



October 26, 2015

Sent via Electronic Mail and First-Class US Mail

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October 26, 2015

Re: Department of Homeland Security's Pattern & Practice of
Improperly Denying Parole to Bangladeshi Asylum Seekers

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By First-Class US Mail:

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Re: Department of Homeland Security's Pattern & Practice of Improperly Denying Parole to Bangladeshi Asylum Seekers

Dear Secretary Johnson, Attorney General Lynch and Secretary Kerry:

Our organizations write to express our concerns with the Department of Homeland Security's ("DHS") pattern and practice of improperly denying parole to Bangladeshi asylum seekers in immigration detention and its unjustified stance that those affiliated with the Bangladesh National Party ("BNP") are members of a Tier III terrorist organization as defined by the Immigration and Nationality Act. DHS' position is unfairly affecting Bangladeshi detainees both at the parole stage, where it appears that DHS is systematically issuing denials to Bangladeshi asylum seekers, as well as at the bond hearing stage, where DHS is consistently arguing as a blanket matter that bond should be denied for any Bangladeshi applicant affiliated with the BNP.

In light of the current political unrest in Bangladesh, it appears that many Bangladeshi asylum seekers have fled to escape persecution due to their affiliation with the BNP, the primary opposition party seeking to regain power. However, since late 2014, DHS's policy has resulted in a disproportionately high number of Bangladeshi asylum seekers remaining in detention pending consideration of their asylum claims. For example, based on Public Law Center's meetings with Bangladeshi detainees at the James A. Musick Facility as of several weeks ago, of 23 detainees, it appears that only two have been able to successfully post bond and leave the facility. Similarly, at the Adelanto Detention Facility in Adelanto, California, of 38 Bangladeshi detainees, only three have successfully posted bond and been released. We have heard of similar accounts around the country. We are aware of large numbers of Bangladeshi detainees unjustifiably held by ICE elsewhere in the country as well, including in El Paso, Texas.

For the reasons explained below, we ask that the Department of Homeland Security refrain from taking the position that the BNP is a Tier III terrorist organization in any pending case—whether in the context of release on parole, bond, or the merits of removal cases. In addition, we ask that the DHS take the following additional steps to ameliorate the harm that its position on this issue has caused, and to ensure that no further such harm occurs in the future.

With respect to the detention of Bangladeshi asylum seekers:

1. reverse any directive or formal or informal guidance instructing parole officers and ICE trial attorneys to systematically deny parole to Bangladeshi detainees, or deny parole to Bangladeshi detainees affiliated with the BNP;
2. reconsider parole determinations for all Bangladeshi asylum seekers who were previously denied parole, and instruct parole officers to apply the correct standards.

With respect to the removal cases of Bangladeshi asylum seekers:

1. submit a statement to all relevant tribunals (whether within the immigration court system or in the federal courts of appeal) that DHS is no longer taking this position in any case where it has asserted that the BNP is a Tier III terrorist organization; and
2. refrain from removing any individuals who were found ineligible for any form of relief in whole or in part on the ground that the BNP is a Tier III terrorist organization until the DHS resolves this issue or, if necessary, until the federal courts have addressed it.

1. Brief History of the BNP and Its Place in Bangladeshi Politics.

As mentioned earlier, many of the Bangladeshi asylum seekers claim that they have fled Bangladesh in order to escape persecution on account of their affiliation with the BNP, which currently is the main opposition party. The Awami League (“AL”), the party currently in power,¹ formed the first national government in 1972,² and the BNP was created as an alternative to the AL.³ The BNP has gained power on numerous occasions since its inception, including most recently between 2001 and 2006.⁴ During this time, the Bangladeshi government was an ally of the U.S., including on issues related to counterterrorism in the period immediately following the 9/11 terrorist attacks in the U.S.⁵

The BNP and AL have been engaged in intense rivalry since the 1990s,⁶ often leading to bouts of political violence.⁷ Most recently, the parties clashed during the January 2014 elections

¹ HUMAN RIGHTS WATCH, DEMOCRACY IN THE CROSSFIRE: OPPOSITION VIOLENCE AND GOVERNMENT ABUSES IN THE 2014 PRE- AND POST- ELECTION PERIOD IN BANGLADESH 10 (2014), available at https://www.hrw.org/sites/default/files/reports/bangladesh0414_ForUpload.pdf [hereafter DEMOCRACY IN THE CROSSFIRE].

