

Congress of the United States

Washington, DC 20515

September 22, 2016

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

Dear Mr. Secretary:

The Immigration and Nationality Act requires the President to set the number of refugees to be admitted in a subsequent fiscal year after “appropriate consultation” with Congress.¹ During each year in office, President Obama has set the refugee ceiling without consulting Congress in a meaningful way. Instead, he has informed Congress of a decision that has already been made.

That was the President’s approach, again, with respect to the refugee ceiling for fiscal year 2017. On September 13, 2016, Secretary of State John Kerry informed Congress that the Administration will set the refugee ceiling for FY 2017 at 110,000.² He also noted that the number of Syrian refugees admitted during FY 2017 will increase to a number greater than the 13,000 that were admitted during FY 2016.³

In setting the number, the Administration does not appear to consider how refugee resettlement will affect local communities. The decision to resettle refugees in a community is ultimately left up to the State Department. That sensitive decision should occur in true consultation with local community leaders, but it often does not. In fact, the Administration and resettlement agency communications with state and local officials is sometimes so perfunctory that residents are taken by surprise when refugees start arriving.

The President’s decision to increase overall refugee resettlement—and specifically that of Syrian refugees—ignores warnings from his own national security officials that Syrians cannot be adequately vetted to ensure terrorists are not admitted.⁴ Revelations about fraud, security gaps, and lack of oversight have demonstrated that the program is creating national security risks.

Our Committees obtained an internal Immigration and Customs Enforcement (ICE) document that confirms those serious concerns. That document is enclosed for your ready reference. The document confirms a key finding from the Staff Report of the National Commission on Terrorist Attacks upon the United States, that “terrorists will utilize benefit fraud

¹ 8 U.S.C. §1157.

² Annual Refugee Consultation with Congress, September 13, 2016.

³ *Id.*

⁴ See Testimony of FBI Director James Comey at an October 22, 2015, hearing before the House Judiciary Committee where he noted that while the vetting of refugees has improved, the reality is that with a conflict zone like Syria where there is “dramatically” less information available to use during the vetting process, he could not “offer anybody an absolute assurance that there’s no risk associated with” admitting Syrian nationals as refugees.

(to include asylum and refugee fraud) to legitimize their stay in the United States.”⁵ The document states:

The Immigration System is a constant target for exploitation by individuals who seek to enter the United States and who are otherwise ineligible for entry based on security grounds. The Refugee Program is one such avenue in which ineligible aliens seek to enter by fraud.

* * *

[The] Refugee Program is particularly vulnerable to fraud due to loose evidentiary requirements where at times the testimony of an applicant alone is sufficient for approval. As a result, a range of bad actors, who use manufactured histories, biographies and other false statements, as well as produce and submit fictitious supporting documentation, have exploited this program.

* * *

In many instances, the applicant for a benefit (including both asylum and refugee status) receives a government issued document that contains the biographic information that the applicant supplied. This document can be used for many things, such as obtaining a driver’s license.

* * *

Identity fraud can be prevalent in the refugee process. The uniform processing of refugees by [Department of Homeland Security] DHS officers takes place in foreign refugee camps. Typically, these camps have been established outside of war zones and many have open access, thereby allowing individuals to infiltrate and purchase the identities of those individuals already in the process.

* * *

Refugee fraud is easy to commit, yet not easy to investigate [because] [r]efugee laws purposefully contain relaxed evidentiary requirements . . . , Refugee applications do not require sponsorship of a third party, such as a relative or employer, [and] Refugee claims are typically made in areas of the world where it is difficult to investigate the veracity of the claim.⁶

⁵ *9/11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks Upon the United States*, Aug. 21, 2004.

⁶ Homeland Security Investigations, Immigration and Customs Enforcement, *Lack of Identity documents in the Refugee Process* (see attachment).

To help our Committees understand how the Administration set the refugee ceiling for FY 2017, and whether national security concerns were adequately considered with respect to increasing the number of Syrian refugees, please provide answers to the following questions:

1. Was the information contained in the internal ICE document used to inform Secretary Kerry and the White House of potential vulnerabilities related to the refugee and asylum process?
2. Was this information considered during the Administration's decision-making process for increasing the refugee ceiling by 35,000 refugees and for increasing the number of Syrian refugees?
3. When was this document circulated within DHS, and when did you receive it?
4. Was this document, and the information contained in it, shared with U.S. Citizenship and Immigration Services?
5. Was this document, and the information contained in it, shared with the U.S. Department of State?
6. How does DHS plan to address the challenges posed by the refugee program that are described in the document? Will DHS work with State Department to address these challenges?
7. The document contains a list of potential solutions to address vulnerabilities within the refugee and the asylum process. Which of these potential solutions has DHS implemented and which does the Department plan to implement?

