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20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 *Oakland Division*

23 Muslim Advocates, )  
24 P.O. Box 34440 )  
25 Washington, DC 20043, )  
26 )  
27 *Plaintiff,* )

28 vs. )

Case Number: 18-cv-02137-JSC

U.S. Department of Justice, )  
950 Pennsylvania Ave., NW )  
Washington, DC 20530, )

**FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

and )

U.S. Department of Homeland Security, )  
245 Murray Lane, SW )  
Washington, DC 20528, )

*Defendants.* )

*First Amended Complaint*

Case No:18-cv-02137-JSC

1 Plaintiff Muslim Advocates hereby sues Defendants the U.S. Department of Justice  
2 (“DOJ”) and the U.S. Department of Homeland Security (“DHS”) under the Administrative  
3 Procedure Act, 5 U.S.C. §§ 701 *et seq.*, (“APA”) and for violation of the Information Quality  
4 Act, 44 U.S.C. § 3516 note (“IQA”), and alleges as follows:  
5

6 **Introduction**

7 1. President Trump campaigned on the promise of a “total and complete shutdown of  
8 Muslims entering the United States.” Since taking office, he sought to fulfill this overtly  
9 discriminatory pledge by enacting three successive bans on nationals of several Muslim-majority  
10 countries and a series of policies aimed at slowing the entry of refugees, particularly from  
11 Muslim-majority countries, into the United States. He has also attempted to reduce other  
12 longstanding paths to lawful immigration.  
13

14 2. As part of this anti-Muslim and anti-immigrant agenda, the President and members of his  
15 Administration regularly overstate and misrepresent the threat that immigrants, especially  
16 Muslim immigrants, pose to the United States. This bias infects a report published by  
17 Defendants on January 16, 2018, the Executive Order 13780: Protecting the Nation From  
18 Foreign Terrorist Entry Into the United States Initial Section 11 Report (the “Report”).  
19

20 3. Executive Order 13780, which required publication of the Report, incorporated President  
21 Trump’s second attempt at a travel ban, and directed Defendants, in order to be “more  
22 transparent with the American people and to implement more effective policies and practices that  
23 serve the national interest,” to compile and disseminate information that purports to link  
24 terrorism to immigration.  
25  
26  
27

1 4. The Report presents information on immigrants and foreign nationals in a manner that  
2 misleadingly inflates the threat they pose to the United States. Its presentation of this  
3 information also focuses exclusively and inaccurately on Muslims.

4 5. Among the ways the Report manipulates information to support its anti-immigrant and  
5 anti-Muslim conclusions: it ignores domestic terrorism incidents; it departs from the directive of  
6 EO 13780 and analyzes terrorism incidents involving foreign-born Americans rather than foreign  
7 nationals; it includes individuals who committed terrorism acts overseas and whose only tie to  
8 the United States is their extradition for prosecution; and it relies on irrelevant and debunked  
9 studies in providing information regarding so-called “honor killings” and violence against  
10 women.  
11

12 6. In so doing, the Report perpetuates the ongoing stigmatization of immigrants and  
13 Muslims by the Administration. For example, the Trump Administration used the Report to  
14 justify its sweeping ban on the entry of nationals from six Muslim-majority countries into the  
15 United States. It has also specifically tied the Report’s findings to its calls for an end to the  
16 issuance of diversity and family reunification visas, which would have a significant negative  
17 impact on Muslim immigrants.  
18

19 7. The Report has been used explicitly to stoke anti-Muslim and anti-immigrant sentiment  
20 and is likely to continue to be used in this manner. It therefore not only contributes on its face to  
21 stigmatization, but it is also likely to contribute to increased acts of hate and violence against  
22 these communities.  
23

24 8. Muslim Advocates submitted a petition for retraction and correction of the Report (the  
25 “Petition”) because the Report’s presentation of information does not meet the level of quality  
26 required of federal agencies by the IQA and its implementing Guidelines.  
27

1 9. Belatedly, and only after the initiation of this litigation, Defendants complied with their  
2 obligation to respond substantively to Plaintiff’s Petition, declining to retract or correct the  
3 Report. The parties agreed to stay the litigation in order to proceed through the administrative  
4 appeal process.

5 10. The administrative appeal process has now concluded. In their final substantive  
6 responses, both Defendants admitted that the information quality concerns raised by Plaintiff  
7 have merit. DOJ conceded that “information in the Report could be criticized by some readers,  
8 consistent with some of the concerns voiced in your Request for Reconsideration.” DHS agreed  
9 that Plaintiff’s criticisms of the Report’s biased selection of illustrative examples of terrorists “is  
10 well-taken.” And DHS “acknowledge[d] the points you have raised” and will take them “into  
11 consideration in future Section 11 Reports.”  
12

13 11. Nevertheless, Defendants declined to retract or correct the Report, and instead continue to  
14 disseminate it. In so doing they violate the IQA and its implementing Guidelines.  
15

16 **Parties**

17 12. **Muslim Advocates** is a civil rights organization that promotes freedom and justice for  
18 Americans of all faiths, with a particular focus on issues impacting Muslim communities.  
19 Muslim Advocates engages in civil rights litigation, policy advocacy, and public education to  
20 fight inaccurate stereotypes about Muslims and other immigrants. In particular, Muslim  
21 Advocates works to ensure that policies enacted under the banner of national security do not  
22 wrongfully discriminate against Muslims and are not based on inaccurate or misleading  
23 information. Muslim Advocates’ headquarters are in Washington, DC.<sup>1</sup>  
24

25  
26  
27 <sup>1</sup> In January 2019, following the initiation of this case, Muslim Advocates closed the office it  
28 maintained in Oakland, California. It now resides in Washington, DC.

1 13. **The Department of Justice** is a federal agency. Along with the Department of  
2 Homeland Security, it disseminated the Report.

3 14. **The Department of Homeland Security** is a federal agency. Along with the  
4 Department of Justice, it disseminated the Report.

5  
6 **Jurisdiction, Venue, and Intradistrict Assignment**

7 15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331,  
8 because this action arises under federal law, specifically the IQA, 44 U.S.C. § 3516 note, and the  
9 APA, 5 U.S.C. §§ 701 *et seq.*

10 16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), because Plaintiff resided  
11 in this district at the time of the initial filing in this case.

12 17. At the time the Complaint was filed, Plaintiff resided in Alameda County, making  
13 assignment to the Oakland Division appropriate pursuant to Local Civil Rule 3-2(c), (d).

14  
15 **The Information Quality Act**

16 18. The IQA, together with its implementing Guidelines, requires that information  
17 disseminated to the public by federal agencies, including by DHS and DOJ, be of requisite  
18 quality, objectivity, utility, and integrity.<sup>2</sup>

19 19. The IQA, an addendum to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 *et seq.*  
20 (“PRA”), directed the Office of Management and Budget (“OMB”) to issue guidelines under  
21 various PRA authorities by September 30, 2001.

22 20. The IQA provides that the guidelines issued by OMB should require each federal agency  
23 to which they apply to, in turn:  
24

25  
26  
27 <sup>2</sup> Consolidated Appropriations—FY 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-  
153, 154 (2000) (codified at 44 U.S.C. § 3516 note).

1 (A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and  
2 integrity of information (including statistical information) disseminated by the  
3 agency, by not later than 1 year after the date of issuance of the guidelines under  
4 subsection (a); [and]

5 (B) establish administrative mechanisms allowing affected persons to seek and  
6 obtain correction of information maintained and disseminated by the agency that  
7 does not comply with the guidelines issued under subsection (a).

8 44 U.S.C. § 3516 note (B)(2).

9 21. OMB issued “final guidelines”, as directed, after a period of notice and comment, in  
10 2002.<sup>3</sup>

11 22. In issuing its Guidelines, OMB explained, “[g]iven the administrative mechanisms  
12 required by [the IQA] as well as the standards set forth in the Paperwork Reduction Act, it is  
13 clear that agencies should not disseminate substantive information that does not meet a basic  
14 level of quality.” 67 Fed. Reg. at 8452.

15 23. The OMB Guidelines elaborate on the directives set forth in the IQA itself. They define  
16 “quality”, “utility”, “objectivity,” and “integrity”, among other relevant terms. These definitions  
17 state, in part:

18 “Quality” is an encompassing term comprising utility, objectivity, and integrity.

19 “Utility” refers to the usefulness of the information to its intended users, including  
20 the public. In assessing the usefulness of information that the agency disseminates  
21 to the public, the agency needs to consider the uses of the information not only  
22 from the perspective of the agency but also from the perspective of the public. As  
23 a result, when transparency of information is relevant for assessing the  
24 information’s usefulness from the public’s perspective, the agency must take care  
25 to ensure that transparency has been addressed in its review of the information. ...

26 “Objectivity” includes whether disseminated information is being presented in an  
27 accurate, clear, complete, and unbiased manner. This involves whether the

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28 <sup>3</sup> Office of Mgmt. & Budget, Exec. Office of the President, *Guidelines for Ensuring and  
Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by  
Federal Agencies* (“OMB Guidelines”), 67 Fed. Reg. 8451, 8452 (Feb. 22, 2002),  
<https://www.gpo.gov/fdsys/pkg/FR-2002-02-22/pdf/R2-59.pdf>.

1 information is presented within a proper context. Sometimes, in disseminating  
2 certain types of information to the public, other information must also be  
3 disseminated in order to ensure an accurate, clear, complete, and unbiased  
4 presentation.

4 24. The OMB Guidelines also require agencies to “establish administrative mechanisms  
5 allowing affected persons to seek and obtain, where appropriate, timely correction of information  
6 maintained and disseminated by the agency that does not comply with OMB or agency  
7 guidelines.” *Id.* at 8459.

8 25. Defendants have each promulgated guidelines applicable to themselves.

9 26. The DOJ Guidelines set forth definitions of “utility”, “objectivity”, and “integrity”, which  
10 “apply, consistent with the OMB Guidelines (paragraph V, definitions) which will also apply.”<sup>4</sup>  
11

12 27. The DOJ Guidelines also set forth a process for submitting a formal request for  
13 correction, including a description of the information that requests for correction should include,  
14 and a statement that the requester bears the burden of proof in seeking a correction.

15 28. The DOJ Guidelines state that:

16 Based on the explanation and evidence submitted with the request for correction,  
17 a DOJ official who is knowledgeable of the subject matter will conduct a  
18 thorough review of the information being challenged, the processes that were used  
19 to create and disseminate the information, and the conformity of the information  
20 and those processes with both OMB’s and DOJ’s Information Quality Guidelines.  
21 After it has completed its review, DOJ will determine whether a correction is  
22 warranted, and, if so, what corrective action it will take. ... After the responsible  
23 DOJ component has made its final determination pertaining to a request for  
24 correction of information, it will respond to the requestor by letter, e-mail, or fax.  
25 The response will explain the findings and the actions to be taken (if any) in  
26 response to the complaint.

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25 <sup>4</sup> U.S. DOJ, *Information Quality: Ensuring the Quality of the Information Disseminated by the*  
26 *Department* (“DOJ Guidelines”), <https://www.justice.gov/iqpr/information-quality> (last updated  
27 Oct. 31, 2018).

1 29. DOJ Guidelines state that normally the agency will respond to a request for correction  
2 within sixty calendar days of receipt, or will inform the requestor of any additional time needed  
3 to resolve the request, the reason why, and an estimated decision date.

4 30. The DHS Guidelines, which are based on the OMB Guidelines, also state that the three  
5 underlying requirements for quality information are utility, objectivity, and integrity of  
6 information, and set forth accompanying definitions.<sup>5</sup>

7 31. The DHS Guidelines also provide for an administrative information correction process,  
8 whereby “affected persons can seek, and obtain, where appropriate, timely correction of  
9 information that does not comply with OMB Guidelines, DHS Guidelines, or [DHS] Component  
10 standards.”<sup>6</sup>

11 32. The DHS Guidelines also state that DHS Components should respond to requests for  
12 correction in writing within sixty calendar days of receipt.  
13  
14

### 15 Factual Allegations

#### 16 *Executive Order 13780 and its reporting requirement.*

17 33. President Trump signed Executive Order 13780, Protecting the Nation from Foreign  
18 Terrorist Entry into the United States (“EO 13780”) on March 6, 2017.

19 34. EO 13780 significantly restricts entry to the United States by individuals from six  
20 Muslim-majority countries. The travel restrictions imposed by EO 13780 and its predecessor  
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23  
24

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25 <sup>5</sup> U.S. Dep’t Homeland Security, Information Quality Guidelines (last visited Jan. 18, 2018),  
26 <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf> (“DHS  
Guidelines”) at 2-5.

27 <sup>6</sup> *Id.* at 6.

1 and successor Executive Order and Proclamation<sup>7</sup> have been the subject of widespread litigation,  
2 including the Supreme Court’s decision in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). Litigation  
3 over the government’s implementation of the travel ban continues, such as a pending challenge  
4 to the government’s failure to provide fair and meaningful access to case-by-case waivers. *See*  
5 *Emami v. Nielsen*, Civil No. 18-1587-JD (N.D. Cal).

6  
7 35. In addition to the travel restrictions, Section 11 of EO 13780 (“Section 11”) instructs the  
8 Secretary of Homeland Security, in consultation with the Attorney General, to collect and make  
9 publicly available certain information regarding foreign nationals and terrorism. EO 13780, Sec.  
10 11(a).

11 36. Section 11 requires in pertinent part that “[t]o be more transparent with the American  
12 people and to implement more effectively policies and practices that serve the national interest,  
13 the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent  
14 with applicable law and national security, collect and make publicly available the following  
15 information:  
16

17 (i) information regarding the number of foreign nationals in the United States who  
18 have been charged with terrorism-related offenses while in the United States;  
19 convicted of terrorism-related offenses while in the United States; or removed  
20 from the United States based on terrorism-related activity, affiliation with or  
provision of material support to a terrorism-related organization, or any other  
national-security-related reasons;

21 (ii) information regarding the number of foreign nationals in the United States  
22 who have been radicalized after entry into the United States and who have  
23 engaged in terrorism-related acts, or who have provided material support to  
terrorism-related organizations in countries that pose a threat to the United States;

24  
25  
26 <sup>7</sup> Exec. Order No. 13769, Proclamation No. 9645, Enhancing Vetting Capabilities and Processes  
27 for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety  
Threats (the “Proclamation”), 82 Fed. Reg. 45,161 (Sept. 27, 2017).

1 (iii) information regarding the number and types of acts of gender-based violence  
2 against women, including so-called “honor killings,” in the United States by  
3 foreign nationals; and

4 (iv) any other information relevant to public safety and security as determined by  
5 the Secretary of Homeland Security or the Attorney General, including  
6 information on the immigration status of foreign nationals charged with major  
7 offenses.

8 EO 13780, Sec. 11(a).

9 37. EO 13780 instructs the Secretary of Homeland Security to release the “initial report”  
10 required by Section 11(a) within 180 days, and that the report shall include information for the  
11 period from September 11, 2001, until the date of the initial report. EO 13780, Sec. 11(b).

12 38. On January 16, 2018, DOJ and DHS released a report titled: “Executive Order 13780:  
13 Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11  
14 Report”<sup>8</sup>, which is the initial report required by Section 11, and which purports to provide  
15 information responsive to the four categories of information that Section 11 requires be made  
16 available. Report at 1.

17 39. The Report sets forth various information in response to the four subsections identified  
18 by Section 11, including the misleading conclusion that three out of four individuals convicted of  
19 international terrorism and terrorism-related offenses were foreign-born.

20 40. Defendants issued the Report with accompanying press releases highlighting the “three  
21 out of four” conclusion and have disseminated the Report to the public on their respective  
22 webpages.<sup>9</sup>

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24 <sup>8</sup> U.S. DHS & U.S. DOJ, *Executive Order 13780: Protecting the Nation from Foreign Terrorist*  
25 *Entry into the United States Initial Section 11 Report* (the “Report”) (Jan. 2018),  
26 [https://www.dhs.gov/sites/default/files/publications/Executive%20Order%](https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf)  
[2013780%20Section%2011%20Report%20-%20Final.pdf](https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf).

27 <sup>9</sup> Press Release, U.S. DHS, *DHS, DOJ Report: Three Out of Four Individuals Convicted of*  
28 *International Terrorism and Terrorism-Related Offenses Were Foreign-Born* (“DHS Press  
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1 41. Despite the Administration’s ongoing dissemination of the Report, the information in the  
2 Report is biased, misleading, and incomplete. It violates OMB’s IQA Guidelines, lacking utility  
3 and objectivity, and Defendants’ respective IQA Guidelines, as set forth in detail, below and in  
4 Plaintiff’s various submissions to Defendants.

5  
6 ***The Report’s substitution of international terrorism for all terrorism misleadingly***  
7 ***undercounts domestic terrorism, and artificially inflates the proportion of terrorist incidents***  
8 ***committed by immigrants and foreign nationals.***

9 42. The Report categorically excludes all terrorism-related offenses that occurred in the  
10 United States which were planned and executed by individuals without international connections.  
11 Instead, the Report relied on a limited subset of terrorism-related data, specifically: “public  
12 convictions in federal courts between September 11, 2001, and December 31, 2016 resulting  
13 from international terrorism investigations, including investigations of terrorist acts planned or  
14 committed outside the territorial jurisdiction of the United States over which Federal criminal  
15 jurisdiction exists and those within the United States involving international terrorists and  
16 terrorist groups.” Report at 2. Defendants omitted data related to domestic terrorism without  
17 explanation.

18 43. This exclusion dramatically misrepresents the actual terrorist threat posed to the United  
19 States.<sup>10</sup> The government’s own information makes clear that domestic terrorism, especially

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22 Release”) (Jan. 16, 2018), [https://www.dhs.gov/news/2018/01/16/dhs-doj-report-three-out-four-](https://www.dhs.gov/news/2018/01/16/dhs-doj-report-three-out-four-individuals-convicted-international-terrorism-and)  
23 [individuals-convicted-international-terrorism-and](https://www.dhs.gov/news/2018/01/16/dhs-doj-report-three-out-four-individuals-convicted-international-terrorism-and); Press Release, U.S. DOJ, *DOJ, DHS Report:*  
24 *Three Out of Four Individuals Convicted of International Terrorism and Terrorism-Related*  
25 *Offenses Were Foreign-Born* (“DOJ Press Release”) (Jan. 16, 2018),  
[https://www.justice.gov/opa/pr/doj-dhs-report-three-out-four-individuals-convicted-](https://www.justice.gov/opa/pr/doj-dhs-report-three-out-four-individuals-convicted-international-terrorism-and-terrorism)  
[international-terrorism-and-terrorism.](https://www.justice.gov/opa/pr/doj-dhs-report-three-out-four-individuals-convicted-international-terrorism-and-terrorism)

26 <sup>10</sup> See Devlin Barrett, *Arrests in domestic terror probes outpace those inspired by Islamic*  
27 *extremists*, Wash. Post (March 9, 2019), [https://www.washingtonpost.com/world/national-](https://www.washingtonpost.com/world/national-security/arrests-in-domestic-terror-probes-outpace-those-inspired-by-islamic-extremists/2019/03/08/0bf329b6-392f-11e9-a2cd-)  
28 [security/arrests-in-domestic-terror-probes-outpace-those-inspired-by-islamic-](https://www.washingtonpost.com/world/national-security/arrests-in-domestic-terror-probes-outpace-those-inspired-by-islamic-extremists/2019/03/08/0bf329b6-392f-11e9-a2cd-)  
[extremists/2019/03/08/0bf329b6-392f-11e9-a2cd-](https://www.washingtonpost.com/world/national-security/arrests-in-domestic-terror-probes-outpace-those-inspired-by-islamic-extremists/2019/03/08/0bf329b6-392f-11e9-a2cd-)

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1 including far right violent extremist groups, is a significant source of the terrorist threat to the  
 2 country. An April 2017 Government Accountability Office report concluded that “of the 85  
 3 violent extremist incidents that resulted in death since September 12, 2001, far right wing violent  
 4 extremist groups were responsible for 62 (73 percent) while radical Islamist violent extremists  
 5 were responsible for 23 (27 percent).”<sup>11</sup> Similarly, DHS and the Federal Bureau of Investigation  
 6 published an intelligence bulletin in May 2017 titled “White Supremacist Extremism Poses  
 7 Persistent Threat of Lethal Violence.” That bulletin states that white supremacist extremists,  
 8 who are very rarely immigrants, were responsible for “49 homicides in 26 attacks from 2000 to  
 9 2016 . . . more than any other domestic extremist movement.”<sup>12</sup>

11 44. Despite the prevalence of serious domestic terrorist threats, particularly the threat posed  
 12 by far-right wing violent extremist groups, the Report, which purports to address *all* terrorism-

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15 307b06d0257b\_story.html?utm\_term=.505bd88ac622 (“Most people arrested as the result of FBI  
 16 terrorism investigations are charged with non-terrorism offenses, and more domestic terror  
 17 suspects were arrested last year than those allegedly inspired by international terror groups,  
 18 according to internal FBI figures reviewed by The Washington Post.”); Seth G. Jones, Center for  
 19 Strategic and International Studies, *The Rise of Far-Right Extremism in the United States* 1 (Nov.  
 20 7, 2018), [https://csis-prod.s3.amazonaws.com/s3fs-  
 21 public/publication/181119\\_RightWingTerrorism\\_layout\\_FINAL.pdf?MyC9DjLLRftoeUKvq6qx  
 22 FP sCPFoTkBpH](https://csis-prod.s3.amazonaws.com/s3fs-public/publication/181119_RightWingTerrorism_layout_FINAL.pdf?MyC9DjLLRftoeUKvq6qxFPsCPFoTkBpH) (“The threat from right-wing terrorism in the United States—and Europe—  
 23 appears to be rising. Of particular concern are white supremacists and anti-government  
 24 extremists, such as militia groups and so-called sovereign citizens interested in plotting attacks  
 25 against government, racial, religious, and political targets in the United States.” And “[T]he  
 26 number of attacks from right-wing extremists since 2014 has been greater than attacks from  
 27 Islamic extremists.”).

23 <sup>11</sup> See U.S. Gov’t Accountability Office, *Countering Violent Extremism: Actions Needed to  
 24 Define Strategy and Assess Progress of Federal Efforts* 4 (Apr. 2017),  
 25 <http://www.gao.gov/assets/690/683984.pdf>.

26 <sup>12</sup> See FBI & DHS Joint Intelligence Bulletin, *White Supremacist Extremism Poses Persistent  
 27 Threat of Lethal Violence* 4 (May 10, 2017), available at  
 28 <https://www.documentcloud.org/documents/3924852-White-Supremacist-Extremism-JIB.html>;  
 see also Jana Winter, *FBI and DHS Warned of Growing Threat from White Supremacists Months  
 Ago*, Foreign Policy (Aug. 14, 2017), [http://foreignpolicy.com/2017/08/14/fbi-and-dhs-warned-  
 of-growing-threat-from-white-supremacists-months-ago/](http://foreignpolicy.com/2017/08/14/fbi-and-dhs-warned-of-growing-threat-from-white-supremacists-months-ago/) (citing the Joint Intelligence Bulletin).

1 related offenses, only provides data related to international terrorism-related offenses. Report at  
2 2. This presentation of information runs contrary to EO 13780’s directive that Defendants  
3 publish information regarding foreign nationals charged with or convicted of “terrorism-related  
4 offenses” generally, not just international terrorism-related offenses.

5 45. Through their manipulation of data, Defendants artificially increased the proportion of  
6 immigrants and foreign nationals presented as responsible for terrorist incidents—without  
7 making clear that the scope of the data is much narrower than what EO 13780 requires and  
8 without explaining how the presentation skews the terrorist threat actually posed to the United  
9 States. As such, Defendants have disseminated information that lacks utility and is not objective.  
10

11 ***The Report provided misleading and biased information by substituting data concerning  
12 foreign-born individuals for data concerning foreign nationals.***

13 46. Section 11 directed Defendants to provide various information related to “foreign  
14 nationals” and terrorism-related offenses. EO 13780, Sec. 11(a).

15 47. The Report instead disseminates information regarding *foreign-born* individuals, rather  
16 than foreign nationals, stating that of at least 549 individuals who were convicted of international  
17 (and only international) terrorism-related charges in U.S. federal courts between September 11,  
18 2001, and December 31, 2016, “approximately 73 percent (402 of these 549 individuals) were  
19 foreign-born.” Report at 2.

20 48. The Report does not provide any explanation for the substitution of foreign-born persons  
21 for foreign nationals, although doing so results in the misleading conclusion that nearly three-  
22 quarters of individuals who were convicted of international terrorism-related charges were  
23 immigrants or non-citizens. This conclusion is debunked by concrete data—the majority of  
24  
25  
26  
27

1 jihadist terrorists, for example, since September 11 have been U.S. citizens.<sup>13</sup> As another study  
2 of terrorism concluded, native born citizens are responsible for the overwhelming majority of  
3 terrorism fatalities since 2002.<sup>14</sup>

4 49. The Report further states that of these 549 individuals, 254 were not U.S. citizens, 148  
5 were foreign-born, naturalized and received U.S. citizenship, and 147 were U.S. citizens by birth.  
6 Report at 2. Had the Report followed EO 13780's directive to report on foreign nationals, even  
7 based on its own flawed data, it would have concluded that fewer than half, or 46 percent, of  
8 individuals charged or convicted of international terrorism-related offenses met this criterion.

9 50. Responding to a request for information that purports to be about the terrorist threat that  
10 foreign national immigrants pose to the United States by disseminating information that includes  
11 naturalized citizens perpetuates the Administration's discriminatory view that only native-born  
12 individuals are actually American, and results in numbers that are artificially inflated.

13 51. Providing such misleading information is also contrary to effective counterterrorism  
14 policy, which aims to prevent terrorism from sowing discord *within* a society. The Report's focus  
15 on the country of an individual's birth also ignores the essential question of where and why the  
16 terrorist became radicalized. As a group of counter-terrorism experts informed Defendants in  
17 support of Plaintiff's Petition, by ignoring the issue of domestic radicalization, Defendants made  
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19  
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22

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23 <sup>13</sup> Peter Bergen et al, *Terrorism in America After 9/11: Part II. Who Are the Terrorists?*, New  
24 America, <https://www.newamerica.org/in-depth/terrorism-in-america/who-are-terrorists/> (last  
25 visited Mar. 27, 2019).

26 <sup>14</sup> See Alex Nowrasteh, *New Government Terrorism Report Provides Little Useful Information*,  
27 Cato Inst. (Jan. 16, 2018), <https://www.cato.org/blog/new-government-terrorism-report-nearly-worthless> ("Since the beginning of 2002, native-born Americans were responsible for 78 percent  
28 of all murders in terrorist attacks committed on U.S. soil while foreign-born terrorists only committed 22 percent.").

1 “a deliberate choice not to help the public understand better the nature of radicalization and its  
2 role in terrorist activities on U.S. soil.”<sup>15</sup>

3 52. As such, in substituting foreign-born for foreign national, Defendants disseminated  
4 information that does not have utility and is not objective.

5  
6 ***The Report’s inclusion of individuals who committed terrorism overseas and whose  
7 only apparent tie to the United States is extradition to the United States for prosecution is  
8 misleading.***

9 53. EO 13780 also directs Defendants to disseminate information regarding terrorist events  
10 that took place in the United States, specifically data about individuals who were charged with or  
11 convicted of terrorism-related offenses “while in the United States” or who have been removed  
12 from the United States for various reasons. EO 13780, Sec. 11(a)(i).

13 54. In response, the Report instead disseminates information about individuals who  
14 “committed offenses while located abroad, including [those] who were transported to the United  
15 States for prosecution.” Report at 2.

16 55. Although someone who has been extradited to the United States for trial may be charged  
17 and convicted while in the United States, the offenses committed by that person overseas do not  
18 reveal the actual terror threat to the United States, nor could they serve to inform the United  
19 States’ immigration policy. Including information about offenses that occurred overseas  
20 misleadingly inflates the number of foreign nationals Defendants can claim are responsible for  
21 terrorism-related offenses, without having any bearing on terrorist threats that exist *within* the  
22 United States, as Section 11 originally required. Defendants provide no explanation for the  
23 inclusion of this information.  
24

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27 <sup>15</sup> Letter from Joshua A. Geltzer et al., Inst. for Constitutional Advocacy and Prot., Georgetown  
28 Univ. Law Ctr., to Jefferson B. Sessions et al., U.S. Attorney Gen., at 6 (Sept. 13, 2018)  
(attached hereto as “Attachment A”) (emphasis omitted).

1 56. The Report also fails to provide access to readily available and nonconfidential  
2 underlying aggregate data that would reveal the degree to which including overseas offenses  
3 misrepresents the nexus between foreign nationals and the risk of terrorism in the United  
4 States—namely the number of charges and convictions it counted for which the perpetrator’s  
5 primary connection to the United States was extradition for trial.

6  
7 57. Defendants’ manipulation of data misleadingly inflates the threat posed by foreign  
8 nationals. As such, Defendants have disseminated information that lacks utility and is not  
9 objective.

10 ***The Report’s examples of foreign nationals charged with or convicted of terrorism-related***  
11 ***offenses are misleading and perpetuate the Administration’s discriminatory narrative that***  
12 ***Muslims are likely to commit acts of terrorism.***

13 58. The Report disseminates eight purportedly “illustrative examples among the 402  
14 convictions of foreign nationals or naturalized U.S. citizens.” Report at 3-7.

15 59. Each of these profiles is of a man who appears to be Muslim, either because he is from a  
16 Muslim-majority country or has a Muslim-sounding name or both.

17 60. The individuals profiled arrived in the United States through the precise immigration  
18 provisions the Administration has maligned and sought to eliminate: refugee resettlement,  
19 migration preferences to support family reunification, and the visa diversity lottery.<sup>16</sup>  
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24 <sup>16</sup> See Faiza Patel, *Trump Administration’s Fuzzy Math on Terrorist Origins Is More than*  
25 *Misleading -- It’s Dishonest*, Just Security (Jan. 16, 2018),  
26 [https://www.justsecurity.org/51084/trump-administrations-fuzzy-math-terrorist-origins-](https://www.justsecurity.org/51084/trump-administrations-fuzzy-math-terrorist-origins-misleading-its-dishonest/)  
27 <http://www.cnn.com/2017/11/01/politics/donald-trump-chuck-schumer-nyc-attack/index.html>  
28 (detailing President Trump’s plans to reform the immigration system).

1 61. Even though the underlying data—conviction records—is not confidential or otherwise  
2 inaccessible, the Report provides no additional information or quantification for outside  
3 observers to test the Departments’ doubtful assertion that these examples are “illustrative.”

4 62. This presentation of information lacks utility and is not objective.

5 ***The Report’s information relating to gender-based violence is misleading and perpetuates***  
6 ***anti-Muslim stereotypes.***

7 63. Subsection (a)(iii) of Section 11 instructs Defendants to provide information regarding  
8 the number and types of acts of gender-based violence against women, including so-called  
9 “honor killings,” in the United States by foreign nationals.

10 64. The information provided by the Report, which purports to be responsive to this  
11 directive, is inaccurate and misleading.

12 65. The federal government has not “recorded and tracked in an aggregated statistical manner  
13 information pertaining to gender-based violence against women committed at the federal and  
14 state level.”<sup>17</sup> Nor does the federal government have reliable information regarding the  
15 prevalence of so-called “honor killings.” Defendants appear not to possess any quality  
16 information that is responsive to the directive of subsection (iii).  
17

18 66. Instead, Defendants provide alternate data, which range from irrelevant to inaccurate.

19 67. The Report cites the average annual number of non-fatal domestic violence  
20 victimizations. Although that number is significant, the data does not reveal the proportion  
21 perpetuated by foreign nationals. Indeed, studies show that gender-based violence rates are  
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27 <sup>17</sup> Report at 7.

