



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").¹ 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.

¹ 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.²

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.”³ OMB promulgated these guidelines via notice and comment rulemaking.⁴ The Department has also promulgated its Information Quality Guidelines, which “apply to information disseminated by the Department on or after October 1, 2002.”⁵

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.”⁶ “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.”⁷

“Objectivity” requires that the information be “presented in an accurate, clear, complete, and unbiased manner,” and “within a proper context.”⁸ 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.⁹ Further, for information to be objective, it must use “reliable data sources, sound analytical

² 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”).

³ Consolidated Appropriations Act, § 515(a).

⁴ See OMB Guidelines, 67 Fed. Reg. 8452, 8459.

⁵ DOJ Guidelines.

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

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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

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.¹²

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].”¹³ 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.¹⁴

¹⁰ DOJ Guidelines.

¹¹ OMB Guidelines at 8459.

¹² OMB Guidelines at 8459, DOJ Guidelines.

¹³ 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.

¹⁴ *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).¹⁵ 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.”

¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸

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.

¹⁶ OMB Guidelines at 8459, DOJ Guidelines.

¹⁷ OMB Guidelines at 8459, DOJ Guidelines.

¹⁸ 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.¹⁹ 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.²⁰ The Department’s Guidelines state that objectivity requires that “disseminated information, as a matter of substance *and presentation*, [be] ... *unbiased*.”²¹ 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.”²² 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.²³

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.”²⁴ 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.²⁵ It serves only to artificially divide American citizens from one another.

¹⁹ 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.

²⁰ Request at 6.

²¹ DOJ Guidelines (emphasis added).

²² OMB Guidelines at 8459.

²³ 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.

²⁴ OMB Guidelines at 8459.

²⁵ 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.²⁶ 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."²⁷ 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*²⁸ and a joint DHS-Federal Bureau of Investigation

²⁶ Request at 7-8.

²⁷ 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>.

²⁸ 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*,²⁹ 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.³⁰ 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.”³¹ 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.³² 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.³³

<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.”

²⁹ 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).

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

³¹ 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>.

³² 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).

³³ *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.³⁴ 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.³⁵

The Report also lacks utility.³⁶ 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.”³⁷ 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.³⁸ 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

³⁴ DOJ Guidelines, OMB Guidelines at 8459.

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

³⁶ DOJ Guidelines, OMB Guidelines at 8459.

³⁷ Report at 1, 2 (emphasis added).

³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹ It categorically excludes examples of U.S. citizens, despite their contribution to a significant percentage of terrorist activity.⁴² 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.

³⁹ OMB Guidelines at 8459.

⁴⁰ Request at 9.

⁴¹ DOJ Guidelines, OMB Guidelines at 8459.

⁴² 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.”⁴³

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.’”⁴⁴ 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.⁴⁵ 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

⁴³ 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/>.

⁴⁴ Response at 2.

⁴⁵ DOJ Guidelines.

violence without any connection to immigration status and by citing discredited and non-scientific studies.⁴⁶ 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.⁴⁷ It also is not objective because it does not derive from “reliable data sources” nor is it the product of “sound analytical techniques.”⁴⁸

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

⁴⁶ Request at 10-11.

⁴⁷ DOJ Guidelines, OMB Guidelines at 8459.

⁴⁸ 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

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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”).¹

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

¹ 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.²

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.”³ 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, 2018.⁴ 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,”⁵ without input from DHS career analysts.⁶

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,

² 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”).

³ 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”).

⁴ 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>.

⁵ Report at 2.

⁶ 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.”⁷

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].”⁸ 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.⁹

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,”¹⁰ as well as eight “illustrative examples” of such individuals.¹¹ The Report also provides an

⁷ DOJ Press Release; DHS Press Release.

⁸ 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.

⁹ *Id.*

¹⁰ 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.¹² 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.”¹³ 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.”¹⁴

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.¹⁵ 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,

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.

¹¹ *Id.* at 2-7.

¹² 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”).

¹³ IQA § 515(a).

¹⁴ *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).

¹⁵ *See* DHS Guidelines; *see also* DOJ Guidelines.

graphic, cartographic, narrative, or audiovisual forms.”¹⁶ 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.”¹⁷ The Departments issued the Report with accompanying press releases, and have made the Report available to the public on their respective webpages.¹⁸

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.”¹⁹ 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.”²⁰ 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.²¹

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.”²² DOJ’s guidelines require the use of “reliable data sources, sound analytical techniques, and document[ed] methods and data sources.”²³

¹⁶ 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.”).

¹⁷ 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.”).

¹⁸ 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).

¹⁹ See OMB Guidelines, 67 Fed. Reg. 8452, 8459.

²⁰ *Id.*

²¹ *Id.*

²² DHS Guidelines.

²³ 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."²⁴ 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.²⁵ 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.²⁶ 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.

²⁴ Report at 2.

²⁵ *Id.*

²⁶ 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.²⁷ 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.”²⁸ 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.²⁹ 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).”³⁰ 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

²⁷ Report at 2.

²⁸ *Id.*

²⁹ 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.”).

³⁰ 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.”³¹ 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.³² As one commentator concluded, “[i]ncluding the actual number of deaths caused by terrorists flips the DHS/DOJ statistics on its head.”³³ 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.³⁴ The Report includes, however, information about individuals who “committed offenses while located abroad, including those who were transported to the United States for prosecution.”³⁵ 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.

³¹ 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).

³² 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.

³³ Nwrasteh, *supra* note 29.

³⁴ Exec. Order at 1.

³⁵ 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.”³⁶ 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.”³⁷ 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 information³⁸—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.³⁹

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.

³⁶ OMB Guidelines, 67 Fed. Reg. 8452, 8459.

³⁷ Report at 3-7.

³⁸ OMB Guidelines, 67 Fed. Reg. 8452, 8459.

³⁹ 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,⁴⁰ 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.”⁴¹ 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.⁴² 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.⁴³

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.”⁴⁴ As an initial matter, the study was not commissioned by the Department of

⁴⁰ 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.

⁴¹ Report at 7.

⁴² *Id.*

⁴³ 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).

⁴⁴ Report at 8.

Justice, but by a private organization.⁴⁵ 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.”⁴⁶

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 1990.⁴⁷ 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.⁴⁸ 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.”⁴⁹ 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.

⁴⁵ 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>.

⁴⁶ *See id.*; *see also* OMB Guidelines 8452, 8459.

⁴⁷ Report at 8.

⁴⁸ *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)).

⁴⁹ *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