² See INT’L CRISIS GRP., MAPPING BANGLADESH’S POLITICAL CRISIS 3 (2015), available at [http://www.crisisgroup.org/~media/Files/asia/south-asia/bangladesh/264-mapping-bangladesh-s-political-crisis.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-asia/bangladesh/264-mapping-bangladesh-s-political-crisis.pdf).

³ *Id.*

⁴ *Id.* at 4 (second election under the caretaker system in October 2001 returned the BNP to power).

⁵ See, e.g., OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM, U.S. DEP’T OF STATE, 2004 COUNTRY REPORTS ON TERRORISM 72-73 (2005), available at <http://www.state.gov/documents/organization/45322.pdf> (noting that in 2004, Bangladesh supported the global war on terror and that the United States was assisting Bangladesh’s capacity to combat terrorism).

⁶ INT’L CRISIS GRP., *supra* note 2, at 4.

⁷ See, e.g., *id.* at 6-7, 21-22.

when they could not agree on the appropriate mechanism to hold elections. As a result, the elections were the most violent in the country's history; there were countrywide strikes, demonstrations, traffic blockades, and attacks on the AL supporters.⁸ In response, the government cracked down on the BNP's strongholds, reportedly torturing, illegally detaining, and extrajudicially killing leaders and activists.⁹ A Human Rights Watch investigation indicated that people were detained solely because of their affiliation with the BNP, and they were later charged in criminal cases in which they had not been originally named.¹⁰ Political violence and human rights violations have continued since the elections.¹¹

2. *The Department of Homeland Security's Stance on BNP Members Seeking Asylum is Unsupported by the Evidence.*

Though members of the BNP face a very real and actual threat to their lives, DHS appears to be denying parole to these asylum seekers for pretextual reasons. At bond hearings that take place after denial at the parole stage, DHS has consistently taken the position that BNP is a Tier III terrorist organization as defined by the Immigration and Nationality Act ("INA"), 8 U.S.C.A. § 1182(a)(3)(B)(vi) (West 2013). The entirety of DHS' claim is based on its unsupported allegation that the BNP is engaged in "continued terrorist activities as well as their affiliations with Islamic extremist entities including the Jamaat-ul Mujahideen Bangladesh (JMB) and the Lashkar-e-Taiba (LeT)."¹² However, this position is belied by both the BNP's history and DHS' lack of evidence.

The Government should abandon its arguments concerning the BNP and formally renounce them in the manner we request above for at least three reasons. First, even assuming that a major political party's mere "affiliation with" a terrorist organization could justify the classification of that party as itself a terrorist organization, the BNP is not affiliated with any of the alleged terrorist organizations identified by DHS. Second, even if the BNP has an affiliation with a terrorist organization, which there is no absolutely evidence of based on our review of

⁸ *Id.* at 6; *see also* DEMOCRACY IN THE CROSSFIRE, *supra* note 1, at 2.

⁹ INT'L CRISIS GRP., *supra* note 2, at 6-7; *see also* DEMOCRACY IN THE CROSSFIRE, *supra* note 1, at 3.

¹⁰ DEMOCRACY IN THE CROSSFIRE, *supra* note 1, at 4.

¹¹ *See generally id.*

¹² *See, e.g.,* Ex. A at 3. Exhibit A is a redacted DHS pre-hearing brief that argues the BNP is a terrorist organization. It is similar to other briefs filed in many cases involving Bangladeshi asylum seekers. *See generally* Ex. B. Exhibit B is practice advisory created by the National Immigration Project of the National Lawyers Guild with assistance of the ACLU; the practice advisory describes the arguments made by DHS in many cases involving Bangladeshi asylum seekers.

DHS's filings, under the plain language of the INA a Tier III designation requires that a group have *more* than a mere "affiliation with" a terrorist organization; it must also provide, *inter alia*, material support to the organization. *See* INA, 8 U.S.C.A. § 1182(a)(3)(B). Third, there is no evidence that the BNP itself engages in terrorist activities, even as that term is broadly defined in the statute. Thus, DHS' allegation that the BNP is a Tier III terrorist organization is wholly unjustified, and it therefore must stop denying parole, asylum, and other protections to Bangladeshi detainees on this basis.