1 largely the same across all countries, a point which further casts doubt on the Report's attempt to  
2 link gender-based violence and national origin.<sup>18</sup>

3 68. The Report also presents discredited data to perpetuate the stigmatization of Muslims  
4 inherent in EO 13780's implication that "honor killings" are a significant problem in the United  
5 States. The Report asserts that "a study commissioned and provided to the DOJ's Bureau of  
6 Justice Statistics in 2014 estimated that an average of 23-27 honor killings occur every year in  
7 the United States."<sup>19</sup> The author of the study has, in fact, disclaimed the accuracy of its  
8 conclusion, saying "it's not terribly scientific," a fact not disclosed by the Report. Moreover, the  
9 study cited was not commissioned by the Department of Justice, but by a private organization.<sup>20</sup>

10 69. Finally, the Report also cites a study regarding the number of women and girls who may  
11 be at risk for female genital mutilation, noting that the number was three times higher in 2012  
12 than in 1990.<sup>21</sup> The Report fails to explain that the study's methodology simply correlates the  
13 risk of female genital mutilation in various countries to the number of women and girls living in  
14 the United States who were born in that country or who lived with a parent born in that  
15 country.<sup>22</sup> In short, the study simply tracks immigration rates, and explicitly does not present  
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19 <sup>18</sup> See, e.g., K.M. Devries et al., *The Global Prevalence of Intimate Partner Violence Against*  
20 *Women*, 340 *Sci.* 1527, 1527, 1528 (June 28, 2013) (estimating that 30 percent of women aged  
21 15 and over have experienced domestic violence and that though there are some slight regional  
22 variations, the rates exceed 19 percent everywhere in the world except East Asia).

23 <sup>19</sup> Report at 8.

24 <sup>20</sup> Jesse Singal, *Here's What the Research Says About Honor Killings in the U.S.*, *N.Y. Magazine*  
25 (Mar. 6, 2017), [http://nymag.com/daily/intelligencer/2017/03/heres-what-the-research-says-  
26 about-american-honor-killings.html](http://nymag.com/daily/intelligencer/2017/03/heres-what-the-research-says-about-american-honor-killings.html).

27 <sup>21</sup> Report at 8.

28 <sup>22</sup> *Id.* at 8 n.17 (citing Howard Goldberg et al., *Female Genital Mutilation/Cutting in the United*  
*States: Updated Estimates of Women and Girls at Risk, 2012*, 131 *Public Health Reports* 340-47  
(2016), available at [http://journals.sagepub.com/doi/pdf/10.1177/  
003335491613100218](http://journals.sagepub.com/doi/pdf/10.1177/003335491613100218)).

1 “scientifically valid information” about the behavior of those immigrant populations in the  
2 United States.

3 70. As such, Defendants have disseminated information that lacks utility and is not objective.

4 ***The Report’s role in the Administration’s larger campaign to target immigrant and Muslim***  
5 ***communities.***

6 71. The Report’s misleading and biased presentation of the threat of violent extremism that  
7 immigrants, especially Muslim immigrants, pose to the United States is consistent with the views  
8 of the President and Defendants.

9 72. During his campaign, then-candidate Trump infamously called for “a total and complete  
10 shutdown of Muslims entering the United States,” stating further “[i]t is obvious to anybody that  
11 the hatred is beyond comprehension. . . . [O]ur country cannot be the victims of horrendous  
12 attacks by people that believe only in Jihad, and have no sense of reason or respect for human  
13 life.” He later stated that “Islam hates us,” and that “[w]e can’t allow people coming into the  
14 country who have this hatred.”<sup>23</sup>

15 73. After becoming President, President Trump re-tweeted anti-Muslim videos from a far-  
16 right British activist, which were titled: “Muslim migrant beats up Dutch boy on crutches!”;  
17 “Muslim destroys a statue of Virgin Mary!”; and “Islamist mob pushes teenage boy off roof and  
18 beats him to death!”<sup>24</sup> The videos were misleading and drew wide condemnation, but the White  
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23 <sup>23</sup> *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 594 (4th Cir.), *as amended* (May 31,  
24 2017), *as amended* (June 15, 2017), *cert. granted*, 137 S. Ct. 2080, *and vacated and remanded*  
25 *sub nom. Trump v. Int’l Refugee Assistance*, 138 S. Ct. 353 (2017). *See also Washington v.*  
26 *Trump*, 847 F.3d 1151, 1167 (9th Cir.), *reconsideration en banc denied*, 853 F.3d 933 (9th Cir.),  
*reconsideration en banc denied*, 858 F.3d 1168 (9th Cir.), *and cert. denied sub nom. Golden v.*  
*Washington*, 138 S. Ct. 448 (2017).

27 <sup>24</sup> Ashley Parker & John Wagner, *Trump Retweets Inflammatory and Unverified Anti-Muslim*  
28 *Videos*, Wash. Post (Nov. 29, 2017), [https://www.washingtonpost.com/news/post-](https://www.washingtonpost.com/news/post-First-Amended-Complaint)  
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1 House defended the President’s actions, with the Press Secretary saying, “[T]he threat is real,  
2 and that is what the president is talking about.”<sup>25</sup>

3 74. President Trump has also repeatedly argued, inaccurately, that immigrants pose a threat  
4 to public safety.<sup>26</sup>

5 75. Similarly, former-Attorney General Sessions, who oversaw publication of the Report,  
6 relied on a single outlier study of questionable methodology to claim that, despite the vast body  
7 of research showing that crime tends to decrease in areas where immigrants settle<sup>27</sup>, “illegal  
8 aliens are more than twice as likely to be convicted of crimes as Arizonans,” and that “[t]ens of  
9 thousands of crimes have been committed in this country that would never have happened if our  
10 immigration laws were enforced and respected like they ought to be.”<sup>28</sup>

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18 politics/wp/2017/11/29/trump-retweets-inflammatory-and-unverified-anti-muslim-  
19 videos/?utm\_term=.1a55596e88c1.

20 <sup>25</sup> *Id.*

21 <sup>26</sup> Salvador Rizzo, *Trump’s Claim That Immigrants Bring ‘Tremendous Crime’ Is Still Wrong*,  
22 Wash. Post (Jan. 18, 2018), [https://www.washingtonpost.com/news/fact-checker/wp/2018/01/18/trumps-claim-that-immigrants-bring-tremendous-crime-is-still-wrong/?utm\\_term=.20ec4a0e8626](https://www.washingtonpost.com/news/fact-checker/wp/2018/01/18/trumps-claim-that-immigrants-bring-tremendous-crime-is-still-wrong/?utm_term=.20ec4a0e8626).

23 <sup>27</sup> Salvador Rizzo, *Questions Raised About Study That Links Undocumented Immigrants to*  
24 *Higher Crime*, Wash. Post (Mar. 21, 2018), [https://www.washingtonpost.com/news/fact-checker/wp/2018/03/21/questions-raised-about-a-study-that-links-undocumented-immigrants-to-higher-crime/?utm\\_term=.5b04d784c153](https://www.washingtonpost.com/news/fact-checker/wp/2018/03/21/questions-raised-about-a-study-that-links-undocumented-immigrants-to-higher-crime/?utm_term=.5b04d784c153).

25 <sup>28</sup> Press Release, U.S. DOJ, *Attorney General Sessions Delivers Remarks on National Security*  
26 *and Immigration Priorities of the Administration* (Jan. 26, 2018),  
27 <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-national-security-and-immigration-priorities>.

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1 76. And Homeland Security Secretary Nielsen has stated that even though the number of  
2 unlawful entries to the United States was at historically low levels, still it “is an unacceptable  
3 risk to public safety and national security.”<sup>29</sup>

4 77. Consistent with these views, the Administration has used the Report to support its  
5 attempts to restrict lawful immigration and its ongoing stigmatization of Muslims.

6 78. For example, the White House issued a statement that the Report shows that “our current  
7 immigration system jeopardizes American security” and used the Report to justify its calls to end  
8 the visa lottery and migration preferences to support family reunification.<sup>30</sup>

9 79. Similarly, former-Attorney General Sessions stated that the Report “reveals an  
10 indisputable sobering reality—our immigration system has undermined our national security and  
11 public safety.”<sup>31</sup>

12 80. In her statement on the Report’s release, Homeland Security Secretary Nielsen said that it  
13 “is a clear reminder of why we cannot continue to rely on immigration policy based on pre-9/11  
14 thinking that leaves us woefully vulnerable to foreign-born terrorists, and why we must examine  
15 our visa laws and continue to intensify screening and vetting of individuals traveling to the  
16 United States to prevent terrorists, criminals, and other dangerous individuals from reaching our  
17 country.”<sup>32</sup>

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22 <sup>29</sup> Written Testimony of DHS Secretary Nielsen Before the U.S. Senate Committee on the  
23 Judiciary (Jan. 16, 2018), <https://www.judiciary.senate.gov/imo/media/doc/01-16-18%20Nielsen%20Testimony.pdf>.

24 <sup>30</sup> Fact Sheet, White House, *Our Current Immigration System Jeopardizes American Security*  
25 (Jan. 16, 2018), <https://www.whitehouse.gov/briefings-statements/current-immigration-system-jeopardizes-american-security/>.

26 <sup>31</sup> DOJ Press Release, *supra* note 9.

27 <sup>32</sup> *Id.*

1 81. She also warned the Senate Judiciary Committee that the Report was “just the tip of the  
2 iceberg” and repeated the conclusion that supposedly three-fourths of individuals convicted of  
3 international terrorism in U.S. federal courts were foreign born in her testimony in January 2018  
4 as part of her justification for the travel ban against nationals of six Muslim-majority countries.<sup>33</sup>

5  
6 ***The Report’s use in public discourse and its harmful effects on Muslim communities.***

7 82. The Report has also—and predictably—been widely used to promote anti-Muslim, anti-  
8 immigrant rhetoric by commentators in the public sphere. In the days following its publication,  
9 it was described in news outlets as “linking terrorism with our broken immigration system, full  
10 of holes.”<sup>34</sup> On one of the most-watched television news programs in the country,<sup>35</sup> the host  
11 described the Report as showing that “America’s terror threat is clearly . . . an immigration  
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16 <sup>33</sup> Anna Giaritelli, *DHS Chief: Foreign-born Have Made Up 3 in 4 of International Terrorism*  
17 *Convictions in US Courts Since Sept. 11 Attacks*, Wash. Examiner (Jan. 16, 2018),  
18 [http://www.washingtonexaminer.com/dhs-chief-foreign-born-have-made-up-3-in-4-of-](http://www.washingtonexaminer.com/dhs-chief-foreign-born-have-made-up-3-in-4-of-international-terrorism-convictions-in-us-courts-since-sept-11-attacks/article/2646031)  
19 [international-terrorism-convictions-in-us-courts-since-sept-11-attacks/article/2646031](http://www.washingtonexaminer.com/dhs-chief-foreign-born-have-made-up-3-in-4-of-international-terrorism-convictions-in-us-courts-since-sept-11-attacks/article/2646031); *see also*  
20 *Testimony of Secretary Kirstjen Nielsen, Homeland Security Oversight, C-Span* (Jan. 16, 2018),  
21 [https://www.c-span.org/video/?439257-1/homeland-security-secretary-kirstjen-nielsen-faces-](https://www.c-span.org/video/?439257-1/homeland-security-secretary-kirstjen-nielsen-faces-questions-daca)  
22 [questions-daca](https://www.c-span.org/video/?439257-1/homeland-security-secretary-kirstjen-nielsen-faces-questions-daca).

23 <sup>34</sup> *Fox News @ Night – Shannon Bream – January 16, 2018 – Archive*, YouTube (Jan. 17, 2017),  
24 <https://www.youtube.com/watch?v=OaJmY2WoEb8> (at 1:54); *see also Special Report with Bret*  
25 *Baier 1/16/18 | Special Report Fox News Tuesday January 16, 2018*, YouTube (Jan. 16, 2018),  
26 <https://www.youtube.com/watch?v=pa4jJOJ4xjw> (at 13:20); *Fox News @ Night – Shannon*  
27 *Bream – January 16, 2018 – Archive*, YouTube (Jan. 17, 2017),  
28 <https://www.youtube.com/watch?v=OaJmY2WoEb8> (at 1:54 and 6:40).

<sup>35</sup> A.J. Katz, *January 2018 Ratings: Fox News Is Cable News’ Most-Watched Network For 16*  
29 *Years Straight*, TV Newser (Jan. 30, 2018), [http://www.adweek.com/tvnewser/january-2018-](http://www.adweek.com/tvnewser/january-2018-ratings-fox-news-is-now-cable-newss-most-watched-network-for-16-straight-years/356285)  
30 [ratings-fox-news-is-now-cable-newss-most-watched-network-for-16-straight-years/356285](http://www.adweek.com/tvnewser/january-2018-ratings-fox-news-is-now-cable-newss-most-watched-network-for-16-straight-years/356285);  
31 Mark Joyella, *Is Tucker Carlson The New King Of Cable News?*, Forbes (May 31,  
32 2017), [https://www.forbes.com/sites/markjoyella/2017/05/31/is-tucker-carlson-the-new-king-of-](https://www.forbes.com/sites/markjoyella/2017/05/31/is-tucker-carlson-the-new-king-of-cable-news/#7c7f84985370)  
33 [cable-news/#7c7f84985370](https://www.forbes.com/sites/markjoyella/2017/05/31/is-tucker-carlson-the-new-king-of-cable-news/#7c7f84985370).

1 issue.”<sup>36</sup> And multiple think tanks and commentators seized upon the Report as an opportunity  
2 to promote anti-Muslim, anti-immigrant rhetoric and policies.<sup>37</sup>

3 83. The damaging stigma the Report has caused is further amplified by an entirely  
4 foreseeable mischaracterization of its findings. The Report found (misleadingly) that 73 percent  
5 of all individuals convicted of *international* terrorism-related offenses were foreign-born. But  
6 numerous government officials and anti-immigrant outlets have stated that 73 percent of  
7 individuals convicted of *all* terrorism-related offenses were foreign-born. For example,  
8 President Trump tweeted on its release date that the report “shows that nearly 3 in 4 individuals  
9 convicted of terrorism-related charges are foreign-born.”<sup>38</sup> On the same day, then-House  
10 Judiciary Chairman Bob Goodlatte stated that “[o]f the 549 terror-related convictions since the  
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16 <sup>36</sup> *Attorney General Jeff Sessions and Tucker Carlson Discuss Immigration – MGTOW*,  
YouTube (Jan. 18, 2018), [https://www.youtube.com/watch?v=o\\_244\\_Rf-Co](https://www.youtube.com/watch?v=o_244_Rf-Co) (at 0:22).

17 <sup>37</sup> *See, e.g.*, David Horowitz, *Man up, DC! Immigrants are 73 percent of terrorism convictions*,  
18 *Conservative Review* (Jan. 17, 2018), <https://www.conservativereview.com/articles/man-dc-immigrants-73-percent-terrorism-convictions/>; Hans A. von Spakovsky, *The importance of public safety and national security in the immigration debate*, Fox News (Jan. 25, 2018),  
19 <http://www.foxnews.com/opinion/2018/01/25/importance-public-safety-and-national-security-in-immigration-debate.html>; Andrew R. Arthur, *We Need Better Vetting, Better Screening, and Better Laws*, Center for Immigration Studies (Jan. 16, 2018), <https://cis.org/Arthur/We-Need-Better-Vetting-Better-Screening-and-Better-Laws>; Kevin Daley, *Defending The Travel Ban Just Got A Little Easier*, The Daily Caller (Jan. 16, 2018), <http://dailycaller.com/2018/01/16/dhs-report-may-help-travel-ban-defense/>.

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21 <sup>38</sup> Donald J. Trump (@realDonaldTrump), Twitter (Jan. 16, 2018),  
22 [https://twitter.com/realDonaldTrump/status/953406423177859073?ref\\_src=twsrc%5Etfw&ref\\_url=http%3A%2F%2Fnymag.com%2Fdaily%2Fintelligencer%2F2018%2F01%2Ftrumps-plan-to-end-chain-migration-isnt-populist.html&tfw\\_creator=ericlevitz&tfw\\_site=intelligencer](https://twitter.com/realDonaldTrump/status/953406423177859073?ref_src=twsrc%5Etfw&ref_url=http%3A%2F%2Fnymag.com%2Fdaily%2Fintelligencer%2F2018%2F01%2Ftrumps-plan-to-end-chain-migration-isnt-populist.html&tfw_creator=ericlevitz&tfw_site=intelligencer); *see also*  
23 Salvador Rizzo, *President Trump’s Claim That ‘Nearly 3 in 4’ Convicted of Terrorism Are Foreign-Born*,  
24 *Wash. Post* (Jan. 22, 2018), [https://www.washingtonpost.com/news/fact-checker/wp/2018/01/22/president-trumps-claim-that-nearly-3-in-4-convicted-of-terrorism-are-foreign-born/?utm\\_term=.2df7ec64132c](https://www.washingtonpost.com/news/fact-checker/wp/2018/01/22/president-trumps-claim-that-nearly-3-in-4-convicted-of-terrorism-are-foreign-born/?utm_term=.2df7ec64132c).

1 attacks on September 11, 2011, 75% of those convicted were foreign born.”<sup>39</sup> And former-  
2 Attorney General Sessions stated in an appearance on a television news program: “we know that  
3 . . . 73% of the people who’ve been arrested for terrorism came here—were born abroad.”<sup>40</sup> This  
4 was repeated in articles published by numerous media outlets and think tanks, which ran  
5 headlines such as: “3 out of 4 convicted of terrorism are immigrants”<sup>41</sup> and “DHS and DOJ  
6 Report: 73 percent of Convicted Terrorists Were Foreign-born.”<sup>42</sup> Because the Report was  
7 presented as purportedly responsive to the requirements of Section 11 of EO 13780—which  
8 requires an analysis of *all* terrorism-related offenses—that mischaracterization was a predictable  
9 outcome of the Report and the agencies’ statements about it.  
10

11 84. By contributing to the stigmatization of Muslims, the Report is also likely to contribute to  
12 increases in associated hate speech and violence. As many experts have noted, public rhetoric  
13 and policies targeting a disfavored group correlate with increases in violence targeting those  
14 groups.<sup>43</sup> And in fact, multiple reports have found significant increases in hate incidents against  
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17 <sup>39</sup> Press Release, H.R. Judiciary Comm., Goodlatte Statement on DOJ/DHS Report on  
18 Immigration and National Security (Jan. 16, 2018), [https://republicans-judiciary.house.gov/press-  
release/goodlatte-statement-doj-dhs-report-immigration-national-security/](https://republicans-judiciary.house.gov/press-release/goodlatte-statement-doj-dhs-report-immigration-national-security/).

19 <sup>40</sup> *Attorney General Jeff Sessions and Tucker Carlson Discuss Immigration – MGTOW*,  
20 YouTube (Jan. 18, 2018), [https://www.youtube.com/watch?v=o\\_244\\_Rf-Co](https://www.youtube.com/watch?v=o_244_Rf-Co) (at 5:26).

21 <sup>41</sup> Daniel Greenfield, *3 out of 4 convicted of terrorism are immigrants*, FrontPage Mag (Jan. 16,  
22 2018), [https://www.frontpagemag.com/point/269046/3-out-4-convicted-terrorism-are-  
immigrants-daniel-greenfield](https://www.frontpagemag.com/point/269046/3-out-4-convicted-terrorism-are-immigrants-daniel-greenfield).

23 <sup>42</sup> *DHS and DOJ Report: 73 Percent of Convicted Terrorists Were Foreign-Born*, NumbersUSA  
24 (Jan. 16, 2018), [https://www.numbersusa.com/news/dhs-and-doj-report-73-percent-convicted-  
terrorists-were-foreign-born](https://www.numbersusa.com/news/dhs-and-doj-report-73-percent-convicted-terrorists-were-foreign-born).

25 <sup>43</sup> See Brian Levin, *Explaining the Rise in Hate Crimes Against Muslims in the US*, The  
26 Conversation (July 19, 2017), [https://theconversation.com/explaining-the-rise-in-hate-crimes-  
against-muslims-in-the-us-80304](https://theconversation.com/explaining-the-rise-in-hate-crimes-against-muslims-in-the-us-80304) (“the rhetoric politicians use after terrorist attacks is correlated  
27 closely to sharp increases...in hate crimes”); *Responses to the Increase in Religious Hate  
Crimes; Hearing Before the S. Comm. On the Judiciary*, 115th Cong. 5 (2017) (statement of  
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1 Muslims and persons perceived to be Muslim since the beginning of Trump’s presidential  
 2 campaign and especially since the beginning of his presidency,<sup>44</sup> and one report found an explicit  
 3 correlation to this administration’s anti-Muslim policies or slogans.<sup>45</sup> If left uncorrected, the  
 4 Report is likely to contribute to this increase in violence and stigmatization experienced by  
 5 Muslim communities.

### Plaintiff’s Petition

8 85. On January 29, 2018, Plaintiff sent a petition to DOJ and DHS setting forth the ways in  
 9 which the Report violates IQA Guidelines on information quality, as summarized in the  
 10 preceding paragraphs, and requesting a retraction of the Report. *See* Att. B.

12 Vanita Gupta, President, Leadership Conference on Civil and Human Rights),  
 13 <http://bit.ly/2xa29Bp> (“Policies singling out protected groups can normalize hate and legitimize  
 hate-motivated violence directed at Muslims or people perceived to be Muslim.”).

14 <sup>44</sup> *See, e.g., CAIR Report Shows 2017 on Track to Becoming One of Worst Years Ever for Anti-*  
 15 *Muslim Hate Crimes*, Council On Am.–Islamic Relations (July 17, 2017),  
 16 [https://www.cair.com/cair\\_report\\_shows\\_2017\\_on\\_track\\_to\\_becoming\\_one\\_of\\_worst\\_years\\_ev  
 er\\_for\\_anti\\_muslim\\_hate\\_crimes](https://www.cair.com/cair_report_shows_2017_on_track_to_becoming_one_of_worst_years_ev_er_for_anti_muslim_hate_crimes) (reporting a 91 percent increase in the number of anti-Muslim  
 17 hate crimes during the first half of 2017); Christopher Ingraham, *American Mosques—and*  
 18 *American Muslims—Are Being Targeted for Hate Like Never Before*, Wash. Post (Aug. 8, 2017),  
 19 <http://wapo.st/2x3nCty> (documenting at least 85 anti-Muslim incidents at mosques during the  
 first half of 2017); Katayoun Kishi, *Assaults Against Muslims in U.S. Surpass 2001 Level*, Pew  
 20 Research Ctr. (Nov. 15, 2017), [http://www.pewresearch.org/fact-tank/2017/11/15/assaults-  
 against-muslims-in-u-s-surpass-2001-level/](http://www.pewresearch.org/fact-tank/2017/11/15/assaults-against-muslims-in-u-s-surpass-2001-level/); Chris Fuchs, *Reported Anti-Muslim Hate Incidents,*  
 21 *Rhetoric Rose in Year After Election, Report Finds*, NBC News (Feb. 1, 2018),  
 22 [https://www.nbcnews.com/news/asian-america/reported-anti-muslim-hate-incidents-rhetoric-  
 rose-year-after-election-n843671](https://www.nbcnews.com/news/asian-america/reported-anti-muslim-hate-incidents-rhetoric-rose-year-after-election-n843671); Laura Pitter, *Hate Crimes Against Muslims in US Continue to*  
 23 *Rise in 2016*, Human Rights Watch (May 11, 2017), [https://www.hrw.org/news/2017/05/11/hate-  
 crimes-against-muslims-us-continue-rise-2016](https://www.hrw.org/news/2017/05/11/hate-crimes-against-muslims-us-continue-rise-2016).

24 <sup>45</sup> *See Report: Communities on Fire: Confronting Hate Violence and Xenophobic Political*  
 25 *Rhetoric*, South Asian Americans Leading Together (SAALT), <https://tinyurl.com/ycllxzd2>  
 26 (documenting 302 incidents of hate incidents directed at Muslim, Arab, and South Asian  
 27 individuals between November 2016 and November 2017, an over 45 percent increase from the  
 previous year; finding that 82 percent of those incidents were motivated by anti-Muslim  
 sentiment, that more than 213 involved actual violence (a 64 percent increase over the preceding  
 year); and reporting that almost 1 in 5 of these incidents involved perpetrators who specifically  
 invoked President Trump’s name, policies, or campaign slogans.

1 86. In the Petition, Plaintiff also explained that it is an “affected person” within the meaning  
2 of the IQA and its implementing Guidelines because, among other reasons,

3 Muslim Advocates works to ensure that policies enacted under the banner of  
4 national security do not wrongfully discriminate against Muslims and are not  
5 based on inaccurate or misleading information.

6 Muslim Advocates uses reliable information concerning the American  
7 immigration population in its work, and it, as well as its clients, is also “harmed”  
8 by the dissemination of the Report, which seeks to portray immigrants, and  
9 particularly Muslim immigrants, as inherently violent and likely to commit acts of  
10 terror. Moreover, the Report serves as a mechanism to justify the travel and  
11 refugee bans, which the Administration has attempted to justify, at least in part,  
12 by reference to the kinds of inaccurate data and biased findings contained in the  
13 Report. The Report serves as further post hoc justification for those efforts,  
14 which directly harm Muslim Advocates and its clients.

15 87. The petition was sent via email and Federal Express. The Federal Express deliveries  
16 arrived on January 30, 2018.

17 88. Under both DOJ and DHS Guidelines, Defendants had 60 days to respond for a request  
18 for correction or to notify the requestor that additional time is needed.

19 89. As detailed below, Plaintiff did not receive even an acknowledgement letter from  
20 Defendants until after the initial Complaint was filed in this case.

21 **Defendants’ Responses to Plaintiff’s Petition**

22 90. On June 15, 2018, after taking more than twice as much time as is permitted under its  
23 IQA guidelines to respond, Defendant DOJ provided a letter acknowledging receipt. DOJ  
24 further stated that additional time was required to “review and provide any response” and noted  
25 that it anticipated doing so “within sixty (60) days of this letter.” Att. C.

26 91. Defendant DHS followed suit with a nearly identical acknowledgment letter on June 19,  
27 2018. DHS likewise stated that an additional sixty (60) days was needed to review and provide a  
28 response to the Petition. Att. D.

1 92. DOJ provided its first substantive response to the Petition in a July 31, 2018 letter. Att.  
2 E. This letter addressed briefly and inadequately the information quality errors set forth by  
3 Plaintiff in the Petition. DOJ's letter concluded that the agency's IQA guidelines did not require  
4 retraction or correction of the Report. *See id.* This conclusion was incorrect.

5 93. DHS provided a substantive response to the Petition on August 1, 2018. *See* Att. F. This  
6 response's analysis of the arguments set forth in the Petition was also incomplete and inadequate.  
7 The response did acknowledge that DHS planned to "refine the available data, provide more  
8 detail where practicable, and examine other datasets that might warrant release in the interest of  
9 transparency," taking the points raised in the Petition into consideration during the preparation of  
10 future Section 11 reports. *Id.* at 2. Despite this tacit admission of the Petition's merit, DHS  
11 concluded that retraction or correction was not warranted. *Id.*

12 94. Both the July 31 DOJ letter and the August 1 DHS letter provided notice of the  
13 opportunity to appeal the final decisions to deny the Petition.

#### 14 **Plaintiff's Appeal Petitions**

15 95. Muslim Advocates submitted administrative appeals to DOJ and DHS on September 13,  
16 2018, requesting reconsideration of the agencies' denials of Plaintiff's Petition. Atts. G, H  
17 (collectively the "Appeal Petitions").

18 96. The Appeal Petitions explained that DOJ's and DHS's responses to the Petition were  
19 inadequate and did not cure the information quality errors in the Report. Among the reasons  
20 provided, the Appeal Petitions stated that:

- 21 a. The DOJ and DHS responses failed to engage meaningfully with the Petition's arguments  
22 that the substitution of "foreign-born" for "foreign national" results in a biased and  
23 misleading presentation of the terrorist threat posed by immigrants, in violation of the

1 IQA's objectivity and utility requirements. Further, the responses failed to articulate a  
2 reason why there is utility in distinguishing between U.S.-born and foreign-born citizens,  
3 which does not reveal meaningful differences in rights or responsibilities, and is not a  
4 distinction relied on by those who conduct counterterrorism work.

5  
6 b. The decision to focus on international terrorism, and to ignore completely acts of  
7 domestic terrorism, is neither objective nor useful because the omission artificially  
8 inflates the proportion of terrorist incidents presented as having been committed by  
9 foreign nationals and ignores a critical component of the counterterrorism discussion. In  
10 their defense of the Report, Defendants asserted that data capturing instances of domestic  
11 terrorism were not available to them, and that the Report was sufficiently clear about the  
12 presentation of information. As the Appeal Petitions point out, however, such  
13 information has been compiled by the government, including in the reports and studies  
14 cited by Plaintiff, and so was readily available for Defendants in order to consider the  
15 threat posed by domestic terrorism and thereby provide objective and useful information  
16 to the public.

17  
18 c. Defendants also failed to respond adequately to the Petition's argument that the Report's  
19 inclusion of individuals who were only present in the United States because they were  
20 brought here through extradition in the total number of terrorism-related convictions  
21 misleadingly inflates the terrorist threat posed by foreign nationals. The responses'  
22 assertion that these individuals were accurately described as having come to the United  
23 States through extradition did not account for the misleading and useless presentation of  
24 the information. Moreover, Defendants inexplicably failed to provide underlying data, in  
25  
26  
27

1 their possession, showing what percentage of the total number of individuals identified in  
2 the Report were included based on their extradition to the United States.

3 d. Defendants' attempts to justify the Report's profiling of eight "illustrative examples," all  
4 of which appear to be Muslim men who arrived in the United States through the precise  
5 immigration provisions the Administration has sought to eliminate, were unpersuasive.  
6 Plaintiffs' criticism is not "subjective," as asserted by Defendants, but based in the  
7 objectivity and utility requirements of the IQA. Compounding this problem, the Report  
8 had failed to include any of the underlying data that might have allowed an outside  
9 observe to test whether these eight examples were, in any sense, illustrative, an omission  
10 the responses further failed to explain or discuss.

11 e. Finally, Defendants failed to address adequately the misleading and anti-Muslim  
12 information disseminated concerning so-called "honor killings," which the Report  
13 portrays as a substantial issue in the United States, in part by relying on irrelevant and  
14 inaccurate data. The DHS and DOJ responses did not address specifically the Report's  
15 inclusion of discredited and irrelevant data sources. The responses further asserted that  
16 the Report noted the lack of aggregate data discussing "honor violence" and that this  
17 transparency was sufficient. But none of these defenses save the Report, which fails to  
18 meet the IQA's objectivity requirement.

19 97. The Appeal Petitions also emphasized the ways in which the Administration—both  
20 President Trump and Defendants—has used the Report to further stigmatize immigrants as  
21 dangerous and likely to be terrorists; important context for understanding the Report's bias.

22 98. Contemporaneously with the submission of the Appeal Petitions, a group of former  
23 officials with extensive counter terrorism experiences submitted a letter to Defendants in support  
24

1 of Plaintiff's appeals. *See* Att. A. This letter reinforced many of the arguments made by  
2 Plaintiff and further explained how continued dissemination of the Report can inflict damage on  
3 vital counterterrorism efforts. *Id.* at 3. As the authors of the letter stated, "[a]llowing  
4 misunderstandings to continue to circulate would undermine the objectives of effective  
5 counterterrorism policy and exacerbate the fear and division that terrorists seek to create." *Id.*

#### 7 Defendants' Responses to the Appeal Petitions

8 99. DOJ did not acknowledge receipt of the administrative appeal until October 24, 2018,  
9 and offered no substantive response at that time, asserting instead that it would take an additional  
10 forty-five (45) days to review and provide a further response. Att. I.

11 100. DOJ responded substantively to the Appeal Petition by letter dated December 21, 2018.  
12 In this response, DOJ admitted that Plaintiff had raised valid concerns about the quality of the  
13 information presented in the Report. Specifically, DOJ stated that

14  
15 [T]he Department concludes on reconsideration that ***information in the Report could be***  
16 ***criticized by some readers, consistent with some of the concerns voiced in your Request***  
17 ***for Reconsideration.*** ... Working closely with DHS, the Department will consider IQA  
18 principles in issuing future reports under Section 11 of Executive Order 13780 ***to better***  
19 ***present such information to the public.***

20 *See* Att. J at 1 (emphasis added).

