

Attorney General Merrick Garland
Deputy Attorney General Lisa Monaco
Associate Attorney General Vanita Gupta
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

September 25, 2023

RE: Targeted prosecutions of Muslim asylum-seekers

Dear Attorney General Garland, Deputy Attorney General Monaco, and Associate Attorney General Gupta,

The undersigned organizations write to express our extreme concern over reports of recent prosecutions under 19 U.S.C. § 1459, charges which the Assistant U.S. Attorney’s office in Del Rio appears to have brought disproportionately against people from Muslim-majority countries. Prosecutions under this provision have historically been relatively rare. However, as *The Los Angeles Times* recently reported,¹ over an 18-month period from October 2021, that office prosecuted more than 200 people for violation of this statute, over 60 percent of whom came from countries such as Afghanistan, Syria, Iran and Mali, even though people from Muslim-majority countries make up only 5 percent of the population of those crossing the border.

These prosecutions present a glaring aberration and smack of religious and ethnic discrimination. Soon after taking office, the Biden Administration rightfully and formally rescinded the Trump Administration’s policy of “Zero Tolerance,” which required the Department of Justice to prosecute every case of illegal entry that the Department of Homeland Security referred.² However, despite this policy change, and to our great disappointment, prosecutions for both unauthorized entry and re-entry have increased in the two years since President Biden took office.³ The laws that criminalize entry and re-entry have an explicitly racist history,⁴ are applied

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

² Memo from Acting Attorney General Monty Wilkinson to All Federal Prosecutors RE Rescinding the Zero-Tolerance Policy for Offenses Under 8 U.S.C. § 1325(a) (Jan. 26, 2021), https://www.justice.gov/d9/2022-12/acting_ag_memo-rescinding_the_zero-tolerance_policy_for_offenses_dated_1-26-2021.pdf.

³ Transactional Records Access Clearinghouse, Immigration Prosecutions for June 2023 (Aug. 22, 2023), <https://trac.syr.edu/tracreports/bulletins/immigration/monthlyjun23/fil/> (with graph showing increased prosecutions from 2021 to 2023).

⁴ See, e.g., Brief for Professors Kelly Lytle Hernández, et. al. as Amici Curiae Supporting Respondent, *U.S. v. Palomar-Santiago*, 593 U.S. ___, No. 20-437 (May 24, 2021), https://www.supremecourt.gov/DocketPDF/20/20-437/173626/20210331173526991_20-437%20Amici%20Brief.pdf.

in a discriminatory manner,⁵ harm people seeking safety and to return to their families,⁶ provide no benefit to anyone,⁷ and are undertaken at great expense.⁸

Of the two, 8 U.S.C. § 1326, or unauthorized re-entry, has recently been the more commonly charged crime.⁹ In June of this year, the Department of Justice charged 1,175 people for unauthorized reentry and 43 people for unauthorized entry, under 8 U.S.C. § 1325 in District Courts.¹⁰ These figures illustrate that the Department has devoted comparatively fewer resources to prosecuting people attempting to cross the border without permission for the first time, a phenomenon due in part to Border Patrol's mass expulsions under the Title 42 program, which replaced some referrals for prosecution.¹¹ The Department's comparatively fewer unauthorized entry charges make the prosecutions under 19 U.S.C. § 1459, which criminalizes entering other than at a designated port of entry and thereafter "fail[ing] to report at a border crossing point" stand out: the statute can be – and was – applied to first-time border crossers. But, unlike 8 U.S.C. § 1325, which carries a maximum punishment of 6 months in prison, 19 U.S.C. § 1459 can be punished with up to a year in prison.

It seems, therefore, that the Department of Justice and specifically the Del Rio AUSA was deliberately invoking a seldom-used law to target and prosecute Muslims and other immigrants arriving in the United States, because that law carries a greater punishment. As Michael Neal, an attorney with the International Rescue Committee, who helped some of the Afghan men who were charged said, it is "actually surpris[ing]...how obvious it is."¹² Even the Del Rio AUSA appears to understand the flagrancy of these prosecutions, as, after *The Los Angeles Times* presented their preliminary findings in April, the office stopped bringing charges under 19 U.S.C. § 1459—but it instead began charging more people with illegal entry, of whom a disproportionate 50 percent or more came from Muslim-majority countries.¹³

⁵ See National Immigration Project & National Immigrant Justice Center, "Fact Sheet: Immigration Prosecutions By the Numbers," November 14, 2022, <https://immigrantjustice.org/staff/blog/fact-sheet-immigration-prosecutions-numbers>.