A. *DHS' Submissions Do Not Establish that the BNP, or Its Subgroups, Are Affiliated With Organizations That Engage in Terrorist Activists.*

There is no evidence that the BNP is engaged in, and or has a subgroup that engages in, terrorist activity as described in the INA, 8 U.S.C.A. 1182 §§ 212(a)(3)(B)(iv)(I)-(VI). Specifically, the BNP does not engage in, or have a subgroup that engages in, terrorist activity through the use of "an explosive firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damages to property."¹³ Consequently, even assuming for the sake of argument that a Bangladeshi detainee claiming affiliation with BNP provided "material support" to the BNP, that detainee has not provided "material support . . . to a terrorist organization" under the INA, 8 U.S.C.A. § 1182 (a)(3)(B)(iv)(VI)(dd) since the BNP is not itself a terrorist organization.

Though DHS has asserted that the BNP is engaged with Islamic Extremist groups, it has not, and cannot, establish that the BNP is affiliated with "Islamic Extremist groups," including the JMB, the LeT, and the Harakatul-Jihad-i-Islami Bangladesh (HUJI-B).¹⁴

i. *The BNP is not affiliated with the JMB.*

DHS' claim that the BNP is affiliated with the JMB is particularly implausible given that, between 2005 and 2006, the BNP-led government cracked down on the JMB, charging, prosecuting, and convicting hundreds of JMB members and its leader.¹⁵ DHS has provided no examples where the BNP has supported the JMB, either directly or indirectly, since this crackdown. Furthermore, other than a fleeting reference to a disputed and politically motivated allegation by the current governing party, the AL, concerning the HUJI-B (addressed below in § C.4.a.iii), DHS provides no evidence of any BNP association with the JMB after 2006.¹⁶

¹³ Immigration and Nationality Act, 8 U.S.C.A. § 1182(a)(3)(B)(iii)(V)(b) (West 2013).

¹⁴ *See generally* Ex. A.

¹⁵ INT'L CRISIS GROUP, *supra* note 2, at 11.

¹⁶ *See* Ex. A at 4-6.

Contrary to DHS's assertion, any tie between the BNP and Jamaat-e-Islami (JeI), Bangladesh's largest Islamic political party,¹⁷ cannot form a basis for concluding that the BNP provides material support to, or is even affiliated with, JMB. DHS argues that the BNP (then the controlling government party) allowed JeI and Islamic Chatra Shabir (ICS), JeI's student wing, to reenter Bangladeshi politics, which indicates close ties between these entities.¹⁸ However, this action in and of itself does not demonstrate that the BNP provided material support to the JMB in any way, let alone that it did so during any relevant time period. While the JMB has recruited members from ICS and to some extent JeI, DHS' own evidence clearly states that those recruited were individuals who were "disgruntled with the policies of their leaders."¹⁹

The JeI and the BNP are distinct parties whose relationship is characterized as a "solely political, not ideological alliance, like that between UK Conservatives and Liberal Democrats."²⁰ Thus, any tie between the BNP and JeI cannot form a basis for concluding that the BNP provides material support to, or is even affiliated with, JMB.

ii. The BNP is not affiliated with the LeT.

DHS has also provided no evidence linking the BNP to the LeT. Instead, they have cited to possible ties between the LeT and the JMB.²¹ However, given that the BNP is not affiliated with the JMB for the reasons set forth above, there is simply no evidence of a connection between the LeT and the BNP. Moreover, given LeT's allegiance to Pakistan,²² it is hard to take seriously the unsupported suggestion that the BNP is even affiliated with, let alone supportive of, the LeT. Bangladesh itself was born out of historical opposition to Pakistan, and successfully fought for independence from Pakistan just a few years before the BNP was founded.²³

iii. The BNP is not affiliated with the HUJI-B.

DHS has also implied that the BNP is connected to HUJI-B, a Tier I terrorist

¹⁷ DEMOCRACY IN THE CROSSFIRE, *supra* note 1, at 10.

¹⁸ Ex. A at 4.

¹⁹ INT'L CRISIS GRP., THE THREAT FROM JAMAAT-UL MUJAHIDEEN BANGLADESH 5 (2010), *available at* http://www.crisisgroup.org/~media/Files/asia/south-asia/bangladesh/187_the_threat_from_jamaat_ul_mujahideen_bangladesh.

