services, Drug Enforcement Administration, and Internal Revenue Service, and law enforcement partners from State and Local entities.<sup>196</sup> These strike forces focus on investigations and prosecutions of individuals and corporations.<sup>197</sup> As one of the agencies involved in Strike Forces, The Federal Bureau of Investigation acts as the “primary agency for exposing and investigating health care fraud” and has declared that these investigations are a top priority for the White-Collar Crime Program.<sup>198</sup>

While U.S. Attorney’s Offices independently handle the majority of criminal cases, they “also partner with the Department’s Criminal Division on Medicare Fraud Strike Forces Teams. . . . Each Strike Force team consists of dedicated AUSAs [assistant United States attorneys] and support personnel from the USAO [U.S. Attorney’s Office], as well as from the Criminal Division.”<sup>199</sup> The DOJ Criminal Division Health Care Fraud Unit retains 80 prosecutors whose sole focus is complex health care fraud, usually involving

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<sup>193</sup> Department of Justice and Department of Health and Human Services, 12.

<sup>194</sup> “Medicare Fraud Strike Force,” Department of Health and Human Services, Office of Inspector General, accessed June 23, 2022, <https://oig.hhs.gov/fraud/strike-force/>.

<sup>195</sup> Department of Health and Human Services, Office of Inspector General.

<sup>196</sup> “Health Care Fraud Unit,” Department of Justice, accessed June 23, 2022, <https://www.justice.gov/criminal-fraud/health-care-fraud-unit>.

<sup>197</sup> Department of Justice.

<sup>198</sup> Thad Trousdale, “Health Care Fraud & the FBI,” *Missouri Medicine* 109, no. 2 (2012): 102–5, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6181733/>.

<sup>199</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 94.

opioids and prescription abuse, and the unit utilizes the Strike Force model.<sup>200</sup> The Strike Force teams have also led to the development of a senior-level tasks force called the Health Care Fraud Prevention and Enforcement Action Team to “increase coordination, intelligence sharing, and training among . . . investigators, agents, and prosecutors.”<sup>201</sup> The DOJ Health Care Fraud Unit has also launched a National Rapid Response Strike Force to “respond quickly to multi-jurisdictional health care fraud cases and priorities, without diverting attorneys from district-specific Strike Forces.”<sup>202</sup> This was largely in response to the impact of new technology broadening the reach of health care fraud.<sup>203</sup> Furthermore, the success of the Strike Force model has led to the DOJ developing and conducting training to “teach the Strike Force concept and case model to prosecutors, law enforcement agents, and administrative support teams.”<sup>204</sup> The Strike Force model has been built into a robust, comprehensive network of stakeholders incentivized to vigorously pursue and prosecute fraud.

Figure 4 shows the funding that has been designated to support the Strike Force structural model that the DOJ utilizes for fraud deterrence methods. Not only does the Strike Force have access to a dedicated budget, but the team also has a large discretionary fund as well.

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<sup>200</sup> Department of Justice, “Health Care Fraud Unit.”

<sup>201</sup> S., *Criminal Prosecution as a Deterrent to Health Care Fraud*, 4.

<sup>202</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 102.

<sup>203</sup> Department of Justice and Department of Health and Human Services, 102.

<sup>204</sup> Department of Justice and Department of Health and Human Services, 12.

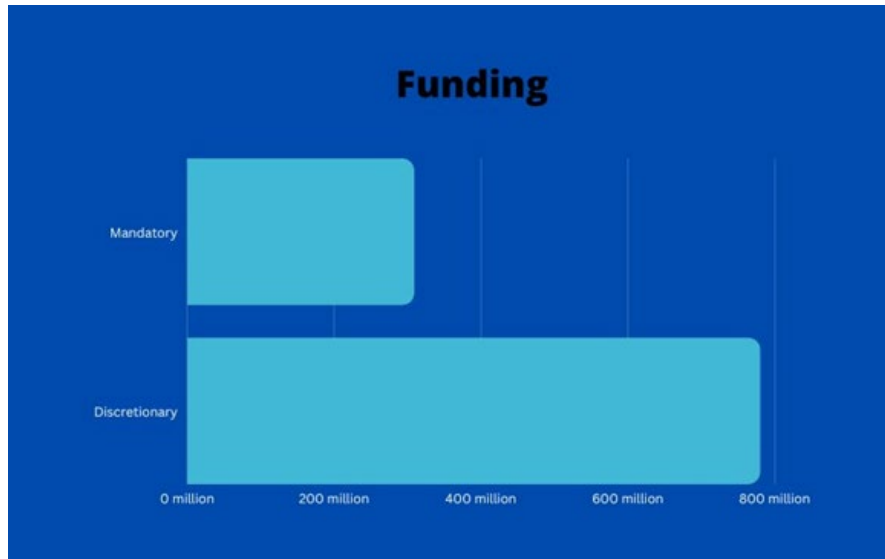


Figure 4. Strike Force Funding.<sup>205</sup>

As will be discussed in the comparative section, this access to funds for investigation and prosecution differs from what the Asylum Division has access to for prosecutions and indicates stronger support for the prosecution of Medicare fraud in general. In FY 2020, stakeholders received substantial allocations to support the fraud deterrence efforts, for example:

The United States Attorneys were allocated \$62.9 million in HCFAC [Health Care Fraud and Abuse Control] funding for civil and criminal health care fraud enforcement efforts. These funds supported attorneys, paralegals, auditors, and investigators, as well as litigation expenses for health care fraud investigations and cases. . . .

The Criminal Division was allocated \$28.3 million in HCFAC funding to support criminal health care fraud litigation and interagency coordination, which is carried out primarily by the Fraud Section’s Health Care Fraud Unit and, to a lesser extent, the Organized Crime and Gang Section.<sup>206</sup>

<sup>205</sup> Adapted from Department of Justice and Department of Health and Human Services, 7, 94, 101.

<sup>206</sup> Department of Justice and Department of Health and Human Services, 94, 101.



In addition to the financial support designated by Congress, the Strike Force Teams also have resources from State and local law enforcement entities at their disposal.<sup>207</sup>

Paired with the proper resources, the chosen structural model of Strike Forces has proved successful in incentivizing and prosecuting benefit fraud. This is evidenced by the active law enforcement activity in Medicare fraud around the country and successful outcomes. Figure 5 highlights law enforcement efforts and success in Fiscal Year (FY) 2020.



Figure 5. Law Enforcement Efforts and Success.<sup>208</sup>

By actively pursuing Medicare fraud investigations and prosecutions, fraudsters are put on notice that they have a higher likelihood of being caught as law enforcement is taking the issue seriously. The law enforcement efforts noted above have resulted in “more than

<sup>207</sup> Department of Health and Human Services, Office of Inspector General, “Medicare Fraud Strike Force.”

<sup>208</sup> Adapted from Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 1, 111.

\$1.8 billion in health care fraud judgments and settlements” in FY20.<sup>209</sup> Figure 6 shows that over the course of its history, Strike Forces have led to numerous cases being brought against fraudsters with a high rate of success in the court room.



Figure 6. Strike Force Court Successes.<sup>210</sup>

The majority of those charged with Medicare fraud either pled guilty or were convicted after trial, indicating the strength of the investigations and cases being brought through the collaborative effort of incentivized stakeholders.<sup>211</sup> Those charged by the Strike Forces had “collectively billed federal health care programs and private insurers approximately \$23.0 billion. . . . [M]ore than 2,800 defendants were sentenced to imprisonment for an average term of approximately 50 months.”<sup>212</sup> By analyzing payment trends in the Medicare field, it has been determined that the Strike Force efforts have had

<sup>209</sup> Department of Justice and Department of Health and Human Services, 1.

<sup>210</sup> Adapted from Department of Justice and Department of Health and Human Services, 9.

<sup>211</sup> Department of Justice and Department of Health and Human Services, 9.

<sup>212</sup> Department of Justice and Department of Health and Human Services, 9.

a successful deterrence impact, indicating in part that a team that has incorporated law enforcement stakeholders and that is properly supported by resources is vital for a comprehensive strategic deterrence plan.<sup>213</sup>

The success of the Strike Force Teams in prosecuting health care fraud continues. Recently:

The Department of Justice announced today criminal charges against 138 defendants, including 42 doctors, nurses, and other licensed medical professionals, in 31 federal districts across the United States. . . . The cases are being prosecuted by Health Care Fraud and ARPO [Appalachian Regional Prescription Opioid] Strike Force teams from the Criminal Division’s Fraud Section, in coordination with 31 U.S. Attorneys’ Offices nationwide.<sup>214</sup>

The DOJ is also focusing on COVID-19 related health care fraud and is deploying the same coordinated and comprehensive approach utilized by the Strike Forces Teams.<sup>215</sup> These methods address the weaknesses identified by Malcolm Sparrow in that perpetrators are on notice that law enforcement is committed to addressing health care fraud and that when caught, perpetrators will be held accountable.<sup>216</sup> The Strike Force method has been well structured and sufficiently funded to incentivize law enforcement’s diligent investigation and prosecution of fraud in the Medicare system.

