

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BRENNAN CENTER FOR JUSTICE
AT NEW YORK UNIVERSITY
SCHOOL OF LAW,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
STATE,

Defendant.

Case No. 17 Civ. 7520

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Brennan Center for Justice at New York University School of Law brings this action against Defendant U.S. Department of State to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. Specifically, Plaintiff seeks:

- a. The report submitted by the Secretary of the Department of Homeland Security to President Trump on July 9, 2017, referred to in Section 1(c) of the Proclamation issued by President Trump on September 24, 2017, “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats” (the “Proclamation,” attached as **Exhibit A**);
- b. The report submitted by the Secretary of Homeland Security to President Trump on September 15, 2017, referred to in Section 1(h) of the Proclamation;
- c. If not included in the reports referred to in Sections 1(c) and 1(h) of the Proclamation, the final reports submitted by the Secretary of Homeland Security to President Trump on each of the eight countries identified in Section 2 of the Proclamation, *i.e.*, Chad, Iran, Libya, North Korea, Syria, Venezuela, Yemen, and Somalia; and
- d. If not included in the reports referred to in Sections 1(c) and 1(h) of the Proclamation, the final reports submitted by the Secretary of Homeland Security to President Trump on the sixteen countries identified by the Secretary as being

“inadequate,” referred to in Section 1(e) of the Proclamation, to the extent that they were not included in the list of seven countries in Section 1(h)(ii).

These four categories of documents are hereinafter referred to as “the Requested Documents.”

JURISDICTION AND VENUE

3. The Court has jurisdiction over this claim pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii).

4. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

5. Plaintiff Brennan Center for Justice at New York University School of Law (“Brennan Center”) is a nonprofit, nonpartisan law and policy institute that is focused on fundamental issues of democracy and justice. The Brennan Center’s Liberty and National Security (“LNS”) Program uses innovative policy recommendations, litigation, and public advocacy to advance effective national security policies that respect the rule of law and constitutional values. The Brennan Center is a 501(c)(3) corporation headquartered at 120 Broadway in New York, New York.

6. Defendant United States Department of State (“DoS”) is a U.S. agency under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1). DoS is located at 2201 C Street, N.W. in Washington, D.C., and has custody and control over the Requested Documents.

STATEMENT OF FACTS

President Trump’s Muslim Travel Bans

7. On January 27, 2017 — one week after assuming office — President Trump signed Executive Order 13769, “Protecting the Nation from Foreign Terrorist Entry into the United States” (“First Muslim Ban”). The First Muslim Ban temporarily halted entry of all nationals from seven Muslim-majority countries, temporarily suspended the U.S. Refugee

Admissions Program, established a policy of prioritizing certain religious denominations over others upon resuming the Refugee Program, and indefinitely barred Syrian refugees.

8. The First Muslim Ban was consistent with President Trump’s campaign promise to establish “a total and complete shutdown of Muslims entering the United States” and his persistent inflammatory and hostile statements about Muslim Americans and Muslims generally.

9. Initial legal challenges to the Trump Administration’s First Muslim Ban resulted in preliminary relief from imposition of the key provisions of the Ban.

10. Following these successful challenges, the Administration issued Executive Order 13780 (“Second Muslim Ban”) on March 6, 2017, which instituted a 90-day travel ban against persons from six Muslim-majority countries and a worldwide 120-day suspension of refugee processing.

11. Nine days later, the U.S. District Court for the District of Hawaii issued a nationwide temporary restraining order against two sections of the Second Muslim Ban — the travel ban and refugee-suspension provisions.

12. The U.S. District Court for the District of Maryland also issued a preliminary injunction against the travel ban section the following day.

13. The U.S. Court of Appeals for the Fourth Circuit upheld the District of Maryland’s decision in substantial part on May 25, 2017.

14. The United States Court of Appeals for the Ninth Circuit upheld the District of Hawaii’s injunction in principal part on June 12, 2017.

15. On June 26, 2017, the U.S. Supreme Court granted the Administration’s petition for certiorari to review the preliminary relief affecting implementation of the Second Muslim Ban.

16. On that day, the U.S. Supreme Court also stayed the preliminary relief to the extent that relief applied to protect foreign nationals who lack a “bona fide relationship with a person or entity in the United States.”

17. Following briefing, but before oral argument, on September 24, 2017, the Administration issued the Proclamation signed by President Trump.

18. The Proclamation restricts entry of persons into the United States from six Muslim-majority countries (and two non-Muslim majority countries), including those with bona-fide relationships with U.S. citizens and lawful permanent residents.

19. The Proclamation also states that it is based on a “worldwide review” of information-sharing practices, policies, and capabilities of foreign countries and the conclusion that the countries named in the Proclamation have “‘inadequate’ identity-management protocols, information-sharing practices, and risk factors” or otherwise merit “entry restrictions, limitations, and other measures.”

20. Such “worldwide review” was ordered by the Second Muslim Ban, which directed the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, to “identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public-safety threat.”

21. The results of that worldwide review were submitted to President Trump in a report issued by the Secretary of Homeland Security on July 9, 2017.

22. According to the Proclamation, the July 9 report detailed the kinds of information required from foreign governments to avoid travel restrictions, a description of the information

provided by the foreign governments, and a list of countries whose information was adequate, inadequate, or at risk of being inadequate.

23. According to the Proclamation, following the July 9 report, Defendant DoS further engaged with the countries that had been reviewed with respect to the information that they had provided.

24. Purportedly based on this review and engagement, on September 15, 2017, the Secretary of Homeland Security submitted a report to President Trump recommending travel restrictions for nationals of the countries included in the Proclamation.

Plaintiff's FOIA Request

25. On July 20, 2017, Plaintiff and others (collectively, "Requesters") submitted a FOIA request to Defendant for 23 categories of records related to the Administration's travel bans. Consistent with FOIA, Requesters asked Defendant to refer the request to the White House, the U.S. Department of Justice, the U.S. Department of Homeland Security, and U.S. Customs and Border Protection, as appropriate. Requesters further requested expedited processing and a fee waiver. The FOIA request is attached as **Exhibit B**.

26. As is relevant here, the FOIA request includes a request for:

- w. All records pertaining to the worldwide review process conducted under Section 2 of Executive Order 13780 and 17 STATE 72000, including the Report that was submitted to President Trump, copies of instructions to foreign governments regarding the requirements that must be met to avoid travel restrictions, and a list of all countries that have:
 - i. been designated as providing adequate information to the U.S. government;
 - ii. been designated as providing inadequate information to the U.S. government; and/or
 - iii. been designated as being at risk of providing inadequate information to the U.S. government.

27. The Requested Documents (as defined in paragraph 2 above) are a discrete subset of the documents covered by request “w.” The Requested Documents are the only records at issue in this action.¹

Defendant’s Interim Responses

28. On July 24, 2017, Defendant granted Requesters’ request for expedited processing and for a fee waiver.

29. Defendant’s response, however, did not indicate the scope of the documents that it would produce or the exemptions it would claim, if any, with respect to the FOIA request.

30. Defendant’s response also did not provide an estimated date for production of the responsive records.

31. Instead, Defendant’s response states only that “[w]e will notify you as soon as responsive material has been retrieved and reviewed.” Defendant’s July 24, 2017 response is attached as **Exhibit C**.

32. On August 18, 2017, after hearing nothing further from Defendant, Requesters contacted Defendant by phone and were informed that Defendant expected to complete production by October 31, 2017.

33. Counsel for Requesters memorialized the August 18 conversation in an August 24, 2017 email, attached as **Exhibit D**.

34. Defendant responded with a form email on August 28, 2017, attached as **Exhibit E**.

¹ Plaintiff does not waive its right to seek judicial relief with respect to the balance of its initial FOIA request, attached hereto as **Exhibit B**.

35. Requesters have heard nothing further from Defendant with respect to the FOIA request.

The Need to Expedite the Production of the Requested Documents

36. The Requested Documents are matters of intense public interest.

37. The Administration’s latest iteration of the Muslim ban — the Proclamation — went into effect immediately for those persons subject to the entry restrictions established by the Second Muslim Ban, as amended by the U.S. Supreme Court to carve out those persons with a bona fide relationship with the United States.

38. The remaining terms of the Proclamation go into effect on October 18, 2017.

39. Courts have held every iteration of the Muslim ban before the Proclamation to merit preliminary relief on the ground that the ban is unconstitutional.

40. Like the Muslim bans that preceded the Proclamation, and as recognized by courts across the nation, “the Government’s asserted national security interest [therein] . . . appears to be a post hoc, secondary justification for an executive action rooted in religious animus and intended to bar Muslims from this country.” *Int’l Refugee Assistance Proj. v. Trump*, 857 F.3d 554, at 603 (4th Cir. 2017).

41. The Requested Documents are essential to assess the Administration’s latest justification for the Muslim ban.

42. As accepted by Defendant itself, when it granted Requester’s request for expedited processing:

- a. “[T]here is a compelling need for expedited processing because Request[e]rs require the records requested to effectively inform the public about new federal procedures already affecting individuals’ civil rights.”
- b. “[F]ailure to release this information will impair due-process rights and harm humanitarian interests.”

43. Expedition is also warranted due to the quickly-approaching October 18 implementation date of the policy reflected in the Proclamation.

44. The Proclamation, like the prior Muslim bans, appears, on its face, to violate the constitutional guarantee that the government will not establish, favor, discriminate, or condemn any religion because it is directed at Muslim-majority countries and was announced in the context of prior failed attempts to violate the Constitution more directly.

45. The Proclamation, like the prior Muslim bans, appears, on its face, to violate the constitutional guarantee of equal protection because it is motivated by animus and is not justified by legitimate, important, or compelling governmental interests.

46. The Proclamation, like the prior Muslim bans, appears, on its face, to violate the constitutional guarantee of freedom of speech because it bars U.S. entities from receiving information and ideas by banning the physical presence of nationals of the affected countries.

47. The Proclamation, like the prior Muslim bans, appears, on its face, to violate the constitutional guarantee of procedural due process because it deprives immigrants and refugees from the affected countries of the statutory rights and prescribed procedures applicable to them and deprives U.S. citizens of travel by specific non-citizen family members to the United States.

48. The Proclamation, like the prior Muslim bans, appears, on its face, to exceed the President's authority under the Immigration and Nationality Act ("INA") and to violate the INA because it discriminates against persons on the basis of nationality while disregarding the statutory criteria for determining terrorism-related inadmissibility.

49. Finally, the intense public interest regarding the Proclamation is evidenced by articles published by, for example, The Washington Post, The New York Times, U.S. News & World Report, The Los Angeles Times, and the Associated Press.

50. For all these reasons, expedition in ordering release of the Requested Documents is warranted.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552,
for Improperly Withholding Agency Records)

51. Plaintiff re-alleges paragraphs 1 through 50 as if fully set forth herein.

52. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), an agency is required to make a determination on a FOIA request within twenty business days of receipt of such request and “shall immediately notify the person making such request of such determination and the reasons therefor.”

