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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 25, 2024

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Garland:

I write to express serious concern over reports that asylum seekers from Muslim-majority countries are being disproportionately prosecuted for alleged improper entry by the Justice Department.

In a report published last year, the *Los Angeles Times* found that, from approximately October 2021 to May 2023, the U.S. Attorney's Office for the Western District of Texas prosecuted more than 200 migrants under 19 U.S.C. § 1459, which requires individuals arriving in the United States other than by vessel, vehicle, or aircraft to enter only at designated border crossings and criminalizes intentional violations of this provision.¹ Despite migrants from Muslim-majority countries making up only a small minority of southern border crossings, more than 60 percent of those charged under Section 1459 in the Western District of Texas were from Muslim-majority countries, such as Afghanistan, Iran, Mali, and Syria.² My staff has independently reviewed the available PACER filings in the Western District of Texas and found that almost two-thirds of the prosecutions under 19 U.S.C. § 1459 between April 2021 and March 2023 appear to be against foreign nationals from Muslim-majority countries as varied as Albania, Kazakhstan, Mauritania, Nigeria, Turkey, and Uzbekistan.³

The concern that the Department of Justice (DOJ) is targeting for prosecution migrants from Muslim-majority countries is heightened by the use of Section 1459. Historically, DOJ has brought border crossing prosecutions under 8 U.S.C. §§ 1325 and 1326, and rarely used 19 U.S.C. § 1459. However, available records demonstrate that since 2021, prosecutions under Section 1459 have increased dramatically nationwide. According to the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, prosecutions under Section 1459 nationwide were up 750 percent in October 2021 from October 2020.⁴ Analysis of a longer six-

¹ Hamed Aleaziz, *Asylum seekers from Muslim-majority countries disproportionately imprisoned at Texas border*, L.A. TIMES (Aug. 31, 2023), <https://www.latimes.com/world-nation/story/2023-08-31/texas-prosecutions-muslim-asylum-seekers-1459>.

² *Id.*

³ This information is on file with the Committee.

⁴ See *Immigration Prosecutions for October 2021*, TRACIMMIGRATION, <https://trac.syr.edu/tracreports/bulletins/immigration/monthlyoct21/fil/>.

year period demonstrates an even more remarkable increase—between May 2016 and May 2022, Section 1459 prosecutions were up 2200 percent.⁵ Based on the review of available PACER filings by my staff, the U.S. Attorneys’ Office for the Western District of Texas was responsible in large part for this increase.

Among those reportedly prosecuted under Section 1459 was an individual named Muhammed, a member of the persecuted Hazara ethnic minority in Afghanistan and former human rights professor who crossed the border into Texas in April 2022 to seek asylum from the Taliban.⁶ An immigration judge granted Muhammed asylum on December 20, 2023. Prior to his release, Muhammed was incarcerated for 602 days⁷—208 days in criminal custody and 395 days in DHS custody.⁸

In April 2023, soon after the *Los Angeles Times* presented the Justice Department and the Department of Homeland Security with preliminary findings related to the prosecution of individuals under Section 1459, it appears the inordinate number of Section 1459 prosecutions brought by the Western District of Texas abruptly stopped. However, the disproportionate number of prosecutions of migrants from Muslim-majority countries has continued under 8 U.S.C. §§ 1325 and 1326. The *Los Angeles Times* found that from April 2023 through August 2023, approximately half of the prosecutions brought by the Western District of Texas under 8 U.S.C. §§ 1325 and 1326 have been against migrants from Muslim-majority countries, who often have received the maximum sentence of six months.⁹

These trends are extremely troubling. Prosecutions targeting individuals based on their religion, national origin, or other protected characteristics are anathema to the rule of law. Congress has prohibited such prosecutions in Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968, which the Department’s Justice Manual expressly acknowledges.¹⁰ In addition, individuals from Muslim-majority countries, like many others who approach our borders seeking safety, have the right to pursue asylum and should not be targeted for criminal prosecution.¹¹

⁵ *Immigration Prosecutions for May 2022*, TRACIMMIGRATION, <https://trac.syr.edu/tracreports/bulletins/immigration/monthlymay22/fil/>.

⁶ Julie Watson, *He spoke no English, had no lawyer. An Afghan man’s case offers a glimpse into US immigration court*, Associated Press (Sep. 24, 2023), <https://apnews.com/article/afghanistan-deportation-taliban-asylum-us-immigration-court-cabf3bcdec9a62b12f08300d1260cd68>.

⁷ Human Rights First, *Helping an Afghan Incarcerated in the United States Earn Asylum* (Dec. 22, 2023), <https://humanrightsfirst.org/library/ice-pushes-to-deport-asylum-seeking-afghan-incarcerated-in-the-united-states/>.

⁸ This information is on file with the Committee.

⁹ Hamed Aleaziz, *Asylum seekers from Muslim-majority countries disproportionately imprisoned at Texas border*, L.A. TIMES (Aug. 31, 2023), <https://www.latimes.com/world-nation/story/2023-08-31/texas-prosecutions-muslim-asylum-seekers-1459>.

¹⁰ See 42 U.S.C. § 2000d; 34 U.S.C. § 10228(c)(1); JM 9-27.260.

¹¹ See Julie Watson, *He spoke no English, had no lawyer. An Afghan man’s case offers a glimpse into US immigration court*, AP (September 24, 2023), <https://apnews.com/article/afghanistan-deportation-taliban-asylum-us-immigration-court-cabf3bcdec9a62b12f08300d1260cd68> (describing the criminal prosecution of an Afghan asylum-seeker who taught human rights courses in Afghanistan and alleges he received death threats under the Taliban as a Hazara ethnic minority).

Given the seriousness of these reports, and the rise of Islamophobic attacks which the Department is also entrusted with addressing, I ask that you contact my staff to schedule a briefing and respond to the following questions no later than May 9, 2024.

1. How many individuals have been indicted under 19 U.S.C. § 1459 nationwide from January 1, 2016 to present? Please provide a statistical breakdown of these indictments by month and by jurisdiction.
2. How many of these individuals identified in Question 1 have a Muslim-majority country as their nation of origin? Please provide a copy of the indictment, including the docket number, for each of these individuals.
3. How many individuals have been indicted under 8 U.S.C. §§ 1325 and 1326 nationwide from January 1, 2021 to present? Please provide a statistical breakdown of these indictments by month and by jurisdiction.
4. How many of these individuals identified in Question 3 have a Muslim-majority country as their nation of origin? Please provide a copy of the indictment, including the docket number, for each of these individuals.
5. Does the Department have any policies that govern prosecutions brought under 18 U.S.C. §§ 1325 and 1326 and 19 U.S.C. § 1459? How many of these policies were implemented between January 20, 2017 and January 20, 2020? Were any of these policies implemented or changed after January 1, 2021? Please produce, in full, all responsive policies and indicate their effective date.
6. Has there been a change in the nature of migration to the United States since January 1, 2021, that otherwise explains the disproportionate rise in prosecutions of migrants from Muslim-majority countries relative to their percentage of border crossings?

Thank you for your time and consideration. I look forward to your prompt response.

Sincerely,



Richard J. Durbin
Chair

cc: The Honorable Lindsey O. Graham
Ranking Member, Senate Committee on the Judiciary

The Honorable Michael E. Horowitz
Inspector General, U.S. Department of Justice