

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PROTECT DEMOCRACY PROJECT, INC.,
BRENNAN CENTER FOR JUSTICE AT
NEW YORK UNIVERSITY SCHOOL OF
LAW, MICHAEL F. CROWLEY, AND
BENJAMIN WITTES,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE, U.S.
DEPARTMENT OF HOMELAND
SECURITY, JEFFERSON BEAUREGARD
SESSIONS III in His Official Capacity as
Attorney General of the United States, and
KIRSTJEN NIELSEN in her Official
Capacity as Secretary of the Department of
Homeland Security,

Defendants.

Case No. 18-10874

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs Protect Democracy Project, Inc., Brennan Center for Justice at New York University School of Law, Michael F. Crowley, and Benjamin Wittes allege as follows:

NATURE OF THE ACTION

1. Our democracy suffers when the government publishes false and misleading information under a veneer of objectivity. Government misinformation skews the public debate over contentious policy objectives. It undermines trust in our public institutions. Most importantly, citizens cannot hold their elected representatives accountable when they are misled about the facts upon which the government's decisions are based.

2. This case concerns Plaintiffs' attempt to correct one particular—and particularly pernicious—piece of disinformation released by the federal government in connection with the so-called “Muslim Ban.”

3. On January 27 and March 6, 2017, President Trump issued Executive Orders barring individuals from various majority-Muslim nations from entering the United States. Those Executive Orders also required Defendant Department of Justice (“DOJ”) and Defendant Department of Homeland Security (“DHS”) to prepare a report on the immigration status of individuals convicted of certain terrorism-related charges and other crimes. In a speech to Congress in February 2017, the President said, “The vast majority of individuals convicted of terrorism-related offenses since 9/11 came here from outside of our country”—apparently referencing data that the first Executive Order instructed Defendants to collect.

4. Nearly a year later, on January 16, 2018, Defendants issued the required report, entitled *Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry into the United States, Initial Section 11 Report* (the “Report”).

5. The Report is rife with inaccuracies and methodological flaws. It fails to disclose most of the data on which it is supposedly based, and fails to objectively analyze what limited data it does identify. Its leading claim is that 73% of individuals convicted of international terrorism-related charges since September 11, 2001 were born in other countries. *See* Report at 2. Defendants do not reveal the data supposedly underlying that statistic, and a review of the available data demonstrates that the statistic is likely wrong and, at the very least, highly misleading.

6. Of the 549 convictions underlying the terrorism statistic in the Report, only about two-thirds included charges that the government considers directly related to international terrorism. Even that portion may include convictions where the government originally brought international terrorism charges that were ultimately dropped or that resulted in an acquittal on the

international terrorism charge. The Report thus falsely and misleadingly asserts that all of these 549 convictions are for international terrorism-related charges.

7. This statistic in the Report also excludes instances of domestic terrorism without explanation. Domestic terrorism convictions account for the majority of terrorism convictions resulting in fatalities since September 11, 2001. And the statistic includes, again without explanation, those who were transported to the United States solely for the purposes of prosecution. By omitting domestic terrorism from its analysis, and conflating those who voluntarily came to the United States with those whom the government itself brought here, the Report depicts a false picture of the proportion of terrorism convictions attributable to immigrants.

8. The Report also evidently relies on a database that may not accurately identify a defendant's place of birth, as the Chief of Staff to the FBI Director expressly warned. Moreover, it groups naturalized U.S. citizens with non-citizens in its tally of "immigrant" convictions. The Report's distinct focus on a subset of U.S. citizens departs from our constitutional and legal tradition of treating natural-born and naturalized citizens the same in nearly every instance, and from DOJ's and DHS's longstanding practice of respecting this tradition in the national security context. Indeed, in this respect the Report even deviates from the authorizing Executive Order, which instructs Defendants to provide information on foreign *nationals*, not foreign-born U.S. *citizens*—who are, of course, nationals of the United States. And it even unreasonably gestures at a distinction between natural-born citizens based on the citizenship status of their parents, with no explanation. *See* Report at 2 n.1. The Report's disparate treatment of certain U.S. citizens based on the place of their birth fails to meet basic objectivity standards that all U.S. citizens reasonably expect from their government.

9. Other parts of the Report rely on unreliable studies, or misstate the studies on which they rely, pandering to negative stereotypes about Islam instead of reporting on any “Foreign Terrorist Entry into the United States.” For example, the Report discusses so-called “honor killings” without mentioning that its statistics are drawn from a study commissioned by an anti-Muslim critic who regularly seeks to stigmatize Muslim communities and which its own author admitted was unscientific. The Report also blatantly overstates the number of immigrants convicted of crimes involving gender-based violence.

10. Notwithstanding the Report’s significant flaws, President Trump and his Administration have repeatedly used it to support their political and policy agenda via television appearances, Congressional testimony, and even President Trump’s Twitter account. The President, his staff, the Attorney General, and the Secretary of Homeland Security have all used the Report to call for stricter immigration policies, for example, including the end of family reunification and diversity visa programs. This is not a government report collecting dust in a basement on Pennsylvania Avenue. It has played a central role in major issues facing our country, and it is false, deceptive, and unreliable.

11. Fortunately, Congress has provided a remedy for correcting inaccurate or misleading information distributed by executive agencies. The Information Quality Act (“IQA”) requires that information published by agencies of the federal government satisfy standards of objectivity, utility, and integrity. The IQA requires agencies to identify the data and methods underlying their statistical claims. It directs the Office of Management and Budget (“OMB”) to promulgate information quality standards for any information that executive branch agencies disseminate. These standards are legally binding, and require that agency publications be accurate, clear, complete, unbiased, and useful to both the agencies and the public. A publication

is subject to a heightened standard when it “will or does have a clear and substantial impact on important public policies.”

12. The IQA also provides a process for third parties to challenge and obtain corrections to publications that violate these standards. On February 8, 2018, Plaintiffs filed a petition (the “Petition”) with Defendants identifying specific flaws in the Report that violate the quality standards in the IQA and its implementing regulations. Plaintiffs requested that Defendants either rescind the Report or revise it to correct the IQA violations identified in the Petition.

13. Defendants have not responded to the Petition within the time allotted by applicable regulations, much less rescinded or corrected the Report. The failure to respond violates Defendants’ obligation to adjudicate IQA challenges and continues the ongoing violation of the IQA substantive standards, contrary to the Administrative Procedure Act (“APA”).

14. Plaintiffs seek to enforce their right to petition agencies for the correction of publications that fail to meet the IQA’s standards, and bring this lawsuit to vindicate their right to receive a response to the Petition as required by applicable regulations.

