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June 27, 2016

The Honorable Jeh Johnson
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Secretary Johnson:

I write to express my frustration with the inadequacy of your Department's efforts to persuade recalcitrant countries, countries that deny or unduly delay issuing appropriate travel documents to their citizens with final orders of removal, to cooperate with the U.S. government in repatriating their nationals. In particular, I want answers as to why you are not using the sanctions authority under section 243(d) of the Immigration and Nationality Act to get full cooperation from recalcitrant countries.

U.S. Immigration and Customs Enforcement (ICE) too often faces problems in repatriating individuals with final orders of removal to their home countries. Many times, these individuals have criminal histories in addition to entering the country illegally or overstaying their visa. Currently, 23 countries are labeled as uncooperative, with the top five most recalcitrant countries being Cuba, China, Somalia, India, and Ghana. In addition, ICE is monitoring another 62 nations where cooperation is strained, but which are not deemed recalcitrant. Because of the Supreme Court decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), persons with final removal orders from these countries are generally required to be released back into the public after 180 days if removal is not "reasonably foreseeable." This means that dangerous criminals, including murderers, are being released every day because their home countries will not cooperate in taking them back. In fiscal year 2015 alone, 2,166 individuals were released in the United States because of this decision and the non-cooperation from recalcitrant countries; more than 6,100 were released in the preceding two years. You yourself stated in a letter to Secretary of State Kerry in September 2014:

In some cases, these individuals went on to commit other violent crimes in the United States, endangering our communities and focusing media attention on the fact that they could have – and should have – been removed, but for their home country's refusal to accept them back. This problem is of significant concern to Congress and to the public.¹

Lives are being lost, the public's safety is at risk, and American families are suffering. It cannot continue.

Congress addressed this problem when it enacted section 243(d) of the Immigration and Nationality Act. Under section 243(d), the Secretary of State is required to discontinue granting immigrant or nonimmigrant visas to a country upon receiving notice from you that the country has denied or is unreasonably delaying accepting a citizen, subject, national or resident of that country. This tool has been used only once, in the case of Guyana in 2001, where it had an immediate effect, resulting in obtaining cooperation from Guyana within two months. However, the sanction authority has not been

¹ Letter from Hon. Jeh Johnson, Secretary of Homeland Security, to Hon. John Kerry, Secretary of State, dated Sep. 19, 2014.

employed since its use against Guyana, even though many of the 23 recalcitrant countries have apparently been uncooperative for years, if not decades. I was surprised to learn in a briefing last week to Congress by your Department and the Department of State that you have never recommended using 243(d) sanctions. In fact, those who briefed Congress insisted that 243(d) sanctions would not necessarily be “effective,” despite the undeniable example of Guyana.

As the person in charge of protecting the homeland and overseeing our country’s visa policies, I strongly urge you to consider using section 243(d) against these recalcitrant countries to compel them to start cooperating with ICE. I know that within the past few months, ICE frustration with the lack of substantial progress with many recalcitrant countries, after years of fruitless demarches, letters, and diplomatic negotiations, finally prompted ICE Assistant Secretary Saldaña to write to the State Department asking that “more aggressive actions,” including 243(d) sanctions, be taken against Guinea and Liberia. I expect you to support ICE in its request.

If you choose to continue to ignore the authority you have been granted, in the face of mounting injury to American citizens, it may be time for Congress to step in and amend section 243(d) in a way that removes any discretion your Department currently enjoys in deciding whether to trigger the imposition of such sanctions and unambiguously *requires* the automatic imposition of visa sanctions and other potentially even harsher penalties for recalcitrant countries.

Sincerely,



Charles E. Grassley
Chairman