

Sirine Shebaya  
Matthew Callahan  
**Muslim Advocates**  
PO Box 66408  
Washington, DC 20035

**U.S. Department of Homeland Security**

Dr. James V.M.L. Holzer  
Deputy Chief FOIA Officer  
The Privacy Office  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655

**U.S. Customs & Border Protection**

Sabrina Burroughs  
FOIA Officer  
1300 Pennsylvania Avenue, NW, Room 3.3D  
Washington, D.C. 20229

To whom it may concern:

On behalf of Muslim Advocates (“Requestor”), we submit this letter to the Department of Homeland Security (“DHS”) and U.S. Customs and Border Protection (“CBP”) as a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* The Requestor asks that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E) and that it be granted a fee waiver. The Requestor also asks that you refer the requests contained in this letter to any other component agency of DHS as appropriate.

**I. Background**

On February 5, 2018, *Foreign Policy* published a report by DHS entitled “Demographic Profile of Perpetrators of Terrorist Attacks in the United States Since September 2001 Attacks Reveals Screening and Vetting Implications” (“Report”).<sup>1</sup> Accompanying this was an article discussing the creation and contents of the article

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<sup>1</sup> The Report is attached to this Request as Attachment 1 and is also available online at <http://foreignpolicy.com/2018/02/05/draft-dhs-report-surveillance-of-muslim-immigrants/> (last accessed Feb. 8, 2018).

(“February 5, 2018 *Foreign Policy* Article”).<sup>1</sup> According to the February 5, 2018 *Foreign Policy* Article, this report was produced pursuant to a January 22, 2018 request by CBP Commissioner Kevin McAleenan (while the Report states that the Request was dated on December 19, 2017).

The Report is concerning because it appears on its face to exclusively target a single religious group—namely Sunni Muslims—for unjustified heightened surveillance and potentially discriminatory practices.

## II. Instructions

The Requestor requests disclosure of the following records<sup>2</sup> that were prepared, received, transmitted, collected and/or maintained by DHS, CBP, and any other agency components thereof.

Please search all records regarding agency business. Please do not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.<sup>3</sup> It is not adequate to rely on policies and procedures that require officials to move such

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<sup>1</sup> The February 5, 2018 *Foreign Policy* Article is attached to this Request as Attachment 2 and is also available online at <http://foreignpolicy.com/2018/02/05/draft-dhs-report-surveillance-of-muslim-immigrants/> (last accessed Feb. 8, 2018).

<sup>2</sup> The terms “records” is intended in the broadest possible sense and includes without limitation all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, legal and policy memoranda, minutes or notes of meetings and phone calls, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, text communications between phones or other electronic devices (including, but not limited to, communications sent via SMA or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, or Twitter direct message), training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations. No category of material should be omitted from search, collection, and production.

<sup>3</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).

information to official systems within a certain period of time; the Requestor has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>1</sup>

Please also employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered the agency's prior FOIA practices unreasonable. The government-wide requirements to manage information electronically by the end of 2016 have rendered it unreasonable to rely exclusively on custodian-driven searches.<sup>2</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but the agency's archiving tools would capture that email under Capstone. Accordingly, Requestor insists that the agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Requestor is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information "only if . . . disclosure would

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<sup>1</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at \*8 (D.D.C. Dec. 12, 2016) ("The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official's] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official's] work email account." (citations omitted)).

<sup>2</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, "Managing Government Records Directive," M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>1</sup> If it is your position that any portion of the requested records is exempt from disclosure, the Requestor requests that you provide an index of those records as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>2</sup> Moreover, the *Vaughn* index “must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.”<sup>3</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>4</sup>

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the Requestor requests that responsive electronic records be provided electronically in their native file format, if possible. In particular, electronic records are to be produced in an electronic, native format that contains the original metadata of the files. As a non-exhaustive list of examples: Microsoft Excel spreadsheets are to be produced as files that open in Excel, with all original data and formulas intact; Microsoft Word documents are to be produced in the same file format they are stored in, such that they contain all tracked changes and comments present in the documents; and emails are to be produced with all metadata fields intact, including but not limited to the date and time the email was sent, the full names and email addresses of all recipients, any data contained in the bcc: field, and all attachments. If the records cannot be produced in their native format, the Requestor asks for (1) an explanation why the records cannot be so produced; and (2) that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the

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<sup>1</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

<sup>2</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>3</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>4</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

document is non-exempt, and how the material is dispersed throughout the document.<sup>1</sup> Claims of non-segregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

If the Request is denied in whole or in part, the Requestor asks that you justify all deletions by reference to specific FOIA exemptions. The Requestor reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

Additionally, in order to avoid delays in receiving records, the Requestor requests that records be produced seriatim as they become available.