53. Under 5 U.S.C. § 552(a)(6)(B)(i), an agency may extend the deadline to make that determination by ten business days if “by written notice” it asserts that there are “unusual circumstances” and if it asserts “the date on which a determination is expected to be dispatched.”

54. Defendant failed to toll its twenty-day statutory deadline to make its determination because it did not assert “unusual circumstances.”

55. Defendant did not make a determination on Plaintiff’s request within the twenty business days required by law.

56. Even if Defendant had asserted “unusual circumstances,” it would have been required to make a determination within 30 business days after receipt of the request. 5 U.S.C. § 552(a)(6)(B)(i).

57. Defendant did not make a determination on Plaintiff’s request within 30 days.

58. Accordingly, Plaintiff has exhausted administrative remedies with respect to its request. 5 U.S.C. § 552(a)(6)(C)(i).

59. Plaintiff has a right of access to the Requested Documents under 5 U.S.C. § 552(a)(3), and there is no legal basis for Defendant to withhold them.

60. Defendant is improperly withholding agency records responsive to Plaintiff's request.

61. Plaintiff is being harmed by reason of Defendant's unlawful withholding of the Requested Documents, and Plaintiff will continue to be harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Issue an order expediting Defendant's filing of a *Vaughn* index for the Requested Documents, or portions thereof, that Defendant claims are exempt from production;

B. Declare that Defendant has violated FOIA by improperly withholding the Requested Documents and compel Defendant to produce the Requested Documents expeditiously pursuant to 5 U.S.C. §§ 552(a)(4)(B), (6)(E);

C. Enjoin Defendant from withholding the Requested Documents and order production of the Requested Documents to Plaintiff pursuant to 5 U.S.C. § 552(a)(4)(B) promptly and by a date certain;

D. Issue an order overruling any exemptions Defendant may assert and compelling Defendant to produce the Requested Documents in full, promptly, and by a date certain;

E. Award Plaintiff reasonably attorneys' fees and other litigation costs reasonably incurred pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and

F. Award any other relief the Court may deem just and proper.

October 2, 2017

Respectfully submitted,

s/ Neil K. Roman

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ⁱ *Pro hac vice* application forthcoming

ⁱⁱ Application for admission forthcoming

EXHIBIT A

THE WHITE HOUSE
Office of the Press Secretary

FOR IMMEDIATE RELEASE

September 24, 2017

ENHANCING VETTING CAPABILITIES AND PROCESSES FOR DETECTING
ATTEMPTED ENTRY INTO THE UNITED STATES BY TERRORISTS OR
OTHER PUBLIC-SAFETY THREATS

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

In Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), on the recommendations of the Secretary of Homeland Security and the Attorney General, I ordered a worldwide review of whether, and if so what, additional information would be needed from each foreign country to assess adequately whether their nationals seeking to enter the United States pose a security or safety threat. This was the first such review of its kind in United States history. As part of the review, the Secretary of Homeland Security established global requirements for information sharing in support of immigration screening and vetting. The Secretary of Homeland Security developed a comprehensive set of criteria and applied it to the information-sharing practices, policies, and capabilities of foreign governments. The Secretary of State thereafter engaged with the countries reviewed in an effort to address deficiencies and achieve improvements. In many instances, those efforts produced positive results. By obtaining additional information and formal commitments from foreign governments, the United States Government has improved its capacity and ability to assess whether foreign nationals attempting to enter the United States pose a security or safety threat. Our Nation is safer as a result of this work.

Despite those efforts, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, has determined that a small number of countries -- out of nearly 200 evaluated -- remain deficient at this time with respect to their identity-management and information-sharing capabilities, protocols, and practices. In some cases, these countries also have a significant terrorist presence within their territory.

As President, I must act to protect the security and interests of the United States and its people. I am committed to our ongoing efforts to engage those countries willing to cooperate, improve information-sharing and identity-management protocols and procedures, and address both terrorism-related and public-safety risks. Some of the countries with remaining inadequacies face significant challenges. Others have made strides to improve their protocols and procedures, and I commend them for these efforts. But until they satisfactorily address the identified inadequacies, I have determined, on the basis of recommendations from the Secretary of Homeland Security and other members of my Cabinet, to impose certain conditional restrictions and limitations, as set forth more fully below, on

entry into the United States of nationals of the countries identified in section 2 of this proclamation.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(f) and 1185(a), and section 301 of title 3, United States Code, hereby find that, absent the measures set forth in this proclamation, the immigrant and nonimmigrant entry into the United States of persons described in section 2 of this proclamation would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Policy and Purpose. (a) It is the policy of the United States to protect its citizens from terrorist attacks and other public-safety threats. Screening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy. They enhance our ability to detect foreign nationals who may commit, aid, or support acts of terrorism, or otherwise pose a safety threat, and they aid our efforts to prevent such individuals from entering the United States.

(b) Information-sharing and identity-management protocols and practices of foreign governments are important for the effectiveness of the screening and vetting protocols and procedures of the United States. Governments manage the identity and travel documents of their nationals and residents. They also control the circumstances under which they provide information about their nationals to other governments, including information about known or suspected terrorists and criminal-history information. It is, therefore, the policy of the United States to take all necessary and appropriate steps to encourage foreign governments to improve their information-sharing and identity-management protocols and practices and to regularly share identity and threat information with our immigration screening and vetting systems.

(c) Section 2(a) of Executive Order 13780 directed a "worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public-safety threat." That review culminated in a report submitted to the President by the Secretary of Homeland Security on July 9, 2017. In that review, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, developed a baseline for the kinds of information required from foreign governments to support the United States Government's ability to confirm the identity of individuals seeking entry into the United States as immigrants and nonimmigrants, as well as individuals applying for any other benefit under the immigration laws, and to assess whether they are a security or public-safety threat. That baseline incorporates three categories of criteria:

(i) Identity-management information. The United States expects foreign governments to provide

the information needed to determine whether individuals seeking benefits under the immigration laws are who they claim to be. The identity-management information category focuses on the integrity of documents required for travel to the United States. The criteria assessed in this category include whether the country issues electronic passports embedded with data to enable confirmation of identity, reports lost and stolen passports to appropriate entities, and makes available upon request identity-related information not included in its passports.

(ii) National security and public-safety information. The United States expects foreign governments to provide information about whether persons who seek entry to this country pose national security or public-safety risks. The criteria assessed in this category include whether the country makes available, directly or indirectly, known or suspected terrorist and criminal-history information upon request, whether the country provides passport and national-identity document exemplars, and whether the country impedes the United States Government's receipt of information about passengers and crew traveling to the United States.

(iii) National security and public-safety risk assessment. The national security and public-safety risk assessment category focuses on national security risk indicators. The criteria assessed in this category include whether the country is a known or potential terrorist safe haven, whether it is a participant in the Visa Waiver Program established under section 217 of the INA, 8 U.S.C. 1187, that meets all of its requirements, and whether it regularly fails to receive its nationals subject to final orders of removal from the United States.

(d) The Department of Homeland Security, in coordination with the Department of State, collected data on the performance of all foreign governments and assessed each country against the baseline described in subsection (c) of this section. The assessment focused, in particular, on identity management, security and public-safety threats, and national security risks. Through this assessment, the agencies measured each country's performance with respect to issuing reliable travel documents and implementing adequate identity-management and information-sharing protocols and procedures, and evaluated terrorism-related and public-safety risks associated with foreign nationals seeking entry into the United States from each country.

(e) The Department of Homeland Security evaluated each country against the baseline described in subsection (c) of this section. The Secretary of Homeland Security identified 16 countries as being "inadequate" based on an analysis of their identity-management protocols, information-sharing practices, and risk factors. Thirty-one additional countries were classified "at risk" of becoming "inadequate" based on those criteria.

(f) As required by section 2(d) of Executive Order 13780, the Department of State conducted a 50-day engagement period to encourage all foreign governments, not just the 47 identified as either "inadequate" or "at risk," to improve their performance with respect to the baseline described in subsection (c) of this section. Those engagements yielded significant improvements in many countries. Twenty-nine countries, for example, provided travel document exemplars for use by Department of Homeland Security officials to combat fraud. Eleven countries agreed to share information on known or suspected terrorists.

(g) The Secretary of Homeland Security assesses that the following countries continue to have "inadequate" identity-management protocols, information-sharing practices, and risk factors, with respect to the baseline described in subsection (c) of this section, such that entry restrictions and limitations are recommended: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. The Secretary of Homeland Security also assesses that Iraq did not meet the baseline, but that entry restrictions and limitations under a Presidential proclamation are not warranted. The Secretary of Homeland Security recommends, however, that nationals of Iraq who seek to enter the United States be subject to additional scrutiny to determine if they pose risks to the national security or public safety of the United States. In reaching these conclusions, the Secretary of Homeland Security considered the close cooperative relationship between the United States and the democratically elected government of Iraq, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combating the Islamic State of Iraq and Syria (ISIS).

(h) Section 2(e) of Executive Order 13780 directed the Secretary of Homeland Security to "submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of foreign nationals of countries that have not provided the information requested until they do so or until the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or has adequately shared information through other means." On September 15, 2017, the Secretary of Homeland Security submitted a report to me recommending entry restrictions and limitations on certain nationals of 7 countries determined to be "inadequate" in providing such information and in light of other factors discussed in the report. According to the report, the recommended restrictions would help address the threats that the countries' identity-management protocols, information-sharing inadequacies, and other risk factors pose to the security and welfare of the United States. The restrictions also encourage the countries to work with the United States to address those inadequacies and risks so that the restrictions and limitations imposed by this proclamation may be relaxed or removed as soon as possible.

(i) In evaluating the recommendations of the Secretary of Homeland Security and in determining what restrictions to impose for each country, I consulted with appropriate Assistants to the President and members of the Cabinet, including the Secretaries of State, Defense, and Homeland Security, and the Attorney General. I considered several factors,

including each country's capacity, ability, and willingness to cooperate with our identity-management and information-sharing policies and each country's risk factors, such as whether it has a significant terrorist presence within its territory. I also considered foreign policy, national security, and counterterrorism goals. I reviewed these factors and assessed these goals, with a particular focus on crafting those country-specific restrictions that would be most likely to encourage cooperation given each country's distinct circumstances, and that would, at the same time, protect the United States until such time as improvements occur. The restrictions and limitations imposed by this proclamation are, in my judgment, necessary to prevent the entry of those foreign nationals about whom the United States Government lacks sufficient information to assess the risks they pose to the United States. These restrictions and limitations are also needed to elicit improved identity-management and information-sharing protocols and practices from foreign governments; and to advance foreign policy, national security, and counterterrorism objectives.

