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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Oakland Division

Muslim Advocates,
P.O. Box 34440
Washington, DC 20043,

Plaintiff,

vs.

U.S. Department of Justice,
950 Pennsylvania Ave., NW
Washington, DC 20530,

and

U.S. Department of Homeland Security,
245 Murray Lane, SW
Washington, DC 20528,

Defendants.

Case Number: 18-cv-02137-JSC

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

First Amended Complaint

Case No:18-cv-02137-JSC

1 Plaintiff Muslim Advocates hereby sues Defendants the U.S. Department of Justice
2 (“DOJ”) and the U.S. Department of Homeland Security (“DHS”) under the Administrative
3 Procedure Act, 5 U.S.C. §§ 701 *et seq.*, (“APA”) and for violation of the Information Quality
4 Act, 44 U.S.C. § 3516 note (“IQA”), and alleges as follows:

5
6 **Introduction**

7 1. President Trump campaigned on the promise of a “total and complete shutdown of
8 Muslims entering the United States.” Since taking office, he sought to fulfill this overtly
9 discriminatory pledge by enacting three successive bans on nationals of several Muslim-majority
10 countries and a series of policies aimed at slowing the entry of refugees, particularly from
11 Muslim-majority countries, into the United States. He has also attempted to reduce other
12 longstanding paths to lawful immigration.

13
14 2. As part of this anti-Muslim and anti-immigrant agenda, the President and members of his
15 Administration regularly overstate and misrepresent the threat that immigrants, especially
16 Muslim immigrants, pose to the United States. This bias infects a report published by
17 Defendants on January 16, 2018, the Executive Order 13780: Protecting the Nation From
18 Foreign Terrorist Entry Into the United States Initial Section 11 Report (the “Report”).

19 3. Executive Order 13780, which required publication of the Report, incorporated President
20 Trump’s second attempt at a travel ban, and directed Defendants, in order to be “more
21 transparent with the American people and to implement more effective policies and practices that
22 serve the national interest,” to compile and disseminate information that purports to link
23 terrorism to immigration.
24

1 4. The Report presents information on immigrants and foreign nationals in a manner that
2 misleadingly inflates the threat they pose to the United States. Its presentation of this
3 information also focuses exclusively and inaccurately on Muslims.

4 5. Among the ways the Report manipulates information to support its anti-immigrant and
5 anti-Muslim conclusions: it ignores domestic terrorism incidents; it departs from the directive of
6 EO 13780 and analyzes terrorism incidents involving foreign-born Americans rather than foreign
7 nationals; it includes individuals who committed terrorism acts overseas and whose only tie to
8 the United States is their extradition for prosecution; and it relies on irrelevant and debunked
9 studies in providing information regarding so-called “honor killings” and violence against
10 women.
11

12 6. In so doing, the Report perpetuates the ongoing stigmatization of immigrants and
13 Muslims by the Administration. For example, the Trump Administration used the Report to
14 justify its sweeping ban on the entry of nationals from six Muslim-majority countries into the
15 United States. It has also specifically tied the Report’s findings to its calls for an end to the
16 issuance of diversity and family reunification visas, which would have a significant negative
17 impact on Muslim immigrants.
18

19 7. The Report has been used explicitly to stoke anti-Muslim and anti-immigrant sentiment
20 and is likely to continue to be used in this manner. It therefore not only contributes on its face to
21 stigmatization, but it is also likely to contribute to increased acts of hate and violence against
22 these communities.
23

24 8. Muslim Advocates submitted a petition for retraction and correction of the Report (the
25 “Petition”) because the Report’s presentation of information does not meet the level of quality
26 required of federal agencies by the IQA and its implementing Guidelines.
27

9. Belatedly, and only after the initiation of this litigation, Defendants complied with their obligation to respond substantively to Plaintiff's Petition, declining to retract or correct the Report. The parties agreed to stay the litigation in order to proceed through the administrative appeal process.