The amount of up-to-date information on Medicare fraud overshadows what is available on asylum fraud, and the language and tone used to describe the Medicare situation differ remarkably from fraud in the asylum context. As illustrated in the prior section, when looking at Medicare fraud prosecution, there is a strong identification of prosecution as a vital deterrence mechanism and a recognition of the role law enforcement

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<sup>213</sup> Department of Justice and Department of Health and Human Services, 9.

<sup>214</sup> “National Health Care Fraud Enforcement Action Results in Charges Involving over \$1.4 Billion in Alleged Losses,” Department of Justice, September 17, 2021, <https://www.justice.gov/opa/pr/national-health-care-fraud-enforcement-action-results-charges-involving-over-14-billion>.

<sup>215</sup> Julian L. André, Benton Curtis, and Brigid McCarthy, “DOJ Demonstrates Commitment to COVID-19-Related Healthcare Enforcement with New Criminal Charges,” *National Law Review* 12, no. 122 (2022), <https://www.natlawreview.com/article/doj-demonstrates-commitment-to-covid-19-related-healthcare-enforcement-new-criminal>.

<sup>216</sup> Department of Justice, “National Health Care Fraud Enforcement Action.”

plays in deterrence plans. As a result, the Strike Force models utilize a comprehensive approach that incorporates all stakeholders, especially law enforcement. There is no such comprehensive approach to asylum fraud as USCIS and FDNS have had the fraud issue put squarely on their shoulders despite the lack of law enforcement powers. Medicare fraud efforts have been utilizing every means of recourse available to recover against fraud and have recognized that such efforts can produce a larger deterrence effect. When it comes to immigration, the discussion surrounding enforcement action appears to have centered around cost without acknowledgment of the deterrence effect of vigorous and consistent prosecution. For example, when ICE considered pursuing administrative penalties under the law, “although DHS [had] not conducted a formal cost-benefit analysis, according to ICE officials responsible for pursuing administrative penalties, these penalties are not cost-effective because the fines are less than the costs to impose them when a hearing is requested.”<sup>217</sup> Furthermore, even though there is a general acknowledgment that fraud is an issue for the asylum program, the tone of the conversation lacks the decisiveness found in the Medicare discussion. The Strike Forces have ensured that Medicare fraud prosecutions are vigorously pursued and that penalties are enforced. When looking at asylum fraud, prosecutions are ad hoc at best, and law enforcement is not fully incorporated into deterrence plans.

One could argue that the difference in prosecution is due to a matter of will. It is more palatable to go after doctors and insurance providers who are engaging in fraud that has a direct monetary impact on the American public than it does to target foreigners who are leaving countries and situations most Americans would never want to live in. While I agree that it may be a factor, it does not mean that the fact the law is failing to be enforced should be overlooked. What it does mean is that the issue of asylum fraud is more subject to political agendas and ideology. That reasoning also fails as a complete explanation for the lack of prosecution, as there are Americans engaging in asylum fraud for exploitation purposes such as labor authorizations and monetary gain.<sup>218</sup> Rather, as with New Zealand,

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<sup>217</sup> Jones, *Immigration Benefits*, 6.

<sup>218</sup> See, for example, *Liu*, No. 12-CR-934-01 (RA).

a case study of Medicare fraud reveals that structure and resources factor into the incentivization of prosecution for fraud and provide clear avenues for recourse in strengthening law enforcement involvement in fraud deterrence plans.

The language and tone difference when comparing Medicare and asylum fraud prosecutions may be influenced by an acknowledgment of scope. The Asylum Division is missing a clear scope as to the problem and resources needed to incentivize tackling the issue. Conversely, there is a grasp of the scope of Medicare fraud. The issue is understood well enough to be able to develop a loss profile which has enabled stakeholders in Medicare fraud to develop a return on investment (ROI) for advocating for prosecutions: “The return on investment (ROI) for the HCFAC program over the last three years (2018–2020) is \$4.30 returned for every \$1.00.”<sup>219</sup> Furthermore, there is a recognition in the Medicare context that utilizing prosecutions for deterrence can go beyond monetary recovery to dissuade future fraudsters and enhance the integrity of the system:

It is important to note that the ROI does not capture the full impact of the results of the Program. For example, criminal action, from either a search warrant, an indictment, or an arrest, prevents the defendant from continuing to defraud federal health care programs. . . . Further, the threat of oversight alone can have a sentinel impact that prevents future bad actors from defrauding Medicaid, Medicare, and other federal health care benefit programs.<sup>220</sup>

It is important that the tone used for discussing asylum fraud prosecution shifts, as it likely influences the structure and resources at various agency disposal. In 2009, then-President Obama placed health care reform at the top of his agenda.<sup>221</sup> Additionally, the Department of Justice and major stakeholders declared Medicaid fraud to be a top priority.<sup>222</sup> Millions of dollars have been allocated to the issue.<sup>223</sup> Even stakeholders such as the FBI have been

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<sup>219</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 8.

<sup>220</sup> Department of Justice and Department of Health and Human Services, 8.

<sup>221</sup> S., *Criminal Prosecution as a Deterrent to Health Care Fraud*, 1.

<sup>222</sup> See, for example, Trousdale, “Health Care Fraud & the FBI.”

<sup>223</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 7, 94, 101.

granted specific funding resources to direct investigations and prosecutions.<sup>224</sup> Medicare fraud deterrence has utilized a comprehensive approach that engages all stakeholders as well as their resources. Conversely, President Biden has since removed fraud from the list of immigration law enforcement priorities.<sup>225</sup> A search of open-source material fails to reveal a dedicated funding source for asylum fraud. Without sufficient resources, it is unlikely that law enforcement will be incentivized to investigate and prosecute asylum fraud. Furthermore, without proper funding, USCIS and the Asylum Division may not be able to structure in a way to facilitate and incentivize prosecutions with stakeholder input.

Medicaid has utilized the Strike Forces to great success. This model incorporates tasks law enforcement, including prosecutors, to teams across the country with a unified goal of investigating and prosecuting Medicaid fraud. Furthermore, instead of diverting the mission or resources of existing task forces when novel issues emerge, new Strike Forces are created as necessary.<sup>226</sup> For USCIS and the Asylum Division, FDNS does not have law enforcement powers and has a wide mandate to address all fraud and national security issues.<sup>227</sup> National security issues are not surprisingly going to take precedence over fraud. When new issues emerge, it is likely that resources may be diverted from existing units to manage competing priorities. As was brought up in the New Zealand analysis, USCIS has extra bureaucratic layers to go through to pursue prosecutions, namely, incorporating HSI into any investigation to address law enforcement matters and to review cases prior to going to an AUSA as directed through the agency memorandum of agreement (MOA).<sup>228</sup> This requires USCIS to funnel information outside of their division to ICE. This takes some control over investigations and prosecutions away from a division that has subject matter expertise in asylum and asylum fraud. It also raises the possibility of divided interest as ICE also has its own investigations and priorities that may compete with that of the Asylum

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<sup>224</sup> Department of Justice and Department of Health and Human Services, 3.

<sup>225</sup> Smith, *The Biden Administration's Immigration Enforcement Priorities*.

<sup>226</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 102.

<sup>227</sup> Jones, *Immigration Benefits*, 10–11.

<sup>228</sup> H.R., *Aftermath of Fraud by Immigration Attorneys*, 4.

Division. If a case is agreed upon, the DOJ presents an additional hurdle. The DOJ does not have a criminal immigration division as it does with civil.<sup>229</sup> As a result, any asylum fraud case brought to the DOJ is going to compete with a wide range of cases that have varying priorities and interests. A comprehensive structure or team to combat fraud provides for clear metrics and direction, incentivizing stakeholder participation in fraud deterrence.

### **C. LESSONS FROM INTERNATIONAL AND DOMESTIC BENEFIT FRAUD PROSECUTION**

New Zealand asylum fraud prosecution and U.S. Medicaid fraud prosecution highlight that law enforcement can be utilized for fraud deterrence when properly incentivized. Both case studies recognize law enforcement as vital to deterrence efforts, a recognition that is largely absent when considering asylum fraud in the United States. The language utilized by New Zealand and Medicaid fraud deterrence efforts makes it clear that prosecutions are a priority and have followed through by properly incentivizing investigation and prosecution efforts. Law enforcement in these areas has been incentivized to investigate and prosecute fraud when incorporated into a comprehensive structure with clear direction and resources. Even though the Biden Administration has de-prioritized immigration fraud for law enforcement, prosecutions can still be incentivized by addressing the structural and resource issues of the current system. Doing so would help reprioritize fraud and divert additional resources to help further incentivize action and promote fraud deterrence to uphold the integrity of the immigration system.

