

December 14, 2007: USCIRF Expresses Concern to DHS Over New Policy Directive on Asylum Seekers

FOR IMMEDIATE RELEASE

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Contact:

Judith Ingram, Communications Director,

(202) 523-3240, ext. 127

WASHINGTON-The United States Commission on International Religious Freedom has sent the following letter to the Secretary of Homeland Security, Michael Chertoff. December 14, 2007

Secretary Michael Chertoff
U.S. Department of Homeland Security

Washington, DC 20528
Dear Secretary Chertoff: On behalf of the U.S. Commission on International Religious Freedom, I write out of concern that the Bureau of Immigration and Customs Enforcement (ICE) has been misrepresenting one of the major recommendations of the February 2005 Commission Study on the Treatment of Asylum Seekers in Expedited Removal. The Commission requests that the Department of Homeland Security (DHS) stop citing the Commission's recommendations as a basis for the new policy directive which, as explained below, is in fact inconsistent with the relevant recommendation of the Commission's Study. To elaborate, the Commission has learned that ICE has been citing the Commission's Expedited Removal Study in defense of ICE's November 6, 2007 directive to rescind and replace its December 30, 1997 parole criteria. According to a December 3, 2007 letter from ICE Assistant Secretary Julie Myers to Eleanor Acer of Human Rights First, "In developing this directive, we reviewed the findings of the United States Commission on International Religious Freedom (USCIRF) regarding their May 2005 study of the Expedited Removal process. We believe this policy directive promotes more consistent parole criteria and procedures in accordance with USCIRF recommendations...." As you know, part of the Commission's statutory mandate was to study whether asylum seekers in the Expedited Removal process are being detained improperly or under inappropriate conditions. The Commission's recommendation relating to the parole of detained asylum seekers was that "(DHS) should promulgate regulations to promote more consistent implementation of existing parole criteria, to ensure that asylum seekers with a credible fear of persecution-who establish identity and who pose neither a flight nor a security risk-are released from detention." (Commission Report, p. 143, Volume I, emphasis added) In contrast to this Commission recommendation, the November 6, 2007 ICE Policy Directive requires that an asylum seeker who meets the original criteria must now also establish that there are medical reasons which warrant release, that (s)he is a juvenile or a government witness in a legal proceeding, or that release would be "in the public interest." Yet the new ICE directive provides no definition or guidance of "the public interest." It certainly does not imply that meeting the original criteria would be sufficient to warrant release. Under the previous guidance, release of asylum seekers who have met the credible fear standard, established identity, and who pose neither a security nor a flight risk was a "viable option and should be considered." The new directive, however, makes it clear that meeting this test is no longer enough-yet provides no clarity on how a detained asylum seeker may establish that (s)he meets the additional public interest criterion. We acknowledge that the new guidelines do establish procedures and quality control for parole decisions, but we fear that the discretion provided under the new guidelines undermines that goal. This is why we are asking that you stop citing our recommendation as a basis for the new policy directive, which, we must reiterate, is inconsistent with our recommendation on that point. The Commission continues to look forward to receiving and reviewing a formal response to the Commission 2005 Study from DHS. As you know, at our May 1, 2007 meeting with you, Assistant Secretary Stewart Baker promised such a response. Sincerely,

Michael Cromartie

Chair
CC: Julie L. Myers, Assistant Secretary of Homeland Security, U.S. Immigration and Customs Enforcement (ICE); Stewart A. Baker, Assistant Secretary for Policy, Department of Homeland Security; Michael Cromartie, Chair; Preeta D. Bansal, Vice Chair; Richard D. Land, Vice Chair; Don Argue; Imam Talal Y. Eid; Felice D. Gaer; Leonard A. Leo; Elizabeth H. Prodromou; Nina Shea; Ambassador John V. Hanford III, Ex-Officio