Where possible, please provide responsive material in electronic format by email to [matthew@muslimadvocates.org](mailto:matthew@muslimadvocates.org). Please furnish any responsive material being sent by mail to:

Matthew Callahan  
Muslim Advocates  
P.O. Box 66408  
Washington, DC 20035

### III. Description of Records

1. Any and all records created on or after January 21, 2017 related to the Report, including but not limited to:
  - a. The full text of the Report, including but not limited to any portions or sections of the Report not reproduced in the February 5, 2018 *Foreign Policy* Article.
  - b. The full text of any prior and/or subsequent versions of the Report.
  - c. The request from CBP Commissioner Kevin McAleenan requesting the drafting of the Report, whether on December 17, 2017, January 22, 2018, or any other date.
  - d. Communications (including but not limited to email) among, between, sent to, sent from, and/or copying personnel from CBP or DHS mentioning the Report.

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<sup>1</sup> *Mead Data Central*, 566 F.2d at 261.



- e. Any and all documents containing or containing discussion of factual materials consulted by the authors and researchers involved in the preparation of the Report.
2. Any and all records created on or after January 21, 2016 that match any of the following criteria:
    - a. Communications (including but not limited to email) among, between, sent to, sent from, and/or copying personnel from CBP or DHS that mention the phrases “radical Sunni Islamist” and/or “global jihadist extremist” and/or “violent Salafist”;
    - b. Any and all records that contain and/or attach independent think tank studies, scholastic publications, and United States press reporting that mention terrorist incidents committed by Sunni Muslims;
    - c. Any and all records that contain and/or attach assessments by the Combatting Counterterrorism Center at West Point, regarding the role women play in radical Islamist militant circles;
    - d. Communications (including but not limited to email) among, between, sent to, sent from, and/or copying personnel from CBP or DHS that mention terrorist incidents in the United States from October 2001 through December 2017 that were committed by Sunni Muslims;
    - e. Communications (including but not limited to email) among, between, sent to, sent from, and/or copying personnel from CBP or DHS that mention terrorist incidents in the United States from October 2001 through December 2017 that were not committed by Sunni Muslims.
  3. Any and all records related to the policies, practices, quality control standards of the preparation of reports for internal consumption, including but not limited to any and all policies, practices, guidance, standards, rules, and procedures that were in effect at any point from January 22, 2018 to February 7, 2018, discussing methods and methodologies of performing research, assignment of staffing and responsibility for review of draft reports, and/or compliance with the Information Quality Act.
  4. Any and all records created on or after February 5, 2018 to the present related to the February 5, 2018 *Foreign Policy* Article, including but not limited to communications (including but not limited to email) among, between, sent to, sent from, and/or cc’ing personnel from CBP or DHS mentioning, quoting from, and/or attaching the February 5, 2018 *Foreign Policy* Article.



5. Records describing the processing of this request, including but not limited to records sufficient to identify search terms used and locations and custodians searched; any tracking sheets used to track the processing of this request; and any FOIA questionnaires or certifications completed by individual custodians or components used to determine whether they possess responsive materials or to describe how they conducted searches.

#### **IV. Application for Expedited Processing**

Expedited processing of this request is warranted because: (1) there is an “urgency to inform the public about an actual or alleged Federal Government activity” by organizations, like the Requester, “primarily engaged in disseminating information,” 5 U.S.C. § 552(a)(6)(E)(i) & (v)(II); and (2) the request concerns “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence” 6 C.F.R. § 5.5(e)(1)(iv); 5 U.S.C. § 552(a)(6)(E)(ii).

The February 5, 2018 *Foreign Policy* Article and the Report—combined with a number of recent actions by the federal government that have been found unconstitutional by the courts—have raised serious concerns about possible religious discrimination in the federal government, giving rise to “questions about the government’s integrity” and an “urgency to inform the public.” Further, attorneys and other services providers need to understand the relevant policies, procedures, and practices to effectively serve and advise the population of individuals potentially affected by these initiatives. The requested records seek to inform the public about an urgent issue implicating the privacy and law enforcement prospects of thousands of people.

Given the foregoing, the Requester has satisfied the requirements for expedited processing of this Request.

