

Congress of the United States
Washington, DC 20515

June 1, 2012

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano:

We are writing to express our concerns about foreign nationals who have been ordered to be deported after serving sentences in federal or state prisons but who continue to live in the United States because their home countries have not cooperated or have failed to provide the documentation needed for removal.

For example, according to news reports, six years ago, an immigration judge ordered the deportation of Binh Thai Luc, a man now suspected of killing five people in a San Francisco home in March 2012.¹ Luc was to be deported to his native Vietnam after serving time in prison for armed robbery and assault. However, he was never deported because the Vietnamese government did not provide the documents needed to process his removal from the United States. Luc served almost a decade in prison for robbery and assault with a deadly weapon.

Generally speaking, under *Zadvydas v. Davis*, 533 U.S. 678 (2001), aliens who face a deportation order cannot be held for more than 180 days. After that, if the aliens cannot be removed from the United States within the reasonably foreseeable future, the Department of Homeland Security must release them. According to news reports, that was the case with Luc, who was released into the community in 2006 after spending time in an Immigration and Customs Enforcement (ICE) detention facility in Arizona. At the time of Luc's recent arrest, an ICE spokesperson could not say how many aliens with deportation orders were released after their home countries refused to respond or did not provide proper documentation.

¹ "Binh Thai Luc, suspect in SF murders, faced deportation to Vietnam in 2006," CBS NEWS (Mar. 27, 2012)(available at http://www.cbsnews.com/8301-504083_162-57405072-504083/binh-thai-luc-suspect-in-sf-murders-faced-deportation-to-vietnam-in-2006/); "Man accused of slaying five in S.F. home to appear in court," LA TIMES (Apr. 5, 2012) (available at <http://latimesblogs.latimes.com/lanow/2012/04/sf-slaying-suspect-will-be-arraigned-thursday-.html>).

We are concerned about this situation and with Executive Branch's apparent failure to address it. Accordingly, please respond to the following requests for information:

1. How many aliens with deportation/removal orders who have been released from detention (after serving time in a federal or state prison), and whose home countries refused to cooperate or did not provide the proper documentation, are currently living in the United States? For each such alien, identify their home country. For each home country, identify how many of its nationals are living in the United States and fit into this category.
2. How many of the aliens ordered removed but released because of *Zadvydas v. Davis* have been convicted of another crime since they were released?
3. How many of the aliens ordered removed but released because of *Zadvydas v. Davis* have been convicted of a "crime of violence" since they were released?
4. How are the aliens identified in response to the first question being monitored by the federal government?
5. Assuming that they are monitored, what else, if anything, is the Obama administration doing to protect U.S. citizens from the aliens identified in response to the first question?
6. Is the Obama administration actively trying to remove the aliens identified in response to the first question from the United States? If so, describe in detail the efforts that are being made. In particular, for each country identified in response to the first question, set forth in detail the efforts being made to have the country cooperate. If no efforts are being made, please explain why not.
7. Are any of the aliens identified in response to the first question being considered for ICE's "prosecutorial discretion" initiative? If so, how many are being considered and how many have been granted "prosecutorial discretion"? And if so, what is the justification for extending eligibility to this category of aliens?
8. Since *Zadvydas v. Davis*, Congress has attempted to pass legislation that would amend the Immigration and Nationality Act to authorize the Department of Homeland Security to detain aliens beyond six months. Would you support legislation that aims to fix the problems caused by *Zadvydas v. Davis* to allow DHS to detain aliens beyond six months?

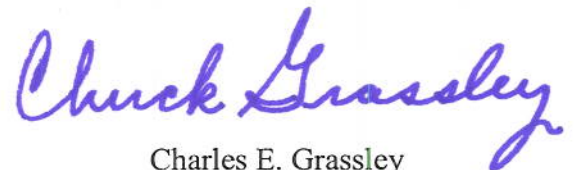
9. Section 243(d) of the Immigration and Nationality Act provides authority to the Secretary of State to discontinue granting visas to nationals of countries that deny or delay accepting their aliens. Specially, the law says that “on being notified by the Secretary of Homeland Security that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country...the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Secretary of Homeland Security notifies the Secretary of State that the country has accepted the alien.” It is our understanding that this authority has never been used by the Obama administration. Have you, in your capacity as Secretary, ever notified Secretary Clinton about countries that refuse to repatriate their nationals? If so, has Secretary Clinton ever acknowledged your notification and/or refused to discontinue granting visas to these countries despite your notification? Given the serious threat to public safety and homeland security, this authority should be used more often to protect Americans. Where is the break down between the two departments in exercising this special authority?

We ask that you provide written answers by June 29, 2012.

Sincerely,



Lamar Smith
Member of Congress



Charles E. Grassley
United States Senator