

Congress of the United States
Washington, DC 20515

April 24, 2014

VIA ELECTRONIC TRANSMISSION

The Honorable Jeh Johnson
Secretary
Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

Dear Secretary Johnson:

On Monday, April 7, 2014, authorities arrested Moroccan native El Mehdi Semlali Fathi, and found wires and tools in his apartment in Bridgeport, Connecticut, which the FBI believes were intended to be used in bombing attacks targeting a school and a federal building.¹ According to FBI Agent Anabela Sharp, in conversations recorded by the FBI, Fathi stated that he was going to use a remote controlled hobby-type airplane to deliver a bomb.² Following his arrest, the FBI raised questions about why Immigration and Customs Enforcement (ICE) allowed Fathi to remain in the United States.³

According to the FBI, on January 8, 2008, El Mehdi Semlali Fathi arrived in the U.S., having been granted a student visa to attend Virginia International University in Fairfax, Virginia, but his visa was terminated on February 20, 2009 after he failed his fall semester's classes and did not register for new classes in the spring.⁴ Fathi was allegedly subsequently arrested on trespassing charges, and was transferred to the custody of the ICE's division of Enforcement and Removal Operations, at which point he applied for "withholding of removal," a status that, if granted, would allow him to remain in the United States by preventing the United States from removing him.⁵

In his written application for withholding of removal, Fathi claimed that he would be persecuted by the Kingdom of Morocco based on his membership in a particular social group because he was a member of a student union at Alkady Ayyad University in Marrakech; yet, Fathi's father allegedly confirmed that Fathi never attended Alkady Ayyad, and federal law enforcement authorities obtained documentation demonstrating that Fathi was enrolled in a different school, 230 miles away from Marrakech, at the time that Fathi

¹ Associated Press, "Feds accuse man in flying bomb plot in Connecticut," (April 8, 2014). Available at: <http://www.myfoxny.com/story/25190169/feds-accuse-man-in-flying-bomb-plot-in-connecticut#ixzz2yQJhKo9F>

² Anabela Sharp Aff. ¶ 27(f), April 4, 2014. Available at: <http://www.scribd.com/doc/217125425/FATHI-Affidavit>.

³ *Id.* at ¶ 27.

⁴ Munoz, Hilda, *The Courant*, "Bridgeport Resident Suspected Of Planning Terrorist Attack Using Remote-Controlled Plane," (April 8, 2014). Available at: <http://www.courant.com/community/bridgeport/hc-bridgeport-bomb-plot-0409-20140408,0,4809265.story>.

⁵ *Id.*; Anabela Sharp Aff. ¶ 10 (FBI reports that Fathi was precluded from applying for asylum because he did not file his asylum application within one year after the date of his arrival in the United States pursuant to 8 U.S.C. §1158(a)(2)(8)).

testified he was attending Alkady Ayyad.⁶ In addition, Fathi testified on his application for withholding of removal that he was arrested twice in 2007 by the Moroccan government and was persecuted by them; however, on his student visa application filed with the Department of State, Fathi claimed that he was never arrested, according to the FBI's report.⁷ Furthermore, the Moroccan government and Fathi's father confirmed that Fathi was never arrested nor even charged with a crime in Morocco.⁸

In addition to the specific factual inconsistencies that the FBI found in Fathi's application, the general reason he asserts for his expectation of persecution in Morocco—the perception of his involvement with the Ansar El Mehdi group—appears groundless. The Ansar El Mehdi group was allegedly dismantled by the Moroccan authorities in 2006.⁹ On August of 2013, based on Fathi's application for withholding of removal that was approved by an Immigration Judge (IJ), he was permitted to remain in the United States.¹⁰ According to Special Agent Anabela Sharp of the FBI, in one of the recorded conversations of Fathi, he "...is clearly heard stating that the more he thinks about the case, he laughs because he cannot believe the judge believed him."¹¹

A 2009 internal USCIS fraud assessment, obtained by the House Judiciary Committee, found that at least 70 percent of asylum applications showed signs of fraud, with 12 percent of cases showing "clear" evidence of fraud. Further, in 2013, USCIS found that 92% of aliens arriving at our borders claiming a "credible fear" of persecution were being approved (with the other 8% either rejected for failure to file properly or withdrawing their applications). As a result of these lax standards and lenient policies on parole and detention, the number of individuals arriving at our borders claiming a credible fear of persecution who intend to apply for asylum has increased 586% in recent years.