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<sup>229</sup> “Organizational Chart: Criminal Division,” Department of Justice, accessed October 7, 2022, <https://www.justice.gov/criminal/sectionsoffices/chart>; “Civil Division Organization Chart,” Department of Justice, accessed October 7, 2022, <https://www.justice.gov/civil/org-chart>.

#### **IV. CRAFTING THE BIG STICK: STRUCTURAL AND RESOURCE ISSUES IN FRAUD PROSECUTION THAT UNDERMINE EFFECTIVE UTILIZATION OF LAW ENFORCEMENT REMEDIES IN ASYLUM FRAUD DETERRENCE**

The government response to fraud in the asylum context should be to deter fraud from being introduced into the system from the onset rather than focusing the bulk of resources on identification after it has already entered the system. At this point, the damage has begun. While it makes sense to allocate resources to the identification phase to catch applications that have not been deterred, sensible changes will need to be made to dissuade attorneys and applicants from introducing the frivolous application. These changes will require stakeholders to be incentivized to investigate and prosecute fraud. The prior chapter identifies structure and resource as two issues that factor into the incentivization of prosecution. As will be discussed below, these issues have been alluded to in various literature as factors that need to be addressed in terms of asylum fraud. However, substantive recommendations are missing. This chapter will seek to identify structural and resource issues in fraud prosecution as it pertains to effectively utilizing law enforcement remedies in asylum fraud deterrence, enabling USCIS and stakeholders to take “appropriate and consistent actions against violators [as] an important element of fraud control and deterrence.”<sup>230</sup> The concepts of structure and resources will undoubtedly overlap at times as resources impact structure and vice versa. Policy decisions can also influence structure and resources in different ways. This chapter will seek to identify the unique facets of each that impact fraud deterrence efforts as it pertains to incentivizing law enforcement investigations and prosecutions. This chapter finds that solutions are needed to address the structural and resource issues if law enforcement partners are going to be properly incentivized to investigate and prosecute fraud.

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<sup>230</sup> Jones, *Immigration Benefits*, 35.



## A. STRUCTURAL AND RESOURCE ISSUES INFLUENCING FRAUD PROSECUTION

The current fraud deterrence structure is not conducive to the investigation and prosecution of asylum fraud. Currently:

Part of the problem is that responsibility [for asylum] is split among two departments and three agencies. U.S. Citizenship and Immigration Services, which is in Homeland Security and handles legal immigration cases, can grant asylum on initial review. The Executive Office for Immigration Review [EOIR], which is under the Justice Department, hears affirmative cases and appeals when USCIS doesn't grant asylum. U.S. Immigration and Customs Enforcement, which is also in Homeland Security, is responsible for arguing those cases before the Executive Office for Immigration Review.<sup>231</sup>

As a result, there are multiple agencies involved in processing asylum-related cases, each with varying agendas and priorities, especially considering that asylum is a subset of the overall immigration scheme. This becomes evident when honing in on fraud specifically. It takes several layers of bureaucracy to be able to get law enforcement entities involved in a case, let alone make it to prosecution. This may not seem unprecedented, as the Department of Justice prosecutes on behalf of many government agencies; however, immigration previously fell under the Department of Justice.<sup>232</sup> Figure 7 highlights the evolution of addressing fraud in the asylum system.

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<sup>231</sup> Dinan, "Immigrants Still in U.S. Years after N.Y. Asylum Fraud Ring Busted."

<sup>232</sup> U.S. Citizenship and Immigration Services, History Office and Library, *Overview of INS History* (Washington, DC: U.S. Citizenship and Immigration Services, 2012), 8, <https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf>.

# Evolution of Addressing Asylum Fraud

Immigration & Naturalization Services under DOJ

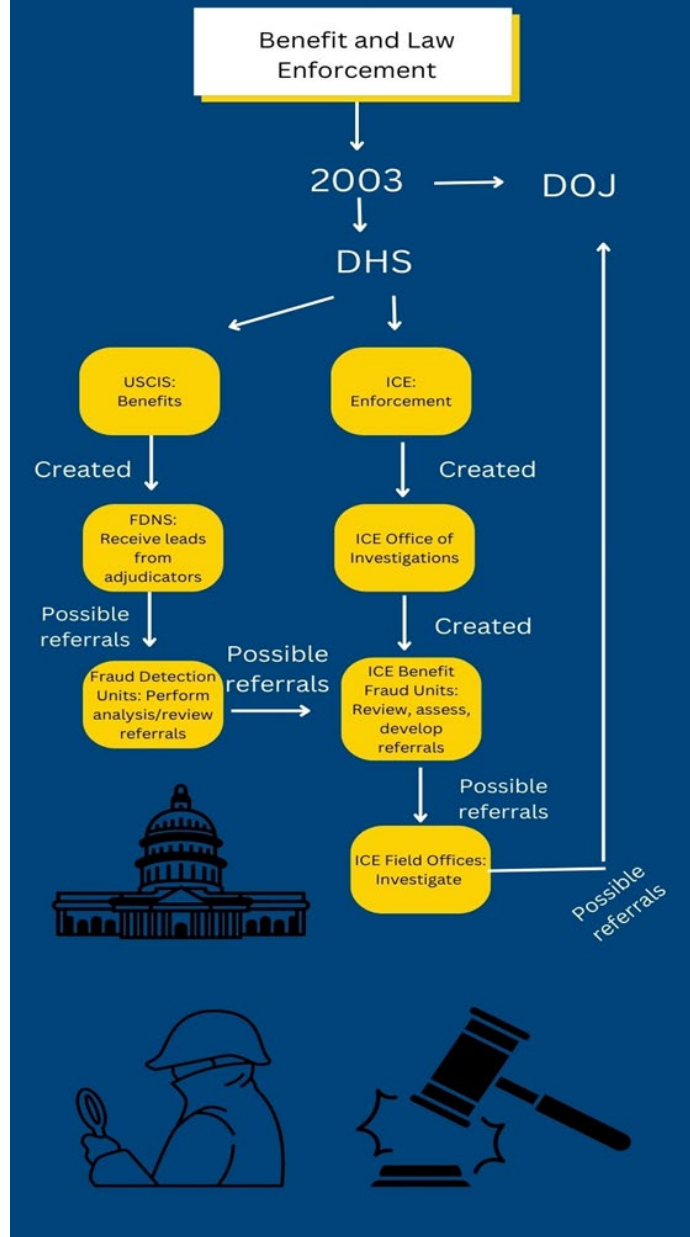


Figure 7. Evolution of Addressing Asylum Fraud.<sup>233</sup>

<sup>233</sup> Adapted from Jones, *Immigration Benefits*, 10–11.

FDNS was created in 2003 in part to review fraud referrals from adjudicators and determine if leads should be referred over to ICE.<sup>234</sup> It wasn't until 2005 that FDNS was tasked to asylum offices.<sup>235</sup> Being in the asylum office allows FDNS to conduct limited field inquiries for asylum offices in addition to working with adjudicators directly on fraud leads.<sup>236</sup> When FDNS suspects fraud, they can refer the information to Fraud Detection Units (FDU), which utilizes research specialists to review the referrals and decide if they should be referred to ICE for further action.<sup>237</sup> However, this unit is also responsible for a variety of other tasks, such as potential national security risks and fraud concerns identified from all different immigration benefit applications.<sup>238</sup> If a case makes it past the FDU and to ICE, it goes to Benefit Fraud Unit (BFU) under the ICE Office of Investigation.<sup>239</sup> The BFU would be looking at document and benefit fraud throughout the immigration system and not just asylum.<sup>240</sup> There is very little information about the BFU on ICE's webpage other than a statement that fraud is a serious threat and that ICE utilizes resources and task forces to investigate these issues.<sup>241</sup> If a BFU does find that information would benefit from further investigation, the BFU will forward the suspect information to a field office.<sup>242</sup> These cases usually involve "organizations and facilitators engaged in large-scale schemes."<sup>243</sup> Data from 2005 by USCIS indicated that "in fiscal year 2005, USCIS referred 2,289 immigration benefit fraud cases to ICE BFUs. However, about 26 percent were accepted by the BFUs. Neither USCIS nor ICE provided . . . information about which of the FDNS referrals accepted by the BFUs resulted in an ICE investigation."<sup>244</sup> Due to

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<sup>234</sup> Jones, 10–11.