10. The administrative appeal process has now concluded. In their final substantive responses, both Defendants admitted that the information quality concerns raised by Plaintiff have merit. DOJ conceded that "information in the Report could be criticized by some readers, consistent with some of the concerns voiced in your Request for Reconsideration." DHS agreed that Plaintiff's criticisms of the Report's biased selection of illustrative examples of terrorists "is well-taken." And DHS "acknowledge[d] the points you have raised" and will take them "into consideration in future Section 11 Reports."

11. Nevertheless, Defendants declined to retract or correct the Report, and instead continue to disseminate it. In so doing they violate the IQA and its implementing Guidelines.

Parties

12. **Muslim Advocates** is a civil rights organization that promotes freedom and justice for Americans of all faiths, with a particular focus on issues impacting Muslim communities. Muslim Advocates engages in civil rights litigation, policy advocacy, and public education to fight inaccurate stereotypes about Muslims and other immigrants. In particular, Muslim Advocates works to ensure that policies enacted under the banner of national security do not wrongfully discriminate against Muslims and are not based on inaccurate or misleading information. Muslim Advocates' headquarters are in Washington, DC.¹

¹ In January 2019, following the initiation of this case, Muslim Advocates closed the office it maintained in Oakland, California. It now resides in Washington, DC.

13. **The Department of Justice** is a federal agency. Along with the Department of Homeland Security, it disseminated the Report.

14. **The Department of Homeland Security** is a federal agency. Along with the Department of Justice, it disseminated the Report.

Jurisdiction, Venue, and Intradistrict Assignment

15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action arises under federal law, specifically the IQA, 44 U.S.C. § 3516 note, and the APA, 5 U.S.C. §§ 701 *et seq.*

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), because Plaintiff resided in this district at the time of the initial filing in this case.

17. At the time the Complaint was filed, Plaintiff resided in Alameda County, making assignment to the Oakland Division appropriate pursuant to Local Civil Rule 3-2(c), (d).

The Information Quality Act

18. The IQA, together with its implementing Guidelines, requires that information disseminated to the public by federal agencies, including by DHS and DOJ, be of requisite quality, objectivity, utility, and integrity.²

19. The IQA, an addendum to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 *et seq.* (“PRA”), directed the Office of Management and Budget (“OMB”) to issue guidelines under various PRA authorities by September 30, 2001.

20. The IQA provides that the guidelines issued by OMB should require each federal agency to which they apply to, in turn:

² Consolidated Appropriations—FY 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153, 154 (2000) (codified at 44 U.S.C. § 3516 note).

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a); [and]

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a).

44 U.S.C. § 3516 note (B)(2).

21. OMB issued “final guidelines”, as directed, after a period of notice and comment, in 2002.³

22. In issuing its Guidelines, OMB explained, “[g]iven the administrative mechanisms required by [the IQA] as well as the standards set forth in the Paperwork Reduction Act, it is clear that agencies should not disseminate substantive information that does not meet a basic level of quality.” 67 Fed. Reg. at 8452.

23. The OMB Guidelines elaborate on the directives set forth in the IQA itself. They define “quality”, “utility”, “objectivity,” and “integrity”, among other relevant terms. These definitions state, in part:

“Quality” is an encompassing term comprising utility, objectivity, and integrity.

“Utility” refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that the agency disseminates to the public, the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information’s usefulness from the public’s perspective, the agency must take care to ensure that transparency has been addressed in its review of the information. ...

“Objectivity” includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the

³ Office of Mgmt. & Budget, Exec. Office of the President, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies* (“OMB Guidelines”), 67 Fed. Reg. 8451, 8452 (Feb. 22, 2002), <https://www.gpo.gov/fdsys/pkg/FR-2002-02-22/pdf/R2-59.pdf>.

information is presented within a proper context. Sometimes, 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.

24. The OMB Guidelines also require agencies to “establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines.” *Id.* at 8459.