21 101. Despite this admission, DOJ declined to retract or correct the Report. The justification it  
22 provided for doing so is inadequate and incorrect in light of the information submitted in support  
23 of the request for retraction.

24 102. DHS was even tardier in its response to the administrative appeal, acknowledging receipt  
25 on November 7, 2018, and stating that it would take an additional 45 days to review and consider  
26 its response. Att. K. On December 19, 2018, DHS again informed Plaintiff that it would take an  
27

1 additional 45 days to respond. Att. L. On January 31, 2019, DHS again stated by letter that it  
2 would take an additional 45 days to respond. Att. M.<sup>46</sup>

3 103. Finally, on February 14, 2019—155 days since the Plaintiff submitted its administrative  
4 appeal—DHS provided a substantive response. Att. N.

5 104. DHS acknowledged the validity of Plaintiff’s information quality concerns, stating, “it  
6 will take into consideration in future Section 11 Reports those points raised in both your  
7 Requests for Correction and Reconsideration.” *Id.* at 1. Further, DHS admitted that Plaintiff’s  
8 contention regarding the bias in the selection of the eight illustrative examples “is well-taken.”  
9 *Id.* at 2.

10 105. Nevertheless, DHS declined to retract or correct the Report. *Id.* The justification it  
11 provided for doing so is inadequate and incorrect in light of the information submitted in support  
12 of the request for retraction.  
13  
14

15 106. Defendants continue to promulgate the Report on their respective websites.

16 **Claim for Relief: Violation of the Administrative Procedure Act**

17 107. Plaintiff hereby incorporates all allegations in the above paragraphs as if fully set forth  
18 herein.

19 108. The IQA, OMB’s IQA Guidelines, and DOJ and DHS’s IQA Guidelines require that  
20 information disseminated by agencies meet a requisite level of quality.

21 109. The Report is information disseminated by Defendants within the meaning of the IQA  
22 and its implementing Guidelines.

23 110. The Report fails the objectivity and utility requirements of information quality; instead, it  
24 presents information in a deceptive, misleading, and incomplete manner, and in so doing,  
25

26 \_\_\_\_\_  
27 <sup>46</sup> This delay was apparently attributable to the lapse in appropriations.

1 misrepresents the actual terror threat to the country, artificially inflating the threat that  
2 immigrants and Muslims pose to the United States.

3 111. Defendants' ongoing dissemination of the Report following their denials of Plaintiffs'  
4 Petition and Appeal Petitions violates the IQA and its implementing Guidelines, and is therefore  
5 arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of  
6 procedure required by law, and otherwise violative of the APA, 5 U.S.C. § 706(2).  
7

8 **Prayer for Relief**

9 WHEREFORE, Plaintiff prays that this Court grant the following relief:

- 10 1. Declare that the Report disseminates information that fails the standard of quality  
11 required of federal agencies;  
12 2. Declare that Defendants violated the IQA, its implementing Guidelines, and the APA;  
13 3. Order Defendants to expressly retract or correct the Report and to cease dissemination of  
14 the Report;  
15 4. Award Plaintiff its costs, reasonable attorneys' fees, and other disbursements incurred in  
16 this action; and  
17 5. Grant such other relief as the Court may deem just and proper.  
18

19 Date: April 1, 2019

Respectfully submitted,

20 /s/ Robin F. Thurston

21 Robin F. Thurston (*pro hac vice*)

22 Benjamin Seel (*pro hac vice application to be filed*)

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26 Sirine Shebaya (*pro hac vice*)

**Muslim Advocates**

28 *First Amended Complaint*

Case No:18-cv-02137-JSC

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**ATTACHMENT**  
**A**



**INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION  
GEORGETOWN UNIVERSITY LAW CENTER**

September 13, 2018

The Honorable Jefferson Beauregard Sessions III  
Attorney General, U.S. Department of Justice  
Attn: Office of Legislative Affairs  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

The Honorable Kirstjen M. Nielsen  
Secretary, U.S. Department of Homeland Security  
Attn: Office of the Chief Information Officer/Information Quality Officer  
245 Murray Lane SW  
Mail Stop 0136  
Washington, DC 20528

Dear Attorney General Sessions and Secretary Nielsen,

We, the undersigned, are former officials with extensive experience in designing and implementing policies to counter terrorism at the White House, Department of Justice, Department of Homeland Security, Department of State, Department of Defense, and the Intelligence Community:

- Rand Beers, Former Acting Secretary of Homeland Security
- James Clapper, Former Director of National Intelligence
- Richard A. Clarke, Former National Coordinator for Counterterrorism, National Security Council
- Jonathan Finer, Former Chief of Staff and Director of Policy Planning, Department of State
- Joshua A. Geltzer, Former Senior Director for Counterterrorism, National Security Council
- Luke Hartig, Former Senior Director for Counterterrorism, National Security Council
- Brett Holmgren, Former Senior Policy Advisor to the Assistant to the President for Homeland Security and Counterterrorism, National Security Council
- Gil Kerlikowske, Former Commissioner of U.S. Customs and Border Protection, Department of Homeland Security
- Robert Malley, Former Special Assistant to the President and Senior Adviser to the President for the Counter-ISIL Campaign, National Security Council
- Amy Marshak, Former Counsel to the Assistant Attorney General for National Security, Department of Justice

- Mary B. McCord, Former Acting Assistant Attorney General for National Security, Department of Justice
- Brian McKeon, Former Acting Under Secretary for Policy, Department of Defense
- Matthew G. Olsen, Former Director, National Counterterrorism Center
- Nicholas Rasmussen, Former Director, National Counterterrorism Center
- Daniel Rosenthal, Former Director for Counterterrorism, National Security Council
- Suzanne Spaulding, Former Under Secretary for the National Protection and Programs Directorate, Department of Homeland Security
- Jake Sullivan, Former National Security Adviser to the Vice President
- Francis X. Taylor, BGen, USAF (Ret.), Former Under Secretary for Intelligence and Analysis, Department of Homeland Security

Based on our experience, we believe strongly that accurate public characterizations by the U.S. Government of the terrorist threat faced in this country are important to countering terrorism effectively. Accurate information helps to thwart terrorists' immediate goals of distorting public understandings and sowing discord and enables the public to make informed evaluations of government decision-making. We therefore write in support of the requests for reconsideration filed today by concerned groups and individuals regarding the misleading report issued by the Department of Justice (DOJ) and the Department of Homeland Security (DHS) in January 2018 and the letters subsequently sent by DOJ and DHS that attempt to defend the misleading impressions yielded by the report.

## Introduction

Terrorism as a strategy uses acts of violence to sow confusion, trigger outsized fear-based reactions, and stoke societal conflict in furtherance of terrorists' political goals. Terrorists rely on public overreaction and misunderstanding to skew political dialogue and create dangerous societal fissures in ways that inflame public sentiment against whole subsets of society. To counter this strategy effectively, counterterrorism policy-makers must help the public understand the actual nature of the threat posed by terrorism, thereby building societal resilience and ensuring that terrorists' attempts to divide society are met with efforts to unite people.

In January 2018, DOJ and DHS issued a public report that purported to satisfy a reporting obligation imposed by Executive Order 13780, *Protecting the Nation from Foreign Terrorist Entry into the United States*. See Dep't of Homeland Sec. & Dep't of Justice, Executive Order 13780: *Protecting the Nation from Foreign Terrorist Entry into the United States* Initial Section 11 Report, Jan. 2018, <https://www.justice.gov/opa/press-release/file/1026436/download> ("Report"). Concerned groups and individuals identified a number of mischaracterizations in the Report and sought the rescission of the Report and other remedies under the Information Quality Act (IQA), 44 U.S.C. § 3516 note, and the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* Having received DOJ's response of July 31 and DHS's response of August 1, those groups and individuals now request reconsideration of that response as inadequate.

Under the IQA, certain public reports issued by federal departments and agencies must meet standards of "utility, objectivity, and integrity." Office of Mgmt. & Budget (OMB), Exec. Office

of the President, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8451, 8458 (Feb. 22, 2002). Moreover, “[i]n assessing the usefulness of information that the agency disseminates to the public,” an agency must “consider the uses of the information not only from the perspective of the agency but also from the perspective of the public.” *Id.* at 8459. The IQA therefore evinces a recognition that information shared publicly by the government must be not just technically accurate but also informative—and not misleading—to the public.

We write to emphasize the damage that DOJ’s and DHS’s continued dissemination of misleading information can inflict on vital counterterrorism efforts. Allowing misunderstandings to continue to circulate would undermine the objectives of effective counterterrorism policy and exacerbate the fear and division that terrorists seek to create.

### **I. Terrorists Seek to Confuse and Divide the Societies They Target, So Effective Counterterrorism Demands Accurate Public Understandings of the Terrorist Threat.**

Because terrorists and terrorist groups tend to have far less political power than their adversaries, they use violent attacks to achieve their political objectives. As part of this strategy, terrorists seek “to provoke governments to react emotionally and precipitously to threats rather than respond in a sober and rational manner.” Brian Michael Jenkins, Bruce Hoffman & Martha Crenshaw, *How Much Really Changed About Terrorism on 9/11*, *The Atlantic*, Sept. 11, 2016, <https://www.theatlantic.com/international/archive/2016/09/jenkins-hoffman-crenshaw-september-11-al-qaeda/499334/>. In other words, “[t]errorism works not simply because it instills fear in target populations, but because it causes governments and individuals to respond in ways that aid the terrorists’ cause.” Andrew H. Kydd & Barbara F. Walter, *The Strategies of Terrorism*, *Int’l Security*, Summer 2006, at 49, 50; *see also* Brian Michael Jenkins, RAND Corp., *Unconquerable Nation* 153 (2006), <https://www.rand.org/pubs/monographs/MG454.html> (“Fear can erode confidence in our institutions, provoke us to overreact, tempt us to abandon our values.”). Indeed, it is because of their desire to stoke public fear and misunderstanding that terrorist groups like ISIS take credit not only for attacks actually associated with the group but also, at times, for attacks in which they had no hand—such as the horrific October 2017 shooting in Las Vegas. *See* Graeme Wood, *Why Did the Islamic State Claim the Las Vegas Shooting?*, *The Atlantic*, Oct. 2, 2017, <https://www.theatlantic.com/international/archive/2017/10/isis-amaq-las-vegas/541746/>.

One particularly common way that terrorists attempt to weaken their stronger adversaries is to sow discord and prod them into turning on themselves. The fear caused by terrorism “can eventually divide and poison societies, hardening people against perceived outsiders, even causing them to abandon key values.” Amanda Taub, *As Vehicle Attacks Rise, an Ordinary Object Becomes an Instrument of Fear*, *N.Y. Times*, Aug. 17, 2017, <https://www.nytimes.com/2017/08/17/world/europe/barcelona-van-terrorist-weapon-fear.html>. In particular, terrorists may seek to provoke government crackdowns against vulnerable populations associated in the public’s mind—however inaccurately—with the identities of terrorists themselves.

Because terrorists seek to create and exploit misunderstandings and societal divisions, accurately informing the public about the nature and scope of the terrorism threat it faces is a

critical component of effective counterterrorism policy. Cultivating resilience against terrorism relies in part on ensuring that the public accurately understands the real nature of the terrorist threat—such as whether that threat stems primarily from those believed to be foreigners. Instilling resilience also hinges on maintaining unity, even as terrorists seek to create and exacerbate divisions by goading the majority into turning on vulnerable minorities. In this way, building resilience on the public’s part can actually assist in thwarting terrorism. *See* Michael Leiter, Director, Nat’l Counterterrorism Ctr., Address at the Ctr. for Strategic & Int’l Studies: The Changing Terrorist Threat and NCTC’s Response (Dec. 1, 2010), [https://csis-prod.s3.amazonaws.com/s3fs-public/event/101202\\_leiter\\_transcript.pdf](https://csis-prod.s3.amazonaws.com/s3fs-public/event/101202_leiter_transcript.pdf) (“We help define the success of an attack by our reaction to that attack. And one of the ways that we illustrate to terrorists that their methods are fruitless and that their goals will not be achieved through terrorism is to respond with resilience . . .”).

In sum, in order to prevent terrorists from distorting public understanding and sowing divisions, counterterrorism policy-makers have an obligation to characterize the terrorist threat accurately, both in its degree and in its nature, in its public communications. Moreover, dissemination of accurate terrorism-related information allows the public to effectively evaluate the government’s counterterrorism policies, thereby preserving critical credibility for the government in justifying its counterterrorism measures to the public.

## II. The January 2018 Report Contains Mischaracterizations That Distort the Public’s Understanding of Terrorism.

We are concerned that misleading statements and omissions in the January 2018 Report may undermine effective counterterrorism policies. Overall, the Report appears designed to give the misleading impression that immigrants—and even their citizen family members—are responsible for the vast majority of terrorist attacks that have occurred in the United States, whereas statistical studies and our experience have shown no identifiable correlation between “foreignness” and terrorist activity in the past 15 years. The Report’s mischaracterizations fall into four categories of particular concern.

### *A. The Report Misleadingly Includes U.S. Citizens in Response to a Call for Information on “Foreign Nationals.”*

The Report responds to Executive Order 13780’s call for semi-annual reports concerning certain categories of information. *See* Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 6, 2017). The first of those categories is “information regarding the number of *foreign nationals* in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reasons.” *Id.* (emphasis added).

While the Executive Order sought information about “foreign nationals,” the Report responded by concluding that, among individuals “convicted of international terrorism-related charges in U.S. federal courts between September 11, 2001, and December 31, 2016 . . . approximately 73 percent (402 of these 549 individuals) were *foreign-born*.” Report at 2 (emphasis

added). Included among these were 148 individual naturalized U.S. citizens. These U.S. citizens are not “foreign nationals.” See 52 U.S.C. § 30121(b)(2) (defining “foreign national” to exclude citizens of the United States). Although the Report includes the raw number of actual foreign nationals, the only percentage included in the Report is the misleading 73 percent figure—which was the primary data point from the Report cited in tweets by both DOJ and President Trump. See Donald J. Trump (@realDonaldTrump), Twitter (Jan. 16, 2018, 3:19 pm), <https://twitter.com/realDonaldTrump/status/953406423177859073> (“New report from DOJ & DHS shows that nearly 3 in 4 individuals convicted of terrorism-related charges are foreign-born.”); Dep’t of Justice (@TheJusticeDepartment), Twitter (Jan. 16, 2018, 6:40 am), <https://twitter.com/TheJusticeDept/status/953275839361187840> (“DOJ, DHS Report: Three out of four individuals convicted of international terrorism and terrorism-related offenses were foreign-born” (capitalization modified)).

Removing U.S. citizens from the calculation yields a finding that fewer than half of those charged or convicted of international terrorism-related offenses in the specific time period were, in fact, foreign nationals (some of whom it was *still* inappropriate to include, as they were foreigners who committed their offenses overseas and were brought to the United States for trial, as will be discussed below). Yet, as President Trump’s tweet reflects, the Report’s mischaracterization of these figures gives the public the inaccurate sense that acts of terrorism on U.S. soil are overwhelmingly associated with foreign nationals, the category about which the Executive Order asked in the first place. Misleadingly correlating the terrorist threat with immigrants—a distortion which is exacerbated by a footnote in the Report suggesting that even the birthplace of terrorists’ *parents* might be relevant to explaining terrorist activity, see Report at 2 n.1—is precisely the opposite of what effective counterterrorism strategy demands. And it is inaccurate: concrete data debunk the notion that foreign nationals are the dominant sources of terrorist threats to Americans. See Peter Bergen et al., *Terrorism in America After 9/11: Who Are the Terrorists?*, New America, <https://www.newamerica.org/in-depth/terrorism-in-america/who-are-terrorists/> (“[E]very jihadist who conducted a lethal attack inside the United States since 9/11 was a citizen or legal resident.”).

Rather than informing and reassuring the public, the Report’s misleading focus on place of birth serves to spread false impressions of the nature of the actual terrorist threat. Moreover, the Report’s implicit suggestion that naturalized U.S. citizens are somehow not legitimate or full citizens of this country exacerbates divisions within American society and disturbingly aggravates hostility toward its most vulnerable populations in ways that are counterproductive to effective counterterrorism policy.

*B. The Misleading Inclusion of Foreign-Born U.S. Citizens Compounds the Report’s Failure To Address Radicalization That Occurs on U.S. Soil.*

The Report’s inclusion of foreign-born U.S. citizens in its data on foreign nationals suggests that an individual’s foreign origin is a meaningful predictor of whether he or she—even decades later—will engage in a terrorism-related crime. Our experience in counterterrorism suggests quite the opposite. In understanding what drives individuals to terrorism, the most important question is not, as the Report implies, “where were they born.” Instead, the better question concerns where—and more importantly why—they radicalized. Answering that question can yield better

policy responses aimed at preventing such radicalization from occurring and potentially taking more lives through violence.

The decision to focus exclusively on where individuals were born and to ignore where and why they radicalized is not only misleading; it also defies the very Executive Order that spawned the Report. That order asked for “information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and who have engaged in terrorism-related acts.” Exec. Order 13780. Whatever the intent behind the framing of this question, it at least offered DOJ and DHS an opportunity to provide a more accurate rendering of potential drivers of terrorism by showing the extent to which radicalization occurs on U.S. soil, thereby shifting the focus to what causes that radicalization, rather than suggesting it is simply a product of being foreign-born. Yet DOJ and DHS decided to ignore this question *entirely*, briefly indicating that they lacked relevant information and would try to provide a better answer in future reporting. Report at 7. This was a deliberate choice *not* to help the public understand better the nature of radicalization and its role in terrorist activities on U.S. soil.

Instead, the Report indulges the misplaced notion that where someone is born is more determinative of their later turn to terrorism than the radicalization process that occurs wherever they might be—including on U.S. soil. When the United States has suffered from even specifically *jihadist* terrorism since 9/11, it has generally been at the hands of individuals who are on U.S. soil legally and who radicalized *here*: “[O]f the 13 perpetrators of lethal jihadist terrorist attacks in the [United] States since 9/11 (which killed a total of 94 people), all were American citizens or legal permanent residents. Of the 406 cases of jihadist terrorism (nonlethal and otherwise) in this country since Sept. 11, 2001, . . . more than 80 percent involved U.S. citizens or legal permanent residents. . . . [T]he most pressing terrorist threat we see today . . . is the phenomenon of Western citizens and legal residents becoming radicalized by what they are watching and reading online.” Peter Bergen, *Trump’s Travel Ban Is Useless. Terrorists Mostly Come from Our Own Back Yard.*, Wash. Post, June 5, 2017, <https://www.washingtonpost.com/posteverything/wp/2017/06/05/trumps-travel-ban-is-useless-terrorists-mostly-come-from-our-own-back-yard/> (citing the study by New America); *see also* Brian Michael Jenkins, RAND Corp., *The Origins of America’s Jihadists* 25 (2017), <https://www.rand.org/pubs/perspectives/PE251.html> (noting that “foreign-born jihadists . . . spent an average of 12 years in the United States before planning or participating in their attacks,” thus suggesting that immigration vetting is not the stage at which such attacks can be prevented).

These statistics are consistent with our work in counterterrorism. A number of drivers lead individuals toward violent extremism: disaffection, a lack of belonging, a grandiose desire to be part of something seen as “bigger,” and a gradual numbing to the humanness of potential victims. These drivers are not unique to immigrants or those in immigrant communities, nor are they specific to any particular ideology. Violent extremism itself can take many forms—from jihadist terrorism to white supremacy to anarchism to violent environmentalism—and the same drivers can affect individuals drawn to these ideologies. Sharing *that* sort of accurate understanding of the nature of terrorist threats—an understanding that does not focus on “foreignness” as a key driver of terrorism—not only accurately reflects the available information but also advances the goals of counterterrorism and frustrates those of terrorists. The misleading Report, however, does just the opposite.

*C. The Report Misleadingly Inflates the Percentage of Foreign Nationals Who Committed Terrorism Crimes by Including Individuals Who Committed Terrorism Overseas and Were Extradited to the United States for Prosecution.*

The Report makes an astonishing inclusion in its response to the call for the number of individuals “who have been charged with” or “convicted of terrorism-related offenses while in the United States.” Exec. Order 13780. The Report includes in that category individuals “who committed offenses while located abroad, including defendants who were transported to the United States for prosecution.” Report at 2. In the most technical way, it is true that someone extradited or otherwise brought to the United States for prosecution has, in the end, been charged or convicted “while in the United States.” But including those individuals who have committed a terrorism-related offense *overseas* and whose only connection to U.S. soil is getting forcibly brought to the United States for prosecution and subsequent imprisonment distorts the public’s understanding of the actual terrorist threat by inflating the apparent number of terrorist acts committed in the United States by foreign nationals.

Indeed, including those who commit terrorist acts overseas does not just overstate the threat of terrorism in ways contrary to the key counterterrorism goal of building resilience; it also inflates the number of foreign nationals (or even foreign-born individuals), in particular, who appear responsible for terrorism in the United States. And it implies failures on the part of an immigration system that those extradited to the United States for prosecution never, in fact, encounter. *See* Lisa Daniels, Nora Ellingsen & Benjamin Wittes, *Trump Repeats His Lies About Terrorism, Immigration and Justice Department Data*, Lawfare, Jan. 16, 2018, <https://www.lawfareblog.com/trump-repeats-his-lies-about-terrorism-immigration-and-justice-department-data> (“[The Report] included almost 100 foreign-born defendants who were extradited into the United States and therefore never would have been affected by U.S. immigration policy.”). This is precisely the type of scapegoating of a vulnerable portion of the population that terrorists hope to induce through their attacks and through the overreaction that those attacks can generate—if the targeted government responds to the provocation. DOJ and DHS take the bait with their Report. They do so by artificially swelling the numbers of terrorist defendants mischaracterized as connected to acts of terrorism on U.S. soil and by inflating the proportion of terrorism defendants who are foreign nationals or even, in the Report’s preferred formulation, foreign-born.

*D. The Report Misleadingly Excludes Any Statistics on Domestic Terrorism or Even Any Examples of It.*

As noted, Executive Order 13780 sought information on “terrorism-related offenses.” But the Report evades this instruction and instead provides information regarding only individuals “convicted of *international* terrorism-related charges.” Report at 2 (emphasis added). By selectively answering a different question from the one posed to them, DOJ and DHS excluded from their calculations all terrorism-related offenses perpetrated in the United States by individuals without connections to international terrorist groups.

Such offenses generally are referred to as “domestic terrorism.” That term is defined by federal law as “activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended (i) to intimidate or

coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States.” 18 U.S.C. § 2331(5). There is, however, no federal crime called “domestic terrorism.” That means that acts of terrorism associated with wholly domestic entities such as white supremacist groups are often prosecuted in state court or, if at the federal level, on the basis of non-terrorism-specific charges. Widely reported acts of apparent domestic terrorism include the April 1995 Oklahoma City bombing; the June 2015 Charleston church shooting; and the August 2017 killing of Heather Heyer on the streets of Charlottesville, Virginia.

This mischaracterization of the responsive data set dramatically skews the results. An April 2017 Government Accountability Office report showed that, of the 85 violent extremist incidents that resulted in deaths in almost exactly the same time period surveyed in the Report, “far right wing violent extremist groups were responsible for 62 (73 percent) while radical Islamist violent extremists were responsible for 23 (27 percent).” U.S. Gov’t Accountability Office, *Countering Violent Extremism: Actions Needed To Define Strategy and Assess Progress of Federal Efforts* 4 (Apr. 2017), <http://gao.gov/assets/690/683984.pdf>; see also Nora Ellingsen & Lisa Daniels, *What the Data Really Show About Terrorists Who “Came Here,” Part III: What If You Included Domestic Terrorism Cases*, Lawfare, Apr. 11, 2017, <https://www.lawfareblog.com/what-data-really-show-about-terrorists-who-came-here-part-iii-what-if-you-included-domestic> (“Domestic terrorism convictions account for the majority of terrorism convictions in the U.S. since Sept. 11, 2001 . . .”). Although the Report notes in a single sentence that its calculations do “not include individuals convicted of offenses relating to domestic terrorism,” Report at 2, DOJ and DHS appear to have made no effort to include such figures (by, for example, reviewing relevant convictions in state courts or at least offering examples of domestic terrorism, much as the Report offers examples of international terrorism) so as actually to respond to the Executive Order’s full mandate. Moreover, the inflammatory touting of the Report’s conclusion by the President and others neglected to include this critical caveat, which ensured that it did not penetrate the public consciousness.

The decision to ignore the question posed and instead answer a different one contributes to the misleading nature of their Report. In particular, DOJ’s and DHS’s approach artificially inflates the apparent involvement of foreign-born individuals in terrorism-related offenses on U.S. soil by defining those offenses as solely those perpetrated by those persons with links to international (i.e., *foreign*) terrorist groups, who are—of course—more likely to be foreign-born. See Ellingsen & Daniels, *supra* (“[T]hose convicted of domestic terrorism charges are less likely to be foreign-born than their international terrorism counterparts”). Redefining the scope of the Report misleads the public as to the nature of the terrorist threat that it faces and, in particular, construes that threat as intertwined with foreigners generally and immigrants specifically in ways belied by the full facts. It also wrongly suggests that international terrorism is the only real terrorism to worry about and that domestic terrorism does not pose a serious threat—at least not one worthy of the U.S. Government collecting information on it. To mislead the public into viewing foreigners overwhelmingly as the perpetrators of terrorism offenses in this country serves to confuse and divide the public in ways contrary to effective counterterrorism and all too welcome to those terrorists who seek to inflame and polarize our country.

## Conclusion

By specifying that, “[i]n assessing the usefulness of the information that the agency disseminates to the public, the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public,” OMB’s guidelines for implementing the IQA emphasize that information disseminated to the public must not be just technically accurate but also informative—and not misleading. Whatever technical accuracy of particular statements DOJ and DHS attempt to defend in their recent letters, it is the Report’s broader, misleading character that is of serious concern to us as former counterterrorism officials. In particular, the inclusion in the Report without sufficient explanation of foreigners who commit terrorist acts abroad and are brought to the United States solely for the purposes of prosecution and incarceration is egregiously deceptive. Terrorists’ success or failure in spreading fear and provoking self-inflicted overreactions hinges, in significant part, on how the public understands the actual threat that terrorists pose. DOJ’s and DHS’s Report distorts that threat in ways that run contrary not only to the IQA but also to sound, responsible approaches to counterterrorism.

We urge DOJ and DHS to reconsider their responses to the concerns articulated with respect to the Report.

Respectfully submitted,



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**ATTACHMENT  
B**



By Fed Ex and Email

January 29, 2018

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Re: *Request for Correction Under the Information Quality Act*

To whom it may concern:

On behalf of Muslim Advocates, we respectfully submit this request for correction pursuant to the Information Quality Act (“IQA”) to the U.S. Department of Homeland Security (“DHS”) and the U.S. Department of Justice (“DOJ”) and, together with DHS, the “Departments” or “you”). We request that you retract and correct the misleading and biased information issued in your first joint report published pursuant to Section 11 of Executive Order 13780, Protecting the Nation from Foreign Terrorist Entry into the United States (the “Report”).<sup>1</sup>

The Report asserts, among other things, that 73 percent of individuals convicted of international terrorism-related offenses are foreign-born. But this figure, disseminated in response to a request for information on the number of terrorism-related offenses committed by foreign *nationals*, misleadingly also includes foreign-born persons—a term that includes naturalized citizens (*i.e.*, individuals who are not foreign nationals). The 73 percent figure also excludes convictions for acts of domestic terrorism, and thereby vastly misrepresents the actual terror threat to the country. Bizarrely, the 73 percent figure does include in its calculation foreign nationals whose only apparent tie to the United States comes through their extradition to this country to be prosecuted for terrorism. These choices artificially inflate the rate of terrorism

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<sup>1</sup> U.S. Dep’t Homeland Security and U.S. Dep’t Justice, Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report (Jan. 2018), <https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf> (the “Report”).

that the government represents is committed by immigrants. Apparently finding the artificially high rate useful for its purposes, DOJ promptly tweeted it out, further disseminating deceptive information to the public.<sup>2</sup>

Because the 73 percent figure and much of the other information in the Report is misleading, reflecting the biased views of the Administration, the Report fails to meet the basic information quality standards required by federal law. Yet the Administration is already using the Report in its ongoing attempts to restrict lawful immigration, and in particular immigration by Muslims. Attorney General Sessions stated that the Report “reveals an indisputable sobering reality—our immigration system has undermined our national security and public safety.”<sup>3</sup> Similarly, Homeland Security Secretary Nielsen repeated the 73 percent statistic in her testimony before the U.S. Senate Committee on the Judiciary on January 16, 2018.<sup>4</sup> Indeed, the Report appears to have been issued primarily to serve the Administration’s political ends—reportedly being substantially drafted by Attorney General Sessions’ office, and contrary to the claim that it is “[a]n analysis conducted by DHS,”<sup>5</sup> without input from DHS career analysts.<sup>6</sup>

Accordingly, on behalf of Muslim Advocates, Democracy Forward Foundation makes this request for correction, pursuant to the Departments’ IQA guidelines, of the information contained in the Report. We request that you retract the Report, and to the extent that you determine that publishing a revised report is necessary, include in it data that avoids the errors identified below, or, to the extent the Departments do not have relevant data, to admit as much. Doing so is necessary to correct the misimpression, intentionally conveyed by the Departments,

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<sup>2</sup> Dep’t Justice (@TheJusticeDepartment), Twitter (Jan. 16, 2018, 6:40am), <https://twitter.com/TheJusticeDept/status/953275839361187840> (“DOJ, DHS REPORT: THREE OUT OF FOUR INDIVIDUALS CONVICTED OF INTERNATIONAL TERRORISM AND TERRORISM-RELATED OFFENSES WERE FOREIGN-BORN”).

<sup>3</sup> See Press Release, U.S. Dep’t Justice, DOJ, DHS Report: Three Out of Four Individuals Convicted Of International Terrorism and Terrorism-Related Offenses Were Foreign-Born (Jan. 16, 2018), <https://www.justice.gov/opa/pr/doj-dhs-report-three-out-four-individuals-convicted-international-terrorism-and-terrorism> (“DOJ Press Release”); see also Press Release, U.S. Dep’t Homeland Security, DOJ, DHS Report: Three Out of Four Individuals Convicted Of International Terrorism and Terrorism-Related Offenses Were Foreign-Born (Jan. 16, 2018), <https://www.dhs.gov/news/2018/01/16/dhs-doj-report-three-out-four-individuals-convicted-international-terrorism-and> (“DHS Press Release”).

<sup>4</sup> Anna Giaritelli, *DHS Chief: Foreign-born have made up 3 in 4 of international terrorism convictions in US courts since Sept. 11 attacks*, Wash. Examiner (Jan. 16, 2018), <http://www.washingtonexaminer.com/dhs-chief-foreign-born-have-made-up-3-in-4-of-international-terrorism-convictions-in-us-courts-since-sept-11-attacks/article/2646031>; see also Homeland Security Oversight: Testimony of Secretary Kirstjen Nielsen, C-Span (Jan. 16, 2018), <https://www.c-span.org/video/?439257-1/homeland-security-secretary-kirstjen-nielsen-faces-questions-da-ca>.

<sup>5</sup> Report at 2.

<sup>6</sup> Spencer Ackerman, *Team Trump Bypassed DHS Analysts to Produce Bogus Terror Report*, Daily Beast (Jan. 21, 2018), <https://www.thedailybeast.com/team-trump-bypassed-dhs-analysts-to-produce-bogus-terror-report>.

that the Report reveals that “our immigration system has undermined our national security and public safety.”<sup>7</sup>

## I. Executive Order 13780 Section 11 Report.

Executive Order 13780, purports to promote the “policy of the United States to protect its citizens from terrorist attacks, including those committed by foreign nationals” by “improv[ing] the screening and vetting protocols and procedures associated with the visa issuance process and the USRAP [United States Refugee Admissions Program].”<sup>8</sup> Section 11 of the Executive Order instructs the Secretary of Homeland Security, in consultation with the Attorney General, “to collect and make publicly available” the following information:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reasons;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and who have engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States;

(iii) information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security or the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.<sup>9</sup>

The Report, which was jointly disseminated by the Departments on January 16, 2018, purports to provide an initial report regarding the information required by Section 11. In response to the above four subsections, the Report sets forth various information, including the assertion that 73 percent of individuals convicted of “international terrorism-related charges in U.S. federal courts between September 11, 2001, and December 31, 2016” were “foreign-born,”<sup>10</sup> as well as eight “illustrative examples” of such individuals.<sup>11</sup> The Report also provides an

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<sup>7</sup> DOJ Press Release; DHS Press Release.