(ii) After reviewing the Secretary of Homeland Security's report of September 15, 2017, and accounting for the foreign policy, national security, and counterterrorism objectives of the United States, I have determined to restrict and limit the entry of nationals of 7 countries found to be "inadequate" with respect to the baseline described in subsection (c) of this section: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. These restrictions distinguish between the entry of immigrants and nonimmigrants. Persons admitted on immigrant visas become lawful permanent residents of the United States. Such persons may present national security or public-safety concerns that may be distinct from those admitted as nonimmigrants. The United States affords lawful permanent residents more enduring rights than it does to nonimmigrants. Lawful permanent residents are more difficult to remove than nonimmigrants even after national security concerns arise, which heightens the costs and dangers of errors associated with admitting such individuals. And although immigrants generally receive more extensive vetting than nonimmigrants, such vetting is less reliable when the country from which someone seeks to emigrate exhibits significant gaps in its identity-management or information-sharing policies, or presents risks to the national security of the United States. For all but one of those 7 countries, therefore, I am restricting the entry of all immigrants.

(iii) I am adopting a more tailored approach with respect to nonimmigrants, in accordance with the recommendations of the Secretary of Homeland Security. For some countries found to be "inadequate" with respect to the baseline described in subsection (c) of this section, I am restricting the entry of all nonimmigrants. For countries with certain mitigating factors, such as a willingness to cooperate or play a

substantial role in combatting terrorism, I am restricting the entry only of certain categories of nonimmigrants, which will mitigate the security threats presented by their entry into the United States. In those cases in which future cooperation seems reasonably likely, and accounting for foreign policy, national security, and counterterrorism objectives, I have tailored the restrictions to encourage such improvements.

(i) Section 2(e) of Executive Order 13780 also provided that the "Secretary of State, the Attorney General, or the Secretary of Homeland Security may also submit to the President the names of additional countries for which any of them recommends other lawful restrictions or limitations deemed necessary for the security or welfare of the United States." The Secretary of Homeland Security determined that Somalia generally satisfies the information-sharing requirements of the baseline described in subsection (c) of this section, but its government's inability to effectively and consistently cooperate, combined with the terrorist threat that emanates from its territory, present special circumstances that warrant restrictions and limitations on the entry of its nationals into the United States. Somalia's identity-management deficiencies and the significant terrorist presence within its territory make it a source of particular risks to the national security and public safety of the United States. Based on the considerations mentioned above, and as described further in section 2(h) of this proclamation, I have determined that entry restrictions, limitations, and other measures designed to ensure proper screening and vetting for nationals of Somalia are necessary for the security and welfare of the United States.

(j) Section 2 of this proclamation describes some of the inadequacies that led me to impose restrictions on the specified countries. Describing all of those reasons publicly, however, would cause serious damage to the national security of the United States, and many such descriptions are classified.

Sec. 2. Suspension of Entry for Nationals of Countries of Identified Concern. The entry into the United States of nationals of the following countries is hereby suspended and limited, as follows, subject to categorical exceptions and case-by-case waivers, as described in sections 3 and 6 of this proclamation:

(a) Chad.

(i) The government of Chad is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Chad has shown a clear willingness to improve in these areas. Nonetheless, Chad does not adequately share public-safety and terrorism-related information and fails to satisfy at least one key risk criterion. Additionally, several terrorist groups are active within Chad or in the surrounding region, including elements of Boko Haram, ISIS-West Africa, and al-Qa'ida in the Islamic Maghreb. At this time, additional information sharing to identify those

foreign nationals applying for visas or seeking entry into the United States who represent national security and public-safety threats is necessary given the significant terrorism-related risk from this country.

(ii) The entry into the United States of nationals of Chad, as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended.

(b) Iran.

(i) Iran regularly fails to cooperate with the United States Government in identifying security risks, fails to satisfy at least one key risk criterion, is the source of significant terrorist threats, and fails to receive its nationals subject to final orders of removal from the United States. The Department of State has also designated Iran as a state sponsor of terrorism.

(ii) The entry into the United States of nationals of Iran as immigrants and as nonimmigrants is hereby suspended, except that entry by such nationals under valid student (F and M) and exchange visitor (J) visas is not suspended, although such individuals should be subject to enhanced screening and vetting requirements.

(c) Libya.

(i) The government of Libya is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding on that cooperation, including in the areas of immigration and border management. Libya, nonetheless, faces significant challenges in sharing several types of information, including public-safety and terrorism-related information necessary for the protection of the national security and public safety of the United States. Libya also has significant inadequacies in its identity-management protocols. Further, Libya fails to satisfy at least one key risk criterion and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. The substantial terrorist presence within Libya's territory amplifies the risks posed by the entry into the United States of its nationals.

(ii) The entry into the United States of nationals of Libya, as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended.

(d) North Korea.

(i) North Korea does not cooperate with the United States Government in any respect and fails to satisfy all information-sharing requirements.

(ii) The entry into the United States of nationals of North Korea as immigrants and nonimmigrants is hereby suspended.

(e) Syria.

(i) Syria regularly fails to cooperate with the United States Government in identifying security risks, is the source of significant terrorist threats, and has been designated by the Department of State as a state sponsor of terrorism. Syria has significant inadequacies in identity-management protocols, fails to share public-safety and terrorism information, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Syria as immigrants and nonimmigrants is hereby suspended.

(f) Venezuela.

(i) Venezuela has adopted many of the baseline standards identified by the Secretary of Homeland Security and in section 1 of this proclamation, but its government is uncooperative in verifying whether its citizens pose national security or public-safety threats. Venezuela's government fails to share public-safety and terrorism-related information adequately, fails to satisfy at least one key risk criterion, and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. There are, however, alternative sources for obtaining information to verify the citizenship and identity of nationals from Venezuela. As a result, the restrictions imposed by this proclamation focus on government officials of Venezuela who are responsible for the identified inadequacies.

(ii) Notwithstanding section 3(b)(v) of this proclamation, the entry into the United States of officials of government agencies of Venezuela involved in screening and vetting procedures -- including the Ministry of the Popular Power for Interior, Justice and Peace; the Administrative Service of Identification, Migration and Immigration; the Scientific, Penal and Criminal Investigation Service Corps; the Bolivarian National Intelligence Service; and the Ministry of the Popular Power for Foreign Relations -- and their immediate family members, as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended. Further, nationals of Venezuela who are visa holders should be subject to appropriate additional measures to ensure traveler information remains current.

(g) Yemen.

(i) The government of Yemen is an important and valuable counterterrorism partner, and the United States Government looks forward to expanding

that cooperation, including in the areas of immigration and border management. Yemen, nonetheless, faces significant identity-management challenges, which are amplified by the notable terrorist presence within its territory. The government of Yemen fails to satisfy critical identity-management requirements, does not share public-safety and terrorism-related information adequately, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Yemen as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended.

(h) Somalia.

(i) The Secretary of Homeland Security's report of September 15, 2017, determined that Somalia satisfies the information-sharing requirements of the baseline described in section 1(c) of this proclamation. But several other considerations support imposing entry restrictions and limitations on Somalia. Somalia has significant identity-management deficiencies. For example, while Somalia issues an electronic passport, the United States and many other countries do not recognize it. A persistent terrorist threat also emanates from Somalia's territory. The United States Government has identified Somalia as a terrorist safe haven. Somalia stands apart from other countries in the degree to which its government lacks command and control of its territory, which greatly limits the effectiveness of its national capabilities in a variety of respects. Terrorists use under-governed areas in northern, central, and southern Somalia as safe havens from which to plan, facilitate, and conduct their operations. Somalia also remains a destination for individuals attempting to join terrorist groups that threaten the national security of the United States. The State Department's 2016 Country Reports on Terrorism observed that Somalia has not sufficiently degraded the ability of terrorist groups to plan and mount attacks from its territory. Further, despite having made significant progress toward formally federating its member states, and its willingness to fight terrorism, Somalia continues to struggle to provide the governance needed to limit terrorists' freedom of movement, access to resources, and capacity to operate. The government of Somalia's lack of territorial control also compromises Somalia's ability, already limited because of poor recordkeeping, to share information about its nationals who pose criminal or terrorist risks. As a result of these and other factors, Somalia presents special concerns that distinguish it from other countries.

(ii) The entry into the United States of nationals of Somalia as immigrants is hereby suspended. Additionally, visa adjudications for nationals of Somalia and decisions regarding their entry as

nonimmigrants should be subject to additional scrutiny to determine if applicants are connected to terrorist organizations or otherwise pose a threat to the national security or public safety of the United States.

Sec. 3. Scope and Implementation of Suspensions and Limitations. (a) Scope. Subject to the exceptions set forth in subsection (b) of this section and any waiver under subsection (c) of this section, the suspensions of and limitations on entry pursuant to section 2 of this proclamation shall apply only to foreign nationals of the designated countries who:

(i) are outside the United States on the applicable effective date under section 7 of this proclamation;

(ii) do not have a valid visa on the applicable effective date under section 7 of this proclamation; and

(iii) do not qualify for a visa or other valid travel document under section 6(d) of this proclamation.

(b) Exceptions. The suspension of entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any foreign national who is admitted to or paroled into the United States on or after the applicable effective date under section 7 of this proclamation;

(iii) any foreign national who has a document other than a visa -- such as a transportation letter, an appropriate boarding foil, or an advance parole document -- valid on the applicable effective date under section 7 of this proclamation or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission;

(iv) any dual national of a country designated under section 2 of this proclamation when the individual is traveling on a passport issued by a non-designated country;

(v) any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or

(vi) any foreign national who has been granted asylum by the United States; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

(c) Waivers. Notwithstanding the suspensions of and limitations on entry set forth in section 2 of this

proclamation, a consular officer, or the Commissioner, United States Customs and Border Protection (CBP), or the Commissioner's designee, as appropriate, may, in their discretion, grant waivers on a case-by-case basis to permit the entry of foreign nationals for whom entry is otherwise suspended or limited if such foreign nationals demonstrate that waivers would be appropriate and consistent with subsections (i) through (iv) of this subsection. The Secretary of State and the Secretary of Homeland Security shall coordinate to adopt guidance addressing the circumstances in which waivers may be appropriate for foreign nationals seeking entry as immigrants or nonimmigrants.

(i) A waiver may be granted only if a foreign national demonstrates to the consular officer's or CBP official's satisfaction that:

(A) denying entry would cause the foreign national undue hardship;

(B) entry would not pose a threat to the national security or public safety of the United States; and

(C) entry would be in the national interest.

(ii) The guidance issued by the Secretary of State and the Secretary of Homeland Security under this subsection shall address the standards, policies, and procedures for:

(A) determining whether the entry of a foreign national would not pose a threat to the national security or public safety of the United States;

(B) determining whether the entry of a foreign national would be in the national interest;

(C) addressing and managing the risks of making such a determination in light of the inadequacies in information sharing, identity management, and other potential dangers posed by the nationals of individual countries subject to the restrictions and limitations imposed by this proclamation;

(D) assessing whether the United States has access, at the time of the waiver determination, to sufficient information about the foreign national to determine whether entry would satisfy the requirements of subsection (i) of this subsection; and

(E) determining the special circumstances that would justify granting a waiver under subsection (iv)(E) of this subsection.