JURISDICTION AND VENUE

15. The Court has jurisdiction under 28 U.S.C. § 1331 because this case concerns a federal question under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, the Paperwork Reduction Act, 44 U.S.C. §§ 3506-07, and the Information Quality Act and its implementing regulations, 44 U.S.C. 3516 note; 67 Fed. Reg. 8451 *et seq.* The Court may enter declaratory and further necessary and proper relief under 28 U.S.C. § 2201 and 28 U.S.C. § 2202.

16. Venue in this judicial district is proper under 28 U.S.C. § 1391(e) because at least one Plaintiff resides in this district.

PARTIES

17. Plaintiff Protect Democracy, Inc., is a 501(c)(3) not-for-profit organization whose mission is to engage in research, public education, and litigation as necessary to prevent our democracy from declining into a more authoritarian form of government. Its work focuses on defending core democratic norms and institutions, and countering the threats of the politicization of independent institutions, the spread of disinformation, and the delegitimization of minority communities.¹ Protect Democracy is incorporated under the laws of the District of Columbia, and maintains offices in Cambridge, MA; New York, NY; and Washington, D.C.

18. Plaintiff Brennan Center for Justice at New York University School of Law is a not-for-profit nonpartisan law and policy institute that seeks to improve the nation's systems of democracy and justice. It advocates for effective national security policies that respect constitutional values and the rule of law, including publishing research evaluating "extreme vetting" as a counterterrorism policy² and the claims in the Report.³ The Brennan Center is organized under the laws of New York and has its principal place of business in New York, NY.

19. Plaintiff Michael F. Crowley was a Senior Policy Analyst with the Justice Branch of the Office of Management and Budget ("OMB") from 2004 to 2013 and his responsibilities there included DOJ's crime statistics program. He currently writes on the Department of Justice programs and criminal justice reform, including their interaction with immigration policy,⁴ and

¹ See, e.g., Protect Democracy & Stand Up Ideas, *The Republic at Risk: American Democracy One Year into the Trump Administration*, <https://protectdemocracy.org/update/republic-at-risk>.

² See, e.g., Harsha Panduranga, Faiza Patel & Michael Price, *Extreme Vetting and the Muslim Ban*, Brennan Center for Justice, Oct. 2, 2017, <https://www.brennancenter.org/publication/extreme-vetting-and-muslim-ban>.

³ See, e.g., Faiza Patel, *Why the Trump Administration is Trying to Make Muslim Immigrants Seem Dangerous*, WASH. POST, Jan. 29, 2018, <https://www.washingtonpost.com/news/posteverything/wp/2018/01/29/why-the-trump-administration-is-trying-to-make-muslim-immigrants-seem-dangerous/>.

⁴ Michael Crowley, *Trump's 2019 Budget Harms Criminal Justice*, Brennan Center for Justice, Feb. 14, 2018, <http://www.brennancenter.org/blog/trump%E2%80%99s-2019-budget-harms-criminal-justice>; Michael Crowley & Ed Chung, *Congress Can Lead on Criminal Justice Reform Through Funding Choices*, Center for American

also serves as a Senior Fellow at the Brennan Center for Justice at New York University School of Law. Mr. Crowley resides in Belmont, Massachusetts.

20. Plaintiff Benjamin Wittes is the editor-in-chief of *Lawfare*, an online publication by The Lawfare Institute, a 501(c)(3) not-for-profit educational organization, and in cooperation with The Brookings Institution, a 501(c)(3) not-for-profit public policy organization. *Lawfare* is dedicated to integrity in national security decision-making, and Mr. Wittes specifically researches and writes about issues related to national security and terrorism, including the claims made in the Report.⁵ Mr. Wittes resides in Washington, D.C.

21. Defendant U.S. Department of Justice is an executive agency within the federal government of the United States. DOJ is headquartered at 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

22. Defendant U.S. Department of Homeland Security is an executive agency within the federal government of the United States. DHS is headquartered at 3801 Nebraska Avenue, NW, Washington D.C., 20016.

23. Defendant Jefferson Beauregard Sessions III is the Attorney General of the United States and is sued in his official capacity.

24. Defendant Kirstjen Nielsen is Secretary of DHS and is sued in her official capacity.

Progress, Sept. 7, 2017, <https://cdn.americanprogress.org/content/uploads/2017/09/07054711/DOJGrant-brief.pdf>; Michael Crowley, *The Sanctuary City Debate Distracts From Public Safety*, Brennan Center for Justice, Mar. 30, 2017, <http://www.brennancenter.org/blog/sanctuary-city-debate-distracts-public-safety>.

⁵ Benjamin Wittes, *Did the Justice Department Really Support the President's Misstatement to Congress? Let's Find Out*, LAWFARE (Apr. 7, 2017), <https://lawfareblog.com/did-justice-department-really-support-presidents-misstatement-congress-lets-find-out>; Benjamin Wittes, *The Friendliest Lawsuit Ever Filed Against the Justice Department*, LAWFARE (Aug. 12, 2017), <https://www.lawfareblog.com/friendliest-lawsuit-ever-filed-against-justice-department>; Lisa Daniels, Nora Ellingsen and Benjamin Wittes, *Trump Repeats His Lies About Terrorism, Immigration and Justice Department Data*, LAWFARE (Jan. 16, 2018), <https://www.lawfareblog.com/trump-repeats-his-lies-about-terrorism-immigration-and-justice-department-data>.

THE INFORMATION QUALITY ACT

25. The IQA requires that OMB promulgate regulations to “ensur[e] and maximiz[e] the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.” *See* Pub. L. 106-554 § 515, 114 Stat. 2763A-153–54 (Dec. 21, 2000), *codified at* 44 U.S.C. § 3516 note.

26. These regulations “shall apply to the sharing by Federal agencies of . . . information disseminated by Federal agencies” and require that each federal agency “establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with” OMB’s regulations. 44 U.S.C. § 3516 note (b)(1) & (b)(2)(B).

27. OMB duly promulgated its final IQA regulations on February 22, 2002. *See* Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication, 67 Fed. Reg. 8451 (Feb. 22, 2002). The regulations require that agencies examine the objectivity, utility, and integrity of their communications to determine whether they meet the IQA’s quality requirements:

- a. **Objectivity** requires determining (i) whether the information is presented “in an accurate, clear, complete, and unbiased manner,” with appropriate context, and (ii) whether the substance of the information is “accurate, reliable, and unbiased,” including providing the underlying data when reporting statistics. *Id.* at 8459.
- b. **Utility** requires agencies to “consider the uses of the information not only from the perspective of the agency but also from the perspective of the public.” *Id.*

- c. **Integrity** is defined as the “protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.” *Id.* at 8460.

28. Additionally, OMB’s regulations provide that “influential information,” or information that “will have or does have a clear and substantial impact on important public policies or important private sector decisions,” should be held to a higher standard. *Id.* at 8455. Similarly, agencies that disseminate “influential . . . statistic information” shall require “a high degree of transparency about data and methods.” *Id.* at 8460.