⁶ See, e.g., Carlos Estrada, et. al., *Rooted in Racism*, National Immigration Project (Dec. 2021), https://nipnl.org/sites/default/files/2023-04/2021_21Dec_Rooted-in-Racism-Report.pdf.

⁷ See, e.g., American Immigration Council, *Prosecuting People for Coming to the United States* (Aug. 31, 2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/prosecuting_people_for_coming_to_the_united_states.pdf.

⁸ *Id.*

⁹ 71.4% of all immigration cases sentenced in FY 2022 involved unauthorized reentry. See Quick-Facts, U.S. Sentencing Commission, *Illegal Reentry Offenses, Fiscal Year 2022*, https://www.usc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Illegal_Reentry_FY22.pdf.

¹⁰ See Offices of the United States Attorneys, U.S. Department of Justice, *Prosecuting Immigration Crimes Report (PICR)*, <https://www.justice.gov/usao/resources/PICReport>.

¹¹ See *Fact sheet, supra n. 5*.

¹² Aleaziz, *supra n. 1*.

¹³ *Id.*

This degree of disproportionality merits investigation and must be addressed. Selective prosecutions motivated by racial, religious, or ethnic bias are illegal, violating the Fifth Amendment, as well as President Biden’s Executive Orders Advancing Racial Equity and Support for Underserved Communities Through The Federal Government,¹⁴ and the Department’s own manual for U.S. Attorneys, which states that a “person’s race, religion, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs” may not influence the decision to prosecute a person.¹⁵

We urge you to treat this matter as one of the highest priority and to initiate an investigation into the Del Rio AUSA office and any illicit motivations, especially racial, ethnic, or religious animus, underlying the prosecutions discussed above. We further urge you to suspend all prosecutions of all referrals for unauthorized entry and reentry offenses in the Western District of Texas until you complete such an investigation. Your office cannot permit *any* discriminatory or biased prosecutions. They are a stain on this Department, this Administration, and this country.

We welcome discussion with your office about ways to address the harms and bias inherent in these prosecutions. You may reach us by contacting Sirine Shebaya at sshebaya@nipnl.org or at (202) 656-4788.

Sincerely,

Adhikaar for Human Rights and Social Justice
Afghans For A Better Tomorrow
African Advocacy Network
African Communities Public Health Coalition
African Communities Together (ACT)
American Muslim Empowerment Network (AMEN)
Asian Americans Advancing Justice- Asian Law Caucus
Bend the Arc: Jewish Action
Center for Constitutional Rights
Center for Gender & Refugee Studies
Church World Service

¹⁴ Executive Order 13895, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 FR 7009 (Jan. 20, 2021), <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>; Executive Order 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 88 FR 10825, (Feb. 16, 2023), <https://www.federalregister.gov/documents/2023/02/22/2023-03779/further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal>.

¹⁵ U.S. Dep’t of Justice, Justice Manual, 9-27.260 - Initiating and Declining Charges—Impermissible Considerations (Jun. 2023), <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.260>.

CLEAR project
Coalition for Humane Immigrant Rights (CHIRLA)
Communities United for Status & Protection (CUSP)
Community Justice Exchange/National Bail Fund Network
Council on American-Islamic Relations (CAIR)
Detention Watch Network
Dorothy Day Catholic Worker, Washington DC
DRUM - Desis Rising Up & Moving
Equality Labs
Haitian Bridge Alliance
Immigrant Defenders Law Center
Indian American Muslim Council
Inter-Faith Committee on Latin America (IFCLA)
Interfaith Welcome Coalition - San Antonio
International Refugee Assistance Project (IRAP)
Iranian American Bar Association
JAMAAT (Jews and Muslims and Allies Acting Together)
Just Neighbors
LatinoJustice PRLDEF
Libyan American Alliance
Louisiana Advocates for Immigrants in Detention
Louisiana Organization for Refugees and Immigrants
MPower Change
Muslim Advocates
Muslim Justice League
Muslims for Just Futures
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project (NIPNLG)
National Lawyers' Guild- San Francisco Bay Area chapter
Project South
The Sikh Coalition
Wind of the Spirit Immigrant Resource Center
Women Watch Afrika

