



VIA Electronic Delivery

January 10, 2018

U.S. Department of Homeland Security
ATTN: Chief Information Officer
245 Murray Lane, SW
Washington, DC 20528
DHS.InfoQuality@hq.dhs.gov

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

To whom it may concern:

Together with and on behalf of Muslim Advocates and the Refugee and Immigrant Center for Education and Legal Services (“RAICES”), Democracy Forward Foundation respectfully submits this Request for Correction of Information pursuant to the Information Quality Act to the U.S. Department of Homeland Security. Requesters ask the Department to retract and correct its recently published *Myth vs. Fact Sheet: Known and Suspected Terrorists/Special Interest Aliens* (the “Fact Sheet”).¹ Through the Fact Sheet, the Department distorts the facts to create the false impression that terrorists are flooding across the Southern Border. The Department issued the Fact Sheet after a week in which Administration officials made both misleading and outright false claims about the rate of terrorists crossing the border in connection with the President’s insistence on a \$5.7 billion appropriation for a physical border wall. A swift public rebuke followed, exposing those claims as false.²

¹ *MYTH/FACT: Known and Suspected Terrorists/Special Interest Aliens*, U.S. Dep’t of Homeland Security (Jan. 7, 2019), <https://www.dhs.gov/news/2019/01/07/mythfact-known-and-suspected-terroristsspecial-interest-aliens>.

² See, e.g., Salvador Rizzo, *The Trump Administration’s Misleading Spin On Immigration, Crime and Terrorism*, Wash. Post (Jan. 7, 2019), <https://www.washingtonpost.com/politics/2019/01/07/trump-administrations-misleading->

Rather than backing away from the Administration’s false statements, however, DHS doubled down. The Fact Sheet now attempts—as DHS has before³—to recast and defend those statements, again drawing an unsupported connection between immigrants at the Southern Border and threats from terrorists. As we explain below, this renewed effort relies on numerous misleading statements and repeatedly omits the facts needed for appropriate context. As a result, the Department has violated its duties under the Information Quality Act and must swiftly retract and correct the Fact Sheet.⁴

I. The Administration Has Repeatedly Tried to Falsely Connect Immigrants at the Southern Border to Terrorism.

In order to understand the Fact Sheet, and how it deliberately omits the factual context required for it to meet the IQA’s standards, one must understand the environment in which it was disseminated by the Department. The Administration has repeatedly misstated or twisted the facts regarding the rate of terrorists crossing the Southern Border in an effort to support calls for extreme and unnecessary border security measures. The Fact Sheet simply formalizes those falsehoods.

Most recently, on January 4, 2019, White House Press Secretary Sarah Sanders announced “that Customs and Border Protection picked up nearly 4,000 known or suspected terrorists last year ‘that came across our southern border.’”⁵ That statement was false. As news reports quickly noted, that figure “is based on 2017 data, not 2018, and refers to stops made by Department of Homeland Security across the globe, mainly at airports.”⁶ Indeed, White House

[spin-immigration-crime-terrorism/?utm_term=.ba1132c38b64](https://www.nbcnews.com/politics/immigration/fact-check-did-u-s-catch-4-000-terrorists-southern-n954796); see also Julia Ainsley, *Fact Check: Did the U.S. Catch 4,000 Terrorists At the Southern Border in 2018?*, NBC News (Jan. 4, 2019), <https://www.nbcnews.com/politics/immigration/fact-check-did-u-s-catch-4-000-terrorists-southern-n954796> (debunking claims by White House Press Secretary Sarah Huckabee Sanders that U.S. Customs and Border Protection (“CBP”) officials had apprehended nearly 4,000 known or suspected terrorists along the southern border); Avery Anapol, *Fox’s Chris Wallace Challenges Sarah Sanders on Claim Terrorists Enter at Southern Border*, The Hill (Jan. 6, 2019), <https://thehill.com/homenews/media/424068-fox-newss-chris-wallace-shuts-down-sarah-sanders-on-claims-about-terrorists-at> (similar).

³ See Letter to the U.S. Dep’t of Homeland Security, Request for Correction Under the Information Quality Act, June 28, 2018, <https://democracyforward.org/wp-content/uploads/2018/06/Request-for-Correction-Under-the-IQA-family-separation-policy-Democracy-Forward-6.28.2018.pdf>.

⁴ See Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 & 154, 44 U.S.C. § 3516, note (the “IQA”); Office of Mgmt. & Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, Exec. Office of the President, 67 Fed. Reg. 8,452 (Feb. 22, 2002) (“OMB Guidelines”), <https://www.gpo.gov/fdsys/pkg/FR-2002-02-22/pdf/R2-59.pdf>; *Information Quality Guidelines*, U.S. Dep’t Homeland Security, <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf> (“DHS Guidelines”).

