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LAWYERS COMMITTEE FOR HUMAN RIGHTS

VIA FACSIMILE: 202-282-8404 \ MAIL

March 2, 2005

Honorable Michael Chertoff
Secretary of Homeland Security
Department of Homeland Security
Naval Security Station
3801 Nebraska Avenue, N.W.
Washington, D.C. 20393

Re: Key Refugee Protection Issues at DHS

Dear Secretary Chertoff:

As you take over leadership of the Department of Homeland Security, we write to urge you to create a high-level refugee protection position within the Department and to make other critical changes necessary to ensure the appropriate treatment of those who seek asylum in this country. The need to implement these reforms was confirmed recently by the bi-partisan U.S. Commission on International Religious Freedom which recommended, in its February 8 report, that the Department create just such a position and make other changes to ensure the appropriate treatment of asylum seekers.

For nearly 25 years, our organization has worked in partnership with law firms to provide *pro bono* legal representation to refugees in their asylum cases. Many of the refugees who have been assisted by our volunteer lawyers have been detained in jails and jail-like immigration detention facilities in the United States. As a result of our extensive representation experience, we have an in-depth understanding of the difficulties that refugees can face in seeking asylum.

Since the Department took over immigration functions from the former INS in March 2003, we have urged the Department to implement mechanisms to ensure the appropriate handling of matters impacting asylum seekers who interact with the Department's various immigration enforcement arms. We submitted to the Department a March 2003 paper, entitled *Refugees, Asylum Seekers and the New Department of Homeland Security: Initial Concerns and Preliminary Recommendations*, and joined with about 90 other organizations around the country in an April 2003 letter to Secretary Ridge (copy enclosed) to urge the Department to establish refugee protection mechanisms.

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Early last year, we issued a report on U.S. detention of asylum seekers. The report, entitled *In Liberty's Shadow: US Detention of Asylum Seekers in the Era of Homeland Security*, made a number of recommendations, including that the Department create a high-level refugee protection position and codify its asylum parole criteria into regulations to ensure that asylum seekers who meet the criteria are actually released from detention. A copy of that report is also enclosed.

We have read in the press that the Department is considering making some structural changes during this period of transition, and Duncan Campbell advised us that he would pass on our interest in this issue to your staff. We urge the Department to take this opportunity to create a high level refugee position in the Secretary's office. I have enclosed some prior correspondence which explains the reasons why we believe this position is essential for helping the Department to deal efficiently and effectively with the many asylum issues that cut-across the Department and why this position should be housed in the Secretary's office.

The need for this position is further demonstrated by the fact that the number one recommendation made by the U.S. Commission on International Religious Freedom, after its experts conducted a comprehensive study relating to asylum seekers in expedited removal and detention, was that the Department should create an office headed by a high-level official who is authorized to address these cross-cutting asylum issues. The Commission found that asylum seekers are detained in inappropriate jail-like facilities, these conditions create a serious risk of psychological harm, about 32% of asylum seekers are jailed for 90 days or more, and that detention release rates vary widely across the country, with parole rates as low as 0.5 % in New Orleans, 8.4% in New York and 3.8% in Newark, New Jersey.

The Commission also found a series of failings, and recommended a number of improvements, in the conduct of the expedited removal process. In some cases immigration inspectors failed to follow the special procedures designed to prevent the mistaken deportation of bona fide asylum seekers, and in 15% of the cases observed by the Commission experts, people who expressed a fear of return were not given a chance to be interviewed by an asylum officer.

We recognize the many challenges that you and the Department face as you work to protect this country's security. We firmly believe that the U.S. can both protect itself and protect the victims of human rights abuses who flee to this country in search of refuge. As a good first step, we urge you to ensure that the Department fully implements the Commission's recommendations, including:

1. Creating a high-level refugee protection position within the Office of the Secretary;
 2. Issuing regulations codifying the asylum parole criteria to ensure that asylum seekers are released from detention when they pose no risk and meet the other release criteria;
- and

3. When asylum seekers are detained, housing them in non-jail like facilities like that in Broward County, Florida instead of in prisons and jail-like detention facilities.

Your leadership in protecting refugees is essential. It is also particularly important at a time when new restrictions have been proposed that would make it much harder for legitimate refugees to receive the protection of this country.

As you turn to these important issues, we welcome the opportunity to meet with you and your staff to discuss these and other recommendations. I can be reached at 212-845-5227 or acere@humanrightsfirst.org. Thank you for your consideration of these matters.

Sincerely,



Eleanor Acer
Director, Asylum Program

cc:

Admiral James Loy
Deputy Secretary, Department of Homeland Security

Eduardo Aguirre, Jr.
Director, Office of US Citizenship and Immigration Services

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