<sup>235</sup> Jones, 10–11.

<sup>236</sup> Jones, 10–11.

<sup>237</sup> Jones, 10–11.

<sup>238</sup> Jones, 10–11.

<sup>239</sup> Jones, 10–11.

<sup>240</sup> Immigration and Customs Enforcement, "Identity and Benefit Fraud."

<sup>241</sup> Immigration and Customs Enforcement.

<sup>242</sup> Jones, *Immigration Benefits*, 11.

<sup>243</sup> Jones, 11.

<sup>244</sup> See Jones, *Immigration Benefits*, 35–36.

resources, ICE “prioritize their investigative resources and assign them to cases involving individuals who are filing large numbers of fraudulent applications for profit, because these cases generally have a greater probability of being prosecuted by the U.S. Attorneys Offices.”<sup>245</sup> ICE Field offices will then coordinate with USCIS and refer cases to U.S. Attorney’s Offices if they believe it merits prosecution.<sup>246</sup> Since 2003, there have been at least five layers of different work units to get through to get a suspected asylum fraud case to the DOJ for prosecution if you consider an additional work unit making the initial fraud identification outside of an FDNS unit, such as an asylum adjudicator. Even when HSI takes a case and determines that prosecution is warranted, the case then faces the priorities of the DOJ.

Currently, no office under the DOJ criminal division owns the issue of asylum fraud as there is no dedicated office of immigration on the criminal side. Asylum fraud cases presented in the appendix have been handled by a variety of offices under the DOJ, such as the Office of Organized Crime.<sup>247</sup> The fact that a variety of offices can handle criminal immigration means that asylum fraud cases are competing for the attention of a limited amount of attorneys against cases with all different types of cases with varying priorities. The attorneys of the DOJ are guided in part by guiding principles of federal prosecution.<sup>248</sup> Under the DOJ, prosecutors have “wide latitude in determining when, whom, how, and even whether to prosecute for apparent violations of federal criminal law.”<sup>249</sup> Several issues may put asylum fraud at a disadvantage when applying these principles compared to other cases that could be deemed more high-profile.

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<sup>245</sup> See Jones, *Immigration Benefits*, 35–36.

<sup>246</sup> Jones, 11.

<sup>247</sup> See, for example, U.S. Attorney’s Office, Southern District of New York, “Lawyer Pleads Guilty in Manhattan Federal Court to Participating in Massive Immigration Fraud Scheme,” Federal Bureau of Investigation, New York Field Office, April 12, 2013, <https://www.fbi.gov/newyork/press-releases/2013/lawyer-pleads-guilty-in-manhattan-federal-court-to-participating-in-massive-immigration-fraud-scheme>. See also the Appendix.

<sup>248</sup> Department of Justice, Justice Manual § 9-27.001 (2018), <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution>.

<sup>249</sup> Department of Justice, § 9-27.110.

In general, prosecutions should be commenced where it appears a federal offense has been committed and the evidence is likely to lead to a conviction “unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution.”<sup>250</sup> Regarding federal interest, the guiding principles of federal prosecution indicate several considerations that would likely impact asylum fraud prosecution, namely “federal law enforcement priorities, including any federal law enforcement initiatives or operations aimed at accomplishing those priorities. . . . [t]he deterrent effect of prosecution . . . [t]he interests of any victims; and [t]he probable sentence or other consequences if the person is convicted.”<sup>251</sup> The first factor on that list is law enforcement priorities. On January 20, 2021, President Biden removed fraud from the categories of federal immigration law enforcement priorities.<sup>252</sup> The deprioritization brings into question “the extent to which resource limitations and policy preferences may inform enforcement priorities.”<sup>253</sup> The principles of federal prosecution note that consideration of federal law enforcement priorities is necessary due to the need to allocate limited resources.<sup>254</sup> In gauging the potential deterrent effect of prosecution, the lack of knowledge as to scope of asylum fraud is a problem as it would be difficult to determine the return on investment. Furthermore, the principles suggest that when deciding to prosecute a potentially minor offense, attorneys should consider if there would be a “substantial cumulative impact on the community” if the offense were commonly committed.<sup>255</sup> Imagining the cumulative impact is a hypothetical exercise, but the fact that the scope of asylum fraud is not currently agreed upon and there is no definitive research on the impact of asylum fraud makes the exercise particularly difficult for attorneys to consider when it comes to asylum fraud prosecution.

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<sup>250</sup> Department of Justice, § 9-27.220.

<sup>251</sup> Department of Justice, § 9-27.230.

<sup>252</sup> Smith, *The Biden Administration’s Immigration Enforcement Priorities*, 3.

<sup>253</sup> Smith, 5.

<sup>254</sup> Department of Justice, Justice Manual § 9-27.230.

<sup>255</sup> Department of Justice, § 9-27.230.

The same issue impacts the consideration of the interest of any victims. Considering the cases presented in the appendix, many of the cases prosecuted represent situations where attorneys or fake attorneys took advantage of clients and filed applications without their full knowledge. The victims in these cases are quite sympathetic as they are immigrants and often vulnerable due to their legal status. Based on the cases cited in the appendix, there are very few prosecutions of cases where applicants are named as defendants.<sup>256</sup> In these cases, it may be because the victim would be the United States Government and potentially any state where the successful asylee was able to claim benefit as a result of their fraudulent application. The victim is not nearly as sympathetic, and looking at individual cases, it could be a difficult sell as to the impact on the government without a full understanding of the larger picture that fraud causes on the immigration system and, therefore, the cost to the American taxpayer. During Operation Fiction Writer, the DOJ sent a strong signal that applicants would not be prosecuted for fraud even when they may have knowingly participated.<sup>257</sup> When OFW first broke in the news, officials, including the U.S. Attorney's Office for the Southern District of New York, decided that clients would not be prosecuted.<sup>258</sup> Following the release of the GAO report, the chairman of the House Judiciary Committee demanded the asylum cases involved in OFW be reopened.<sup>259</sup> EOIR has independent authority to review cases where fraud is suspected; however, the DOJ declined "to investigate 3,700 cases of people receiving asylum after hiring lawyers who were convicted of preparing fraudulent asylum applications."<sup>260</sup> Instead of a coordinated effort by the immigration system and arguably its top law enforcement stakeholder, the DOJ, the burden was shifted squarely on DHS to handle the applicants that had received asylum and, in many cases, participated in the fraud scheme.<sup>261</sup> In 2018, National Public Radio reported that ICE's thousand-plus lawyer team

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<sup>256</sup> See, for example, *United States v. Kodithuwakku*, No. 1:19-cr-00604 (S.D.N.Y. filed August 27, 2019).

<sup>257</sup> Chang, "Thousands Could Be Deported."

<sup>258</sup> Chang.

<sup>259</sup> Chang.

<sup>260</sup> Gehrke, "DOJ Refuses to Investigate Asylum Claims."

<sup>261</sup> Chang, "Thousands Could Be Deported."

began the task of systematically reviewing the asylum cases tied to OFW after the lawyer on staff for the House Judiciary Committee that called for the review became the principal legal advisor for ICE under the Trump administration.<sup>262</sup> The review was promoted as a means to uphold the integrity of the asylum system.<sup>263</sup> However, this action was the direct result of pressure from Congress, and the onus was again put back on DHS (specifically ICE attorneys) as opposed to DOJ. Even though the resource burden was shifted to DHS, DOJ still had to expend resources in hearing the cases brought by ICE under its civil EOIR component.

Another factor in asylum fraud prosecutions that can impact an attorney’s decision to prosecute is the probable sentence, especially “whether such a sentence or other consequence would justify the time and effort of prosecution.”<sup>264</sup> The typical maximum sentences for the cases cited in the Appendix include five years of jail time.<sup>265</sup> The GAO report suggested that because asylum fraud cases did not typically result in significant jail time, this disincentivized DOJ as it influenced their cost-benefit analysis when deciding resource allocation, and as a result, HSI from pursuing these types of cases.<sup>266</sup> As noted earlier, I could not find any dedicated funding for fraud prosecutions. A congressional hearing held months before the release of the GAO noted a need to address resources. One Congressperson called for “smart changes that further assist USCIS to eliminate . . . [and] ensuring that ICE and DOJ dedicate appropriate resources to fully prosecute persons and groups that defraud the immigration system.”<sup>267</sup> Furthermore, the hearing noted, “As funding for enforcement skyrocketed in recent years, funding for the courts lagged behind, leading to massive backlogs. These delays . . . increased the potential for fraud. . . .

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<sup>262</sup> Chang.

<sup>263</sup> Chang.

<sup>264</sup> Department of Justice, Justice Manual § 9-27.230.