<sup>8</sup> Exec. Order No. 13780, 82 FR 13209 (Mar. 6, 2017) (the “Exec. Order”). Executive Order 13780 is colloquially known as Muslim Ban 2.0 or Travel Ban 2.0, and has been the subject of extensive litigation relating to its discriminatory intent and unlawfulness, including its constitutional violations.

<sup>9</sup> *Id.*

<sup>10</sup> As discussed in greater detail below, the term “foreign-born” would still include individuals who lawfully immigrated to the United States, and naturalized to become full United States citizens. This

assortment of statistical information that it claims is related to gender-based violence, and “other information” that it determined to be relevant to public safety and security.

## II. Requirements of the IQA

The IQA, which is found at Section 515 of Public Law 106-554, together with its implementing regulations and guidelines, requires that information disseminated to the public by federal agencies, including by DHS and DOJ, be accurate, reliable, and unbiased.<sup>12</sup> It also directs the Office of Management and Budget (“OMB”) to issue guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”<sup>13</sup> Federal agencies, in turn, must issue their own guidelines, likewise “ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency” and establishing “administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines.”<sup>14</sup>

Pursuant to these directives, OMB, as well as DHS and DOJ, promulgated guidelines establishing information quality standards and providing a means for parties to seek redress for information that does not conform to these standards.<sup>15</sup> Thus, under the OMB and agency guidelines, the touchstone for the IQA is that (1) information (2) disseminated by an agency (3) be of requisite quality.

The Report is covered by the IQA. DHS guidelines, as well as the substantially similar DOJ guidelines, define “information,” in relevant part, as “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical,

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group of people is expressly different than foreign nationals, which would not include naturalized United States citizens. The Executive Order asked only for information concerning terrorism-related offenses for “foreign nationals in the United States.” Report at 1.

<sup>11</sup> *Id.* at 2-7.

<sup>12</sup> Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 & 154, 44 U.S.C. § 3516, note (West) (the “IQA”); Office of Mgmt. & Budget, Exec. Office of the President, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002) (“OMB Guidelines”), <https://www.gpo.gov/fdsys/pkg/FR-2002-02-22/pdf/R2-59.pdf>; U.S. Dep’t Homeland Security, Information Quality Guidelines (last visited Jan. 18, 2018), <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf> (“DHS Guidelines”); U.S. Dep’t Justice, Information Quality: Ensuring the Quality of the Information Disseminated by the Department (Nov. 2016), <https://www.justice.gov/iqpr/information-quality> (“DOJ Guidelines”).

<sup>13</sup> IQA § 515(a).

<sup>14</sup> *Id.* § 515(b); *see also Prime Time Int’l Co. v. Vilsack*, 599 F.3d 678, 684-86 (D.C. Cir. 2010) (describing the statutory and administrative scheme of the IQA).

<sup>15</sup> *See* DHS Guidelines; *see also* DOJ Guidelines.

graphic, cartographic, narrative, or audiovisual forms.”<sup>16</sup> The Report purports to present facts, primarily in the form of numerical data and narrative description, and therefore was required to adhere to the standards of the IQA.

The Report was disseminated to the public, for the purposes of the IQA. DHS and DOJ’s IQA guidelines define “dissemination” in substantially the same manner, including “agency initiated or sponsored distribution of information to the public.”<sup>17</sup> The Departments issued the Report with accompanying press releases, and have made the Report available to the public on their respective webpages.<sup>18</sup>

IQA guidelines define what it means for information to be of sufficient quality to meet the statutory standard. Specifically, quality “is an encompassing term comprising utility, objectivity, and integrity.”<sup>19</sup> Among other standards relevant here, “in assessing the usefulness of the information that the agency disseminates to the public, the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public.”<sup>20</sup> And, “objectivity” includes:

Whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.<sup>21</sup>

Further, where the information is disseminated in “a statistical context,” the DHS guidelines require that DHS “generate the original and supporting data, and develop the analytic results, using sound statistical and research methods.”<sup>22</sup> DOJ’s guidelines require the use of “reliable data sources, sound analytical techniques, and document[ed] methods and data sources.”<sup>23</sup>

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<sup>16</sup> See DHS Guidelines; cf. DOJ Guidelines (defining information to include “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. It includes information that an agency disseminates from a web page, but does not include information disseminated by others and accessible through hyperlinks from an agency web page.”).

<sup>17</sup> See DHS Guidelines; see also DOJ Guidelines (“Except for those categories of information that are specifically exempted from coverage (see below), these guidelines apply to all information disseminated by DOJ and DOJ initiated or sponsored dissemination of information by DOJ grantees, contractors, or cooperators on or after October 1, 2002, regardless of when the information was first disseminated.”).

<sup>18</sup> See DHS Press Release (providing a link to the Report at a dhs.gov web domain); DOJ Press Release (providing a link to the Report at a justice.gov web domain).

<sup>19</sup> See OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> DHS Guidelines.

<sup>23</sup> DOJ Guidelines.

As set forth in detail in the following section, the Report fails to meet the IQA requirements regarding quality, utility, objectivity, and integrity. These failures hamper the public's ability to participate in the ongoing debate regarding immigration policy and national security by providing misinformation with the purpose of bolstering the Administration's anti-immigrant agenda. The Report's failings also may impede public safety agencies who look to glean insights from the Report for accurately assessing and protecting against true national security threats.

### **III. The Report Violates the IQA by Disseminating Information Which is Designed to Mislead the Public About the Risk that Immigrants to the United States Will Commit Acts of Terrorism.**

#### **A. The Report provides misleading and biased information by substituting foreign-born for foreign national.**

Section 11 directed the Departments to provide information related to foreign nationals and terrorism-related offenses, which the Executive Order claimed would be used to inform the country's immigration policy. Instead, the Report provided information regarding *foreign-born* individuals rather than foreign nationals, which allows it to attribute 73 percent of international terrorism-related offenses to individuals who the Departments apparently perceive as foreign, despite their American citizenship.

The Report's topline conclusion is that "at least 549 individuals were convicted of international terrorism-related charges in U.S. federal courts between September 11, 2001, and December 31, 2016," and that "approximately 73 percent (402 of these 549 individuals) were foreign-born."<sup>24</sup> The Department's math, however, relies on the wrong inputs in a misleading way. The report further states that of these 549 individuals, 254 were not U.S. citizens, 148 were foreign-born, naturalized and received U.S. citizenship, and 147 were U.S. citizens by birth.<sup>25</sup> Had the Report followed the Executive Order's directive to report on foreign nationals, even based on its own, flawed, data, it would have concluded that fewer than half, or 46 percent, of individuals charged or convicted of international terrorism-related offenses met this criterion.

The failure to use the proper numerator (or, more precisely, the one that would have actually reflected the data collection requested by E.O. 13780) is only part of the problem. The Departments have also failed to adhere to the IQA's requirements that federally produced data also be, among other criteria, useful and unbiased.<sup>26</sup> Responding to a request for information that purports to be about the terrorist threat that foreign national immigrants pose to the United States by substituting information that includes naturalized citizens fails that metric and perpetuates the Administration's discriminatory view that only native-born individuals are actually American. Such a manipulation of information is misleading and biased, in violation of IQA guidelines.

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<sup>24</sup> Report at 2.

<sup>25</sup> *Id.*

<sup>26</sup> OMB Guidelines.

**B. The Report’s substitution of international terrorism for all terrorism misleadingly ignores domestic terrorism, artificially inflating the proportion of terrorist incidents committed by foreign nationals.**

In response to the Executive Order’s charge that the Departments provide information regarding foreign nationals charged with or convicted of terrorism-related offenses, the Report fails to do so and instead provides data related only to *international* terrorism-related offenses.<sup>27</sup> This sleight of hand artificially increases the proportion of foreign nationals presented as responsible for terrorist incidents.

The Report states that it has only considered information about international terrorism-related offenses, specifically: “public convictions in federal courts between September 11, 2001, and December 31, 2016 resulting from international terrorism investigations, including investigations of terrorist acts planned or committed outside the territorial jurisdiction of the United States over which Federal criminal jurisdiction exists and those within the United States involving international terrorists and terrorist groups.”<sup>28</sup> In so doing, the Report categorically excludes all terrorism-related offenses that occurred in the United States, and which were planned and executed by individuals without international connections. This exclusion dramatically misrepresents the actual terrorist threat posed by foreign nationals in the United States.

In contrast to the Report’s representations, studies show, as the government itself is aware, that native-born citizens commit significant numbers of terrorist attacks in the United States.<sup>29</sup> An April 2017 Government Accountability Office report concluded that “of the 85 violent extremist incidents that resulted in death since September 12, 2001, far right wing violent extremist groups were responsible for 62 (73 percent) while radical Islamist violent extremists were responsible for 23 (27 percent).”<sup>30</sup> Similarly, DHS and the Federal Bureau of Investigation published an intelligence bulletin in May 2017 titled, “White Supremacist Extremism Poses Persistent Threat of Lethal Violence.” That bulletin states that white supremacist extremists, who are very rarely immigrants, were responsible for 49 homicides in 26 attacks from 2000 to

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<sup>27</sup> Report at 2.

<sup>28</sup> *Id.*

<sup>29</sup> See Alex Nwrasteh, *New Government Terrorism Report Provides Little Useful Information*, Cato Inst. (Jan. 16, 2018), <https://www.cato.org/blog/new-government-terrorism-report-nearly-worthless> (“Since the beginning of 2002, native-born Americans were responsible for 78 percent of all murders in terrorist attacks committed on U.S. soil while foreign-born terrorists only committed 22 percent.”); see also Lachlan Markay and Spencer Ackerman, *Fuzzy Math: Team Trump Cooks Terror Stats for Bogus Immigration Agreement*, Daily Beast (Jan. 16, 2018), <https://www.thedailybeast.com/team-trump-cooks-terror-stats-for-bogus-immigration-argument?via=ios> (citing a New America Foundation study, which found that 85 percent of individuals who were charged with, or died engaging in, an act of terrorism were United States citizens or lawful permanent residents.”).

<sup>30</sup> See U.S. Gov’t Accountability Office, *Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts* at 3-5 (Apr. 2017), available at <http://www.gao.gov/assets/690/683984.pdf>.

2016 . . . more than any other domestic extremism movement.”<sup>31</sup> Despite the existence of this threat, the Departments omitted data related to domestic terrorism without explanation.

By presenting data that omits completely information about the threat posed by domestic terrorists without international ties, as responsive to the directive to provide data regarding *all* terrorism, domestic and international, the Departments have presented incomplete and misleading information in violation of the IQA. Indeed, the Departments’ data has artificially inflated the percentage of foreign nationals that they can claim are involved in terrorism-related offenses. It is common sense that foreign nationals are more likely to be involved in terrorist events occurring in foreign countries or involving foreign groups than they are to be involved in purely domestic terrorist events.<sup>32</sup> As one commentator concluded, “[i]ncluding the actual number of deaths caused by terrorists flips the DHS/DOJ statistics on its head.”<sup>33</sup> Such a manipulation of the data plainly violates information quality requirements.

**C. The Report’s inclusion of individuals who committed terrorism overseas and whose only apparent tie to the United States is extradition to the United States for prosecution is misleading.**

The Executive Order also directs the Departments to collect information regarding terrorist events that took place in the United States, specifically data about individuals who were charged with or convicted of terrorism-related offenses “*while in the United States*” or who have been removed from the United States for various reasons.<sup>34</sup> The Report includes, however, information about individuals who “committed offenses while located abroad, including those who were transported to the United States for prosecution.”<sup>35</sup> Although someone who has been extradited to the United States for trial may be charged and convicted while in the United States, the offenses committed by that person overseas do not necessarily reflect the actual terror threat to the United States, nor could they serve to inform the United States’ immigration policy. Including information about offenses that occur overseas will, however, naturally increase the number of foreign nationals the Departments can claim are responsible for terrorism-related offenses.

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<sup>31</sup> See FBI & DHS Joint Intelligence Bulletin, White Supremacist Extremism Poses Persistent Threat of Lethal Violence 4 (May 10, 2017), *available at* <https://www.documentcloud.org/documents/3924852-White-Supremacist-Extremism-JIB.html>; *see also* Jana Winter, *FBI and DHS Warned of Growing Threat from White Supremacists Months Ago*, Foreign Policy (Aug. 14, 2017), <http://foreignpolicy.com/2017/08/14/fbi-and-dhs-warned-of-growing-threat-from-white-supremacists-months-ago/> (citing the FBI & DHS Joint Intelligence Bulletin, *supra* note 31).

<sup>32</sup> William Braniff, executive director of the National Consortium for the Study of Terrorism and Responses to Terrorism (START) at the University of Maryland, noted that “If you’re looking at international terrorism, you’re going to see people with a more international background—that’s just common sense. . . . [DHS and DOJ] exclude a lot of data what would present a different picture.” *See* Markay and Ackerman, *supra* note 29.

<sup>33</sup> Nwrasteh, *supra* note 29.

<sup>34</sup> Exec. Order at 1.

<sup>35</sup> Report at 2.

The Departments provide no information in the Report about why they chose to include terrorism-related offenses that did not occur in the United States. Moreover, in plain violation of IQA guidelines that agencies provide supporting data for statistical information, the Departments do not provide access to underlying aggregate data that would reveal the degree to which including overseas offenses misrepresents the nexus between foreign nationals and the risk of terrorism in the United States. As OMB itself notes in the context of this guideline, doing so is necessary, “so that the public can assess for itself whether there may be some reason to question the objectivity of the sources.”<sup>36</sup> By failing to provide the public with this opportunity, the Departments have violated the IQA.

**D. The Report’s examples of foreign nationals charged with or convicted of terrorism-related offenses are misleading and perpetuate the Administration’s discriminatory narrative that Muslims are likely to commit acts of terrorism.**

The Report provides eight “illustrative examples among the 402 convictions of foreign nationals or naturalized U.S. citizens.”<sup>37</sup> Because the Report offers no raw data tables revealing biometric information for the 402 convicted persons—despite IQA guidelines directing that agencies provide supporting data for statistical information<sup>38</sup>—there is no way for outside observers to test the Departments’ assertion that these examples are “illustrative.” Even without the ability to verify, however, it seems highly unlikely that the vignettes offered as “illustrative examples” are in any way representative for the obvious reason that they exclusively chronicle Muslims who arrived in the United States through the precise immigration provisions the Administration now seeks to do away with: refugee resettlement, migration preferences to support family reunification, and the diversity visa lottery.<sup>39</sup>

By selecting anecdotes that perpetuate the Administration’s discriminatory view of immigrants and failing to provide transparency about the underlying data that would allow the public to determine whether these anecdotes are misrepresentative, as they appear to be, the Report again fails the IQA guideline requirement to be objective.

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<sup>36</sup> OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>37</sup> Report at 3-7.

<sup>38</sup> OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>39</sup> See Faiza Patel, *Trump Administration’s Fuzzy Math on Terrorist Origins is More than Misleading -- It’s Dishonest*, Just Security (Jan. 16, 2018), <https://www.justsecurity.org/51084/trump-administrations-fuzzy-math-terrorist-origins-misleading-its-dishonest/>; see also Dan Merica and Tal Kopan, *Trump demands Congress terminate diversity immigration lottery*, CNN (Nov. 1, 2017), <http://www.cnn.com/2017/11/01/politics/donald-trump-chuck-schumer-nyc-attack/index.html> (detailing President Trump’s plans to reform the immigration system).

**E. The Report’s information relating to gender-based violence is misleading and perpetuates anti-Muslim stereotypes.**

Subsection (iii) of Section 11 of the Executive Order instructs the Departments to provide information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals. Given that the Administration proposed eliminating funding for programs to prevent violence against women at the same time that the President requested this information,<sup>40</sup> the motivation in the information request does not appear to be the actual protection of women but instead appears to be to perpetuate stigma about Muslims. The information provided by the Report, which purports to be responsive to the Executive Order’s directive, is inaccurate and misleading.

In fact, as the Report must acknowledge, the federal government has not “recorded and tracked in an aggregated statistical manner information pertaining to gender-based violence against women committed at the federal and state level.”<sup>41</sup> Nor does the federal government have reliable information regarding the prevalence of so-called “honor killings.” The Departments appear not to possess any information that is responsive to the directive of subsection (iii) that meets IQA standards.

Yet, instead of reaching that conclusion and recommending further study, the Departments provided alternate data, which range from irrelevant to inaccurate. The Report cites the average annual number of non-fatal domestic violence victimizations, which is an alarmingly large number, but plainly fails to reveal the proportion perpetuated by foreign nationals.<sup>42</sup> Indeed, studies show that gender-based violence rates are largely the same across all countries, a point which further casts doubt on the Report’s attempt to link gender-based violence with national origin.<sup>43</sup>

The Report then points to discredited data to perpetuate the stigmatization of Muslims inherent in the Executive Order’s implication that “honor killings” are a significant problem in the United States. First, the Report fails to define what it interprets the term “honor killings” to mean. The Report next asserts that “a study commissioned and provided to the DOJ’s Bureau of Justice Statistics in 2014 estimated that an average of 23-27 honor killings occur every year in the United States.”<sup>44</sup> As an initial matter, the study was not commissioned by the Department of

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<sup>40</sup> See Melissa Jeltsen, *Trump’s Budget Would Be Devastating to Poor Victims of Domestic Abuse*, HuffPost (Mar. 17, 2017), [https://www.huffingtonpost.com/entry/trump-budget-domestic-abuse-victims\\_us\\_58cc2184e4b0ec9d29dbd9f7](https://www.huffingtonpost.com/entry/trump-budget-domestic-abuse-victims_us_58cc2184e4b0ec9d29dbd9f7).

<sup>41</sup> Report at 7.

<sup>42</sup> *Id.*

<sup>43</sup> K.M. Devries et al., *The Global Prevalence of Intimate Partner Violence Against Women*, 340 Science 1527, 1527-1528 (June 2013) (estimating that 30 percent of women experience domestic violence and that though there are some slight regional variations, the rates exceed 19 percent everywhere in the world except East Asia).

<sup>44</sup> Report at 8.

Justice, but by a private organization.<sup>45</sup> Moreover, the author of that study has disclaimed the accuracy of its conclusion, saying “it’s not terribly scientific,” a fact not disclosed by the Report, despite the OMB guidelines’ directive that “error sources affecting data quality should be identified and disclosed to users.”<sup>46</sup>

Finally, the Report also cites a study regarding the number of women and girls who may be *at risk for* female genital mutilation, noting that the number was three times higher in 2012 than in 1990.<sup>47</sup> What the Report fails to explain is that the study’s methodology simply correlates the risk of female genital mutilation in various countries to the number of women and girls living in the United States who were born in that country or who lived with a parent born in that country.<sup>48</sup> In other words, the study that purports to inform the risk that immigrants pose with regard to violence against women, simply tracks immigration rates, and explicitly does not present “scientifically valid information” about the behavior of those immigrant populations in the United States.

#### IV. Muslim Advocates is an Affected Person

Muslim Advocates is an affected person entitled to seek a correction of disseminated information that fails to meet the IQA’s quality standards. Muslim Advocates is a civil rights organization that promotes freedom and justice for Americans of all faiths, with a particular focus on issues impacting the Muslim community. Muslim Advocates engages in civil rights litigation, policy advocacy, and public education to fight inaccurate stereotypes about Muslims and other immigrants. In particular, Muslim Advocates works to ensure that policies enacted under the banner of national security do not wrongfully discriminate against Muslims and are not based on inaccurate or misleading information.

The guidelines define “affected person” as one who “may benefit or be harmed by the disseminated information,” including one who “use[s] information.”<sup>49</sup> Muslim Advocates uses reliable information concerning the American immigration population in its work, and it, as well as its clients, is also “harmed” by the dissemination of the Report, which seeks to portray immigrants, and particularly Muslim immigrants, as inherently violent and likely to commit acts of terror. Moreover, the Report serves as a mechanism to justify the travel and refugee bans, which the Administration has attempted to justify, at least in part, by reference to the kinds of inaccurate data and biased findings contained in the Report. The Report serves as further *post hoc* justification for those efforts, which directly harm Muslim Advocates and its clients.

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<sup>45</sup> Jesse Singal, *Here’s What the Research Says About Honor Killings in the U.S.*, N.Y. Mag. (March 6, 2017), <http://nymag.com/daily/intelligencer/2017/03/heres-what-the-research-says-about-american-honor-killing-s.html>.

<sup>46</sup> *See id.*; *see also* OMB Guidelines 8452, 8459.

<sup>47</sup> Report at 8.

<sup>48</sup> *Id.* at 8 n.17 (citing Howard Goldberg et al., *Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk, 2012*, 131 Pub. Health Rep. 340-347 (2016)).

<sup>49</sup> *See* DHS Guidelines; *see also* DOJ Guidelines.

A retraction and correction of the Report and its findings would therefore benefit Muslim Advocates by advancing its mission of advocating on behalf of Muslim, Arab, South Asian, and immigrant communities.

**IV. Conclusion and Relief Requested**

Given the importance and immediacy of the public dialogue on the Administration's proposed immigration policy efforts, and the impact that the misleading Report may have on this debate, we request that the Departments retract and, if you determine that publishing a revised report is necessary, correct the Report as outlined above within 60 days.

Sincerely,

/s/ Robin Thurston

Robin Thurston, Senior Counsel  
Democracy Forward Foundation

/s/ Sirine Shebaya

Sirine Shebaya, Senior Staff Attorney  
Muslim Advocates

*Counsel for Muslim Advocates*

**ATTACHMENT  
C**



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

*Washington, D.C. 20530*

**JUN 15 2018**

Robin Thurston  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, DC 20043-4553

Sirine Shebaya  
Muslim Advocates  
P.O. Box 71080  
Oakland, CA 94612

Dear Ms. Thurston and Ms. Shebaya:

This is to notify you that the Department of Justice (Department) is in receipt of your January 29, 2018 request for correction under the Department's Information Quality Act (IQA) guidelines. You seek retraction and correction of information in the Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States Initial Section 11 Report. At this time, your request is under review pursuant to the Department's IQA guidelines. If the Department of Justice and the Department of Homeland Security, to which you have also submitted your IQA request, determine that a correction is warranted we will notify you at that time. Given the number and complexity of issues raised in your request, additional time is required to review and provide any response. The Department anticipates providing a further response to your request, or update on its review of your request, within sixty (60) days of this letter.

Sincerely,

A handwritten signature in blue ink that reads "Jessica E. Hart".

Jessica E. Hart  
Intergovernmental and Public Liaison

**ATTACHMENT  
D**



Homeland  
Security

June 19, 2018

Robin Thurston  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, DC 20043-4553

Sirine Shebaya  
Muslim Advocates  
P.O. Box 71080  
Oakland, CA 94612

Dear Ms. Thurston and Ms. Shebaya:

This is to notify you that the Department of Homeland Security is in receipt of your January 28, 2018 request for correction under the Department's Information Quality Act (IQA) guidelines. You seek retraction and correction of information in the Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States Initial Section 11 Report. At this time, your request is under review pursuant to the Department's IQA guidelines. If the Department of Homeland Security and the Department of Justice determine that a correction is warranted, you will be notified at that time.

Please note that, given the number and complexity of issues raised in your request, additional time will be required to review and provide any response. The Department anticipates providing a further response to your request or update on its review of your request within sixty (60) days of this letter.

Sincerely

A handwritten signature in blue ink that reads "Tyrone Huff".

Tyrone Huff  
Office of the Chief Information Officer  
Business Management Office  
United States Department of Homeland Security

**ATTACHMENT  
E**



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

*Washington, D.C. 20530*

**JUL 31 2018**

Robin Thurston  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, DC 20043-4553

Sirine Shebaya  
Muslim Advocates  
P.O. Box 71080  
Oakland, CA 94612

Dear Ms. Thurston and Ms. Shebaya:

The Department of Justice (Department) writes in further response to your January 29, 2018, request for correction under the Information Quality Act (IQA) and the Department's implementing guidelines. *See* U.S. Dep't Justice, Information Quality: Ensuring the Quality of the Information Disseminated by the Department (Nov. 1, 2016) (the "IQA Guidelines"), available online at <https://www.justice.gov/iqpr/information-quality>. Your request seeks retraction and correction of information in Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States Initial Section 11 Report (Initial Section 11 Report or Report). The Department provided an interim response on June 15, 2018. As noted in that response, the Department required additional time to resolve your request given the number and complexity of issues raised in your request.

The Department has considered your IQA request reviewed against the Initial Section 11 Report. The IQA Guidelines require that Department components ensure the quality, objectivity, utility, and integrity of information disseminated. Consistent with the directive to ensure objectivity by using reliable data sources and documentation of methods and data sources, the Initial Section 11 Report outlines the scope and source of the data utilized and, where applicable, provides appropriate caveats, thereby meeting all applicable requirements.

In your objections to the Initial Section 11 Report, you first raise a concern about over-inclusivity. Your letter asserts that the Report violated the IQA by "substituting foreign-born for foreign national." As you acknowledge on page 6, however, the Report provided figures for *both* foreign-born individuals and foreign nationals. It is no violation to provide additional data, particularly when Executive Order 13780 requires "[a]ny other information relevant to public

Robin Thurston  
Sirine Shebaya  
Page Two

safety and security as determined by the Secretary of Homeland Security or the Attorney General.” The letter does not challenge the reliability or accuracy of this information.

Second, your letter alleges that the Report ignores instances of domestic terrorism. The Report, however, clarifies that the Report “does not include individuals convicted of offenses relating to domestic terrorism, nor does it include information related to terrorism-related convictions in state courts.” As you may be aware, the federal criminal code contains no statute specifically prohibiting “domestic terrorism,” which is often prosecuted at the state level, and the Department therefore does not possess comprehensive data on such activity, assuming such data would have been responsive to the Executive Order. In light of the accurate descriptions of the data used in the Report, and the relevant caveats and noted limitations, the data contained in the Report is not misleading.

Third, your letter alleges that the inclusion of individuals extradited to the United States for prosecution is misleading. Again, the data used was clearly stated and accurately described. The Report stated that the “information includes . . . defendants who were transported to the United States for prosecution.” *Id.* The accurate description of the data included allows the reader to draw his or her own conclusions.

Fourth, your letter alleges that the Report’s examples of foreign nationals perpetuate a “discriminatory narrative” and are misleading. That charge is a subjective conclusion based on your interpretation of the Report and is premised on the alleged existence of a preexisting “narrative.” The Department disagrees with your subjective conclusion and its premise and, in any event, your conclusion presents no cognizable violation of the Department’s Guidelines.

Fifth, you have also noted a lack of data in the federal government regarding domestic violence and honor killings. The Report acknowledges that the “federal government lacks comprehensive data regarding incidents of such offenses,” as there is no federal statute specifically addressing honor killings and most domestic violence offenses are prosecuted at the state level. *Id.* at 8. In an effort to disseminate information about these crimes, which are of a complex and highly sensitive nature, the Office of Justice Programs (OJP) is conducting two independent reviews of relevant research pertaining to honor violence in the United States. The first is an internal review, led by social science analysts and research assistants at the National Institute of Justice who specialize in gender-based violence. This review will result in a report summarizing the current state of research with regards to scope, scale, methods, context, and the criminal justice response. The second review anticipates an externally commissioned report by a researcher who specializes in exploring and understanding honor crimes in the United States.

Finally, your letter takes issue with certain statements of the Attorney General in a press release announcing the Report. Such statements are, of course, not part of the Report that is the subject of your request. In any event, the IQA Guidelines do not apply to press releases announcing or supporting the release of information. U.S. Dep’t Justice, Information Quality:

Robin Thurston  
Sirine Shebaya  
Page Three

Ensuring the Quality of the Information Disseminated by the Department (Nov. 1, 2016)  
<https://www.justice.gov/iqpr/information-quality>. Any statements made by the Department as part of a press statement in advance of the release of this Report are outside the scope of the IQA. *Id.*

For the reasons above, the Department has determined that there is no inconsistency with the IQA Guidelines. The Department concludes that neither retraction nor correction of information in the Initial Section 11 Report is required under the IQA Guidelines.

The Department's IQA guidelines provide petitioners with the right to request reconsideration of the Department's denial. Any request for reconsideration must be received within 45 calendar days from the date of this letter. Please direct such a request to:

Department of Justice  
ATTN: Office of Legislative Affairs  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Sincerely,

A handwritten signature in black ink that reads "Jessica E. Hart". The signature is written in a cursive style with a large, looped initial "J".

Jessica E. Hart  
Intergovernmental and Public Liaison

**ATTACHMENT  
F**

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

August 1, 2018

Robin Thurston  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, DC 20043-4553

Sirine Shebaya  
Muslim Advocates  
P.O. Box 71080  
Oakland, CA 94612

Dear Ms. Thurston and Ms. Shebaya:

The Department of Homeland Security ("Department") writes in further response to your January 28, 2018, request for correction under the Department's Information Quality Act ("IQA") guidelines. Your request seeks retraction and correction of information in the Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States Initial Section 11 Report ("Initial Section 11 Report" or "Report"). The Department provided an interim response to your request on June 19, 2018. As noted in that response, the Department required additional time to resolve your request given the number and complexity of issues raised in your request.

The Department has now completed its review of your IQA request and its contentions in connection with the Initial Section 11 Report and the Department's IQA guidelines. Based on information presently available, the Department has determined that there is no inconsistency with the information contained in the Initial Section 11 Report and the Department's IQA guidelines.

Section 11(i) of Executive Order (EO) 13780 required the Secretary of Homeland Security, in consultation with the Attorney General, to provide information regarding the number of foreign nationals in the United States who have been: charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reasons. Pursuant to Section 11(i),

the Department and the Department of Justice (DOJ) worked collaboratively to provide the information for the Initial Section 11 Report.

In the request, you ask that additional data, context, and explanations be provided. For instance, you argue that the Report should include information on domestic terrorism. However, the Report specifically identified what information was available and noted that because of previous information collection practices some of the data presented did not capture the full spectrum of statistics envisioned by the EO. Report at 1. As the Report makes clear on its face, the scope of the data on terrorism convictions is confined to international terrorism-related offenses. *Id.* at 2. On this point as with other data, the information contained in the Report is annotated to explain the data being provided, and the Report contains caveats for the data limitations. For example, the report provides that “DHS and DOJ do not yet have complete, final information” concerning the 402 convictions of foreign nationals or naturalized U.S. citizens. *Id.* at 2-3. Where data was not available, the lack of data is either noted in the report or other sources of estimated data are referenced with citations to those sources. *Id.* at 8 & n.15.

Much of your request does not specifically challenge the accuracy of the data contained in the Report, but rather requests that the Report be retracted to “correct the misimpression” that it supposedly created. In addition, you advance arguments based not on the data in the Report itself, but on your differing interpretation of that data, which do not warrant correction under the Department’s IQA guidelines. As noted in the Report, the Department will endeavor to provide additional information in future reports that are required to be issued under the EO. With respect to such future reports, the Department is working to refine the available data, provide more detail where practicable, and examine other datasets that might warrant release in the interest of transparency about the threat environment, especially the challenge of terrorist recruitment and radicalization.

Based on its review of your request, the Department concludes that neither retraction nor correction of information in the Initial Section 11 Report is warranted, and therefore denies your request. As noted above, the Department will be providing additional information, consistent with privacy protections and other limitations, in future reports issued pursuant to the requirements of Executive Order 13780. The Department will take the points raised in your IQA request into consideration in the preparation of future reports.