#### **V. Application for Waiver or Limitation of Fees**

The Requestor requests a waiver of fees for document search, review, and duplication on the grounds that disclosure of the requested records is in the public interest and because disclosure 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.” 5 U.S.C. § 552(a)(4)(A)(iii). The Requestor also requests a waiver of search fees on the grounds that the Requestor qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

- A. *The Request 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 Requestor.*

The fact that *Foreign Policy* covered the drafting of the Report underscores the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance.

The Requestor is not filing this Request to further its commercial interest. Any information disclosed by the Requestor as a result of this FOIA Request will be made available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending the 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." (internal quotation marks omitted)).

- B. *The Requestor is a representative of the news media and the records are not sought for commercial use.*

The Requestor also requests a waiver of search fees on the grounds that the Requestor qualifies as "representative[s] of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The Requestor meets the statutory and regulatory definitions of "representative[s] of the news media" because they gather information, exercise editorial discretion in selecting and organizing documents, and "distribute the resulting work to the public." *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). The Requestor is therefore a "representative of the news media" for the same reasons: it is "primarily engaged in [the] dissemination of information." 5 U.S.C. § 552(a)(4)(A)(ii)(II), (6)(E)(v)(II).

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the Requestor's to be "representative[s] of the news media" as well. Requestor Muslim Advocates has pursued FOIA litigation against many agencies that resulted in the disclosure of previously withheld information, including against the FBI in 2009 and multiple suits against DHS in 2017. *Cf. Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding *Judicial Watch*, self-described as a "public interest law firm," a news media requester).<sup>1</sup>

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<sup>1</sup> Courts have found these organizations to be "representative[s] of the news media" even though they engage in litigation and lobbying activities beyond their

On account of these factors, fees associated with responding to FOIA requests should be waived for the Requestor as a “representative[s] of the news media.”

Pursuant to applicable statutes and regulations, the Requestor expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I).

We would welcome the chance to discuss this matter with you. If you would like to discuss any part of this request, please contact Matthew Callahan at [matthew@muslimadvocates.org](mailto:matthew@muslimadvocates.org) or (202) 897-2622 or Sirine Shebaya at [sirine@muslimadvocates.org](mailto:sirine@muslimadvocates.org) or (202) 897-2622.

Thank you for your prompt attention to this matter.

We affirm that the information provided supporting the request for expedited processing is true and correct to the best of our knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Very truly yours,



Sirine Shebaya  
Muslim Advocates  
P.O. Box 66408  
Washington, DC 20035



Matthew Callahan  
Muslim Advocates  
P.O. Box 66408  
Washington, DC 20035

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dissemination of information and public education activities. *See, e.g., Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

# **Attachment 1**

## **(U) Demographic Profile of Perpetrators of Terrorist Attacks in the United States Since September 2001 Attacks Reveals Screening and Vetting Implications**

### **(U) Scope**

(U//FOUO/LES) CBP's Office of Intelligence produced this document by request from CBP's Commissioner on 19 December. This product examines 29 perpetrators of 25 terrorist incidents in the United States from October 2001 through December 2017 whom CBP/OI assesses were driven by radical Sunni Islamist militancy.<sup>1</sup> This assessment covers the demographic profile of the perpetrators, consisting of age, citizenship, gender, immigration status, national origin, international travel and religious background. This assessment is intended to inform United States foreign visitor screening, immigrant vetting and on-going evaluations of United States-based individuals who might have a higher risk of becoming radicalized and conducting a violent attack. This information is cut-off as of 22 January 2018.

### **(U) Source Summary**

(U//FOUO) We place moderate confidence on assessments discussed herein due to our reliance on information derived primarily from analysis of law enforcement databases, independent think tank studies, scholastic publications, and United States press reporting. We lack specific details on the perpetrators path to radicalization that would have contributed a higher confidence in our assessment.

### **(U) Key Findings**

(U//FOUO/LES) The national origins of all but six of the perpetrators traced to the Middle East, South Asia or Africa, possibly reflecting the long-term difficulty for some Muslim immigrants to integrate into United States society.

(U//FOUO/LES) Most perpetrators resided in the United States for a significant period of time, signaling the need for recurrent screening and vetting over a long period of time.

(U//FOUO/LES) The presence of all of the perpetrators in the United States was lawful, highlighting that illegal immigration was not a factor in these cases.

(U//FOUO/LES) Despite the prominent role Muslim converts have played in radical Islamist terrorist incidents occurring in the West, only six of the perpetrators converted to Islam.