²⁰ INT'L CRISIS GRP., *supra* note 2, at 10.

²¹ *See, e.g.*, Ex. A at 3 (citing to INT'L CRISIS GRP, *supra* note 19, which states that JMB's link to LeT is of concern).

²² *See* INT'L CRISIS GRP., *supra* note 2, at 24.

²³ *See Bangladesh Islamist leader Ghulam Azam charged*, BRIT. BROADCASTING CORP. (May 13, 2012), *available at* <http://www.bbc.com/news/world-asia-18049515>.

organization.²⁴ This implication is entirely premised on unsubstantiated and politically motivated allegations regarding the son of the BNP's leader, Khaleda Zia.²⁵

As a threshold matter, the fact—even if true—that a single individual related by blood to a leader of the BNP has ties to a terrorist organization would not suffice to establish that a group or subgroup of the party engages in terrorist activity.²⁶

In any event, the charge against Zia's son cannot serve as a basis for such a finding because it is an entirely political charge that has never been accepted by any court.²⁷ In 2011, the AL issued a warrant for Tarique Rahman, Zia's son, with aiding and abetting HUJI-B in the attempted assassination of the AL's leader in 2004.²⁸ In the intervening years, no court has ever substantiated this charge. In fact, the AL similarly charged over 20 other individuals with the same attempted assassination,²⁹ including Zia herself, who was Prime Minister at the time.³⁰ These charges were made as part of the AL's larger, politically-motivated, anti-BNP campaign.³¹

Suppression through the use of trumped-up charges presented to the judiciary is not uncommon in Bangladesh. For example, the ruling AL also interfered with the efforts of the Anti-Corruption Commission (ACC), a government agency tasked with investigating corruption. The AL forced the ACC to drop thousands of corruption cases involving the AL, while bringing new charges against Zia and Rahman.³² The Department of State has noted that:

the government subjected the judiciary to political pressure, and cases involving opposition leaders often proceeded in an irregular fashion. Corruption remained a serious problem within the judiciary and was a factor in lengthy delays of trials,

²⁴ See Ex. A at 5.

²⁵ See *id.*

²⁶ See Immigration and Nationality Act, 8 U.S.C.A. § 1182(a)(3)(B)(vi)(III) (West 2013).

²⁷ INT'L CRISIS GRP., *supra* note 2, at 13.

²⁸ Farid Ahmed, *Bangladesh ex-premier's son wanted in grenade attack*, CNN.COM (July 4, 2011, 1:12 PM), <http://www.cnn.com/2011/WORLD/asiapcf/07/04/bangladesh.arrest.warrant/>; see also INT'L CRISIS GRP., *supra* note 2, at 13.

²⁹ Ahmed, *supra* note 28.

³⁰ INT'L CRISIS GRP., *supra* note 2, at 13.

³¹ *Id.*

³² BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEP'T OF STATE, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: BANGLADESH 29 (2011), available at <http://www.state.gov/documents/organization/160056.pdf>.

which were subjected to witness tampering and intimidation of victims.³³

In sum, the evidence does not support DHS' contention that the BNP is a Tier III terrorist group. The BNP is one of the two largest political parties in Bangladesh and previously led a government that cracked down on international and domestic terrorist groups, and it worked closely with the United States to address JMB's domestic terrorism.³⁴ Neither the JMB nor the HUJI-B are subgroups of the BNP, and they not affiliated with the BNP in any way, shape, or form. Similarly, there are no connections of any kind between the LeT and the BNP.

B. Even if the BNP Were Affiliated with a Terrorist Organization, Mere Affiliation is Not Enough for a Tier III Designation.

Even assuming *arguendo* that the BNP were affiliated with a terrorist organization, absent an explicit determination that the BNP solicited funding, recruited individuals for, or provided material support to said organization, the plain language of INA, 8 U.S.C.A. § 1182(a)(3)(B)(vi)(III) (West 2013) forecloses a finding that the BNP is a Tier III terrorist organization.

Under section 1182(a)(3)(B)(vi)(III) of the INA, a Tier III terrorist organization is defined as a "group of two or more individuals, whether organized or not, which engages in, or has a subgroup which [engages in terrorist activity]." The phrase "engage in terrorist activity" is defined in sections 1182(a)(3)(B)(iv)(I-VI); it includes, *inter alia*, committing and planning terrorist activities, soliciting funds or recruiting individuals for terrorist activities or terrorist organizations, and affording material support to a terrorist organization.