⁵ Ainsley, *supra* note 2.

⁶ *Id.*

advisor Kellyanne Conway was forced to retract the statement in an appearance on Fox News, describing it as an “unfortunate misstatement.”⁷

That same day, Secretary Kirstjen Nielsen, replying to a reporter’s question at a White House news conference “about the terrorism” asserted that “CBP has stopped over 3,000 . . . special-interest aliens trying to come into the country on the southern border.”⁸ Secretary Nielsen defined special-interest aliens (“SIA”) as individuals who “the intel community has identified are of concern. They either have travel patterns that are identified as terrorist travel patterns, or they have known or suspected ties to terrorism.”⁹ Again, that statement was incorrect: as DHS officials have previously testified, the vast majority of these migrants have no connection to terrorism, and are instead migrating for economic reasons or fleeing persecution.¹⁰ DHS subsequently refused to clarify how many of these migrants were identified based on known or suspected ties to terrorism.¹¹ Even the Center for Immigration Studies (“CIS”), an organization that advocates for restrictive immigration policies, has noted that estimates in the 3,000 to 4,000 range are highly inaccurate.¹²

Then, on January 7, 2019, Secretary Nielsen took to Twitter to announce the dissemination of the Fact Sheet. She hedged on her previous statement, asserting that “last year at our Southern Border @DHSgov encountered more than 3,000 Special Interest Aliens – individuals with suspicious travel patterns who may pose a national security threat”—apparently recognizing that many special-interest aliens lack any known or suspected ties to terrorism.¹³ She further alleged, in the same Twitter thread, that “[t]he number of terror-watchlisted encountered at our Southern Border has increased over the last two years” though she declined to provide information concerning the size of this increase or the number of individuals to whom that claim applied.¹⁴

The Administration’s claims were intended to trick the public into believing that thousands of terrorists are streaming across the Southern Border. That misconception is, in turn, a focal point of the President’s case for billions of dollars to fund his unnecessary border wall,

⁷ Brett Samuels, *Conway: Sarah Sanders Made “Unfortunate Misstatement” About Terror Suspects at Border*, The Hill (Jan. 8, 2019), <https://thehill.com/homenews/administration/424303-conway-sarah-sanders-made-unfortunate-misstatement-about-terror>.

⁸ Rizzo, *supra* note 2 (internal quotation marks omitted).

⁹ *Id.* (internal quotation marks omitted).

¹⁰ *Id.*

¹¹ *Id.*

¹² See Calvin Woodward, *AP Fact Check: Trump’s Mythical Terrorist Tide From Mexico*, Assoc. Press (Jan. 8, 2019), <https://www.apnews.com/4a7792c523ab4b5984893b38c988d70b> (quoting a CIS analyst who estimates that the number of individuals with some connection to terrorism arriving at the Southwest Border is closer to twenty per year).

¹³ Sec. Kirstjen Nielsen (@SecNielsen), Twitter (Jan. 7, 2019, 5:02 PM), <https://twitter.com/SecNielsen/status/1082442431860297731>.

¹⁴ See Sec. Kirstjen Nielsen (@SecNielsen), Twitter (Jan. 7, 2019, 5:00 PM), <https://twitter.com/SecNielsen/status/1082441890224619521>.

and his decision to shut down the government until his demands are met. Instead of distorting the facts to support a political agenda, the Department should instead strive to ensure that the public has an accurate and thorough understanding of any security issues regarding the Southern Border.

II. The DHS Fact Sheet Is Subject to the Information Quality Act.

The Fact Sheet, published on January 7, 2019, serves this same goal and suffers from the same deficiencies. As an official dissemination of information from the Department, the Fact Sheet is also subject to the standards set forth in the Information Quality Act. In that context, the Department's statements are not only misleading or inaccurate—they are unlawful.

The Information Quality Act, which is found at Section 515 of Public Law 106-554, together with its implementing regulations and guidelines, mandates that information disseminated to the public by federal agencies like DHS must be accurate, reliable, and unbiased.¹⁵ It also directs the Office of Management and Budget 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.”¹⁶ 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.”¹⁷

Pursuant to these directives, OMB, as well as DHS, promulgated guidelines establishing information quality standards and providing a means for parties to seek redress for information that does not conform to these standards. Under these guidelines, a document is subject to the IQA's requirements if it constitutes information disseminated by the agency.

