

From:	(b)(6)
To:	SLTT Partner Engagement (b)(6)
Subject:	DT Threat Assessment - Clarisa Kirk_FBI LA
Date:	2018/11/29 08:58:06
Priority:	Normal
Type:	Note

For archiving purposes.

Very respectfully,

(b)(6)

From: (b)(6)
Sent: Wednesday, November 28, 2018 6:52 PM
To: (b)(6)
Subject: FW: 2018 Specialized Analytic Seminar Series: Domestic Terrorism - LOGISTICS

Please see attached. Looking forward to meeting you soon.

Best regards,

(b)(6)

Staff Operations Specialist
 FBI Los Angeles FIG

(b)(6)

From: (b)(6)
Sent: Wednesday, November 28, 2018 3:08 PM
To: (b)(6)
Cc: (b)(6)
Subject: RE: 2018 Specialized Analytic Seminar Series: Domestic Terrorism - LOGISTICS

Hi (b)(6)

Please see the attached. I kept it pretty concise and simple, considering the audience. Please let me know if you have any questions or need any additional information. I'm copying my supervisor, just for her situational awareness.

Thanks!

(b)(6)

From: (b)(6)
Sent: Wednesday, November 28, 2018 11:02 AM
To: (b)(6)
Subject: FW: 2018 Specialized Analytic Seminar Series: Domestic Terrorism - LOGISTICS

From: SLTT Partner Engagement (b)(6)
Sent: Monday, November 26, 2018 11:16 AM
To: SLTT Partner Engagement (b)(6)
Cc: Saupp, Kevin (DHS) (b)(6)
 (b)(6)
Subject: 2018 Specialized Analytic Seminar Series: Domestic Terrorism - LOGISTICS

Seminar Participants:

Thank you for registering to attend the *2018 Specialized Analytic Seminar Series: Domestic Terrorism* event being hosted on December 4-5, 2018, in Phoenix, AZ. For your convenience, please find attached the latest draft agenda and logistical details below.

Meeting Location

Arizona Game and Fish Department
 5000 W. Carefree Highway
 Phoenix, AZ 85086

Logistics:

- Dress is business casual
- * Please be prepared to show a photo ID in order to receive your event credentials and related materials.
- Registration will open at **7:15 a.m.** to ensure a prompt 8:00 a.m. start time.
- **Please note:** Food/beverages are NOT allowed in the auditorium. Water bottles/travel coffee mugs that can be sealed are acceptable. **Please plan accordingly.**
- * Due to the sensitive nature of some of the seminar topics, please wear your name badge at all times during the event
- Nearby lunch options are available.
- Parking is available – however, attendees **cannot** park in front of the building- they must park to the NE side of the building in the "corral" area (photo of building and parking lot attached).
- The meetings are closed to the public and to the press. Please do not share the meeting location or details on social media.

As a friendly reminder, to inform and guide the roundtable discussion on Day 2 of the seminar, we request you complete the attached threat assessment template.

In addition to informing and guiding the roundtable discussion at the end of the seminar, the *Threat Assessment* input will be used to identify overlapping threats and/or gaps that can be addressed through joint production, and to capture your needs related to domestic terrorism. Please complete the threat assessment and if possible, return it to us by **November 29th** and bring a copy with you to the event to ensure a robust dialogue during the roundtable.

If you have any questions or are no longer able to attend, please contact us at

(b)(6) confirmation and failure to appear may impact approval for future events.

We look forward to seeing you all in Phoenix!

**State and Local Partner Engagement
Office of Intelligence and Analysis
Department of Homeland Security**

(b)(6)

Sender:	(b)(6)
Recipient:	SLTT Partner Engagement (b)(6)
Sent Date:	2018/11/29 08:58:05
Delivered Date:	2018/11/29 08:58:06

From:	SLTT Partner Engagement (b)(6)
To:	(b)(6)
Subject:	FW: 2018 Specialized Analytic Seminar Series: Domestic Terrorism - LOGISTICS
Date:	2018/11/30 10:01:19
Priority:	Normal
Type:	Note

Very respectfully,

(b)(6)

From: (b)(6)
Sent: Thursday, November 29, 2018 7:18 PM
To: SLTT Partner Engagement (b)(6)
Subject: Re: 2018 Specialized Analytic Seminar Series: Domestic Terrorism - LOGISTICS

I'm sorry its a little late in the day - this is a quick look at our DT Threat Assessment.

(b)(6) **Intelligence Analyst**
Intelligence Division
Utah Department of Public Safety
Utah Statewide Information & Analysis Center (SIAC)

(b)(6)



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On Mon, Nov 26, 2018 at 12:16 PM SLTT Partner Engagement

(b)(6)

wrote:

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We look forward to seeing you all in Phoenix!

State and Local Partner Engagement

Office of Intelligence and Analysis

Department of Homeland Security

(b)(6)

Sender:	SLTT Partner Engagement (b)(6)	(b)(6)
Recipient:	(b)(6)	(b)(6)

Sent Date:	2018/11/30 10:01:18
Delivered Date:	2018/11/30 10:01:19

Page 008

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act.

Page 009

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act.

S1 CHS Hearing Prep Questions

Terrorism/Aviation Security/ Cybersecurity/Critical Infrastructure/CWMD

Member Attendance (updates pending):

Majority

- Chairman Michael McCaul (R-TX) – Will attend
- Rep. Lamar Smith (TX-21) - TBD
- Rep. Peter King (NY-02) - TBD
- Rep. Mike Rogers (AL-03) - TBD
- Rep. Lou Barletta (PA-11) - TBD
- Rep. Scott Perry (PA-04) - TBD
- Rep. John Katko (NY-24) - TBD
- Rep. Will Hurd (TX-23) - TBD
- Rep. Martha McSally (AZ-02) - TBD
- Rep. John Ratcliffe (TX-04) - TBD
- Rep. Dan Donovan (NY-11) – TBD
- Rep. Mike Gallagher (WI-08) – TBD
- Rep. Clay Higgins (LA-03) – TBD
- Rep. John Rutherford (FL-04) – TBD
- Rep. Thomas A. Garrett, Jr. (VA-05) – TBD
- Rep. Brian Fitzpatrick (PA-08) – TBD
- Rep. Ron Estes (KS-04) – TBD
- Rep. Don Bacon (NE-02) - TBD

Minority

- Ranking Member Bennie Thompson (MS-2) – Will attend
- Rep. Sheila Jackson Lee (TX-18) - TBD
- Rep. James R. Langevin (RI-02) – TBD
- Rep. Cedric L. Richmond (LA-02) – TBD
- Rep. William R. Keating (MA-09) – TBD
- Rep. Donald M. Payne (NJ-10) – TBD
- Rep. Filemon Vela (TX-34) – TBD
- Rep. Bonnie Watson Coleman (NJ-12) – TBD
- Rep. Kathleen M. Rice (NY-04) – TBD
- Rep. J. Luis Correa (CA-46) – TBD
- Rep. Val Butler Demings (FL-10) - TBD
- Rep. Nanette Diaz Barragan (CA-44) – TBD

S1 CHS Hearing Prep Questions

Terrorism/Aviation Security/ Cybersecurity/Critical Infrastructure/CWMD

Preliminary Prep Questions (Lead: I&A):

Big Picture Questions:

1. Madam Secretary, in your opinion, what are the biggest threats facing the homeland today? In other words, what keeps you up at night? (b)(5)
2. What is the Department doing to protect the homeland from the kinds of low-tech, mass-casualty type attacks occurring increasingly in the homeland? (b)(5)
3. What can Congress do to help you better protect the Homeland? (b)(5)

Terrorism (Lead: I&A/CPB)

Homegrown Violent Extremism – Threat and Groups

4. Characterize the threat to the homeland from Homegrown Violent Extremists. What groups or ideologies does DHS most closely associate with Homegrown Violent Extremism? (b)(5)
5. What do we know about the radicalization process, and what is DHS doing to better equip state and local partners and at-risk communities to identify the signs before an attack? What role does internet propaganda play in the radicalization process? (b)(5)
6. What assurances, if any, can you give this Committee that “extreme vetting” or improvements made under the Trump Administration would have uncovered this individual’s potential ties to terrorism? (b)(5)

Foreign Terrorists / Organizations

7. What foreign terrorist group does DHS believe poses the biggest threat to the homeland? (b)(5)
8. As ISIS loses territory in Iraq and Syria, the so-called caliphate is disintegrating and its fighters are disbursing around the world. How is this changing the nature of the threat to the homeland, and what is DHS doing to mitigate the threat? (b)(5)
9. How is DHS coordinating with its IC partners to identify and disrupt the plans of foreign terrorists seeking to attack the homeland, to include preventing foreign terrorists from entering our porous borders? (b)(5)

S1 CHS Hearing Prep Questions

Terrorism/Aviation Security/ Cybersecurity/Critical Infrastructure/CWMD

10. Are you concerned that foreign terrorist groups will leverage US refugee admissions programs or the Visa Waiver Program to enter the US in order to facilitate or commit attacks within the homeland? (b)(5)
11. As you may know, the Committee recently formed a bipartisan *Task Force on Denying Terrorist Entry to the United States*, which seeks to review implementation of the VWP Improvement and Terrorist Travel Prevention Act and identify any remaining security gaps in the program. What improvements has DHS made to the VWP, and in your view, what security gaps remain? (b)(5)
12. How are Foreign Terrorist Organizations using the internet to further their goals? What, if anything, is DHS doing to disrupt terrorist use of the internet and social media, and to counter the narratives of terrorists' online content? (b)(5)

Domestic Terrorism

13. How does DHS define Domestic Terrorism? What groups or types of groups does DHS associate with Domestic Terrorism, and which of those groups does DHS consider to pose the greatest threat to the homeland? (b)(5)
14. What is DHS doing to mitigate the threat of domestic terrorism? (b)(5)
15. How do DHS and FBI work together on Domestic Terrorism issues? How do you ensure there is no duplication of effort in this space? (b)(5)
16. I'm concerned that DHS may be gathering intelligence on individuals who are simply exercising their constitutionally-guaranteed rights. Does DHS apply a threshold to its Domestic Terrorism intelligence activities? How does DHS ensure the privacy and civil rights and liberties of US Persons are protected? (b)(5)
17. We are witnessing a startlingly rapid rise in domestic terrorism incidents, specifically those perpetrated by violent white supremacists. What can DHS do to protect the American people from the threat of violent white supremacist movements? (b)(5)

S1 CHS Hearing Prep Questions

Terrorism/Aviation Security/ Cybersecurity/Critical Infrastructure/CWMD

DHS Response – Terrorism Prevention (formerly CVE)

18. It is our understanding that DHS recently conducted a review of its CVE program. Despite numerous requests for information, we're still in the dark about the future of this program. What conclusions or findings resulted from this review? What is the future of the DHS CVE program? (b)(5)
19. The DHS CVE strategy focuses disproportionately on Islamist extremism. And yet, violent extremism and homegrown terrorism are fomented by numerous groups in the US, as we've seen by the violence and demonstrations by Neo-Nazis, the KKK, and other white supremacists in Charlottesville. What assurances can you give this committee that the DHS CVE program is focused on countering all forms of violent extremism, regardless of the ideology it espouses? (b)(5)
20. A major component of the DHS CVE program was grants for terrorism prevention. What is the status of the Department's grant awards? Has any money gone out the door yet? (b)(5)
21. The awards announced on 23 June 2017 are different from those announced by Secretary Johnson in Jan 2017. Why the evaluation criteria change, and what drove the decision to revise the grant awards? Why did the revised awards shift funding away from the "Changing the Narrative" and "Building Capacity" target areas, which are typically carried out by non-profit and academic organizations? (b)(5)

Law Enforcement (TCOs, Gangs, Drugs)

22. Thank you for your continued work to remove the "worst of the worst" from the United States. I appreciate the Department's focus on TCOs, which plague communities throughout the U.S., particularly those in Long Island. What is DHS doing to target TCOs generally, and does the Administration plan on formally recognizing MS-13 as transnational criminal organization? (b)(5)
23. I'm very concerned about MS-13 activity in my district, including statistics on recent violent crimes associated with this violent gang. I've also heard reports that MS-13 may be actively recruiting UACs that were resettled in the area. What more can be done at the border to better identify gang members within the UAC population? (b)(5)
24. Under former Secretary Kelly, DHS took a strong public position and asserted leadership on the issues drug interdiction and demand reduction. How has DHS continued this commitment under your leadership? Also, what steps is the Department taking to enhance interdiction, improve interagency coordination, and reduce demand? (b)(5)

S1 CHS Hearing Prep Questions

Terrorism/Aviation Security/ Cybersecurity/Critical Infrastructure/CWMD Aviation Security

Aviation Security Threats/DHS Response

25. As we've seen terrorist tactics shift to lower tech, are terrorist organizations still targeting the aviation industry? (b)(5)
26. What can you tell us about the Department's efforts to deploy CT imagery in airports around the country? (b)(5)
27. What is TSA doing to speed up the vendor acquisition process? (b)(5)
28. What operations/measures is DHS putting in place to raise the bar on aviation security globally and mitigate against the Australia plot and other threats we've heard about like the laptop IED? (b)(5)
29. Does the Department plan to increase funding for the deployment of VIPR teams abroad? (b)(5)
30. Despite all these so-called improvements, the fact is TSA is not making air travel safer. Just this month, the DHS OIG released a report that showed TSA failed 80% of the time to identify contraband smuggled through checkpoints during covert testing. What are you doing to address these findings and when can we expect to see improvements? (b)(5)