The Department's IQA guidelines provide petitioners with the right to an administrative appeal. Any appeal of the Department's decision on your request must be submitted within 45 business days of this response letter. Please direct any appeals to:

Department of Homeland Security  
ATTN: Office of the Chief Information Officer/Information Quality Officer  
245 Murray Lane, SW  
Mail Stop 0136  
Washington, DC 20528

Email: [DHS.InfoQuality@hq.dhs.gov](mailto:DHS.InfoQuality@hq.dhs.gov)

Fax Number: 202-343-2530

Sincerely,

A handwritten signature in blue ink that reads "Tyrone Huff". The signature is stylized with a large, looped flourish at the end.

Tyrone Huff

**ATTACHMENT  
G**



By FedEx

September 13, 2018

U.S. Department of Justice  
Attn: Office of Legislative Affairs  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Re: *Request for Reconsideration of Denial of Request for Correction Under the Information Quality Act*

To whom it may concern:

On behalf of Muslim Advocates, we respectfully submit this request for reconsideration of the Department of Justice's ("DOJ" or "Department") denial of Muslim Advocates' request for correction pursuant to the Information Quality Act ("IQA"), submitted by letter dated January 29, 2018. We requested that the Department retract and correct a report it published, together with the Department of Homeland Security, pursuant to Section 11 of Executive Order 13780, titled Protecting the Nation From Foreign Terrorist Entry Into the United States (the "Report").<sup>1</sup> We are requesting reconsideration because the Department's denial failed to apply the requirements of the IQA and its implementing Guidelines and failed to respond adequately to our arguments in favor of correction. As such, the Department's denial was in error.

The Report must be corrected because the information it presents inflates the proportion of terrorist events that it can attribute to immigrants, especially Muslim men. Among its errors, it draws an artificial distinction between U.S.-born citizens and naturalized citizens, perpetuating an anti-immigrant agenda. It inexplicably excludes analysis of the serious domestic terror threat. And it cherry picks non-citizen Muslim men for profiling, even though these examples do not present an accurate and complete picture of the terror threat to Americans. The Report is misleading, biased, and lacking in utility, and as such does not meet the level of information quality required of the Department of Justice under the IQA.

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<sup>1</sup> U.S. Department of Homeland Security and U.S. Department of Justice, Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report (Jan. 2018), <https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf>.

## I. Requirements of the IQA.

The IQA, which is found at Section 515 of Public Law 106-554, together with its implementing regulations and guidelines, requires that information disseminated to the public by federal agencies, including by the Department, be accurate, reliable, and unbiased.<sup>2</sup>

As required by the IQA, the Office of Management and Budget (“OMB”) issued guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”<sup>3</sup> OMB promulgated these guidelines via notice and comment rulemaking.<sup>4</sup> The Department has also promulgated its Information Quality Guidelines, which “apply to information disseminated by the Department on or after October 1, 2002.”<sup>5</sup>

Under OMB and DOJ guidelines (1) information (2) disseminated by an agency (3) must be of requisite quality. Quality is “an encompassing term comprising utility, objectivity, and integrity.”<sup>6</sup> “Utility” is measured, in part, by “assessing the usefulness of information . . . not only from the perspective of the agency but also from the perspective of the public.”<sup>7</sup>

“Objectivity” requires that the information be “presented in an accurate, clear, complete, and unbiased manner,” and “within a proper context.”<sup>8</sup> Objectivity may also require that together with disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.<sup>9</sup> Further, for information to be objective, it must use “reliable data sources, sound analytical

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<sup>2</sup> Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 & 154, 44 U.S.C. § 3516, note (West); Office of Mgmt. & Budget, Exec. Office of the President, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002) (“OMB Guidelines”); U.S. Dep’t of Justice, Information Quality: Ensuring the Quality of the Information Disseminated by the Department (Nov. 1, 2016), <https://www.justice.gov/iqpr/information-quality> (“DOJ Guidelines”).

<sup>3</sup> Consolidated Appropriations Act, § 515(a).

<sup>4</sup> See OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>5</sup> DOJ Guidelines.

<sup>6</sup> See OMB Guidelines at 8459. DOJ Guidelines explicitly apply the OMB Guidelines’ definitions of “quality”, “utility”, “objectivity”, and “integrity”.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

techniques, and document[ed] methods and data sources.”<sup>10</sup> In a “statistical context, the original and supporting data shall be generated.”<sup>11</sup>

Affected persons may seek and obtain, where appropriate, timely correction of information disseminated by an agency that does not comply with OMB Guidelines or the Department’s Guidelines.<sup>12</sup>

## II. Executive Order 13780 Section 11 Report.

Executive Order 13780 purports to promote the “policy of the United States to protect its citizens from terrorist attacks, including those committed by foreign nationals” by “improv[ing] the screening and vetting protocols and procedures associated with the visa-issuance process and the USRAP [United States Refugee Admissions Program].”<sup>13</sup> Section 11 of the Executive Order instructs the Secretary of Homeland Security, in consultation with the Attorney General, to “collect and make publicly available” the following information:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reasons;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and who have engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States;

(iii) information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security or the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.<sup>14</sup>

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<sup>10</sup> DOJ Guidelines.

<sup>11</sup> OMB Guidelines at 8459.

<sup>12</sup> OMB Guidelines at 8459, DOJ Guidelines.

<sup>13</sup> Exec. Order No. 13780, 82 FR 13209 (Mar. 6, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-03-09/pdf/2017-04837.pdf>. Executive Order 13780 is colloquially known as Muslim Ban 2.0 or Travel Ban 2.0.

<sup>14</sup> *Id.*

The Departments jointly disseminated the Report in response to this directive on January 16, 2018. The Report identified 549 individuals convicted of international terrorism charges in U.S. federal courts between September 11, 2001, and December 31, 2016. It stated that 73 percent of those individuals were foreign-born; it did not provide such a statistic for foreign nationals, *i.e.*, foreign-born or naturalized U.S. citizens. It also profiled eight “illustrative examples” of the individuals, all of whom are non-U.S. citizen Muslim men. And it discussed several studies in response to the request regarding gender-based violence against women.

### III. The Request for Correction.

Muslim Advocates submitted a request for retraction and correction of the Report to the Department on January 29, 2018 (along with an identical request for correction to the Department of Homeland Security).<sup>15</sup> This Request identified five primary quality errors in the Report, specifically:

- The Report provides misleading and biased information by substituting foreign-born for foreign national.
- The Report’s substitution of international terrorism for all terrorism misleadingly ignores domestic terrorism, artificially inflating the proportion of terrorist incidents committed by foreign nationals.
- The Report’s inclusion of individuals who committed terrorism overseas and whose only apparent tie to the United States is extradition to the United States for prosecution is misleading.
- The Report’s examples of foreign nationals charged with or convicted of terrorism-related offenses are misleading and perpetuate the Administration’s discriminatory narrative that Muslims are likely to commit acts of terrorism.
- The Report’s information relating to gender-based violence is misleading and perpetuates anti-Muslim stereotypes.

In its Request, Muslim Advocates also explained why the Report is subject to the IQA and why Muslim Advocates is an “affected person” within the meaning of the IQA. The Department, in its Response, does not challenge these contentions.

The Department provided an interim response on June 15, 2018, in which it stated it would take additional time to respond to the Request. The Department provided its final response on July 31, 2018 (the “Response”), in which it states that “[t]he Department concludes that neither retraction nor correction of information in the Initial Section 11 Report is required under the IQA Guidelines.”

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<sup>15</sup> Attached hereto. Hereafter, the “Request.”

For the reasons set forth below, this conclusion was in error. Accordingly, Muslim Advocates requests that the Department reconsider it, and issue a retraction and correction of the Report.

#### **IV. The Department Should Reconsider Its Denial of Muslim Advocates' Request Because the Denial Failed to Apply IQA Requirements and Failed to Defend the Report's Numerous IQA Violations.**

As set forth in our Request, the Report consistently presents information in a manner that misleadingly inflates the proportion of terrorist incidents that are perpetrated by immigrants, especially Muslim men. In so doing, it fails the IQA requirement of objectivity, which requires that information be presented in a manner that is not misleading or biased.<sup>16</sup> It also fails the IQA requirement of utility, because the misleading information is useless to the public in assessing the actual terror threat posed to the United States and in making informed immigration policy decisions in response.<sup>17</sup> This conclusion is buttressed by the letter submitted by former counter-terrorism and national security officials in support of this appeal, which analysis we incorporate herein.<sup>18</sup>

DOJ's Response failed to establish the Report's objectivity or utility in the face of our arguments and failed to engage meaningfully with our complaints about the quality of information disseminated. The Department should therefore change its decision and retract and correct the Report.

##### **A. The Response Errs in Defending the Misleading and Biased Substitution of Foreign-Born for Foreign National.**

The Response incorrectly refused to retract and correct the Departments' substitution of "foreign-born" for "foreign national" in the Report's analysis of the immigration status of certain individuals convicted of international terrorism related charges. This substitution presents information in a manner that allows the Report to attribute a higher percentage of terrorism charges to immigrants, violating the IQA's requirements of objectivity in presentation and utility.

Section 11 expressly directed the Departments to provide information related to *foreign nationals* and terrorism-related offenses. Instead, under a heading purporting to provide "Information Regarding the Number of Foreign Nationals Charged with or Convicted of Terrorism-Related Offenses..." the Report's first and primary conclusion is that of the at least 549 individuals who were convicted of international terrorism-related charges during the relevant time period "approximately 73 percent (402 of these 549 individuals) were *foreign-born*." (emphasis added). While the Report thereafter states how many of the 549 individuals are U.S.

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<sup>16</sup> OMB Guidelines at 8459, DOJ Guidelines.

<sup>17</sup> OMB Guidelines at 8459, DOJ Guidelines.

<sup>18</sup> August 13, 2018 Letter from Joshua A. Geltzer, *et al*, to Attorney General Sessions and Secretary Nielsen, available at <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/09/IQA-Letter.pdf>.

citizens, naturalized citizens, or U.S. citizens by birth, its emphasis is on foreign-born individuals, the only category for which it calculates a percentage of the total number.<sup>19</sup> As we pointed out in the Request, if the Report had responded to the charge to provide information about foreign nationals, it would have concluded that a much smaller percentage—46 percent of relevant convictions—were of foreign nationals (based on its own, otherwise flawed data).

The decision to highlight convictions of foreign-born individuals is biased in presentation, in violation of the IQA’s objectivity requirement, an issue ignored by the Response.<sup>20</sup> The Department’s Guidelines state that objectivity requires that “disseminated information, as a matter of substance *and presentation*, [be] ... *unbiased*.”<sup>21</sup> OMB’s Guidelines similarly state that objectivity “involves two distinct elements, presentation and substance”, and “includes whether disseminated information is presented in an accurate, clear, complete, and unbiased manner.”<sup>22</sup> The Report fails this requirement because its presentation promotes the biased and misleading conclusion that immigrants are dangerous. This conclusion is buttressed by the discussion of the Report by senior members of the Administration, including the President, all of whom repeat the 73 percent figure, rather than the lower percentage related to non-citizens.<sup>23</sup>

The Department’s Response also ignores the Report’s failure to meet the requirement of usefulness. OMB’s Guidelines require disseminated information to have “utility”, which “refers to the usefulness of the information to its intended users, including the public.” To meet this standard, “the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public.”<sup>24</sup> There is no utility in distinguishing between U.S.-born and foreign-born citizens. The distinction was not required by Section 11, it does not reveal meaningful differences in rights or responsibilities, nor is it relied on by the intelligence community in anti-terrorism work.<sup>25</sup> It serves only to artificially divide American citizens from one another.

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<sup>19</sup> The Report further emphasizes the foreign-born category of individuals (as opposed to foreign nationals), by including both non-citizens and naturalized U.S. citizens (but not U.S. citizens by birth) in its supposed illustrative examples of convicted individuals.

<sup>20</sup> Request at 6.

<sup>21</sup> DOJ Guidelines (emphasis added).

<sup>22</sup> OMB Guidelines at 8459.

<sup>23</sup> See Request at 2. These Response asserts that these statements are not subject to the IQA. The point, however, is that public discussion of the Report reveals the misleading effects of its presentation, a consideration that is relevant to whether it meets IQA standards.

<sup>24</sup> OMB Guidelines at 8459.

<sup>25</sup> See Carrie Cordero & Paul Rosenzweig, *Beware the Slippery Slope in the DOJ-DHS Report on Foreign-Born Terrorists*, Lawfare Blog (Jan. 19, 2018), <https://www.lawfareblog.com/beware-slippery-slope-doj-dhs-report-foreign-born-terrorists>; see also Exec. Order No. 12333, 46 FR 59941 (Dec. 4, 1981) (defining “U.S. person” to include all citizens, regardless of country of birth).

The Department's defense of its presentation of data is unpersuasive. The Department states that "[i]t is no violation to provide additional data, particularly when Executive Order 13780 requires '[a]ny other information relevant to public safety and security as determined by the Secretary of Homeland Security or the Attorney General.'" But neither an executive order nor the Department's discretion to provide additional data overrides the requirements of the IQA. On the contrary, the Act's explicit requirements that presentation of data must be objective and that data must have utility means that there is no blanket permission to disseminate additional useless data, and especially not where the presentation of that data has misleading consequences.

**B. The Report's Misleading and Anti-Immigrant Substitution of International Terrorism for All Terrorism is Indefensible.**

The Response ought to have retracted the Report based on the misleading substitution of international terrorism for all terrorism. This substitution inappropriately deemphasizes domestic terrorism and artificially inflates the proportion of terrorist incidents the Report presents as having been committed by foreign nationals.

As we set forth in our Request, in response to Section 11's instruction to provide information regarding foreign nationals charged with or convicted of terrorism-related offenses, the Report instead provides data related only to *international* terrorism-related offenses.<sup>26</sup> The Response defends this decision on the ground that the Report reveals which data it is using. The Response also asserts that "the federal criminal code contains no statute specifically prohibiting 'domestic terrorism,' which is often prosecuted at the state level, and the Department therefore does not possess comprehensive data on such activity." The Response concludes that accordingly, the Report is not misleading.

The Response ignores the Department's ability to provide meaningful analysis regarding domestic terrorism. First, the U.S. Code does include a definition of domestic terrorism, which largely mirrors the definition of international terrorism, except that the terrorist acts must "occur primarily within the territorial jurisdiction of the United States."<sup>27</sup> This definition provides a baseline for the Department to conduct its analysis of terrorism-related offenses based on information regarding domestic terrorism in its possession. We provided several examples of these data sources in our Request, including an April 2017 Government Accountability Office report titled *Countering Violent Extremism*<sup>28</sup> and a joint DHS-Federal Bureau of Investigation

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<sup>26</sup> Request at 7-8.

<sup>27</sup> 18 U.S.C. § 2331(5). Indeed, just last month, the Department touted the arrest of an "Oregon domestic terrorism suspect" in connection with a series of arsons and destruction of property. In announcing the arrest, the Assistant Attorney General for the National Security Division stated that, "[w]hatever the motivation, terrorism is simply unacceptable," and "[d]omestic terrorism is no exception." U.S. Dep't of Justice, *Oregon Suspect in Custody After 12 Years on the Run*, Justice News (Aug. 10, 2018), <https://www.justice.gov/opa/pr/oregon-domestic-terrorism-suspect-custody-after-12-years-run>.

<sup>28</sup> See U.S. Gov't Accountability Office, *Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts* at 3-5 (Apr. 2017),

intelligence bulletin from May 2017 titled *White Supremacist Extremism Poses Persistent Threat of Lethal Violence*,<sup>29</sup> which the Response ignored entirely. Many more such analyses exist, including the Transactional Records Access Clearinghouse (“TRAC”), a research center at Syracuse University, which uses DOJ data to provide monthly and annual reports on the number of domestic terrorism prosecutions and convictions.<sup>30</sup> The Department has previously relied on reports such as these. For example, in a 2015 speech, then Assistant Attorney General John Carlin told the audience that “it is quite clear that domestic terrorists and homegrown violent extremists remain a clear and present danger here inside the United States. We recognize that according to at least one study more people died in this country in attacks by domestic extremists than attacks associated with international terrorist groups over the last, say, five to six years.”<sup>31</sup> The Response’s assertion that the Report was unable to provide meaningful information about domestic terrorism charges and convictions is therefore baseless.

Had the Report included data on all terrorism, its results would likely have been very different. Domestic terrorists are much less likely to have been born outside of the United States than are individuals involved in international terrorism.<sup>32</sup> One analysis determined that for both international and domestic terrorism convictions since 1996, foreign born persons would account for 18-21 percent of the convictions, a much lower figure than 73 percent.<sup>33</sup>

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<http://www.gao.gov/assets/690/683984.pdf> (concluding that “of the 85 violent extremist incidents that resulted in death since September 12, 2001, far right wing violent extremist groups were responsible for 62 (73 percent) while radical Islamist violent extremists were responsible for 23 (27 percent).”). Hereafter, the “GAO Report.”

<sup>29</sup> See FBI & DHS Joint Intelligence Bulletin, *White Supremacist Extremism Poses Persistent Threat of Lethal Violence* 4 (May 10, 2017), available at <https://www.documentcloud.org/documents/3924852-White-Supremacist-Extremism-JIB.html> (stating that “white supremacist extremists were responsible for 49 homicides in 26 attacks from 2000 to 2016 . . . more than any other domestic extremism movement”); see also Jana Winter, *FBI and DHS Warned of Growing Threat from White Supremacists Months Ago*, *Foreign Policy* (Aug. 14, 2017), <http://foreignpolicy.com/2017/08/14/fbi-and-dhs-warned-of-growing-threat-from-white-supremacists-months-ago/> (citing the Intelligence Bulletin).

<sup>30</sup> TRAC Reports on Terrorism, <http://trac.syr.edu/tracreports/terrorism/>.

<sup>31</sup> Dep’t of Justice, *Assistant Attorney General John P. Carlin Delivers Remarks on Domestic Terrorism at an Event Co-Sponsored by the Southern Poverty Law Center and the George Washington University Center for Cyber and Homeland Security’s Program on Extremism*, *Justice News* (Oct. 14, 2015), <https://www.justice.gov/opa/speech/assistant-attorney-general-john-p-carlin-delivers-remarks-domestic-terrorism-event-co>.

<sup>32</sup> Nora Ellingsen & Lisa Daniels, *What the Data Really Show About Terrorists Who 'Came Here,' Part III: What If You Included Domestic Terrorism Cases?*, *Lawfare* (Apr. 11, 2017), <https://www.lawfareblog.com/what-data-really-show-about-terrorists-who-came-here-part-iii-what-if-you-included-domestic> (analyzing TRAC data to conclude that “[o]f the 92 domestic terrorists convicted between 2014 and 2016, for example, only six were foreign-born.” For another 15, country of birth could not be determined).

<sup>33</sup> *Id.* (This analysis also excludes individuals extradited to the United States for prosecution).

The information presented by the Report is therefore not objective in presentation.<sup>34</sup> It selects misleading sources of data to arrive at an artificially high percentage of immigrants who the reader perceives as responsible for terrorism. The biased presentation is made even more plain by the President’s characterization of the Report’s conclusions, which failed to even include the qualifier “international” and instead refer simply to terrorism convictions.<sup>35</sup>

The Report also lacks utility.<sup>36</sup> It purports to present information relevant to policy decisions regarding America’s national security and its decision to admit immigrants into the United States, yet it ignores readily available information regarding a large portion of the terrorist events that actually occur in the United States. It therefore is not useful to the public in assessing the actual, very low, terror threat that immigrants pose.

**C. The Response Should Have Excluded Individuals Only Brought to the United States for Prosecution.**

The Response’s treatment of Muslim Advocates’ third argument for retraction and correction—the Report’s unexplained inclusion of individuals who were extradited to the United States for prosecution—is also inadequate. In compiling data in response to Section 11’s request for information regarding terrorist events that took place in the United States, specifically data about individuals who were charged with or convicted of terrorism-related offenses “*while in the United States*” or who have been removed from the United States for various reasons, the Report also includes information about individuals who “committed offenses while located abroad, including defendants who were transported to the United States for prosecution.”<sup>37</sup> As we pointed out in our Request, the inclusion of these individuals, especially without the underlying data that would reveal what percentage of the total they comprise, violates the IQA.<sup>38</sup> The Response’s assertion that the Report complies with the IQA because it accurately described the data used is incorrect.

Including persons who have been extradited to the United States for trial on charges related to terrorist activity that took place outside of the United States in the total number of terrorism-related convictions misleadingly inflates the terrorist threat posed to the United States by foreign nationals. These individuals are definitionally unlikely to be U.S. citizens, which results in increasing the percentage of foreigners the Report can assert are responsible for terrorist activity. While they may be convicted in the United States following extradition, their overseas offenses do not typically reflect the actual terror threat to the United States, nor could they serve to inform the United States’ immigration policy. The Response fails completely to

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<sup>34</sup> DOJ Guidelines, OMB Guidelines at 8459.

<sup>35</sup> Donald J. Trump, Tweet (Jan. 16, 2018), <https://twitter.com/realDonaldTrump/status/953406553083777029>.

<sup>36</sup> DOJ Guidelines, OMB Guidelines at 8459.

<sup>37</sup> Report at 1, 2 (emphasis added).

<sup>38</sup> Request at 8-9.

address our arguments regarding this misleading consequence of its presentation of information as well as the information's lack of utility.

Compounding the information quality problem, the Department inexplicably fails to provide relevant and easily ascertainable underlying data—namely how many of the total 549 individuals were included based on their extradition to the United States. The Department's assertion that it has provided an “accurate description of the data included”—in that it disclosed that extraditions are included in the total—does not meet the requirement to provide “full, accurate, transparent documentation” of data.<sup>39</sup> This information must be within the Department's possession, as it was responsible for the convictions in the first instance and compiled the information for the Report. There is no basis for failing to disclose it.

**D. There is No Justification for Failing to Retract the Biased and anti-Muslim Presentation of Examples of Foreign Nationals Charged With or Convicted of Terrorism-Related Offenses.**

The Response fails to address meaningfully our fourth basis for retraction—the Report's biased selection of eight supposedly “illustrative examples” among the 402 convictions of foreign nationals or naturalized U.S. citizens. As we note, each of these examples appears to depict a Muslim man who arrived in the United States through the precise immigration provisions the Administration seeks to eliminate: refugee resettlement, migration preferences to support family reunification, and the visa diversity lottery.<sup>40</sup> On its face, this selection of examples is biased. Making the problem worse, the public is unable to test the representativeness of the examples given the Report's failure to provide underlying information, failing the IQA's requirement to do so.

The selection of the eight “illustrative examples” is not objective and does not provide useful information.<sup>41</sup> It categorically excludes examples of U.S. citizens, despite their contribution to a significant percentage of terrorist activity.<sup>42</sup> It also excludes from profile any individual extradited to the U.S. for prosecution, even though such people were included in the number of foreign nationals included in the Report's totals. Such individuals likely would not, of course, have immigrated to the United States via any of the mechanisms opposed by the Administration. Rather, each of the examples included is an individual who arrived in the United States via an immigration path disfavored by the current Administration, an outcome that is exceedingly unlikely absent cherry picking of examples.

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<sup>39</sup> OMB Guidelines at 8459.

<sup>40</sup> Request at 9.

<sup>41</sup> DOJ Guidelines, OMB Guidelines at 8459.

<sup>42</sup> See GAO Report at 3-5; see also Phil Hirschhorn, *Most Convicted Terrorists Are U.S. Citizens. Why Does The White House Say Otherwise?*, PBS (Mar. 12, 2017), <https://www.pbs.org/newshour/nation/convicted-terrorists-citizens> (citing to a study from the New America Foundation that found that 72.5 percent of those charged in “jihadist terrorism” cases were U.S. citizens).

Once again, the conclusion that the Report’s presentation of information is misleading is buttressed by the Administration’s seizing on to the Report to promote its policy agenda. A White House “Fact Sheet” relies on the eight “illustrative examples” to state that “[a] significant number of terrorists have entered the United States solely on the basis of family ties and extended-family chain migration” and “[t]errorists have also entered the United States through the visa lottery program.” The “Fact Sheet” concludes, that it is “TIME TO END CHAIN MIGRATION AND THE VISA LOTTERY.”<sup>43</sup>

The Response addresses our argument by stating only that the “charge is a subjective conclusion based on your interpretation of the Report and is premised on the alleged existence of a preexisting ‘narrative.’”<sup>44</sup> Moreover, the Response argues that this allegation of a pre-existing and “discriminatory narrative” does not provide a “cognizable violation of the Department’s Guidelines.” While we indeed maintain that this Administration from day one has promoted a discriminatory narrative that Muslims present in the U.S. are likely to commit acts of terrorism, with or without that narrative, the IQA violations we identify are not subjective. Indeed, it is clear from the face of the Report that the Department selected as “illustrative examples” only Muslim men who entered the country via immigration processes that the Administration disfavors. And the claim that the Report contains a pre-existing and discriminatory narrative constitute an allegation that the Report presents information based on the Administration’s existing biases. This necessarily violates the Department’s Guidelines, which require “disseminated information, as a matter of substance and presentation” to be, among other things, “unbiased” in order to meet the objectivity standard.<sup>45</sup> Thus, the Request’s assertions of bias are, indeed, cognizable under the IQA.

Of course, if the Report had complied with the IQA requirement to provide underlying data—such as basic information regarding the other individuals included in the conviction totals—the public could have determined for itself whether the examples were representative in any respect, or whether they were tainted by bias. Having failed to do so, however, the information again fails to meet the standard for objectivity.

**E. The Response Fails to Address the Misleading and Anti-Muslim Information the Report Disseminates About Gender-Based Violence Against Women.**

The Response to our request for correction of the information disseminated by the Report relating to gender-based violence is inadequate. Section 11 called for information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals. As we pointed out, while the Report acknowledged the lack of meaningful aggregated data on the topic, it provided irrelevant and inaccurate data instead, particularly by providing misleadingly large numbers of incidents of

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<sup>43</sup> The White House, *Our Current Immigration System Jeopardizes American Security* (Jan. 16, 2018), <https://www.whitehouse.gov/briefings-statements/current-immigration-system-jeopardizes-american-security/>.

<sup>44</sup> Response at 2.

<sup>45</sup> DOJ Guidelines.

violence without any connection to immigration status and by citing discredited and non-scientific studies.<sup>46</sup> The Response does not discuss specifically any of the studies or analyses that we critiqued. Nor does it attempt to respond to our complaint that the inclusion of these flawed studies and analyses results in the dissemination of inaccurate and misleading information regarding gender-based violence.

By refusing to retract this portion of the Report, the Department perpetuates the dissemination of information that is not objective because the information is not presented in an unbiased manner.<sup>47</sup> It also is not objective because it does not derive from “reliable data sources” nor is it the product of “sound analytical techniques.”<sup>48</sup>

Rather than defend the quality of the information it presented, the Department instead states that the Office of Justice Programs is conducting “two independent reviews of relevant research.” The possibility that the Department may have more accurate, less biased data in the future does not change the conclusion that the information disseminated in the Report does not meet the requirements of the IQA. Indeed, it reinforces the need for the Department to state, as Muslim Advocates requested, that it does not possess any information responsive to the directive of this subsection of Section 11 that meets IQA standards.

#### **IV. Conclusion and Relief Requested**

As set forth above and in the Request, the Report is not objective and does not have utility. The Department’s Response erred in rejecting these arguments. We request that the Department retract the Report and, if you determine that publishing a revised report is necessary, correct the Report as outlined above within 60 days.

Sincerely,

/s/ Robin Thurston

Robin Thurston, Senior Counsel  
Democracy Forward Foundation

/s/ Sirine Shebaya

Johnathan Smith, Legal Director  
Sirine Shebaya, Senior Staff Attorney  
Muslim Advocates

*Counsel for Muslim Advocates*

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<sup>46</sup> Request at 10-11.

<sup>47</sup> DOJ Guidelines, OMB Guidelines at 8459.

<sup>48</sup> DOJ Guidelines. *See also* OMB Guidelines at 8459 (“error sources affecting data quality should be identified and disclosed”).

# **Attachment**



By Fed Ex and Email

January 29, 2018

U.S. Department of Justice  
Office of the Attorney General, and  
Office of the Chief Information Officer  
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Re: *Request for Correction Under the Information Quality Act*

To whom it may concern:

On behalf of Muslim Advocates, we respectfully submit this request for correction pursuant to the Information Quality Act (“IQA”) to the U.S. Department of Homeland Security (“DHS”) and the U.S. Department of Justice (“DOJ” and, together with DHS, the “Departments” or “you”). We request that you retract and correct the misleading and biased information issued in your first joint report published pursuant to Section 11 of Executive Order 13780, Protecting the Nation from Foreign Terrorist Entry into the United States (the “Report”).<sup>1</sup>

The Report asserts, among other things, that 73 percent of individuals convicted of international terrorism-related offenses are foreign-born. But this figure, disseminated in response to a request for information on the number of terrorism-related offenses committed by foreign *nationals*, misleadingly also includes foreign-born persons—a term that includes naturalized citizens (*i.e.*, individuals who are not foreign nationals). The 73 percent figure also excludes convictions for acts of domestic terrorism, and thereby vastly misrepresents the actual terror threat to the country. Bizarrely, the 73 percent figure does include in its calculation foreign nationals whose only apparent tie to the United States comes through their extradition to this country to be prosecuted for terrorism. These choices artificially inflate the rate of terrorism

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<sup>1</sup> U.S. Dep’t Homeland Security and U.S. Dep’t Justice, Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report (Jan. 2018), <https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf> (the “Report”).

that the government represents is committed by immigrants. Apparently finding the artificially high rate useful for its purposes, DOJ promptly tweeted it out, further disseminating deceptive information to the public.<sup>2</sup>

Because the 73 percent figure and much of the other information in the Report is misleading, reflecting the biased views of the Administration, the Report fails to meet the basic information quality standards required by federal law. Yet the Administration is already using the Report in its ongoing attempts to restrict lawful immigration, and in particular immigration by Muslims. Attorney General Sessions stated that the Report “reveals an indisputable sobering reality—our immigration system has undermined our national security and public safety.”<sup>3</sup> Similarly, Homeland Security Secretary Nielsen repeated the 73 percent statistic in her testimony before the U.S. Senate Committee on the Judiciary on January 16, 2018.<sup>4</sup> Indeed, the Report appears to have been issued primarily to serve the Administration’s political ends—reportedly being substantially drafted by Attorney General Sessions’ office, and contrary to the claim that it is “[a]n analysis conducted by DHS,”<sup>5</sup> without input from DHS career analysts.<sup>6</sup>

Accordingly, on behalf of Muslim Advocates, Democracy Forward Foundation makes this request for correction, pursuant to the Departments’ IQA guidelines, of the information contained in the Report. We request that you retract the Report, and to the extent that you determine that publishing a revised report is necessary, include in it data that avoids the errors identified below, or, to the extent the Departments do not have relevant data, to admit as much. Doing so is necessary to correct the misimpression, intentionally conveyed by the Departments,

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<sup>2</sup> Dep’t Justice (@TheJusticeDepartment), Twitter (Jan. 16, 2018, 6:40am), <https://twitter.com/TheJusticeDept/status/953275839361187840> (“DOJ, DHS REPORT: THREE OUT OF FOUR INDIVIDUALS CONVICTED OF INTERNATIONAL TERRORISM AND TERRORISM-RELATED OFFENSES WERE FOREIGN-BORN”).

<sup>3</sup> See Press Release, U.S. Dep’t Justice, DOJ, DHS Report: Three Out of Four Individuals Convicted Of International Terrorism and Terrorism-Related Offenses Were Foreign-Born (Jan. 16, 2018), <https://www.justice.gov/opa/pr/doj-dhs-report-three-out-four-individuals-convicted-international-terrorism-and-terrorism> (“DOJ Press Release”); see also Press Release, U.S. Dep’t Homeland Security, DOJ, DHS Report: Three Out of Four Individuals Convicted Of International Terrorism and Terrorism-Related Offenses Were Foreign-Born (Jan. 16, 2018), <https://www.dhs.gov/news/2018/01/16/dhs-doj-report-three-out-four-individuals-convicted-international-terrorism-and> (“DHS Press Release”).

