

Representative Brian Bilbray
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via fax and mail

Asylum and National Security – Rumor vs. Reality

Dear Representative Bilbray:

We write with concerns that your call for congressional hearings on the purported national security threat posed by East African asylum seekers is based on inaccurate reporting and misconceptions about the asylum process.¹ We include local community organizations, legal service providers and immigration attorneys who work regularly with East African and other asylum seekers. While we support all reasonable and lawful steps by the government to protect our national security, our asylum system already includes extensive national security safeguards, some of which unfortunately operate to bar and imprison even non-threatening asylum seekers from East Africa and elsewhere. Given that misinformed fears about asylum and national security threaten America's role as a symbol of hope and a refuge for the victims of persecution, we hope you will join us in insisting that any public discussion of our asylum system be based on reality rather than rumor.

The Asylum Process Already Includes Extensive National Security Protections

Asylum presents one of the most difficult ways for a terrorist to obtain entry into the United States. Congress and the agencies responsible for administering the asylum system have created an exacting set of procedures to stop the infiltration of asylum seekers who might wish us harm. These protections include:

- *One-on-one screening of asylum applicants, including an initial interview at the port of entry and a complete "credible fear" interview.* Both of these interviews are performed by Department of Homeland Security ("DHS") officials trained to identify and report any suspicions about an applicant.

¹ KPBS reported your call for such hearings on the morning of September 30, 2010. See <http://www.kpbs.org/news/2010/sep/30/congressman-bilbray-call-hearings-asylum-process/>. Your interest in those hearings was apparently prompted by an earlier KPBS report citing the concerns of an anonymous law enforcement source and an analyst at a conservative think tank about possible infiltration by the al-Shabaab terrorist group through the asylum process. See <http://www.kpbs.org/news/2010/sep/29/circuitous-path-asylum-raises-national-security-co/>.

- *Background checks by federal authorities, in which an applicant's fingerprints and biographical information are checked against federal law enforcement and intelligence databases.* The background checks are mandated by Department of Justice regulation, 8 C.F.R. § 1003.47, and must be completed before an applicant may be granted asylum or other legal relief. East African asylum applicants, including Somalis, are frequently subjected to additional screening relative to other applicants, including the requirement that they complete a special national security screening form.
- *A complete set of hearings before an immigration judge, where DHS prosecutors test the consistency of an asylum applicant's story, challenge the applicant's identity, and present arguments about any suspicious activity or associations.* DHS is frequently able to uncover deception by applicants about their identity or life story at these hearings.
- *Applicants must meet an exacting burden of proving their eligibility for asylum at immigration hearings.* Based on concerns about national security, Congress imposed a heightened burden of proof on applicants to demonstrate their eligibility for asylum through the REAL ID Act of 2005. This exacting burden includes proving identity to the satisfaction of the immigration judge, which frequently involves corroborating testimony by United States citizens and the provision of documentary evidence.
- *Immigration judges have broad discretion to deny asylum based on an adverse credibility finding for even minor inconsistencies.* An immigration judge must find an applicant has credibly established his or her identity to grant asylum. But in the REAL ID Act of 2005, Congress provided immigration judges greater discretion to find an applicant not credible based on any number of factors, including relatively minor inconsistencies. The chances of a terrorist assuming a false identity and being found credible by an immigration judge are accordingly slim.
- *Applicants who have associated with terrorists, supported terrorists, or engaged in terrorism are ineligible for asylum.* Based on progressively more strict legislation, an exceptionally broad range of past activity now makes an applicant ineligible for asylum under the so-called "Terrorism Bars." See 8 U.S.C. §§ 1158(b)(2)(A)(v); 1182(b)(3)(B). Judges have found the "Terrorism Bars" to include even *relatively innocuous activity* such as setting up a tent for the political arm of a militant group and *completely involuntary activity* such as giving a militant lunch at gunpoint. Given the breadth of the "Terrorism Bars," there should be little concern that applicants with actual terrorist affiliation are obtaining asylum.
- *Arriving asylum seekers are detained until they are granted relief or until they prove their identity and show that they are neither a flight risk or a danger to the community.*

DHS regularly detains asylum seekers for months or years and normally only releases them on intensive supervision plans. DHS's practice is to refuse to release anyone who does not have identity documents.

Moreover, individuals who are granted asylum must apply for lawful permanent residence after one year, at which point they again undergo robust background checks and again must demonstrate that no "Terrorism Bars" apply to them. In sum, the current policies governing asylum adjudication and detention are strict and explicitly designed to prevent terrorists from gaining a foothold in the United States.

