



U.S. Department of Justice

Washington, D.C. 20530

December 21, 2018

Mr. Ben Berwick
Protect Democracy
10 Ware St.
Cambridge, MA 02138

Ms. Faiza Patel
Brennan Center for Justice at NYU School of Law
120 Broadway, Suite 1750
New York, NY 10271

Mr. Benjamin Wittes
The Brookings Institution
1775 Massachusetts Ave., NW
Washington, DC 02478

Mr. Michael F. Crowley
P.O. Box 211
Belmont, MA 02478

Ms. Nora Ellingsen
1563 Massachusetts Ave.
Cambridge, MA 02138

Dear Mr. Berwick, Ms. Patel, Mr. Wittes, Mr. Crowley, and Ms. Ellingsen:

This letter responds to your September 13, 2018 Request for Reconsideration of Denial of Request for Correction Under the Information Quality Act.

On February 8, 2018, you 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, you 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 presented in your Request for Reconsideration. However, the Department also concludes that it was reasonably transparent in its presentation of the information and, as a result, the Report should not be withdrawn or corrected.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 seven 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 and incidents of international (as opposed to domestic) terrorism. You contend that the inclusion of foreign-born individuals lacked objectivity under the IQA. You also argue that the inclusion of foreign-born individuals within statistics presented in the report may leave readers with the impression that foreign-born individuals are the primary perpetrators of acts of terrorism generally.

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 cannot control the way in which information in the Report is used or interpreted. However, in future reports, the Department can strive to minimize the potential for misinterpretation through, to the extent possible, 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. You 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. Your Request for Correction contended that the inclusion of such data leaves readers with the misimpression that the convicted individuals were predominantly immigrants. You contend that this information was "influential" within the meaning of the IQA. As such, you assert that the Department violated the IQA by failing to present the statistics with the National Security Division's (NSD's) explanations about the limitations of the data, so as to put the data "in the proper context" and without the "high degree of transparency" required of influential information. You also contend that the data lacks transparency because it reports convictions with a link to international terrorism, even if the terrorism-related crime was not the offense of conviction.

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. 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, and providing a more thorough discussion of the limitations of the data presented, would 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.

3. You challenge the presentation of eight "illustrative examples" out of 402 convicted individuals – which number included both foreign nationals and naturalized U.S. citizens – as "obviously not illustrative" and lacking objectivity and transparency. The Department disagreed with these arguments in its Final Response, responding that your argument reflected "a subjective conclusion based on your interpretation of the Report."

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. While the Department reaffirms its Final Decision, we

recognize that the objectivity and transparency 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 to describe the method of selection of examples, to the extent possible, while noting that they are not intended to be representative of all cases.

4. You claim that the Report is unclear and not transparent due to its alleged failure to provide underlying information and context about the terror watchlist and what constituted a DHS “encounter” with an individual on the list. These statistics were compiled for law enforcement purposes and relate to public safety and security. You do not challenge the accuracy of the data, but merely question the standards under which the figures are compiled. The figures and what they report stand for themselves; we conclude that the goals of the IQA do not require amendments to the Report in this regard.

5. You claim that the agencies misrepresented data regarding gender-based violence in a General Accountability Office report. The alleged misrepresented data constitute mere editorial errors which the IQA does not obligate the agencies to withdraw or correct. The Department appreciates being made aware of such errors so that they will not be repeated.

6. Section 11 directed that the Report present information regarding so-called “honor killings” and gender-based violence against women by foreign nationals. You contend that a study cited in the Report was commissioned by an allegedly biased source, and one of the authors of the report has questioned its reliability. The IQA does not obligate agencies to research, report, and analyze all possible negative inferences that one may draw from sources they rely on. The agencies cited sufficient information about the source of the data so that readers could make such an inquiry and draw their own conclusions. The Department declines to retract or correct the report on that basis.

7. You also claim that the Report lacked transparency because it failed to disclose the data underlying the information from NSD regarding charges and convictions for terrorism-related offenses; and information from DHS regarding removals based on national security concerns, and encounters with individuals on the terror watchlist. As previously noted, the Department agrees that the perception of objectivity of future reports could be enhanced by, where practicable, releasing underlying data with appropriate protections for national security and privacy, 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. In the Department’s view, such explanations could promote transparency of underlying NSD data. The DHS data stands for itself, however; it does not require publication of backup material when it is referenced.

* * *

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,

A handwritten signature in blue ink that reads "Michael H. Allen". The signature is written in a cursive style with a large initial "M".

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