(iii) Unless otherwise specified by the Secretary of Homeland Security, any waiver issued by a consular officer as part of the visa adjudication process will be effective both for the issuance of a visa and for any subsequent entry on that visa, but will leave

unchanged all other requirements for admission or entry.

(iv) Case-by-case waivers may not be granted categorically, but may be appropriate, subject to the limitations, conditions, and requirements set forth under subsection (i) of this subsection and the guidance issued under subsection (ii) of this subsection, in individual circumstances such as the following:

(A) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the applicable effective date under section 7 of this proclamation, seeks to reenter the United States to resume that activity, and the denial of reentry would impair that activity;

(B) the foreign national has previously established significant contacts with the United States but is outside the United States on the applicable effective date under section 7 of this proclamation for work, study, or other lawful activity;

(C) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry would impair those obligations;

(D) the foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry would cause the foreign national undue hardship;

(E) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;

(F) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee), and the foreign national can document that he or she has provided faithful and valuable service to the United States Government;

(G) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 *et seq.*, traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;

(H) the foreign national is a Canadian permanent resident who applies for a visa at a location within Canada;

(I) the foreign national is traveling as a United States Government-sponsored exchange visitor; or

(J) the foreign national is traveling to the United States, at the request of a United States Government department or agency, for legitimate law enforcement, foreign policy, or national security purposes.

Sec. 4. Adjustments to and Removal of Suspensions and Limitations. (a) The Secretary of Homeland Security shall, in consultation with the Secretary of State, devise a process to assess whether any suspensions and limitations imposed by section 2 of this proclamation should be continued, terminated, modified, or supplemented. The process shall account for whether countries have improved their identity-management and information-sharing protocols and procedures based on the criteria set forth in section 1 of this proclamation and the Secretary of Homeland Security's report of September 15, 2017. Within 180 days of the date of this proclamation, and every 180 days thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies, shall submit a report with recommendations to the President, through appropriate Assistants to the President, regarding the following:

(i) the interests of the United States, if any, that continue to require the suspension of, or limitations on, the entry on certain classes of nationals of countries identified in section 2 of this proclamation and whether the restrictions and limitations imposed by section 2 of this proclamation should be continued, modified, terminated, or supplemented; and

(ii) the interests of the United States, if any, that require the suspension of, or limitations on, the entry of certain classes of nationals of countries not identified in this proclamation.

(b) The Secretary of State, in consultation with the Secretary of Homeland Security, the Secretary of Defense, the Attorney General, the Director of National Intelligence, and the head of any other executive department or agency (agency) that the Secretary of State deems appropriate, shall engage the countries listed in section 2 of this proclamation, and any other countries that have information-sharing, identity-management, or risk-factor deficiencies as practicable, appropriate, and consistent with the foreign policy, national security, and public-safety objectives of the United States.

(c) Notwithstanding the process described above, and consistent with the process described in section 2(f) of Executive Order 13780, if the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, and the Director of National Intelligence, determines, at any

time, that a country meets the standards of the baseline described in section 1(c) of this proclamation, that a country has an adequate plan to provide such information, or that one or more of the restrictions or limitations imposed on the entry of a country's nationals are no longer necessary for the security or welfare of the United States, the Secretary of Homeland Security may recommend to the President the removal or modification of any or all such restrictions and limitations. The Secretary of Homeland Security, the Secretary of State, or the Attorney General may also, as provided for in Executive Order 13780, submit to the President the names of additional countries for which any of them recommends any lawful restrictions or limitations deemed necessary for the security or welfare of the United States.

Sec. 5. Reports on Screening and Vetting Procedures.

(a) The Secretary of Homeland Security, in coordination with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies shall submit periodic reports to the President, through appropriate Assistants to the President, that:

(i) describe the steps the United States Government has taken to improve vetting for nationals of all foreign countries, including through improved collection of biometric and biographic data;

(ii) describe the scope and magnitude of fraud, errors, false information, and unverifiable claims, as determined by the Secretary of Homeland Security on the basis of a validation study, made in applications for immigration benefits under the immigration laws; and

(iii) evaluate the procedures related to screening and vetting established by the Department of State's Bureau of Consular Affairs in order to enhance the safety and security of the United States and to ensure sufficient review of applications for immigration benefits.

(b) The initial report required under subsection (a) of this section shall be submitted within 180 days of the date of this proclamation; the second report shall be submitted within 270 days of the first report; and reports shall be submitted annually thereafter.

(c) The agency heads identified in subsection (a) of this section shall coordinate any policy developments associated with the reports described in subsection (a) of this section through the appropriate Assistants to the President.

Sec. 6. Enforcement. (a) The Secretary of State and the Secretary of Homeland Security shall consult with appropriate domestic and international partners, including countries and organizations, to ensure efficient, effective, and appropriate implementation of this proclamation.

(b) In implementing this proclamation, the Secretary of State and the Secretary of Homeland Security shall comply with all applicable laws and regulations, including those that provide an opportunity for individuals to enter the

United States on the basis of a credible claim of fear of persecution or torture.

(c) No immigrant or nonimmigrant visa issued before the applicable effective date under section 7 of this proclamation shall be revoked pursuant to this proclamation.

(d) Any individual whose visa was marked revoked or marked canceled as a result of Executive Order 13769 of January 27, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry under the terms and conditions of the visa marked revoked or marked canceled. Any prior cancellation or revocation of a visa that was solely pursuant to Executive Order 13769 shall not be the basis of inadmissibility for any future determination about entry or admissibility.

(e) This proclamation shall not apply to an individual who has been granted asylum by the United States, to a refugee who has already been admitted to the United States, or to an individual granted withholding of removal or protection under the Convention Against Torture. Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States.

Sec. 7. Effective Dates. Executive Order 13780 ordered a temporary pause on the entry of foreign nationals from certain foreign countries. In two cases, however, Federal courts have enjoined those restrictions. The Supreme Court has stayed those injunctions as to foreign nationals who lack a credible claim of a bona fide relationship with a person or entity in the United States, pending its review of the decisions of the lower courts.

(a) The restrictions and limitations established in section 2 of this proclamation are effective at 3:30 p.m. eastern daylight time on September 24, 2017, for foreign nationals who:

(i) were subject to entry restrictions under section 2 of Executive Order 13780, or would have been subject to the restrictions but for section 3 of that Executive Order, and

(ii) lack a credible claim of a bona fide relationship with a person or entity in the United States.

(b) The restrictions and limitations established in section 2 of this proclamation are effective at 12:01 a.m. eastern daylight time on October 18, 2017, for all other persons subject to this proclamation, including nationals of:

(i) Iran, Libya, Syria, Yemen, and Somalia who have a credible claim of a bona fide relationship with a person or entity in the United States; and

(ii) Chad, North Korea, and Venezuela.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the national security, foreign policy, and counterterrorism interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its other provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.

DONALD J. TRUMP

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EXHIBIT B

COVINGTON

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July 20, 2017

U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, DC 20522-0208

Re: Freedom of Information Act Request Regarding Visa Applicant Vetting Policies and Procedures

To Whom It May Concern:

Muslim Advocates, Americans United for Separation of Church and State, the Southern Poverty Law Center, the Brennan Center for Justice, and Professor Shoba Sivaprasad Wadhia¹ (“Requestors”) submit this letter to the U.S. Department of State as a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, regarding the Administration’s visa-applicant vetting policies and procedures. We request expedited process pursuant to 5 U.S.C. § 552(a)(6)(E) and, in any event, that the information requested be made available as soon as practicable and on a rolling basis as it becomes available. We also request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.16. We also ask that you refer the requests within this letter to the White House, Department of Justice, Department of Homeland Security (“DHS”), and Customs and Border Protection (“CBP”), as appropriate.

I. Background

On March 6, 2017, after federal courts began entering preliminary injunctions to block implementation of President Trump’s first Executive Order targeting nationals from seven Muslim-majority nations, the President issued a second, revised Order. The revised Order was scheduled to take effect on March 16, 2017, and included a 90-day travel ban against individuals from six Muslim-majority countries—Iran, Libya, Somalia, Sudan, Syria, and Yemen—as well as a worldwide 120-day suspension of refugee processing.² On March 15 and 16, 2017, federal

¹ Samuel Weiss Faculty Scholar, Clinical Professor of Law, and Director, Center for Immigrants’ Rights, at Penn State Law School. Affiliation listed for identification purposes only.

² Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States (E.O. 13780), White House (Mar. 6, 2017), <https://www.whitehouse.gov/the-press->

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courts in Hawaii and Maryland enjoined sections 2(c) and 6 of the second Order—the travel-ban and refugee-suspension provisions—preventing them from going into effect.³ But even as these most prominent provisions were enjoined, the Administration quietly began to implement other provisions of the Order, putting in place, among other things, an “extreme vetting” regime targeted at individuals from the six Muslim-majority countries and beyond.⁴ As civil-rights advocates and organizations, Requestors are concerned that the Trump Administration is using this “extreme vetting” regime as a means of implementing a Muslim ban away from the spotlight of court cases and media coverage. For this reason, Requestors seek detailed information about these “extreme vetting” policies.⁵

Relatedly, the revised Order also mandated a worldwide review process that would identify countries from which additional information would be sought as a condition for processing and granting visas or other entry documents into the United States.⁶ The review process would identify countries from which additional information would be sought and categories of information that those countries would be required to provide.⁷ It is Requestors’ understanding that this review process concluded during the week of July 9, 2017, and that a report outlining its results was submitted to the President on July 10.⁸ In a cable sent to all U.S. diplomatic posts on July 12, 2017, the State Department summarized the results of this report and laid out new information-sharing requirements that countries must adhere to in order to avoid travel restrictions.⁹ Because the goal of this unprecedented review process is potentially to make certain provisions of the revised Order permanent and also to add to the list of six countries identified in the Order, Requestors are concerned that a more permanent Muslim ban is underway without the requisite level of transparency and scrutiny. For this reason, Requestors also seek various documents regarding the results of this internal review process.

office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states (removing Iraq from the list of targeted nations, among other changes) [hereinafter E.O. 13780].

³ See *Hawai’i v. Trump*, No. 17-00050 DKW-KSC, 2017 WL 1011673, at *1 (D. Haw. Mar. 15, 2017) (enjoining enforcement or implementation of Sections 2 and 6 of the revised Order); *Int’l Refugee Assistance Project v. Trump*, No. TDC-17-0361, 2017 WL 1018235, at *18 (D. Md. Mar. 16, 2017) (barring enforcement of Section 2(c) of the revised Order).

⁴ Michael D. Shear, *Trump Administration Orders Tougher Screening of Visa Applicants*, N.Y. TIMES (Mar. 23, 2007), <https://www.nytimes.com/2017/03/23/us/politics/visa-extreme-vetting-rex-tillerson.html>.

⁵ The specific items requested are detailed in Section II. See *infra* p. 8.

⁶ See E.O. 13780, *supra* note 2, Sections 2(a), (b).