The omission of "affiliation" as a separate criterion within the definitions of terrorist organizations and "engag[ing] in terrorist activity" cannot be understood as accidental, given that Congress knows how to render inadmissible individuals who are merely "affiliated with" a disfavored group.³⁵ Congress codified a ground of inadmissibility based on an "affiliation with

³³ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2014: BANGLADESH 21-22 (2014), *available at* <http://www.state.gov/documents/organization/236846.pdf>.

³⁴ OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM, U.S. DEP'T OF STATE, 2005 COUNTRY REPORTS ON TERRORISM: SOUTH ASIA OVERVIEW (2006), *available at* <http://www.state.gov/j/ct/rls/crt/2005/64345.htm>. The State Department's 2005 report noted that Bangladesh saw the rise of the JMB during this time, and that the JMB actively engaged in acts of domestic terrorism. However, Prime Minister Zia of the BNP regularly condemned these terrorist acts and renewed bans on the JMB as a terrorist organization. Prime Minister Zia also cooperated with the United States to address these terrorist attacks, drafting a comprehensive anti-money laundering law and strengthening control to ports of entry. *Id.*

³⁵ *See, e.g.*, Immigration and Nationality Act, 8 U.S.C.A. § 1182(a)(3)(D) (West 2013) (rendering inadmissible "[a]ny immigrant who is or has been a member of or *affiliated with* the

the Communist or any other totalitarian party.”³⁶ In light of that provision, Congress’s decision not to codify an “affiliation with” ground for Tier III groups creates a strong inference that Congress did not intend to impose inadmissibility based on mere affiliation.³⁷ A group’s mere affiliation with a terrorist organization cannot justify classification as a Tier III terrorist organization.

C. DHS’ Submissions Do Not Establish that the BNP Engages in Terrorist Activities.

DHS has not established, and cannot establish, that the BNP has engaged in terrorist activities by participating in and inciting violence.³⁸ This assertion is based on a deep misunderstanding of Bangladeshi politics and an incorrect understanding of the nature of the political activity that the BNP advocates.

First, while the BNP has routinely called for strikes and protests, this is a regular feature of Bangladesh’s democracy.³⁹ Calling for strikes and protests is well within the BNP’s rights as a political party and does not define it as a terrorist organization. Other organizations that courts have identified as Tier III terrorist organizations have called for far more explicitly violent actions or held extremist goals, such as kidnapping or a regime change.⁴⁰ The BNP has never advocated for such actions or held such goals; even in their disagreement with the AL over the

Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign”) (emphasis added).

³⁶ See, e.g., *id.*

³⁷ See *Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006) (“[A] negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute.”).

³⁸ See Ex. A at 5-6.

³⁹ Letter from James F. Moriarty, U.S. Ambassador (ret.) to Bangladesh (April 17, 2015) (“In the democracies of South Asia, calling for strikes and closures is a time-honored way of movements and political parties . . . Indeed the right to call for strikes is protected in Bangladesh’s legal system”).

⁴⁰ See, e.g., *Bojnoordi v. Holder*, 757 F.3d 1075, 1078 (9th Cir. 2014) (finding a Tier III terrorist organization when the organization’s goal was “regime change, which could only be accomplished through violence”); *Viegas v. Holder*, 699 F.3d 798, 802 (4th Cir. 2012) (finding a Tier III terrorist organization when the organization’s factions engaged in violence against the government); *Haile v. Holder*, 658 F.3d 1122, 1127 (9th Cir. 2011) (finding a Tier III terrorist organization when the organization carried out kidnapping, assassination, and hijacking).

management of the most recent elections, the BNP has only called for a boycott of the elections—not an overthrow of the AL-led government or violence.⁴¹