25. Defendants have each promulgated guidelines applicable to themselves.

26. The DOJ Guidelines set forth definitions of “utility”, “objectivity”, and “integrity”, which “apply, consistent with the OMB Guidelines (paragraph V, definitions) which will also apply.”⁴

27. The DOJ Guidelines also set forth a process for submitting a formal request for correction, including a description of the information that requests for correction should include, and a statement that the requester bears the burden of proof in seeking a correction.

28. The DOJ Guidelines state that:

Based on the explanation and evidence submitted with the request for correction, a DOJ official who is knowledgeable of the subject matter will conduct a thorough review of the information being challenged, the processes that were used to create and disseminate the information, and the conformity of the information and those processes with both OMB’s and DOJ’s Information Quality Guidelines. After it has completed its review, DOJ will determine whether a correction is warranted, and, if so, what corrective action it will take. ... After the responsible DOJ component has made its final determination pertaining to a request for correction of information, it will respond to the requestor by letter, e-mail, or fax. The response will explain the findings and the actions to be taken (if any) in response to the complaint.

⁴ U.S. DOJ, *Information Quality: Ensuring the Quality of the Information Disseminated by the Department* (“DOJ Guidelines”), <https://www.justice.gov/iqpr/information-quality> (last updated Oct. 31, 2018).

29. DOJ Guidelines state that normally the agency will respond to a request for correction within sixty calendar days of receipt, or will inform the requestor of any additional time needed to resolve the request, the reason why, and an estimated decision date.

30. The DHS Guidelines, which are based on the OMB Guidelines, also state that the three underlying requirements for quality information are utility, objectivity, and integrity of information, and set forth accompanying definitions.⁵

31. The DHS Guidelines also provide for an administrative information correction process, whereby “affected persons can seek, and obtain, where appropriate, timely correction of information that does not comply with OMB Guidelines, DHS Guidelines, or [DHS] Component standards.”⁶

32. The DHS Guidelines also state that DHS Components should respond to requests for correction in writing within sixty calendar days of receipt.

Factual Allegations

Executive Order 13780 and its reporting requirement.

33. President Trump signed Executive Order 13780, Protecting the Nation from Foreign Terrorist Entry into the United States (“EO 13780”) on March 6, 2017.

34. EO 13780 significantly restricts entry to the United States by individuals from six Muslim-majority countries. The travel restrictions imposed by EO 13780 and its predecessor

⁵ U.S. Dep’t Homeland Security, Information Quality Guidelines (last visited Jan. 18, 2018), <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf> (“DHS Guidelines”) at 2-5.

⁶ *Id.* at 6.

and successor Executive Order and Proclamation⁷ have been the subject of widespread litigation, including the Supreme Court’s decision in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). Litigation over the government’s implementation of the travel ban continues, such as a pending challenge to the government’s failure to provide fair and meaningful access to case-by-case waivers. *See Emami v. Nielsen*, Civil No. 18-1587-JD (N.D. Cal).

35. In addition to the travel restrictions, Section 11 of EO 13780 (“Section 11”) instructs the Secretary of Homeland Security, in consultation with the Attorney General, to collect and make publicly available certain information regarding foreign nationals and terrorism. EO 13780, Sec. 11(a).

36. Section 11 requires in pertinent part that “[t]o be more transparent with the American people and to implement more effectively policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available the following information:

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

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and who have 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;

⁷ Exec. Order No. 13769, Proclamation No. 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (the “Proclamation”), 82 Fed. Reg. 45,161 (Sept. 27, 2017).

(iii) information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security or the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

EO 13780, Sec. 11(a).

37. EO 13780 instructs the Secretary of Homeland Security to release the “initial report” required by Section 11(a) within 180 days, and that the report shall include information for the period from September 11, 2001, until the date of the initial report. EO 13780, Sec. 11(b).

38. On January 16, 2018, DOJ and DHS released a report titled: “Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Section 11 Report”⁸, which is the initial report required by Section 11, and which purports to provide information responsive to the four categories of information that Section 11 requires be made available. Report at 1.

39. The Report sets forth various information in response to the four subsections identified by Section 11, including the misleading conclusion that three out of four individuals convicted of international terrorism and terrorism-related offenses were foreign-born.