⁷ See *id.*

⁸ See Rex Tillerson, 17 State 72000, at para. 4 (July 12, 2017), http://live.reuters.com/Event/Live_US_Politics/1012197528; Arshad Mohammed and Mica Rosenberg, *U.S. Demands Nations Provide More Traveler Data or Face Sanctions*, REUTERS (July 13, 2017), <http://www.reuters.com/article/us-usa-immigration-travelban-exclusive-idUSKBN19Y2I9>.

⁹ See Tillerson, 17 State 72000, *supra* note 8, at para. 4-6.

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A. Recent Developments for “Extreme Vetting” Policy

The same day he issued the revised Order, President Trump sent a White House memorandum to the Secretary of State, Attorney General, and Secretary of Homeland Security, ordering them to “implement protocols and procedures as soon as practicable” to “enhance the screening and vetting of applications for visas.”¹⁰ According to Secretary of State Rex Tillerson, President Trump’s issuing of the revised ban and the signing of the memorandum were “[s]imultaneous.”¹¹

On March 15, nine days after the issuance of the revised ban, Secretary Tillerson sent a cable to “all diplomatic and consular posts collective” concerning implementation of the March 6, 2017 White House Memorandum.¹² First, the cable directed consular chiefs to create working groups to identify sets of “applicant populations warranting increased scrutiny,” without providing any guidelines regarding which “populations” might be affected or any factors that should be taken into consideration in identifying such “populations.”¹³ Individuals identified as part of this undefined “population” were to be asked seven sets of questions, including: the “names of any siblings/children/former spouses” not recorded in visa applications; the applicants’ “prior passport numbers”; fifteen years’ worth of “travel history,” “addresses,” and “prior occupation(s) and employers (plus a brief description if applicable);” and five years’ worth of all “phone numbers used by the applicant” and “email addresses and social media handles used by the applicant.”¹⁴ For any applicant who was determined to have “ever been present in an ISIS-controlled territory,” the guidelines required a “mandatory social media review.”¹⁵

Second, Secretary Tillerson directed that steps be taken against applicants with passports from the six Muslim-majority nations named in the revised Order who were not already disqualified from entry based on the terms of the Order. Consular officials were directed to issue Donkey Special Advisory Opinions (“SAOs”)¹⁶ for all applicants from the nations listed in the revised Order, and to subject those applicants to the same seven areas of questioning listed above and additional interrogation regarding whether the applicants were “ever present in a territory at the time it was under the control of ISIS.”¹⁷ For “SAO requests based on this guidance,” Secretary Tillerson wrote that “[l]ocation, dates, and purpose of presence must be

¹⁰ Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, White House (Mar. 6, 2017), <https://www.whitehouse.gov/the-press-office/2017/03/06/memorandum-secretary-state-attorney-general-secretary-homeland-security>.

¹¹ Rex Tillerson, 17 STATE 24324, at para. 2 (Mar. 15, 2017), http://live.reuters.com/Event/Live_US_Politics/791246151.

¹² *Id.*

¹³ *Id.* at paras. 6, 7.

¹⁴ *Id.* at para. 7.

¹⁵ *Id.* at para. 15.

¹⁶ DHS defines “Donkey SAOs” as requiring “interagency reviews of applicants 16 years or older who have: a security-related CLASS hit, a prior unfavorable SAO that has not been reversed, or has raised security concerns with a consular officer.” *The DHS Visa Security Program*, OIG-14-137, Dep’t of Homeland Security 7 n.6 (Sept. 2014), https://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-137_Sep14.pdf.

¹⁷ Tillerson, 17 STATE 24324, *supra* n. 11, at para. 12.

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thoroughly documented by the consular officer.”¹⁸ In a separate section of the cable, Secretary Tillerson noted that although Iraq had been exempted from the “travel suspension provisions” of the revised travel ban, the revised Order and corresponding White House Memorandum both called for “additional screening for Iraqi nationals in addition to the robust vetting already in place,” so Iraqis who were ever present in ISIS-controlled territories were made subject to the same Donkey SAO and questioning outlined for the other six Muslim-majority nations contained in the revised Order.¹⁹

On the evening of March 15, the U.S. District Court for the District of Hawaii issued a temporary restraining order barring enforcement of the Administration’s revised Order.²⁰ The next day, Secretary Tillerson sent a follow-up cable, citing the District Court’s order and directing visa-issuing posts to “halt implementation” of visa suspensions as outlined in the revised Order.²¹ Secretary Tillerson also instructed the posts to abandon the portions of the directives from his March 15 cable that directly named the six Muslim-majority countries mentioned in the revised Order.²² However, at that time, Secretary Tillerson directed the officials to continue implementing the other instructions in the March 15 cable, including: the identification of “applicant populations warranting increased scrutiny” (again, without guidance regarding how such populations should be defined); questioning regarding the seven subject matters above including social media information; mandatory social media reviews for individuals who had ever been present in ISIS-controlled territory; and targeting of Iraqi nationals who had been present in ISIS-controlled territories (who, as Secretary Tillerson acknowledged, had been exempted from the revised Order).²³

In a subsequent cable on March 17, 2017, Secretary Tillerson directed consular officers to “disregard the guidance” from the March 15 cable “to the extent the guidance sets out specific questions to ask of applicants, unless and until notified by septel that the Department has received approval from the Office of Management and Budget (OMB) for those specific questions.”²⁴ But Secretary Tillerson added that consular officers should “consider sending a discretionary Donkey Security Advisory Opinion (SAO) request”—the same SAO he had requested for nationals of the countries targeted by the revised Order two days earlier—for applicants in the “populations” identified by consular officials in accordance with the March 15 cable.²⁵

¹⁸ *Id.*

¹⁹ *Id.* at paras. 16, 17.

²⁰ See *Hawai’i v. Trump*, CV. No. 17-00050 DKW-KSC, 2017 WL 1011673, at *1 (D. Haw. Mar. 15, 2017), <http://cdn.ca9.uscourts.gov/datastore/general/2017/03/30/17-15589%203-15%20DC%20order.pdf>.

²¹ Rex Tillerson, 17 STATE 24800 (Mar 16, 2017), http://live.reuters.com/Event/Live_US_Politics/791249837.

²² *Id.* at para. 2.

²³ *Id.*

²⁴ Rex Tillerson, 17 STATE 25814, at para. 8 (Mar. 17, 2017), http://live.reuters.com/Event/Live_US_Politics/791255396.

²⁵ *Id.* at para. 7.

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Although the State Department has not said that these “populations” are rooted in any particular religion or nationality, the applicants affected by the “extreme vetting” policies under the Trump Administration have frequently been Muslim. Even before Secretary Tillerson’s cables were sent, news outlets reported that Muslims and individuals from largely Muslim countries were being subjected to invasive questioning and arbitrary detention.²⁶ In one instance, a woman seeking a consulate interview was denied and told: “If you were Spanish you could get an appointment in two days, but for Iranians appointments are closed.”²⁷

Since March 2017, visa denials of individuals from Muslim-majority and African countries have skyrocketed and detentions of these individuals have become more egregious. For example, in March every single African participant in an African trade summit taking place in California was denied a visa; the participants largely came from countries with significant Muslim populations.²⁸ In another instance, an Iranian woman was detained in a Portland airport and transferred to a county jail for twelve hours for what a CBP agent described as a “minor administrative violation.”²⁹ More recently, immigration officials at the Los Angeles International airport detained and interrogated an American University of Beirut professor, who was also forced to divulge passwords to his laptop and phone after they were seized.³⁰

B. Data and Events Supporting Disclosure

State Department data supports the finding that applicants from Muslim-majority nations have suffered dramatic, tangible effects from the Trump Administration’s extreme vetting policies, both in nations that were targeted by the revised Order and in nations that were not explicitly named. Across nearly 50 Muslim-majority countries, the number of non-immigrant visas (“NIVs”) granted in April 2017 was down approximately 20% from the 2016 monthly average.³¹ Among Arab nations in particular, the April 2017 decrease was almost 30%

²⁶ See, e.g., Don Melvin & Molly Roecker, *Muhammad Ali Jr. Detained at Airport, Asked About Being Muslim: Lawyer*, NBC NEWS (Feb. 25, 2017) (noting that immigration officers detained Muhammad Ali, Jr. and asked him about his faith); Ryan Greboble, *Customs Officers Detained An ACLU Lawyer And Asked Her A ‘Chilling’ Question*, HUFF. POST (Feb. 8, 2017) (detailing how customs officer subjected Pakistani ACLU lawyer to extensive questioning about her work and citizenship); Paul Adepoju & Kieron Monks, *Africans Wary of U.S. Travel After Series of Border Denials*, CNN (Apr. 19, 2017) (Nigerian man was placed in cold cell for four days after requesting to read a document he was told to sign).

²⁷ See Ed Pilkington, *Trump Travel Crackdown Turns ‘Wedding Celebration Into a Family Separation,’* THE GUARDIAN (Apr. 14, 2017).

²⁸ See Sam Levin, *No African Citizens Granted Visas for African Trade Summit in California*, THE GUARDIAN (Mar. 20, 2017).

²⁹ See Sam Levin, *Iranian Woman Visiting Family On Tourist Visa Detained in Oregon Jail*, THE GUARDIAN (Mar. 29, 2017).

³⁰ See Marisa Schultz, *Professor Stopped, Grilled, Booted After ‘Extreme Vetting,’* N.Y. POST (June 8, 2017).

³¹ Nahal Toosi & Ted Hesson, *Visas to Muslim-Majority Countries Down 20 Percent*, POLITICO (May 25, 2017), <http://www.politico.com/story/2017/05/25/trump-muslim-visas-238846> (citing Visa Statistics, U.S. Dep’t of State (2017), <https://travel.state.gov/content/visas/en/law-and-policy/statistics.html>).

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below the 2016 monthly average.³² And in the countries specifically named in the revised Order, less than 50% of the 2016 average number of NIVs were issued in April 2017.³³

Individual country data further highlights the impact on Muslim-majority countries of the revised Order's extreme vetting procedures. On average, 2,450 Iranian applicants received NIVs per month in 2016. In March of 2017, the same month that the revised Order and State Department cables were issued (and then partially rescinded), only 1,572 Iranians received NIVs. By April 2017, when neither directive targeting Iranian applicants was supposed to be in place, the number of NIVs granted to Iranian applicants dropped even further to 1,186—less than half of the average number of NIVs granted per month in 2016. State Department data concerning Yemen revealed even more drastic cuts. The 2016 average of just over 1,083 Yemeni immigrant visas (“IVs”) per month was reduced by 58% in March 2017. Even after the Trump Administration supposedly halted both the ban and enhanced vetting of Yemeni applicants, the April numbers yielded an 80 percent drop from the 2016 average.³⁴

In the months that followed the injunction against the revised Order, the State Department submitted an information collection request (“ICR”) to the Office of Management and Budget (“OMB”) to re-implement the March 6, 2017 White House Memorandum that was issued on the same day as the President's revised Order.³⁵ On May 23, the OMB approved this ICR.³⁶ The ICR contained questions nearly identical to those listed in the State Department cables³⁷ and reiterated that these questions would be addressed to “applicant populations warranting increased scrutiny”³⁸ but failed to define the “population” to be identified by consulate officials in any meaningful way. However, the State Department did claim that approximately 65,000 applicants would be affected by the new questioning—approximately the

³² *Id.*

³³ The State Department's Visa Office provides annual reports that break down the issuance of immigrant and non-immigrant visas by nationality. *See* VISA STATISTICS, U.S. DEP'T OF STATE (2017), <https://travel.state.gov/content/visas/en/law-and-policy/statistics.html>.