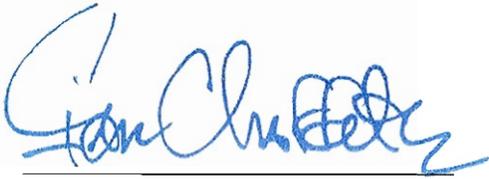
Provide this information as soon as possible, but no later than 5:00 p.m. on October 6, 2016. Please also provide a briefing to both Committees on this topic.

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. The Committee on the Judiciary has specific jurisdiction over immigration matters.

When producing documents to the Committee on Oversight and Government Reform, 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. Documents provided to the Committee on the Judiciary should be delivered to Room 2138 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.

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If you have any questions about this request, please contact Dimple Shah at (202) 225-5074 or Andrea Loving at (202) 225-3926. Thank you for your attention to this matter.



Jason Chaffetz
Chairman
Committee on Oversight and Government Reform

Sincerely,



Bob Goodlatte
Chairman
Committee on the Judiciary

Enclosure

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



Lack of Identity Documents in the Refugee Process

Background

The immigration system is a constant target for exploitation by individuals who seek to enter the United States and who are otherwise ineligible for entry based on security grounds. The Refugee Program is one such avenue through which ineligible aliens seek to enter by fraud. To prevent criminal activity and address systemic vulnerabilities in the program, U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) actively pursues criminal investigations of organizations and individuals that facilitate refugee fraud.

ICE's Refugee Program is particularly vulnerable to fraud due to loose evidentiary requirements, where at times, the testimony of an applicant alone is sufficient for approval. As a result, a range of bad actors, who use manufactured histories, biographies, and other false statements, as well as produce and submit factitious supporting documentation, have exploited this program. ICE HSI uses both domestic and international resources to investigate this activity and seeks prosecution of both the person fraudulently entering the U.S. as a refugee and the organizations and individuals facilitating the crime. To accomplish this, HSI uses criminal statutes designed to address this activity, including 18 U.S. Code (USC) 1546 (Visa Fraud), 18 USC 1001 (False Statements), 8 USC 1324(a) (Alien Smuggling), and 18 USC 371 (Conspiracy).

- Lack of Identity (name and date of birth (DOB)) documents in the refugee process has a significant impact on investigations where identity and age is questioned. Recently, a Nashville, Tennessee, U.S. District Court Judge opined that the U.S. Citizenship and Inspection Services' (USCIS) immigration files were not reliable evidence of a subject's age.
- It should be noted that in many instances, the applicant for a benefit (including both asylum and refugee status) receives a government issued document that contains the biographic information that the applicant supplied. This document can then be used for many things, such as obtaining a driver's license.
- Many problems found in the refugee process are also in the asylum process; therefore, this paper will also refer to the asylum program at times.
- In the past, Congress has expressed interest in refugee fraud, in particular as it relates to refugees from Somalia.
- It is well documented in the "9/11 and Terrorist Travel, the Staff Report of the National Commission on Terrorist Attacks upon the United States" that terrorist will utilize benefit fraud (to include asylum and refugee fraud) to legitimize their stay in the United States. Some examples related to asylum fraud include Mir Aimal Kans; Ramzi Yousef; Ahmad Ajaj; Biblal A. Alkaisy; Sheik Omar Abdel Rahman; Gazi Ibrahim Abu Mezer; Ahmed Ressam; and Hesham Mohamed Ali Hedayet.

Warning! This document, along with any attachments, contains NON-PUBLIC INFORMATION exempt from release to the public by federal law. It may contain confidential, legally privileged, proprietary or deliberative process inter-agency/intra-agency material. You are hereby notified that any dissemination, copying, or further distribution of this information to unauthorized individuals (including unauthorized members of the President-elect Transition Team) is strictly prohibited. Unauthorized disclosure or release of this information may result in loss of access to information, and civil and/or criminal fines and penalties.