Cybersecurity

Cyber Security Threats/DHS Response

31. What do you see as the biggest threat to our nation's cybersecurity? (b)(5)
32. Can you provide an update on the implementation of CDM? When will CDM be fully deployed across the ".gov" space? (b)(5)
33. Many departments and agencies have been slow to adopt CDM tools for a variety of reasons. Should DHS be required to resource and manage this capability to ensure it is implemented as quickly as possible? (b)(5)
34. What is the future of federal network security, and how are we adapting our security posture to mitigate the evolving threat landscape? (b)(5)

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Terrorism/Aviation Security/ Cybersecurity/Critical Infrastructure/CWMD

Election Security

35. Do you agree that the Russians targeted our 2016 Election? If so, do you believe they were successful? (b)(5)
36. How are we positioned to mitigate similar threat activity ahead of the 2018 midterm elections? (b)(5)
37. Where is DHS at in terms of granting security clearances to state election officials? Has DHS provided those who are cleared with any useful threat briefings ahead of the 2018 midterms? (b)(5)

Cyber SAFETY Act

38. Do you agree that companies in the private sector should be encouraged to work with government to develop technology solutions that help advance our shared homeland security mission responsibilities? (b)(5)
39. The Department has in the past certified some cyber defense products under this program, yet some in the cybersecurity industry don't feel the existing authority has a clear enough link to the Department's cybersecurity mission. Do you agree that we need to send a strong signal to your cybersecurity industry partners that DHS has their back as we work together to develop the kind of cutting edge technology we need to enhance our nation's cybersecurity? (b)(5)

Bug Bounty

40. Do you believe a bug bounty program at DHS is a good idea, and if so, why? (b)(5)

FPS

41. Do you believe FPS belongs in NPPD? Why or why not? (b)(5)
42. If not, where should FPS be moved to? (b)(5)

Supply Chain

43. What is DHS doing to issue similar warnings about other potentially risky companies like ZTE, Huawei, and DJI? Why aren't we seeing more BODs? (b)(5)
44. How can we prevent federal departments and agencies from even procuring risky technology in the first place? (b)(5)

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Terrorism/Aviation Security/ Cybersecurity/Critical Infrastructure/CWMD

45. When can this committee expect to see a legislative proposal from the Administration or DHS that will help address the current lack of ability to base procurement decisions on classified threat information? (NPPD)

Critical Infrastructure

Critical Infrastructure Protection

46. Shouldn't SSAs, who have existing relationships with industry and often times a much closer connection to the infrastructure owners/operators than DHS, have a greater role in leading infrastructure protection efforts? (b)(5)
47. What is DHS doing to work with so-called "Section Nine" entities, and do you feel the level of effort here is sufficient? What more can or should DHS be doing to help ensure the security and resilience of these most critical infrastructure assets and systems? (b)(5)
48. Do you agree that common sense gun safety regulations are an essential part of enhancing school safety? (b)(5)

IMSI Catchers

49. Please summarize DHS's recent findings related to the detection of cell site simulator technology in use in the DC area. (b)(5)
50. Who is using this technology, and for what purpose? Could these devices have been deployed by foreign adversaries? (b)(5)
51. Isn't this technology used to spy on basically anyone with its range? Can it also be used to potentially to record the content of calls made while in range? (b)(5)
52. This represents a huge breach of American's privacy and civil rights/liberties, and a potentially huge security vulnerability in a place like DHS where senior government officials and employees with security clearances can easily be tracked and spied. What is DHS doing to locate and disrupt these cell site simulators? If not, why not? Who should? (b)(5)

CWMD

Toxic Gas/Nerve Agents

53. In light of recent events in the UK, what is the Department doing to mitigate the threat of State/terrorist deployment of Toxic Gas and Nerve Agents here in the United States? Is

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Terrorism/Aviation Security/ Cybersecurity/Critical Infrastructure/CWMD

DHS coordinating HHS and CDC? Is the Department deploying additional mass transit detectors? (b)(5)

54. How is DHS coordinating with its interagency partners to combat this threat? (b)(5)

55. Does the Department require additional authorities to fix the BioWatch program?

(b)(5)

CFATS

56. Why is it important that CFATS be reauthorized? (b)(5)

57. What progress has DHS made implementing this program, and what improvements do you feel should be incorporated into potential reauthorization legislation? (b)(5)

Electromagnetic Pulse

58. The Committee remains very concerned about the threat of an EMP attack on the United States, especially given North Korea's continuing efforts to develop and weaponize radiological devices. Do you agree this is a grave threat to the homeland? (b)(5)

59. What is the status of the Department's EMP Threat Study? How does the Department plan to mitigate this threat? (b)(5)

60. The NDAA of 2017 required DHS to develop a strategy for preparing US critical infrastructure against EMP attack, and a deliver a report on the progress and estimated completion date for EMP national planning, R&D, progress on the recommended strategy, and outreach and education. When can we expect to receive the strategy and the report? (b)(5)

61. A recent GAO report found DHS lacks specific roles and responsibilities for addressing EMP risks, and that there has been a general lack of coordination addressing this grave threat to US critical infrastructure. Has DHS taken any actions to address these recommendations? (b)(5)

Media Monitoring/Civil Liberties

62. What was the purpose of your agency's recent solicitation for a media monitoring contract? (b)(5)

63. I was shocked to hear your agency is compiling a database of journalists. What possible purpose could such a database serve, other than to violate the privacy rights and civil liberties of the American people? (b)(5)

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Terrorism/Aviation Security/ Cybersecurity/Critical Infrastructure/CWMD

64. Freedom of the press is an important safeguard against tyranny. How will information collected under this contract be used by DHS, and what effect do you believe this kind of monitoring by the government has on journalists? (b)(5)



President Trump's claim that 'nearly 3 in 4' convicted of terrorism are foreign-born

by Salvador Rizzo – January 22, 2018

"New report from DOJ & DHS shows that nearly 3 in 4 individuals convicted of terrorism-related charges are foreign-born. . . . [W]e need to keep America safe, including moving away from a random chain migration and lottery system, to one that is merit-based."

— President Trump, in a pair of Twitter posts, Jan. 16

Making the case for tighter immigration controls, Trump cites a new report from the Homeland Security and Justice departments that says foreign-born people accounted for 73 percent of the convictions for international terrorism and related offenses from 9/11 through 2016.

The president got Four Pinocchios when he claimed in a speech to Congress in February 2017 that "the vast majority of individuals convicted of terrorism and terrorism-related offenses since 9/11 came here from outside of our country." Almost a year later, the new report and its 73 percent statistic appeared to back up Trump's claim — but only where *international* terrorism is concerned. For some reason, the president did not include that word in his tweets.

Far from settling the debate, the terrorism report raised more questions upon its release on Jan. 16.

Do the foreign-born really account for three-quarters of terrorism convictions in the United States since 9/11?

The Facts

The Justice Department's National Security Division keeps a list of individuals convicted in U.S. federal courts of international terrorism and related charges since the 9/11 attacks. The list predates the Trump administration and for years has been the subject of inquiry and debate.

According to the most recent version, 549 individuals were convicted of these offenses from Sept. 11, 2001, to Dec. 31, 2016. An analysis by the Department of Homeland Security determined 402 of them (73 percent) were not born in the United States: 254 were foreigners and 148 were naturalized U.S. citizens. The remaining 147 were U.S. citizens by birth.

The new report is a requirement of Trump's executive order issued March 6, 2017, banning travelers from six countries: Iran, Libya, Somalia, Sudan, Syria and Yemen. (This was Trump's second attempt at a travel ban after the first one was blocked by the courts — and it was later revised again in September, with a new list of countries.)

The report does not include people convicted of domestic terrorism.

Administration officials have said that they take the threat of domestic terrorism seriously but that Trump's travel-ban executive order does not require reports on those cases. In 2017, the Government Accountability

FROM: INTELLIGENCE COMMITTEE

Office reported there were 85 violent extremist incidents that resulted in death in the United States from Sept. 12, 2001, to Dec. 31, 2016. “Far right wing violent extremist groups were responsible for 62 (73 percent) while radical Islamist violent extremists were responsible for 23 (27 percent),” the GAO report said.

White supremacist groups “were responsible for 49 homicides in 26 attacks from 2000 to 2016 ... more than any other domestic extremist movement,” according to a 2017 joint intelligence bulletin from the FBI and DHS, which was obtained by Foreign Policy magazine.

Benjamin Wittes, a national security expert at the Brookings Institution and the editor in chief of Lawfare, said the Justice Department’s new report attempts to “run a correction” on Trump’s speech to Congress in February 2017 by adding one word: “international.”

“They added a word, and they added a word in such a way that they made it technically accurate,” Wittes said.

Except, Trump continues to say the “terrorism” part without the “international” part.

The Homeland Security and Justice departments make clear in their report that domestic terrorism cases are not included, only international ones. But Trump’s tweet, like his speech 11 months before, does not make the same distinction and refers to terrorism broadly.

A key argument the president and Attorney General Jeff Sessions make for ending the diversity visa lottery and “chain migration” through relatives is that these programs open the door to terrorist attacks.

“This report reveals an indisputable sobering reality — our immigration system has undermined our national security and public safety,” Sessions said in a statement accompanying the report Jan. 16, calling for “a merit-based immigration system that ends the use of diversity visas and chain migration.”

The report spotlights a few terrorism cases and links them to these immigration policies, but it is otherwise light on details. The White House did not respond to a request for comment and the Justice Department did not respond to a request for more information.

And that’s where things get tricky for fact-checkers.

The 10-page report gives details on only eight of the 402 foreign-born individuals on the Justice Department’s list of international terrorism convicts. One entered the United States through the diversity visa lottery program. One entered as the child of a diversity visa recipient. Five entered because they were related to a naturalized citizen or legal immigrant, and of those, the Trump administration said in specific terms that one benefited from chain migration and the report described one other individual who entered after extended family members had immigrated.

Five of the eight individuals in the report came from countries included in Trump’s March 6 travel ban (Somalia, Sudan, Syria and Yemen), though Sudan was removed in Trump’s revised list. So three of eight individuals in the report come from countries named in the current travel ban.

For now, there’s no way to know how many of the 394 others on the list came from the travel-ban countries, or how many of them entered through chain migration or the diversity visa lottery program. Because of this lack of

detail, the report at best describes two terrorism cases linked to the diversity visa lottery program and two involving chain migration.

And the Daily Beast reported based on anonymous sources that the Department of Homeland Security did not actually analyze how many of the individuals on the list were foreign-born, contrary to what the report says, and that the department “does not track or correlate international terrorism data by citizenship or country of origin.”

The report raises other questions, too.

In an analysis of a detailed data set that the Justice Department released under the Freedom of Information Act for an earlier version of the list that covers 9/11 through 2015, Lawfare researchers found 100 individuals were transported to the United States to be prosecuted. Karen Greenberg, the director of Fordham University’s Center on National Security, told The Washington Post’s Devlin Barrett there were 80 such cases.

This means a significant number of the individuals on the list were not immigrants and that Trump’s 73 percent statistic would be lower if they were excluded.

The new report from the Homeland Security and Justice departments does say its figures include “defendants who were transported to the United States for prosecution,” but not how many.

“There is undoubtedly, because I’ve been involved in a lot of the cases, a certain number of those foreign-born individuals who have been brought into the United States, by extradition or otherwise, to face charges,” Ed O’Callaghan, the principal deputy assistant attorney general in the National Security Division, said of the report at a White House briefing Jan. 17.

Failing to acknowledge this, however, a fact sheet from the White House says “the report found that approximately three out of every four individuals convicted of international terrorism-related charges . . . entered the United States through our immigration system.”

Lawfare’s analysis of the previous list that runs through 2015 found, by including domestic terrorism cases and excluding individuals convicted of international terrorism after being transported to the United States, immigrants would account for 18 percent to 21 percent of total terrorism convictions.

Greenberg told The Post that the new report from the Trump administration showed a need for more rigorous standards in the government.

“It’s an awfully thin report for an absolutely important topic,” Greenberg said. “There’s almost no rhyme or reason to the things they choose to include or not include — they don’t explain it.”

Curiously, the Justice Department’s list also appears to have shrunk, from 627 names at the end of 2015 to 549 names in the 2016 version cited in the new report. Where did the remaining 78 individuals go, and did this change have any bearing on Trump’s 73 percent statistic? The answers are unknown because the Justice Department did not include any reasons for this change in the report (and, again, did not respond to questions).

Finally, note that Trump in his speech and in his tweet carefully referred to “terrorism-related convictions.” This could mean fraud, immigration, firearms, drug, perjury and obstruction of justice offenses, as well as false statements and “general conspiracy charges,” according to the new report. The crime must bear some link to

terrorism for it to make the Justice Department's list, but it doesn't have to involve violence or material support for a terrorist plot.

According to an analysis of separate data by the libertarian Cato Institute, "114 of the 154 foreign-born terrorists from 1975 to the end of 2015 didn't kill anybody."

The Pinocchio Test

The president has been saying for nearly a year — first in a speech to Congress and most recently on Twitter — that foreign-born individuals account for the vast majority of terrorism convictions in the United States post-9/11. Armed with a new report from the Homeland Security and Justice departments, Trump has a statistic that seems to buttress his claim, and he tweeted that "nearly 3 in 4 individuals convicted of terrorism-related charges are foreign-born."

The president is advocating for more restrictive immigration laws, and this line is central to his argument. But it is misleading in two ways.

First, Trump misrepresents the report that serves as the basis of his claim. It focuses only on international and not domestic terrorism. The president conflates the two and gives the impression that the figures he cites apply for all kinds of terrorism.

Second, the report raises several questions because of its lack of detail, its artful math and its inclusion of a significant number of individuals who did not immigrate but were transported to the United States to be prosecuted. The White House held a briefing in which it was made clear that some individuals in the report were brought to the United States and did not enter as immigrants. Yet the White House also issued an inaccurate fact sheet claiming "approximately three out of every four individuals convicted of international terrorism-related charges . . . entered the United States through our immigration system."