³⁴ *Id.*

³⁵ Notice of Information Collection Under OMB Emergency Review: Supplemental Questions for Visa Applicants, 82 Fed. Reg. 20956, 20956–57, U.S. Dep't of State (May 4, 2017), <https://www.federalregister.gov/documents/2017/05/04/2017-08975/notice-of-information-collection-under-omb-emergency-review-supplemental-questions-for-visa> [hereinafter DOS ICR] (“This information collection implements the directive of the President, in the *Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security* of March 6, 2017, to implement additional protocols and procedures focused on ‘ensur[ing] the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility or deportability, or grounds for the denial of other immigration benefits.’”).

³⁶ Nicole Gaouette & Laura Jarrett, *Trump Admin Gives Embassies Broad New Discretion to Limit Travelers*, CNN POLITICS (May 26, 2017), <http://www.cnn.com/2017/05/26/politics/embassies-get-broad-discretion-to-limit-travelers/>.

³⁷ DOS ICR, *supra* note 355 (adding two questions about “[n]ame and dates of birth for all children” and “[n]ames and dates of birth for all current and former spouses, or civil or domestic partners,” but keeping all seven original areas of questioning).

³⁸ *Id.*

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same number of non-immigrant visas issued in fiscal year 2015 to applicants from the six Muslim-majority countries targeted by President Trump’s revised Order. Beyond violating fundamental principles of privacy and chilling freedom of expression—particularly through the mandatory collection of social-media handles—this vast collection of information could effectively create a treasure trove of highly sensitive and private data, the majority of which would belong to Muslims. Equally troubling, by invoking emergency review and expedited approval procedures, the Administration denied the public an adequate opportunity to provide input on the proposed regulation and its associated consequences.

The President himself has linked the vetting policies to his revised Order, suggesting that these vetting policies are an attempt to circumvent federal court rulings.³⁹ On June 5, 2017, President Trump published a string of tweets, stating: “People, the lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is, a TRAVEL BAN!”;⁴⁰ “The Justice Dept. should ask for an expedited hearing of the watered down Travel Ban before the Supreme Court - & seek much tougher version!”;⁴¹ and “In any event we are EXTREME VETTING people coming into the U.S. in order to help keep our country safe. The courts are slow and political!”⁴² Just hours after this string of tweets, the White House Press Secretary acknowledged that the President’s tweets “are considered official statements by the President of the United States.”⁴³

More recently, the State Department began implementation of Section 2 of Executive Order 13780, which called for DHS to “conduct a worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudication) in order to determine that the individual is not a security or public safety threat.”⁴⁴ On July 10, the Secretary of Homeland Security, in consultation with the Secretary of State and Director of National Intelligence, submitted a report to President Trump that identified “the information needed from each country for adjudications and a list of countries that do not provide adequate information.”⁴⁵ On July 12, Secretary Tillerson sent a cable to all diplomatic and consular posts instructing them to inform host governments of the new

³⁹ Several news outlets have also reached the conclusion that the ban and the vetting policies are linked. *See infra* at note 544 and accompanying text.

⁴⁰ Donald Trump, Twitter (June 5, 2017 3:25 A.M.), <https://twitter.com/realDonaldTrump/status/871674214356484096>.

⁴¹ Donald Trump, Twitter (June 5, 2017 3:37 A.M.), <https://twitter.com/realDonaldTrump/status/871677472202477568>.

⁴² Donald Trump, Twitter (June 5, 2017 3:44 A.M.), <https://twitter.com/realDonaldTrump/status/871679061847879682>.

⁴³ Ali Vitali, *Trump’s Tweets ‘Official Statements,’ Spicer Says*, NBC NEWS (June 6, 2017), <http://www.nbcnews.com/politics/white-house/trump-s-tweets-official-statements-spicer-says-n768931>.

⁴⁴ *See* Tillerson, 17 State 72000, *supra* note 8, at para. 4.

⁴⁵ *Id.*

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information-sharing and cooperation requirements that each country must meet to avoid travel restrictions.⁴⁶

These broad requirements include: making biometric information of nationals available upon request by the United States; providing criminal history information and biographic data for all nationals seeking United States visas; and implementing measures to avoid becoming a “terrorist safe haven.”⁴⁷ Countries have only a 50-day window to fulfill these provisions, and failure to meet the new standards or compile adequate plans to meet them may result in the prohibition of entry into the United States for certain nationals of that country.⁴⁸ These requirements and the rapid timeline provided to meet them have been controversial, as officials and practitioners have raised concerns of privacy intrusions, impossible-to-meet standards, and the potential need for countries to develop unaffordable technological infrastructure to fulfill requests and avoid travel restrictions.⁴⁹

II. Request for Information

In consideration of the information above, Requestors ask that the following records—or any reasonably segregable portion thereof, as appropriate—be disclosed pursuant to the listed agencies’ obligations under FOIA:

- a. All policies, directives, training materials, and other guidelines related to the vetting measures set out in the March 6, 2017 White House Memorandum, including communications and/or inquiries from consular offices or officials regarding these measures;
- b. All policies, directives, training materials, and other guidelines related to the following State Department cables (listed below by Message Reference Number), including communications and/or inquiries from consular offices or officials regarding these measures:
 - i. 17 STATE 8708 (referenced in 17 STATE 23338 (Mar. 10, 2017)),
 - ii. 17 STATE 9516 (referenced in 17 STATE 23338 (Mar. 10, 2017)),
 - iii. 17 STATE 11004 (referenced in 17 STATE 23338 (Mar. 10, 2017)),
 - iv. 17 STATE 21026 (referenced in 17 STATE 23338 (Mar. 10, 2017)),
 - v. 17 STATE 23338 (Mar. 10, 2017),
 - vi. 17 STATE 24324 (Mar. 15, 2017),
 - vii. 17 STATE 24800 (Mar. 16, 2017),
 - viii. 17 STATE 25814 (Mar. 17, 2017), and
 - ix. 17 STATE 72000 (July 12, 2017);

⁴⁶ *Id.*

⁴⁷ *Id.* at para. 9.

⁴⁸ *Id.*

⁴⁹ See Nahal Toosi & Ted Hesson, *New Directive May Expand Trump Travel Ban*, POLITICO (July 13, 2017), <http://www.politico.com/story/2017/07/13/trump-travel-ban-could-soon-be-applied-worldwide-240539>.

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- c. All policies, directives, training materials, and other guidelines that reference countries of origin or religious affiliation and are related to the White House Memorandum and State Department cables referenced above in (a) and (b);
- d. A complete copy of the Foreign Affairs Handbook or, if not feasible, a copy of all portions not made publicly available online, including 7 FAH-1;
- e. All policies, directives, training materials, and other guidelines related to 7 FAH-1 H-943.5-2 (referenced in 17 STATE 24324), including communications and/or inquiries from consular offices or officials regarding these measures;
- f. For the period from January 24, 2017, through the date of response to this letter, all (de-identified) State Department email communications sent to, received from, or copying CBP or Immigration and Customs Enforcement personnel, containing any of the following words or terms, and common variations thereof:
 - i. "extreme vetting,"
 - ii. "enhanced vetting,"
 - iii. "Executive Order 13769" or "E.O. 13769,"
 - iv. "Executive Order 13780" or "E.O. 13780,"
 - v. "Muslim,"
 - vi. "Iran,"
 - vii. "Iraq,"
 - viii. "Libya,"
 - ix. "Somalia,"
 - x. "Sudan,"
 - xi. "Syria,"
 - xii. "Yemen,"
 - xiii. "ban,"
 - xiv. "Muslim ban," and
 - xv. "travel ban;"
- g. For the period from January 1, 2016, through the date of response to this letter, records reflecting the total number of immigrant and non-immigrant visa applicants from the following countries (for each month of the requested period):
 - i. Iran,
 - ii. Iraq,
 - iii. Libya,
 - iv. Somalia,
 - v. Sudan,
 - vi. Syria, and
 - vii. Yemen;
- h. For the period from January 1, 2016, through February 28, 2017, records reflecting the total number of immigrant and non-immigrant visas *issued* to applicants from the countries listed in (g)(i)–(vii) above (for each month of the requested period);

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- i. For the period from January 1, 2016, through the date of response to this letter, records reflecting the total number of immigrant and non-immigrant visa applicants from or whose applications made reference to Muslim-majority countries⁵⁰ (for each month of the requested period);
- j. For the period from January 1, 2016, through the date of response to this letter, records reflecting the total number of immigrant and non-immigrant visas *issued* to applicants from or whose applications made reference to Muslim-majority countries (for each month of the requested period);
- k. For the period from January 1, 2016, through the date of response to this letter, records reflecting the total number of individuals who were detained upon arrival at U.S. ports of entry (for each month of the requested period);
- l. For the period from January 1, 2016, through the date of response to this letter, records reflecting the total number of individuals from or whose applications made reference to Muslim-majority countries who were detained upon arrival at U.S. ports of entry (for each month of the requested period);
- m. For the period from January 1, 2016, through the date of response to this letter, all policies, directives, training materials, and other guidelines related to the following types of SAOs:
 - i. Condor,
 - ii. Donkey,
 - iii. Viper,
 - iv. Merlin,
 - v. Hawk, and
 - vi. Eagle;
- n. For each type of SAO enumerated in (m)(i)-(vi) above, records reflecting the average length of time to draft, clear, and disseminate an SAO over the following time periods:
 - i. January 1, 2015, through December 31, 2015,
 - ii. January 1, 2016, through December 31, 2016, and
 - iii. January 1, 2017, to present;

⁵⁰ For these information requests, the term “Muslim-majority countries” is defined to include: Algeria, Albania, Bahrain, Brunei, Burkina Faso, Chad, Comoros, Djibouti, Egypt, Gambia, Guinea, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kyrgyzstan, Kosovo, Kuwait, Lebanon, Libya, Malaysia, Maldives, Mali, Mauritania, Mayotte, Morocco, Niger, Oman, Palestine, Pakistan, Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syria, Tajikistan, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan, Western Sahara, Yemen. *See* Pew Research Ctr., *The Changing Global Religious Landscape*, Apr. 5, 2017, <http://www.pewforum.org/2017/04/05/the-changing-global-religious-landscape/#global-population-projections-2015-to-2060>; *see also* *Muslim Populations by Country: How Big Will Each Muslim Population Be By 2030?*, THE GUARDIAN (Jan. 28, 2011), <https://www.theguardian.com/news/datablog/2011/jan/28/muslim-population-country-projection-2030#data>.