### **(U) Gender**

(U//FOUO/LES) Males were involved in all of the attacks highlighted in the assessment, despite growing concerns, such as assessments by the Combatting Counterterrorism Center at West Point, regarding the increasingly prominent, and sometimes operational, role women play in radical Islamist militant circles, including their use by the Islamic

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<sup>1</sup> For the purpose of this assessment, radical Sunni Islamist militancy refers to the violent Salafist and global jihadist extremist ideologies promoted by al-Qaida (AQ), the Islamic State of Iraq and as-Sham (ISIS), AQ and ISIS affiliates, and similarly inspired extremist entities.

State of Iraq and ash-Sham (ISIS).(2) There was only one incident, where a female, the wife of the male perpetrator, was also involved in carrying out the attack.

### **(U) Ages**

(U//FOUO/LES) Case studies over the past few years conducted by both federal and private entities yielded similar age-ranges after reviewing various comparable subsets of individuals. Our study found the average age of the 29 perpetrators was 28 years, ranging from 17 to 49 years of age at the time they were arrested or killed. The average age of perpetrators who conducted attacks in North America and Europe following ISIS' declaration of its self-proclaimed caliphate in June 2014 was a similar 27.3 years old, according to independent think tank findings.(3) According to one scholastic publication, the average age of United States individuals arrested due to their associations with ISIS was 26. (3) We assess that 14 out of the 15 individuals born outside the United States spent approximately 10 years in the United States prior to their attacks; the remaining foreign born perpetrator was a Canadian resident visiting the United States.

### **(U) National Origins**

(U//FOUO/LES) The national origins of all but six of the perpetrators traced to the Middle East, South Asia or Africa, likely reflecting the long-term difficulty for some Muslim immigrants to integrate into U.S. society. Just over half of the perpetrators were born outside the United States and over four-fifths (86%) of those immigrated as a minor or resided for a significant period of time (approximately 10 years) in the United States, indicating that the radicalization of these individuals likely occurred after immigrating. The remaining perpetrators born outside the United States resided in the country for two years or less, suggesting that they could have arrived in the United States already radicalized. The presence of all of the foreign-born perpetrators in the United States was lawful, highlighting that illegal immigration was not a factor in these cases and that possibly some militants are heeding calls by ISIS and AQ to take up arms in their Western countries of residence as opposed to traveling abroad to participate in foreign conflicts.

- (U//FOUO/LES) Eight of the 14 U.S.-born perpetrators are first-generation descendants of South Asian, Middle Eastern or African immigrants. Of the six other U.S.-born perpetrators, five are of African-American heritage and one is Caucasian.
- (U//FOUO/LES) Among the 14 foreign-born perpetrators who immigrated to the United States, 4 entered the United States before they reached 10 years of age; another 5 perpetrators were between 13 and 17 years of age when they migrated. Four perpetrators migrated to the United States after the age of 18 and were residents for approximately 7 years. Only one perpetrator over 18 years old had been in the United States for a year or less.

(U//FOUO/LES) Fourteen of the foreign-born perpetrators were lawful permanent residents (LPR)<sup>2</sup> of the United States and one was a lawful resident of Canada visiting the United States under a U.S.-Canada Trusted Traveler Program. Of the fourteen foreign-born individuals who were residents of the United States, 7 acquired permanent residency in the United States and 7 were naturalized citizens.

**(U) Immigration Channel**

(U//FOUO/LES) Of the 14 U.S. LPRs, five immigrated to the country as children of asylees; two were refugees; two acquired diversity immigrant visas, one was the child of a U.S. citizen; one was the spouse of a U.S. citizen; one was the child of an alien family member of a U.S. citizen; one was the child of an alien with an advanced professional degree; and one immigrated on a fiancé visa.

**(U) International Travel**

(U//FOUO/LES) Nine of the perpetrators traveled outside of the United States, within one to two years of the incident, to countries in the Middle East, South Asia or Europe, suggesting the travel may have played a role in their path to radicalization. Four individuals traveled to the Middle East or South Asia within three to four years of their attacks. Five out of the 14 U.S.-born perpetrators traveled to the Middle East or South Asia within 4 years or less of the incidents.

