

# COVINGTON

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July 20, 2017

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

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

To Whom It May Concern:

Muslim Advocates, Americans United for Separation of Church and State, the Southern Poverty Law Center, the Brennan Center for Justice, and Professor Shoba Sivaprasad Wadhia<sup>1</sup> (“Requestors”) submit this letter to the U.S. Department of State as a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, regarding the Administration’s visa-applicant vetting policies and procedures. We request expedited process pursuant to 5 U.S.C. § 552(a)(6)(E) and, in any event, that the information requested be made available as soon as practicable and on a rolling basis as it becomes available. We also request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.16. We also ask that you refer the requests within this letter to the White House, Department of Justice, Department of Homeland Security (“DHS”), and Customs and Border Protection (“CBP”), as appropriate.

### **I. Background**

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

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

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

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

Relatedly, the revised Order also mandated a worldwide review process that would identify countries from which additional information would be sought as a condition for processing and granting visas or other entry documents into the United States.<sup>6</sup> The review process would identify countries from which additional information would be sought and categories of information that those countries would be required to provide.<sup>7</sup> It is Requestors’ understanding that this review process concluded during the week of July 9, 2017, and that a report outlining its results was submitted to the President on July 10.<sup>8</sup> In a cable sent to all U.S. diplomatic posts on July 12, 2017, the State Department summarized the results of this report and laid out new information-sharing requirements that countries must adhere to in order to avoid travel restrictions.<sup>9</sup> Because the goal of this unprecedented review process is potentially to make certain provisions of the revised Order permanent and also to add to the list of six countries identified in the Order, Requestors are concerned that a more permanent Muslim ban is underway without the requisite level of transparency and scrutiny. For this reason, Requestors also seek various documents regarding the results of this internal review process.

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

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

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

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

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

<sup>7</sup> See *id.*

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

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

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### *A. Recent Developments for “Extreme Vetting” Policy*

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

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

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

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

<sup>11</sup> Rex Tillerson, 17 STATE 24324, at para. 2 (Mar. 15, 2017), [http://live.reuters.com/Event/Live\\_US\\_Politics/791246151](http://live.reuters.com/Event/Live_US_Politics/791246151).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at paras. 6, 7.

<sup>14</sup> *Id.* at para. 7.

<sup>15</sup> *Id.* at para. 15.

<sup>16</sup> DHS defines “Donkey SAOs” as requiring “interagency reviews of applicants 16 years or older who have: a security-related CLASS hit, a prior unfavorable SAO that has not been reversed, or has raised security concerns with a consular officer.” *The DHS Visa Security Program*, OIG-14-137, Dep’t of Homeland Security 7 n.6 (Sept. 2014), [https://www.oig.dhs.gov/assets/Mgmt/2014/OIG\\_14-137\\_Sep14.pdf](https://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-137_Sep14.pdf).

<sup>17</sup> Tillerson, 17 STATE 24324, *supra* n. 11, at para. 12.

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

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

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

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at paras. 16, 17.

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

<sup>21</sup> Rex Tillerson, 17 STATE 24800 (Mar 16, 2017), [http://live.reuters.com/Event/Live\\_US\\_Politics/791249837](http://live.reuters.com/Event/Live_US_Politics/791249837).

<sup>22</sup> *Id.* at para. 2.

<sup>23</sup> *Id.*

<sup>24</sup> Rex Tillerson, 17 STATE 25814, at para. 8 (Mar. 17, 2017), [http://live.reuters.com/Event/Live\\_US\\_Politics/791255396](http://live.reuters.com/Event/Live_US_Politics/791255396).

<sup>25</sup> *Id.* at para. 7.