As an initial matter, the Fact Sheet is covered by the IQA. DHS 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, graphic, cartographic, narrative, or audiovisual forms.”¹⁸ The Fact Sheet purports to present facts about the threat posed by individuals seeking to enter the United States through the Southern Border.¹⁹ Indeed, it purports to clarify the difference between “myth” and “fact,” asserting that “[t]he facts are

¹⁵ See *supra* note 4.

¹⁶ IQA § 515(a).

¹⁷ *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).

¹⁸ See DHS Guidelines at 11.

¹⁹ See Fact Sheet.

clear.”²⁰ Since the Department has held the Fact Sheet out as a public, objective source of information, the Fact Sheet must adhere to the standards of the IQA.

The Fact Sheet was also disseminated to the public within the meaning of the IQA. DHS’s IQA guidelines define “dissemination” to include an “agency initiated or sponsored distribution of information to the public.”²¹ The Department posted the Fact Sheet on its website to buttress statements made by Administration officials, to rebut the public criticism those statements created, and to assert that the Southern Border is, indeed, a desired point of entry for those who intend to commit acts of terrorism.²²

Documents subject to the IQA, like the Fact Sheet, must contain “quality” information. Quality “is an encompassing term comprising utility, objectivity, and integrity.”²³ “Utility” refers to the usefulness of the information to its intended users, including the public,” and includes an assessment of “the uses of the information not only from the perspective of the agency but also from the perspective of the public.”²⁴ “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.²⁵

It also requires that the substance of information presented be “accurate, reliable, and unbiased.”²⁶ Information disseminated by an agency must meet each of these standards.

III. The DHS Fact Sheet Makes Numerous False, Misleading, or Uncontextualized Statements Regarding Terrorists at the Southern Border.

As explained below, the Fact Sheet fails to meet the IQA’s requirements regarding quality, utility, and objectivity, and must be retracted or corrected accordingly. The Fact Sheet purports to clarify the Administration’s use of “the terms ‘Special Interest Aliens’ (SIAs) and ‘Known and Suspected Terrorists’ (KSTs)” which the Fact Sheet claims are “unfortunately, being misunderstood or mischaracterized as part of the current shutdown debate.”²⁷ In reality, however, the Fact Sheet aims to serve the same goal as the Administration’s statements in the

²⁰ *Id.*

²¹ *See* DHS Guidelines at 11.

²² *See* Fact Sheet.

²³ *See* OMB Guidelines, 67 Fed. Reg. at 8,459.

²⁴ *Id.*

²⁵ *Id.*

²⁶ DHS Guidelines at 3. While not relevant here, “[i]ntegrity” refers to the security of information— protection of the information from unauthorized access or revision.” *See* OMB Guidelines, 67 Fed. Reg. at 8,460.

²⁷ Fact Sheet at 1.

week leading up to DHS's publication of the Fact Sheet: to artificially connect the threat of terrorism with the discussion of immigration and border security along the Southern Border.

Most importantly, the Fact Sheet fails to present the statistics concerning suspected terrorists at the Southern Border in the proper context, as required under the "objectivity" standard of the IQA's guidelines.²⁸ Proper context, in this case, would require the Department to acknowledge that the total number of terrorists apprehended along the Southern Border is, in reality, extremely low, and to explain the general circumstances surrounding those cases. Absent those qualifications, the Department has failed to present its claims within the proper context. Nor has it presented the information in a manner that is useful to the public—*i.e.*, in a manner that, viewed from the public's perspective, allows it to critically examine the Department's characterization of the scale and nature of the purported threat of terrorism along the Southern Border.

These failures are immensely significant. Specifically, the Department's misinformation impedes the public's ability to understand and participate in the ongoing debate regarding immigration policy, particularly with respect to the Administration's request for more than \$5 billion dollars to build a wall along the Southern Border, its efforts to combat the unlawful entry of terrorists, and the President's decision to shut down the government until he receives funding for his border wall.²⁹

In particular, the following statements fail to meet the IQA's requirements.

Statement 1

*The threat is real. The number of terror-watchlisted individuals encountered at our Southern Border has increased over the last two years. The exact number is sensitive and details about these cases are extremely sensitive.*³⁰

The Department's claim that the "threat is real" is misleading or outright false, as are its characterizations of the number of terror-watchlisted individuals who have crossed the Southern Border. The Department's attempt to hide behind the claim that the "exact number is sensitive" compounds the misdirection: publicly reported figures make clear that the exact number of terrorists who have crossed the Southern Border is so low that it has been described by the former director of the National Counterterrorism Center as "much more of a theoretical vulnerability than an actual one."³¹ According to CBP data from May 2018, it "encountered only six immigrants at ports of entry on the U.S.-Mexico border in the first half of fiscal year 2018

²⁸ OMB Guidelines, 67 Fed. Reg. at 8,459

²⁹ See *Full Transcripts: Trump's Speech on Immigration and the Democratic Response*, N.Y. Times (Jan. 8, 2019), <https://www.nytimes.com/2019/01/08/us/politics/trump-speech-transcript.html>.