40. Defendants issued the Report with accompanying press releases highlighting the “three out of four” conclusion and have disseminated the Report to the public on their respective webpages.⁹

⁸ U.S. DHS & U.S. DOJ, *Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry into the United States Initial Section 11 Report* (the “Report”) (Jan. 2018), <https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf>.

⁹ Press Release, U.S. DHS, *DHS, DOJ Report: Three Out of Four Individuals Convicted of International Terrorism and Terrorism-Related Offenses Were Foreign-Born* (“DHS Press First Amended Complaint

41. Despite the Administration's ongoing dissemination of the Report, the information in the Report is biased, misleading, and incomplete. It violates OMB's IQA Guidelines, lacking utility and objectivity, and Defendants' respective IQA Guidelines, as set forth in detail, below and in Plaintiff's various submissions to Defendants.

The Report's substitution of international terrorism for all terrorism misleadingly undercounts domestic terrorism, and artificially inflates the proportion of terrorist incidents committed by immigrants and foreign nationals.

42. The Report categorically excludes all terrorism-related offenses that occurred in the United States which were planned and executed by individuals without international connections. Instead, the Report relied on a limited subset of terrorism-related data, specifically: "public convictions in federal courts between September 11, 2001, and December 31, 2016 resulting from international terrorism investigations, including investigations of terrorist acts planned or committed outside the territorial jurisdiction of the United States over which Federal criminal jurisdiction exists and those within the United States involving international terrorists and terrorist groups." Report at 2. Defendants omitted data related to domestic terrorism without explanation.

43. This exclusion dramatically misrepresents the actual terrorist threat posed to the United States.¹⁰ The government's own information makes clear that domestic terrorism, especially

Release") (Jan. 16, 2018), <https://www.dhs.gov/news/2018/01/16/dhs-doj-report-three-out-four-individuals-convicted-international-terrorism-and>; Press Release, U.S. DOJ, *DOJ, DHS Report: Three Out of Four Individuals Convicted of International Terrorism and Terrorism-Related Offenses Were Foreign-Born* ("DOJ Press Release") (Jan. 16, 2018), <https://www.justice.gov/opa/pr/doj-dhs-report-three-out-four-individuals-convicted-international-terrorism-and-terrorism>.

¹⁰ See Devlin Barrett, *Arrests in domestic terror probes outpace those inspired by Islamic extremists*, Wash. Post (March 9, 2019), <https://www.washingtonpost.com/world/national-security/arrests-in-domestic-terror-probes-outpace-those-inspired-by-islamic-extremists/2019/03/08/0bf329b6-392f-11e9-a2cd->
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including far right violent extremist groups, is a significant source of the terrorist threat to the country. An April 2017 Government Accountability Office report concluded that “of the 85 violent extremist incidents that resulted in death since September 12, 2001, far right wing violent extremist groups were responsible for 62 (73 percent) while radical Islamist violent extremists were responsible for 23 (27 percent).”¹¹ Similarly, DHS and the Federal Bureau of Investigation published an intelligence bulletin in May 2017 titled “White Supremacist Extremism Poses Persistent Threat of Lethal Violence.” That bulletin states that white supremacist extremists, who are very rarely immigrants, were responsible for “49 homicides in 26 attacks from 2000 to 2016 . . . more than any other domestic extremist movement.”¹²

44. Despite the prevalence of serious domestic terrorist threats, particularly the threat posed by far-right wing violent extremist groups, the Report, which purports to address *all* terrorism-

307b06d0257b_story.html?utm_term=.505bd88ac622 (“Most people arrested as the result of FBI terrorism investigations are charged with non-terrorism offenses, and more domestic terror suspects were arrested last year than those allegedly inspired by international terror groups, according to internal FBI figures reviewed by The Washington Post.”); Seth G. Jones, Center for Strategic and International Studies, *The Rise of Far-Right Extremism in the United States* 1 (Nov. 7, 2018), https://csis-prod.s3.amazonaws.com/s3fs-public/publication/181119_RightWingTerrorism_layout_FINAL.pdf?MyC9DjLLRftoeUKvq6qxFPsCPFoTkBpH (“The threat from right-wing terrorism in the United States—and Europe—appears to be rising. Of particular concern are white supremacists and anti-government extremists, such as militia groups and so-called sovereign citizens interested in plotting attacks against government, racial, religious, and political targets in the United States.” And “[T]he number of attacks from right-wing extremists since 2014 has been greater than attacks from Islamic extremists.”).

