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KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

January 5, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Jeh Johnson
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

It has come to my attention that Immigration and Customs Enforcement (ICE) has not used recommended vetting procedures for individuals coming from Specially Designated Countries (SDCs) – countries “that have shown a tendency to promote, produce, or protect terrorist organizations or their members.”¹

According to a whistleblower and other sources, ICE has neglected to comprehensively conduct Third Agency Checks (TACs) on foreign nationals arriving in the United States from SDCs. In addition, there is concern that smuggling organizations may be exploiting this weakness at our border and successfully helping individuals from SDCs reach and cross into the United States.

Questions about the vetting processes and procedures for undocumented immigrants are not new. In December of 2011, the Department of Homeland Security (DHS) Office of Inspector General (OIG) published a report investigating the effectiveness of ICE’s decision-making policies regarding the detention or release of individuals arriving at the border.² In this

¹ U.S. Dep’t of Homeland Sec. Office of Inspector Gen., *OIG-11-81, Supervision of Aliens Commensurate with Risk* (2011) [hereinafter 2011 DHS OIG Report].

² *Id.*

report, DHS OIG found that the ICE policy for screening undocumented immigrants from specially designated countries is not effective.³ Specifically, ICE’s decision to conduct TAC screenings only on individuals from SDCs who were detained in ICE custody was deemed inadequate. DHS OIG recommended that ICE revise its policy to require officers to conduct TAC screenings for all undocumented immigrants – not just those it detains – from SDCs emphasizing that ICE risks releasing an individual with ties to terrorist organizations if TACs are not performed on all detained and nondetained individuals from SDCs.⁴

According to DHS reports on open and unresolved agency recommendations – the latest of which was issued in March of 2015 – ICE has yet to concur with or implement the 2011 DHS OIG recommendation to revise the TAC policy regarding SDCs.⁵ As a result, ICE risks releasing individuals with ties to terrorist organizations onto U.S. soil due to selective application of the screening process.⁶

According to a whistleblower, smuggling organizations in Latin America are taking advantage of this lax screening and profiting off asylum seekers from SDCs. In recent news reports, an ICE official called the smuggling organizations along the route in South America a “federation of independent operators who hand groups of migrants off to each other, each charging for one leg of the journey.”⁷ And an unpublished DHS report disclosed to the Committee claims that smugglers are motivated by profit and will adjust their operations in response to foreign and U.S. government policies and enforcement. The report alleged that there are insufficient screening mechanisms in place to deal with the smuggling of persons. Additionally, the report found a lack of consistent foreign government detention data and personally identifiable information made it difficult to track travel and assess the percentage of asylum seekers that reach the border after being detained en route.

For example, two men who were interviewed separately by ICE explained that their families paid \$15,000 USD and \$10,000 USD, respectively, to smuggling organizations to enter the United States. The men began their journeys to the United States from an SDC. From there they traveled through South America – guided by smuggling contacts – to at least ten different countries, including Brazil. The report notes that Brazil is a particularly common entry point. Migrants use Sao Paulo as a staging ground to coordinate with human smugglers and obtain

³ *Id.* at 1.

⁴ *Id.* at 6.

⁵ See U.S. Dep’t of Homeland Sec. Office of Inspector Gen., DHS Open Unresolved Recommendations Over Six Months Old, as of September 30, 2014, at 6 (2014), https://www.oig.dhs.gov/assets/OpenRec/DHS_Open_Rec_Rep_093114.pdf; see also U.S. Dep’t of Homeland Sec. Office of Inspector Gen., DHS Open Unresolved Recommendations Over Six Months Old, as of March 31, 2015, at 2 (2015), https://www.oig.dhs.gov/assets/OpenRec/DHS_Open_Rec_Rep.pdf.

⁶ 2011 DHS OIG Report.

⁷ Sibylla Brodzinsky & Nina Lakhani, *Global refugees take long detours through Latin America to reach US*, The Guardian (Nov. 24, 2015), <http://www.theguardian.com/world/2015/nov/24/syrian-refugees-central-america-routes-cuban-migrants>.

fraudulent travel documents. One of the men told border patrol agents that he encountered a group of eight other travelers going along the route from various SDCs. Once in Mexico, the men turned themselves in to the immigration authorities.

