

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

May 5, 2016

The Honorable Sarah R. Saldaña  
Director  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
500 12th Street, SW  
Washington, D.C. 20536

Dear Director Saldaña:

On April 28, 2016, you testified before our Committee at a hearing titled “Criminal Aliens Released by the Department of Homeland Security.” During your testimony, our Members asked you about the difficulties Immigration and Customs Enforcement has had removing foreign nationals. Specifically, you testified about the non-cooperation of certain home countries.

As discussed at the hearing, section 243(d) of the Immigration and Nationality Act (INA) requires the Secretary of State to discontinue granting visas to nationals of countries that refuse to accept aliens removed from the United States. Specifically, the provision states:

On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country . . . the Secretary of State **shall** order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary of State that the country has accepted the alien.<sup>1</sup>

The Attorney General’s statutory authority to make the initial notification under section 243(d) of the INA has now been designated, *de facto*, to the Secretary of Homeland Security.<sup>2</sup>

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<sup>1</sup> Section 243(d) of the INA, 8 U.S.C. § 1253(d). (emphasis added)

<sup>2</sup> See Responses from Hon. Jeh Johnson, Sec’y, U.S. Dep’t of Homeland Security, to Hon. Charles E. Grassley, Chairman, S. Comm. on the Judiciary, at question 13, *available at* <https://www.judiciary.senate.gov/imo/media/doc/Johnson%20Responses.pdf> (“Section 243(d) of [INA] provides the Department of [ ] State (DOS) with authority to discontinue the granting of visas to citizens, nationals, subjects, or residents of a country that fails to or unreasonably delays repatriation of its nationals after being notified of the failure or unreasonable delay by the Department of Homeland Security.”).

During the hearing, you testified that you notified the Department of State (DOS) with regard to using the authority under 243(d) of the INA to ensure that recalcitrant countries accept their nationals under final orders of removal. You promised to provide the following related documents and information to the Committee:

1. Communications between your office and DOS relating to the use of section 243(d) authority;
2. A list of the recalcitrant countries about which you have notified DOS; and
3. A memorandum of understanding (MOU) between ICE and DOS concerning section 243(d).

You committed to provide this information to the Committee within one week of your testimony on April 28, 2015. We expect to receive this information no later than May 6, 2016. Further, so the Committee can better understand how the Secretary of Homeland Security is using the authority under section 243(d) of the INA, please also provide responses to the following questions and requests for information as soon as possible, but no later than May 20, 2016:

4. Has DOS agreed to work with ICE, either formally or informally, to utilize visa sanctions under section 243(d) of the INA? If such agreement has also, or alternatively, involved any individual at, or component of, the Department of Homeland Security (DHS) outside of ICE, please identify that individual or component.
5. Has DOS ever acknowledged such notification from ICE or any other individual or component in DHS outside of ICE?
6. Has DOS ever acknowledged such notification from ICE or any other individual or component in DHS outside of ICE and refused to discontinue granting visas to these countries despite such notification?
7. An updated list of all releases required by the Supreme Court's decision in *Zadvydas v. Davis*<sup>3</sup> by Fiscal Year (FY) and nationality, including in FY 2015 and FY 2016 to date. The most recent production including FY 2014 is attached for reference.
8. A copy of the repatriation agreement DHS recently signed with China.
9. A description of any alternatives DHS is considering for recalcitrant countries, and the implementation status of those alternatives.

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<sup>3</sup> *Zadvydas v. Davis*, 533 U.S. 678 (2001).

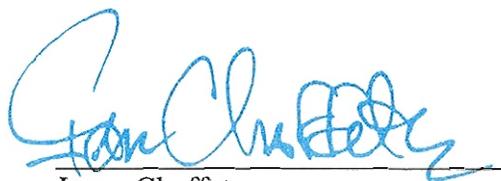
10. For each of the countries on ICE's current list of top recalcitrant countries, identify the steps (in the series of steps (a)-(e) set forth in the MOU between ICE and DOS) that have been completed. Include the specific dates on which each of steps (a) through (e) were completed for each of those countries.<sup>4</sup>

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

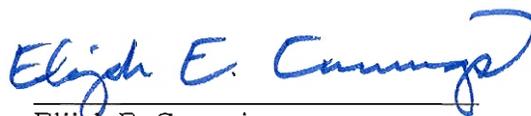
When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

Please contact Dimple Shah of Chairman Chaffetz' staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Elijah E. Cummings  
Ranking Member

Enclosures

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<sup>4</sup> On May 24, 2011, former ICE Executive Associate Director for Enforcement and Removal Operations Gary Mead testified before the House Judiciary Committee's Subcommittee on Immigration Policy and Enforcement. Mr. Mead testified that ICE and DOS entered into a memorandum of understanding (MOU) "establishing ways in which DOS and [DHS] will work together to ensure that other countries accept the return of their nationals in accordance with international law." Mr. Mead testified that the MOU provides that ICE and DOS will pursue the following steps, in the order set forth below, in an attempt to increase compliance among countries that systematically refuse or delay repatriation of their nationals:

- a) issuing a demarche or series of demarches at increasingly higher levels;
- b) holding joint meetings with the Ambassador to the United States, DOS Assistant Secretary for Consular Affairs and the Director of ICE;
- c) considering whether to provide notice of the U.S. government's intent to formally determine that the country is not accepting the return of its nationals and that the U.S. government intends to exercise the provisions of Section 243(d) of the INA to gain compliance;
- d) considering visa sanctions under Section 243(d) of the INA; and
- e) calling for an interagency meeting to pursue withholding of aid or other funding.

**For Official Use Only (FOUO)/Pre-decisional**  
**Zadydydas Releases by Fiscal Year and Citizenship**

FY2015YTD data is updated through 05/09/2015 (IIDS v1.16 run date 05/11/2015; EID as of 05/09/2015) FY2014 data is historic and remains static.

Data is based on the approved Zadydydas methodology of 04/14/2011:

1. All active cases booked out with Release Reasons of Order of Supervision and have a the Final Order that was issued 90 days prior to the release as well as
2. All active cases with citizens from recalcitrant countries that have a Release Reason of Order of Supervision regardless of time frame.

Data includes Aliens released, duplicates have been removed.

Data excludes ORR and MRP facilities.

The U.S. Supreme Court, in *Zadydydas v. Davis*, 533 U.S. 678 (2001), in the context of review of petitions for writ of habeas corpus, analyzed the post order custody provisions of the U.S. Immigration and Nationality Act. The Court held that, in light of the Constitution's demands, the statute implicitly limits an alien's detention to a period reasonably necessary to bring about that alien's removal from the United States and does not permit indefinite detention. The Court determined that for the sake of uniform administration in the federal courts, six months is a presumptively reasonable period of time. Thereafter, if the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must furnish evidence to rebut that showing. In addition to the Zadydydas decision and the underlying statute, federal immigration regulations govern the consideration of whether an alien should be released from post-order detention. Those regulations require periodic reviews, including reviews conducted upon the passage of 90 days of post-removal-order detention, and also upon the passage of 180 days of post-removal-order detention.

Citizenship	FY2014		FY2015 YTD	
	Non-Criminal Immigration Violators	Convicted Criminals	Non-Criminal Immigration Violators	Convicted Criminals
AFGHANISTAN	0	3	1	2
ALBANIA	1	0	0	1
ALGERIA	0	1	0	4
ANGOLA	0	0	0	0
ANTIGUA-BARBUDA	0	2	0	6
ARGENTINA	0	2	0	0
ARMENIA	0	9	0	2
AUSTRALIA	0	0	0	0
AUSTRIA	0	0	0	0
AZERBAIJAN	0	2	0	1
BAHAMAS	0	3	0	1
BANGLADESH	7	5	5	1
BARBADOS	0	4	0	0
BELARUS	0	1	0	0
BELGIUM	0	0	0	0
BELIZE	0	2	1	3
BENIN	0	0	0	0
BERMUDA	0	0	0	0
BHUTAN	0	1	0	2
BOLIVIA	0	0	0	0
BOSNIA-HERZEGOVINA	0	5	0	0
BOTSWANA	0	0	0	0
BRAZIL	4	3	5	3
BRITISH VIRGIN ISLANDS	0	0	0	0
BULGARIA	0	0	0	0
BURKINA FASO	0	5	2	0
BURMA	1	9	0	3
BURUNDI	0	3	0	3
CAMBODIA	1	51	0	8
CAMEROON	1	1	0	0
CANADA	0	1	0	0
CAPE VERDE	1	19	0	8
CAYMAN ISLANDS	0	0	0	0
CENTRAL AFRICAN REPUBLIC	0	2	4	1
CHAD	0	1	0	0
CHILE	0	0	0	1
CHINA, PEOPLES REPUBLIC OF	82	63	28	38
COLOMBIA	1	4	0	1
COMOROS	0	0	0	0
CONGO	0	1	0	1
COSTA RICA	3	0	0	0
CROATIA	0	0	0	0
CUBA	18	787	15	396
CZECH REPUBLIC	0	1	0	0
DEM REP OF THE CONGO	5	7	0	1
DENMARK	0	0	0	0
DOMINICA	1	1	0	0
DOMINICAN REPUBLIC	0	6	1	1
ECUADOR	6	5	2	3
EGYPT	1	4	0	4
EL SALVADOR	56	41	24	24
EQUATORIAL GUINEA	0	0	0	0
ERITREA	2	3	19	2
ESTONIA	0	0	0	0
ETHIOPIA	13	14	6	3
FIJI	0	0	0	0
FRANCE	0	1	0	0
GAMBIA	0	11	3	15
GEORGIA	0	0	0	0
GERMANY	0	0	0	2
GHANA	11	31	11	6