More importantly, in contrast to DHS' assertion, the BNP and its leadership has consistently condemned any violence associated with strikes or other protests. For example, during the most recent elections when the AL government refused to allow an election overseen by a neutral caretaker government, as had been the practice since the 1990s, the BNP called for political protests.⁴² But, consistent with its historical position, the BNP called for peaceful protests and denounced any associated violence, even explicitly accusing activists of terrorism.⁴³ While there have been recent violent political clashes in Bangladesh, the Department of State has described them as “linked to criminal activities rather than to political motives.”⁴⁴ Thus, individual party members may be taking it upon themselves to perpetrate violence, but the party and its leadership as a whole do not support these actions. In such cases, “[a]n organization is not a terrorist organization just because one of its members commits an act of armed violence . . . even if his objective was to advance the organization's goals.”⁴⁵ Second, if DHS' assertion were true, and routine violence arising from otherwise-lawful strikes and protests constituted terrorist activity, DHS would have to deem every political party in Bangladesh—and, indeed, most of the political parties in South Asia—terrorist organizations. This designation would include the

⁴¹ DEMOCRACY IN THE CROSSFIRE, *supra* note 2, at 2. *See generally* INT'L CRISIS GRP., *supra* note 2, at 3-7 (discussing the history and rivalry between the AL and BNP as political parties).

⁴² INT'L CRISIS GRP., *supra* note 2, at 1.

⁴³ *See Bangladesh Firebomb Attacks on Bus and Truck Kill Nine*, BRIT. BROADCASTING CORP. (Feb. 7, 2015), *available at* <http://www.bbc.com/news/world-asia-31191812>; *Bangladesh Opposition Leader Khaleda Zia Charged Over Arson Attack*, BRIT. BROADCASTING CORP. (Jan. 3, 2014), *available at* <http://www.bbc.com/news/world-asia-31127763>; *see also* Democracy in the Crossfire, at 13.

⁴⁴ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *supra* note 33, at 3.

⁴⁵ *See Hussain v. Mukasey*, 518 F.3d 534, 538 (7th Cir. 2008) (citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 930-32 (1982)); *see also Khan v. Holder*, 766 F.3d 689, 699 (7th Cir. 2014).

governing AL party,⁴⁶ to which the United States gave more than 600 million dollars of aid between 2010 and 2012⁴⁷ and will give close to 5 billion dollars in aid between 2012 and 2017.⁴⁸

Violent protests and clashes regularly occur in Bangladesh, with political violence flaring up in 1996 and 2006, as well as most recently in 2014.⁴⁹ According to the legal aid and human rights NGO Ain o Salish Kendra (ASK), which the Department of State regularly cites, in 2014 more than 664 incidents of political violence occurred, resulting in 8,373 individuals injured and 147 deaths.⁵⁰ Of the 664 incidents that occurred, only 146 involved the BNP in any way (resulting in 31 deaths). Indeed, the AL fomented nearly twice as many political incidents, with 280 violent incidents involving 64 deaths.⁵¹ Significantly, these numbers do not include violence committed by AL security forces, who have cracked down on the opposition through extrajudicial killings of protesters—including bystander children—destruction of property, and widespread arbitrary arrests.⁵² Any reading of INA, 8 U.S.C.A. § 1182(a)(3)(B)(vi) that would classify the BNP as an undesignated Tier III terrorist organization based on this type of political violence would necessarily require the same finding with respect to the AL and every other political party in the country. Such a reading would certainly run counter to Congressional intent, given the fact that Congress is giving the AL billions of dollars in U.S. economic and military aid.

⁴⁶ See, e.g., HUMAN RIGHTS WATCH, BLOOD ON THE STREETS: THE USE OF EXCESSIVE FORCE DURING BANGLADESH PROTESTS 4 (2013), available at http://www.hrw.org/sites/default/files/reports/bangladesh0813_ForUpload_0.pdf (indicating that during a national march, activists of the AL joined in violent clashes that arose between protesters and security forces).

⁴⁷ See *Foreign Aid Explorer: Bangladesh*, USAID, <https://explorer.usaid.gov/country-detail.html#Bangladesh> (last visited Aug. 10, 2015).

⁴⁸ Press Release, Embassy of the United States of America in Dhaka, Bangladesh, USAID Celebrates 50th Anniversary and 40 Years with Bangladesh (Jan. 12, 2012), available at http://photos.state.gov/libraries/bangladesh/8601/2012%20Press%20Releases/USAID%2050th%20Anniversary_%20Jan%2012_%202012.pdf.

⁴⁹ See INT'L CRISIS GRP., *supra* note 2, at 1, 4.

