U.S. Department of Justice

Washington, D.C. 20530

December 21, 2018

Ms. Robin Thurston
Democracy Forward Foundation
P.O. Box 34553
Washington, D.C. 20043-4553

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

Dear Ms. Thurston and Ms. Shebaya:

This letter responds to the Request for Reconsideration of Denial of Request for Correction Under the Information Quality Act submitted by Democracy Forward Foundation and Muslim Advocates ("Muslim Advocates") on September 13, 2018.

On January 29, 2018, Muslim Advocates requested, pursuant to the Information Quality Act (IQA) and implementing guidelines, that the Department of Justice (Department) and the Department of Homeland Security (DHS) retract and correct their January 2018 joint report ("Report") issued pursuant to Section 11 of Executive Order 13780 ("Request for Correction"). The Department issued its Final Response to the Request for Correction ("Final Response") on July 31, 2018, declining to retract or correct the Report. On September 13, 2018, Muslim Advocates requested that the Department reconsider its decision declining to retract or correct the Report ("Request for Reconsideration").

As discussed in detail below, the Department concludes on reconsideration that information in the Report could be criticized by some readers, consistent with some of the concerns voiced in your Request for Reconsideration. However, the Department also concludes that it was sufficiently transparent in its presentation of the information, and as a result, the Report should not be withdrawn or corrected. Working closely with DHS, the Department will consider IQA principles in issuing future reports under Section 11 of Executive Order 13780 to better present such information to the public.

The IQA and applicable guidelines create a framework under which agencies, in presenting information, strive to meet the stated goals of the IQA to maximize the quality, objectivity, utility, and integrity of their information. The Department committed in its IQA guidelines that

it will "review all substantive information it disseminates" in a manner that – among other things – allows sufficient time for such reviews; ensures compliance with both OMB's and the Department's guidelines; provides methodologies, origins and limitations of information wherever possible; and ensures that the information fulfills the stated intentions for the disseminated information.

You have raised five general areas of concern regarding the Report. Each of these concerns is addressed in turn below.

1. Executive Order 13780 directed the Department and DHS to report on the number of foreign nationals in the United States who have been charged with or convicted of terrorism-related offenses while in the United States; and removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reason. The Report presented such information to include foreign-born (albeit naturalized) U.S. citizens. Muslim Advocates contend that the inclusion of foreign-born individuals lacked objectivity and utility under the IQA. Muslim Advocates also argue that the inclusion of foreign-born individuals within statistics presented in the report may promote a conclusion, unsupported from the data presented, that immigrants are dangerous. Muslim Advocates do not otherwise challenge the reliability or accuracy of the information.

The Department's response to the Request for Correction stated:

> It is no violation [of the IQA] to provide additional data, particularly when Executive Order 13780 requires "[a]ny other information relevant to safety and security as determined by the Secretary of Homeland Security or the Attorney General."

Consistent with the Department's response to your Request for Correction, the Report is transparent in its description of the information presented, notwithstanding that it was not limited to the information about which Executive Order 13780 directed the agencies to report.

The Department disagrees with Muslim Advocates' unsupported contention that the report lacks utility. The Department collected the information at issue here for law enforcement purposes, and it relates to matters described in the Report. The agencies' inclusion of the information (which Muslim Advocates does not contend is inaccurate) is relevant to public safety and security, within the meaning of Executive Order 13780, and relevant to the Report. It is therefore presumed useful on that basis alone. That some of the information provided was beyond the scope of Section 11's dictates does not diminish its utility.

The Department cannot control the way in which information in the Report is used or interpreted. To Muslim Advocates' point, however, in future reports the Department can strive to minimize the potential for misinterpretation by some readers, to the extent possible, through more thorough explanation of the context for information and clearer differentiation of the information presented, and by noting when information presented goes beyond the specific dictates of Section 11. The Department will proceed accordingly in future Section 11 reports.

2. As noted above, Section 11 required the agencies to report on "terrorism-related" offenses and activity. Muslim Advocates argue that it is domestic terrorism, not international terrorism, that is relevant for Section 11 purposes. Muslim Advocates claim that the Department's inclusion of information about international terrorism, and omission of information related to domestic terrorism, inflates the proportion of terrorist incidents as having been committed by foreign nationals, thus violating IQA principles of objectivity and utility. Muslim Advocates also contend that the Department has other more relevant data sources available to it to report information limited to domestic terrorism.

Section 11 does not expressly require the agencies to report only on domestic terrorism. The Department explained in its Final Response that it does not possess comprehensive data related to domestic terrorism. The Report was transparent about what the information described and the information was relevant to Section 11's dictates. In this regard, we do not agree that the Report lacked objectivity or utility. The Department appreciates Muslim Advocates' suggestion of alternative ways the agencies could report information that it claims is more relevant to Section 11. The Department will continue to work with DHS to obtain and analyze reliable sources of data in future reports.