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- o. From March 6, 2017, to March 17, 2017, any records reflecting the total number of applications reviewed in compliance with the March 6, 2017 White House Memorandum and State Department cables' guidelines;
- p. From March 6, 2017, to March 17, 2017, records of any (de-identified) applications reviewed in compliance with the March 6, 2017 White House Memorandum and State Department cables' guidelines (referenced in requested items (a) and (b) above) before Executive Order 13780 was enjoined, where those records make reference to the following:
 - i. country of origin,
 - ii. location of processing,
 - iii. types of information sought and questions asked by consular officers and other immigration officials, and
 - iv. religious affiliation;
- q. Any communications, cables, directives, guidelines, or policies addressing how the applicant "populations" referenced in paragraphs 6 and 7 of 17 STATE 24324 are being defined by the State Department, CBP, or consular officials;
- r. Any communications, cables, directives, guidelines, or policies addressing how the "additional screening" for Iraqi nationals is conducted pursuant to paragraphs 16 and 17 of the March 15, 2017 cable (17 STATE 24324);
- s. Any communications, cables, directives, guidelines, or policies addressing how the applicant "populations" referenced in the abstract of 82 Fed. Reg. 20956 are being defined by the State Department, CBP, or consular officials;
- t. For each of the next six months from the date of this letter, any communications, cables, directives, guidelines, or policies sent to or received from embassies regarding the vetting procedures that have been put in place or approved by the Trump Administration;
- u. For each of the next six months of implementation of the new visa applicant questionnaire from 82 Fed. Reg. 20956, de-identified records detailing the following information about all respondents:
 - i. country of origin,
 - ii. religious affiliation,
 - iii. gender,
 - iv. age,
 - v. type of visa requested,
 - vi. location of visa processing for any persons subjected to this extreme vetting, and
 - vii. the current status of such applications, including whether the visa application was approved, denied, or remains pending.

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- v. Beginning on May 1, 2017, all policies, directives, training materials, and other guidelines related to the ICR that the State Department submitted to OMB in May 2017;⁵¹ and
- w. All records pertaining to the worldwide review process conducted under Section 2 of Executive Order 13780 and 17 STATE 72000, including the Report that was submitted to President Trump, copies of instructions to foreign governments regarding the requirements that must be met to avoid travel restrictions, and a list of all countries that have:
 - i. been designated as providing adequate information to the U.S. government;
 - ii. been designated as providing inadequate information to the U.S. government; and/or
 - iii. been designated as being at risk of providing inadequate information to the U.S. government.

III. Request for Expedited Process

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 22 C.F.R. § 171.11(f), and rely on three justifications for this request.

First, there is a compelling need for expedited processing because Requestors require the records requested to effectively inform the public about new federal procedures already affecting individuals' civil rights. Requestors are nationally renowned scholars and advocacy organizations, engaged in disseminating information to the public.⁵² The requested information is essential for informing the public about the Trump Administration's policies surrounding the review of visa applications, and is urgently needed "to inform the public concerning actual or alleged Federal Government activity."⁵³

This urgency is further supported by current discourse and evident public concern that "extreme vetting" procedures are being used to implement President Trump's revised Order despite judicial proscriptions against it.⁵⁴ Thirty-five advocacy organizations—including two of the Requestors (the Brennan Center for Justice and the Southern Poverty Law Center)—have also raised concerns that these vetting procedures may lead to discriminatory enforcement and

⁵¹ Notice of Information Collection Under OMB Emergency Review: Supplemental Questions for Visa Applicants, 82 Fed. Reg. 20956, 20956–57, U.S. Dep't of State (May 4, 2017), <https://www.federalregister.gov/documents/2017/05/04/2017-08975/notice-of-information-collection-under-omb-emergency-review-supplemental-questions-for-visa>.

⁵² 5 U.S.C. 552(a)(6)(E)(v)(II); 22 C.F.R. § 171.11(f)(2).

⁵³ 5 U.S.C. 552(a)(6)(E)(v)(II).

⁵⁴ See, e.g., Shayan Modarres, *Despite Court Losses, Trump Has Found Backdoor to Continue the Muslim Ban*, HUFF. POST (June 6, 2017); Lauren Gambino & Tom McCarthy, *Trump Pressing Ahead in 'Extreme Vetting' in Spite of Court Battles*, THE GUARDIAN (June 6, 2017); Trisha Thadani, *For Some U.S. Visitors, 'Extreme Vetting' Is Here*, SFGATE (June 5, 2017).

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the chilling of free speech.⁵⁵ Dozens of academic and educational groups cited fears of confusion, unacceptable delays, and vaguely defined enforcement mechanisms when writing to the State Department about the new vetting procedures.⁵⁶ Media organizations have also warned the public that these vetting procedures may be a prelude to requests for financial data, social-media passwords, and other personal contacts.⁵⁷ These reports demonstrate widespread fear of discriminatory enforcement, privacy intrusions, and civil rights violations as a result of “extreme vetting” procedures. They also highlight the pressing need for the public to have greater understanding about the level of discretion federal agents retain in their questioning of travelers and visa applicants abroad and at the border.

Second, failure to release this information will impair due-process rights and harm humanitarian interests.⁵⁸ In recent months, stories of immigrants detained at airports for hours on end—without access to legal services or even adequate information to defend themselves—have flooded news outlets.⁵⁹ These stories underscore the imminent need for detail about the State Department’s extreme vetting policies. There is a serious threat of “extreme vetting” procedures penalizing visa applicants and visa holders for personal statements made online, which inherently threatens free expression, an internationally recognized right that includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.”⁶⁰ Without information on how federal officials are trained to question visa applicants and how they will use answers provided, the fundamental rights of those questioned will be harmed.

Third, the need for expediency is heightened by the fast-tracking of the State Department’s ICR that was approved by the OMB in May 2017.⁶¹ Given that OMB provided approval to the ICR without following standard procedures—and that the ICR will be in effect for 180 days—the public should be granted the same expedited consideration to fully understand this action. Moreover, the State Department’s July 12, 2017 cable requires countries to meet

⁵⁵ See Letter from 180MillionRising.org *et al.*, to Office of Information and Regulatory Affairs and Bureau of Consular Affairs, Visa Office, *Comments on Department of State Proposed Questions for Visa Applicants*, May 18, 2017.

⁵⁶ See Yeganeh Torbati, *U.S. Academic Groups Oppose Trump’s Visa-Vetting Plans*, REUTERS (May 18, 2017).

⁵⁷ See, e.g., *Have You Experienced ‘Extreme Vetting’ When Visiting the United States?* THE GUARDIAN (June 5, 2017); AJ Dellinger, *Extreme Vetting: US Visa Applicants Asked To Disclose Social Media Handles, Email Addresses*, INT’L BUS. TIMES (June 1, 2017).

⁵⁸ 22 C.F.R. § 171.11(f)(3).

⁵⁹ See, e.g., Melissa Etehad, *Afghan Family Detained at LAX Is Granted Permanent Residency*, L.A. TIMES (Apr. 18, 2017) (detailed that an Afghani family was detained at LAX for forty hours without a lawyer); Sam Levin, *Iranian Woman Visiting Family On Tourist Visa Detained in Oregon Jail*, THE GUARDIAN (Mar. 29, 2017) (describing that an Iranian woman was sent to county jail for twelve hours for a “minor administrative violation”).

⁶⁰ See Letter from 180MillionRising.org *et al.*, *supra* note 555 (internal citation omitted); see also Kendall Brown, *Muslim Advocates Criticizes Anti-Muslim Extreme Vetting Proposal*, MUSLIMADVOCATES.ORG (May 18, 2017), <https://www.muslimadvocates.org/extreme-vetting-comments/>.

⁶¹ See DOS ICR, *supra* note 355.

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information-sharing requirements within a short 50-day window. This timeline further supports Requestors' need for expedited processing.

In sum, to ensure that the new, fast-tracked visa-application policies referenced above are not discriminatory or arbitrary—and to better understand their implementation overall—visa applicants and the public at large must know as soon as possible how the listed agencies' have guided and trained their personnel in this area.

IV. Request for Fee Waiver

Requestors seek a waiver of all document search, review, and duplication fees 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.”⁶² If the waiver request is not granted, Requestors ask that fees be limited to reasonable standard charges for document duplication because Muslim Advocates, Americans United for Separation of Church and State, the Southern Poverty Law Center, and the Brennan Center for Justice each qualify as a “representative of the news media” and the records sought are not for commercial use.⁶³

A. Disclosure Is in the Public Interest

The information requested satisfies the four factors used by the State Department when determining whether the information requested is “in the public interest” such that the request warrants a fee waiver.⁶⁴ Per State Department regulations, the information requested should (1) identify specific operations and activities of the federal government, (2) be “meaningfully informative” about those operations, (3) contribute to the understanding of a reasonably broad audience of persons, and (4) enhance the public's understanding to a significant extent.⁶⁵

First, the request identifies operations and activities of the federal government, as the records sought concern vetting procedures set forth by the State Department in both the Federal Register and in a series of cables sent by Secretary Tillerson.⁶⁶

Second, the disclosure of the records requested will be “meaningfully informative” about government operations.⁶⁷ The records requested are not in the public domain, and any new information that will be derived from them will provide meaningful information on how vetting of visa applicants is conducted. The records requested include policies, directives, trainings, and guidance on vetting procedures, and therefore will provide information on how these government practices take place, given that these practices are only vaguely defined in the State

⁶² 5 U.S.C. § 552(4)(A)(iii); 22 C.F.R. § 171.16(a).

⁶³ 5 U.S.C. § 552(4)(A)(ii)(II).

⁶⁴ See 22 C.F.R. § 171.16.

⁶⁵ *Id.*

⁶⁶ 22 C.F.R. § 171.16(a)(1)(i); DOS ICR, *supra* note 355.

⁶⁷ 22 C.F.R. § 171.16(a)(1)(ii).

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Department's ICR and cables referenced above. Finally, the records requested include data regarding visa issuances and applications from Muslim-majority countries, which will provide important statistical information surrounding the enforcement of these procedures as it relates to religious affiliation.

Third, disclosure of records requested will contribute to the understanding of a reasonably broad audience of persons interested in extreme vetting procedures.⁶⁸ As described above, news outlets and numerous advocacy organizations are concerned about how vetting will affect visa applicants and holders. Requestors will use the requested records to educate the public at large about immigration policies.

