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August 18, 2016

The Honorable Loretta Lynch
Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Lynch:

In a stunning revelation, the Department of Justice recently reported to this Committee that a component agency, the Executive Office for Immigration Review (EOIR), has taken no action to review the cases of more than 3,700 asylum applicants who were granted asylum by immigration judges, despite EOIR's knowledge that the cases likely involve fraud. A report by the Government Accountability Office (GAO) on December 2, 2015, found that EOIR failed to develop policies and procedures across the agency to detect and prevent asylum fraud.¹ That same report indicates that immigration judges granted asylum to 3,709 aliens who were connected to attorneys and document preparers convicted in a multi-agency criminal investigation headed by the Federal Bureau of Investigation (FBI) into fraudulent asylum claims in New York City, labeled Operation Fiction Writer.²

On July 6, 2016, DOJ responded to questions for the record that were submitted to EOIR Director Juan Osuna on December 17, 2015, following his testimony before this Committee on December 3, 2015. In response to questions regarding the referenced GAO report and EOIR's efforts to address asylum fraud, Assistant Attorney General Peter Kadzik stated that, as of December 3, 2015, EOIR "has not conducted additional, independent actions" in any of the 3,709 cases since providing "substantial assistance" during the investigation and prosecution of the criminal cases and had reopened none of the cases in which asylum was granted by an immigration judge.

It is important to note that DOJ has been fully aware of the fraud associated with these cases for several years. The FBI began its investigation into these fraudulent asylum claims around 2010. Indeed, the indictments of some of those charged by the

¹ Government Accountability Office, Report to Congressional Requesters, *Asylum: Additional Actions Needed to Assess and Address Fraud Risks*, GAO-16-50, Dec. 2, 2015, available at <http://www.gao.gov/assets/680/673941.pdf>.

² *Id.* at 32-33, 37-38.

U.S. Attorney's Office in 2012 reflect that in many cases, the aliens seeking asylum were significantly involved in the fraudulent scheme by memorizing the fraudulent stories provided to them, rehearsing their answers to anticipated questions, and by obtaining fraudulent documents to support their claims.³ At least one indictment states that most of the aliens had not actually suffered persecution.⁴

In DOJ's response to the Committee, Assistant Attorney General Kadzik states that the Department of Homeland Security (DHS) is charged with prosecuting cases before EOIR and, as such, he suggests that DHS has the responsibility to seek reopening in these cases. Citing statutory and regulatory authority, he further suggests that it is not EOIR's responsibility to reopen cases where fraud is suspected. That response is incomplete and misleading because EOIR regulations clearly authorize an immigration judge to reopen a case in which asylum is granted on "his or her own motion at any time."⁵ While DHS prosecutors should endeavor to reopen cases involving fraud and while DHS may ultimately bear the burden of evidentiary proof in such proceedings, EOIR's immigration judges have the independent authority to reopen cases – and justice demands that they do so where fraud is suspected.

As the chief law enforcement officer of the United States, you, above all others, should be the most vigilant protector of the rights of those who suffer most from asylum fraud – the bona fide asylum seekers, whose claims are stymied by a bureaucratic process that seemingly rewards wrongdoers and cheaters. This was the very sentiment of the U.S. Attorney for the Southern District of New York who prosecuted the attorneys and preparers involved in these cases: "The United States opens its arms to victims of persecution across the globe, and our asylum laws are the vehicle through which we are able to provide that critical safety net. Those who orchestrate fraud under the asylum laws . . . make it more difficult for genuine victims, and we will come down hard on them."⁶ As the investigation revealed, many of the aliens seeking asylum were complicit in the fraudulent schemes and fully participated in efforts that ultimately led to their improper grant of asylum by immigration judges. Like the indicted attorneys and preparers, the fraudulent conduct of these aliens also harmed legitimate asylum applicants and, consequently, they should be held accountable for their illicit acts. Those who obtained asylum through fraud should have their asylum status revoked and should be removed from the United States in accordance with law because they have unlawfully derived the benefits and privileges of asylum status that rightfully belong to those who have legitimately suffered persecution.

Those granted asylum are conferred benefits and privileges that are unavailable to many other aliens. In addition to federal and state welfare benefits and work authorization, they can become lawful permanent residents after one year. Thereafter, they are eligible to become U.S. citizens through naturalization. Once they attain U.S. citizenship, they are eligible to file petitions to obtain immigration benefits for their

³ See <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/U.S.%20v.%20Xia%20Ping%20Wen%20Indictment.pdf>.

⁴ *Id.*

⁵ 8 C.F.R. §§ 1208.24(f) and 1003.23(b).

⁶ See <https://www.justice.gov/usao-sdny/pr/three-defendants-plead-guilty-participating-massive-immigration-fraud-scheme>.

family members. Thus, tens of thousands of aliens could potentially derive their status and U.S. citizenship through this pervasive fraud.

Immigration fraud is not a trivial matter that can be given lip service by this Administration. Neither can it turn a blind eye to fraud and call it a “low priority.” Aside from eroding confidence in our national resolve to protect the persecuted around the world, asylum fraud promotes criminal enterprises and threatens our national security. The 9/11 Commission found that “[a] number of terrorists discussed [in its report] abused the asylum system.”⁷ There should be little doubt that terrorist organizations are probing the contours of our flawed asylum system to exploit its vulnerabilities.

DOJ’s refusal to take action in these cases is simply outrageous. What message is being sent to those aliens who already have an incentive to lie to obtain an immigration benefit and now are emboldened even more by DOJ’s apparent acquiescence to this type of egregious criminal conduct? Americans cannot have confidence in a system that rewards deceit and perjury at the expense of truth and justice.

Therefore, I call on you to take immediate action to review and reopen each of the 3,709 cases referenced in the GAO report and any others known to EOIR, in which an immigration judge granted asylum, to determine if fraud is present and to pursue revocation of asylum in those cases where fraud is established. As your appointees, immigration judges act as your delegates in cases that come before them. Thus, you have the authority – and duty – to instruct them to reopen and review these cases to determine if the grants of asylum were the result of fraud.

Please respond by August 31, 2016, and state what specific actions you have taken or will be taking regarding these cases and any others currently or previously pending before EOIR in which fraud is suspected or found.

If you have any questions concerning this request, please contact Tracy Short, Counsel, Subcommittee on Immigration and Border Security, at (202) 225-3926. Thank you for your attention to this matter.

Sincerely,



Bob Goodlatte
Chairman

cc: Hon. John Conyers, Jr., Ranking Member

⁷ National Commission on Terrorist Attacks Upon the United States, *9/11 and Terrorist Travel: Staff Report*, p. 99, Aug. 21, 2004, available at http://www.9-11commission.gov/staff_statements/911_TerrTrav_Monograph.pdf.