¹¹ See U.S. Gov’t Accountability Office, *Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts* 4 (Apr. 2017), <http://www.gao.gov/assets/690/683984.pdf>.

¹² See FBI & DHS Joint Intelligence Bulletin, *White Supremacist Extremism Poses Persistent Threat of Lethal Violence* 4 (May 10, 2017), available at <https://www.documentcloud.org/documents/3924852-White-Supremacist-Extremism-JIB.html>; see also Jana Winter, *FBI and DHS Warned of Growing Threat from White Supremacists Months Ago*, Foreign Policy (Aug. 14, 2017), <http://foreignpolicy.com/2017/08/14/fbi-and-dhs-warned-of-growing-threat-from-white-supremacists-months-ago/> (citing the Joint Intelligence Bulletin).

related offenses, only provides data related to international terrorism-related offenses. Report at 2. This presentation of information runs contrary to EO 13780's directive that Defendants publish information regarding foreign nationals charged with or convicted of "terrorism-related offenses" generally, not just international terrorism-related offenses.

45. Through their manipulation of data, Defendants artificially increased the proportion of immigrants and foreign nationals presented as responsible for terrorist incidents—without making clear that the scope of the data is much narrower than what EO 13780 requires and without explaining how the presentation skews the terrorist threat actually posed to the United States. As such, Defendants have disseminated information that lacks utility and is not objective.

The Report provided misleading and biased information by substituting data concerning foreign-born individuals for data concerning foreign nationals.

46. Section 11 directed Defendants to provide various information related to "foreign nationals" and terrorism-related offenses. EO 13780, Sec. 11(a).

47. The Report instead disseminates information regarding *foreign-born* individuals, rather than foreign nationals, stating that of at least 549 individuals who were convicted of international (and only international) terrorism-related charges in U.S. federal courts between September 11, 2001, and December 31, 2016, "approximately 73 percent (402 of these 549 individuals) were foreign-born." Report at 2.

48. The Report does not provide any explanation for the substitution of foreign-born persons for foreign nationals, although doing so results in the misleading conclusion that nearly three-quarters of individuals who were convicted of international terrorism-related charges were immigrants or non-citizens. This conclusion is debunked by concrete data—the majority of

1 jihadist terrorists, for example, since September 11 have been U.S. citizens.¹³ As another study
 2 of terrorism concluded, native born citizens are responsible for the overwhelming majority of
 3 terrorism fatalities since 2002.¹⁴

4 49. The Report further states that of these 549 individuals, 254 were not U.S. citizens, 148
 5 were foreign-born, naturalized and received U.S. citizenship, and 147 were U.S. citizens by birth.
 6 Report at 2. Had the Report followed EO 13780's directive to report on foreign nationals, even
 7 based on its own flawed data, it would have concluded that fewer than half, or 46 percent, of
 8 individuals charged or convicted of international terrorism-related offenses met this criterion.
 9

10 50. Responding to a request for information that purports to be about the terrorist threat that
 11 foreign national immigrants pose to the United States by disseminating information that includes
 12 naturalized citizens perpetuates the Administration's discriminatory view that only native-born
 13 individuals are actually American, and results in numbers that are artificially inflated.
 14

15 51. Providing such misleading information is also contrary to effective counterterrorism
 16 policy, which aims to prevent terrorism from sowing discord *within* a society. The Report's focus
 17 on the country of an individual's birth also ignores the essential question of where and why the
 18 terrorist became radicalized. As a group of counter-terrorism experts informed Defendants in
 19 support of Plaintiff's Petition, by ignoring the issue of domestic radicalization, Defendants made
 20

21
 22
 23 ¹³ Peter Bergen et al, *Terrorism in America After 9/11: Part II. Who Are the Terrorists?*, New
 24 America, <https://www.newamerica.org/in-depth/terrorism-in-america/who-are-terrorists/> (last
 25 visited Mar. 27, 2019).