29. OMB’s regulations reiterate the IQA’s requirement that agencies establish an administrative mechanism to seek and obtain timely correction of information that does not comply with OMB’s or the agency’s guidelines. To this end, the regulations require that agencies “specify appropriate time periods for agency decisions on whether and how to correct the information.” *See id.* at 8459.

30. In accordance with the IQA and OMB’s regulations, DOJ promulgated Information Quality Guidelines that further explicate OMB’s regulations. DOJ set a 60-day deadline for DOJ to respond to IQA petitions: “DOJ will normally respond to requests for correction of information within 60 calendar days of receipt. If the request requires more than 60 calendar days to resolve, DOJ will inform the requestor that more time is required and indicate the reason why and an estimated decision date.” DOJ Information Quality Guidelines (updated Nov. 1, 2016).⁶

⁶ *Information Quality*, U.S. DEPARTMENT OF JUSTICE, <https://www.justice.gov/iqpr/information-quality> (last visited May 3, 2018).

31. DHS similarly promulgated Information Quality Guidelines that explicate OMB's regulations. It also gave itself a 60-day deadline for responses to IQA petitions: "DHS Components should respond to requests for correction in writing within 60 calendar days of receipt. If the request for correction requires an extended period of time for processing, the Component should notify the petitioner." DHS Information Quality Guidelines (Mar. 18, 2011).⁷

32. While the DHS guidelines use the word "should" rather than "shall," OMB has reminded agencies that their Guidelines are, in fact, legally binding, noting that "agency guidelines should not suggest that agencies are free to disregard their own guidelines." OIRA Review of Information Quality Guidelines Drafted by Agencies (June 10, 2002), at 14.⁸ The OIRA Administrator who promulgated OMB's guidelines advised that courts should enforce the IQA in "cases of egregious agency mismanagement." See John D. Graham, OIRA Administrator, OMB's Role in Overseeing Information Quality, Remarks to Public Workshop on Information-Quality Guideline (Nov. 21, 2002).⁹

FACTUAL ALLEGATIONS

I. **President Trump Issues Executive Orders to Ban Muslims From Entering the United States, and Orders DHS and DOJ to Find Information to Retroactively Justify His Discriminatory Policy**

33. On January 27, 2017—just one week after taking office—President Trump issued Executive Order 13769, *Protecting the Nation from Foreign Terrorist Entry into the United States* ("EO-1"), which followed through on his campaign promise to impose a ban on the

⁷ *Information Quality Guidelines*, U.S. DEPARTMENT OF HOMELAND SECURITY, <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf> (last visited May 3, 2018).

⁸ John D. Graham, *MEMORANDUM FOR PRESIDENT'S MANAGEMENT COUNCIL: Agency Draft Information Quality Guidelines*, June 10, 2002, available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/inforeg/iqg_comments.pdf.

⁹ John D. Graham, *OMB's Role in Overseeing Information Quality*, Mar. 21, 2002, available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/inforeg/info-quality_march21.pdf.

immigration of Muslims into the United States through an immediate temporary ban on entry by nationals of several overwhelmingly Muslim countries, as well as all refugees. *See generally* 82 Fed. Reg. 8977 (Feb. 1, 2017).

34. EO-1 claimed that “numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program,” but it did not cite any statistics in support of this claim. *Id.*

35. In an apparent effort to bolster the factual basis of this policy, Section 10 of EO-1 directed the Secretary of DHS, in consultation with the Attorney General, to collect and publicly disseminate certain categories of information within 180 days, and every 180 days thereafter.

The requested information included:

(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, or material support to a terrorism-related organization, or any other national security reasons . . . ;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and 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 honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later . . . ; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the

Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

Id. at 8981.

36. EO-1 justified this collection by noting an interest in being “more transparent with the American people.” Importantly, it required that DHS and DOJ implement the Order “consistent with applicable law.” *Id.* at 8980.

37. Just one month later, on February 28, 2017, President Trump announced in his first speech before a joint session of Congress that “[a]ccording to data provided by the Department of Justice, the vast majority of individuals convicted of terrorism-related offenses since 9/11 came here from outside of our country.” *See* Remarks by President Trump in Joint Address to Congress (Feb. 28, 2017).¹⁰ President Trump promised to “take new steps to keep our nation safe and to keep out those who will do us harm.” *Id.* These remarks echoed his false campaign claims that “scores of recent migrants” were charged with terrorism and that “for every case known to the public, there are dozens and dozens more.” *See* Michelle Ye Hee Lee, *Donald Trump’s false claim that ‘scores of recent migrants’ in the U.S. are charged with terrorism*, Washington Post, May 2, 2016.¹¹

38. In response to media questioning, the White House stated that the President’s claim was derived from a 2016 analysis done by Defendant and then-Senator Jeff Sessions, along with Senator Ted Cruz. *See* Miriam Valverde, *Trump Misleads in Claim About Terrorism*

¹⁰ Remarks by President Trump in Joint Address to Congress, Feb. 28, 2017, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-joint-address-congress/>.

¹¹ Michelle Ye Hee Lee, *Donald Trump’s False Claim That ‘Scores of Recent Migrants’ in the U.S. Are Charged with Terrorism*, WASH. POST, May 2, 2016, available at https://www.washingtonpost.com/news/fact-checker/wp/2016/05/02/donald-trumps-false-claim-that-scores-of-recent-migrants-in-the-u-s-are-charged-with-terrorism/?utm_term=.912d21fdda1d.

Convictions Since 9/11, PolitiFact, May 2, 2017.¹² This analysis was based on a list of convictions for international terrorism-related crimes between September 11, 2001 and December 31, 2014 that the National Security Division (“NSD”) of DOJ released to the Senators. The Senators estimated that the majority of those on the list were foreign-born.¹³ This analysis has been roundly criticized for its inaccuracy by legal scholars and national security experts.¹⁴

39. According to information released by DOJ in response to a Freedom of Information Act (“FOIA”) request by Mr. Wittes, in order to prepare the statistics underlying the President’s claim, NSD provided to the Office of the Attorney General on February 10, 2017, an updated chart listing 668 international terrorism and terrorism-related crimes between September 11, 2001 and December 31, 2016, attached hereto as **Exhibit 1**. This chart included 119 individuals prosecuted following a broad nationwide investigation after the September 11, 2001 attacks; these 119 individuals were included on the list “regardless of whether investigators developed or identified evidence that they had any connection to international terrorism.” This

¹² Miriam Valverde, *Trump Misleads in Claim About Terrorism Convictions Since 9/11*, POLITIFACT (Mar. 2, 2017), available at <http://www.politifact.com/truth-o-meter/statements/2017/mar/02/donald-trump/trump-misleads-claim-about-terrorism-convictions-9/>.