After being issued short term permits to travel in Mexico, the men illegally crossed into the United States and turned themselves in to Customs and Border Protection agents as asylees. In total, the individuals crossed into ten countries without being vetted by any law enforcement agencies.

The unpublished report states that asylum seekers from SDCs are typically successful in arriving at the U.S. border making smuggling a potential national security concern. The report indicates the increase in 2015 of smuggled individuals arriving from SDCs – including Pakistan, Somalia, and Syria – was “particularly notable.”

Nearly five years after DHS OIG’s 2011 report, ensuring ICE adequately screens individuals from SDCs remains an objective for DHS OIG. In its 2016 Fiscal Year Annual Performance Plan, DHS OIG planned to determine whether ICE ensures the proper screening of individuals from specially designated countries.⁸ In light of the ongoing refusal by ICE to implement any DHS OIG recommended changes to the screening process of individuals from SDCs and the recent exploitation by smuggling organizations of these lax procedures, please answer the following questions and provide the following requested information by January 19, 2016.

1. Does ICE have a recent updated list of SDCs? If so, what criteria were used to determine which countries are included? If there is no updated list, why not? Please provide any documentation, including the list itself, related to this decision.
2. What procedures are in place to vet asylum seekers from SDCs? Does DHS collaborate with its interagency partners (FBI, DoD, and Office of the Director of National Intelligence (ODNI)) to interview recent entrants to identify known or suspected terrorists? Please explain.
3. ICE has stated that the purpose of TAC screening is to determine whether other agencies have an interest in the individual. How do other agencies’ interests affect decisions about granting immigration benefits to individuals from SDCs? Please explain.
4. Is DHS allowing its interagency partners to make recommendations for continued detention of individuals considered “special interest?” If so, is DHS heeding the recommendations of its partners to continue to detain these individuals? If not, why not? Please explain.

⁸ U.S. Dep’t of Homeland Sec. Office of Inspector Gen., Fiscal Year 2016 Annual Performance Plan, https://www.oig.dhs.gov/assets/PDFs/OIG_APP_FY16.pdf, at 9.

5. Does DHS have a relationship with EUROPOL, specifically regarding the vetting of recent entrants? Does DHS share intelligence with EUROPOL? If not, why not? Can DHS run name checks with EUROPOL? Please explain.
6. Does DHS have human intelligence collection methods in place regarding undocumented individuals in DHS custody? If yes, please provide information about the collection methods. If not, why not?
7. How many recent entrants from SDCs did ICE apprehend from 2011 to the present day? What percentage of these individuals were detained by ICE? What percentage of those detained were subjected to TAC screening? Does DHS conduct TACs on all individuals, whether detained or not, from SDCs? If not, why not? Please explain.
8. When individuals who have sought asylum with DHS are released on orders to report to ICE or issued Notices to Appear, do these individuals typically report or appear at their hearings? What percentage appear or report, and what percentage fail to appear or report?
9. Does DHS place recent entrants subject to detention on Alternatives to Detention (ATD)? Please explain. If not, why not?
10. From 2011 to the present day how many individuals from SDCs have been found to have terrorist ties? How many of these individuals traveled through South and Central America before crossing our border? Were they subject to TAC screening? If not, why not?
11. Does DHS have additional data on whether terrorists view smuggling routes and methods, including applications for asylum, as possible means to enter the United States? Please explain.
12. Why has ICE not implemented Recommendation #2 from the 2011 DHS OIG report regarding the policy for screening individuals from SDCs?
13. Does ICE plan to implement the DHS OIG recommendation regarding the policy for screening? If not, why not?

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is fluid and cursive, with the first name "Chuck" and last name "Grassley" clearly legible.

Charles E. Grassley
Chairman
Committee on the Judiciary

- cc: The Honorable Patrick Leahy
Ranking Member,
Senate Committee on the Judiciary
- cc: The Honorable John Roth
Inspector General
U.S. Department of Homeland Security
- cc: The Honorable James B. Comey, Jr.
Director
Federal Bureau of Investigation
- cc: The Honorable Ash Carter
Secretary
U.S. Department of Defense
- cc: James R. Clapper
Director
U.S. Office of the Director of National Intelligence