⁵⁰ *Political Violence in 2014*, Ain o Salish Kendra (Jan. 17, 2015), <https://docs.google.com/viewerng/viewer?url=http://www.askbd.org/ask/wp-content/uploads/2015/01/Political-Violence-2014-ASK-Documentation1.pdf>

⁵¹ *Id.*

⁵² HUMAN RIGHTS WATCH, *supra* note 46, 13-20.

3. *DHS Must Discontinue Arguing that Bangladeshi Asylum Seekers Claiming Persecution on the Basis of their BNP Affiliation are Members of a Tier III Terrorist Organization.*

Based on reports we have heard from detainees and their advocates, we have reason to believe that immigration judges are denying release on bond to Bangladeshi individuals otherwise eligible for such release pursuant to the Ninth Circuit's decision in *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) because of DHS' unsupported assertion that BNP is a Tier III terrorist organization. We also have reason to believe that when such detainees are awarded bond under *Rodriguez*, immigration judges are granting very high bonds—sometimes as high as \$50,000—at least in part because of DHS' unsupported assertion that BNP is a Tier III terrorist organization. In contrast, the mean bond amount for prolonged detainees in the Central District of California is \$15,883, while the median is \$10,000.⁵³ As explained above, the BNP is neither a Tier III terrorist organization, nor is it affiliated with any terrorist organizations. Thus, DHS' pattern and practice of improperly denying parole to Bangladeshi asylum seekers in detention—or, when bond is granted, advocating for extraordinarily high bond amounts—must stop.

We are also concerned that Bangladeshi detainees' asylum proceedings are tainted by DHS' allegation that BNP is a Tier III terrorist organization. As discussed above, at *Rodriguez* bond hearings, DHS has argued that those Bangladeshi asylum seekers claiming persecution on account of their affiliation with the BNP are members of a Tier III terrorist organization. While immigration judges have denied asylum to Bangladeshi detainees for a variety of reasons, it is very likely that asylum proceedings are tainted by DHS' unsupported assertion that BNP is a terrorist organization. DHS must stop arguing that those Bangladeshi asylum seekers claiming persecution on account of their affiliation with the BNP are members of a Tier III terrorist organization.

Further, DHS' current stance, in addition to being out of touch with reality, is also completely at odds with its own policy directives. Many asylum seekers have suffered trauma and abuse prior to arrival in the United States. Detaining asylum seekers in prison-like conditions is re-traumatizing and may create long-term psychological consequences.⁵⁴ Uncertainty about the length of detention is itself a significant cause of anxiety and mental

⁵³ See Ex. C (collecting and summarizing government data on bond amounts for individuals detained for more than six months as part of Petitioners-Appellees/Cross Appellants' Request for Judicial Notice at 86, *Rodriguez v. Robbins*, No. 13-56706 (9th Cir. Sept. 22, 2014) ECF No. 24-4).

⁵⁴ See PHYSICIANS FOR HUMAN RIGHTS & THE BELLEVUE/NYU PROGRAM FOR SURVIVORS OF TORTURE, FROM PERSECUTION TO PRISON: THE HEALTH CONSEQUENCES OF DETENTION FOR ASYLUM SEEKERS 1-3 (2003), available at https://s3.amazonaws.com/PHR_Reports/persecution-to-prison-US-2003.pdf.

distress,⁵⁵ and detention becomes especially isolating and hostile for an asylum seeker who is unable to communicate or understand English.⁵⁶ Detention also impacts an individual's ability to demonstrate eligibility for asylum; not only is it difficult for an applicant to gather documentation in support of his or her asylum claim, it is nearly impossible for an applicant to secure legal representation.⁵⁷ Because of the unique situation of asylum seekers, members of Congress, the bipartisan U.S. International Religious Freedom Commission, and national and international human rights organizations urged DHS to reform its detention and treatment of asylum seekers.⁵⁸

In response, DHS issued the ICE Policy Directive 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture in 2009 to increase parole grants to asylum seekers and shift away from detaining asylum seekers.⁵⁹ Under this directive, individuals found to have a credible fear of persecution should be considered for parole, and parole may be granted once asylum seekers establish credible fear, identity, community ties, and that they are not a flight or security risk.⁶⁰ The parole application process requires an individualized, case-by-case determination of whether detention is necessary.⁶¹ The guidance memo favors parole where identity is established and the individual is neither a flight risk nor a danger to the community.⁶²

However, DHS is not honoring its own guidance towards Bangladeshi asylum applicants with political persecution claims. Most of these applicants have established a credible fear,

⁵⁵ *Id.* at 5.