¹³ Jeff Sessions & Ted Cruz, *At Least 580 Individuals Convicted in Terror Cases Since 9/11, At Least 380 Are Foreign-Born*, Jun. 22, 2016, available at <https://web.archive.org/web/20160906022318/http://www.sessions.senate.gov/public/index.cfm/2016/6/at-least-580-individuals-convicted-in-terror-cases-since-9-11-at-least-380-are-foreign-born>. See also Letter from U.S. Department of Justice, Office of Legislative Affairs, to Senators Jeff Sessions & Ted Cruz (Jan. 13, 2016), available at https://web.archive.org/web/20161109030252/http://www.sessions.senate.gov/public/_cache/files/6e9a95e6-3552-45f7-bb0c-4fd41f5a28ca/01.13.16-original-doj-nsd-list.pdf.

¹⁴ A more accurate analysis of the data provided to Senators Sessions and Cruz by DOJ shows that 241 of the 580 convictions (and 186 of the 380 convictions of foreign-born individuals) were not actually for terrorism offenses. And of the remaining terrorism-related convictions, 180 were for attempts to support or commit foreign terrorism on foreign soil, and do not relate to domestic national security. Alex Nowrasteh, *Little National Security Benefit to Trump’s Executive Order on Immigration*, CATO AT LIBERTY, Jan. 25, 2017, <https://www.cato.org/blog/little-national-security-benefit-trumps-executive-order-immigration>; Andrew Lindsay, *What the Data Tells Us About Immigration and Terrorism*, Brennan Center for Justice, Feb. 17, 2017, <https://www.brennancenter.org/blog/what-data-tells-us-about-immigration-and-terrorism>.

caution was included in a Preamble that NSD warned should always accompany the chart or any quotation of the total number of convictions.

40. According to additional information released by DOJ in response to that same FOIA request, attached hereto as **Exhibit 2**, DOJ then deleted 115 of the 119 individuals convicted following the September 11, 2001 investigations and cross-referenced the remaining 553 names with its FBI investigation files to determine each defendant's place and date of birth. The then-Chief of Staff to the FBI Director admitted that “[g]iven the use of aliases in I[n]ternational T[errorism] matters, factual errors in the initial data, and conflicting DOBs, database checks are limited in their ability to accurately identify a date/place of birth,” which he “highlight[ed] . . . to note the . . . list likely contains gaps or errors” *See* Ex. 2. The final chart included 392 or 393 individuals who were born abroad (the FBI was unsure whether one individual was born in Jamaica or the United States), 136 or 137 individuals who were born in the United States, and 24 individuals whom the FBI was unsure of their place of birth. *See id.* This chart was then passed on to DHS.

41. Despite the apparent availability of Defendants' analysis, the government avoided relying on the statistics that the President was presenting as fact to Congress and the American people in its defense of the legality of EO-1 in the courts. *See Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) (per curiam) (noting that the government “pointed to no evidence that any alien from any of the countries named in [EO-1] has perpetrated a terrorist attack in the United States”). Instead, the government argued that the order was unreviewable. *Id.* Courts found this argument unpersuasive and enjoined EO-1's immigration provisions. *Id.*

42. In response, President Trump issued a second Executive Order on March 6, 2017. Executive Order 13780, also called *Protecting the Nation from Foreign Terrorist Entry into the*

United States (“EO-2”), revoked EO-1 and made minor changes to its immigration provisions. *See* 82 Fed. Reg. 13,209 (Mar. 9, 2017). EO-2 still temporarily barred entry by nationals of certain overwhelmingly Muslim countries and all refugees. It again repeated the claim that “hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States.” *Id.* at 13,212. It identified two examples of refugees convicted of terrorism-related crimes and claimed that “more than 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations by the Federal Bureau of Investigation.” *Id.*

43. Section 11 of EO-2 tasked the Secretary of DHS and the Attorney General with finding the same information identified in Section 10 of EO-1, with non-substantive changes to the order’s language—despite the fact that DOJ had already given President Trump some of this data ahead of his February speech to Congress. 82 Fed. Reg. 13,217. Section 11 of EO-2 again identified an interest in “transparency” and again required that Defendants follow applicable law. *Id.*

44. The immigration provisions of EO-2 were also quickly enjoined, and expired of their own accord before the U.S. Supreme Court was able to substantively review them. *See Int’l Refugee Assistance v. Trump*, 241 F. Supp. 3d 539, 566 (D. Md. 2017) *aff’d in part, vacated in part* 857 F.3d 554 (4th Cir. 2017) (en banc) *vacated as moot* 138 S. Ct. 353 (2017); *Hawaii v. Trump*, 245 F. Supp. 3d 1227 (D. Haw. 2017) *aff’d in part, vacated in part* 859 F.3d 741 (9th Cir. 2017) *vacated as moot* 138 S. Ct. 377 (2017).¹⁵ In defending the legality of EO-2 in litigation, the government again did not rely on Defendants’ statistics that President Trump

¹⁵ The Supreme Court did issue a partial stay limiting the lower court’s injunctions to those similarly situated to plaintiffs without discussion of the merits. *See Trump v. IRAP*, 137 S. Ct. 2080, 2087-88 (2017).

offered to justify EO-2, and argued instead that Order was not open to judicial scrutiny. Nevertheless, courts cast doubt on the examples cited in EO-2, noting that in one of them the defendants were convicted for engaging in terrorism *overseas*, and that in the other the defendant was radicalized many years *after* his entry into the United States. *See Hawaii*, 859 F.3d at 775 nn. 15 & 16. Courts also cited EO-2's request for data regarding honor killings as evidence of anti-Muslim animus on the part of the Order's drafters. *IRAP*, 857 F.3d at 596 n. 17; *see also id.* at 634 (Wynn, J. concurring).

45. Without waiting for the DHS and DOJ report required by Section 11 of EO-2, President Trump made permanent a modified version of the immigration provisions of EO-1 and EO-2 in his September 24, 2017 *Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats*, Proc. 9645 (Sept. 24, 2017) (the "Proclamation"). *See* 82 Fed. Reg. 45,161 (Sept. 24, 2017). The Proclamation abandoned any attempt to root its provisions in data regarding terrorism and did not alter Defendants' obligations under Section 11 of EO-2. The Supreme Court granted certiorari on January 19, 2018, principally to review whether the Proclamation's immigration provisions were a lawful exercise of President Trump's authority, whether the provisions violate the Establishment Clause, and whether the lawsuit is justiciable. *See Trump v. Hawaii*, 138 S. Ct. 923 (2018). The Court heard oral argument on April 25, 2018.