³⁰ Fact Sheet at 2.

³¹ Ainsley, *supra* note 2.

whose names were on a federal government list of known or suspected terrorists.”³² Even that number significantly overstates the threat that terrorists pose at the Southern Border: “[a]ccording to Justice Department public records and two former counterterrorism officials, no immigrant has been arrested at the southwest border on terrorism charges in recent years.”³³ To the extent that the number of terrorists crossing the southern border is indeed on the rise, it is increasing from a total that is negligible to one that is still quite small.³⁴

Moreover, even if there were any truth to these broad, uncontextualized statements about the threat of terrorists entering the United States through the Southern Border, they cannot meet the IQA’s requirement that disseminations of information be “useful” and “objective.”³⁵ Only within the proper context can the public appreciate the scope of the problem, assess the Department’s characterization of the threat, and use this information to develop well-considered views on immigration policy issues such as the construction of a border wall.

Statement 2

*This does not mean that all SIAs are “terrorists,” but rather that the travel and behavior of such individuals indicates a possible nexus to nefarious activity (including terrorism) and, at a minimum, provides indicators that necessitate heightened screening and further investigation. The term SIA does not indicate any specific derogatory information about the individual – and DHS has never indicated that the SIA designation means more than that.*³⁶

The Department’s statement that it has “never indicated that the SIA designation” implies “any specific derogatory information about the individual” is false. As explained above, Secretary Nielsen asserted in response to a “question about ... terrorism” from a member of the press at a White House briefing on January 4, 2018:

So, obviously, I can’t get into classified information. But what we do know is we’ve stopped — CBP has stopped over 3,000, what we call, special-interest aliens trying to come into the country on the southern border. Those are aliens who the intel community has identified are of concern. They either have travel patterns that

³² Julia Ainsley, *Only Six Immigrants in Terrorism Database Stopped by CBP at Southern Border from October to March*, NBC News (Jan. 7, 2018), <https://www.nbcnews.com/news/amp/ncna955861#>. Of course, the flaws of the Terrorist Screening Database, like its “broad criteria for inclusion” and lack of any requirement for concrete supporting facts, are themselves well-documented; even the President has acknowledged that “[a] lot of people are on the list that really maybe shouldn’t be on the list.” Harsha Panduranga, *Trump Administration’s Watchlist Data Overstates Terror Threat*, Just Security (Jan. 23, 2018), <https://www.justsecurity.org/51301/misleading-data-terrorist-watchlist-adds-confusion-doj-dhs-numbers/>.

³³ Ainsley, *supra* note 2.

³⁴ Ainsley, *supra* note 32.

³⁵ The Department can surely meet these obligations without disclosing information that would reveal sources and methods. But if it cannot, it is also free not to speak, and not to use the imprimatur of the Department to provide support to the Administration in a manner that does not allow for a full and candid discussion.

³⁶ Fact Sheet at 2.

are identified as terrorist travel patterns, *or they have known or suspected ties to terrorism.*³⁷

As an initial matter, asserting that “the travel and behavior of such individuals indicates a possible nexus to nefarious activity” clearly amounts to “specific derogatory information about the individual.” But Secretary Nielsen went even further and described the SIA population as also including individuals who “have known or suspected ties to terrorism.” That label plainly amounts to more than “a possible nexus to nefarious activity,” and constitutes “derogatory information” about an individual. It is also itself false: as explained above (*see supra* at 2-3), the vast majority of the SIA population has no ties to terrorism at all. In other words, the Fact Sheet attempts to paper over Secretary Nielsen’s prior misstatements about the SIA population by pretending that she never said them in the first place. Such misleading claims cannot meet the “Objectivity” requirement of the IQA, which requires the Department to ensure that information presented is, at a minimum, “accurate.”³⁸

Statement 3

*The bottom line is that significant numbers of threat actors have attempted, and continue to attempt, to enter the United States surreptitiously and without authority.*³⁹

This statement is misleading, and thereby falls short of both the “Objectivity” and “Utility” prongs of the IQA. The issuance of the Fact Sheet follows a week’s worth of statements by White House and DHS officials focused purely on the threat deriving from *terrorists* crossing the *Southern Border*, not merely “threat actors” attempting to “enter the United States” across the globe.⁴⁰ Even close readers might therefore misconstrue this statement in the Fact Sheet to mean that significant numbers of terrorists are attempting to cross the Southern Border. As explained above, that assertion is inaccurate. This statement therefore uses ambiguous phrasing to create an impression of the purported terrorist threat at odds with the facts.