An alien who wants to make an affirmative claim of asylum will first apply with a USCIS asylum officer. Approval rates by asylum officers have increased from 28% in 2007 to 46% in 2013.¹² If an asylum officer does not approve the application, it is referred to an IJ. Approval rates by IJs in affirmative cases have increased from 51% in 2007 to 72% in 2012.¹³ Combining these two bites at the apple, the vast majority of aliens who affirmatively seek asylum are now successful in their claims. This does not even take into account appellate process. All of these factors suggest that our immigration system is being abused.

⁶ Anabela Sharp Aff. ¶ 17, *supra*.

⁷ *Id.*

⁸ *Id.* at ¶ 3.

⁹ *Id.* at ¶ 18-19.

¹⁰ *Id.* at ¶ 24 (The Immigration Court granted Fathi's application for "withholding of removal," meaning that they found it "more likely than not" that he would face persecution if returned to his country pursuant to 8 CFR § 208.16(b)(2)).

¹¹ *Id.* at ¶ 27(b).

¹² Data provided to the House Judiciary Committee by USCIS.

¹³ Executive Office of Immigration Review, *Statistical Year Book* 2011 and 2012, available at <http://www.justice.gov/eoir/statspub/fy12syb.pdf>

In light of the concerns raised by Fathi's fraudulent application for withholding of removal and his subsequent attempt at bombing a school and a government building, please answer the following questions:

- 1) Was Mr. Fathi granted a student visa? If so, when? Please provide copies of his student visa application, even if it requires your department to cooperate with the Department of State on this matter.
- 2) When was Mr. Fathi's student visa terminated and why? What steps did DHS take to locate Mr. Fathi after his visa was terminated?
- 3) Upon termination of his student visa when Mr. Fathi failed to register for classes in the Spring of 2009, why was he not detained prior to being arrested on trespassing charges on December 19, 2010? If Mr. Fathi had not been arrested on trespassing charges, when would he have been arrested as removable from the United States?
- 4) Since Mr. Fathi's arrival in the United States, where and when, if at all, did Mr. Fathi travel internationally? Please provide a list of all entry and exits from the United States and provide actual copies of all corresponding arrival and departure records.
- 5) Given the alleged fraudulent nature of Mr. Fathi's I-589 application form, why was ICE unaware of his misrepresentations? Did ICE's Office of the Principal Legal Adviser challenge Mr. Fathi's application for withholding of removal?
- 6) According to an official in ICE, on February 17, 2014, Homeland Security Investigations (HSI) arrested Semlali subsequent to a traffic stop conducted by the Connecticut State Police. Then, on February 18, 2014, ERO Boston released Semlali on an Order of Supervision (OSUP) and enrolled him into the Intensive Supervisory Appearance Program (ISAP). Why was he released on supervision? Please provide any documentation about discussions related to this decision.
- 7) Please provide the Committee with copies of all documents and reports relating to the issuance of student visa(s), any adjustment of status and subsequent visas, and immigration proceedings for Mr. Fathi including, but not limited to the following:
 - a. All visa applications filed by Mr. Fathi (even if it requires your department to cooperate with the Department of State on this matter);
 - b. Any records on Mr. Fathi included in the student tracking system, SEVIS, including but not limited to his degree program and classes taken at

Virginia International University or any other school attended by Mr. Fathi;

- c. Mr. Fathi's I-589 application form;
- d. The decision granting Mr. Fathi withholding of removal; *and*
- e. Any other documentation that DHS may have regarding Mr. Fathi's immigration court proceedings.

- 8) What action(s) will DHS take against Mr. Fathi now that serious allegations - that he submitted a fraudulent application for withholding of removal and that he planned to bomb U.S. buildings - have been raised?

Thank you for your cooperation and attention in this matter. I would appreciate a response by May 2, 2014. If you have any questions, please do not hesitate to contact Kathy Nuebel Kovarik with the Senate Judiciary Committee at (202) 224-3744 or Dimple Shah with the House Judiciary Committee at 202-226-3926.

Sincerely,



Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary



Bob Goodlatte
Chairman
House Committee on the Judiciary