II. DHS and DOJ Issue Report Making False and Misleading Claims

46. On January 16, 2018—months after the deadline imposed by EO-2—Defendants issued a report entitled *Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States, Initial Section 11 Report* (the "Report"), attached hereto as

Exhibit 3.

47. Ignoring EO-2's instructions to collect data on "the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States," the Report's headline claim is that 402 of 549 people convicted of international terrorism-related charges from September 11, 2001 through December 31, 2016 (roughly 73%), were "foreign-born." Report at 2. Of those 402 "foreign-born" individuals, the Report asserts that 148 were naturalized U.S. citizens (i.e., nationals of the United States) and that 254 were foreign nationals. *Id.* (The Report does not discuss the possibility that some foreign-born individuals could also be U.S. citizens by birth because they have a U.S. citizen parent.) While the Report's stated goal is "protecting the nation," Report at 1, it does not describe whether the intended terrorism target was within the United States or directed at U.S. citizens in any way.

48. The Report does not provide any underlying data, but it does acknowledge that it relied on "a list maintained by DOJ's National Security Division" of those convicted of international terrorism-related charges. Report at 2. Its list of 549 total convictions is consistent with the list that NSD compiled a year earlier, excluding the 119 individuals investigated following the September 11, 2001 attacks. *See* Ex. 2.

49. Ignoring NSD's warning that the explanations and qualifications in the Preamble "always need to accompany [the] total number" of convictions listed on the chart, *see* Ex. 1, the Report contains only an abbreviated version of the Preamble's explanations. The Report admits that its data does not distinguish between individuals arrested inside the United States and individuals captured abroad and extradited to the United States. Report at 2. It also admits that while some convictions in the underlying data were in cases that charged violations "directly related to international terrorism," the data includes a wide variety of offenses that are indirectly "related" to international terrorism simply because they arose from an investigation with an

“identified link to international terrorism,” such as those involving fraud, immigration, firearms, drugs, and perjury. Report at 2 & n.3.

50. Significantly, the Report omits the Preamble’s details explaining why the data must be qualified. Specifically, it omits the fact that only 360 defendants included in NSD’s list were convicted after facing at least one charge directly related to international terrorism, meaning that around one-third of the 549 convictions on which DOJ relies were not for terrorism charges at all. Moreover, the Report fails to include language in the Preamble highlighting that NSD’s list includes anyone charged with terrorism, “regardless of offense of conviction,” meaning that the Report’s data may include convictions where all terrorism charges were ultimately dropped, or where the defendant was in fact acquitted of terrorism. *See* Ex. 2.

51. The Report also provides details about eight of the 402 “foreign-born” individuals, which it claims are “illustrative.” Report at 3-7. But these eight cases are not representative: they are cherry-picked examples of cases where the defendant was admitted to the United States as a refugee, through family-based immigration, or through the diversity lottery system. *Id.* The Report does not discuss any examples or even quantify how many of the 402 cases were, for example, individuals who were extradited to the United States for criminal prosecution or admitted with a merit-based student or work visa.

52. Responding to further directives in the Executive Order to “collect and make publicly available ... information regarding the number and types of acts of gender-based violence against women, including so-called ‘honor killings.’” (EO-2 § 11(a)(iii)), the Report estimates that 23 to 27 “honor killings” and 1,500 “forced marriages” occurred every year in the United States between September 11, 2001 and December 31, 2016. Report at 7-8. Yet the Report simultaneously acknowledges that the federal government does not generally track data

about gender-based violence against women. *Id.* Citing an outside study that was itself based largely on media reports, the Report surmises that 91% of these honor killings occurred because the victim was perceived as “too Westernized.” *Id.*

53. The Report also includes other statistics that have no apparent connection to terrorism. For example, it volunteers that between October 1, 2011 and September 30, 2017, 372,098 non-citizens were deported following convictions for an aggravated felony or two or more felonies. Report at 9-10. The Report also notes that between 2007 and 2017, USCIS referred 45,858 foreign nationals who applied for immigration benefits to ICE for enforcement action based on information that they had committed crimes. *Id.*

54. Finally, the Report concludes with a promise to continue to provide similar information to “highlight the threats facing the United States.” It asserts that DOJ is “committed to” investigating and prosecuting terrorists—and also to denaturalizing citizens who “derive their citizenship through naturalization fraud,” a problem not otherwise discussed in the Report, much less supported by any data.

III. The Trump Administration Uses the Report to Mislead the American Public and Congress About the Need for Stricter Immigration Policies

55. The Report was issued months after the date contemplated by EO-2, even though the data for its central claim were apparently available before EO-2’s promulgation. Its publication instead coincided with a renewed push by the Administration to convince Congress and the American people that stricter immigration laws are needed.

56. A prominent theme in President Trump’s statements during this period was the purported national security threat represented by this country’s family reunification and diversity lottery immigration policies.

57. For example, at a televised immigration roundtable one week before the Report was issued, President Trump falsely claimed that twenty-two to twenty-four people immigrated to the United States on the basis of their relation to the suspect in the Manhattan truck attack. *CNN Bipartisan Immigration Bill Roundtable Transcript*, Jan. 9, 2018.¹⁶

58. On January 11, 2018, five days before the Report was issued, President Trump attacked family reunification and diversity lottery policies in an interview with the Wall Street Journal, saying, “[t]he lottery system is a disaster, we have to get rid of the lottery system. The—as you know chain is—chain migration is a horrible situation. You’ve seen the ads, you’ve seen everything, you know all about chain.” *Transcript of Donald Trump Interview with the Wall Street Journal*, Wall Street Journal (Jan. 13, 2018).¹⁷ He went on to repeat his claim that these programs were associated with the Manhattan terror attack. *Id.*

59. The Report was issued while Congress was considering sweeping immigration reform legislation,¹⁸ and after the Report was issued, the Administration embarked on a public relations campaign to amplify it. It was the subject of a dedicated White House press briefing, where Press Secretary Sarah Huckabee Sanders stated that the Report “highlights the urgent need for Congress to adopt immigration reforms identified in the administration’s priorities.” *Press*

¹⁶ *Transcript: Bipartisan Immigration Roundtable*, CNN (Jan. 9, 2018), available at <http://transcripts.cnn.com/TRANSCRIPTS/1801/09/wolf.01.html>; see also Miriam Valverde, *Donald Trump’s Unsubstantiated Claims About Chain Migration, NYC Terror Suspects*, POLITIFACT (Jan. 24, 2018), available at <http://www.politifact.com/truth-o-meter/statements/2018/jan/24/donald-trump/donald-trumps-unsubstantiated-claims-about-chain-m/>.

¹⁷ *Transcript of Donald Trump Interview With The Wall Street Journal*, WSJ (Jan. 14, 2018), <https://www.wsj.com/articles/transcript-of-donald-trump-interview-with-the-wall-street-journal-1515715481>.