Even taking the Department’s statement at face value, the lack of a precise definition of “threat actor” makes it impossible for the public to appraise the significance of the statement. Its conclusory assertion regarding “threat actors” also lacks any supporting or underlying data that might enable the public to understand the scope of any purported terror threat and assess the need for increased border security. Because the statement is presented without the context necessary to understand and evaluate this “bottom line,” it fails to meet the “Objectivity” and “Utility” requirements of the IQA.

³⁷ Rizzo, *supra* note 2.

³⁸ *See* DHS Guidelines at 3.

³⁹ Fact Sheet at 3 (emphasis added).

⁴⁰ *See* Rizzo, *supra* note 2.

IV. The Requesters are Affected Persons.

Any “affected person” is entitled to request correction or retraction of agency documents that fail to meet the IQA’s standards. The IQA guidelines broadly define “affected person” as one who “may benefit or be harmed by the disseminated information,” including one who “use[s] information.”⁴¹ That standard is met here.

As a general matter, the Requesters all use reliable information concerning federal immigration policy and the immigrant population in their work. That work is made more difficult when they cannot rely on the Department to state clearly and accurately why and to what degree a threat exists. Moreover, the Requesters currently represent individuals and/or entities who are adversely affected by the Department’s efforts to stoke fear about immigrant communities generally, as the Fact Sheet does by seeking to bolster the false equivalency between terrorism and immigration, or have otherwise directed organizational resources to advocate against the Department’s draconian immigration policies undertaken in the name of border security. Reliable information from the Department, which meaningfully informs the public debate about immigration and Southern Border security needs, is critical to their clients and their work.

Specifically, 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 people of all faiths. Muslim Advocates engages in civil rights litigation, policy advocacy, and public education to challenge inhumane immigration policies that stigmatize immigrants, particularly where those policies are predicated on dangerous race-based or religion-based stereotypes.

RAICES is also an affected person. RAICES is a nonprofit agency that promotes justice by providing free and low-cost legal services to underserved immigrant children, families, and refugees in Texas. RAICES is the largest immigration legal service provider in Texas and operates on the frontlines of the current immigration crisis, providing legal assistance in the very places the Department now, misleadingly, claims are being overrun by terrorists.

Finally, Democracy Forward Foundation is an affected person as well. Democracy Forward is a non-partisan, non-profit organization that scrutinizes Executive Branch activity across policy areas, challenges unlawful actions through litigation, and educates the public about improper government activity. To that end, Democracy Forward has brought multiple lawsuits pertaining to the treatment of immigrants by the Executive Branch, including lawsuits under the Information Quality Act, the Freedom of Information Act, and other federal statutes. More generally, Democracy Forward is committed to ensuring that the government disseminates accurate and reliable information pertaining to policy issues, including immigration.

* * *

This is not the first time the Administration has distorted the facts in an attempt to trick the public into believing that immigrants are likely to be terrorists. Nor is it even the first time

⁴¹ See DHS Guidelines at 9.

that it has violated the Information Quality Act in doing so. Indeed, the Administration recently conceded that information in a report titled *Protecting the Nation From Foreign Terrorist Entry Into the United States* “could be criticized by some readers,” contained “the potential for misinterpretation by some readers,” and “could have better met IQA standards.”⁴² While the Administration promised to do better, it failed to do so here.

The Fact Sheet does not meet the requirements of the IQA. We therefore request that it be retracted or corrected within 60 days. Should you have any questions, please do not hesitate to contact the Requestors at jlewis@democracyforward.org or (202) 448-9090.

Sincerely,

/s/ John Lewis
John Lewis
Counsel
Democracy Forward Foundation

/s/ Sirine Shebaya
Sirine Shebaya
Senior Staff Attorney
Muslim Advocates

/s/ Manoj Govindaiah
Manoj Govindaiah
Director of Litigation
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⁴² See Letter from Michael H. Allen, Deputy Assistant Att’y Gen., to Robin Thurston & Sirine Shebaya (Dec. 21, 2018), <https://democracyforward.org/wp-content/uploads/2019/01/DOJ-12.21.18-response-to-appeal.pdf>; see also *Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report*, U.S. Dep’t of Homeland Security & U.S. Dep’t of Justice (Jan. 2018), <https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf>.