26 ¹⁴ See Alex Nowrasteh, *New Government Terrorism Report Provides Little Useful Information*,
 27 Cato Inst. (Jan. 16, 2018), <https://www.cato.org/blog/new-government-terrorism-report-nearly-worthless> ("Since the beginning of 2002, native-born Americans were responsible for 78 percent
 28 of all murders in terrorist attacks committed on U.S. soil while foreign-born terrorists only
 committed 22 percent.").

1 “a deliberate choice not to help the public understand better the nature of radicalization and its
2 role in terrorist activities on U.S. soil.”¹⁵

3 52. As such, in substituting foreign-born for foreign national, Defendants disseminated
4 information that does not have utility and is not objective.

5 ***The Report’s inclusion of individuals who committed terrorism overseas and whose***
6 ***only apparent tie to the United States is extradition to the United States for prosecution is***
7 ***misleading.***

8 53. EO 13780 also directs Defendants to disseminate information regarding terrorist events
9 that took place in the United States, specifically data about individuals who were charged with or
10 convicted of terrorism-related offenses “while in the United States” or who have been removed
11 from the United States for various reasons. EO 13780, Sec. 11(a)(i).

12 54. In response, the Report instead disseminates information about individuals who
13 “committed offenses while located abroad, including [those] who were transported to the United
14 States for prosecution.” Report at 2.

15 55. Although someone who has been extradited to the United States for trial may be charged
16 and convicted while in the United States, the offenses committed by that person overseas do not
17 reveal the actual terror threat to the United States, nor could they serve to inform the United
18 States’ immigration policy. Including information about offenses that occurred overseas
19 misleadingly inflates the number of foreign nationals Defendants can claim are responsible for
20 terrorism-related offenses, without having any bearing on terrorist threats that exist *within* the
21 United States, as Section 11 originally required. Defendants provide no explanation for the
22 inclusion of this information.
23
24

25
26 ¹⁵ Letter from Joshua A. Geltzer et al., Inst. for Constitutional Advocacy and Prot., Georgetown
27 Univ. Law Ctr., to Jefferson B. Sessions et al., U.S. Attorney Gen., at 6 (Sept. 13, 2018)
(attached hereto as “Attachment A”) (emphasis omitted).

56. The Report also fails to provide access to readily available and nonconfidential underlying aggregate data that would reveal the degree to which including overseas offenses misrepresents the nexus between foreign nationals and the risk of terrorism in the United States—namely the number of charges and convictions it counted for which the perpetrator’s primary connection to the United States was extradition for trial.

57. Defendants’ manipulation of data misleadingly inflates the threat posed by foreign nationals. As such, Defendants have disseminated information that lacks utility and is not objective.

The Report’s examples of foreign nationals charged with or convicted of terrorism-related offenses are misleading and perpetuate the Administration’s discriminatory narrative that Muslims are likely to commit acts of terrorism.

58. The Report disseminates eight purportedly “illustrative examples among the 402 convictions of foreign nationals or naturalized U.S. citizens.” Report at 3-7.

59. Each of these profiles is of a man who appears to be Muslim, either because he is from a Muslim-majority country or has a Muslim-sounding name or both.

60. The individuals profiled arrived in the United States through the precise immigration provisions the Administration has maligned and sought to eliminate: refugee resettlement, migration preferences to support family reunification, and the visa diversity lottery.¹⁶

¹⁶ See Faiza Patel, *Trump Administration’s Fuzzy Math on Terrorist Origins Is More than Misleading -- It’s Dishonest*, Just Security (Jan. 16, 2018), <https://www.justsecurity.org/51084/trump-administrations-fuzzy-math-terrorist-origins-misleading-its-dishonest/>; see also Dan Merica & Tal Kopan, *Trump Demands Congress Terminate Diversity Immigration Lottery*, CNN (Nov. 1, 2017), <http://www.cnn.com/2017/11/01/politics/donald-trump-chuck-schumer-nyc-attack/index.html> (detailing President Trump’s plans to reform the immigration system).