¹⁸ See, e.g., *Securing America’s Future Act of 2018*, H.R. 4760, 115th Cong. (2d Sess. 2018).

Briefing by Press Secretary Sarah Sanders and Principal Deputy Assistant Attorney General Ed O'Callaghan, Jan. 17, 2018.¹⁹

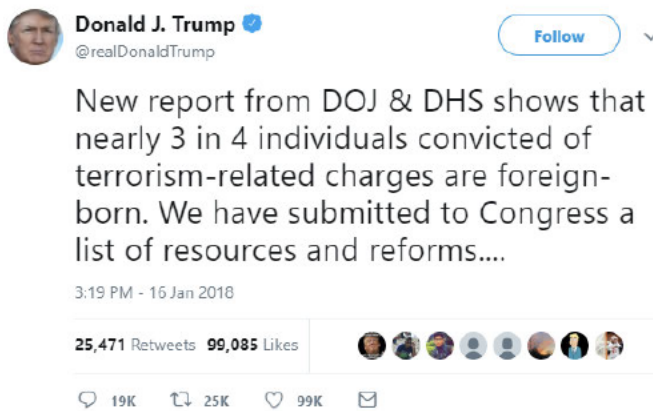
60. In a White House Fact Sheet, the Administration claimed that the Report “shows, once again, that our current immigration system jeopardizes our national security.” White House Fact Sheet, *Our Current Immigration System Jeopardizes American Security*, Jan. 16, 2018.²⁰ The press release also cites the “facts” set forth in the Report as reason to end so-called “chain migration,” the Administration’s term for immigration laws aimed at reunifying families with some members living abroad. *Id.*

61. President Trump also used the Report to buttress the claim he made to Congress in February 2017, tweeting to his millions of followers that the Report showed that “nearly 3 in 4 individuals convicted of terrorism-related charges are foreign-born” and emphasizing that the Report supported ending family reunification and diversity lottery immigration policies.²¹

¹⁹ Press Briefing by Press Secretary Sarah Sanders and Principal Deputy Assistant Attorney General Ed O'Callaghan, Jan. 17, 2018, *available at* <https://www.whitehouse.gov/briefings-statements/press-briefing-by-press-secretary-sarah-sanders-and-principal-deputy-assistant-attorney-general-ed-ocallaghan01172018/>.

²⁰ Fact Sheets: Our Current Immigration System Jeopardizes American Security (Jan. 16, 2018), *available at* <https://www.whitehouse.gov/briefings-statements/current-immigration-system-jeopardizes-american-security>.

²¹ Donald Trump (@realDonaldTrump), Twitter (Jan. 16, 2018, 3:20 PM), <https://twitter.com/realDonaldTrump/status/953406553083777029>.



62. Attorney General Sessions stated in a DOJ press release that the Report “reveals an indisputable sobering reality—our immigration system has undermined our national security and public safety.”²² Press Release, Department of Justice Office of Public Affairs, DOJ, DHS Report: Three Out of Four Individuals Convicted of International Terrorism and Terrorism-Related Offenses were Foreign-Born (Jan. 16, 2018).

63. Defendant DHS Secretary Nielsen described the Report as “a clear reminder of why . . . we must examine our visa laws and continue to intensify screening and vetting of individuals traveling to the United States to prevent terrorists, criminals, and other dangerous individuals from reaching our country.” *Id.* On live television, she repeated the 73% number and used this statistic to advocate for the “continual vet[ting]” of lawful permanent residents. *See DHS Report: 73 Percent of Terrorism-Related Offenders over Last 15 Years Were Foreign-*

²² Press Release, U.S. Department of Justice, Office of Public Affairs, DOJ, DHS Report: Three Out of Four Individuals Convicted of International Terrorism and Terrorism-Related Offenses were Foreign-Born (Jan. 16, 2018), available at <https://www.justice.gov/opa/pr/doj-dhs-report-three-out-four-individuals-convicted-international-terrorism-and-terrorism>.

Born, CBS News, Jan. 16, 2018.²³ Secretary Nielsen repeated these points in prepared testimony to the Senate Judiciary Committee the same day, stating that “tougher vetting and tighter screening” is warranted because “[t]he majority of individuals convicted on terrorism charges in the United States since 9/11 were foreign-born.”²⁴ Written testimony of DHS Secretary Kirstjen Nielsen for a Senate Committee on the Judiciary hearing titled “Oversight of the United States Department of Homeland Security,” Jan. 16, 2018. She highlighted the Report in her testimony, calling the data “truly chilling,” suggesting that it was “just the tip of the iceberg,” and using it to justify EO-3. *See Tr.* at 56.

64. Several members of Congress also amplified the claims made in the Report, including the Chairman of the House of Representatives’ Homeland Security Committee. *See, e.g.,* McCaul Statement on DHS-DOJ Report on Terrorist Entry Into the United States (Jan. 16, 2018);²⁵ Lou Barletta, *Report Shows 73% of Individuals Convicted of Terrorism Since 9/11 Gained Access Via U.S. Immigration Laws*, Jan. 17, 2018.²⁶

65. Ultimately, on January 25, 2018, President Trump and his Administration released an immigration plan calling for legislation to end family migration, increase the speed

²³ DHS Report: 73 Percent of Terrorism-Related Offenders Over Last 15 Years Were Foreign-Born, CBS (Jan. 16, 2018), *available at* <https://www.cbsnews.com/news/kirstjen-nielsen-dhs-secretary-terror-charges-report-us-citizens/>.

²⁴ Written Testimony of DHS Secretary Kirstjen Nielsen for a Senate Committee on the Judiciary Hearing Titled “Oversight of the United States Department of Homeland Security,” Jan. 16, 2018, *available at* <https://www.dhs.gov/news/2018/01/16/written-testimony-dhs-secretary-kirstjen-nielsen-senate-committee-judiciary-hearing>.

²⁵ Michael McCaul, McCaul Statement on DHS-DOJ Report on Terrorist Entry Into the United States (Jan. 16, 2018), *available at* <https://homeland.house.gov/press/mccaul-statement-dhs-doj-report-terrorist-entry-united-states/>.

²⁶ Press Release, Congressman Lou Barletta, Report Shows 73% Of Individuals Convicted of Terrorism Since 9/11 Gained Access Via U.S. Immigration Laws (Jan. 17, 2018), *available at* <https://barletta.house.gov/media-center/press-releases/report-shows-73-of-individuals-convicted-of-terrorism-since-911-gained>.

of immigration violation processing and deportations, and fund a border wall with Mexico. *See White House Framework on Immigration Reform and Border Security*, Jan. 25, 2018.²⁷

66. The Report has therefore been highly influential and has had a clear and substantial impact on important public policy discussions and initiatives.