Furthermore, certain of the Requestors qualify as representatives of the news media, and should be presumed to satisfy this third factor pursuant to 22 C.F.R. § 171.16(a)(1)(iii). For example, each of Muslim Advocates, Americans United, and the Southern Poverty Law Center gather information of interest to the public, "uses its editorial skills to turn the raw materials into a distinct work," and disseminates that work to the public, all of which can be seen in its previous publications, web postings, newsletters, and informational videos.⁶⁹ Requestors intend to use the information from this request to create published works that will be disseminated to the public for educational purposes.⁷⁰

Fourth, the public's understanding will be significantly enhanced by the requested disclosure.⁷¹ Access to State Department policies and trainings on vetting procedures, as well as records reflecting how these procedures are implemented, will help inform the public on how the high-level process outlined in 82 Fed. Reg. 20956 are being operationalized. Additionally, given that these administrative vetting procedures appear to circumvent judicial rulings regarding President Trump's revised Order, information about the internal training and the external application of these procedures will significantly enhance the public's understanding of whether the State Department's vetting procedures are in accordance with the judicial opinions of the Fourth and Ninth Circuit Courts of Appeal and the Supreme Court.

B. Certain of the Requestors are Representatives of the News Media and the Requested Records Are Not Sought for Commercial Use

Even if a waiver is not granted, fees should be "limited to reasonable standard charges for document duplication" because Muslim Advocates, American United for Separation of Church and State, the Southern Poverty Law Center, and the Brennan Center for Justice are "representative[s] of the news media" and the records are not sought for commercial use.⁷² These Requestors gather information, use editorial discretion in gathering sources, and disseminate the resulting publication to the public. In the past, for example, Muslim Advocates

⁶⁸ 22 C.F.R. § 171.16(a)(1)(iii).

⁶⁹ 5 U.S.C. § 552(4)(A)(ii)(III); *see also Long v. Dep't of Homeland Sec.*, 113 F. Supp. 3d 100, 107 (D.D.C. 2015) (finding that a research institute qualified as a news media group when it published widely accessed reports and bulletins).

⁷⁰ *See Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989).

⁷¹ 22 C.F.R. § 171.16(a)(1)(iv).

⁷² 5 U.S.C. § 552(4)(A)(ii)(II); 22 C.F.R. § 171.16(a)(2).

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has sought records from the FBI, which resulted in the disclosure of previously withheld information, and from the CBP in a joint action with the American Civil Liberties Union (ACLU). Furthermore, other organizations similar in mission, function, and educational activities as Muslim Advocates have been found by courts to be representatives of the news media.

Finally, Muslim Advocates and its co-Requestors do not seek to use the information requested for commercial use. They do not have a commercial interest that would be furthered by the disclosure. Requestors' primary interest in the disclosure of information is to educate the public and defend the basic right to be free from racial and religious profiling.⁷³

* * *

Pursuant to applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.⁷⁴

Pursuant to 5 U.S.C. § 552(a)(3)(B), Requestors ask that the responsive electronic records be provided electronically in their native format, if possible. In the alternative, Requestors ask that the records be provided electronically in a text-searchable, static-image format (e.g., PDF), in the best image quality in the providing agency's possession, and that the records be provided in separate, Bates-stamped files.

If the request is denied in whole or in part, Requestors ask that you justify all deletions by reference to specific FOIA exemptions. Requestors expect the release of all segregable portions of otherwise exempt material. Requestors reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Additionally, to avoid delays in receiving records, Requestors ask that records be produced as they become available.

Thank you for your prompt attention to this matter. Please furnish the applicable records to undersigned counsel for requesters at kwimmer@cov.com. If the records are too large to transmit by email, please send them to:

Kurt Wimmer
Covington & Burling LLP
One CityCenter
850 10th Street, NW
Washington, DC 20001

⁷³ 22 C.F.R. § 171.16 (a)(2)(i)-(ii).

⁷⁴ 5 U.S.C. § 552(a)(6)(E)(ii)(I); 22 C.F.R. § 171.11(f)(4).

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Requestors affirm that the information provided supporting the request for expedited processing is true and correct to the best of their knowledge and belief.

Please contact the undersigned with any questions concerning this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kurt Wimmer", with a long horizontal flourish extending to the right.

Kurt Wimmer
Lala R. Qadir
Sara H. Lacy
Jadzia Butler
Counsel for Requestors

EXHIBIT C



United States Department of State

Washington, D.C. 20520

JUL 24 2017

Dear Requester,

RE: Visa Applicant Vetting Policies and Procedures

This is in response to your request dated 07/20/2017, which was received on 07/20/2017. We have assigned Case Control Number F-2017-13846 and will begin the processing of your request based upon the information provided in your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

After consideration of your request for expedited processing under the Department's rules governing Freedom of Information Act requests, we have determined that your request does warrant expedited processing.

We have considered your request for a fee waiver. Based upon the information provided in your letter, your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.

We will notify you as soon as responsive material has been retrieved and reviewed.

Should you want to contact us, you may call our FOIA Requester Service Center at (202) 261-8484 or send an email to FOIAstatus@state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

Requester Communications Branch
Office of Information Programs & Services

Office of Information Programs and Services
U.S. Department of State, SA-2
Washington, DC 20522-8100
Website: www.foia.state.gov

Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
E-mail: FOIAstatus@state.gov

UNITED STATES DEPARTMENT OF STATE

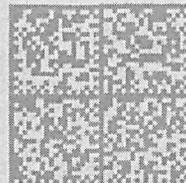
WASHINGTON, D.C. 20520

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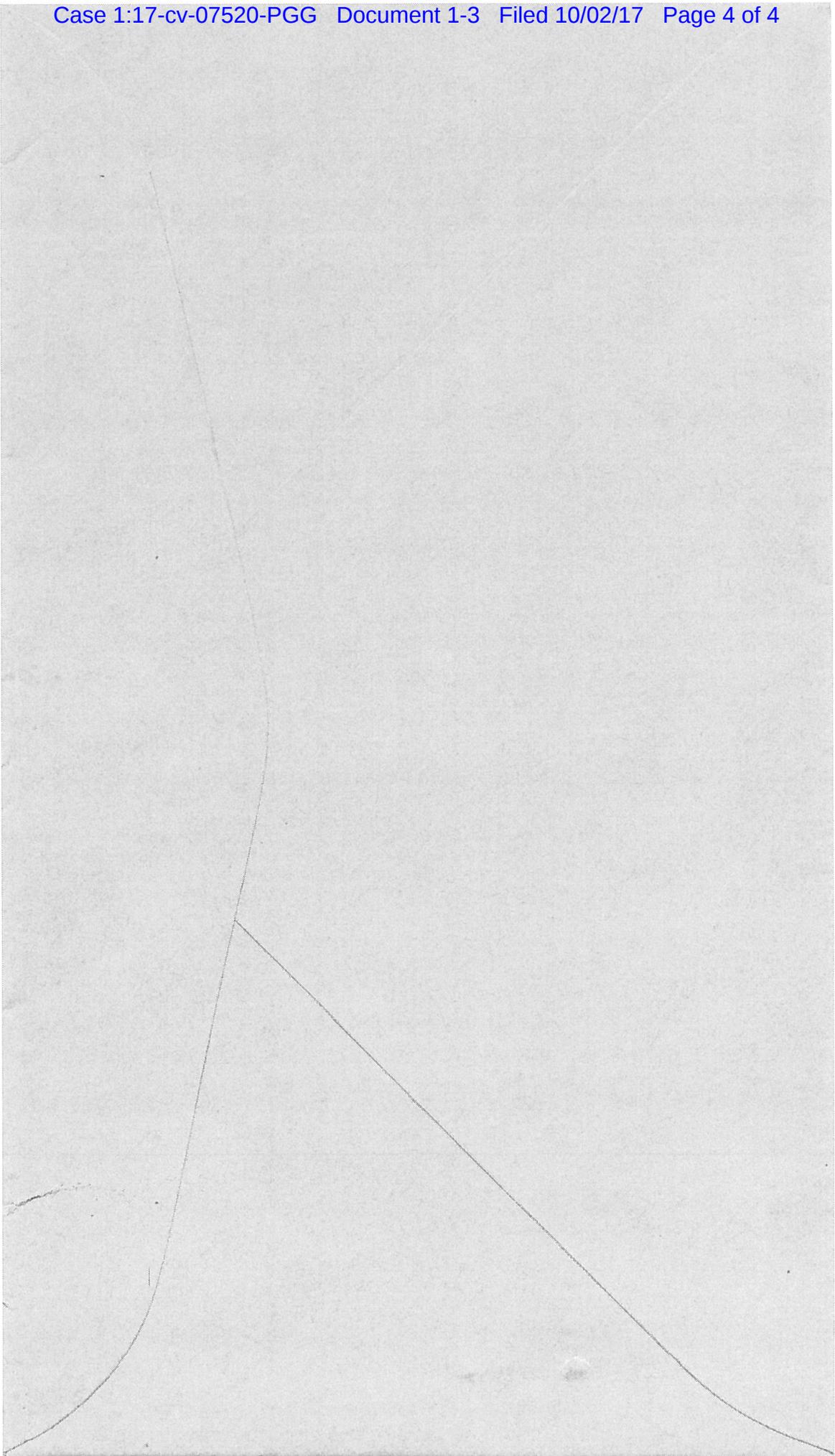


EXHIBIT D

From: [Qadir, Lala](#)
To: FOIAstatus@state.gov
Cc: [Wimmer, Kurt](#); [Lynch, Mark](#); [Butler, Jadzia](#); [Lacy, Sara](#)
Subject: Follow-up on FOIA Request F-2017-13846
Date: Thursday, August 24, 2017 11:32:05 AM
Attachments: [image003.jpg](#)

Dear Ms. Baer,

It was a pleasure speaking to you last Friday, August 18, 2017 with regards to FOIA Case Control Number F-2017-13846. Thank you for letting us know that the estimated date of completion for our request is October 31, 2017. We look forward to the State Department's response.

As mentioned during our conversation, we would also like to request the name and/or contact information for the person handling this case so that we can raise any questions we may have on this matter to them directly. Please feel free to forward this communication, as necessary.

Thank you very much for your help and we look forward to hearing from you soon.

Best,
Lala

Lala R. Qadir

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5013 | lqadir@cov.com
www.cov.com

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EXHIBIT E

From: FOIA Status
To: [Qadir, Lala](#)
Subject: RE: Follow-up on FOIA Request F-2017-13846
Date: Monday, August 28, 2017 3:01:40 PM
Attachments: [image002.jpg](#)

Ms. Lala Qadir,

This is in reference to your email dated August 24, 2017 regarding FOIA request F-2017-13846.

The Advocacy and Oversight Branch (FOIA Requester Service Center) is the point of contact for the Department of State for FOIA and Privacy Act requests. Therefore Privacy Act or FOIA-related enquiries should be referred to the FOIA Requester Service Center (FRSC) at (202) 261-8484, or fax at (202) 261-8579 or e-mail to foiastatus@state.gov.

Sincerely,
U.S. Department of State
FOIA Requester Service Center
(202) 261-8484
foiastatus@state.gov

Official - Transitory
UNCLASSIFIED

From: Qadir, Lala [<mailto:LQadir@cov.com>]
Sent: Thursday, August 24, 2017 11:32 AM
To: FOIA Status
Cc: Wimmer, Kurt; Lynch, Mark; Butler, Jadzia; Lacy, Sara
Subject: Follow-up on FOIA Request F-2017-13846

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Best,
Lala

Lala R. Qadir

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