<sup>4</sup> Anna Giaritelli, *DHS Chief: Foreign-born have made up 3 in 4 of international terrorism convictions in US courts since Sept. 11 attacks*, Wash. Examiner (Jan. 16, 2018), <http://www.washingtonexaminer.com/dhs-chief-foreign-born-have-made-up-3-in-4-of-international-terrorism-convictions-in-us-courts-since-sept-11-attacks/article/2646031>; see also Homeland Security Oversight: Testimony of Secretary Kirstjen Nielsen, C-Span (Jan. 16, 2018), <https://www.c-span.org/video/?439257-1/homeland-security-secretary-kirstjen-nielsen-faces-questions-da-ca>.

<sup>5</sup> Report at 2.

<sup>6</sup> Spencer Ackerman, *Team Trump Bypassed DHS Analysts to Produce Bogus Terror Report*, Daily Beast (Jan. 21, 2018), <https://www.thedailybeast.com/team-trump-bypassed-dhs-analysts-to-produce-bogus-terror-report>.

that the Report reveals that “our immigration system has undermined our national security and public safety.”<sup>7</sup>

### **I. Executive Order 13780 Section 11 Report.**

Executive Order 13780, purports to promote the “policy of the United States to protect its citizens from terrorist attacks, including those committed by foreign nationals” by “improv[ing] the screening and vetting protocols and procedures associated with the visa issuance process and the USRAP [United States Refugee Admissions Program].”<sup>8</sup> Section 11 of the Executive Order instructs the Secretary of Homeland Security, in consultation with the Attorney General, “to collect and make publicly available” the following information:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reasons;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and who have engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States;

(iii) information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security or the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.<sup>9</sup>

The Report, which was jointly disseminated by the Departments on January 16, 2018, purports to provide an initial report regarding the information required by Section 11. In response to the above four subsections, the Report sets forth various information, including the assertion that 73 percent of individuals convicted of “international terrorism-related charges in U.S. federal courts between September 11, 2001, and December 31, 2016” were “foreign-born,”<sup>10</sup> as well as eight “illustrative examples” of such individuals.<sup>11</sup> The Report also provides an

<sup>7</sup> DOJ Press Release; DHS Press Release.

<sup>8</sup> Exec. Order No. 13780, 82 FR 13209 (Mar. 6, 2017) (the “Exec. Order”). Executive Order 13780 is colloquially known as Muslim Ban 2.0 or Travel Ban 2.0, and has been the subject of extensive litigation relating to its discriminatory intent and unlawfulness, including its constitutional violations.

<sup>9</sup> *Id.*

<sup>10</sup> As discussed in greater detail below, the term “foreign-born” would still include individuals who lawfully immigrated to the United States, and naturalized to become full United States citizens. This

assortment of statistical information that it claims is related to gender-based violence, and “other information” that it determined to be relevant to public safety and security.

## II. Requirements of the IQA

The IQA, which is found at Section 515 of Public Law 106-554, together with its implementing regulations and guidelines, requires that information disseminated to the public by federal agencies, including by DHS and DOJ, be accurate, reliable, and unbiased.<sup>12</sup> It also directs the Office of Management and Budget (“OMB”) to issue guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”<sup>13</sup> Federal agencies, in turn, must issue their own guidelines, likewise “ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency” and establishing “administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines.”<sup>14</sup>

Pursuant to these directives, OMB, as well as DHS and DOJ, promulgated guidelines establishing information quality standards and providing a means for parties to seek redress for information that does not conform to these standards.<sup>15</sup> Thus, under the OMB and agency guidelines, the touchstone for the IQA is that (1) information (2) disseminated by an agency (3) be of requisite quality.

The Report is covered by the IQA. DHS guidelines, as well as the substantially similar DOJ guidelines, define “information,” in relevant part, as “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical,

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group of people is expressly different than foreign nationals, which would not include naturalized United States citizens. The Executive Order asked only for information concerning terrorism-related offenses for “foreign nationals in the United States.” Report at 1.

<sup>11</sup> *Id.* at 2-7.

<sup>12</sup> Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 & 154, 44 U.S.C. § 3516, note (West) (the “IQA”); Office of Mgmt. & Budget, Exec. Office of the President, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002) (“OMB Guidelines”), <https://www.gpo.gov/fdsys/pkg/FR-2002-02-22/pdf/R2-59.pdf>; U.S. Dep’t Homeland Security, Information Quality Guidelines (last visited Jan. 18, 2018), <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf> (“DHS Guidelines”); U.S. Dep’t Justice, Information Quality: Ensuring the Quality of the Information Disseminated by the Department (Nov. 2016), <https://www.justice.gov/iqpr/information-quality> (“DOJ Guidelines”).

<sup>13</sup> IQA § 515(a).

<sup>14</sup> *Id.* § 515(b); *see also Prime Time Int’l Co. v. Vilsack*, 599 F.3d 678, 684-86 (D.C. Cir. 2010) (describing the statutory and administrative scheme of the IQA).

<sup>15</sup> *See* DHS Guidelines; *see also* DOJ Guidelines.

graphic, cartographic, narrative, or audiovisual forms.”<sup>16</sup> The Report purports to present facts, primarily in the form of numerical data and narrative description, and therefore was required to adhere to the standards of the IQA.

The Report was disseminated to the public, for the purposes of the IQA. DHS and DOJ’s IQA guidelines define “dissemination” in substantially the same manner, including “agency initiated or sponsored distribution of information to the public.”<sup>17</sup> The Departments issued the Report with accompanying press releases, and have made the Report available to the public on their respective webpages.<sup>18</sup>

IQA guidelines define what it means for information to be of sufficient quality to meet the statutory standard. Specifically, quality “is an encompassing term comprising utility, objectivity, and integrity.”<sup>19</sup> Among other standards relevant here, “in assessing the usefulness of the information that the agency disseminates to the public, the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public.”<sup>20</sup> And, “objectivity” includes:

Whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.<sup>21</sup>

Further, where the information is disseminated in “a statistical context,” the DHS guidelines require that DHS “generate the original and supporting data, and develop the analytic results, using sound statistical and research methods.”<sup>22</sup> DOJ’s guidelines require the use of “reliable data sources, sound analytical techniques, and document[ed] methods and data sources.”<sup>23</sup>

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<sup>16</sup> See DHS Guidelines; cf. DOJ Guidelines (defining information to include “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. It includes information that an agency disseminates from a web page, but does not include information disseminated by others and accessible through hyperlinks from an agency web page.”).

<sup>17</sup> See DHS Guidelines; see also DOJ Guidelines (“Except for those categories of information that are specifically exempted from coverage (see below), these guidelines apply to all information disseminated by DOJ and DOJ initiated or sponsored dissemination of information by DOJ grantees, contractors, or cooperators on or after October 1, 2002, regardless of when the information was first disseminated.”).

<sup>18</sup> See DHS Press Release (providing a link to the Report at a dhs.gov web domain); DOJ Press Release (providing a link to the Report at a justice.gov web domain).

<sup>19</sup> See OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> DHS Guidelines.

<sup>23</sup> DOJ Guidelines.

As set forth in detail in the following section, the Report fails to meet the IQA requirements regarding quality, utility, objectivity, and integrity. These failures hamper the public's ability to participate in the ongoing debate regarding immigration policy and national security by providing misinformation with the purpose of bolstering the Administration's anti-immigrant agenda. The Report's failings also may impede public safety agencies who look to glean insights from the Report for accurately assessing and protecting against true national security threats.

### **III. The Report Violates the IQA by Disseminating Information Which is Designed to Mislead the Public About the Risk that Immigrants to the United States Will Commit Acts of Terrorism.**

#### **A. The Report provides misleading and biased information by substituting foreign-born for foreign national.**

Section 11 directed the Departments to provide information related to foreign nationals and terrorism-related offenses, which the Executive Order claimed would be used to inform the country's immigration policy. Instead, the Report provided information regarding *foreign-born* individuals rather than foreign nationals, which allows it to attribute 73 percent of international terrorism-related offenses to individuals who the Departments apparently perceive as foreign, despite their American citizenship.

The Report's topline conclusion is that "at least 549 individuals were convicted of international terrorism-related charges in U.S. federal courts between September 11, 2001, and December 31, 2016," and that "approximately 73 percent (402 of these 549 individuals) were foreign-born."<sup>24</sup> The Department's math, however, relies on the wrong inputs in a misleading way. The report further states that of these 549 individuals, 254 were not U.S. citizens, 148 were foreign-born, naturalized and received U.S. citizenship, and 147 were U.S. citizens by birth.<sup>25</sup> Had the Report followed the Executive Order's directive to report on foreign nationals, even based on its own, flawed, data, it would have concluded that fewer than half, or 46 percent, of individuals charged or convicted of international terrorism-related offenses met this criterion.

The failure to use the proper numerator (or, more precisely, the one that would have actually reflected the data collection requested by E.O. 13780) is only part of the problem. The Departments have also failed to adhere to the IQA's requirements that federally produced data also be, among other criteria, useful and unbiased.<sup>26</sup> Responding to a request for information that purports to be about the terrorist threat that foreign national immigrants pose to the United States by substituting information that includes naturalized citizens fails that metric and perpetuates the Administration's discriminatory view that only native-born individuals are actually American. Such a manipulation of information is misleading and biased, in violation of IQA guidelines.

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<sup>24</sup> Report at 2.

<sup>25</sup> *Id.*

<sup>26</sup> OMB Guidelines.

**B. The Report’s substitution of international terrorism for all terrorism misleadingly ignores domestic terrorism, artificially inflating the proportion of terrorist incidents committed by foreign nationals.**

In response to the Executive Order’s charge that the Departments provide information regarding foreign nationals charged with or convicted of terrorism-related offenses, the Report fails to do so and instead provides data related only to *international* terrorism-related offenses.<sup>27</sup> This sleight of hand artificially increases the proportion of foreign nationals presented as responsible for terrorist incidents.

The Report states that it has only considered information about international terrorism-related offenses, specifically: “public convictions in federal courts between September 11, 2001, and December 31, 2016 resulting from international terrorism investigations, including investigations of terrorist acts planned or committed outside the territorial jurisdiction of the United States over which Federal criminal jurisdiction exists and those within the United States involving international terrorists and terrorist groups.”<sup>28</sup> In so doing, the Report categorically excludes all terrorism-related offenses that occurred in the United States, and which were planned and executed by individuals without international connections. This exclusion dramatically misrepresents the actual terrorist threat posed by foreign nationals in the United States.

In contrast to the Report’s representations, studies show, as the government itself is aware, that native-born citizens commit significant numbers of terrorist attacks in the United States.<sup>29</sup> An April 2017 Government Accountability Office report concluded that “of the 85 violent extremist incidents that resulted in death since September 12, 2001, far right wing violent extremist groups were responsible for 62 (73 percent) while radical Islamist violent extremists were responsible for 23 (27 percent).”<sup>30</sup> Similarly, DHS and the Federal Bureau of Investigation published an intelligence bulletin in May 2017 titled, “White Supremacist Extremism Poses Persistent Threat of Lethal Violence.” That bulletin states that white supremacist extremists, who are very rarely immigrants, were responsible for 49 homicides in 26 attacks from 2000 to

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<sup>27</sup> Report at 2.

<sup>28</sup> *Id.*

<sup>29</sup> See Alex Nwrasteh, *New Government Terrorism Report Provides Little Useful Information*, Cato Inst. (Jan. 16, 2018), <https://www.cato.org/blog/new-government-terrorism-report-nearly-worthless> (“Since the beginning of 2002, native-born Americans were responsible for 78 percent of all murders in terrorist attacks committed on U.S. soil while foreign-born terrorists only committed 22 percent.”); see also Lachlan Markay and Spencer Ackerman, *Fuzzy Math: Team Trump Cooks Terror Stats for Bogus Immigration Agreement*, Daily Beast (Jan. 16, 2018), <https://www.thedailybeast.com/team-trump-cooks-terror-stats-for-bogus-immigration-argument?via=ios> (citing a New America Foundation study, which found that 85 percent of individuals who were charged with, or died engaging in, an act of terrorism were United States citizens or lawful permanent residents.”).

<sup>30</sup> See U.S. Gov’t Accountability Office, *Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts* at 3-5 (Apr. 2017), available at <http://www.gao.gov/assets/690/683984.pdf>.

2016 . . . more than any other domestic extremism movement.”<sup>31</sup> Despite the existence of this threat, the Departments omitted data related to domestic terrorism without explanation.

By presenting data that omits completely information about the threat posed by domestic terrorists without international ties, as responsive to the directive to provide data regarding *all* terrorism, domestic and international, the Departments have presented incomplete and misleading information in violation of the IQA. Indeed, the Departments’ data has artificially inflated the percentage of foreign nationals that they can claim are involved in terrorism-related offenses. It is common sense that foreign nationals are more likely to be involved in terrorist events occurring in foreign countries or involving foreign groups than they are to be involved in purely domestic terrorist events.<sup>32</sup> As one commentator concluded, “[i]ncluding the actual number of deaths caused by terrorists flips the DHS/DOJ statistics on its head.”<sup>33</sup> Such a manipulation of the data plainly violates information quality requirements.

**C. The Report’s inclusion of individuals who committed terrorism overseas and whose only apparent tie to the United States is extradition to the United States for prosecution is misleading.**

The Executive Order also directs the Departments to collect information regarding terrorist events that took place in the United States, specifically data about individuals who were charged with or convicted of terrorism-related offenses “*while in the United States*” or who have been removed from the United States for various reasons.<sup>34</sup> The Report includes, however, information about individuals who “committed offenses while located abroad, including those who were transported to the United States for prosecution.”<sup>35</sup> Although someone who has been extradited to the United States for trial may be charged and convicted while in the United States, the offenses committed by that person overseas do not necessarily reflect the actual terror threat to the United States, nor could they serve to inform the United States’ immigration policy. Including information about offenses that occur overseas will, however, naturally increase the number of foreign nationals the Departments can claim are responsible for terrorism-related offenses.

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<sup>31</sup> See FBI & DHS Joint Intelligence Bulletin, White Supremacist Extremism Poses Persistent Threat of Lethal Violence 4 (May 10, 2017), *available at* <https://www.documentcloud.org/documents/3924852-White-Supremacist-Extremism-JIB.html>; *see also* Jana Winter, *FBI and DHS Warned of Growing Threat from White Supremacists Months Ago*, Foreign Policy (Aug. 14, 2017), <http://foreignpolicy.com/2017/08/14/fbi-and-dhs-warned-of-growing-threat-from-white-supremacists-months-ago/> (citing the FBI & DHS Joint Intelligence Bulletin, *supra* note 31).

<sup>32</sup> William Braniff, executive director of the National Consortium for the Study of Terrorism and Responses to Terrorism (START) at the University of Maryland, noted that “If you’re looking at international terrorism, you’re going to see people with a more international background—that’s just common sense. . . . [DHS and DOJ] exclude a lot of data what would present a different picture.” See Markay and Ackerman, *supra* note 29.

<sup>33</sup> Nwrasteh, *supra* note 29.

<sup>34</sup> Exec. Order at 1.

<sup>35</sup> Report at 2.

The Departments provide no information in the Report about why they chose to include terrorism-related offenses that did not occur in the United States. Moreover, in plain violation of IQA guidelines that agencies provide supporting data for statistical information, the Departments do not provide access to underlying aggregate data that would reveal the degree to which including overseas offenses misrepresents the nexus between foreign nationals and the risk of terrorism in the United States. As OMB itself notes in the context of this guideline, doing so is necessary, “so that the public can assess for itself whether there may be some reason to question the objectivity of the sources.”<sup>36</sup> By failing to provide the public with this opportunity, the Departments have violated the IQA.

**D. The Report’s examples of foreign nationals charged with or convicted of terrorism-related offenses are misleading and perpetuate the Administration’s discriminatory narrative that Muslims are likely to commit acts of terrorism.**

The Report provides eight “illustrative examples among the 402 convictions of foreign nationals or naturalized U.S. citizens.”<sup>37</sup> Because the Report offers no raw data tables revealing biometric information for the 402 convicted persons—despite IQA guidelines directing that agencies provide supporting data for statistical information<sup>38</sup>—there is no way for outside observers to test the Departments’ assertion that these examples are “illustrative.” Even without the ability to verify, however, it seems highly unlikely that the vignettes offered as “illustrative examples” are in any way representative for the obvious reason that they exclusively chronicle Muslims who arrived in the United States through the precise immigration provisions the Administration now seeks to do away with: refugee resettlement, migration preferences to support family reunification, and the diversity visa lottery.<sup>39</sup>

By selecting anecdotes that perpetuate the Administration’s discriminatory view of immigrants and failing to provide transparency about the underlying data that would allow the public to determine whether these anecdotes are misrepresentative, as they appear to be, the Report again fails the IQA guideline requirement to be objective.

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<sup>36</sup> OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>37</sup> Report at 3-7.

<sup>38</sup> OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>39</sup> See Faiza Patel, *Trump Administration’s Fuzzy Math on Terrorist Origins is More than Misleading -- It’s Dishonest*, Just Security (Jan. 16, 2018), <https://www.justsecurity.org/51084/trump-administrations-fuzzy-math-terrorist-origins-misleading-its-dishonest/>; see also Dan Merica and Tal Kopan, *Trump demands Congress terminate diversity immigration lottery*, CNN (Nov. 1, 2017), <http://www.cnn.com/2017/11/01/politics/donald-trump-chuck-schumer-nyc-attack/index.html> (detailing President Trump’s plans to reform the immigration system).

**E. The Report’s information relating to gender-based violence is misleading and perpetuates anti-Muslim stereotypes.**

Subsection (iii) of Section 11 of the Executive Order instructs the Departments to provide information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals. Given that the Administration proposed eliminating funding for programs to prevent violence against women at the same time that the President requested this information,<sup>40</sup> the motivation in the information request does not appear to be the actual protection of women but instead appears to be to perpetuate stigma about Muslims. The information provided by the Report, which purports to be responsive to the Executive Order’s directive, is inaccurate and misleading.

In fact, as the Report must acknowledge, the federal government has not “recorded and tracked in an aggregated statistical manner information pertaining to gender-based violence against women committed at the federal and state level.”<sup>41</sup> Nor does the federal government have reliable information regarding the prevalence of so-called “honor killings.” The Departments appear not to possess any information that is responsive to the directive of subsection (iii) that meets IQA standards.

Yet, instead of reaching that conclusion and recommending further study, the Departments provided alternate data, which range from irrelevant to inaccurate. The Report cites the average annual number of non-fatal domestic violence victimizations, which is an alarmingly large number, but plainly fails to reveal the proportion perpetuated by foreign nationals.<sup>42</sup> Indeed, studies show that gender-based violence rates are largely the same across all countries, a point which further casts doubt on the Report’s attempt to link gender-based violence with national origin.<sup>43</sup>

The Report then points to discredited data to perpetuate the stigmatization of Muslims inherent in the Executive Order’s implication that “honor killings” are a significant problem in the United States. First, the Report fails to define what it interprets the term “honor killings” to mean. The Report next asserts that “a study commissioned and provided to the DOJ’s Bureau of Justice Statistics in 2014 estimated that an average of 23-27 honor killings occur every year in the United States.”<sup>44</sup> As an initial matter, the study was not commissioned by the Department of

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<sup>40</sup> See Melissa Jeltsen, *Trump’s Budget Would Be Devastating to Poor Victims of Domestic Abuse*, HuffPost (Mar. 17, 2017), [https://www.huffingtonpost.com/entry/trump-budget-domestic-abuse-victims\\_us\\_58cc2184e4b0ec9d29dbd9f7](https://www.huffingtonpost.com/entry/trump-budget-domestic-abuse-victims_us_58cc2184e4b0ec9d29dbd9f7).

<sup>41</sup> Report at 7.

<sup>42</sup> *Id.*

<sup>43</sup> K.M. Devries et al., *The Global Prevalence of Intimate Partner Violence Against Women*, 340 Science 1527, 1527-1528 (June 2013) (estimating that 30 percent of women experience domestic violence and that though there are some slight regional variations, the rates exceed 19 percent everywhere in the world except East Asia).

<sup>44</sup> Report at 8.

Justice, but by a private organization.<sup>45</sup> Moreover, the author of that study has disclaimed the accuracy of its conclusion, saying “it’s not terribly scientific,” a fact not disclosed by the Report, despite the OMB guidelines’ directive that “error sources affecting data quality should be identified and disclosed to users.”<sup>46</sup>

Finally, the Report also cites a study regarding the number of women and girls who may be *at risk for* female genital mutilation, noting that the number was three times higher in 2012 than in 1990.<sup>47</sup> What the Report fails to explain is that the study’s methodology simply correlates the risk of female genital mutilation in various countries to the number of women and girls living in the United States who were born in that country or who lived with a parent born in that country.<sup>48</sup> In other words, the study that purports to inform the risk that immigrants pose with regard to violence against women, simply tracks immigration rates, and explicitly does not present “scientifically valid information” about the behavior of those immigrant populations in the United States.

#### IV. Muslim Advocates is an Affected Person

Muslim Advocates is an affected person entitled to seek a correction of disseminated information that fails to meet the IQA’s quality standards. Muslim Advocates is a civil rights organization that promotes freedom and justice for Americans of all faiths, with a particular focus on issues impacting the Muslim community. Muslim Advocates engages in civil rights litigation, policy advocacy, and public education to fight inaccurate stereotypes about Muslims and other immigrants. In particular, Muslim Advocates works to ensure that policies enacted under the banner of national security do not wrongfully discriminate against Muslims and are not based on inaccurate or misleading information.

The guidelines define “affected person” as one who “may benefit or be harmed by the disseminated information,” including one who “use[s] information.”<sup>49</sup> Muslim Advocates uses reliable information concerning the American immigration population in its work, and it, as well as its clients, is also “harmed” by the dissemination of the Report, which seeks to portray immigrants, and particularly Muslim immigrants, as inherently violent and likely to commit acts of terror. Moreover, the Report serves as a mechanism to justify the travel and refugee bans, which the Administration has attempted to justify, at least in part, by reference to the kinds of inaccurate data and biased findings contained in the Report. The Report serves as further *post hoc* justification for those efforts, which directly harm Muslim Advocates and its clients.

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<sup>45</sup> Jesse Singal, *Here’s What the Research Says About Honor Killings in the U.S.*, N.Y. Mag. (March 6, 2017), <http://nymag.com/daily/intelligencer/2017/03/heres-what-the-research-says-about-american-honor-killing-s.html>.

<sup>46</sup> *See id.*; *see also* OMB Guidelines 8452, 8459.

<sup>47</sup> Report at 8.

<sup>48</sup> *Id.* at 8 n.17 (citing Howard Goldberg et al., *Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk, 2012*, 131 Pub. Health Rep. 340-347 (2016)).

<sup>49</sup> *See* DHS Guidelines; *see also* DOJ Guidelines.

A retraction and correction of the Report and its findings would therefore benefit Muslim Advocates by advancing its mission of advocating on behalf of Muslim, Arab, South Asian, and immigrant communities.

**IV. Conclusion and Relief Requested**

Given the importance and immediacy of the public dialogue on the Administration's proposed immigration policy efforts, and the impact that the misleading Report may have on this debate, we request that the Departments retract and, if you determine that publishing a revised report is necessary, correct the Report as outlined above within 60 days.

Sincerely,

/s/ Robin Thurston

Robin Thurston, Senior Counsel  
Democracy Forward Foundation

/s/ Sirine Shebaya

Sirine Shebaya, Senior Staff Attorney  
Muslim Advocates

*Counsel for Muslim Advocates*

**ATTACHMENT  
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By Fed Ex and Email

September 13, 2018

Department of Homeland Security  
Attn: Office of the Chief Information Officer / Information Quality Officer  
245 Murray Lane, SW  
Mail Stop 0136  
Washington, DC 20528  
DHS.InfoQuality@hq.dhs.gov

Re: *Request for Reconsideration of Denial of Request for Correction Under the Information Quality Act*

To whom it may concern:

On behalf of Muslim Advocates, we respectfully submit this request for reconsideration of the Department of Homeland Security's ("DHS" or "Department") denial of Muslim Advocates' request for correction pursuant to the Information Quality Act ("IQA"), submitted by letter dated January 29, 2018. We requested that the Department retract and correct a report it published, together with the Department of Homeland Security, pursuant to Section 11 of Executive Order 13780, titled Protecting the Nation From Foreign Terrorist Entry Into the United States (the "Report").<sup>1</sup> We are requesting reconsideration because the Department's denial failed to apply the requirements of the IQA and its implementing Guidelines and failed to respond adequately to our arguments in favor of correction. As such, the Department's denial was in error.

The Report must be corrected because the information it presents inflates the proportion of terrorist events that it can attribute to immigrants, especially Muslim men. Among its errors, it draws an artificial distinction between U.S.-born citizens and naturalized citizens, perpetuating an anti-immigrant agenda. It inexplicably excludes analysis of the serious domestic terror threat. And it cherry picks non-citizen Muslim men for profiling, even though these examples do not present an accurate and complete picture of the terror threat to Americans. The Report is

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<sup>1</sup> U.S. Department of Homeland Security and U.S. Department of Justice, Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report (Jan. 2018), <https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf>.

misleading, biased, and lacking in utility, and as such does not meet the level of information quality required of the Department of Justice under the IQA.

### **I. Requirements of the IQA.**

The IQA, which is found at Section 515 of Public Law 106-554, together with its implementing regulations and guidelines, requires that information disseminated to the public by federal agencies, including by the Department, be accurate, reliable, and unbiased.<sup>2</sup>

As required by the IQA, the Office of Management and Budget (“OMB”) issued guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”<sup>3</sup> OMB promulgated these guidelines via notice and comment rulemaking.<sup>4</sup> The Department has also promulgated its Information Quality Guidelines, which cover information promulgated on or after March 18, 2011.<sup>5</sup>

Under OMB and DHS guidelines (1) information (2) disseminated by an agency (3) must be of requisite quality. Quality is “an encompassing term comprising utility, objectivity, and integrity.”<sup>6</sup> “Utility” is measured, in part, by “assessing the usefulness of information . . . not only from the perspective of the agency but also from the perspective of the public.”<sup>7</sup>

“Objectivity” requires that the information be “presented in an accurate, clear, complete, and unbiased manner,” and “within a proper context.”<sup>8</sup> Objectivity may also require that together with disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.<sup>9</sup> Further, for information to be objective, it must use “reliable data sources, sound analytical

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<sup>2</sup> Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 & 154, 44 U.S.C. § 3516, note (West); Office of Mgmt. & Budget, Exec. Office of the President, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002) (“OMB Guidelines”), U.S. Dep’t of Homeland Security, Information Quality Guidelines, <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf> (“DHS Guidelines”).

<sup>3</sup> Consolidated Appropriations Act, § 515(a).

<sup>4</sup> See OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>5</sup> DHS Guidelines at 1.

<sup>6</sup> See OMB Guidelines, 67 Fed. Reg. 8452, 8459. DHS Guidelines at 2.

<sup>7</sup> OMB Guidelines at 8459, DHS Guidelines at 3.

<sup>8</sup> OMB Guidelines at 8459, DHS Guidelines at 3.

<sup>9</sup> OMB Guidelines at 8459, DHS Guidelines at 3.

techniques, and document[ed] methods and data sources.”<sup>10</sup> In a “statistical context, the original and supporting data shall be generated.”<sup>11</sup>

Affected persons may seek and obtain, where appropriate, timely correction of information disseminated by an agency that does not comply with OMB Guidelines or the Department’s Guidelines.<sup>12</sup>

## II. Executive Order 13780 Section 11 Report.

Executive Order 13780 purports to promote the “policy of the United States to protect its citizens from terrorist attacks, including those committed by foreign nationals” by “improv[ing] the screening and vetting protocols and procedures associated with the visa-issuance process and the USRAP [United States Refugee Admissions Program].”<sup>13</sup> Section 11 of the Executive Order instructs the Secretary of Homeland Security, in consultation with the Attorney General, to “collect and make publicly available” the following information:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reasons;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and who have engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States;

(iii) information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security or the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.<sup>14</sup>

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<sup>10</sup> OMB Guidelines at 8459, DHS Guidelines at 3.

<sup>11</sup> OMB Guidelines at 8459, DHS Guidelines at 3.

<sup>12</sup> OMB Guidelines at 8459, DHS Guidelines at 5-7.

<sup>13</sup> Exec. Order No. 13780, 82 FR 13209 (Mar. 6, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-03-09/pdf/2017-04837.pdf>. Executive Order 13780 is colloquially known as Muslim Ban 2.0 or Travel Ban 2.0.

<sup>14</sup> *Id.*

The Departments jointly disseminated the Report in response to this directive on January 16, 2018. The Report identified 549 individuals convicted of international terrorism charges in U.S. federal courts between September 11, 2001, and December 31, 2016. It stated that 73 percent of those individuals were foreign-born; it did not provide such a statistic for foreign nationals, *i.e.*, foreign-born or naturalized U.S. citizens. It also profiled eight “illustrative examples” of the individuals, all of whom are non-U.S. citizen Muslim men. And it discussed several studies in response to the request regarding gender-based violence against women.

### III. The Request for Correction.

Muslim Advocates submitted a request for retraction and correction of the Report to the Department on January 29, 2018 (along with an identical request for correction to the Department of Justice).<sup>15</sup> This Request identified five primary quality errors in the Report, specifically:

- The Report provides misleading and biased information by substituting foreign-born for foreign national.
- The Report’s substitution of international terrorism for all terrorism misleadingly ignores domestic terrorism, artificially inflating the proportion of terrorist incidents committed by foreign nationals.
- The Report’s inclusion of individuals who committed terrorism overseas and whose only apparent tie to the United States is extradition to the United States for prosecution is misleading.
- The Report’s examples of foreign nationals charged with or convicted of terrorism-related offenses are misleading and perpetuate the Administration’s discriminatory narrative that Muslims are likely to commit acts of terrorism.
- The Report’s information relating to gender-based violence is misleading and perpetuates anti-Muslim stereotypes.

In its Request, Muslim Advocates also explained why the Report is subject to the IQA and why Muslim Advocates is an “affected person” within the meaning of the IQA. The Department, in its Response, does not challenge these contentions.

The Department provided an interim response on June 19, 2018, in which it stated it would take additional time to respond to the Request. The Department provided its final response on August 1, 2018 (the “Response”), in which it states that “[t]he Department has determined that there is no inconsistency with the information contained in the Initial Section 11 Report and the Department’s IQA Guidelines.”

For the reasons set forth below, this conclusion was in error. Accordingly, Muslim Advocates requests that the Department reconsider it, and issue a retraction and correction of the Report.

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<sup>15</sup> Attached hereto. Hereafter, the “Request.”

#### **IV. The Department Should Reconsider Its Denial of Muslim Advocates' Request Because the Denial Failed to Apply IQA Requirements and Failed to Defend the Report's Numerous IQA Violations.**

As set forth in our Request, the Report consistently presents information in a manner that misleadingly inflates the proportion of terrorist incidents that are perpetrated by immigrants, especially Muslim men. In so doing, it fails the IQA requirement of objectivity, which requires that information be presented in a manner that is not misleading or biased.<sup>16</sup> It also fails the IQA requirement of utility, because the misleading information is useless to the public in assessing the actual terror threat posed to the United States and in making informed immigration policy decisions in response.<sup>17</sup> This conclusion is buttressed by the letter submitted by former counter-terrorism and national security officials in support of this appeal, which analysis we incorporate herein.<sup>18</sup>

DHS's Response failed to establish the Report's objectivity or utility in the face of our arguments and failed to engage meaningfully with our complaints about the quality of information disseminated. The Response's general assertion that our complaints are not about accuracy, but a "misimpression" created by the Report is no defense. The IQA requires more than bare disclosure of data sources used and accurate arithmetic. It and its implementing Guidelines require that information be useful to the public and unbiased in presentation and substance—standards that prohibit disseminating information that create a "misimpression" for the public. The Response's statement that the Department may provide more detailed data in the future also does not excuse the quality violations in the information it currently is disseminating.

The Department should therefore change its decision and retract and correct the Report.