IV. Plaintiffs File an Administrative Petition Under the IQA Showing That the Report Fails to Satisfy the Agencies' Information Quality Obligations

67. Observers across the political spectrum roundly criticized the Report. *See, e.g.*, Paul Fredrick & David Inserra, *A Report on Terrorism that Falls Short on Useful Details*, The Daily Signal, Jan. 24, 2018;²⁸ Lachlan Markay & Spencer Ackerman, *Team Trump Cooks Terror Stats for Bogus Immigration Argument*, The Daily Beast, Jan. 16, 2018.²⁹

68. On February 8, 2018, Plaintiffs filed an administrative petition under the IQA, attached hereto as **Exhibit 4** (the "Petition").

69. OMB has explained to agencies that "[t]he focus of the complaint process should be on the merits of the complaint, not on the possible interests or qualifications of the complainants." *See* OIRA Review of Information Quality Guidelines Drafted by Agencies at 13. Nevertheless, the Petition demonstrated that Plaintiffs are "affected persons" within the meaning of DHS's and DOJ's Guidelines and are therefore entitled to petition Defendants for a correction of the Report and to a meaningful response to their petition. Indeed, the IQA requires the government to disclose significant information, both along with the Report as well as in response

²⁷ Fact Sheets: White House Framework on Immigration Reform & Border Security (Jan. 25, 2018), *available at* <https://www.whitehouse.gov/briefings-statements/white-house-framework-immigration-reform-border-security/>.

²⁸ Paul Frederick & David Inserra, *A Report on Terrorism That Falls Short on Useful Details*, THE DAILY SIGNAL (Jan. 24, 2018), *available at* <https://www.dailysignal.com/2018/01/24/a-report-on-terrorism-that-falls-short-on-useful-details/>.

²⁹ Lachlan Markay & Spencer Ackerman, *Team Trump Cooks Terror Stats for Bogus Immigration Argument*, THE DAILY BEAST (Jan. 16, 2018), *available at* <https://www.thedailybeast.com/team-trump-cooks-terror-stats-for-bogus-immigration-argument?ref=author>.

to the Petition, and Plaintiffs further the IQA's purpose of holding DOJ and DHS accountable for the information in the Report, and to promote the utility of the Report, and its underlying data, in the public debate on immigration and national security.

70. Specifically, the Petition explained that Plaintiffs Brennan Center, Mr. Crowley, and Mr. Wittes, all write on the topic of criminal justice, terrorism, and/or immigration, and that the Brennan Center and Mr. Wittes both wrote public analyses based on the data and claims in the Report. They have been forced to rely on and respond to the false and misleading information in the Report. Pet. at 2-3.

71. Plaintiffs Protect Democracy and Brennan Center both have an interest in advancing their missions to prevent the spread of disinformation, especially in the national security context. They devote substantial resources to ensuring that the democratic process does not suffer due to the spread of disinformation, including by conducting research and publishing on core democratic norms and principles, the politicization of independent institutions, and the delegitimization of minority communities.³⁰ Had Defendants corrected or retracted the Report, Protect Democracy and the Brennan Center would have educated the public on the implications of the Report, and would have organized their own advocacy strategies to respond appropriately. Pet. at 2.

72. Plaintiff Mr. Crowley also has a professional interest in the accurate, fair, and unbiased presentation of data as a former Senior Policy Analyst with OMB with extensive oversight experience involving DOJ, as well as its crime statistics programs. Pet. at 3-4.

³⁰ See, e.g., Protect Democracy & Stand Up Ideas, *The Republic at Risk: American Democracy One Year into the Trump Administration*, <https://protectdemocracy.org/update/republic-at-risk>; Harsha Panduranga, Faiza Patel & Michael Price, *Extreme Vetting and the Muslim Ban*, <https://www.brennancenter.org/publication/extreme-vetting-and-muslim-ban>.

73. Plaintiff Mr. Wittes writes on national security issues, including counter-terrorism efforts. As a journalist and academic focused on issues directly related to the Report, he has an interest in the accuracy of data about terrorism. Pet. at 3.

74. The Petition was meritorious and detailed how many aspects of the Report violate the IQA.

75. First, the Report offers statistics and conclusions regarding the perpetrators of “terrorism,” but the data upon which the Report is based includes only individuals with a nexus to “foreign terrorism” and excludes individuals with a nexus to domestic terrorism. As Plaintiffs explained in the Petition, however, *domestic* terrorism convictions account for the majority of terrorism convictions since September 11, 2001. Not surprisingly, those convicted of domestic terrorism are less likely to be foreign-born than their international terrorism counterparts. Pet. at 7. Indeed, according to a report by the Government Accountability Office (“GAO”), 62 of 85 violent extremist attacks since September 11, 2001 resulting in a fatality were perpetrated by far-right extremists. See GAO, *Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts*, at 29-32 (April 2017).³¹ In other words, the Report misleadingly includes only those terrorism offenses that almost by definition are far more likely to be committed by foreign nationals, and excludes those that are far more likely to be committed by U.S. nationals.

76. The Report also offers statistics purportedly linking immigration and terrorism prosecutions without disaggregating cases where the defendant was transported to the United States *solely for the purpose of prosecution*. The Petition explained that it is “highly likely” that

³¹ U.S. Government Accountability Office, *Report to Congressional Requestors, Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts* (April 2017), available at <https://www.gao.gov/assets/690/683984.pdf>.

nearly one in five individuals discussed in the Report were extradited or otherwise captured and brought to the United States for the sole purpose of prosecution, and thus were unaffected by and did not interact with U.S. immigration policies. Pet. at 7.

77. The Report fails to provide necessary context about the underlying data maintained by DOJ's National Security Division. For example, while the Report acknowledges that many of the convictions included in the underlying data are not for terrorism charges at all, but rather for what the National Security Division describes as convictions for other violations "where the investigation involved an identified link to international terrorism," the Report fails to disaggregate how many of the underlying conviction were not. The Report only included an abbreviated version of the caveats and explanations that are included in a Preamble to the underlying data, which, according to the responsible NSD analyst, "always need to accompany [the] total number" of convictions listed on the chart. Ex. 1. For example, the Report leaves out language in the Preamble highlighting that the underlying data includes anyone charged with terrorism, "regardless of offense of conviction," meaning that the data may include convictions where all terrorism charges were ultimately dropped, or where the defendant was in fact acquitted of terrorism. *Id.*

78. The Report also manufactures a distinction between those who are U.S. citizens by birth and those who are citizens by naturalization. As the Petition explained, this not only departs from Defendants' longstanding practice of treating all citizens equally in counterterrorism efforts, consistent with our constitutional and legal tradition, but departs from Section 11 of EO-2, which instructs Defendants to provide certain information on "foreign nationals"—not foreign-born U.S. citizens. Pet. at 8. Defendants even suggest that the Report

would draw a distinction between natural-born citizens based on the citizenship status of their parents, were data available. *See* Report at 2 n.1

79. The Report also cherry-picks so-called “illustrative examples” of foreign-born terrorists that are not, in fact, representative of the vast majority of individuals on the list, and then used these examples to support a call for the end of family-based migration. *Id.* at 3.