In short, had Trump accurately described the report by adding the word "international" to his tweet, his claim would still be problematic — the report does not prove his point about immigration. For playing this misleading game of broken telephone, Trump earns Four Pinocchios.

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of the Freedom of Information and Privacy Act

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of the Freedom of Information and Privacy Act

RECENT CORRESPONDENCE

1. January 2, 2018 letter from Senator McCaskill – with (b)(5) to draft response
2. January 24, 2018 letter from Senator McCaskill – with (b)(5) to draft response
3. February 2, 2018 letter from Senator McCaskill – with (b)(5) to draft response
4. February 5, 2018 letter from Senator McCaskill – with (b)(5) to draft response
5. February 28, 2018 letter from Senator McCaskill – with (b)(5) to draft response
6. March 2, 2018 letter from Senator Durbin – with (b)(5) to draft response
7. March 5, 2018 letter from Senator McCaskill – with (b)(5) to draft response
8. March 6, 2018 letter from Senator Leahy – with (b)(5) to draft response
9. March 8, 2018 letter from Senator Durbin – with to (b)(5) to draft response

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

January 2, 2018

Dear Secretary Nielsen:

I write to request information about the interactions between the Department of Homeland Security (DHS) and the Presidential Advisory Commission on Election Integrity (Commission).

Following public reports that the Commission would have full-time staff from the Department of Homeland Security,¹ I asked then-Secretary John Kelly for information on DHS' role related the Commission.² Specifically, I asked for details of any plans to staff the Commission with DHS employees.³ He responded that the executive order establishing the Commission established that General Services Administration (GSA), not DHS, would "provide support to the Commission, including any staff necessary to carry out its mission."⁴

Recently-released documents indicate that DHS may have more involvement with the Commission than previously known. The Commission recently disclosed an index of documents withheld in litigation that suggest DHS may be providing technical assistance to the Commission. This index confirmed that the Commission's designated federal officer, Andrew Kossack, and Mr. Kobach himself had repeated email contact with DHS from June through late August 2017. One email recently disclosed that Kossack, Kobach, and the Office of the Vice President exchanged correspondence categorized as "Email chain about potential partnership

¹ *Civil Rights Groups Fume About Trump's Choice Of Kris Kobach For Voter Fraud Panel*, Kansas City Star (May 11, 2017) (www.kansascity.com/news/politics-government/article149910457.html).

² Senate Committee on Homeland Security and Governmental Affairs, Questions for the Record to Secretary John Kelly, Department of Homeland Security, *Hearing on the Department of Homeland Security Fiscal Year 2018 Budget Request*, 115th Cong. (June 6, 2017).

³ *Id.*

⁴ *Id.*

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opportunities with DHS.”⁵ Other emails authored by DHS officials indicate discussions included “potential future coordination / overlap between entities.”⁶

To assist me in understanding the nature and level of support being provided by DHS to the Commission, I request that you provide the following information and documents on or before January 23, 2018:

1. Please provide all internal and external communications of DHS personnel regarding the Presidential Advisory Commission on Election Integrity.
2. On June 28, 2017, the Commission sent requests to state election officials seeking an extensive set of state voter records. Please describe the role of DHS in this process and provide all related documents and records.
3. Please provide all data or information possessed by DHS that has been shared with the Commission and explain what steps has DHS taken to ensure its security.

If you have any questions please contact (b)(6) and (b)(6) of my staff at (b)(6). Please send any official correspondence related to this request to (b)(6) at (b)(6). Thank you for your prompt attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

⁵ Defendants’ *Vaughn Index* at entry 383 (Sept. 29, 2017), *Lawyers’ Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity et al.*, D.D.C. (No. 1:17 CV 01354) (www.scribd.com/document/360511302/Vaughn-Index).

⁶ See, Defendants’ *Vaughn Index* at entries 365, 384, 445, 472, 475, and 705 (Sept. 29, 2017), *Lawyers’ Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity et al.*, D.D.C. (No. 1:17 CV 01354) (www.scribd.com/document/360511302/Vaughn-Index).

JOHN MCCAIN, ARIZONA
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United States Senate

COMMITTEE ON
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

January 24, 2018

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The Honorable Kirstjen Nielsen
 Secretary
 U.S. Department of Homeland Security
 3801 Nebraska Ave. NW
 Washington, DC 20016

Dear Madam Secretary:

A whistleblower recently provided my staff with a document titled "Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance." The document communicated—through the Office of Management and Budget (OMB)—the President's discretionary budget and policy priorities for the Department of Homeland Security (DHS) in Fiscal Year (FY) 2019.¹

The OMB guidance deviated from the Department's own FY 2019 budgetary priorities in several key ways. For example, the OMB guidance rejected approximately \$175 million in specific DHS funding requests for border security technology and equipment and, instead, instructed the Department to seek \$1.6 billion for border wall construction in the Rio Grande Valley of Texas—a \$700 million, or 78%, increase over DHS's own request for border barrier construction. The OMB document indicated this discrepancy was a result of "Presidential priorities" and made no reference to operational requirements.²

Additionally, the OMB guidance reduced funding for multiple counterterrorism programs by amounts exceeding the Department's self-identified budgetary needs. Funding for Visible Intermodal Prevention and Response (VIPR) teams, which assist with security operations at airports, mass transit terminals, and high-profile events, was eliminated, and OMB instructed DHS to seek \$11 million in additional cuts to the Domestic Nuclear Detection Office (DNDO). With these cuts, along with those to counterterrorism grant programs such as the Port Security Grant Program and Public Transportation Security Assistance, OMB has instructed DHS to make an additional \$44 million in cuts to DHS counterterrorism programs in FY 2019.³

OMB also overruled DHS budget requests on a number of personnel issues. Specifically, OMB instructed DHS to hire 1,000 more Immigration and Customs Enforcement (ICE) agents in FY 2019 than the Department requested. OMB did not accept DHS's proposed funding increase for the Office of Field Operations, which employs U.S. Customs and Border Protection (CBP)

¹ Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

² *Id.*

³ *Id.*

officers at ports of entry. It also rejected the Department's request for an FY 2019 pay raise for Border Patrol agents, ICE agents, CBP officers, and other civilian DHS employees.⁴

The OMB guidance appears to stand in contrast to some of your stated priorities for the Department. On November 8, 2017, you testified before this Committee on the importance of technology and personnel—at and between ports of entry—in securing our nation's borders. You said, "There is no need for a wall from sea to shining sea," and, "There's a lot that we can do with technology to help secure our borders," also adding, "We need the best and brightest both in terms of personnel and technology at the ports."⁵ In a pre-hearing questionnaire, you described the role and value of VIPR teams as follows:

*"I believe it is important that the Department have some specially trained personnel who are deployable anywhere for enhanced deterrence or response to threats against critical mass transportation modes. The Visible Intermodal Prevention and Response (VIPR) teams of TSA serve that role."*⁶

According to the OMB document, DHS' appeals to the FY 2019 OMB guidance were due by December 1, 2017 and were required to be submitted in writing and approved by you. In order to better understand the Department's budgetary needs, I ask that you provide me with a copy of all written appeals that DHS—and/or any of its components and subcomponents—submitted to OMB in response to the "Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance" document.

Additionally, please provide answers to the following questions:

Border Security

1. Do you support OMB's recommendation for \$1.6 billion in FY 2019 to construct a border wall in the Rio Grande Valley of Texas? Why or why not?
 - a. Why did DHS initially seek \$900 million—rather than \$1.6 billion—for border wall construction?
2. Do you support OMB guidance reducing the Department's request for Remote Video Surveillance Systems (RVSS) by \$44.6 million? Why or why not?

⁴ *Id.*

⁵ Senate Committee on Homeland Security and Governmental Affairs, Testimony of Kirstjen M. Nielsen, *Nomination Hearing for Kirstjen M. Nielsen to be Secretary, U.S. Department of Homeland Security*, 115th Cong. (Nov. 8, 2017).

⁶ Senate Committee on Homeland Security and Governmental Affairs, *Pre-hearing Questionnaire for the Nomination of Kirstjen Nielsen to be Secretary, Department of Homeland Security* (Nov. 2, 2017).

The Honorable Kirstjen Nielsen
January 24, 2018
Page 3

- a. Why did DHS initially request \$88.3 million for this technology?
 - b. Please provide a copy of the “out-year funding and acquisition plan for completing the remaining required RVSS procurements in the RGV Sector” that OMB requested by January 19, 2018.
3. Do you support OMB’s recommendation not to include a \$2.2 million increase DHS requested for Tethered Aerostat Radar System (TARS) acquisition planning and the purchase of a spare hull? Why or why not?
 - a. Why did the Department initially seek increased funding for TARS acquisition planning and the purchase of a spare hull in FY 2019?
4. Do you support the OMB guidance delaying the Department’s \$14.8 million request to purchase 15 Coastal Interceptor Vessels in FY 2019? Why or why not?
 - a. Why did DHS initially request funding for these Coastal Interceptor Vessels?
5. Do you support OMB’s recommendation to reduce the Department’s request for a P-3 aircraft technology refresh by \$7.9 million, Multi-Role Enforcement Aircraft by \$28.4 million, UH-60 medium lift helicopters by \$15.4 million, aircraft sensor upgrades by \$7.8 million, and Vehicle and Dismount Exploitation Radar by \$11 million? Why or why not?
 - a. Why did DHS initially request funding for this technology and equipment?
6. Do you support the OMB guidance reducing the Department’s request for Border Patrol Enforcement System maintenance by \$18.8 million? Why or why not?
 - a. Why did DHS initially request \$28.8 million for this technology?
7. Do you support the elimination of the Department’s request for \$25 million in additional funding for High Risk Internal Cybersecurity Remediation? Why or why not?
 - a. Why did DHS initially request this additional funding for High Risk Internal Cybersecurity Remediation?

Counterterrorism Programs

8. Do you support the OMB guidance to eliminate the VIPR team program? Why or why not?

- a. Do you still believe it is important that DHS have specially trained personnel who are deployable anywhere for enhanced deterrence or response to threats against critical mass transportation nodes?
 - b. The guidance document indicates that OMB overruled DHS's request for continued VIPR program funding and instead instructed DHS to completely eliminate the program. Why did DHS initially request more than \$11 million of funding for VIPR teams?
9. OMB instructed DHS to plan to facilitate staffing reductions for VIPR teams through attrition at the Federal Air Marshal Service (FAMS). In total, this is a reduction of 362 full-time employees from the FY 2017 Enacted Budget. OMB also instructed DHS to cut an additional \$27 million in FY 2019 from the FAMS budget. What will be cut at FAMS in order to achieve \$27 million in savings?
10. Do you support the OMB guidance to cut nearly \$11 million in funding for the DNDO? Why or why not?
 - a. The guidance document indicates that OMB overruled DHS's request for additional DNDO funding in the FY 2019 budget request and instead instructed DHS to make further cuts. Why did DHS initially request \$1.4 million of additional funding in FY 2019?
11. Do you support the OMB guidance to cut an additional \$44 million from DHS counterterrorism programs in the FY 2019 budget? Why or why not?
 - a. In total, proposed cuts to DHS counterterrorism programs total \$568 million since the FY 2017 Enacted Budget. How can DHS have adequate resources to assist states and localities in their counterterrorism efforts with \$568 million less in funding than in FY 2017?

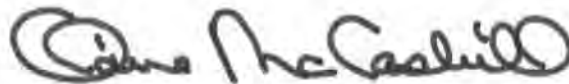
DHS Personnel

12. Do you support the OMB guidance to hire 2,000 additional ICE law enforcement officers? Why or why not?
 - a. Why did DHS originally request 1,000 additional ICE law enforcement officers?
 - b. Are you concerned that ICE will not have the resources to recruit, vet, and hire 1,000 more officers than DHS requested?
13. Do you support the OMB guidance to decrease the amount of funding for the Office of Field Operations within CBP that DHS had originally requested by \$88 million? Why or why not?

- a. What planned or existing programs will be cut or modified to accommodate this decrease in funding?
 - b. Will ports of entry have adequate resources to screen the entry of people, vehicles, and goods entering the United States?
 - c. Staffing at the Office of Field Operations is currently too low by over 3,600 law enforcement positions based on CBP's assessment of the needs of ports of entry. Will this change in budget allow CBP to hire any of these additional officers? If so, how many?
14. Do you support the OMB guidance to implement a pay freeze across all civilian federal employees, including law enforcement officers? Why or why not?
- a. How will a pay freeze affect retention of federal employees at DHS?
 - b. How will a pay freeze affect plans to hire additional law enforcement personnel at CBP and ICE?

I ask that you respond to this letter at your earliest convenience but in no event later than February 14, 2018. If you are unable to meet this deadline, or should you have any questions, please contact (b)(6) at (b)(6) or (b)(6). Please send any official correspondence related to this request to (b)(6) at (b)(6). Thank you in advance for your attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

RON JAFFSON, WISCONSIN, CHAIRMAN

JERRY MCCRIN, ARIZONA

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United States Senate

COMMITTEE ON

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

February 2, 2018

CORRECTOR R. HESLIN, STAFF DIRECTOR
MARSHALE T. DALUM, MINORITY STAFF DIRECTOR

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The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, DC 20016

Dear Madam Secretary:

I write to request additional information regarding new legal authorities the Department of Homeland Security (DHS) is seeking in order to expedite the seizure of private property and the construction of a wall along the U.S.-Mexico border.