- Further, a Somali-American, who following his admission to the United States, as a P-3 refugee (A family member of a primarily accepted refugee), committed a suicide bombing in Somalia in October 2008, the first known instance of a U.S. citizen committing a suicide bombing.
- ICE's Human Rights Violators and War Crimes Unit has conducted investigations involving situations where people who have persecuted others entered the United States through refugee fraud.

Current Status

- The lack of valid identity documents in the refugee process was identified in March 2012, during U.S. District Court hearing, as part of Somali Human Trafficking investigation.

Challenges

- Identity fraud can be prevalent in the refugee process. The uniform processing of refugees by DHS officers takes place in foreign refugee camps. Typically, these camps have been established outside war zones and many have open access, thereby allowing individuals to infiltrate and purchase the identities of those individuals already in the process.
- Refugee Fraud is easy to commit, yet not easy to investigate:
 - The refugee laws purposefully contain relaxed evidentiary requirements because it is presumed that true victims of persecution would not have time or resources to obtain evidence of persecution as they flee. Because of this, decision makers may have to rely on credible testimony.
 - Refugee applications do not require the sponsorship of a third party, such as a relative or an employer. The applicant makes the claim and provides evidence. Therefore, if there is a conspiracy, less people will be involved.
 - Refugee claims are typically made in areas of the world where it is difficult to investigate the veracity of the claim.
- The Department of State (DOS) suspended the P-3 category of the refugee program because of widespread fraud confirmed through DNA testing. The DOS Fact Sheet, "Fraud in the Refugee Family Reunification Program" (February 3, 2009), reported an 80 percent fraud rate for all claimed biological relationships within the P-3 program. In the remaining cases, at least one fraudulent relationship was identified or the individuals refused to be tested.
- Clearance from the USCIS Refugee Access Verification Unit, DOS Consular Lookout and Support System, and Security Advisory Opinion databases are based on biographical information provided by the applicant. Therefore, these are not reliable tools.

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Potential Solutions

- Biometric tools such as DNA testing and fingerprinting are needed. Building safeguards, such as those recommended below, are necessary to ensure the integrity of both the asylum and refugee programs:
 - DNA testing to assure family relationships;
 - Extensive interviews with persons seeking refugee status, which include questions to determine admissibility, address national security concerns (e.g., war criminals, persecutors, and persons involved with insurgents and terrorist groups), and verify relationships where DNA testing is not feasible (e.g., spouse, and adopted or foster children). Additionally, as it pertains to derivative refugee status in situations where there is no blood relation, USCIS should interview the petitioner in the United States and send complete adjudicative notes overseas so they can be used to interview the beneficiary.
 - Photographing and fingerprinting of all applications, with vetted fingerprints prior to approval, should be required for travel to the United States.
 - USCIS should conduct adjustment interviews when the refugee applies for permanent residence.
 - Remove the refugee's ability to add or claim additional relatives after his/her initial filing or after any approval process, except in instances of children conceived during the initial filing stages.
 - Access to and utilization of Department of Defense intelligence gathered in war zones and related to the identification of individuals involved in insurgent terrorist activities or war crime.
 - Enhance security reviews and intelligence driven interviews of applicants with regard to their activities prior to entry into the United States.
 - Ensure that all goals of the Operation JANUS (an operation that specifically targets Special Interest Aliens with Final Removal Orders from obtaining immigration benefits under fraudulent identities) working group are fully functional and in place.
 - Institute a uniform biometric system for both the refugee and asylum programs to eliminate imposter substitution and maintain programmatic integrity.
 - Enhance the investigative commitment to asylum and refugee fraud schemes that involve interpreters, preparers, attorneys, and multiple jurisdictions. These schemes include document fraud, such as counterfeit and altered documents, including identity and judicial papers, political activity, medical documentation, affidavits, letters, or photographs. It also includes multiple claims and identities, preparer or boilerplate claims, and "asylum schools" prep packages.

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- The refugee and asylum laws purposefully contain loose evidentiary requirements based on the assumption that a true victim of persecution would not have the time or resources to obtain evidence of their persecution as they flee the country. This flexibility in the law; however, not only helps victims of persecution, it also allows others to exploit the system.

ICE HSI believes that the recommendations outlined above will aid in the prevention and detection of those who abuse the system without affecting the ability of a true victim to benefit from the protections of the United States.

Milestones

- *(Month 1)*: Senior leaders from ICE and USCIS brief the Department Secretary and discuss a path forward.
- *(Months 2–5)*: Joint ICE/USCIS working group creates draft legislation.

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.