GREECE	0	0	0	0
GRENADA	0	1	0	2
GUADELOUPE	0	0	0	0
GUATEMALA	31	39	32	17
GUINEA	7	38	3	16
GUINEA-BISSAU	0	0	0	0
GUYANA	0	1	0	0
HAITI	3	5	0	2
HONDURAS	58	47	41	18
HONG KONG	0	2	0	0
HUNGARY	0	0	0	0
INDIA	35	45	23	24
INDONESIA	0	1	1	1
IRAN	1	58	0	38
IRAQ	1	47	0	39
ISRAEL	0	4	0	1
ITALY	0	0	0	0
IVORY COAST	0	9	1	3
JAMAICA	13	102	0	18
JAPAN	0	0	0	0
JORDAN	2	4	0	3
KAZAKHSTAN	0	2	0	1
KENYA	2	10	1	11
KOREA	0	0	0	2
KOSOVO	0	0	0	1
KUWAIT	0	0	0	0
KYRGYZSTAN	0	1	0	1
LAOS	1	198	0	76
LATVIA	0	1	0	0
LEBANON	0	2	0	1
LESOTHO	0	0	0	0
LIBERIA	1	85	4	27
LIBYA	0	0	0	3
LITHUANIA	0	1	1	0
MACEDONIA	0	0	0	0
MADAGASCAR	0	0	0	0
MALAWI	0	0	0	0
MALAYSIA	0	1	0	0
MALI	1	7	2	9
MALTA	0	0	0	0
MAURITANIA	1	2	3	4
MAURITIUS	0	0	0	1
MEXICO	16	81	21	62
MOLDOVA	0	0	0	0
MONGOLIA	0	0	1	0
MONTENEGRO	0	0	0	0
MONTSERRAT	0	1	0	0
MOROCCO	1	3	0	2
NAMIBIA	0	0	0	0
NEPAL	0	1	9	0
NETHERLANDS	0	0	0	0
NETHERLANDS ANTILLES	0	0	0	0
NEW ZEALAND	0	0	0	0
NICARAGUA	2	2	0	4
NIGER	0	0	1	3
NIGERIA	4	13	4	9
NORWAY	0	0	0	0
PAKISTAN	10	23	6	13
PANAMA	0	3	0	1
PERU	2	1	1	1
PHILIPPINES	0	2	0	0
POLAND	0	0	0	0
PORTUGAL	0	0	0	0
ROMANIA	0	0	0	1
RUSSIA	0	12	1	6
RWANDA	0	1	0	0
SAMOA	0	3	0	6
SAUDI ARABIA	0	1	0	0
SENEGAL	4	11	2	2
SERBIA			0	0
SERBIA AND MONTENEGRO	0	1	0	0
SEYHELLES	0	0	0	0
SIERRA LEONE	0	5	0	7
SOLOMON ISLANDS	0	0	0	0
SINGAPORE	0	1	0	0
SOMALIA	38	45	50	17
SOUTH AFRICA	0	2	0	1
SOUTH KOREA	0	2	1	2
SOUTH SUDAN	0	8	0	8

SPAIN	0	0	0	0
SRI LANKA	0	0	2	1
ST. KITTS-NEVIS	0	0	0	0
ST. LUCIA	1	13	0	9
ST. VINCENT-GRENADINES	0	1	0	0
STATELESS	0	0	0	0
SUDAN	1	9	0	18
SURINAME	0	0	0	1
SWAZILAND	0	0	0	0
SWEDEN	0	0	1	0
SYRIA	0	0	1	1
TAIWAN	0	0	0	0
TAJKISTAN	0	0	0	0
TANZANIA	0	4	0	2
THAILAND	0	4	0	4
TOGO	0	2	1	2
TONGA	0	0	0	0
TRINIDAD AND TOBAGO	0	4	0	3
TUNISIA	0	0	0	0
TURKEY	0	0	0	0
TURKMENISTAN	0	0	0	0
TURKS AND CAICOS ISLANDS	0	0	0	1
UGANDA	0	2	0	0
UKRAINE	0	8	0	1
UNITED ARAB EMIRATES	0	0	0	0
UNITED KINGDOM	0	8	0	0
UNKNOWN	0	0	1	1
URUGUAY	1	0	1	1
USSR	0	2	0	1
UZBEKISTAN	0	3	0	0
VENEZUELA	2	9	0	3
VIETNAM	7	331	0	44
YEMEN	0	3	0	2
YUGOSLAVIA	0	1	0	0
ZAMBIA	0	0	0	0
UNKNOWN	0	0	0	0
ZIMBABWE	0	3	1	1
<b>Total</b>	<b>461</b>	<b>2,457</b>	<b>344</b>	<b>1,107</b>

## 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.