On January 5, 2018, I received a document detailing the Department's plans to construct 722 miles of new, replacement, and secondary barriers—at a cost of approximately \$18 billion—over a 10-year period.¹ The document also describes several legal authorities DHS is seeking in order to expedite construction of the “continuous, physical wall” that President Trump has ordered.² Specifically, the Department is requesting amendments to existing law that would “allow for more expedited acquisition of land” and “clarify and expand the Secretary’s waiver authority.”³ However, the document provides no further details about this proposed legislation.⁴

As you know, the federal government already has extraordinary eminent domain power along our nation’s borders. The Attorney General has the general authority to acquire land adjacent to or in the vicinity of our nation’s international border upon deeming the land “essential to control and guard the boundaries and borders of the United States[.]”⁵ In instances where the Attorney General and a lawful property owner cannot agree upon a reasonable price for a particular parcel of land, the Attorney General is authorized to commence condemnation proceedings.⁶ Upon filing a declaration of taking in U.S. District Court and depositing what government officials determine to be just compensation for the taking in the court registry, the federal government has the ability to assume ownership of private property before compensation

¹ Department of Homeland Security, *Critical CBP Requirements to Improve Border Security* (Dec. 27, 2017).

² Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017).

³ Department of Homeland Security, *Critical CBP Requirements to Improve Border Security* (Dec. 27, 2017).

⁴ *Id.*

⁵ 8 U.S.C. § 1103(b)(1).

⁶ 8 U.S.C. § 1103(b)(3).

The Honorable Kirstjen Nielsen
 February 2, 2018
 Page 2

has been adjudicated and before a landowner has received compensation for the taking.⁷ In some cases, private landowners living along the southwest border are still waiting to be compensated for takings that occurred nearly a decade ago during previous fence deployment efforts.⁸

The Homeland Security Secretary also has the authority to “waive all legal requirements” in instances where such a waiver is necessary “to ensure expeditious construction of ... barriers and roads” in the vicinity of the international border.⁹ This authority has been referred to as “possibly having greater reach than any other waiver authority conferred by statute.”¹⁰ To date, this waiver authority has been invoked eight times—five times by former Secretary Chertoff,¹¹ once by former Secretary Kelly,¹² once by former Acting Secretary Duke,¹³ and once by you.¹⁴ The most recent waiver that you issued waived more than 20 federal statutes, including the Clean

⁷ 40 U.S.C. § 3114.

⁸ *The Taking: How the Federal Government Abused Its Power to Seize Property for a Border Fence*, Texas Tribune (Dec. 14, 2017) (www.texastribune.org/2017/12/14/border-land-grab-government-abused-power-seize-property-fence/).

⁹ 8 U.S.C. § 1103 note.

¹⁰ Congressional Research Service, *Barriers Along the U.S. Borders: Key Authorities and Requirements* (R43975) (Nov. 18, 2016).

¹¹ Department of Homeland Security, *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as Amended by Section 102 of the REAL ID Act of 2005*, 70 Fed. Reg. 55622 (Sept. 22, 2005); Department of Homeland Security, *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as Amended by Section 102 of the REAL ID Act of 2005 and as Amended by the Secure Fence Act of 2006*, 72 Fed. Reg. 2535 (Jan. 19, 2007); Department of Homeland Security, *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as Amended by Section 102 of the REAL ID Act of 2005 and as Amended by the Secure Fence Act of 2006*, 72 Fed. Reg. 60870 (Oct. 26, 2007); Department of Homeland Security, *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended*, 73 Fed. Reg. 19077 (April 8, 2008); Department of Homeland Security, *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended*, 73 Fed. Reg. 19078 (April 8, 2008).

¹² Department of Homeland Security, *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended*, 82 Fed. Reg. 35984 (Aug. 2, 2017).

¹³ Department of Homeland Security, *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended*, 82 Fed. Reg. 42829 (Sept. 12, 2017).

¹⁴ Department of Homeland Security, *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended*, 83 Fed. Reg. 3012 (Jan. 22, 2018).

The Honorable Kirstjen Nielsen
 February 2, 2018
 Page 3

Air Act, the Federal Water Pollution Control Act, the Endangered Species Act, the National Historic Preservation Act, the Native American Graves Protection Act, and the Administrative Procedure Act.¹⁵ It was issued to facilitate the construction of approximately 20 miles of replacement fencing in the Border Patrol's El Paso sector.¹⁶ This extraordinarily broad waiver authority cannot be invoked, however, in violation of an individual landowner's Fifth Amendment right to just compensation for any public taking of private property.¹⁷

I am concerned that the additional legal authorities requested by the Department may enable the Department to circumvent existing law and constitutional protections for individual landowners. The federal government should exercise extreme caution when condemning private property for public use, and this action should only be taken after bona fide notification, consultation, and negotiation with landowners has been conducted. Furthermore, I concur with a statement made by former Secretary Kelly before this Committee on January 10, 2017, that "it's, in a lot of ways, dangerous to think that you can pick and choose which laws [need to be followed]." "The law is the law, and I think the law has to be followed," the former Secretary said.¹⁸ In your confirmation hearing on November 8, 2017, you also pledged to "enforce our laws."¹⁹

In order to better understand the legal authorities you feel you lack and the Department's proposals for addressing these concerns, please provide detailed answers to the following questions:

1. In your view, what additional legal authorities are needed to "allow for more expedited acquisition of land" and to "clarify and expand the Secretary's waiver authority"?
2. Please provide any and all legislative proposals the Department has drafted or received related to these additional legal authorities.
3. What specific obstacles is DHS seeking to remove by requesting these additional authorities?

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ U.S. Const. amend. V; *Williams v. Rhodes*, 393 U.S. 23, 29 (1968).

¹⁸ Senate Committee on Homeland Security and Governmental Affairs, *Hearing on the Nomination of General John F. Kelly, USMC (Ret.), to be Secretary, U.S. Department of Homeland Security*, 115th Cong. (Jan. 10, 2017).

¹⁹ Senate Committee on Homeland Security and Governmental Affairs, *Hearing on the Nomination of Kirstjen M. Nielsen to be Secretary, U.S. Department of Homeland Security*, 115th Cong. (Nov. 8, 2017).

The Honorable Kirstjen Nielsen
February 2, 2018
Page 4

I ask that you respond to this letter at your earliest convenience but in no event later than February 8, 2018. If you are unable to meet this deadline, or should you have any questions, please contact (b)(6) at (b)(6) or (b)(6). Please send any official correspondence related to this request to (b)(6) at (b)(6). Thank you in advance for your prompt attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

JOHN MCCAIN, ARIZONA
 ROB PORTMAN, OHIO
 RAND PAUL, KENTUCKY
 JAMES LANKFORD, OKLAHOMA
 MICHAEL B. ENZI, WYOMING
 JOHN HOEVEN, NORTH DAKOTA
 STEVE DAINES, MONTANA

CLAIRE McCASKILL, MISSOURI
 THOMAS R. CARPER, DELAWARE
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CHRISTOPHER R. HIXON, STAFF DIRECTOR
 MARGARET E. DAUM, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

February 5, 2018

The Honorable Kirstjen Nielsen
 Secretary
 U. S. Department of Homeland Security
 3801 Nebraska Ave. NW
 Washington, DC 20016

Dear Madam Secretary:

On January 16, 2018, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) released a joint report entitled "Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry into the United States, Initial Section 11 Report."¹ This report was written in response to President Trump's March 6, 2017, executive order of the same name. Among other things, this order required you and the Attorney General to collect and make publicly available certain information regarding terrorism-related offences.²

You and the Attorney General reported that "three out of four ... individuals convicted of international terrorism charges in U.S. federal courts" from September 11, 2001, through the end of 2016 were foreign-born.³ The report identified 549 individuals as having committed international terrorism offences. Of these, 254 were not U.S. citizens, 148 gained U.S. citizenship, and 147 were U.S. citizens by birth.⁴ The report states that the conviction information used to compile these numbers was "based on public convictions in federal courts between September 11, 2001, and December 31, 2016 resulting from international terrorism."⁵

Although DHS and DOJ contend that the information in this report was based on public conviction information, the report relies on non-public analysis conducted by DOJ and DHS, and does not provide citations, source material, or explanation sufficient to assess the report's

¹ Department of Homeland Security, Department of Justice, *Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report* (Jan. 16, 2018).

² Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

³ Department of Homeland Security, Department of Justice, *Press Release: DHS, DOJ Report: Three Out of Four Individuals Convicted of International Terrorism and Terrorism-Related Offenses Were Foreign-Born* (Jan. 16, 2018).

⁴ Department of Homeland Security, Department of Justice, *Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report* (Jan. 16, 2018).

⁵ *Id.*

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The Honorable Kirstjen Nielsen
 February 5, 2017
 Page 2

methodology and interpret its findings.⁶ For instance, the report does not indicate how many of the foreign-born terrorists traveled freely to the United States, rather than were brought here through extradition. Nor does the report reveal how many of the individuals originated—and how many did not originate—from countries that fall under the Administration's travel ban.

To better understand the information that DHS and DOJ have provided and what it means for our national security, I request the following information:

1. Identification of the 549 individuals who were convicted of international terrorism-related charges, including their nationality;
2. The charges that were considered "international terrorism-related" for the purposes of this report;
3. The location of each incident cited in this report that gave rise to international terrorism charges;
4. The number of individuals in this report "who were transported to the United States for prosecution";
5. The citizenship status of each individual listed in the report. For those with legal status or citizenship in the United States, please provide the method by which each individual listed gained legal status;
6. The number of individuals listed in the report who were present in the United States illegally when charged;
7. The number and identification of individuals convicted of domestic-terrorism related charges since September 11, 2001. Please include details of each incident including the names and citizenship of any individuals involved;
8. The DHS office(s) responsible for the report and for the data used to produce it.

I request that you provide this information as soon as possible, but in no event later than February 26, 2018.

If you have any questions regarding this request, please contact (b)(6) of the Committee staff at (b)(6). Please send any official correspondence to (b)(6) and (b)(6). Thank you for your prompt attention to this matter.

⁶ Department of Homeland Security, Department of Justice, *Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report* (Jan. 16, 2018).

The Honorable Kirstjen Nielsen
February 5, 2017
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" written in a larger, more prominent script than the last name "McCaskill".

Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

United States Senate

WASHINGTON, DC 20510

February 28, 2018

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, DC 20016

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2018 FEB 28 PM 3:52

Dear Madam Secretary:

In the midst of Senate debate over critical immigration legislation, the Department of Homeland Security (DHS) issued an inflammatory statement on the proposed bipartisan Rounds-King immigration amendment to H.R. 2579, the bill the Senate was using as a vehicle to vote on a number of important immigration and border security issues.¹ We welcome input from the Department on the impact legislation will have on the Department, its resources, and its mission. However, as Congress works to find a policy solution that can better secure our borders and address the status of the estimated 1.8 million Dreamers who were brought here as children, we are extremely concerned about the overtly political statement DHS issued on February 15, 2018, that appeared designed to cut off deliberations, rather than advance them.

Congress and the public rely on the credibility of DHS to evaluate all manner of threats to Americans. It is, after all, primarily a department composed of law enforcement, national security, and intelligence agencies. For that reason, we expect DHS to provide professional, reasoned and composed advice. Unfortunately, DHS's statement tarnishes that credibility by characterizing the Rounds-King amendment in overdramatic, even apocalyptic, language. According to DHS, this legislation "would be the end of immigration enforcement in America" and "make the United States a Sanctuary Nation [sic] where ignoring the rule of law is encouraged." While there are certainly fair criticisms that can be made of this amendment—as can be made of any compromise legislation—the insinuation that it would make Americans less safe is simply not true. In fact, the legislation maintains or improves current enforcement efforts and invests billions of dollars in border security.

DHS's statement also includes multiple false or misleading claims. For example, DHS claims that the legislation "Provides a Safe Enforcement-Free Haven for Over 10 Million Illegal Aliens." But this amendment does the opposite: it *prioritizes* the deportation of criminals and national security threats. The lack of priorities under this Administration currently has resulted in capturing low-risk undocumented immigrants like Syed Jamal, a chemistry professor in Lawrence, Kansas, who, despite having overstayed his visa, has lived peacefully in the United States for more than 20 years.² It is difficult to identify the national security interest that would

¹ Department of Homeland Security: *Schumer-Rounds-Collins Destroys Ability of DHS to Enforce Immigration Laws, Creating a Mass Amnesty for Over 10 Million Illegal Aliens, Including Criminals* (Feb. 15, 2018).

² *A Chemistry Professor Got His Kids Ready for School. Then ICE Arrested Him on His Front Lawn*, Washington Post (Feb. 5, 2018) (www.washingtonpost.com/news/post-

be served by deporting this beloved teacher, father and husband rather than violent criminal aliens who pose threats to their communities, and it is for that reason that Congress has no choice but to assist DHS in identifying priorities for deportation. No reading of the term “Priorities” would grant any non-priority populations any legal protection, though, and DHS’s insinuation that it does makes it difficult to trust DHS’s policy feedback in the future.

DHS also said in its statement that the bipartisan amendment “Fails to Secure the Border.” The Rounds-King amendment would appropriate \$25 billion—the entire amount the Administration requested for border security³—for the construction of physical barriers, border security technologies, tactical infrastructure, marine vessels, aircraft, unmanned aerial systems, facilities and equipment. On top of that, the amendment provides over \$1.5 billion for “impedance and denial,” \$658 million for “domain awareness,” and \$143 million for access and mobility just for Fiscal Year (FY) 2018. The amendment also includes \$148 million in FY 2018 for the “retention, recruitment, and relocation of officers of Border Patrol Agents, Customs Officers, and Air and Marine personnel, and an additional \$75 million specifically to hire 615 Customs and Border Protection Officers (CBPOs). As you know, most of the illegal opioids ravaging this country are coming through those ports, making these CBPOs even more critical to our nation’s security than ever.

