

# Congress of the United States

Washington, DC 20515

May 20, 2015

The Honorable Jeh Johnson  
Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Mr. Secretary:

The status of the United States as a haven for those fleeing persecution is a fundamental element of our identity as a nation. Ten years ago, however, the Conference Report for the REAL ID Act described how aliens who posed a danger to national security exploited our country's asylum laws to avoid being removed.<sup>1</sup> U.S. Citizenship and Immigration Services' (USCIS) recent disclosure regarding the numbers of aliens found to have a "credible fear" in cases where the terrorism bar to asylum eligibility may have applied raised the concern that hundreds of known and suspected aliens with terrorist connections may be attempting to take advantage of our country's asylum system.

According to documents and information that USCIS provided to the Committee on Oversight and Government Reform, the terrorism bar to asylum eligibility<sup>2</sup> may be applicable to 299 aliens who were found to have a "credible fear"<sup>3</sup> of persecution in the first four months of Fiscal Year (FY) 2015, and to 339 aliens who were found to have a "credible fear" in FY 2014.

In order to assess our concern, we request that you provide the Committee on Oversight and Government Reform and the Committee on the Judiciary with the following documents and information as soon as possible, but no later than 5:00 p.m. on June 3, 2015:

1. A copy of the alien file (A-file) for each alien who was found to have a credible fear in FY 2014 and 2015 (through May 1, 2015) who USCIS also found the terrorism bar to asylum eligibility may apply.
2. For each individual covered by the above request, identify whether the alien has been released, and for each alien who has been released, whether the release decision was made by officers of the Department of Homeland Security (DHS) or by an Immigration Judge (IJ) or the Board of Immigration Appeals. For any alien who has been released by an order of an IJ, please state whether DHS filed a stay and/or an appeal of that decision.

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<sup>1</sup> H.R. Rep. No. 109-72, at 160 (2005).

<sup>2</sup> See section 208(b)(2)(A)(v) of the Immigration and Nationality Act (INA) (2015).

<sup>3</sup> See section 235(b)(1)(B)(v) of the INA (defining "credible fear of persecution").

3. The number of cases nationwide where the asylum officer found a potential INA 208(b)(2)(A)(v) bar to asylum eligibility in a reasonable fear case. For each individual covered by this request, please provide a copy of the alien's A-file.

Please also make arrangements to brief staff of both Committees on this matter no later than June 5, 2015. The restrictions against the disclosure of asylum-related material set forth in 8 C.F.R. §§ 208.6 and 1208.6 do not bar disclosure of this information to Congress.

The Committee on Oversight and Government Reform is the principal investigative committee in the House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate "any matter" at "any time." The Committee on the Judiciary has jurisdiction over immigration policy and non-border enforcement pursuant to that rule.

When producing documents to the Committee on Oversight and Government Reform, please deliver production sets to the Majority Staff of the Committee in room 2157 of the Rayburn House Office Building and the Minority Staff in room 2471 of the Rayburn House Office Building. When producing documents to the Committee on the Judiciary, please deliver production sets to the Majority Staff of the Committee in room 2138 of the Rayburn House Office Building and the Minority Staff in room B-351 of the Rayburn House Office Building. The Committees prefer, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committees' request.

If you have any questions about this request, please contact Art Arthur of Chairman Chaffetz's staff at 202-225-5074 or Dimple Shah of Chairman Goodlatte's staff at 202-225-3951. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform



Bob Goodlatte  
Chairman  
Committee on the Judiciary



Ron DeSantis  
Chairman  
Subcommittee on National Security  
Committee on Oversight and Government Reform



Trey Gowdy  
Chairman  
Subcommittee on Immigration and  
Border Security  
Committee on the Judiciary

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cc: The Honorable Elijah E. Cummings, Ranking Member  
Committee on Oversight and Government Reform

The Honorable John Conyers, Jr., Ranking Member  
Committee on the Judiciary

The Honorable Stephen Lynch, Ranking Member  
Subcommittee on National Security  
Committee on Oversight and Government Reform

The Honorable Zoe Lofgren, Ranking Member  
Subcommittee on Immigration and Border Security  
Committee on the Judiciary

The Honorable John Carter, Chairman  
Subcommittee on Homeland Security  
Committee on Appropriations

The Honorable Lucille Roybal-Allard, California, Ranking Member  
Subcommittee on Homeland Security  
Committee on Appropriations

Enclosure

## Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:  
  
BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,  
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,  
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,  
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.