80. The Petition explained that the Report generally lacks transparency, objectivity, and utility because it withholds or fails to disclose the data on which it relies. For example, it fails to provide the data underlying its claim that DHS had 2,554 encounters with those on the terrorist watch list, which is widely understood to be overbroad. *Pet.* at 9.

81. The Report also blatantly exaggerates the number of immigrants arrested for gender-based violence and fails to provide necessary context for its figures on this topic. For instance, while the Report states that aliens were convicted of 69,929 sex offenses between 2003 and 2009, this number comes from a GAO report that addresses arrests—not convictions—between 1955 and 2010. *Id.* Furthermore, the 69,929 figure represents the number of unique arrest *offenses*, and a single arrest can relate to numerous offenses. Finally, the Report assumes without explanation that the arrests mostly pertain to violent offenses against women, an assumption that the Petition explains is unjustified. *Id.*

82. The Report fails to disclose that its figures regarding “honor killings” are drawn from a study commissioned by an anti-Muslim critic who regularly seeks to stigmatize Muslim communities and which its own author admitted was “not terribly scientific.” *See* Jesse Singal, *Here’s What the Research Says About Honor Killings in the U.S.*, Mar. 6, 2017.³² And while the

³² Jesse Singal, *Here’s What the Research Says About Honor Killings in the U.S.*, N.Y. MAGAZINE (Mar. 6, 2017), available at <http://nymag.com/daily/intelligencer/2017/03/heres-what-the-research-says-about-american-honor-killings.html>.

Report claims that 1,500 forced marriages occur in the United States every year, nothing in the underlying study on which Defendants relied suggested that these marriages occurred in the United States (as opposed to abroad), and the authors expressly disclaimed that their data addressed how many forced marriages occur in any given year, instead focusing on how many forced marriages certain service providers “encountered.” Pet. at 9-10.

83. These dubious statistics related to gender-based violence and honor killings bear no apparent relationship to “Foreign Terrorist Entry into the United States” but invoke unrelated negative stereotypes about Islam.

84. Finally, the Report fails to disclose the data and analysis from NSD upon which it relies. *Id.* at 10-11.

85. The Petition concluded that “the Report is so saturated with bias and a lack of objectivity—both in conception and execution—that the appropriate course is to retract it in its entirety.” *Id.* at 11.

86. In the alternative, Plaintiffs asked Defendants to make the following specific corrections:

- Include data and appropriate context regarding domestic terrorism-related convictions, including the methodology for determining that a charge has an “identifiable link” to a terror-related investigation and for determining that an offense is “directly related to international terrorism”;
- Include data and appropriate context regarding the underlying data on which the Report relies, including the number of foreign-born individuals convicted of international terrorism-related offenses who were extradited to the United

States for prosecution and the number of convictions for attacks that took place overseas;

- Explain why drawing a distinction between naturalized citizens and citizens by birth is relevant, as well as why information about the citizenship of the parents of citizens by birth is relevant;
- Include data to support the assertion that the eight individuals named in the Report are “illustrative,” particularly as to their method of admission to the United States (or, if such data are unavailable, provide context so that the public can judge whether the examples are truly “illustrative”);
- Provide additional information about DHS’s 2,554 encounters with individuals on the terrorist watch list, including how an “encounter” is defined;
- Correct data and appropriate context regarding gender-based violence, honor killings, and forced marriages;
- Provide access to the data underlying the Report; and Consult with relevant experts, including career DHS officials and those in the private sector.

Id. at 11.

V. Defendants Fail to Respond to Plaintiffs’ IQA Petition

87. Defendants’ IQA Guidelines require that Defendants respond to a petition within 60 days.

88. It has been more than 60 days since the filing of the Petition and Defendants have provided no response to Plaintiffs’ IQA petition. Plaintiffs have received neither a corrected or

rescinded Report from Defendants nor a notification that their Petition requires extended time for processing.

89. Plaintiffs therefore bring this lawsuit to receive the response to which they are legally entitled.

CAUSES OF ACTION

COUNT I

Unlawful Withholding of Required Agency Action (5 U.S.C. § 706(1))

90. Plaintiffs incorporate and re-allege each and every allegation contained in paragraphs 1 through 89 of this Complaint as though fully set forth herein.

91. Under the APA, a reviewing court shall “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

92. Plaintiffs filed their IQA petition on February 8, 2018, and no Defendant has substantively responded to Plaintiffs’ request for correction or provided notice to Plaintiffs that extra time would be required.

93. Plaintiffs are legally entitled to a response to their IQA petition within 60 days.

94. The Report addresses matters of human health and welfare, as it has serious and direct implications for the immigration law and policies of this country.

95. Expediting a response would not significantly impede agency action on any higher or competing priorities.

96. Responding to an IQA petition is a discrete agency action within the meaning of 5 U.S.C. § 706(1).

97. Failing to respond to a request for correction is final agency action within the meaning of the APA.

98. Therefore, Defendants have unlawfully withheld a discrete and legally required agency action in violation of 5 U.S.C. § 706(1).

COUNT II

Agency Action Without Observance of Procedure Required by Law (5 U.S.C. § 706(2)(D))

99. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 98.

100. Under the APA, a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

101. Plaintiffs filed their IQA petition on February 8, 2018, and no Defendant has substantively responded to Plaintiffs’ request for correction or provided notice to Plaintiffs that extra time would be required.

102. Defendants’ IQA Guidelines set out various legally binding procedural requirements, including that Defendants respond to Plaintiffs’ IQA petition within 60 days.

103. Failing to respond to a request for correction is final agency action within the meaning of the APA.

104. Therefore, both DOJ and DHS have taken agency action without observance of procedure required by law.

PRAYER FOR RELIEF

Plaintiffs pray that this Court:

A. Declare that DOJ’s and DHS’s failure to timely issue a response to Plaintiffs’ request for correction as required by applicable regulations violates the APA;

- B. Issue an injunction requiring DOJ and DHS to respond to Plaintiffs' IQA petition as required by applicable regulations within 60 days;
- C. Award Plaintiffs costs and expenses and any interest allowable by law; and
- D. Issue any other relief that this Court deems just and appropriate.

Dated: May 3, 2018

PROTECT DEMOCRACY PROJECT, INC.

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