3. Muslim Advocates assert that, in light of Section 11's focus on terrorism-related offenses committed by foreign nationals "while in the United States," the Report was misleading in its inclusion of data regarding foreign nationals who were brought to the United States only for prosecution for terrorism committed outside of the United States. Muslim Advocates contend that by including such extradition data, the Report "misleadingly inflates the terrorist threat posed to the United States by foreign nationals." In addition, Muslim Advocates state that the Department "fails" to provide underlying data that would allow calculation of (quoting from the Request for Correction) "the degree to which the inclusion of overseas offenses misrepresents the nexus between foreign nationals and the risk of terrorism in the United States," and that failure to provide such additional information violates the IQA. In response to the Request for Correction, the Department stated that the data used was "clearly stated and accurately described," which allowed readers to draw their own conclusions.

There is no requirement in either the IQA or the OMB or Department implementing guidelines that agencies must always provide underlying data when disseminating information to the public. While the Department's response to your Request for Correction is an accurate statement, OMB's definition of "objectivity" provides that "[s]ometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete and unbiased presentation." 67 Fed. Reg. at 8459. Further, the Department's guidelines provide that in achieving objectivity, the Department will document data sources. Nevertheless, neither OMB nor Department guidelines identify the circumstances under which a need to provide "additional information" should be found to exist.

While the Report does not expressly address the risk of terrorism in the United States, the Department appreciates the suggestion that disaggregating information about foreign nationals brought to the United States for prosecution for terrorism-related offenses committed outside the United States, while presenting additional supporting information, could further promote the

perception of objectivity in the presentation of the information. The Department will work with DHS in future reports to ensure that information provided maximizes the goals of the IQA.

4. Muslim Advocates challenge the presentation of eight "illustrative examples" out of 402 convicted individuals – which number included both foreign nationals and naturalized U.S. citizens – as lacking objectivity and utility. Muslim Advocates note that the examples only include Muslim men "who arrived in the United States through the precise immigration provisions the Administration seeks to eliminate." Further, Muslim Advocates note that the Administration has used these examples to promote its policy agenda, which, according to Muslim Advocates, itself supports the characterization that the examples are misleading, and "perpetuates a discriminatory narrative." Muslim Advocates also contend that the public cannot "test the representativeness" of the examples because the report lacks underlying information. The Department disagreed with these arguments in its Final Response, responding that Muslim Advocates' argument reflected "a subjective conclusion based on [its] interpretation of the Report."

Although the Department did not address this in its Final Response, we note that Muslim Advocates shifted the Department's premise that the examples are "illustrative" to an assertion that they were intended to be "representative." In fact, the Department did not assert that the eight prosecution summaries were "representative" of the entire body of 402 terrorism-related convictions of foreign nationals or naturalized citizens. Nevertheless, on reconsideration, the Department acknowledges that a focus on eight seemingly similar "illustrative examples" from a list of more than 400 convictions could cause some readers of the Report to question its objectivity and utility. While the Department reaffirms its Final Decision, we recognize that the perception of objectivity and utility of future Reports could be enhanced by releasing underlying data – if accomplished consistent with national security and privacy restraints – and could provide readers with more complete information from which to draw their own conclusions. Should examples again be included in future reports, the Department will work with DHS to include more varied examples and describe the method of selection of examples, to the extent possible, while noting that they are not intended to be representative of all cases.

5. Section 11 directed that the Report present information regarding so-called "honor killings" and gender-based violence against women by foreign nationals. Muslim Advocates contend that the Report, while acknowledging a lack of responsive or relevant data, instead presented irrelevant, unreliable, and misleading information, and therefore failed to meet IQA standards. Muslim Advocates assert that the Report simply should have included no information in response to this aspect of the Executive Order. In response to your Request for Correction, the Department noted the Report's acknowledgment that the federal government lacks aggregated statistical information pertaining to gender-based violence against women, but did not address concerns about the additional studies and information cited in the Report. Indeed, the Report clearly stated the lack of focused data meant the Department and DHS were unable to provide information responsive to Section 11(a)(iii) of the Executive Order. Nevertheless, both the Report and the Department's response to your Request for Correction referred to additional available information related generally to the subject of gender-based violence against women of which the Departments are aware either exist or are under development. Muslim Advocates continue to object to the studies cited in the Report, in large part because the studies allegedly

have no connection to immigration status, are flawed and inaccurate, and do not meet IQA requirements.

The Report's reference to studies and statistics relating generally to gender-based violence against women other than specifically to "honor killings," as well as convictions of "aliens" for sex offenses generally, went beyond what Section 11 directs the agencies to report. On reconsideration, the Department concludes that the Report could have better met IQA standards by more clearly indicating a lack of directly responsive information. To the extent possible, the Department will proceed on that basis in the future when issuing reports under Section 11. Nevertheless, the Department reaffirms its prior decision not to retract or correct the Report in this regard.

* * *

The Report identified the origins and limitations of the information contained within it. As a result, the Report was sufficiently transparent and consistent with the IQA and implementing guidance. The Department reaffirms its prior decision not to retract or correct the Report.

The Department will work closely with DHS in preparing future Section 11 reports to continue meeting Department guidelines and the objectives of the IQA.

Thank you for bringing these concerns to the attention of the Department.

Sincerely,

Michael H. Allen
Deputy Assistant Attorney General
Policy, Management, and Planning