**(U) Religious Conversion**

(U//FOUO/LES) We assess that only six of the perpetrators-or about 20 percent-converted to Islam, which is in line with a 2017 independent think tank that found 23-percent of United States Muslims are converts (4)- despite the prominent role Muslim converts have played in radical Islamist terrorist incidents occurring in the West, according to a body of academic, media and anecdotal reporting. (5) (6) (7)

**(U) Outlook**

(U//FOUO/LES) CBP/OI assesses that the factors contributing to an individual's decision to perpetrate an act of terrorism reflect a highly personalized set of circumstances. The cohort of perpetrators represents migrants to the United States, U.S.-born citizens, including six converts to Islam with backgrounds that are comparable to other Sunni Islamist extremist cohorts. Demographic factors such as age, national origin, length of residence, immigration status or travel history can inform evaluations, but are not determinative, when assessing an individual's susceptibility to violent extremism. While the sense of perceived marginalization of some Muslim immigrants may represent an important factor in the radicalization process, we assess with low confidence that the motivations of at least some of the perpetrators centered on their failure to assimilate in United States society.

(U//FOUO/LES) The common demographics among those in this study provides a baseline to identify at-risk persons. While initial screenings at ports of entry that CBP performs remains crucial, this assessment suggests great value for the United States

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<sup>2</sup> Lawful permanent residents (LPRs), also known as "green card" holders, are non-citizens who are lawfully authorized to live permanently within the United States.

Government in dedicating resources to continuously evaluate persons of interest. The lengthy period of time most of the foreign-born perpetrators spent in the United States suggests substantial benefits from United States efforts that scrutinize transactional immigration events, including visa renewals, immigrant benefit applications, travel plans, and other instances to re-evaluate on a long-term basis, individuals who might be vulnerable to terrorist narratives. In addition to these mechanisms, campaigns to counter violent radicalization and programs to integrate Muslim immigrants will likely help reduce the vulnerability of those most susceptible to violent extremism.

# **Attachment 2**

**EXCLUSIVE**

# Draft DHS Report Called for Long-Term Surveillance of Sunni Muslim Immigrants

Those fitting broad “at-risk” profiles would be targeted for continuous vetting.

BY **GEORGE JOSEPH** | FEBRUARY 5, 2018, 4:53 PM

**A** Department of Homeland Security draft report from late January called on authorities to continuously vet Sunni Muslim immigrants deemed to have “at-risk” demographic profiles.

The draft report, a copy of which was obtained by **Foreign Policy**, looks at 25 terrorist attacks in the United States between October 2001 and December 2017, concluding there would be “great value for the United States Government in dedicating resources to continuously evaluate persons of interest” and suggesting that immigrants to the United States be tracked on a “long-term basis.”

If the report’s recommendations were implemented, it would represent a vast expansion of the Trump administration’s policies aimed at many Muslim immigrants, extending vetting from those trying to enter the United States to those already legally in the country, including permanent residents.

The report was produced at the request of U.S. Customs and Border Protection (CBP) Commissioner Kevin McAleenan on Jan. 22, according to internal DHS correspondence reviewed by **FP**. The purpose of the report, the document says, is to “inform United States foreign visitor screening, immigrant vetting and on-going evaluations of United States-based individuals who might have a higher risk of becoming radicalized and conducting a violent attack.”

In the report, CBP identifies a broad swath of Sunni Muslim residents as being potentially “vulnerable to terrorist narratives,” based on a set of risk indicators, such as being young, male, and having national origins in “the Middle East, South Asia or Africa.”

**FP**, which reviewed the original draft document and related correspondence, is publishing a reproduced version of the text of the report.

In response to queries from **FP**, a CBP spokesperson called the report a “first draft” that has already been changed and is still undergoing revisions. “[I]t is extremely important to highlight an important aspect – the document that was improperly provided to you is not a final CBP intelligence assessment, and therefore does not reflect CBP’s policy on this matter,” the spokesperson wrote in an email. “More specifically, the initial draft assessment in your possession not only is still undergoing internal CBP review, but, at the time of its improper disclosure, did not reflect a large number of substantive comments and revisions that have since been made to subsequent versions of the document as a result of CBP’s internal and external review process.”

The CBP draft report comes on the heels of a **controversial study** by DHS and the Justice Department, released on Jan. 16, which claimed that three out of every four individuals convicted of international terrorism or terrorism-related offenses were immigrants. Critics have **charged** that the joint report had serious methodological issues and cherry-picked the data to justify the Trump administration’s restrictive immigration policies.

The draft CBP report shares similar methodological problems, according to current and former DHS officials who spoke to **FP**.

A DHS official who reviewed the report and requested anonymity because they were not authorized to speak about it said this terrorist incident analysis, which focuses exclusively on “radical Sunni Islamist militancy,” is currently the only such risk analysis product they know of circulating within the department. The official also noted that the draft’s title — “Demographic Profile of Perpetrators of Terrorist Attacks in the United States Since September 2001 Attacks Reveals Screening and Vetting Implications” — is meant to sound all-encompassing, when, in fact, it is limited to select cases.