<sup>265</sup> See U.S. Attorney’s Office, Southern District of New York, “Attorneys and Managers of Fraudulent Asylum Scheme Charged”; “Three Defendants Plead Guilty to Participating in Massive Immigration Fraud Scheme,” U.S. Attorney’s Office, Southern District of New York, May 13, 2015, <https://www.justice.gov/usao-sdny/pr/three-defendants-plead-guilty-participating-massive-immigration-fraud-scheme>. The charges included conspiracy to commit offense or to defraud the United States.

<sup>266</sup> Gambler, *Asylum*, 66–67.

<sup>267</sup> H.R., *Asylum Fraud*, 3–4.

Adequate resources are essential for maintaining the integrity and effectiveness of the system.”<sup>268</sup> Resource issues continue to be a concern in USCIS Annual Reports and need to be addressed to incentivize fraud prosecutions.<sup>269</sup>

## **B. MOVING FORWARD: LOOKING FOR WAYS TO INCENTIVIZE ASYLUM FRAUD PROSECUTION**

The current state of asylum fraud prosecutions is impacted by structural and resource barriers. Getting an asylum fraud case to prosecution faces multiple bureaucratic layers, with each layer facing competing priorities and interests. Furthermore, there is a lack of designated resources in the way of budgetary or prosecutors to incentivize law enforcement stakeholder participation in the fraud prosecution process. Remedies to address the barriers that disincentivize prosecutions must include designated resources for asylum fraud prosecution as well as address priority issues that impact prosecutorial considerations. As law enforcement needs to be included and incentivized to prosecute cases as part of a comprehensive fraud deterrence strategy, the final chapter looks at recommendations and further research needed to incentivize the prosecution of asylum fraud.

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<sup>268</sup> H.R., 4.

<sup>269</sup> Dougherty, *Annual Report 2020*, 41–47.



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## **V. CARRYING THE BIG STICK: RECOMMENDATIONS FOR INCENTIVIZING FEDERAL LAW ENFORCEMENT PROSECUTION OF ASYLUM FRAUD AND ADDITIONAL RESEARCH NEEDED**

Asylum fraud is complex. There is no way around that. The topic provides many avenues that can and should be explored further, including the unique nature of, and considerations made for, fraud in the asylum context. This thesis only touches on one brief facet of fraud, which is how to incentivize prosecutions through law enforcement involvement once fraud is discovered. Even then, there are additional areas to review, such as the psychological components of asylum fraud deterrence. However, at a minimum though, there needs to be an acknowledgment and incorporation of law enforcement into fraud deterrence plans. USCIS does not operate in a vacuum. As such, it cannot be expected to tackle deterrence issues alone. Key stakeholders need to be involved in fraud deterrence efforts. Based on the analysis in the preceding chapters, this thesis advocates for reprioritizing fraud under law enforcement priorities and a criminal immigration fraud office within the Department of Justice to address structural and resource issues disincentivizing investigation and prosecutions. Finally, this chapter recommends additional research needed to promote these changes.

### **A. REPRIORITIZING FRAUD**

Fraud needs to be reprioritized as an immigration law enforcement priority. Law enforcement priorities are a factor when considering what cases to prosecute criminally. The reprioritization would also have a trickle down effect on the current fraud investigation structure. If DOJ were prioritizing fraud cases, it is likely that HSI would be more inclined to investigate and refer asylum fraud cases to the DOJ. It was noted earlier that HSI was reluctant to take referrals from USCIS or refer asylum fraud cases to the DOJ because they were aware of or perceived a lack of interest in asylum fraud cases.<sup>270</sup> Furthermore, the Transactional Records Access Clearinghouse, which keeps statistics on immigration-

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<sup>270</sup> Gambler, *Asylum*, 65–67.

related matters, noted that immigration matters such as illegal border crossings, criminal referrals, and prosecutions were primarily driven “by policy decisions directing . . . federal prosecutors to focus on specific crimes for federal prosecution.”<sup>271</sup> The fact that referrals and prosecutions were driven by policy supports the assertion that reprioritizing fraud would incentivize law enforcement stakeholders to actively participate in fraud deterrence and contribute to a more comprehensive fraud deterrence strategy.

Reprioritizing fraud can be justified based on the homeland security aspects that can flow from immigration fraud as well as the strain fraud puts on an already stretched agency such as USCIS’s Asylum Division. Congress has an interest in directing resources to the fraud issue and making it a priority. For instance, Congress has directed USCIS to address the asylum backlog and has poured 275 million in the fiscal year 2022 into USCIS to help address this issue.<sup>272</sup> Part of the proposed Presidential budget for the fiscal year 2023 includes \$765 million to assist USCIS in addressing the increased asylum case load.<sup>273</sup> As indicated in this thesis, fraud could contribute to 20 percent of the backlog.<sup>274</sup> The fraud cases are one clear impediment to fulfilling the Congressional mandate. Additionally, due to the strain USCIS and the Asylum Division have been under, Congress had to divert money to an agency that is typically self-sustaining.<sup>275</sup> It should also be noted that currently, there is no fee for applying for asylum, so USCIS shoulders the burden of the asylum program.<sup>276</sup> Recently, USCIS published a proposed rule for a specific asylum benefit fee that would be collected from nonrelated immigration filings.<sup>277</sup> Therefore, asylum fraud puts an increased burden on the entire Immigration system by diverting resources to address the adjudication and impact of fraudulent applications. Reprioritizing

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<sup>271</sup> Transactional Records Access Clearinghouse, “Decline in Criminal Immigration Prosecutions.”

<sup>272</sup> Cora Wright, “Barriers and Backlog,” Human Rights First, October 3, 2022, <https://humanrightsfirst.org/library/barriers-and-backlog-asylum-office-delays-continue-to-cause-harm/>.

<sup>273</sup> Wright.

<sup>274</sup> See the discussion on the scope of the fraud problem in Chapter II.

<sup>275</sup> Lily Jamali, “Immigration Fees Would Go Up under USCIS Proposal,” Market Place, January 4, 2023, <https://www.marketplace.org/2023/01/04/immigration-fees-would-increase-under-new-uscis-proposal/>.

<sup>276</sup> U.S. Citizenship and Immigration Services, “Asylum.”

<sup>277</sup> Jamali, “Immigration Fees Would Go Up under USCIS Proposal.”

and addressing fraud in the asylum program will need to be a long game. Resources will need to be expended to combat the resources being drained in addressing fraudulent applications to promote a deterrence effect and change the mindset that committing asylum fraud is low risk.

Priorities and resources are tied together. By setting fraud as a priority, there is a clear mission for a work unit to pursue fraud and helps advocate for additional resources. “Congress, through the annual appropriations process, can . . . have a profound effect on enforcement decisions that are premised on the availability of resources.”<sup>278</sup> Every stakeholder mentioned in this paper has referenced resource issues as impacting their capacity for conducting investigations and prosecution. The case comparison in this thesis indicates that resources are an important component of incentivizing fraud prosecutions. If fraud was reprioritized, “United States Attorneys [would be] required to establish their own priorities (in consultation with law enforcement authorities), within the national priorities, in order to concentrate their resources on problems of particular local or regional significance.”<sup>279</sup> Reprioritizing fraud would enable “the Attorney General and individual United States Attorneys [to] implement specific federal law enforcement initiatives and operations designed at accomplishing those priorities” such as criminal immigration fraud office under the Department of Justice.<sup>280</sup>

## **B. CREATION OF A CRIMINAL IMMIGRATION FRAUD OFFICE**

USCIS needs to fully incorporate law enforcement into asylum fraud deterrence plans by incentivizing investigations and prosecutions. The role of law enforcement needs to be acknowledged and incorporated into fraud deterrence plans so that cases are investigated and carried out to prosecution so that perpetrators are aware that they will be held responsible for committing fraud. An immigration fraud office under the criminal division of the DOJ is needed to address structural and resource issues that impede fraud prosecutions. This would benefit not only the Asylum Division but the entire immigration

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<sup>278</sup> Smith, *The Biden Administration’s Immigration Enforcement Priorities*, 6.

<sup>279</sup> Department of Justice, Justice Manual § 9-27.230.

<sup>280</sup> Department of Justice, § 9-27.230.

system, as the office would ultimately be responsible for the prosecution of all immigration benefit fraud.

The establishment of a criminal immigration fraud office would incentivize law enforcement to prosecute asylum fraud by addressing current structural and resource issues. Having a criminal immigration fraud office would likely result in higher case investigation and prosecution as the purpose of the immigration fraud office would be to focus on addressing fraud in the immigration system. A new office would address the issue of multiple agencies involved in processing asylum fraud-related cases, each with varying agendas and priorities. As noted in Chapter IV, it takes several layers of bureaucracy to be able to get law enforcement entities involved in a fraud case, let alone make it to prosecution. A criminal immigration fraud office would not only give needed focus and prioritization to fraud, but it would also consolidate the key law enforcement stakeholders and USCIS under one roof, thereby reducing the ad hoc approach to investigations and prosecutions and promoting a more comprehensive and efficient approach.