DHS states that the amendment is “Not a DREAMer Bill, But a Mass Amnesty Bill for Illegal Aliens of All Ages.” However, while the bipartisan amendment includes a pathway to citizenship for certain individuals, it still requires background checks, paying fees, and a record clear of felonies, significant misdemeanors, or three or more misdemeanors. The pathway to citizenship in the amendment is twice as long as that afforded to Dreamers in the bipartisan comprehensive immigration reform amendment which passed the Senate in 2013.⁴

DHS also states that the amendment “Expands Chain Migration.” This is simply false. No additional family members are eligible for citizenship under the amendment. DHS states that providing citizenship to Dreamers means that “these individuals would then be able to bring over all of extended families [sic] through chain migration, who in turn could bring in their foreign relatives, potentially increasing the legalized population of aliens to 10 million.” This is a significant misrepresentation of immigration law by the Department charged with administering it. Citizens are limited to sponsoring immediate family members—not “all of their relatives”—and even then immigrants must surmount background checks and usually wait years to come to the United States.

nation/wp/2018/02/04/a-chemistry-professor-got-his-kids-ready-for-school-then-ice-arrested-him-on-his-front-lawn/?utm_term=.f94648a67f93).

³ Executive Office of the President, *White House Framework on Immigration Reform & Border Security* (Jan. 25, 2018) (www.whitehouse.gov/briefings-statements/white-house-framework-immigration-reform-border-security/).

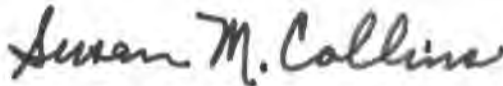
⁴ S. 744, 113th Cong. (2013).

The Honorable Kirstjen Nielsen
February 28, 2018
Page 3

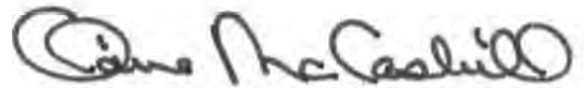
The DHS statement also shows a disappointing willingness to use misleading and incomplete information. For instance, it states that while noncitizens made up 7.2% of the U.S. population in 2016, they accounted for 41.7% of all federal offenders sentenced for felonies or Class A misdemeanors. This statistic is misleading, because it does not include any information on state prisons and local jails, which account for 90% of the total incarcerated population. The Cato Institute has said that “the federal prison population is not representative of incarcerated populations on the state and local level, so excluding them from the report means it sheds little light on nationwide incarcerations by nativity, legal status, or type of crime.”⁵ At another point, it relies on a GAO report to criticize the Visa Lottery program, but failed to include that the GAO report states that of those lawful permanent residents, “we found no documented evidence that DV [diversity visa] immigrants from these, or other, countries posed a terrorist or other threat.”⁶

As the bipartisan Rounds-King amendment itself shows, immigration reform has support across the aisle from Democrats and Republicans alike. We encourage the Department to play a positive, productive role in achieving a solution—not in stifling one.

Sincerely,



Susan Collins
U.S. Senator



Claire McCaskill
U.S. Senator

⁵ CATO Institute: *New Report on Illegal Immigrant Criminality Reveals Little & Admits Its Own Shortcomings* (Dec. 21, 2017) (www.cato.org/blog/new-report-illegal-immigrant-criminality-reveals-little-admits-its-own-shortcomings).

⁶ Government Accountability Office, *Fraud Risks Complicate State's Ability to Manage Diversity Visa Program* (GAO-07-1174) (Sept. 2007).

RICHARD J. DURBIN

ILLINOIS

DEMOCRATIC WHIP

COMMITTEE ON APPROPRIATIONS

COMMITTEE ON THE JUDICIARY

COMMITTEE ON RULES
AND ADMINISTRATION

United States Senate

Washington, DC 20510-1501

March 2, 2018

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Nielsen:

We are deeply concerned by allegations that the Department of Homeland Security (DHS) has forcibly and unlawfully separated a seven-year-old girl and her mother from the Democratic Republic of Congo who presented themselves at our border and sought protection in accordance with the law. If these reports are accurate, we urge you to immediately reunite this child with her mother.

Upon their arrival at a port of entry near San Diego on November 1, 2017, this mother and child were reportedly separated after just four days, with the mother held at a detention center in the San Diego area, and the child at a facility in Chicago. DHS apparently took this troubling action even though a USCIS asylum officer found that the mother had a credible fear of being killed if she was returned to the Democratic Republic of Congo and that she therefore had a significant possibility of receiving asylum. When DHS officers separated the mother from her child, and handcuffed the mother, she reportedly could hear her daughter in the next room frantically screaming. After the separation, DHS allegedly provided the mother with no information regarding her child for four days. Approximately four months later, the child remains more than 2,000 miles away from her mother and is reportedly frightened and traumatized, crying for her mother and not knowing when she will see her again.

This is reportedly only one of many recent cases in which DHS has separated the children of asylum-seekers from their parents. According to one report, 155 such cases were documented in just October 2017. Reports further indicate that DHS may soon formalize a policy of detaining children of asylum-seekers separately from their parents. This would be an unacceptable breach of our legal and humanitarian obligations to innocents who are fleeing war and terrorism. Any alleged deterrent effect this practice may have in reducing the number of individuals seeking safe haven under our laws is a wholly insufficient justification for forcibly separating children from their parents.

The American Academy of Pediatrics and the American Medical Association have both condemned the separation of families in immigration detention. As the American Academy of Pediatrics found:

Studies of detained immigrants have shown that children and parents may suffer negative physical and emotional symptoms from detention, including anxiety, depression and

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posttraumatic stress disorder. When children live in fear for prolonged periods of time, they may develop toxic stress, which causes harm to the developing brain and can result in short and long-term health consequences.

Please respond to the following at your earliest convenience, and no later than March 9, 2018:

1. Please provide information about the alleged detention and separation of this mother and her seven-year-old child.
2. If these reports are accurate, will you take steps to immediately reunite this mother and child?
3. Please provide the following data:
 - a. The number of children of asylum-seekers DHS has separated from a parent since President Trump took office;
 - b. The average length of separation and the longest period of time a child has been separated; and
 - c. The number of children of asylum-seekers who are currently detained separately from a parent.
4. Please clarify whether DHS plans to continue to detain children of asylum-seekers separately from their parents.

Thank you for your time and consideration. While we may have different views on many immigration policies, we hope you will agree that it is cruel and inhumane to separate a parent from her child and immediately bring a stop to this practice. We look forward to your prompt response.

Sincerely,


Richard J. Durbin


Tammy Duckworth

Cc: Kevin K. McAleenan, Acting Commissioner, U.S. Customs and Border Protection
Thomas D. Homan, Deputy Director and Senior Official Performing the Duties of the
Director, U.S. Immigration and Customs Enforcement

JOHN H. CARL, ARIZONA
 PAUL F. COTTELL, OHIO
 RAND PAUL, KENTUCKY
 JAMES LANSFORD, CALIFORNIA
 MICHAEL S. LEE, WYOMING
 JOHN HERVEY, NORTH CAROLINA
 STEVE DAINES, MONTANA
 CLARE MICHAEL, MISSOURI
 THOMAS S. CRAPER, INDIANA
 HENRY HETTLER, NORTH DAKOTA
 GARY E. PETERS, MINNESOTA
 MARGARET WILCOX, NEW HAMPSHIRE
 KATHALIN HARRIS, CALIFORNIA
 DEAN JONES, ALABAMA

United States Senate

COMMITTEE ON
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

March 5, 2018

CHRISTOPHER R. HAYES, STAFF DIRECTOR
 KATHLEEN E. DAINE, MINORITY STAFF DIRECTOR

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 BY ESEC/SEC
 2018 MAR -5 PM 1:15

The Honorable Kirstjen M. Nielsen
 Secretary
 Department of Homeland Security
 3801 Nebraska Ave. NW
 Washington, DC 20016

Dear Madam Secretary:

Last month, the Administration released their Budget Proposal for Fiscal Year (FY) 2019. As you are aware, the Budget Proposal for the Department of Homeland Security (DHS) proposed a reallocation of operational responsibility and funding for the National Bio-Agro-Defense Facility (NBAF), currently under construction in Manhattan, Kansas.¹ NBAF is designed for enhanced research, development, and testing capabilities to protect the homeland against foreign animal and emerging diseases. According to the World Health Organization, 75% of new and emerging infections are zoonotic diseases transmitted from animal to human.² NBAF will be the nation's only large animal research facility built to safely handle pathogens that do not currently have treatments or countermeasures; NBAF will also help develop vaccines.³

The Budget Proposal outlines a reallocation of \$42 million from the Science and Technology Directorate (S&T) to the Department of Agriculture (USDA), which will assume operational responsibility of NBAF.⁴ Additionally, non-public guidance from the Office of Management and Budget (OMB) stipulates that DHS should "not take any action on its planned Management, Operations, and Research Support (MORS) contract, such as the release of requests for proposals (RFPs), or award of any related NBAF operational service contract."⁵

¹ Department of Homeland Security, Science and Technology Directorate, *Operations and Support Fiscal Year 2019 Congressional Justification* (Feb. 12, 2018).

² Department of Homeland Security, Science and Technology, *National Bio and Agro-Defense Facility* (www.dhs.gov/science-and-technology/national-bio-and-agro-defense-facility) (accessed Jan. 29, 2018).

³ *Id.*

⁴ Department of Homeland Security, Science and Technology Directorate, *Operations and Support Fiscal Year 2019 Congressional Justification* (Feb. 12, 2018).

⁵ Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

The Honorable Kirstjen M. Nielsen

March 5, 2018

Page 2

In order to better understand the Department's priorities related to NBAF and your office's justification for moving operational responsibility of NBAF, I ask that you provide a staff-level briefing and written answers to the following questions:

1. What is the current status of the planned MORS contract? Please include information about who will manage the contract, plans for contract awards and RFPs, and contract oversight. What would the next steps have been in the MORS contract process had OMB not directed DHS to suspend further action?
2. Will suspension of action on the MORS contract delay either the full completion or operation of NBAF?
3. The OMB guidance stated that "DHS does not have a mission need for the NBAF facility."⁶ Does this proposal merely reallocate the operational responsibility and funding for NBAF from DHS to USDA, or represent the assumption by USDA of some or all of DHS's bio and agro-defense responsibilities? What assurances can DHS make that the research conducted at NBAF will remain a national security priority through the budgeting process?
4. Does DHS have further plans to reorganize or reallocate S&T among other departments or agencies?
5. The OMB guidance indicated that USDA and DHS would constitute an NBAF transition team by December 8, 2017.⁷
 - a. Please identify the USDA and DHS officials on the transition team.
 - b. Please describe the transition team's accomplishments to date.
6. The OMB guidance indicated that the NBAF transition team would develop a series of reports throughout the transition process.⁸ Please provide the following reports:
 - a. The NBAF transition report which details the transition plan including an integrated master schedule, a communication strategy to "socialize" the proposed NBAF transition, and contingency plans for each agency should the transition proposal be blocked or delayed;
 - b. The report on making the National Biodefense Analysis and Countermeasures Center more cost-efficient and efforts to expand its customer base; and

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

The Honorable Kirstjen M. Nielsen

March 5, 2018

Page 3

- c. The report on performance indicators for transitioned research and development (R&D) projects.
- 7. The OMB guidance outlined a series of briefings that the NBAF transition team would provide on status of the transition.⁹ Please provide my staff summaries of the following briefings:
 - a. The first of four quarterly briefings on the performance of the Centers of Excellence existing work; and
 - b. The first of four quarterly briefings on construction status of NBAF.

I ask that you respond to this letter at your earliest convenience but in no event later than March 26, 2018. If you have any questions, please contact (b)(6) at (b)(6) or (b)(6). Please send any official correspondence related to this request to (b)(6) at (b)(6). Thank you in advance for your attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

⁹ Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

United States Senate
WASHINGTON, DC 20510-4502

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March 6, 2018

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue N.W.
Washington, D.C. 20528

Dear Secretary Nielsen:

I write to reiterate the need for answers to questions I asked you during the Senate Judiciary Committee's oversight hearing of the Department of Homeland Security on January 16, 2018. At that hearing, I asked you basic questions that would shed light on the relevance and validity of a report that has been promoted by the Trump administration to defend its immigration priorities. Despite attempts by my staff to follow up and obtain these answers after the hearing, I have not yet received responses.

On January 16, 2018, the Department issued a report related to terrorism and other threats to public safety that purported to show that since the 9/11 attacks, three out of four individuals convicted of international terrorism-related charges – 402 in total – were foreign born. Surprisingly, the report does not include any statistics related to the persistent threat of domestic terrorism. This report was released pursuant to Executive Order 13780, which also, as amended by Presidential Proclamation 9645, barred citizens of certain countries from travelling to the United States.

At the January hearing I asked you whether any of the 402 individuals cited in the Department's report came from any of the countries subject to the President's travel ban. You did not have the answer, but you assured me that you would follow up to obtain it. I then asked whether the Department's report included the amount of time each of the 402 individuals had been in the United States prior to their convictions, or whether any were arrested abroad and only brought to the United States to face trial. Again, you were not able to give me an answer, but you assured me you would follow up.

I was surprised that you were not aware of this information. This report was requested in order to justify the President's travel ban. It is critical to know whether the 402 individuals actually came from countries subject to the travel ban. The President has also used the report to justify "moving away from a random chain migration and lottery system." To assess whether this report could arguably justify restrictions on legal immigration, it is essential to know how many of the 402 individuals used such benefits and, critically, how long each individual had been in our country prior to committing a terrorism-related offense.

The White House has also claimed—and it is still on its website today—that these individuals “entered the United States through our immigration system.” Yet the report acknowledges that some unspecified number of the 402 individuals were present in the United States simply because they were transported here to face trial. To claim that an individual arrested abroad and extradited to the United States arrived “through our immigration system” speaks volumes about how this report has been brazenly manipulated for political gain.