“First, this report would steer policymakers to implement unfair and discriminatory surveillance of particular ethnic groups,” the DHS official told **FP**. “Second, the analysis, which is misleadingly packaged as a comprehensive analysis of post-9/11 terrorism, could lead policymakers to overlook significant national security threats.”

A former senior DHS official also expressed concern about the way the report was formulated. “It feels very much like the self-licking ice cream cone,” the former official said. “That is, they have presented an answer to a question that has not specifically been asked.”

The former official said the assessment appears to rely on a “sweeping classification to military-aged males from a very specific group across all classes of émigré.” Such an approach risks “putting a projection on an entire class that they are never fully American.”

The focus on a specific group of Muslims is particularly concerning, said another former DHS official, referring to the “at-risk” demographic selections. “The only things these people have in common is that they are Sunni Muslim,” the former official said. “The study was limited to Sunni Muslims, so that’s not a finding — that’s the design of the study.”

Even if the report were one of many group-focused reports, the limited data used in the study effectively bakes in bias against Sunni Muslims on a broad scale because its findings don’t narrow the population significantly, said Margo Schlanger, a professor of law at the University of Michigan, who reviewed the study.

“They’re saying we can use their demographics to identify at-risk people, but the demographics they identify are all over the map: citizens and noncitizens, native and naturalized, Middle Eastern, African, and South Asian,” said Schlanger, who served as the DHS officer for civil rights and civil liberties during the Barack Obama administration. “So it basically concludes that everybody who is Sunni Muslim needs extra scrutiny.”

The CBP recommendations wouldn’t be the first proposal to enhance the ongoing monitoring of foreigners in the last year, since U.S. Immigration and Customs Enforcement (ICE) **announced** plans to build an “extreme vetting” data-mining program to continuously monitor a select group of high-risk visa holders.

CBP’s vetting report differs from ICE’s recent vetting proposals, however, in that it focuses exclusively on Sunni Muslims and also has far-reaching implications for permanent residents and potentially even U.S. citizens. According to the report, Sunni Muslim residents identified by these metrics as having a “higher risk of becoming radicalized” would face more intensive evaluations from immigration authorities when applying for visas, benefits, or travel.

“CBP would use this kind of analysis to tighten their risk algorithms,” said John Sandweg, the former acting director of ICE and general counsel at DHS, told **FP**. “A lot of the recurring vetting CBP does is electronic vetting, running you against all their databases to see if there’s been any derogatory information to flag you for, or reviewing social media to check for things related to terrorism.”

But Sandweg said the assessment might not, on its own, imply unfair policies. This kind of report “wouldn’t be uncommon” for CBP’s Office of Intelligence to do. “There are a lot of issues as to how you do this targeting — age-based, country of origin-based are certainly things that have to be looked at.”

Others, however, feel the risk classification analysis is unusual in that it seems to target specifically Sunni Muslim immigrants.

“The primary threat we face today comes from people who are born here,” said John Cohen, the former acting undersecretary for intelligence and analysis at DHS, adding that the focus on those in the United States legally and who are not involved in criminal activity is a misuse of enforcement resources. “And disclosing that you are doing that will further erode the relationship between law enforcement and community members.”

Legal advocates say the report is another signal of the administration’s overt anti-Muslim stance.

“This is definitely troubling. This is really racial profiling,” said Abed Ayoub, the national legal and policy director of the American-Arab Anti-Discrimination Committee. “It’s continuing to ignore the real threat in this country, and that’s white supremacists and their agenda.”

Sharifa Abbasi, an immigration lawyer, said the report suggests that DHS may be seeking to reinstitute programs like the George W. Bush administration’s National Security Entry-Exit Registration System, which registered noncitizen visa holders almost exclusively from Muslim-majority countries.

“It’s not like Muslims have not been subjected to this before,” Abbasi said. “It’s a way for this administration to vilify certain ethnicities in support of their white nationalist agenda.”

The former senior DHS official, who expressed concerns about the sweeping classifications used in the report, said the assessment and its recommendations appear to reflect the broader policy goals of the Trump administration.

“When your immigration policy is formulated by Stephen Miller and Katie Gorka,” said the former official, referring to two senior Trump appointees known for attacking Muslim immigrants, “this is where governmental radicalization and overreach by departments becomes particularly odious.”