FDNS and HSI could task staff to the criminal immigration office in each jurisdiction, which would then give them access to a dedicated prosecutor to help review, investigate, coordinate, and prosecute fraud in their jurisdiction. A new office such as this could utilize the methods of the Medicare Strike Force Teams discussed in Chapter III or develop their own unique strategy for comprehensively addressing asylum and immigration fraud. The strategy could include developing a mechanism by which to liaise with ICE attorneys who are handling EOIR cases that are tied to immigration fraud schemes. For example, if a decision was made not to criminally prosecute applicants involved in a fraud scheme for a particular reason, there could still be a coordinated effort to pursue fraud-related charges in the immigration hearing to promote fraud deterrence as part of a comprehensive strategic deterrence plan.

Standing up a new office under the DOJ would also direct the necessary resources and funding to investigations and prosecutions. As seen with the Medicaid Strike Force Teams, Teams, and related stakeholders received designated funding to focus on

investigating and prosecuting benefit fraud.<sup>281</sup> As a new office for criminal immigration fraud would likely only be stood up if fraud was recognized as a priority, United States Attorneys would be able to concentrate resources on the fraud problem.<sup>282</sup>

The exact costs of establishing a criminal immigration fraud office are unknown. However, the recently established De-Naturalization Unit under the DOJ Civil Division Office of Immigration Litigation requested \$207.6 million to investigate 887 leads and review 700,000 files in their FY2019 budget.<sup>283</sup> The Medicare Strike Force Teams, which tackle benefit fraud, the recent budget was \$200 million in mandatory funding and just shy of \$800 million in discretionary.<sup>284</sup> The cost will be impacted by the overall size of the established office. Factors to be considered would be labor, supplies/equipment, court costs, and travel. Requirements for training may be limited depending on reorganization efforts and tasking already trained Homeland Security Investigators, FDNS, and litigators to the newly formed office. However, training will be required for any new procedures developed as part of the reorganization initiative. Some of the funding could be supplemented by shifting resources from existing FDNS and HSI units that may find their tasks consolidated under a criminal immigration fraud office. Considerations should be made as to whether successful prosecutions could result in financial damages or penalties that could help fund the office and fraud prosecution initiative.

There are several potential challenges to this initiative. Currently, the scope of asylum fraud is unknown. This creates a buy-in issue for stakeholders to focus resources on addressing the issue. Furthermore, USCIS, ICE, and other agencies in the executive branch have varying levels of immigration law enforcement discretion. This creates a structurally disjointed approach to immigration, as there are competing bureaucratic elements with varying priorities. Yet each element has influence over the other due to their

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<sup>281</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 7, 94, 101.

<sup>282</sup> Department of Justice, Justice Manual § 9-27.230.

<sup>283</sup> “Featured Issue: Denaturalization Efforts by USCIS,” American Immigration Lawyers Association, August 27, 2021, <https://www.aila.org/infonet/featured-issue-denaturalization-efforts-by-uscis>.

<sup>284</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 7, 94, 101.

different levels of law enforcement discretion. Existing procedures and guidelines regarding the investigation and prosecution of asylum fraud, specifically the memorandums of agreement between USCIS and ICE, would either conflict or become obsolete under a criminal immigration fraud office of the DOJ. This can lead to interagency and intra-agency rivalries that may perceive the establishment of a criminal fraud office as a threat to their existing power as they could face a loss of authority. Additionally, on January 20, 2021, President Biden removed fraud from the categories of immigration law enforcement priorities.<sup>285</sup> This disincentivizes law enforcement partners from investigating and prosecuting asylum fraud. The creation of a criminal immigration office will need significant input from legal teams and inter/intra agency cooperation, but establishing new offices within the DOJ and creating task forces is not without precedence.

Fraud needs to be reprioritized when it comes to immigration law enforcement in order to establish a criminal immigration fraud office. This will require buy-in from Asylum Division stakeholders. USCIS is the primary stakeholder, as the asylum program falls under its purview. The Asylum Office's Fraud Detection and National Security (FDNS) team may also be looped in at any point to review fraud or national security indicators identified during the adjudicative process along with HSI under ICE.<sup>286</sup> USCIS is also dependent on U.S. Attorney's Offices to prosecute criminal charges for U.S. attorneys and individuals involved in immigration fraud.<sup>287</sup> These stakeholders make up critical components of USCIS's legal arm: DOJ (specifically U.S. District Attorneys) and ICE. Finally, Congress, along with the Executive Branch, are stakeholders as the President has set immigration law enforcement priorities and has directed the Asylum Division through a series of executive orders, and Congress can influence asylum initiatives through budgetary action.<sup>288</sup> Additional research is needed to create the necessary buy-in from stakeholders. As it stands right now, the impact of asylum fraud is ill-researched, and what little information is out there is out of date. The next section will provide recommendations

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<sup>285</sup> Smith, *The Biden Administration's Immigration Enforcement Priorities*, 3.

<sup>286</sup> Department of Homeland Security, *Privacy Impact Assessment for the Pangaea*, 3–4.

<sup>287</sup> Gambler, *Asylum*, 3, 65.

<sup>288</sup> Smith, *The Biden Administration's Immigration Enforcement Priorities*, 3, 6.

as to additional research needed to create the buy-in to support the establishment of a criminal immigration office under the DOJ. Clear messaging would also help garner stakeholder support for addressing asylum fraud through initiatives such as a criminal immigration fraud office. Asylum fraud is a threat to homeland security and “the integrity of the lawful immigration system.”<sup>289</sup> Granting a fraudulent asylum case has implications for security and resources. Applicants who were not entitled to a benefit receive one, thereby becoming entitled to various other benefits, such as applying for legal residence. Individuals, who may not have been adequately identified due to the fraud, are then legally authorized to stay in the United States.<sup>290</sup> This impacts all Stakeholders mentioned above and should be emphasized as the primary reason to establish a criminal immigration fraud office within the DOJ.

Additionally, it should be communicated to law enforcement that asylum fraud negatively impacts their available resources, and efforts should be made to address the problem to alleviate some of the strain fraud causes on an overburdened system.<sup>291</sup> This can be illustrated through fraud schemes such as Operation Fiction Writer (OFW) out of New York, which had a significant spillover effect on the immigration court under the DOJ and whose fallout is still ongoing.<sup>292</sup> Therefore, DOJ and HSI have a specific interest in reducing the strain of fraudulent applications. Furthermore, Congress and the Executive Branch have an interest in its immigration system running efficiently and relieving the burden caused by fraud. As such, a criminal immigration fraud office under the DOJ, as part of a comprehensive asylum fraud deterrence plan (as well as overall immigration fraud deterrence) aimed at increasing prosecutions and deterring fraudulent applications, would be a benefit to all Stakeholders.

Establishing the effectiveness of a criminal immigration fraud office would take time as it would be subject to factors such as investigation and prosecution times. However,

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<sup>289</sup> Immigration and Customs Enforcement, “Identity and Benefit Fraud.”

<sup>290</sup> U.S. Citizenship and Immigration Services, “Types of Asylum Decisions.”

<sup>291</sup> See also Dougherty, *Annual Report 2020*, 44–45.

<sup>292</sup> Gambler, *Asylum*, 32–33; Chang, “Thousands Could Be Deported.”



once prosecutions were taking place, plans could be put into place to start a review process to analyze the effectiveness of investigation tactics and prosecution strategy under the new office. Specifically, a review should consider the functioning of the unit by evaluating workflow between agencies, the number of investigations, the comparison of work and outcome between the various legal jurisdiction, and the success of prosecution. It will take longer for numbers to be developed as to the impact of increased fraud prosecution on overall deterrence and will require detailed accounting between agencies.

Looking at long-term solutions, the Asylum Division, and immigration in general, is impacted by the changing political policies that new administrations bring. This impacts the stable functioning of an entity meant to uphold immigration laws, which includes addressing immigration fraud. Congressional legislation charging the DOJ with the prioritization of addressing criminal immigration fraud through the establishment of a specialized office or taking steps to provide new legislation to strengthen fraud immigration fraud deterrence, in general, would create the stability needed for a comprehensive fraud deterrence strategy. In the meantime, it is clear that additional research will be needed to bolster general knowledge as to the exact impact of fraud on the Asylum Division and the immigration system.