I once again request prompt answers to the following questions:

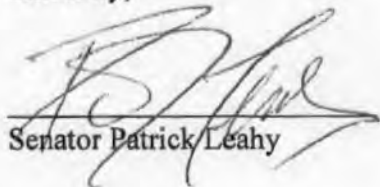
- 1) How many of the 402 foreign-born individuals convicted of international terrorism-related charges, cited in the Department’s January 16, 2018 report, are citizens or nationals of countries subject to the President’s travel ban (E.O. 13780)?
- 2) How long was each of the 402 individuals present in the United States before they were arrested for and convicted of international terrorism-related charges?
- 3) How many of the 402 individuals were arrested abroad and were only present in the United States to face trial?

Thank you for your attention to this matter.

As the Vice Chairman of the Appropriations Committee, I look forward to hearing from you at our hearing on the Department’s budget in the coming months.

If you have any questions, please reach out to (b)(6) at (b)(6)
(b)(6) or (b)(6) at (b)(6)

Sincerely,


Senator Patrick Leahy

I relied on your statement under oath that you would provide answers. Now would be a good time to do so.

PL

March 8, 2018

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Nielsen:

We write today to urge the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) to expedite the adjudication of renewal applications for the Deferred Action for Childhood Arrivals (DACA) program that DHS is currently required to accept and process pursuant to preliminary injunctions issued by two United States District Courts. DACA recipients have experienced months of traumatic uncertainty as to their future status in the country they call home. Expediting the review of their applications will help to reduce the chaos and anxiety associated with President Trump's termination of the DACA program, and demonstrate DHS's good-faith compliance with the spirit of the district courts' orders.

On January 9, 2018, the U.S. District Court for the Northern District of California issued a preliminary injunction, which partially blocks the administration's termination of the DACA program, and directs DHS to resume accepting DACA renewal applications on the same terms and conditions as before the program was terminated on September 5, 2017.¹ On February 13, 2018, the U.S. District Court for the Eastern District of New York issued a similar preliminary injunction.² Since the Supreme Court denied the administration's request for certiorari before judgment in the California case on February 26, 2018, the preliminary injunctions remain in effect.³ Under the terms of these preliminary injunctions, hundreds of thousands of individuals who had previously received deferred action through the DACA program are now eligible to apply to renew their status and, in the case of those whose DACA protections already have expired, to regain that status.

We encourage DHS and USCIS to expedite the review and processing of these renewal applications. An estimated 20,000 young people have already seen their DACA status expire, and until those benefits are restored, they are vulnerable to the threat of detention and deportation, and may have already lost jobs, drivers' licenses, and educational opportunities.⁴ Reducing the processing time for DACA renewal applications, particularly for those individuals

¹ Order Denying FRCP 12(b)(1) Dismissal And Granting Provisional Relief, *Regents of the Univ. of Cal. v. U.S. Department of Homeland Security* (No. 3:17-cv-5211) (N.D. Cal. Jan. 9, 2018).

² Amended Memorandum & Order & Preliminary Injunction, *Vidal v. Nielsen* (No. 1:16-cv-04756) (E.D.N.Y. Feb. 13, 2018).

³ *Dept. of Homeland Sec. v. Regents of Univ. of Cal.*, No. 17-1003 (S.Ct. Feb. 22, 2018).

⁴ *Dreams Deferred: A Look at DACA Renewals and Losses Post-March 5*, CENTER FOR AMERICAN PROGRESS (March 2, 2018), <https://www.americanprogress.org/issues/immigration/news/2018/03/02/447486/dreams-deferred-look-daca-renewals-losses-post-march-5/>.

whose status has already expired, is a vital step to minimize fear and confusion for recipients, their families, employers, schools, and communities.

In addition to processing DACA renewal applications quickly, we urge DHS to also consider taking other steps to reduce the anxiety and uncertainty felt by Dreamers whose status is at risk, or has already expired. In January, when USCIS announced it was terminating Temporary Protected Status (TPS) for approximately 200,000 Salvadorans effective September 9, 2019, it also announced it would automatically extend the validity of work authorization for 180 days, through September 5, 2018, recognizing that not all re-registrants would receive new work permits before their current work permits expired.⁵ A similar action to extend the validity of work authorization permits for current DACA recipients would not only be a compassionate response, but would also reduce administrative burdens at USCIS, allowing the agency to work through existing application backlogs.

As hundreds of thousands of DACA recipients were only recently given permission to file for renewal, as a result of the injunctions, we are concerned that many of these applications will not be adjudicated before these recipients' current protections expire. DACA recipients are at risk of losing their jobs and deportation if their status expires. Thus, we strongly urge you to take administrative action to automatically extend work authorizations and issue written guidance that clearly states DACA recipients will not be enforcement priorities for removal. These actions will allow DACA recipients to continue living and working in their home communities while their DACA renewal applications are processed.

Additionally, please provide written answers to the following questions about DHS and USCIS's policies and procedures for processing DACA renewal applications pursuant to the January 9th and February 13th preliminary injunctions by March 30, 2018.

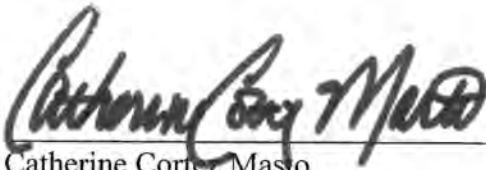
1. On February 28, 2018, USCIS published new data about current DACA recipients and pending applications as of January 31, 2018. Please provide updated information on the number of DACA renewal applications that USCIS has received since announcing that the agency would resume accepting these applications on January 13, 2018.
2. How many DACA renewal applications that were received after the January 13, 2018 announcement have been adjudicated?
3. How many DACA renewal applications that were received after the January 13, 2018 announcement have been approved?
4. How many DACA renewal applications that were received after the January 13, 2018 announcement have been rejected?
5. How many DACA renewal applications that were received after the January 13, 2018 announcement have been denied?
6. How many DACA renewal applications that were received after the January 13, 2018 announcement have been administratively closed?
7. How many DACA renewal applications that were received after the January 13, 2018 announcement remain pending?

⁵ Federal Register, "Termination of the Designation of El Salvador Temporary Protected Status," Notice by the USCIS on 1/18/2018, available at <https://www.federalregister.gov/documents/2018/01/18/2018-00885/termination-of-the-designation-of-el-salvador-for-temporary-protected-status>

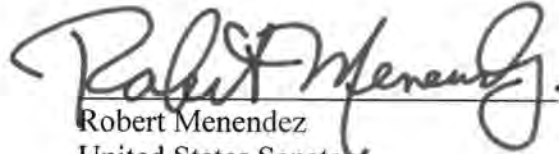
8. How many DACA renewal applications are pending in total?
9. What is the average processing time for DACA renewal applications filed after January 13, 2018?
10. Will USCIS commit to publish data related to the processing times and outcomes of DACA renewal applications that are received and processed pursuant to the preliminary injunctions?
11. Will USCIS commit to updating that published data on a weekly basis?
12. How many initial DACA applications were pending on September 5, 2017, when the program's termination was announced?
13. How many of those initial DACA applications pending on September 5, 2017 have been approved? How many have been rejected? How many have been denied?
14. How many initial DACA applications received prior to September 5, 2017 are still pending review?
15. What is the current average processing time for initial DACA applications?

We appreciate your attention to this request and look forward to your full and prompt response.

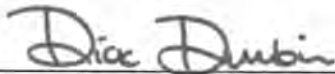
Sincerely,



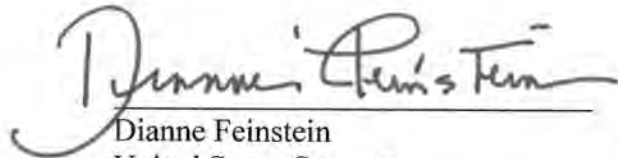
Catherine Cortez Masto
United States Senator



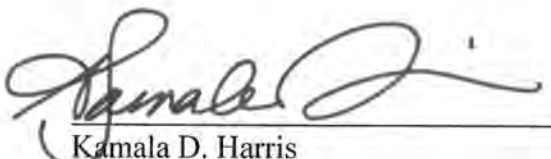
Robert Menendez
United States Senator



Richard J. Durbin
United States Senator



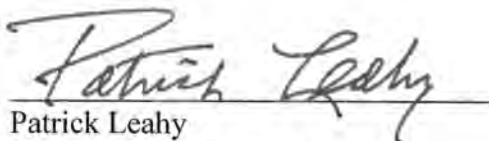
Dianne Feinstein
United States Senator



Kamala D. Harris
United States Senator



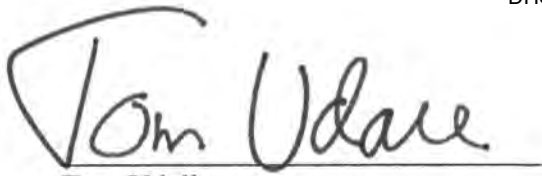
Mazie K. Hirono
United States Senator



Patrick Leahy
United States Senator



Tammy Baldwin
United States Senator



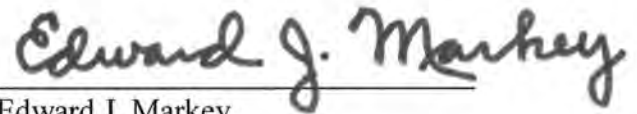
Tom Udall
United States Senator



Bernard Sanders
United States Senator



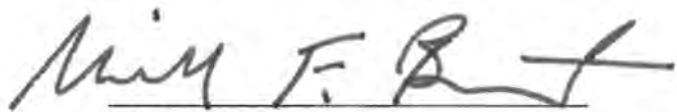
Kirsten Gillibrand
United States Senator



Edward J. Markey
United States Senator



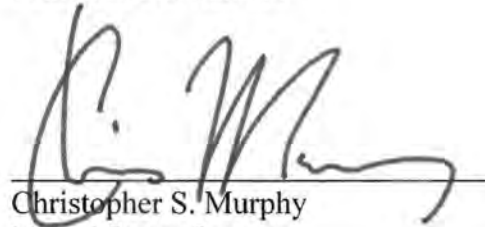
Patty Murray
United States Senator



Michael F. Bennet
United States Senator



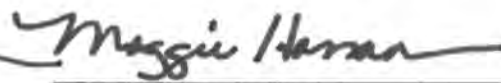
Cory A. Booker
United States Senator



Christopher S. Murphy
United States Senator



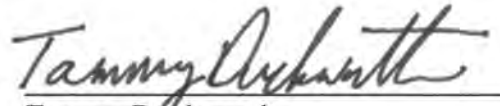
Elizabeth Warren
United States Senator



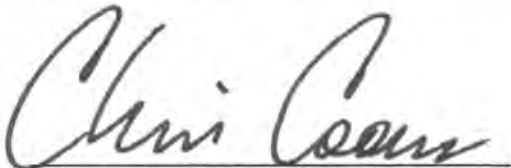
Margaret Wood Hassan
United States Senator



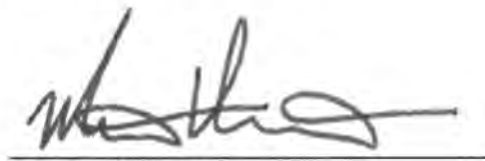
Jack Reed
United States Senator



Tammy Duckworth
United States Senator



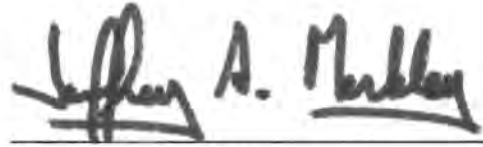
Christopher A. Coons
United States Senator



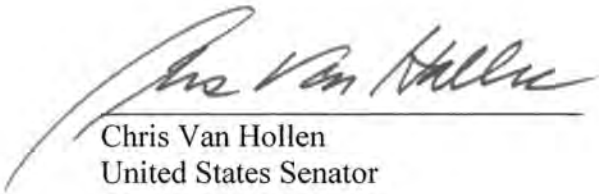
Martin Heinrich
United States Senator



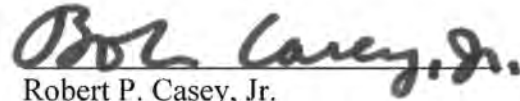
Tina Smith
United States Senator



Jeffrey A. Merkley
United States Senator



Chris Van Hollen
United States Senator



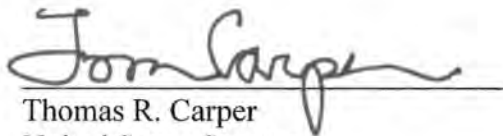
Robert P. Casey, Jr.
United States Senator



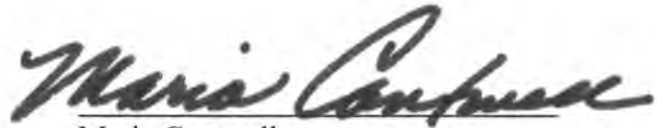
Mark R. Warner
United States Senator



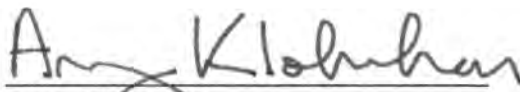
Bill Nelson
United States Senator



Thomas R. Carper
United States Senator



Maria Cantwell
United States Senator



Amy Klobuchar
United States Senator

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Fact Sheet

U.S. DEPARTMENT OF HOMELAND SECURITY

FACT SHEET: DHS Strategic Framework for Countering Terrorism and Targeted Violence

INTRODUCTION

The U.S. Department of Homeland Security was created in the wake of the devastating 9/11 attacks to coordinate and unify the nation's homeland security efforts. As we marked the 18th anniversary of the attacks, the country confronts an evolving challenge of terrorism and targeted violence.

Foreign terrorist organizations remain a core priority of DHS's counterterrorism efforts and we will continue to make substantial progress in our ability to detect, prevent, protect against, and mitigate the threats that these groups pose. At the same time, we face a growing threat from domestic terrorism and targeted violence here at home. We must address and prevent the mass attacks that have too frequently struck our houses of worship, our schools, our workplaces, our festivals, and our shopping spaces.