⁵⁶ *Id.* at 117-18 (recounting stories of non-English speaking detainees put in segregation or solitary confinement).

⁵⁷ HUMAN RIGHTS FIRST, U.S. DETENTION OF ASYLUM SEEKERS: SEEKING PROTECTION, FINDING PRISON 42 (2009), *available at* <https://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf>

⁵⁸ *See generally id.* at 68-73; U.S. COMM'N FOR INT'L RELIGIOUS FREEDOM, REPORT ON ASYLUM SEEKERS IN EXPEDITED REMOVAL (2005), *available at* <http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal>.

⁵⁹ U.S. Immigration and Customs Enforcement, Directive No. 11002.1, Parole of Arriving Aliens Found to Have A Credible Fear of Persecution or Torture 6-7 (2009), *available at* http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf.

⁶⁰ *Id.* § 4.2.

⁶¹ *Id.*

⁶² *See id.* § 6.2

produced identification documents, and submitted proof of an eligible sponsor.⁶³ According to the 2009 criteria, they are not a danger to the community. Thus, they are the type of asylum seekers that the parole guidance is intended to assist. However, DHS is carrying out a blanket, systematic denial of parole applications submitted by Bangladeshi asylum applicants with political persecution claims on account of their support or membership in the BNP. DHS is circumventing its own policy and depriving individuals of an individualized determination of their parole application where DHS ought to balance the interests of the individual against any security risk.

For instance, of the 23 Bangladeshi detainees we met with at the Musick facility, 21 established a credible fear of persecution. Of these, at least 18 submitted an application for parole that included proof of identification and community ties; yet all were denied parole. Take for instance the situation of Islam Tanvir who is a BNP supporter and was forced to flee his country after suffering multiple instances of harm by the Awami League. After passing his credible fear interview, Tanvir submitted a parole application which included sponsorship from his cousin, a U.S. citizen who lives in New York and was willing to support Tanvir. Nevertheless, ICE denied parole on the pretext that they were not satisfied by the proof of identification submitted and for failure to demonstrate strong enough ties to the community, even though comparable identity documents are routinely deemed sufficient in other cases. Tanvir, like many Bangladeshi asylum seekers, came to the United States specifically *because* of his ties to the Bangladeshi immigrant community residing here, such as his cousin and his cousin's family. At Tanvir's prolonged custody redetermination hearing, Tanvir's cousin and friend from Bangladesh traveled from New York to Los Angeles in order to testify in person and corroborate that Tanvir was neither a flight risk nor a danger to society. However, because DHS argued that BNP constitutes a Tier-III terrorist organization, Tanvir was denied bond.

Tanvir's case is not unique. At least dozens of Bangladeshi asylum seekers are languishing in detention facilities across the United States just as he is.

For all of these reasons, it is clear that DHS' current policy in denying parole and opposing release on bond to Bangladeshi detainees affiliated with the BNP on account of its position that BNP is a Tier III terrorist organization is unjustified. We ask that you immediately take the steps identified at the outset of this letter in order to rectify the harms created by this unjustified policy.

⁶³ Indeed, because of the sizable Bangladeshi immigrant community residing in the United States, many Bangladeshi detainees have family members and close friends living in the U.S. who can qualify as their sponsor. See MIGRATION POLICY INSTITUTE, RAD DIASPORA PROFILE: THE BANGLADESHI DIASPORA IN THE UNITED STATES 1 (2014), *available at* <http://www.migrationpolicy.org/sites/default/files/publications/RAD-Bangladesh.pdf> (As of July 2014, there were an estimated 277,000 Bangladeshis living in the U.S.).

We look forward to hearing from you by November 13, 2015, to reach a resolution on this matter. If you have any questions, please contact Laboni Hoq, Asian Americans Advancing Justice – LA, lhoq@advancingjustice-la.org, 213-977-7500, ext. 257.

Sincerely,

A handwritten signature in blue ink, appearing to be 'LH', is centered below the word 'Sincerely,'.

Laboni Hoq, Esq.
Litigation Director
Asian Americans Advancing Justice | LA