### **C. ADDITIONAL RESEARCH NEEDED**

Additional research is needed to carry out the above recommendations and to create the necessary buy-in from stakeholders. As it stands right now, the impact of asylum fraud is ill-researched, and what little information is out there is out of date. Two reports need to be generated, one on the scope of fraud and another on the current state of the fraud investigation and prosecution process. First, USCIS requires a thorough evaluation of the asylum program with regard to fraud to develop a clearer picture of the scope of the problem. By formulating a supported estimated fraud rate, the program would be able to develop a report as to the loss occurring due to fraud. Factors to consider when formulating the estimated loss would include, but not be limited to, time, labor, resources, financial benefits received, and cost of investigation and prosecution. Fraud is a compounding problem. Not only do unqualified applicants gain access to benefits, but so do any

dependents that may have been attached to their applications. Alternatively, an asylee can later petition for qualified dependent relatives to join them based on their original fraudulent application.<sup>293</sup> Successful fraud begets fraud, especially when there is a culture of impunity, which can also undermine trust in the program. By developing this loss profile, USCIS and stakeholders could further develop an estimated return on investment (ROI) for the cost of investigation and prosecution of fraud, keeping in mind that not all benefits of prosecution can be captured by ROI.<sup>294</sup> Producing a loss profile would help establish for Congress and stakeholders a clear picture of the scope of the problem, and an ROI would help USCIS and stakeholders advocate for structural and resource changes, including dedicated funding strings to accomplish these changes.

Second, an evaluation needs to be completed to assess the relationship between agencies as well as the impact of DOJ and ICE policies when it comes to the investigation and prosecution of asylum fraud. This evaluation can be similar to the assessment conducted by New Zealand into the Fraud Branch's investigation and prosecution structure. In doing so, the influence of stakeholders on the deterrence process could be assessed while acknowledging the role of law enforcement in asylum fraud deterrence. The GAO can conduct and issue an updated report as to the status of asylum fraud investigation and prosecution. Specifically, the report should address gaps in their prior reports pertaining to resources and the impact of law enforcement stakeholders on deterrence, which would contribute to a better understanding of how a more streamlined fraud investigation process under a criminal immigration fraud division of the DOJ could promote a more comprehensive and successful fraud deterrence strategy. The GAO's ability to initially contribute to the discussion was likely constrained by a lack of understanding as to the scope of the problem. As USCIS's Asylum Division has completed its fraud risk profile for affirmative cases as of 2021, GAO should consider providing an updated report on USCIS's ability to address fraud and look more thoroughly at the impact

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<sup>293</sup> "I-730: Refugee/Asylee Relative Petition," U.S. Citizenship and Immigration Services, accessed January 16, 2023, <https://www.uscis.gov/i-730>.

<sup>294</sup> Department of Justice and Department of Health and Human Services, *Health Care Fraud and Abuse Control Program*, 8.

of resources on the system's ability to combat fraud, evaluate statistical data and analyze the impact of ICE and the DOJ on asylum fraud deterrence.<sup>295</sup> A thorough report will help incorporate law enforcement into deterrence plans and provide a foundation for advocating for changes to resource and structural issues that disincentivize prosecutions.

A working group will need to be formed to address standing up an immigration fraud office under the criminal side of the DOJ. Specifically, a national working group should have stakeholders encompassing USCIS (specifically the Asylum Division, FDNS, and Office of Chief Counsel), HSI, DOJ, and a Congressional and Executive liaison. Both agencies and the executive branch have varying levels of immigration law enforcement discretion.<sup>296</sup> As such, all need to be included in a working group discussion as any changes would impact current divisions of power and could flame agency rivalry and create resistance to needed change if an agency or division felt their power was being diminished. Including all relevant stakeholders in a working group would allow the group to identify these issues, work through them, and create buy-in for proposed changes. The working group would evaluate the establishment of an immigration fraud division under the DOJ and reprioritizing fraud under the immigration law enforcement priorities. Items to consider, at minimum, would be legal grounds, availability of resources, and impact on current procedures and guidelines.

There may be other unique fraud deterrence options to consider that would be worthy of additional research. For example, pursuing cases in state court may provide more creative options for pursuing prosecutions than relying on support from HSI and DOJ. As indicated in the appendix, it appears that FDNS is already starting to take the initiative in pursuing state-based prosecutions. Research as to the effectiveness and impact of these prosecutions as opposed to federal prosecutions should be an avenue for further research. Another possibility would be the impact of granting law enforcement powers to FDNS. This could alleviate structural and resource issues by bypassing HSI and putting investigations and enforcement action under teams that are highly specialized in specific

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<sup>295</sup> Gambler, *Asylum*.

<sup>296</sup> Smith, *The Biden Administration's Immigration Enforcement Priorities*, 5.

areas of immigration law, as opposed to funneling all immigration fraud concerns under the umbrella of HSI. This could free up resources for HSI and put FDNS in direct contact with the DOJ, allowing for a more consolidated and streamlined investigative and prosecutorial process.

The above research and working group are necessary for promoting the structural and resource changes noted in this paper to incentivize the prosecution of asylum fraud. There are also additional avenues for further research that can help promote unique solutions to the issue of fraud and further a more comprehensive fraud deterrence strategy. Any additional work in the field of asylum fraud deterrence will serve to protect the integrity of this vital humanitarian program.

#### **D. CONCLUSION: SPEAK SOFTLY AND CARRY A BIG STICK**

Human beings have yet to run out of ways to harm each other. The Asylum Division of USCIS offers those that have suffered some of the worst harms imaginable shelter. Yet there are those that would exploit that humanity. As it stands, asylum fraud is low risk, high reward. To change that equation, USCIS needs a big stick—prosecutions.<sup>297</sup> By carrying out consistent investigations and prosecutions, perpetrators will be forced to reevaluate in fraud is worth the risk, as they know fraud is being taken seriously. Consistent and rigorous investigations and prosecutions will require structural and resource issues to be addressed to incentivize prosecutions and law enforcement stakeholders to be incorporated into a comprehensive strategic asylum fraud deterrence plan. Until then, the already stretched-thin Asylum Division is left fighting fraud with one hand tied behind its back.

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<sup>297</sup> “Sep 2, 1901 CE: Big Stick Diplomacy,” National Geographic, accessed January 8, 2023, <https://education.nationalgeographic.org/resource/big-stick-diplomacy>.

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**APPENDIX. AFFIRMATIVE ASYLUM CASE SCHEMES  
CRIMINALLY PROSECUTED OVER THE LAST 10 YEARS**

<b>Case/Operation Name</b>	<b>Location/Year</b>	<b>Pertinent Charges</b>	<b>Outcome</b>	<b>Comments</b>
Operation Fiction Writer <sup>298</sup>	New York/2012 indictments	Ex: Title 18 U.S.C. § 371 Conspiracy and Title 18 U.S.C. §1546(a) Immigration Fraud	Many pled guilty to Title 18 U.S.C. 371 Conspiracy to Commit Immigration Fraud. Some sentences were for 2 years in prison.	Multi-year investigation. Round up of 30 individuals, including 8 lawyers and numerous office staff. Prosecuted by Office of Organized Crime. Over 5,700 suspect applications were filed.
Andreea Dumitru <sup>299</sup>	SDNY/2018 (superseding indictment)	Title 18 U.S.C. §§ 1546 (a) (Immigration Fraud) and 2 and Title 18 U.S.C. §1001(a)(2) and (3), and 2 (False Statements)  Title 18 U.S.C. §§ 102A(a)(1) (Aggravated Identity Theft)	Sentenced to five years in Prison and forfeit \$157,500.	2012 through 2017, at least 246 applications filed by the lawyer were identified as fraudulent.

<sup>298</sup> Semple, Goldstein, and Singer, “Asylum Fraud in Chinatown”; Dinan, “Immigrants Still in U.S. Years after N.Y. Asylum Fraud Ring Busted”; Chang, “Thousands Could Be Deported”; “Matter of Giles,” Justia, accessed February 15, 2023, <https://law.justia.com/cases/new-york/appellate-division-first-department/2014/m-4089.html>; Liu, No. 12-CR-934-01 (RA); Gambler, *Asylum*, 32–33. Unless otherwise indicated, the source or sources for each case are contained in a single footnote.

<sup>299</sup> United States v. Dumitru, 991 F.3d 427 (2d Cir 2021); “Queens Immigration Attorney Sentenced to Five Years in Prison for Operating Asylum Fraud Scheme,” U.S. Attorney’s Office, Southern District of New York, May 8, 2019, <https://www.justice.gov/usao-sdny/pr/queens-immigration-attorney-sentenced-five-years-prison-operating- asylum-fraud-scheme>.