DHS is introducing a new document, DHS Strategic Framework for Countering Terrorism and Targeted Violence, which explains how we will use the tools and expertise that have protected and strengthened the country from foreign terrorist organizations to address the evolving challenges of today.

- DHS was founded after the 9/11 attacks with the mission of safeguarding the country from threats, foreign and domestic.
- Nearly two decades after the attacks, the U.S. faces an increasingly complex and evolving threat of terrorism and targeted violence.
- Since its inception, DHS has developed and implemented an array of tools to address threats to the nation.
- DHS is rolling out a new Strategic Framework for combating terrorism and targeted violence that will make it clear that the whole of DHS is committed to addressing the threat posed by terrorism and targeted violence at home, just as we are committed to addressing the threat posed by foreign terrorist organizations.
- The Strategic Framework takes a whole-of-society approach to prevention, empowering our citizens and our state, local, tribal, and territorial authorities, as well as our private sector, non-governmental, and community leaders, to develop localized prevention frameworks to protect their communities. By empowering our homeland security enterprise, DHS will continue to adapt ahead of evolving threats, enhancing the safety of our nation.



**Homeland
Security**

Current and Emerging Threats:

- Just like when DHS was founded, foreign terrorist organizations remain intent on striking the country through directed attacks or by radicalizing the most vulnerable and disaffected Americans.
- These groups seek to spur to violence in our youth, our disenfranchised, and our disaffected—encouraging them to strike the heart of our nation and attack the unity of our vibrant, diverse society.
- ISIS al Qaeda, returning foreign fighters, and those still in prison in theater represent significant, persistent, and long-term national security threats.
- Today, we face a growing threat from domestic actors inspired by violent extremist ideologies, as well as attacks from those are not ideologically driven.
- The prevalent trend of Americans driven by violent extremist ideologies or personal grievances to commit acts of terrorism and targeted violence with little apparent warning creates a unique challenge to traditional law enforcement and investigation methods.
- Racially- and ethnically-motivated violent extremism, in particular, violent white supremacism is one of the most prevalent and abhorrent of these anti-American ideologies. There is no moral ambiguity on this issue.



GOALS OF THE STRATEGY

Goal 1: Understand the evolving terrorism and targeted violence threat environment and support partners in the homeland security enterprise through this specialized knowledge.

Goal 2: Prevent terrorists and other hostile actors from entering the United States, and deny them the opportunity to exploit the nation's trade, immigration, and domestic and international travel systems.

Goal 3: Prevent terrorism and targeted violence.

Goal 4: Enhance U.S. infrastructure protections and community preparedness.



Homeland
Security



DHS STRATEGY AND ACTIONS

- This is the first national-level strategy to explicitly state that terrorism and targeted violence overlap, intersect, and interact as problems and require a shared set of solutions.
- DHS is introducing new methods of creating a more comprehensive understanding of the challenge of terrorism and targeted violence, both within and outside the federal government.
- The Strategic Framework introduces a new annual assessment that will explicate the state of the threat to the nation. This new report will help to inform all levels of government and the broader public.
- The Strategic Framework also introduces a mechanism for crafting a new definition of the key concept of targeted violence and elucidates the nature of today's domestic challenges and, in particular, the dangers of violent white supremacy extremism.
- This Strategic Framework is designed to assess DHS's past and provide a guidepost to its future. It lays out a comprehensive framework to enhance our prevention capabilities in an age of complex and multidimensional domestic threats, regardless of ideology.
- Importantly, the Strategic Framework explicitly recognizes the need to focus on and protect our most vulnerable populations, particularly our youth.
- This Strategic Framework emphasizes the importance of transparency, the protections of civil rights and civil liberties, and the protection of data in a digital age.
- The Strategic Framework is intentionally forward-looking in its understanding of technology's role as a factor that can exacerbate problems, but also one that can provide new solutions to combat the threats we confront.
- DHS will follow this strategy with a public action plan, explaining to the American people in greater detail how we will accomplish our strategic goals.
- DHS has dedicated operators and personnel that will play a critical role in implementing this strategy with vigilance and integrity.

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Submitting a FOIA Request for the Department of Homeland Security's Office of Intelligence and Analysis (I&A)

Joshua Phillips <foiareporter@gmail.com>

Sun 2/24/2019 3:00 PM

To: I&AFOIA <IAFOIA@HQ.DHS.GOV>;

To Whom it May Concern:

Please see the FOIA request, below, for the Department of Homeland Security's Office of Intelligence and Analysis (I&A) and its components referenced in my request -- including but not limited to the Office for Community Partnerships (OCP), the Science and Technology Directorate (S&T), the Office for State and Local Law Enforcement (OSLLE), and the Office of Terrorism Prevention Partnerships (OTPP).

Thank you for your assistance.

Regards,

Joshua Phillips

Joshua Phillips

Journalist / Producer

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office

+1.917.842.0755

mobile + Signal

eyewitnessonskype

Skype

foiareporter@gmail.com

FOIA Request for the Department of Homeland Security's Office of Intelligence and Analysis (I&A)

Freedom of Information and Privacy Acts request:

To:

U.S. Department of Homeland Security

Washington, D.C. 20528

FOIA Officer/Public Liaison: Brendan Henry

Phone: 202-447-3783

DHS-001-1971-00372605/10/2022

DHS-001-1971-00372705/10/2022

Fax: 202-612-1936

E-mail: I&AFOIA@hq.dhs.gov

This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records.

REQUESTER INFORMATION

Name: Joshua Phillips

Address: 510 E. 84th St., #4C, New York, NY 10028

Email: foiareporter@gmail.com

REQUEST FOR EXPEDITED PROCESSING

Under 32 C.F.R. 1900.34(c), a request is to be given expedited processing when "a compelling need is established to the satisfaction of the Agency." A compelling need is deemed to exist "[w]hen the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity." 32 C.F.R. 1900.34(c)(2).

I am seeking expedited treatment for this request.

1. I am a person primarily engaged in disseminating information

I am a full-time member of the news media and have contributed to various publications including. I am currently reporting for the Center for Investigative Reporting. My work has also appeared in the *Washington Post*, *Newsweek*, *The Atlantic*, *The Nation*, *Salon*, the *San Francisco Chronicle*, and the *Atlanta Journal-Constitution*, among other publications. I have also authored a book, *None of Us Were Like This Before: American Soldiers and Torture* (Verso Books, 2010), and have produced broadcast features for NPR, PRI, the BBC, Reveal, PRX and Al Jazeera. I have been awarded a Heywood Broun Award and Alfred I. duPont-Columbia University Award for excellence in broadcast journalism.

2. Certification pursuant to 32 C.F.R. 1900.34(c)

I certify the foregoing to be true and correct to the best of my knowledge and belief.

DOCUMENTS REQUESTED

I request disclosure of any records for (a) documents requesting, authorizing, or reflecting on or about; (b) copies of documents on, about, mentioning or referring to; (c) copies of any correspondence on, about, mentioning or referring to, or documents generated by any complaints and reports on, about, mentioning or referring to, and; (d) copies of any correspondence on, about, mentioning or referring to, or documents reviewed in any complaints and reports on, about, mentioning or referring to each of the following topics:

1. All reports, draft reports, and/or notes created from January 1, 2018 to the present that mention or refer to the Domestic Terrorism Intel Estimate, the Dom Terr Nat Intelligence Est (DT-NIE), the DT Threat Assessment, and/or any other reports that discuss the threat of domestic terrorism.
2. All emails, correspondence, draft emails and draft correspondence created from January 1, 2018 to the present that mention or refer to the Domestic Terrorism Intel Estimate, the Dom Terr Nat Intelligence Est (DT-NIE), the DT Threat Assessment, and/or any other reports that discuss the threat of domestic terrorism.
3. All written policies, orders, decisions, memoranda (or memorandums) created from January 1, 2018 to the present, that mention or refer to the Domestic Terrorism Intel Estimate, the Dom Terr Nat Intelligence Est (DT-NIE), the DT Threat Assessment and/or any other reports that discuss the threat of domestic terrorism.

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4. All records of meetings occurring includes any contemporaneous notes taken during such meetings by all attendees.
5. All records of presentations occurring from January 1, 2018 to the present that mention or refer to the Domestic Terrorism Intel Estimate, the Dom Terr Nat Intelligence Est (DT-NIE), the DT Threat Assessment, and/or any other reports that discuss the threat of domestic terrorism. This request includes any contemporaneous notes taken by all attendees during such presentations.
6. All records of investigations, inquiries and/or incident reviews created from January 1, 2018 to the present — including, but not limited to digital data and audio recordings — that mention or refer to the Domestic Terrorism Intel Estimate, the Dom Terr Nat Intelligence Est (DT-NIE), the DT Threat Assessment, and/or any other reports that discuss the threat of domestic terrorism.
7. All records created from January 1, 2018 to the present that mention or refer to the Domestic Terrorism Intel Estimate, the Dom Terr Nat Intelligence Est (DT-NIE), the DT Threat Assessment, and/or any other reports that discuss the threat of domestic terrorism.

INSTRUCTIONS

I request a copy of all records for the aforementioned “DOCUMENTS REQUESTED” from:

The Department of Homeland Security (DHS), including its contractors, including but not limited to the Department of Homeland Security’s Office of Intelligence and Analysis (I&A), the Office for Community Partnerships (OCP), the Science and Technology Directorate (S&T), the Office for State and Local Law Enforcement (OSLLE), the Office of Terrorism Prevention Partnerships (OTPP), the Office of the Secretary of Homeland Security, Department of Homeland Security’s Office of General Counsel (OGC), and Department of Homeland Security Office of Inspector General (DHS OIG).

1. Instructions Regarding “Leads”:

As required by the relevant case law, the **Department of Homeland Security (DHS), and its aforementioned components** should follow any leads it discovers during the conduct of its searches and perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

2. Request for Public Records:

Please search for any records even if they are already publicly available.

3. Request for Electronic and Paper/Manual Searches:

I request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted. I further request that the **Department of Homeland Security (DHS), and its aforementioned components** conduct a search of its “soft files.”

4. Request for Search of Filing Systems, Indices, and Locations:

I request that the **Department of Homeland Security (DHS), and its aforementioned components** conduct a search of all of its directorates. Specifically, I request that the search conducted by the **Department of Homeland Security (DHS), and its aforementioned components** include, but not be limited to, the following filing systems, indices, and locations:

Department of Homeland Security (DHS)

DHS/ALL-001 - Department of Homeland Security (DHS) Freedom of Information Act (FOIA) and Privacy Act (PA) Record System
 DHS/ALL-002 - Department of Homeland Security (DHS) Mailing and Other Lists System
 DHS/ALL-003 - Department of Homeland Security General Training Records
 DHS/ALL-004 - General Information Technology Access Account Records System (GITAARS)
 DHS/ALL-005 - Department of Homeland Security Redress and Response Records System
 DHS/ALL-007 Accounts Payable System of Records
 DHS/ALL-008 Accounts Receivable System of Records
 DHS/ALL-009 - Department of Homeland Security Advisory Committees
 DHS/ALL-010 Asset Management Records System of Records
 DHS/ALL-011 - Department of Homeland Security Biographies and Awards
 DHS/ALL-013 - Department of Homeland Security Claims Records

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DHS/ALL-015 - Department of Homeland Security Employee Assistance Program
 DHS/ALL-016 - Department of Homeland Security Correspondence Records
 DHS/ALL-017 - Department of Homeland Security General Legal Records
 DHS/ALL-018 - Department of Homeland Security Grievances, Appeals, and Disciplinary Action Records System of Records
 DHS/ALL-019 Payroll, Personnel, and Time and Attendance Records System of Records
 DHS/ALL-020 - Department of Homeland Security Internal Affairs
 DHS/ALL-021 - Department of Homeland Security Contractors and Consultants
 DHS/ALL-023 - Department of Homeland Security Personnel Security Management
 DHS/ALL-025 - Department of Homeland Security Law Enforcement Authority in Support of the Protection of Property Owned, Occupied, or Secured by the Department of Homeland Security
 DHS/ALL-026 - Department of Homeland Security Personal Identity Verification Management System
 DHS/ALL-027 - The History of the Department of Homeland Security
 DHS/ALL-028 - Department of Homeland Security Complaint Tracking System
 DHS/ALL-029 - Civil Rights and Civil Liberties Records
 DHS/ALL-030 Use of the Terrorist Screening Database System of Records
 DHS/ALL-031 - Information Sharing Environment Suspicious Activity Reporting Initiative
 DHS/ALL-032 - Official Passport Application and Maintenance Records
 DHS/ALL-033 - Reasonable Accommodations Records System of Records
 DHS/ALL-034 - Emergency Care Medical Records System of Records Notice
 DHS/ALL-035 Common Entity Index Prototype System of Records Notice
 DHS/ALL-036 Board for Correction of Military Records System of Records Notice
 DHS/ALL-037 E-Authentication Records System of Records
 DHS/ALL-038 Insider Threat Program System of Records

Also, please search all of your indices, filing systems, and locations, including those I have not specified by name and those that I may not be aware of.

5. Request regarding Photographs and other Visual Materials:

I request that any photographs or other visual materials responsive to my request be released to me in their original or comparable forms, quality, and resolution. For example, if a photograph was taken digitally, or if the **Department of Homeland Security (DHS), and its aforementioned components** maintains a photograph digitally, I request disclosure of the original digital image file, not a reduced resolution version of that image file nor a printout and scan of that image file. Likewise, if a photograph was originally taken as a color photograph, I request disclosure of that photograph as a color image, not a black and white image. Please contact me for any clarification on this point.