##### **A. The Response Errs in Not Correcting the Misleading and Biased Substitution of Foreign-Born for Foreign National.**

The Response incorrectly refused to retract and correct the Departments' substitution of "foreign-born" for "foreign national" in the Report's analysis of the immigration status of certain individuals convicted of international terrorism related charges. This substitution presents information in a manner that allows the Report to attribute a higher percentage of terrorism charges to immigrants, violating the IQA's requirements of objectivity in presentation and utility.

Section 11 expressly directed the Departments to provide information related to *foreign nationals* and terrorism-related offenses. Instead, under a heading purporting to provide "Information Regarding the Number of Foreign Nationals Charged with or Convicted of

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<sup>16</sup> OMB Guidelines at 8459, DHS Guidelines at 3.

<sup>17</sup> OMB Guidelines at 8459, DHS Guidelines at 3.

<sup>18</sup> August 13, 2018 Letter from Joshua A. Geltzer, *et al*, to Attorney General Sessions and Secretary Nielsen, available at <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/09/IQA-Letter.pdf>.

Terrorism-Related Offenses...” the Report’s first and primary conclusion is that of the at least 549 individuals who were convicted of international terrorism-related charges during the relevant time period “approximately 73 percent (402 of these 549 individuals) were *foreign-born*.” (emphasis added). While the Report thereafter states how many of the 549 individuals are U.S. citizens, naturalized citizens, or U.S. citizens by birth, its emphasis is on foreign-born individuals, the only category for which it calculates a percentage of the total number.<sup>19</sup> As we pointed out in the Request, if the Report had responded to the charge to provide information about foreign nationals, it would have concluded that a much smaller percentage—46 percent of relevant convictions—were of foreign nationals (based on its own, otherwise flawed data).

The decision to highlight convictions of foreign-born individuals is biased in presentation, in violation of the IQA’s objectivity requirement, an issue ignored by the Response.<sup>20</sup> The Department’s Guidelines state that objectivity requires that disseminated information be presented in an “unbiased manner.”<sup>21</sup> OMB’s Guidelines similarly state that objectivity “involves two distinct elements, presentation and substance”, and “includes whether disseminated information is presented in an accurate, clear, complete, and unbiased manner.”<sup>22</sup> The Report fails this requirement because its presentation promotes the biased and misleading conclusion that immigrants are dangerous. This conclusion is buttressed by the discussion of the Report by senior members of the Administration, including the President, all of whom repeat the 73 percent figure, rather than the lower percentage related to non-citizens.<sup>23</sup>

The Department’s Response also ignores the Report’s failure to meet the requirement of usefulness. OMB and DHS Guidelines require disseminated information to have “utility”, which “refers to the usefulness of the information to its intended users, including the public.” To meet this standard, “the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public.”<sup>24</sup> There is no utility in distinguishing between U.S.-born and foreign-born citizens. The distinction was not required by Section 11, it does not reveal meaningful differences in rights or responsibilities, nor is it relied on by the intelligence community in anti-terrorism work.<sup>25</sup> It serves only to artificially divide American citizens from one another.

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<sup>19</sup> The Report further emphasizes the foreign-born category of individuals (as opposed to foreign nationals), by including both non-citizens and naturalized U.S. citizens (but not U.S. citizens by birth) in its supposed illustrative examples of convicted individuals.

<sup>20</sup> Request at 6.

<sup>21</sup> DHS Guidelines at 3.

<sup>22</sup> OMB Guidelines at 8459; DHS Guidelines at 3. .

<sup>23</sup> See Request at 2.

<sup>24</sup> OMB Guidelines at 8459; see also DHS Guidelines at 3.

<sup>25</sup> See Carrie Cordero & Paul Rosenzweig, *Beware the Slippery Slope in the DOJ-DHS Report on Foreign-Born Terrorists*, Lawfare Blog (Jan. 19, 2018), <https://www.lawfareblog.com/beware-slippery-slope-doj-dhs-report-foreign-born-terrorists>; see also Exec. Order No. 12333, 46 FR 59941 (Dec. 4, 1981) (defining “U.S. person” to include all citizens, regardless of country of birth).

The Department provides no specific defense regarding this information quality issue. It should retract and correct this information.

**B. The Report’s Misleading and Anti-Immigrant Substitution of International Terrorism for All Terrorism is Indefensible.**

The Response ought to have retracted the Report based on the misleading substitution of international terrorism for all terrorism. This substitution inappropriately deemphasizes domestic terrorism and artificially inflates the proportion of terrorist incidents the Report presents as having been committed by foreign nationals.

As we set forth in our Request, in response to Section 11’s instruction to provide information regarding foreign nationals charged with or convicted of terrorism-related offenses, the Report instead provides data related only to *international* terrorism-related offenses.<sup>26</sup> The Response defends this decision on the ground that the Report reveals which data it is using. The Response also asserts that “because of previously information collection practices some of the data presented did not capture the full spectrum of statistic envisioned by the EO.” The Response concludes that accordingly, the Report does not require correction.

The Response ignores the Department’s ability to provide meaningful analysis regarding domestic terrorism. First, the U.S. Code includes a definition of domestic terrorism, which largely mirrors the definition of international terrorism, except that the terrorist acts must “occur primarily within the territorial jurisdiction of the United States.”<sup>27</sup> This definition provides a baseline for the Department to conduct its analysis of terrorism-related offenses based on information regarding domestic terrorism in its possession. We provided several examples of these data sources in our Request, including an April 2017 Government Accountability Office report titled *Countering Violent Extremism*<sup>28</sup> and a joint DHS-Federal Bureau of Investigation intelligence bulletin from May 2017 titled *White Supremacist Extremism Poses Persistent Threat*

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<sup>26</sup> Request at 7-8.

<sup>27</sup> 18 U.S.C. § 2331(5). Indeed, just last month, the Department touted the arrest of an “Oregon domestic terrorism suspect” in connection with a series of arsons and destruction of property. <https://www.justice.gov/opa/pr/oregon-domestic-terrorism-suspect-custody-after-12-years-run>. In announcing the arrest, the Assistant Attorney General for the National Security Division stated that, “[w]hatever the motivation, terrorism is simply unacceptable,” and “[d]omestic terrorism is no exception.” U.S. Dep’t of Justice, *Oregon Suspect in Custody After 12 Years on the Run*, Justice News (Aug. 10, 2018), <https://www.justice.gov/opa/pr/oregon-domestic-terrorism-suspect-custody-after-12-years-run>.

<sup>28</sup> See U.S. Gov’t Accountability Office, *Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts* at 3-5 (Apr. 2017), <http://www.gao.gov/assets/690/683984.pdf> (concluding that “of the 85 violent extremist incidents that resulted in death since September 12, 2001, far right wing violent extremist groups were responsible for 62 (73 percent) while radical Islamist violent extremists were responsible for 23 (27 percent).”). Hereafter, the “GAO Report.”

of Lethal Violence,<sup>29</sup> which the Response ignored entirely. Many more such analyses exist, including the Transactional Records Access Clearinghouse (“TRAC”), a research center at Syracuse University, which uses DOJ data to provide monthly and annual reports on the number of domestic terrorism prosecutions and convictions.<sup>30</sup> The government has previously relied on reports such as these. For example, in a 2015 speech, then Assistant Attorney General John Carlin told the audience that “it is quite clear that domestic terrorists and homegrown violent extremists remain a clear and present danger here inside the United States. We recognize that according to at least one study more people died in this country in attacks by domestic extremists than attacks associated with international terrorist groups over the last, say, five to six years.”<sup>31</sup> The Response’s implication that the Report was unable to provide meaningful information about domestic terrorism charges and convictions is therefore baseless.

Had the Report included data on all terrorism, its results would likely have been very different. Domestic terrorists are much less likely to have been born outside of the United States than are individuals involved in international terrorism.<sup>32</sup> One analysis determined that for both international and domestic terrorism convictions since 1996, foreign born persons would account for 18-21 percent of the convictions, a much lower figure than 73 percent.<sup>33</sup>

The information presented by the Report is therefore not objective in presentation.<sup>34</sup> It selects misleading sources of data to arrive at an artificially high percentage of immigrants who the reader perceives as responsible for terrorism. The biased presentation is made even more

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<sup>29</sup> See FBI & DHS Joint Intelligence Bulletin, *White Supremacist Extremism Poses Persistent Threat of Lethal Violence* 4 (May 10, 2017), available at <https://www.documentcloud.org/documents/3924852-White-Supremacist-Extremism-JIB.html> (stating that “white supremacist extremists were responsible for 49 homicides in 26 attacks from 2000 to 2016 . . . more than any other domestic extremism movement”); see also Jana Winter, *FBI and DHS Warned of Growing Threat from White Supremacists Months Ago*, *Foreign Policy* (Aug. 14, 2017), <http://foreignpolicy.com/2017/08/14/fbi-and-dhs-warned-of-growing-threat-from-white-supremacists-months-ago/> (citing the Intelligence Bulletin).

<sup>30</sup> TRAC Reports on Terrorism, <http://trac.syr.edu/tracreports/terrorism/>.

<sup>31</sup> Dep’t of Justice, *Assistant Attorney General John P. Carlin Delivers Remarks on Domestic Terrorism at an Event Co-Sponsored by the Southern Poverty Law Center and the George Washington University Center for Cyber and Homeland Security’s Program on Extremism*, *Justice News* (Oct. 14, 2015), <https://www.justice.gov/opa/speech/assistant-attorney-general-john-p-carlin-delivers-remarks-domestic-terrorism-event-co>.

<sup>32</sup> Nora Ellingsen & Lisa Daniels, *What the Data Really Show About Terrorists Who 'Came Here,' Part III: What If You Included Domestic Terrorism Cases?*, *Lawfare* (Apr. 11, 2017), <https://www.lawfareblog.com/what-data-really-show-about-terrorists-who-came-here-part-iii-what-if-you-included-domestic> (analyzing TRAC data to conclude that “[o]f the 92 domestic terrorists convicted between 2014 and 2016, for example, only six were foreign-born.” For another 15, country of birth could not be determined).

<sup>33</sup> *Id.* (This analysis also excludes individuals extradited to the United States for prosecution).

<sup>34</sup> OMB Guidelines at 8459, DHS Guidelines at 3.

plain by the President’s characterization of the Report’s conclusions, which failed to even include the qualifier “international” and instead refer simply to terrorism convictions.<sup>35</sup>

The Report also lacks utility.<sup>36</sup> It purports to present information relevant to policy decisions regarding America’s national security and its decision to admit immigrants into the United States, yet it ignores readily available information regarding a large portion of the terrorist events that actually occur in the United States. It therefore is not useful to the public in assessing the actual, very low, terror threat that immigrants pose.

**C. The Response Should Have Excluded Individuals Only Brought to the United States for Prosecution.**

The Response fails to respond specifically to Muslim Advocates’ third argument for retraction and correction—the Report’s unexplained inclusion of individuals who were extradited to the United States for prosecution. In compiling data in response to Section 11’s request for information regarding terrorist events that took place in the United States, specifically data about individuals who were charged with or convicted of terrorism-related offenses “*while in the United States*” or who have been removed from the United States for various reasons, the Report also includes information about individuals who “committed offenses while located abroad, including defendants who were transported to the United States for prosecution.”<sup>37</sup> As we pointed out in our Request, the inclusion of these individuals, especially without the underlying data that would reveal what percentage of the total they comprise, violates the IQA.<sup>38</sup> The Response’s general assertion that the Report complies with the IQA because it accurately described the data used is incorrect.

Including persons who have been extradited to the United States for trial on charges related to terrorist activity that took place outside of the United States in the total number of terrorism-related convictions misleadingly inflates the terrorist threat posed to the United States by foreign nationals. These individuals are definitionally unlikely to be U.S. citizens, which results in increasing the percentage of foreigners the Report can assert are responsible for terrorist activity. While they may be convicted in the United States following extradition, their overseas offenses do not typically reflect the actual terror threat to the United States, nor could they serve to inform the United States’ immigration policy. The Response fails completely to address our arguments regarding this misleading consequence of its presentation of information as well as the information’s lack of utility.

Compounding the information quality problem, the Department inexplicably fails to provide relevant and easily ascertainable underlying data—namely how many of the total 549 individuals were included based on their extradition to the United States. In so doing, it fails to

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<sup>35</sup> Donald J. Trump, Tweet (Jan. 16, 2018), <https://twitter.com/realDonaldTrump/status/953406553083777029>.

<sup>36</sup> OMB Guidelines at 8459, DHS Guidelines at 3.

<sup>37</sup> Report at 1, 2 (emphasis added).

<sup>38</sup> Request at 8-9.

meet the requirement to provide “full, accurate, transparent documentation” of data.<sup>39</sup> This information must be within the government’s possession, as it was responsible for the convictions in the first instance and compiled the information for the Report. There is no basis for failing to disclose it.

**D. There is No Justification for Failing to Retract the Biased and anti-Muslim Presentation of Examples of Foreign Nationals Charged With or Convicted of Terrorism-Related Offenses.**

The Response fails to address meaningfully our fourth basis for retraction—the Report’s biased selection of eight supposedly “illustrative examples” among the 402 convictions of foreign nationals or naturalized U.S. citizens. As we note, each of these examples appears to depict a Muslim man who arrived in the United States through the precise immigration provisions the Administration seeks to eliminate: refugee resettlement, migration preferences to support family reunification, and the visa diversity lottery.<sup>40</sup> On its face, this selection of examples is biased. Making the problem worse, the public is unable to test the representativeness of the examples given the Report’s failure to provide underlying information, failing the IQA’s requirement to do so.

The selection of the eight “illustrative examples” is not objective and does not provide useful information. It categorically excludes examples of U.S. citizens, despite their contribution to a significant percentage of terrorist activity.<sup>41</sup> It also excludes from profile any individual extradited to the U.S. for prosecution, even though such people were included in the number of foreign nationals included in the Report’s totals. Such individuals likely would not, of course, have immigrated to the United States via any of the mechanisms opposed by the Administration. Rather, each of the examples included is an individual who arrived in the United States via an immigration path disfavored by the current Administration, an outcome that is exceedingly unlikely absent cherry picking of examples. As such, the Report presents information based on the Administration’s existing biases. This necessarily violates the Department’s Guidelines, which require disseminated information, as a matter of substance and presentation to be, among other things, “unbiased” to meet the objectivity standard and that the information be useful to the public.<sup>42</sup>

The Response’s statement that the Departments do not yet have “complete, final information” on these individuals does not address the biased and misleading information that it did present. The IQA and its implementing guidelines do not permit an agency to disseminate

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<sup>39</sup> OMB Guidelines at 8459.

<sup>40</sup> Request at 9.

<sup>41</sup> See GAO Report at 3-5; see also Phil Hirschorn, *Most Convicted Terrorists Are U.S. Citizens. Why Does The White House Say Otherwise?*, PBS (Mar. 12, 2017), <https://www.pbs.org/newshour/nation/convicted-terrorists-citizens> (citing to a study from the New America Foundation that found that 72.5 percent of those charged in “jihadist terrorism” cases were U.S. citizens).

<sup>42</sup> DHS Guidelines at 3.

selective information that is biased and misleading simply because the agency does not have complete information in its possession.

Once again, the conclusion that the Report’s presentation of information is misleading is buttressed by the Administration’s seizing on to the Report to promote its policy agenda. A White House “Fact Sheet” relies on the eight “illustrative examples” to state that “[a] significant number of terrorists have entered the United States solely on the basis of family ties and extended-family chain migration” and “[t]errorists have also entered the United States through the visa lottery program.” The “Fact Sheet” concludes, that it is “TIME TO END CHAIN MIGRATION AND THE VISA LOTTERY.”<sup>43</sup>

Of course, if the Report had complied with the IQA requirement to provide underlying data—such as basic information regarding the other individuals included in the conviction totals—the public could have determined for itself whether the examples were representative in any respect, or whether they were tainted by bias. Having failed to do so, however, the information again fails to meet the standard for objectivity.

#### **E. The Response Fails to Address the Misleading and Anti-Muslim Information the Report Disseminates About Gender-Based Violence Against Women.**

The Response to our request for correction of the information disseminated by the Report relating to gender-based violence is inadequate. Section 11 called for information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals. As we pointed out, while the Report acknowledged the lack of meaningful aggregated data on the topic, it provided irrelevant and inaccurate data instead, particularly by providing misleadingly large numbers of incidents of violence without any connection to immigration status and by citing discredited and non-scientific studies.<sup>44</sup> The Response does not discuss specifically any of the studies or analyses that we critiqued. Nor does it attempt to respond to our complaint that the inclusion of these flawed studies and analyses results in the dissemination of inaccurate and misleading information regarding gender-based violence.

By refusing to retract this portion of the Report, the Department perpetuates the dissemination of information that is not objective because the information is not presented in an unbiased manner.<sup>45</sup> It also is not objective because it does not derive from reliable data sources nor is it the product of “sound statistical and research methods.”<sup>46</sup>

#### **IV. Conclusion and Relief Requested**

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<sup>43</sup> The White House, *Our Current Immigration System Jeopardizes American Security* (January 16, 2018), <https://www.whitehouse.gov/briefings-statements/current-immigration-system-jeopardizes-american-security/>.

<sup>44</sup> Request at 10-11.

<sup>45</sup> OMB Guidelines at 8459, DHS Guidelines at 3.

<sup>46</sup> DHS Guidelines at 3. *See also* OMB Guidelines at 8459 (“error sources affecting data quality should be identified and disclosed”).

As set forth above and in the Request, the Report is not objective and does not have utility. The Department's Response erred in rejecting these arguments. We request that the Department retract the Report and, if you determine that publishing a revised report is necessary, correct the Report as outlined above within 60 days.

Sincerely,

/s/ Robin Thurston

Robin Thurston, Senior Counsel  
Democracy Forward Foundation

/s/ Sirine Shebaya

Johnathan Smith, Legal Director  
Sirine Shebaya, Senior Staff Attorney  
Muslim Advocates

*Counsel for Muslim Advocates*

# **Attachment**



By Fed Ex and Email

January 29, 2018

U.S. Department of Justice  
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Office of the Chief Information Officer  
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Re: *Request for Correction Under the Information Quality Act*

To whom it may concern:

On behalf of Muslim Advocates, we respectfully submit this request for correction pursuant to the Information Quality Act (“IQA”) to the U.S. Department of Homeland Security (“DHS”) and the U.S. Department of Justice (“DOJ”) and, together with DHS, the “Departments” or “you”). We request that you retract and correct the misleading and biased information issued in your first joint report published pursuant to Section 11 of Executive Order 13780, Protecting the Nation from Foreign Terrorist Entry into the United States (the “Report”).<sup>1</sup>

The Report asserts, among other things, that 73 percent of individuals convicted of international terrorism-related offenses are foreign-born. But this figure, disseminated in response to a request for information on the number of terrorism-related offenses committed by foreign *nationals*, misleadingly also includes foreign-born persons—a term that includes naturalized citizens (*i.e.*, individuals who are not foreign nationals). The 73 percent figure also excludes convictions for acts of domestic terrorism, and thereby vastly misrepresents the actual terror threat to the country. Bizarrely, the 73 percent figure does include in its calculation foreign nationals whose only apparent tie to the United States comes through their extradition to this country to be prosecuted for terrorism. These choices artificially inflate the rate of terrorism

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<sup>1</sup> U.S. Dep’t Homeland Security and U.S. Dep’t Justice, Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report (Jan. 2018), <https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf> (the “Report”).

that the government represents is committed by immigrants. Apparently finding the artificially high rate useful for its purposes, DOJ promptly tweeted it out, further disseminating deceptive information to the public.<sup>2</sup>

Because the 73 percent figure and much of the other information in the Report is misleading, reflecting the biased views of the Administration, the Report fails to meet the basic information quality standards required by federal law. Yet the Administration is already using the Report in its ongoing attempts to restrict lawful immigration, and in particular immigration by Muslims. Attorney General Sessions stated that the Report “reveals an indisputable sobering reality—our immigration system has undermined our national security and public safety.”<sup>3</sup> Similarly, Homeland Security Secretary Nielsen repeated the 73 percent statistic in her testimony before the U.S. Senate Committee on the Judiciary on January 16, 2018.<sup>4</sup> Indeed, the Report appears to have been issued primarily to serve the Administration’s political ends—reportedly being substantially drafted by Attorney General Sessions’ office, and contrary to the claim that it is “[a]n analysis conducted by DHS,”<sup>5</sup> without input from DHS career analysts.<sup>6</sup>

Accordingly, on behalf of Muslim Advocates, Democracy Forward Foundation makes this request for correction, pursuant to the Departments’ IQA guidelines, of the information contained in the Report. We request that you retract the Report, and to the extent that you determine that publishing a revised report is necessary, include in it data that avoids the errors identified below, or, to the extent the Departments do not have relevant data, to admit as much. Doing so is necessary to correct the misimpression, intentionally conveyed by the Departments,

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<sup>2</sup> Dep’t Justice (@TheJusticeDepartment), Twitter (Jan. 16, 2018, 6:40am), <https://twitter.com/TheJusticeDept/status/953275839361187840> (“DOJ, DHS REPORT: THREE OUT OF FOUR INDIVIDUALS CONVICTED OF INTERNATIONAL TERRORISM AND TERRORISM-RELATED OFFENSES WERE FOREIGN-BORN”).

<sup>3</sup> See Press Release, U.S. Dep’t Justice, DOJ, DHS Report: Three Out of Four Individuals Convicted Of International Terrorism and Terrorism-Related Offenses Were Foreign-Born (Jan. 16, 2018), <https://www.justice.gov/opa/pr/doj-dhs-report-three-out-four-individuals-convicted-international-terrorism-and-terrorism> (“DOJ Press Release”); see also Press Release, U.S. Dep’t Homeland Security, DOJ, DHS Report: Three Out of Four Individuals Convicted Of International Terrorism and Terrorism-Related Offenses Were Foreign-Born (Jan. 16, 2018), <https://www.dhs.gov/news/2018/01/16/dhs-doj-report-three-out-four-individuals-convicted-international-terrorism-and> (“DHS Press Release”).

<sup>4</sup> Anna Giaritelli, *DHS Chief: Foreign-born have made up 3 in 4 of international terrorism convictions in US courts since Sept. 11 attacks*, Wash. Examiner (Jan. 16, 2018), <http://www.washingtonexaminer.com/dhs-chief-foreign-born-have-made-up-3-in-4-of-international-terrorism-convictions-in-us-courts-since-sept-11-attacks/article/2646031>; see also Homeland Security Oversight: Testimony of Secretary Kirstjen Nielsen, C-Span (Jan. 16, 2018), <https://www.c-span.org/video/?439257-1/homeland-security-secretary-kirstjen-nielsen-faces-questions-da-ca>.

<sup>5</sup> Report at 2.

<sup>6</sup> Spencer Ackerman, *Team Trump Bypassed DHS Analysts to Produce Bogus Terror Report*, Daily Beast (Jan. 21, 2018), <https://www.thedailybeast.com/team-trump-bypassed-dhs-analysts-to-produce-bogus-terror-report>.

that the Report reveals that “our immigration system has undermined our national security and public safety.”<sup>7</sup>

### **I. Executive Order 13780 Section 11 Report.**

Executive Order 13780, purports to promote the “policy of the United States to protect its citizens from terrorist attacks, including those committed by foreign nationals” by “improv[ing] the screening and vetting protocols and procedures associated with the visa issuance process and the USRAP [United States Refugee Admissions Program].”<sup>8</sup> Section 11 of the Executive Order instructs the Secretary of Homeland Security, in consultation with the Attorney General, “to collect and make publicly available” the following information:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reasons;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and who have engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States;

(iii) information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security or the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.<sup>9</sup>

The Report, which was jointly disseminated by the Departments on January 16, 2018, purports to provide an initial report regarding the information required by Section 11. In response to the above four subsections, the Report sets forth various information, including the assertion that 73 percent of individuals convicted of “international terrorism-related charges in U.S. federal courts between September 11, 2001, and December 31, 2016” were “foreign-born,”<sup>10</sup> as well as eight “illustrative examples” of such individuals.<sup>11</sup> The Report also provides an

<sup>7</sup> DOJ Press Release; DHS Press Release.

<sup>8</sup> Exec. Order No. 13780, 82 FR 13209 (Mar. 6, 2017) (the “Exec. Order”). Executive Order 13780 is colloquially known as Muslim Ban 2.0 or Travel Ban 2.0, and has been the subject of extensive litigation relating to its discriminatory intent and unlawfulness, including its constitutional violations.

<sup>9</sup> *Id.*

<sup>10</sup> As discussed in greater detail below, the term “foreign-born” would still include individuals who lawfully immigrated to the United States, and naturalized to become full United States citizens. This

assortment of statistical information that it claims is related to gender-based violence, and “other information” that it determined to be relevant to public safety and security.

## II. Requirements of the IQA

The IQA, which is found at Section 515 of Public Law 106-554, together with its implementing regulations and guidelines, requires that information disseminated to the public by federal agencies, including by DHS and DOJ, be accurate, reliable, and unbiased.<sup>12</sup> It also directs the Office of Management and Budget (“OMB”) to issue guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”<sup>13</sup> Federal agencies, in turn, must issue their own guidelines, likewise “ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency” and establishing “administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines.”<sup>14</sup>

Pursuant to these directives, OMB, as well as DHS and DOJ, promulgated guidelines establishing information quality standards and providing a means for parties to seek redress for information that does not conform to these standards.<sup>15</sup> Thus, under the OMB and agency guidelines, the touchstone for the IQA is that (1) information (2) disseminated by an agency (3) be of requisite quality.

The Report is covered by the IQA. DHS guidelines, as well as the substantially similar DOJ guidelines, define “information,” in relevant part, as “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical,

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group of people is expressly different than foreign nationals, which would not include naturalized United States citizens. The Executive Order asked only for information concerning terrorism-related offenses for “foreign nationals in the United States.” Report at 1.

<sup>11</sup> *Id.* at 2-7.

<sup>12</sup> Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 & 154, 44 U.S.C. § 3516, note (West) (the “IQA”); Office of Mgmt. & Budget, Exec. Office of the President, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002) (“OMB Guidelines”), <https://www.gpo.gov/fdsys/pkg/FR-2002-02-22/pdf/R2-59.pdf>; U.S. Dep’t Homeland Security, Information Quality Guidelines (last visited Jan. 18, 2018), <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf> (“DHS Guidelines”); U.S. Dep’t Justice, Information Quality: Ensuring the Quality of the Information Disseminated by the Department (Nov. 2016), <https://www.justice.gov/iqpr/information-quality> (“DOJ Guidelines”).

<sup>13</sup> IQA § 515(a).

<sup>14</sup> *Id.* § 515(b); *see also Prime Time Int’l Co. v. Vilsack*, 599 F.3d 678, 684-86 (D.C. Cir. 2010) (describing the statutory and administrative scheme of the IQA).

<sup>15</sup> *See* DHS Guidelines; *see also* DOJ Guidelines.

graphic, cartographic, narrative, or audiovisual forms.”<sup>16</sup> The Report purports to present facts, primarily in the form of numerical data and narrative description, and therefore was required to adhere to the standards of the IQA.

The Report was disseminated to the public, for the purposes of the IQA. DHS and DOJ’s IQA guidelines define “dissemination” in substantially the same manner, including “agency initiated or sponsored distribution of information to the public.”<sup>17</sup> The Departments issued the Report with accompanying press releases, and have made the Report available to the public on their respective webpages.<sup>18</sup>

IQA guidelines define what it means for information to be of sufficient quality to meet the statutory standard. Specifically, quality “is an encompassing term comprising utility, objectivity, and integrity.”<sup>19</sup> Among other standards relevant here, “in assessing the usefulness of the information that the agency disseminates to the public, the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public.”<sup>20</sup> And, “objectivity” includes:

Whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.<sup>21</sup>

Further, where the information is disseminated in “a statistical context,” the DHS guidelines require that DHS “generate the original and supporting data, and develop the analytic results, using sound statistical and research methods.”<sup>22</sup> DOJ’s guidelines require the use of “reliable data sources, sound analytical techniques, and document[ed] methods and data sources.”<sup>23</sup>

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<sup>16</sup> See DHS Guidelines; cf. DOJ Guidelines (defining information to include “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. It includes information that an agency disseminates from a web page, but does not include information disseminated by others and accessible through hyperlinks from an agency web page.”).

<sup>17</sup> See DHS Guidelines; see also DOJ Guidelines (“Except for those categories of information that are specifically exempted from coverage (see below), these guidelines apply to all information disseminated by DOJ and DOJ initiated or sponsored dissemination of information by DOJ grantees, contractors, or cooperators on or after October 1, 2002, regardless of when the information was first disseminated.”).

<sup>18</sup> See DHS Press Release (providing a link to the Report at a dhs.gov web domain); DOJ Press Release (providing a link to the Report at a justice.gov web domain).

<sup>19</sup> See OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> DHS Guidelines.

<sup>23</sup> DOJ Guidelines.

As set forth in detail in the following section, the Report fails to meet the IQA requirements regarding quality, utility, objectivity, and integrity. These failures hamper the public's ability to participate in the ongoing debate regarding immigration policy and national security by providing misinformation with the purpose of bolstering the Administration's anti-immigrant agenda. The Report's failings also may impede public safety agencies who look to glean insights from the Report for accurately assessing and protecting against true national security threats.

### **III. The Report Violates the IQA by Disseminating Information Which is Designed to Mislead the Public About the Risk that Immigrants to the United States Will Commit Acts of Terrorism.**

#### **A. The Report provides misleading and biased information by substituting foreign-born for foreign national.**

Section 11 directed the Departments to provide information related to foreign nationals and terrorism-related offenses, which the Executive Order claimed would be used to inform the country's immigration policy. Instead, the Report provided information regarding *foreign-born* individuals rather than foreign nationals, which allows it to attribute 73 percent of international terrorism-related offenses to individuals who the Departments apparently perceive as foreign, despite their American citizenship.

The Report's topline conclusion is that "at least 549 individuals were convicted of international terrorism-related charges in U.S. federal courts between September 11, 2001, and December 31, 2016," and that "approximately 73 percent (402 of these 549 individuals) were foreign-born."<sup>24</sup> The Department's math, however, relies on the wrong inputs in a misleading way. The report further states that of these 549 individuals, 254 were not U.S. citizens, 148 were foreign-born, naturalized and received U.S. citizenship, and 147 were U.S. citizens by birth.<sup>25</sup> Had the Report followed the Executive Order's directive to report on foreign nationals, even based on its own, flawed, data, it would have concluded that fewer than half, or 46 percent, of individuals charged or convicted of international terrorism-related offenses met this criterion.

The failure to use the proper numerator (or, more precisely, the one that would have actually reflected the data collection requested by E.O. 13780) is only part of the problem. The Departments have also failed to adhere to the IQA's requirements that federally produced data also be, among other criteria, useful and unbiased.<sup>26</sup> Responding to a request for information that purports to be about the terrorist threat that foreign national immigrants pose to the United States by substituting information that includes naturalized citizens fails that metric and perpetuates the Administration's discriminatory view that only native-born individuals are actually American. Such a manipulation of information is misleading and biased, in violation of IQA guidelines.

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<sup>24</sup> Report at 2.

<sup>25</sup> *Id.*

<sup>26</sup> OMB Guidelines.

**B. The Report’s substitution of international terrorism for all terrorism misleadingly ignores domestic terrorism, artificially inflating the proportion of terrorist incidents committed by foreign nationals.**

In response to the Executive Order’s charge that the Departments provide information regarding foreign nationals charged with or convicted of terrorism-related offenses, the Report fails to do so and instead provides data related only to *international* terrorism-related offenses.<sup>27</sup> This sleight of hand artificially increases the proportion of foreign nationals presented as responsible for terrorist incidents.

The Report states that it has only considered information about international terrorism-related offenses, specifically: “public convictions in federal courts between September 11, 2001, and December 31, 2016 resulting from international terrorism investigations, including investigations of terrorist acts planned or committed outside the territorial jurisdiction of the United States over which Federal criminal jurisdiction exists and those within the United States involving international terrorists and terrorist groups.”<sup>28</sup> In so doing, the Report categorically excludes all terrorism-related offenses that occurred in the United States, and which were planned and executed by individuals without international connections. This exclusion dramatically misrepresents the actual terrorist threat posed by foreign nationals in the United States.