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

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

### *B. Data and Events Supporting Disclosure*

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

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

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

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

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

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

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

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below the 2016 monthly average.<sup>32</sup> And in the countries specifically named in the revised Order, less than 50% of the 2016 average number of NIVs were issued in April 2017.<sup>33</sup>

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

In the months that followed the injunction against the revised Order, the State Department submitted an information collection request (“ICR”) to the Office of Management and Budget (“OMB”) to re-implement the March 6, 2017 White House Memorandum that was issued on the same day as the President's revised Order.<sup>35</sup> On May 23, the OMB approved this ICR.<sup>36</sup> The ICR contained questions nearly identical to those listed in the State Department cables<sup>37</sup> and reiterated that these questions would be addressed to “applicant populations warranting increased scrutiny”<sup>38</sup> but failed to define the “population” to be identified by consulate officials in any meaningful way. However, the State Department did claim that approximately 65,000 applicants would be affected by the new questioning—approximately the

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

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

<sup>34</sup> *Id.*

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

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

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

<sup>38</sup> *Id.*

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

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

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

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

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

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

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

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

<sup>44</sup> *See* Tillerson, 17 State 72000, *supra* note 8, at para. 4.

<sup>45</sup> *Id.*

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

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

## II. Request for Information

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

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

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at para. 9.

<sup>48</sup> *Id.*

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



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

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- i. For the period from January 1, 2016, through the date of response to this letter, records reflecting the total number of immigrant and non-immigrant visa applicants from or whose applications made reference to Muslim-majority countries<sup>50</sup> (for each month of the requested period);
- j. For the period from January 1, 2016, through the date of response to this letter, records reflecting the total number of immigrant and non-immigrant visas *issued* to applicants from or whose applications made reference to Muslim-majority countries (for each month of the requested period);
- k. For the period from January 1, 2016, through the date of response to this letter, records reflecting the total number of individuals who were detained upon arrival at U.S. ports of entry (for each month of the requested period);
- l. For the period from January 1, 2016, through the date of response to this letter, records reflecting the total number of individuals from or whose applications made reference to Muslim-majority countries who were detained upon arrival at U.S. ports of entry (for each month of the requested period);
- m. For the period from January 1, 2016, through the date of response to this letter, all policies, directives, training materials, and other guidelines related to the following types of SAOs:
  - i. Condor,
  - ii. Donkey,
  - iii. Viper,
  - iv. Merlin,
  - v. Hawk, and
  - vi. Eagle;
- n. For each type of SAO enumerated in (m)(i)-(vi) above, records reflecting the average length of time to draft, clear, and disseminate an SAO over the following time periods:
  - i. January 1, 2015, through December 31, 2015,
  - ii. January 1, 2016, through December 31, 2016, and
  - iii. January 1, 2017, to present;

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

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

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

### III. Request for Expedited Process

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

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

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

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

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

<sup>53</sup> 5 U.S.C. 552(a)(6)(E)(v)(II).

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

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

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

Third, the need for expediency is heightened by the fast-tracking of the State Department’s ICR that was approved by the OMB in May 2017.<sup>61</sup> Given that OMB provided approval to the ICR without following standard procedures—and that the ICR will be in effect for 180 days—the public should be granted the same expedited consideration to fully understand this action. Moreover, the State Department’s July 12, 2017 cable requires countries to meet

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

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

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

<sup>58</sup> 22 C.F.R. § 171.11(f)(3).

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

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

<sup>61</sup> See DOS ICR, *supra* note 355.

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

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

### IV. Request for Fee Waiver

Requestors seek a waiver of all document search, review, and duplication fees because disclosure “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>62</sup> If the waiver request is not granted, Requestors ask that fees be limited to reasonable standard charges for document duplication because Muslim Advocates, Americans United for Separation of Church and State, the Southern Poverty Law Center, and the Brennan Center for Justice each qualify as a “representative of the news media” and the records sought are not for commercial use.<sup>63</sup>

#### A. *Disclosure Is in the Public Interest*

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

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

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

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

<sup>63</sup> 5 U.S.C. § 552(4)(A)(ii)(II).

<sup>64</sup> See 22 C.F.R. § 171.16.

<sup>65</sup> *Id.*

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

<sup>67</sup> 22 C.F.R. § 171.16(a)(1)(ii).

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

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

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

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

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

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

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<sup>68</sup> 22 C.F.R. § 171.16(a)(1)(iii).

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

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

<sup>71</sup> 22 C.F.R. § 171.16(a)(1)(iv).

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

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

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

\* \* \*

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

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

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

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

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

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

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<sup>73</sup> 22 C.F.R. § 171.16 (a)(2)(i)-(ii).

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



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

Please contact the undersigned with any questions concerning this request.

Respectfully submitted,

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

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