6. Request for Duplicate Pages:

I request disclosure of any and all supposedly "duplicate" pages. Scholars analyze records not only for the information available on any given page, but also for the relationships between that information and information on pages surrounding it. As such, though certain pages may have been previously released to me, the existence of those pages within new context renders them functionally new pages. As such, the only way to properly analyze released information is to analyze that information within its proper context. Therefore, I request disclosure of all "duplicate" pages.

7. Request to Search Emails:

Please search for emails relating to the subject matter of my request.

8. Request for Search of Records — and Records Transferred to Other Agencies:

I request that in conducting its search, the **Department of Homeland Security (DHS), and its aforementioned components** disclose releasable records even if they are available publicly through other sources outside the **Department of Homeland Security (DHS), and its aforementioned components**.

As part of this, I request a copy of all records for the aforementioned "DOCUMENTS REQUESTED," from and between the aforementioned governmental bodies, centers, agencies, and departments, including but not limited to any all correspondence records, electronic or otherwise, including but not limited to, emails, faxes, tape recordings, regular or standard mail, as well as documents, memos, memoranda, notes, meeting notes, phone call notes, policy papers, policy statements, press briefings, cables, briefings, reports, drafts, photographs and images, power point slides, bulletins, statistical data, surveys, computer source and object code, technical manuals, technical specifications, as well as records of complaints, responses to and results of complaints, investigations, responses to and results of investigations, internal reviews, responses to and results of internal reviews, audits, responses to and results of audits, reports, responses to and results of reports.

I also request that the search conducted by the **Department of Homeland Security (DHS), and its aforementioned components** include, but not be limited to, the following records, documents, filing systems, indices, and locations:

- Any Inspector General reviews or audits of investigations;
- Unclassified email traffic transmitted on unclassified networks;

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- Privacy Impact Assessments;

- Meeting notes and readouts;

- Also, please search all of your indices, filing systems, and locations, including those I have not specified by name and those that I may not be aware of.

9. *Regarding Destroyed Records*

If any records responsive or potentially responsive to my request have been destroyed, my request include, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

INSTRUCTIONS REGARDING SCOPE AND BREADTH OF REQUESTS

Please interpret the scope of this request broadly. The **Department of Homeland Security (DHS), and its aforementioned components** is instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

ADDITIONAL INSTRUCTIONS REGARDING REQUEST

Please produce all records with administrative markings and pagination included. Please send a memo (copy to me) to the appropriate units in your office to assure that no records related to this request are destroyed. Please advise of any destruction of records and include the date of and authority for such destruction.

FORMAT

I request that any releases stemming from this request be provided to me in digital format (soft-copy) on a compact disk or other like media.

EXEMPTIONS AND SEGREGABILITY

I call your attention to President Obama's 21 January 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA [...] The presumption of disclosure should be applied to all decisions involving FOIA.

In the same Memorandum, President Obama added that government information should not be kept confidential "merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Finally, President Obama ordered that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nonetheless, if any responsive record or portion thereof is claimed to be exempt from production, FOIA/PA statutes provide that even if some of the requested material is properly exempt from mandatory disclosure, all segregable portions must be released. If documents are denied in part or in whole, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Please provide a complete itemized inventory and a detailed factual justification of total or partial denial of documents. Specify the number of pages in each document and the total number of pages pertaining to this request. For "classified" material denied, please include the following information: the classification (confidential, secret or top secret); identity of the classifier; date or event for automatic declassification or classification review or downgrading; if applicable, identity of official authorizing extension of automatic declassification or review past six years; and, if applicable, the reason for extended classification beyond six years.

In excising material, please "black out" the material rather than "white out" or "cut out." I expect, as provided by FOIA, that the remaining non-exempt portions of documents will be released.

Please release all pages regardless of the extent of excising, even if all that remains are the stationery headings or administrative markings.

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In addition, I ask that your agency exercise its discretion to release records which may be technically exempt, but where withholding serves no important public interest.

FEE CATEGORY AND REQUEST FOR A FEE WAIVER

I am willing to pay any reasonable expenses associated with this request, however, as the purpose of the requested disclosure is in full conformity with the statutory requirements for a waiver of fees, I formally request such a waiver. I request a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4) (A)(iii) ("Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'").

Under 32 C.F.R. 1900.13(b), "Records will be furnished without charge or at a reduced rate whenever the Agency determines... (2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester."

Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes pursuant to 32 C.F.R. 1900.02(h)(3). According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified the ruling of *Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), the term "a representative of the news media" means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. This is consistent with the definition provided in 32 C.F.R. 1900.02(h)(3).

As the legislative history of FOIA reveals, "It is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. ... In fact, any person or organization which regularly publishes or disseminates information to the public... should qualify for waivers as a 'representative of the news media.'" 132 Cong. Rec. S14298 (daily ed. Sept 30, 1986) (emphasis in original quotation); and 2) "A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision." 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Joshua Phillips, should be considered a representative of the news media.

I. DISCLOSURE OF THE REQUESTED RECORDS IS IN THE PUBLIC INTEREST BECAUSE IT IS LIKELY TO CONTRIBUTE SIGNIFICANTLY TO THE PUBLIC UNDERSTANDING OF THE OPERATIONS AND ACTIVITIES OF THE GOVERNMENT.

A. The subject of the requested records concerns the operations and activities of the DoJ and broader government. The subject of the requested records concerns identifiable operations and activities of the DoJ and broader government, specifically the DoJ's controversial detention and interrogation program.

B. The disclosure is likely to contribute to an understanding of government operations and activities because the disclosable portions of the requested records will be meaningfully informative about those operations and activities. The vast majority of disclosable information is not already in the public domain, in either a duplicative or a substantially identical form, and therefore the disclosure would add substantial new information to the public's understanding of the DoJ's controversial detention and interrogation program.

The overwhelming preponderance of records I need to conduct my study are in the possession of the DoJ and not in the public domain.

C. The disclosure of the requested records will contribute to the increased understanding of a broad audience of persons interested in the subject, rather than merely my own individual understanding. Further, I will be collaborating with professionals who have great expertise in the subject area, and I have the ability and intention to effectively convey information to the public.

As explained herein in more detail, the audience likely to be interested in the subject is broad, and includes, historians of modern American government, politics, culture, and national security; journalists reporting on American politics, government, national security, and society; civil liberties attorneys; and the general public.

i) I firmly intend to analyze the requested records in order to facilitate significant expansion of public understanding of government operations. I am well qualified to perform this analysis.

I am a full-time member of the news media and have contributed to various publications including, most recently, the Center for Investigative Reporting. I have extensively reported on U.S. interrogation and detainee abuse-related issues. I have authored a book about this subject, titled, *None of Us Were Like This Before: American Soldiers and Torture*. My work has also appeared in the *Washington Post*, *Newsweek*, *The Atlantic*, *The Nation*, *Salon*, the *San Francisco Chronicle*, and the *Atlanta Journal-Constitution*, among other publications. I have also produced broadcast features for NPR, PRI, the BBC, Reveal, PRX and Al Jazeera.

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As should be clear from the above, I have the ability and firm intention to disseminate to the public significant expansions of understanding of government operations based on my analysis of the requested disclosures.

ii) Additional Note on Journalistic Research and the Public Interest:

The case law on this matter is emphatically clear that journalistic inquiry alone satisfies the FOIPA public interest requirement *National Treasury Employees Union v. Griffin*, 811 F.2d, 644, 649 (D.C. Cir. 1987).

Further, as articulated in the amendments to FOIA established by the OPEN Government Act of 2007,¹ I solidly meet the applicable definition of "a representative of the news media[.]" The OPEN Government Act of 2007 established that for FOIA purposes,

'a representative of the news media' means any person or entity that gathers information of potential interest to the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. 552(a)(4)(A)(ii)

Based on my completed and firmly intended research, analysis, and information dissemination activities detailed at length herein, I clearly satisfy this description.

Further, the OPEN Government Act of 2007's definition of "a representative of the news media" is taken nearly verbatim from language used by the United States Court of Appeals, District of Columbia Circuit in the court's 1989 FOIA fee waiver-oriented ruling in *National Security Archive v. Department of Defense*. As the court also relatedly found in *National Security Archive v. Department of Defense*, a requester need not already have published numerous works in order to qualify as a representative of the news media. The court found that the express "intention" to publish or disseminate analysis of requested documents amply satisfies the above noted requirement for journalists to "publish or disseminate information to the public." *National Security Archive v. Department of Defense*, 880 F.2d 1386, (D.C. Cir, 1989). I have expressed a firm intention to continue disseminating significant analysis of documents obtained through FOIPA requests. And I have demonstrated my ability to continue disseminating significant analysis of documents obtained through FOIPA requests.

Therefore, in that I am "person or entity that gathers information of potential interest to the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience," I solidly meet the applicable definition of "a representative of the news media." As such, I have again more than satisfied the requirement for the fee waiver.

D. The disclosure of the requested records is likely to contribute "significantly" to public understanding of government operations and activities because disclosure would enhance to a significant extent the public's understanding of the subject in question as compared to the level of public understanding existing prior to the disclosure

i) See above Section I.

ii) As noted above, the overwhelming preponderance of records I need to conduct my study are in the possession of the DoJ and not in the public domain.

II. DISCLOSURE OF THE INFORMATION IS NOT PRIMARILY IN MY COMMERCIAL INTEREST.

Any commercial interest that I have which would be furthered by the requested disclosure is *de minimis*.

I am requesting the release of records to analyze for use in the dissemination of news articles. Though journalists do get paid for writing news articles, payment is not the primary purpose for which such work is conducted. As the D.C. Circuit explained in *National Treasury Employees Union v. Griffin*, 811 F.2d, 644,649 (D.C. Cir. 1987), "While private interests clearly drive journalists (and journals) in their search for news, they advance those interests almost exclusively by dissemination of news, so that the public benefit from news distribution necessarily rises with any private benefit. Thus it is reasonable to presume that furnishing journalists with information will primarily benefit the general public[.]"

The disclosure of records will significantly benefit the public interest, and this benefit to the public is of vastly greater magnitude than my minimal commercial interest.

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Additionally, the courts and the legislature have been deeply invested in ensuring that FOIPA duplication and search fees are not used by government agencies to deliberately or otherwise thwart legitimate scholarly and journalistic research:

This was made clear in *Better Government Ass'n v. Department of State*, in which the court ruled that, "The legislative history of the fee waiver provision reveals that it was added to FOIA 'in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests/ in particular those from journalists, scholars and nonprofit public interest groups.'" *Better Government Ass'n v. Department of State*, 780 F.2d 86,89 (D.C. Cir. 1986).

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This point is further elaborated in *Ettlinger v. FBI*,

The legislative history of the FOIA clearly indicates that Congress intended that the public interest standard for fee waivers embodied in 5 U.S.C. § 552(a)(4)(A) be liberally construed. In 1974, Congress added the fee waiver provision as an amendment to the FOIA in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests. The 1974 Senate Report and the sources relied on in it make it clear that the public interest/benefit test was consistently associated with requests from journalists, scholars and non-profit public interest groups. There was a clear message from Congress that "this public-interest standard should be liberally construed by the agencies." The 1974 Conference Report, in which differences between the House and Senate amendments were ironed out, retained the Senate-originated public-interest fee waiver standard and further stated "the conferees intend that fees should not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." Further evidence of congressional intent regarding the granting of fee waivers comes from a 1980 Senate Subcommittee report. The report stated that "excessive fee charges ... and refusal to waive fees in the public interest remain... 'toll gates' on the public access road to information." The report noted that "most agencies have also been too restrictive with regard to granting fee waivers for the indigent, news media, scholars..." and recommended that the Department of Justice develop guidelines to deal with these fee waiver problems. The report concluded: The guidelines should recommend that each agency authorize as part of its FOIA regulations fee waivers for the indigent, the news media, researchers, scholars, and non-profit public interest groups. The guidelines should note that the presumption should be that requesters in these categories are entitled to fee waivers, especially if the requesters will publish the information or otherwise make it available to the general public.

The court, in its *Ettlinger v. FBI* decision, continued that on 18 December 1980, a policy statement was sent to the heads of all federal departments and agencies accompanied by a cover memorandum from then United States Attorney General Civiletti which stated that he had "concluded that the Federal Government often fails to grant fee waivers under the Freedom of Information Act when requesters have demonstrated that sufficient public interest exists to support such waivers." The Attorney General went on to state: Examples of requesters who should ordinarily receive consideration of partial fee waivers, at minimum, would be representatives of the news media or public interest organizations, and historical researchers. *Such waivers should extend to both search and copying fees, and in appropriate cases, complete rather than partial waivers should be granted.*

III. ALTERNATIVELY, THE AGENCY SHOULD EXERCISE ITS DISCRETION TO GRANT A FEE WAIVER.

Although I am entitled to a waiver of fees under 32 C.F.R. 1900.13(b)(2), even if I were not entitled to fees under that provision the agency should grant me a fee waiver in the exercise of its discretion. Pursuant to 32 C.F.R. 1900.13(b)(1), "as a matter of administrative discretion, the interest of the United States Government would be served." The agency should exercise its discretion here to award a fee waiver because release of the documents would be in the interest of the United States Government for the reasons stated above.

IV. CONCLUSION.

As demonstrated above, the disclosure of the requested records will significantly contribute to expanded public understanding of government operations. I have the intent and ability to disseminate this significant expansion of public understanding of government operations. The public interest in this significant expansion of public understanding of government operations far outweighs any commercial interest of my own in the requested release. Accordingly, my fee waiver request amply satisfies the rules of 32 C.F.R. 1900.13(b). Legislative history and judicial authority emphatically support this determination. For these reasons, and based upon their extensive elaboration above, I request a full waiver of fees be granted. I will appeal any denial of my request for a waiver of fees, and I will take the issue to the courts if necessary.

Please do not hesitate to contact me if you have any questions concerning this request.

Thank you for your assistance in this matter.

Joshua Phillips

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