National Security Concerns Have Already Made the Asylum Process Overly Strict, Resulting in the Denial of Protection to Victims of Terrorism and Oppression

If anything, the asylum system effects unnecessarily harsh – and often sadly absurd – results in the name of national security. East African asylum seekers frequently suffer from these harsh effects, particularly where they have been victimized by al-Shabaab and other terrorist groups in their home region. Since 9/11, Congress has progressively expanded the "Terrorism Bars" that apply to asylum seekers. Immigration judges and federal appeals courts have in turn adopted many of DHS's most extreme interpretations of the "Terrorism Bars." The result is that innocent victims of terrorism and oppression have been found ineligible for asylum or legal permanent resident status. Here are some examples²:

- A girl kidnapped at age 12 by a rebel group in the Democratic Republic of the Congo and used as a child soldier was unable to obtain asylum based on a "Terrorism Bar" because she was forced to take part in armed conflict as a child, even where she later became an advocate against the use of child soldiers.
- A young man from Somalia who escaped from al-Shabbab after they violently kidnapped him, murdered his cousin for refusing to cooperate, and forced him to stand on a road holding a gun for a short time on pain of death, was denied asylum based on a "Terrorism Bar."
- A man from Burundi was denied asylum based on a "Terrorism Bar" because armed rebels robbed him of four dollars and his lunch.

DHS has also taken indefensible positions on its authority to detain purported national security threats, even when there is no reasonable factual basis for doing so. For example, even after an immigration judge twice found that a Sri Lankan asylum seeker had been persecuted by

² These examples are drawn from *Human Rights First, Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States* (November 2009), available at <http://www.humanrightsfirst.org/pdf/RPP-DenialandDelay-FULL-111009-web.pdf>, and from local immigration lawyers' experiences.

a militant group, DHS continued to insist it could not release him from detention on the basis of its discredited claims that he was a national security threat.

To the extent the asylum regime needs reform, that reform should provide greater safeguards for asylum seekers against unreasonable assertions that an applicant represents a national security risk.

The Media Reports Sparking Your Call for Hearings Are Factually Inaccurate

The media reports that apparently sparked your call for hearings contained several material inaccuracies.³

- The focus on some Somalis' use of false identification documents to reach our borders omitted important facts:
 - First, our own Department of State recognizes that Somalis cannot be expected to possess official identification documents given the Somali state's collapse some twenty years ago.⁴ Due to the lack of identification documents from their own country, Somalis are forced to obtain false documents in order to reach a safe haven like the United States.
 - Second, it is unheard of for immigration judges to accept false or unverified foreign identification documents as proof of identity. Immigration judges require that applicants produce independent evidence to establish their identity.
- The statement that the cost of reaching the United States from Somalia can be \$60,000 would appear to be a gross exaggeration by the anonymous federal officials who provided that figure. Local immigration attorneys who work regularly on Somali asylum cases reported that the cost of reaching the United States from Somalia is normally between \$4,000 and \$10,000, and is never more than \$12,000. Asylum seekers ordinarily raise this amount through sale of family property in Somalia and/or through remittances from friends and family in the Somali diaspora.
- The discussion of the Pennsylvania man who was indicted on charges of smuggling Somalis, including purported members of al-Shabaab, failed to mention that man's serious credibility issues⁵:

³ See footnote 1, above.

⁴ See http://travel.state.gov/visa/fees/fees_4881.html?cid=3671.

⁵ See transcript of briefing on al-Shabaab to senior Obama administration officials at <http://allafrica.com/stories/201007140762.html>.

- He apparently failed polygraph exams.
- DHS is reluctant to use him as a witness in immigration cases due to implausible aspects to his story and poor performance on polygraph exams, even though he is a former agent of DHS and other federal agencies.
- It is completely unclear whether he actually helped any members of al-Shabaab.

None of the sources identified a single documented instance of an al-Shabaab operative obtaining asylum in the United States. Given our exceptional intelligence capabilities with respect to al-Shabaab – for example, last year United States forces assassinated al-Shabaab’s military commander while he was in a remote, rural area of Somalia – it seems unlikely that al-Shabaab could secretly enact a smuggling program of the manner speculated about by the sources. Moreover, Somali community leaders across the county, including in San Diego, have pledged themselves to a strong working relationship with the FBI and DHS to make sure al-Shabaab does not infiltrate the United States.

Conclusion

Our asylum system already contains robust national security protections. The reporting that led to your call for hearings is factually inaccurate in this and other important respects. Moreover, DHS often interprets the national security provisions of our immigration laws in such an overzealous manner as to falsely cast the victims of terrorism as terrorists themselves. We ask you and other elected representatives to take these realities into account when speaking publically about asylum and national security issues.

Signatories

Community Leaders

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Ralph Achenbach, San Diego Refugee Forum

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Community Organizations

American Friends Service Committee – U.S./Mexico Border Program (San Diego)

Employee Rights Center

Equality Alliance

Escondido Human Rights Committee

San Diego Immigrants’ Rights Consortium

Legal Organizations

Casa Cornelia Law Center

ACLU of San Diego & Imperial Counties

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