Case/Operation Name	Location/Year	Pertinent Charges	Outcome	Comments
Mosha/ Greenberg/ Danskoi <sup>300</sup>	SDNY/2021	Title 18 U.S.C. § 371 Conspiracy to Defraud the United State and Title 18 U.S.C. §1546(a) Immigration Fraud	By December 20, 2022, convictions were secured against all three.	Lawyers and preparers coached applicants on false narratives. Case prosecuted by DOJ offices for money laundering and transnational enterprise unit.
Dzhamgarova/ Reznik/ Arcadian <sup>301</sup>	SDNY/2021	Title 18 U.S.C. §1546(a) Immigration Fraud	All pled guilty by 2023 to “one count of conspiring to commit immigration fraud, and each faces a maximum of five years in prison.” <sup>302</sup>	2018 to 2021, lawyers and preparer, for example, advised clients to falsely claim membership in the LGBTQ community. Case prosecuted by DOJ offices for money laundering and transnational enterprise unit.

<sup>300</sup> U.S. Attorney’s Office, Southern District of New York, “Attorneys and Managers of Fraudulent Asylum Scheme Charged”; “Immigration Attorney and CEO of Immigration Services Company Convicted at Trial of Conspiring to Commit Immigration Fraud,” U.S. Attorney’s Office, Southern District of New York, December 20, 2022, <https://www.justice.gov/usao-sdny/pr/immigration-attorney-and-ceo-immigration-services-company-convicted-trial-conspiring>.

<sup>301</sup> “Attorneys and Associate of Immigration Law Firm Plead Guilty to Participating in Asylum Fraud Scheme,” U.S. Attorney’s Office, Southern District of New York, January 25, 2023, <https://www.justice.gov/usao-sdny/pr/attorneys-and-associate-immigration-law-firm-plead-guilty-participating-asylum-fraud>; U.S. Attorney’s Office, Southern District of New York, “Attorneys and Managers of Fraudulent Asylum Scheme Charged”; “In Brooklyn Immigration Case Rezkik Pleads & Wants Allocation Sealed but Press Present,” Inner City Press, accessed November 6, 2022, <http://www.innercitypress.com/sdny65avyskocilbklynasylumicp082422.html>.

<sup>302</sup> U.S. Attorney’s Office, Southern District of New York, “Attorneys and Associate of Immigration Law Firm Plead Guilty.”

Case/Operation Name	Location/Year	Pertinent Charges	Outcome	Comments
Dat Tat Ho/ Manh Ngoc Nguyen <sup>303</sup>	EDNY/2020	Title 18 U.S.C. §§ 371 & 3551	Pending	2017 to 2020, Defendants labor trafficked Vietnamese Nationals into the U.S. and had them submit fraudulent asylum applications.
Madhawa Duminda Edirisinghe Kodithuwakku a.k.a Kevin/ Chandan Herathmudiyans elage a.k.a Herath <sup>304</sup>	SDNY/ 2019 (indictment)	Title 18 U.S.C. § 1546(a) (Immigration Fraud) & Title 18 U.S.C. §§ 1001(a)(2), and (3), and 2 (False Statements)	Kevin pled guilty to Title 18 U.S.C. 371 Conspiracy to Commit Immigration Fraud and False Statement (Probation 2 years and \$100 monetary penalty)	Only one incident of fraud prosecuted.
Tania Gonzalez <sup>305</sup>	Nassau County NY DA/2021	10 Counts of Grand Larceny 3 <sup>rd</sup> Degree, 1 Count Grand Larceny in 4 <sup>th</sup> Degree, 1 Court of Scheme to Defraud in the 1 <sup>st</sup> Degree	Pending	Fake attorney who defrauded victims for more than \$30,000 and filed asylum applications without clients' knowledge.

<sup>303</sup> “Two Individuals Arrested for Human Smuggling Conspiracy and Defrauding U.S. Government Agencies,” U.S. Attorney’s Office, Eastern District of New York, December 10, 2020, <https://www.justice.gov/usao-edny/pr/two-individuals-arrested-human-smuggling-conspiracy-and-defrauding-us-government>; United States v. Dat Tat Ho, No. CR 20 486 (E.D.N.Y. filed October 29, 2020).

<sup>304</sup> United States v. Kodithuwakku, No. 1:19-cr-00604. Information in this row comes from the 2019 indictment (unsealed August 28, 2019) and the 2021 judgement, filed under the aforementioned docket number.

<sup>305</sup> “Ronkonkoma Woman Charged with Defrauding Undocumented Immigrants Who Sought Assistance,” Nassau County District Attorney, June 14, 2021, <https://www.nassaуда.org/CivicAlerts.aspx?AID=1321>.



Case/Operation Name	Location/Year	Pertinent Charges	Outcome	Comments
Edier Alvarez <sup>306</sup>	Nassau County NY DA/ 2022 (sentenced)	P.L. §155.35 (Grand Larceny 3 <sup>rd</sup> Degree)	Pled to Grand Larceny 4 <sup>th</sup> Degree and sentenced to 364 days in jail.	Man posed as an immigration attorney and stole \$74,000 from more than 40 victims, and failed to provide services. USCIS and FDNS were credited in the case.
Carlos Moreno <sup>307</sup>	Manhattan DA/ 2022	See-Outcome	Pled guilty to scheme to defraud in the 1 <sup>st</sup> Degree, practice of law by an attorney who has been disbarred, suspended, or convicted of a felony. Sentenced to 1 to 3 years in state prison.	Submitted asylum applications without clients' knowledge as part of a "ten-year green card scam." <sup>308</sup>
Steven Thomas <sup>309</sup>	U.S. District Court District of NJ/2022 (criminal complaint)	Title 18 U.S.C. § 1546(a) (Immigration Fraud)	Pending	Attorney accused of coaching clients and submitting false asylum applications. A sample of 100 applications found 29 with identical language.

<sup>306</sup> "Queens Man Sentenced to Jail Time for Scheme Targeting Immigrants Seeking Legal Assistance," Nassau County District Attorney, March 10, 2022, <https://www.nassauda.org/CivicAlerts.aspx?AID=1387>.

<sup>307</sup> "D.A. Bragg: Immigration Lawyer Sentenced to 1–3 Years in State Prison," Manhattan District Attorney's Office, August 3, 2022, <https://www.manhattanda.org/d-a-bragg-immigration-lawyer-sentenced-to-1-3-years-in-state-prison/>.

<sup>308</sup> Manhattan District Attorney's Office.

<sup>309</sup> "Somerset County Attorney Arrested for Visa Fraud," U.S. Attorney's Office, District of New Jersey, February 23, 2022, <https://www.justice.gov/usao-nj/pr/somerset-county-attorney-arrested-visa-fraud>.

Case/Operation Name	Location/Year	Pertinent Charges	Outcome	Comments
Elvis Reyes <sup>310</sup>	Tampa, FL/2021 Sentenced	Mail Fraud and Aggravated Identity Theft	Pled Guilty 2020–20 years and 9 months Federal Jail	Fake Immigration Attorney filed over 225 fraudulent asylum applications without victims’ full knowledge and later threatened victims.
Laura Luz Maria Torres Romero <sup>311</sup>	U.S. District Court Southern District of Florida/2020 pled guilty	See outcome	pled guilty to counts of conspiracy pertaining to immigration fraud, mail fraud, and to steal and launder government money. Also, one count of false statements	2012–2020 Attorney drafted and submitted apx 1,000 fraudulent asylum applications and coached clients. Co-conspirators previously pled guilty.
Buyantod Thomas <sup>312</sup>	Northern District of CA/2015 (Sentenced)	“Knowingly aiding and abetting a person to make a false statement in an asylum application.” <sup>313</sup>	Pled guilty-6 months prison	Prosecuted by Office of the U.S. Attorney’s Special Prosecutions and National Security Unit- at least 25 fraudulent applications.

<sup>310</sup> U.S. Attorney’s Office, Middle District of Florida, “Attorney Sentenced to More than 20 Years.”

<sup>311</sup> “Owner of Immigration Business Pleads Guilty to Defrauding USCIS and IRS,” U.S. Attorney’s Office, Southern District of Florida, December 28, 2020, <https://www.justice.gov/usao-sdfl/pr/owner-immigration-business-pleads-guilty-defrauding-uscis-and-irs>.

<sup>312</sup> “Concord Resident Sentenced to Six Months in Custody for Role in Submitting Fraudulent Asylum Applications,” U.S. Attorney’s Office, Northern District of California, July 13, 2015, <https://www.justice.gov/usao-ndca/pr/concord-resident-sentenced-six-months-custody-role-submitting-fraudulent-asylum>.

<sup>313</sup> U.S. Attorney’s Office, Northern District of California.

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