In contrast to the Report’s representations, studies show, as the government itself is aware, that native-born citizens commit significant numbers of terrorist attacks in the United States.<sup>29</sup> An April 2017 Government Accountability Office report concluded that “of the 85 violent extremist incidents that resulted in death since September 12, 2001, far right wing violent extremist groups were responsible for 62 (73 percent) while radical Islamist violent extremists were responsible for 23 (27 percent).”<sup>30</sup> Similarly, DHS and the Federal Bureau of Investigation published an intelligence bulletin in May 2017 titled, “White Supremacist Extremism Poses Persistent Threat of Lethal Violence.” That bulletin states that white supremacist extremists, who are very rarely immigrants, were responsible for 49 homicides in 26 attacks from 2000 to

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<sup>27</sup> Report at 2.

<sup>28</sup> *Id.*

<sup>29</sup> See Alex Nwrasteh, *New Government Terrorism Report Provides Little Useful Information*, Cato Inst. (Jan. 16, 2018), <https://www.cato.org/blog/new-government-terrorism-report-nearly-worthless> (“Since the beginning of 2002, native-born Americans were responsible for 78 percent of all murders in terrorist attacks committed on U.S. soil while foreign-born terrorists only committed 22 percent.”); see also Lachlan Markay and Spencer Ackerman, *Fuzzy Math: Team Trump Cooks Terror Stats for Bogus Immigration Agreement*, Daily Beast (Jan. 16, 2018), <https://www.thedailybeast.com/team-trump-cooks-terror-stats-for-bogus-immigration-argument?via=ios> (citing a New America Foundation study, which found that 85 percent of individuals who were charged with, or died engaging in, an act of terrorism were United States citizens or lawful permanent residents.”).

<sup>30</sup> See U.S. Gov’t Accountability Office, *Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts* at 3-5 (Apr. 2017), available at <http://www.gao.gov/assets/690/683984.pdf>.

2016 . . . more than any other domestic extremism movement.”<sup>31</sup> Despite the existence of this threat, the Departments omitted data related to domestic terrorism without explanation.

By presenting data that omits completely information about the threat posed by domestic terrorists without international ties, as responsive to the directive to provide data regarding *all* terrorism, domestic and international, the Departments have presented incomplete and misleading information in violation of the IQA. Indeed, the Departments’ data has artificially inflated the percentage of foreign nationals that they can claim are involved in terrorism-related offenses. It is common sense that foreign nationals are more likely to be involved in terrorist events occurring in foreign countries or involving foreign groups than they are to be involved in purely domestic terrorist events.<sup>32</sup> As one commentator concluded, “[i]ncluding the actual number of deaths caused by terrorists flips the DHS/DOJ statistics on its head.”<sup>33</sup> Such a manipulation of the data plainly violates information quality requirements.

**C. The Report’s inclusion of individuals who committed terrorism overseas and whose only apparent tie to the United States is extradition to the United States for prosecution is misleading.**

The Executive Order also directs the Departments to collect information regarding terrorist events that took place in the United States, specifically data about individuals who were charged with or convicted of terrorism-related offenses “*while in the United States*” or who have been removed from the United States for various reasons.<sup>34</sup> The Report includes, however, information about individuals who “committed offenses while located abroad, including those who were transported to the United States for prosecution.”<sup>35</sup> Although someone who has been extradited to the United States for trial may be charged and convicted while in the United States, the offenses committed by that person overseas do not necessarily reflect the actual terror threat to the United States, nor could they serve to inform the United States’ immigration policy. Including information about offenses that occur overseas will, however, naturally increase the number of foreign nationals the Departments can claim are responsible for terrorism-related offenses.

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<sup>31</sup> See FBI & DHS Joint Intelligence Bulletin, White Supremacist Extremism Poses Persistent Threat of Lethal Violence 4 (May 10, 2017), *available at* <https://www.documentcloud.org/documents/3924852-White-Supremacist-Extremism-JIB.html>; *see also* Jana Winter, *FBI and DHS Warned of Growing Threat from White Supremacists Months Ago*, Foreign Policy (Aug. 14, 2017), <http://foreignpolicy.com/2017/08/14/fbi-and-dhs-warned-of-growing-threat-from-white-supremacists-months-ago/> (citing the FBI & DHS Joint Intelligence Bulletin, *supra* note 31).

<sup>32</sup> William Braniff, executive director of the National Consortium for the Study of Terrorism and Responses to Terrorism (START) at the University of Maryland, noted that “If you’re looking at international terrorism, you’re going to see people with a more international background—that’s just common sense. . . . [DHS and DOJ] exclude a lot of data what would present a different picture.” *See* Markay and Ackerman, *supra* note 29.

<sup>33</sup> Nwrasteh, *supra* note 29.

<sup>34</sup> Exec. Order at 1.

<sup>35</sup> Report at 2.

The Departments provide no information in the Report about why they chose to include terrorism-related offenses that did not occur in the United States. Moreover, in plain violation of IQA guidelines that agencies provide supporting data for statistical information, the Departments do not provide access to underlying aggregate data that would reveal the degree to which including overseas offenses misrepresents the nexus between foreign nationals and the risk of terrorism in the United States. As OMB itself notes in the context of this guideline, doing so is necessary, “so that the public can assess for itself whether there may be some reason to question the objectivity of the sources.”<sup>36</sup> By failing to provide the public with this opportunity, the Departments have violated the IQA.

**D. The Report’s examples of foreign nationals charged with or convicted of terrorism-related offenses are misleading and perpetuate the Administration’s discriminatory narrative that Muslims are likely to commit acts of terrorism.**

The Report provides eight “illustrative examples among the 402 convictions of foreign nationals or naturalized U.S. citizens.”<sup>37</sup> Because the Report offers no raw data tables revealing biometric information for the 402 convicted persons—despite IQA guidelines directing that agencies provide supporting data for statistical information<sup>38</sup>—there is no way for outside observers to test the Departments’ assertion that these examples are “illustrative.” Even without the ability to verify, however, it seems highly unlikely that the vignettes offered as “illustrative examples” are in any way representative for the obvious reason that they exclusively chronicle Muslims who arrived in the United States through the precise immigration provisions the Administration now seeks to do away with: refugee resettlement, migration preferences to support family reunification, and the diversity visa lottery.<sup>39</sup>

By selecting anecdotes that perpetuate the Administration’s discriminatory view of immigrants and failing to provide transparency about the underlying data that would allow the public to determine whether these anecdotes are misrepresentative, as they appear to be, the Report again fails the IQA guideline requirement to be objective.

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<sup>36</sup> OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>37</sup> Report at 3-7.

<sup>38</sup> OMB Guidelines, 67 Fed. Reg. 8452, 8459.

<sup>39</sup> See Faiza Patel, *Trump Administration’s Fuzzy Math on Terrorist Origins is More than Misleading -- It’s Dishonest*, Just Security (Jan. 16, 2018), <https://www.justsecurity.org/51084/trump-administrations-fuzzy-math-terrorist-origins-misleading-its-dishonest/>; see also Dan Merica and Tal Kopan, *Trump demands Congress terminate diversity immigration lottery*, CNN (Nov. 1, 2017), <http://www.cnn.com/2017/11/01/politics/donald-trump-chuck-schumer-nyc-attack/index.html> (detailing President Trump’s plans to reform the immigration system).

**E. The Report’s information relating to gender-based violence is misleading and perpetuates anti-Muslim stereotypes.**

Subsection (iii) of Section 11 of the Executive Order instructs the Departments to provide information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals. Given that the Administration proposed eliminating funding for programs to prevent violence against women at the same time that the President requested this information,<sup>40</sup> the motivation in the information request does not appear to be the actual protection of women but instead appears to be to perpetuate stigma about Muslims. The information provided by the Report, which purports to be responsive to the Executive Order’s directive, is inaccurate and misleading.

In fact, as the Report must acknowledge, the federal government has not “recorded and tracked in an aggregated statistical manner information pertaining to gender-based violence against women committed at the federal and state level.”<sup>41</sup> Nor does the federal government have reliable information regarding the prevalence of so-called “honor killings.” The Departments appear not to possess any information that is responsive to the directive of subsection (iii) that meets IQA standards.

Yet, instead of reaching that conclusion and recommending further study, the Departments provided alternate data, which range from irrelevant to inaccurate. The Report cites the average annual number of non-fatal domestic violence victimizations, which is an alarmingly large number, but plainly fails to reveal the proportion perpetuated by foreign nationals.<sup>42</sup> Indeed, studies show that gender-based violence rates are largely the same across all countries, a point which further casts doubt on the Report’s attempt to link gender-based violence with national origin.<sup>43</sup>

The Report then points to discredited data to perpetuate the stigmatization of Muslims inherent in the Executive Order’s implication that “honor killings” are a significant problem in the United States. First, the Report fails to define what it interprets the term “honor killings” to mean. The Report next asserts that “a study commissioned and provided to the DOJ’s Bureau of Justice Statistics in 2014 estimated that an average of 23-27 honor killings occur every year in the United States.”<sup>44</sup> As an initial matter, the study was not commissioned by the Department of

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<sup>40</sup> See Melissa Jeltsen, *Trump’s Budget Would Be Devastating to Poor Victims of Domestic Abuse*, HuffPost (Mar. 17, 2017), [https://www.huffingtonpost.com/entry/trump-budget-domestic-abuse-victims\\_us\\_58cc2184e4b0ec9d29dbd9f7](https://www.huffingtonpost.com/entry/trump-budget-domestic-abuse-victims_us_58cc2184e4b0ec9d29dbd9f7).

<sup>41</sup> Report at 7.

<sup>42</sup> *Id.*

<sup>43</sup> K.M. Devries et al., *The Global Prevalence of Intimate Partner Violence Against Women*, 340 Science 1527, 1527-1528 (June 2013) (estimating that 30 percent of women experience domestic violence and that though there are some slight regional variations, the rates exceed 19 percent everywhere in the world except East Asia).

<sup>44</sup> Report at 8.

Justice, but by a private organization.<sup>45</sup> Moreover, the author of that study has disclaimed the accuracy of its conclusion, saying “it’s not terribly scientific,” a fact not disclosed by the Report, despite the OMB guidelines’ directive that “error sources affecting data quality should be identified and disclosed to users.”<sup>46</sup>

Finally, the Report also cites a study regarding the number of women and girls who may be *at risk for* female genital mutilation, noting that the number was three times higher in 2012 than in 1990.<sup>47</sup> What the Report fails to explain is that the study’s methodology simply correlates the risk of female genital mutilation in various countries to the number of women and girls living in the United States who were born in that country or who lived with a parent born in that country.<sup>48</sup> In other words, the study that purports to inform the risk that immigrants pose with regard to violence against women, simply tracks immigration rates, and explicitly does not present “scientifically valid information” about the behavior of those immigrant populations in the United States.

#### IV. Muslim Advocates is an Affected Person

Muslim Advocates is an affected person entitled to seek a correction of disseminated information that fails to meet the IQA’s quality standards. Muslim Advocates is a civil rights organization that promotes freedom and justice for Americans of all faiths, with a particular focus on issues impacting the Muslim community. Muslim Advocates engages in civil rights litigation, policy advocacy, and public education to fight inaccurate stereotypes about Muslims and other immigrants. In particular, Muslim Advocates works to ensure that policies enacted under the banner of national security do not wrongfully discriminate against Muslims and are not based on inaccurate or misleading information.

The guidelines define “affected person” as one who “may benefit or be harmed by the disseminated information,” including one who “use[s] information.”<sup>49</sup> Muslim Advocates uses reliable information concerning the American immigration population in its work, and it, as well as its clients, is also “harmed” by the dissemination of the Report, which seeks to portray immigrants, and particularly Muslim immigrants, as inherently violent and likely to commit acts of terror. Moreover, the Report serves as a mechanism to justify the travel and refugee bans, which the Administration has attempted to justify, at least in part, by reference to the kinds of inaccurate data and biased findings contained in the Report. The Report serves as further *post hoc* justification for those efforts, which directly harm Muslim Advocates and its clients.

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<sup>45</sup> Jesse Singal, *Here’s What the Research Says About Honor Killings in the U.S.*, N.Y. Mag. (March 6, 2017), <http://nymag.com/daily/intelligencer/2017/03/heres-what-the-research-says-about-american-honor-killing-s.html>.

<sup>46</sup> *See id.*; *see also* OMB Guidelines 8452, 8459.

<sup>47</sup> Report at 8.

<sup>48</sup> *Id.* at 8 n.17 (citing Howard Goldberg et al., *Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk, 2012*, 131 Pub. Health Rep. 340-347 (2016)).

<sup>49</sup> *See* DHS Guidelines; *see also* DOJ Guidelines.

A retraction and correction of the Report and its findings would therefore benefit Muslim Advocates by advancing its mission of advocating on behalf of Muslim, Arab, South Asian, and immigrant communities.

**IV. Conclusion and Relief Requested**

Given the importance and immediacy of the public dialogue on the Administration's proposed immigration policy efforts, and the impact that the misleading Report may have on this debate, we request that the Departments retract and, if you determine that publishing a revised report is necessary, correct the Report as outlined above within 60 days.

Sincerely,

/s/ Robin Thurston

Robin Thurston, Senior Counsel  
Democracy Forward Foundation

/s/ Sirine Shebaya

Sirine Shebaya, Senior Staff Attorney  
Muslim Advocates

*Counsel for Muslim Advocates*

# **ATTACHMENT I**



U.S. Department of Justice

Washington, D.C. 20530

OCT 24 2018

Ms. Robin Thurston  
Senior Counsel  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, DC 20043-4553

Ms. Sirine Shebaya  
Senior Staff Attorney  
Muslim Advocates  
P.O. Box 71080  
Oakland, CA 94612

Dear Ms. Thurston and Ms. Shebaya:

This is to notify you that the Department of Justice (Department) is in receipt of your September 13, 2018, request for reconsideration under the Department's Information Quality Act (IQA) guidelines. You seek reconsideration of the Department's denial of your request for retraction and correction of information in the Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States Initial Section 11 Report. At this time, your request for reconsideration is under review pursuant to the Department's IQA guidelines. If the Department of Justice and the Department of Homeland Security, to which you have also submitted your request for reconsideration, determine that reconsideration relief is warranted, we will notify you at that time. Additional time is required to review and respond. The Department anticipates providing a further response to your request for reconsideration, or update on its review of your request, within forty-five (45) days of this letter.

Sincerely,

A handwritten signature in blue ink that reads "Michael H. Allen".

Michael H. Allen  
Deputy Assistant Attorney General  
Policy, Management, and Planning  
Justice Management Division

**ATTACHMENT**  
**J**



U.S. Department of Justice

Washington, D.C. 20530

December 21, 2018

Ms. Robin Thurston  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, D.C. 20043-4553

Ms. Sirine Shebaya  
Muslim Advocates  
P.O. Box 71080  
Oakland, CA 94612

Dear Ms. Thurston and Ms. Shebaya:

This letter responds to the Request for Reconsideration of Denial of Request for Correction Under the Information Quality Act submitted by Democracy Forward Foundation and Muslim Advocates ("Muslim Advocates") on September 13, 2018.

On January 29, 2018, Muslim Advocates requested, pursuant to the Information Quality Act (IQA) and implementing guidelines, that the Department of Justice (Department) and the Department of Homeland Security (DHS) retract and correct their January 2018 joint report ("Report") issued pursuant to Section 11 of Executive Order 13780 ("Request for Correction"). The Department issued its Final Response to the Request for Correction ("Final Response") on July 31, 2018, declining to retract or correct the Report. On September 13, 2018, Muslim Advocates requested that the Department reconsider its decision declining to retract or correct the Report ("Request for Reconsideration").

As discussed in detail below, the Department concludes on reconsideration that information in the Report could be criticized by some readers, consistent with some of the concerns voiced in your Request for Reconsideration. However, the Department also concludes that it was sufficiently transparent in its presentation of the information, and as a result, the Report should not be withdrawn or corrected. Working closely with DHS, the Department will consider IQA principles in issuing future reports under Section 11 of Executive Order 13780 to better present such information to the public.

The IQA and applicable guidelines create a framework under which agencies, in presenting information, strive to meet the stated goals of the IQA to maximize the quality, objectivity, utility, and integrity of their information. The Department committed in its IQA guidelines that

it will “review all substantive information it disseminates” in a manner that – among other things – allows sufficient time for such reviews; ensures compliance with both OMB’s and the Department’s guidelines; provides methodologies, origins and limitations of information wherever possible; and ensures that the information fulfills the stated intentions for the disseminated information.

You have raised five general areas of concern regarding the Report. Each of these concerns is addressed in turn below.

1. Executive Order 13780 directed the Department and DHS to report on the number of foreign nationals in the United States who have been charged with or convicted of terrorism-related offenses while in the United States; and removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reason. The Report presented such information to include foreign-born (albeit naturalized) U.S. citizens. Muslim Advocates contend that the inclusion of foreign-born individuals lacked objectivity and utility under the IQA. Muslim Advocates also argue that the inclusion of foreign-born individuals within statistics presented in the report may promote a conclusion, unsupported from the data presented, that immigrants are dangerous. Muslim Advocates do not otherwise challenge the reliability or accuracy of the information.

The Department’s response to the Request for Correction stated:

It is no violation [of the IQA] to provide additional data, particularly when Executive Order 13780 requires “[a]ny other information relevant to safety and security as determined by the Secretary of Homeland Security or the Attorney General.”

Consistent with the Department’s response to your Request for Correction, the Report is transparent in its description of the information presented, notwithstanding that it was not limited to the information about which Executive Order 13780 directed the agencies to report.

The Department disagrees with Muslim Advocates’ unsupported contention that the report lacks utility. The Department collected the information at issue here for law enforcement purposes, and it relates to matters described in the Report. The agencies’ inclusion of the information (which Muslim Advocates does not contend is inaccurate) is relevant to public safety and security, within the meaning of Executive Order 13780, and relevant to the Report. It is therefore presumed useful on that basis alone. That some of the information provided was beyond the scope of Section 11’s dictates does not diminish its utility.

The Department cannot control the way in which information in the Report is used or interpreted. To Muslim Advocates’ point, however, in future reports the Department can strive to minimize the potential for misinterpretation by some readers, to the extent possible, through more thorough explanation of the context for information and clearer differentiation of the information presented, and by noting when information presented goes beyond the specific dictates of Section 11. The Department will proceed accordingly in future Section 11 reports.

2. As noted above, Section 11 required the agencies to report on “terrorism-related” offenses and activity. Muslim Advocates argue that it is domestic terrorism, not international terrorism, that is relevant for Section 11 purposes. Muslim Advocates claim that the Department’s inclusion of information about international terrorism, and omission of information related to domestic terrorism, inflates the proportion of terrorist incidents as having been committed by foreign nationals, thus violating IQA principles of objectivity and utility. Muslim Advocates also contend that the Department has other more relevant data sources available to it to report information limited to domestic terrorism.

Section 11 does not expressly require the agencies to report only on domestic terrorism. The Department explained in its Final Response that it does not possess comprehensive data related to domestic terrorism. The Report was transparent about what the information described and the information was relevant to Section 11’s dictates. In this regard, we do not agree that the Report lacked objectivity or utility. The Department appreciates Muslim Advocates’ suggestion of alternative ways the agencies could report information that it claims is more relevant to Section 11. The Department will continue to work with DHS to obtain and analyze reliable sources of data in future reports.

3. Muslim Advocates assert that, in light of Section 11’s focus on terrorism-related offenses committed by foreign nationals “while in the United States,” the Report was misleading in its inclusion of data regarding foreign nationals who were brought to the United States only for prosecution for terrorism committed outside of the United States. Muslim Advocates contend that by including such extradition data, the Report “misleadingly inflates the terrorist threat posed to the United States by foreign nationals.” In addition, Muslim Advocates state that the Department “fails” to provide underlying data that would allow calculation of (quoting from the Request for Correction) “the degree to which the inclusion of overseas offenses misrepresents the nexus between foreign nationals and the risk of terrorism in the United States,” and that failure to provide such additional information violates the IQA. In response to the Request for Correction, the Department stated that the data used was “clearly stated and accurately described,” which allowed readers to draw their own conclusions.

There is no requirement in either the IQA or the OMB or Department implementing guidelines that agencies must always provide underlying data when disseminating information to the public. While the Department’s response to your Request for Correction is an accurate statement, OMB’s definition of “objectivity” provides that “[s]ometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete and unbiased presentation.” 67 Fed. Reg. at 8459. Further, the Department’s guidelines provide that in achieving objectivity, the Department will document data sources. Nevertheless, neither OMB nor Department guidelines identify the circumstances under which a need to provide “additional information” should be found to exist.

While the Report does not expressly address the risk of terrorism in the United States, the Department appreciates the suggestion that disaggregating information about foreign nationals brought to the United States for prosecution for terrorism-related offenses committed outside the United States, while presenting additional supporting information, could further promote the

perception of objectivity in the presentation of the information. The Department will work with DHS in future reports to ensure that information provided maximizes the goals of the IQA.

4. Muslim Advocates challenge the presentation of eight “illustrative examples” out of 402 convicted individuals – which number included both foreign nationals and naturalized U.S. citizens – as lacking objectivity and utility. Muslim Advocates note that the examples only include Muslim men “who arrived in the United States through the precise immigration provisions the Administration seeks to eliminate.” Further, Muslim Advocates note that the Administration has used these examples to promote its policy agenda, which, according to Muslim Advocates, itself supports the characterization that the examples are misleading, and “perpetuates a discriminatory narrative.” Muslim Advocates also contend that the public cannot “test the representativeness” of the examples because the report lacks underlying information. The Department disagreed with these arguments in its Final Response, responding that Muslim Advocates’ argument reflected “a subjective conclusion based on [its] interpretation of the Report.”

Although the Department did not address this in its Final Response, we note that Muslim Advocates shifted the Department’s premise that the examples are “illustrative” to an assertion that they were intended to be “representative.” In fact, the Department did not assert that the eight prosecution summaries were “representative” of the entire body of 402 terrorism-related convictions of foreign nationals or naturalized citizens. Nevertheless, on reconsideration, the Department acknowledges that a focus on eight seemingly similar “illustrative examples” from a list of more than 400 convictions could cause some readers of the Report to question its objectivity and utility. While the Department reaffirms its Final Decision, we recognize that the perception of objectivity and utility of future Reports could be enhanced by releasing underlying data – if accomplished consistent with national security and privacy restraints – and could provide readers with more complete information from which to draw their own conclusions. Should examples again be included in future reports, the Department will work with DHS to include more varied examples and describe the method of selection of examples, to the extent possible, while noting that they are not intended to be representative of all cases.

5. Section 11 directed that the Report present information regarding so-called “honor killings” and gender-based violence against women by foreign nationals. Muslim Advocates contend that the Report, while acknowledging a lack of responsive or relevant data, instead presented irrelevant, unreliable, and misleading information, and therefore failed to meet IQA standards. Muslim Advocates assert that the Report simply should have included no information in response to this aspect of the Executive Order. In response to your Request for Correction, the Department noted the Report’s acknowledgment that the federal government lacks aggregated statistical information pertaining to gender-based violence against women, but did not address concerns about the additional studies and information cited in the Report. Indeed, the Report clearly stated the lack of focused data meant the Department and DHS were unable to provide information responsive to Section 11(a)(iii) of the Executive Order. Nevertheless, both the Report and the Department’s response to your Request for Correction referred to additional available information related generally to the subject of gender-based violence against women of which the Departments are aware either exist or are under development. Muslim Advocates continue to object to the studies cited in the Report, in large part because the studies allegedly

have no connection to immigration status, are flawed and inaccurate, and do not meet IQA requirements.

The Report's reference to studies and statistics relating generally to gender-based violence against women other than specifically to "honor killings," as well as convictions of "aliens" for sex offenses generally, went beyond what Section 11 directs the agencies to report. On reconsideration, the Department concludes that the Report could have better met IQA standards by more clearly indicating a lack of directly responsive information. To the extent possible, the Department will proceed on that basis in the future when issuing reports under Section 11. Nevertheless, the Department reaffirms its prior decision not to retract or correct the Report in this regard.

\* \* \*

The Report identified the origins and limitations of the information contained within it. As a result, the Report was sufficiently transparent and consistent with the IQA and implementing guidance. The Department reaffirms its prior decision not to retract or correct the Report.

The Department will work closely with DHS in preparing future Section 11 reports to continue meeting Department guidelines and the objectives of the IQA.

Thank you for bringing these concerns to the attention of the Department.

Sincerely,

A handwritten signature in blue ink that reads "Michael H. Allen". The signature is written in a cursive, flowing style.

Michael H. Allen  
Deputy Assistant Attorney General  
Policy, Management, and Planning

**ATTACHMENT  
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Homeland  
Security

November 7, 2018

Ms. Robin Thurston Senior Counsel  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, DC 20043-4553

Ms. Sirine Shebaya  
Senior Staff Attorney  
Muslim Advocates  
P.O. Box 71080  
Oakland, CA 94612

Dear Ms. Thurston and Ms. Shebaya:

This is to notify you that the Department of Homeland Security (Department) is in receipt of your September 13, 2018, request for reconsideration under the Department's Information Quality Act (IQA) guidelines. You seek reconsideration of the Department's denial of your request for retraction and correction of information in the Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States Initial Section 11 Report. At this time, your request for reconsideration is under review pursuant to the Department's IQA guidelines. If the Department determines that reconsideration relief is warranted, we will notify you at that time. Additional time is required to review and respond. The Department anticipates providing a further response to your request for reconsideration, or update on its review of your request, within forty-five (45) days of this letter.

Sincerely,

A handwritten signature in blue ink that reads "Tyrone Huff".

Tyrone Huff  
Office of the Chief Information Officer  
Business Management Office  
United States Department of Homeland Security

**ATTACHMENT  
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Homeland  
Security

December 19, 2018

Ms. Robin Thurston Senior Counsel  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, DC 20043-4553

Ms. Sirine Shebaya  
Senior Staff Attorney  
Muslim Advocates  
P.O. Box 71080  
Oakland, CA 94612

Dear Ms. Thurston and Ms. Shebaya:

This is to notify you that the Department of Homeland Security (Department) is in the process of reviewing your September 13, 2018, request for reconsideration under the Department's Information Quality Act (IQA) guidelines, in which you seek reconsideration of the Department's denial of your request for retraction and correction of information in the Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States Initial Section 11 Report. Additional time is required to review and respond. The Department anticipates providing a further response to your request for reconsideration, or update on its review of your request, within forty-five (45) days of this letter.

Sincerely,

A handwritten signature in blue ink that reads "Tyrone Huff".

Tyrone Huff  
Office of the Chief Information Officer  
Business Management Office  
United States Department of Homeland Security

**ATTACHMENT  
M**



Homeland  
Security

January 31, 2019

Ms. Robin Thurston Senior Counsel  
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Washington, DC 20043-4553

Ms. Sirine Shebaya  
Senior Staff Attorney  
Muslim Advocates  
P.O. Box 71080  
Oakland, CA 94612

Dear Ms. Thurston and Ms. Shebaya:

This is to notify you that the Department of Homeland Security (Department) is in the process of reviewing your September 13, 2018, request for reconsideration under the Department's Information Quality Act (IQA) guidelines, in which you seek reconsideration of the Department's denial of your request for retraction and correction of information in the Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States Initial Section 11 Report. Due to the recent lapse in appropriations, additional time is required to review and respond. The Department anticipates providing a further response to your request for reconsideration, or update on its review of your request, within forty-five (45) days of this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tyrone Huff".

Tyrone Huff  
Office of the Chief Information Officer  
Business Management Office  
United States Department of Homeland Security

**ATTACHMENT**  
**N**

February 14, 2019



**Homeland  
Security**

Ms. Robin Thurston, Senior Counsel  
Democracy Forward Foundation  
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Ms. Sirine Shebaya  
Senior Staff Attorney  
Muslim Advocates  
P.O. Box 71080  
Oakland, CA 94612

Dear Ms. Thurston and Ms. Shebaya:

The Department of Homeland Security (“Department”) writes in response to your September 13, 2018, request for reconsideration under the Department’s Information Quality Act (“IQA”) guidelines.

On January 29, 2018, Muslim Advocates requested that the Departments of Homeland Security and Justice retract and correct the January 2018 joint report issued pursuant to Section 11 of Executive Order 13780 (“Section 11 Report”). On August 1, 2018, the Department issued its response to the Request for Correction, declining to retract or correct information contained in the Section 11 Report, and noted that it would take those points raised in your IQA request into consideration in drafting future Section 11 Reports. On September 13, 2018, Muslim Advocates requested that the Department reconsider its decision (“Request for Reconsideration”).

The Department has conducted an independent review of your Request for Reconsideration and concludes that, while it will take into consideration in future Section 11 Reports those points raised in both your Requests for Correction and Reconsideration, the Section 11 Report was sufficiently transparent in its presentation of the information and meets the IQA guidelines. It therefore declines to withdraw or correct it.

The IQA Guidelines are used to ensure and maximize the quality, objectivity, utility, and integrity of disseminated information. Your Request for Reconsideration raises five issues, each of which is discussed in turn:

First, Muslim Advocates contends that the Section 11 Report substituted “foreign-born” for “foreign national,” thereby inappropriately attributing a higher percentage of terrorism charges to immigrants and violating the IQA’s requirements of objectivity and utility. The Department disagrees. The Section 11 Report was transparent in its language, explaining that of the 549 individuals convicted of international terrorism-related charges in the relevant time frame, 254 were not U.S. citizens, 148 were foreign-born, naturalized citizens, and 147 were U.S. citizens by birth. It did not contend that all 549 individuals were foreign nationals. Indeed, there is nothing in the IQA that prohibits the Department from providing more information than is required, especially where, as here, Executive Order 13780 requires the Department to compile “any other information relevant to the safety and security as determined by the Secretary of Homeland

Security and the Attorney General.” The information presented in the Section 11 Report therefore meets the utility requirement on that basis alone.

Second, Muslim Advocates next contend that the Section 11 Report substituted international terrorism for all terrorism, thereby inappropriately deemphasizing domestic terrorism and inflating the proportion of terrorist incidents as having been committed by foreign nationals. Again, Section 11 of Executive Order 13780 does not require the Department to limit its report to only domestic terrorism. The Section 11 Report also specifically explains that the Department does not possess comprehensive data related to domestic terrorism, but endeavored to provide other information relevant to Section 11’s requirements. In so doing, this information met the IQA’s objectivity and utility requirements.

Third, your Request for Reconsideration argues that the Section 11 Report should have excluded information about those individuals who committed offenses while located abroad or who were transported to the United States for prosecution. Like with those issues raised above, the Section 11 Report was transparent about what information the Departments were providing. Section 11 of Executive Order 13780 did not contain limits as to what relevant information the Department should provide in its Report.

Fourth, Muslim Advocates believe that the Section 11 Report demonstrated a bias in the selection of examples of those charged with or convicted of terrorism-related offenses. The Department explained in the Section 11 Report, however, that the examples it chose were illustrative; it did not state that they were *representative*. The Section 11 Report also explained that the federal government did not have complete, final information regarding this subject. Muslim Advocates’ contention, however, is well-taken, and the Department will continue to work with the Department of Justice to provide information that meets the dictates of Section 11 of Executive Order 13780 while also meeting the guidelines established by the IQA.

Finally, Muslim Advocates argues that the information regarding Gender-Based Violence Against Women contained in the Section 11 Report was misleading and anti-Muslim. The Section 11 Report, however, acknowledged that the federal government lacks aggregated statistical information pertaining to gender-based violence against women, and therefore it was unable to provide responsive information. The Section 11 Report then referenced additional, relevant, and available information. While the Department acknowledges that that information provided in this section was not specific to honor killings, it nevertheless was relevant to the inquiry into gender-based violence.

In sum, the Department declines to correct or retract the Section 11 Report and denies the Request for Reconsideration. However, the Department also acknowledges the points you have raised. In its continued effort to meet the guidelines of the IQA, the Department will take those into consideration in its future Section 11 Reports.

Respectfully,



John Neal Latta

Director

Office of Strategy, Policy, and Plans

Department of Homeland Security