61. Even though the underlying data—conviction records—is not confidential or otherwise inaccessible, the Report provides no additional information or quantification for outside observers to test the Departments’ doubtful assertion that these examples are “illustrative.”

62. This presentation of information lacks utility and is not objective.

The Report’s information relating to gender-based violence is misleading and perpetuates anti-Muslim stereotypes.

63. Subsection (a)(iii) of Section 11 instructs Defendants to provide information regarding the number and types of acts of gender-based violence against women, including so-called “honor killings,” in the United States by foreign nationals.

64. The information provided by the Report, which purports to be responsive to this directive, is inaccurate and misleading.

65. The federal government has not “recorded and tracked in an aggregated statistical manner information pertaining to gender-based violence against women committed at the federal and state level.”¹⁷ Nor does the federal government have reliable information regarding the prevalence of so-called “honor killings.” Defendants appear not to possess any quality information that is responsive to the directive of subsection (iii).

66. Instead, Defendants provide alternate data, which range from irrelevant to inaccurate.

67. The Report cites the average annual number of non-fatal domestic violence victimizations. Although that number is significant, the data does not reveal the proportion perpetuated by foreign nationals. Indeed, studies show that gender-based violence rates are

¹⁷ Report at 7.

largely the same across all countries, a point which further casts doubt on the Report's attempt to link gender-based violence and national origin.¹⁸

68. The Report also presents discredited data to perpetuate the stigmatization of Muslims inherent in EO 13780's implication that "honor killings" are a significant problem in the United States. The Report asserts that "a study commissioned and provided to the DOJ's Bureau of Justice Statistics in 2014 estimated that an average of 23-27 honor killings occur every year in the United States."¹⁹ The author of the study has, in fact, disclaimed the accuracy of its conclusion, saying "it's not terribly scientific," a fact not disclosed by the Report. Moreover, the study cited was not commissioned by the Department of Justice, but by a private organization.²⁰

69. Finally, the Report also cites a study regarding the number of women and girls who may be at risk for female genital mutilation, noting that the number was three times higher in 2012 than in 1990.²¹ The Report fails to explain that the study's methodology simply correlates the risk of female genital mutilation in various countries to the number of women and girls living in the United States who were born in that country or who lived with a parent born in that country.²² In short, the study simply tracks immigration rates, and explicitly does not present

¹⁸ See, e.g., K.M. Devries et al., *The Global Prevalence of Intimate Partner Violence Against Women*, 340 Sci. 1527, 1527, 1528 (June 28, 2013) (estimating that 30 percent of women aged 15 and over have experienced domestic violence and that though there are some slight regional variations, the rates exceed 19 percent everywhere in the world except East Asia).

¹⁹ Report at 8.

²⁰ Jesse Singal, *Here's What the Research Says About Honor Killings in the U.S.*, N.Y. Magazine (Mar. 6, 2017), <http://nymag.com/daily/intelligencer/2017/03/heres-what-the-research-says-about-american-honor-killings.html>.

²¹ Report at 8.

²² *Id.* at 8 n.17 (citing Howard Goldberg et al., *Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk, 2012*, 131 Public Health Reports 340-47 (2016), available at <http://journals.sagepub.com/doi/pdf/10.1177/003335491613100218>).

1 “scientifically valid information” about the behavior of those immigrant populations in the
 2 United States.

3 70. As such, Defendants have disseminated information that lacks utility and is not objective.

4 ***The Report’s role in the Administration’s larger campaign to target immigrant and Muslim***
 5 ***communities.***

6 71. The Report’s misleading and biased presentation of the threat of violent extremism that
 7 immigrants, especially Muslim immigrants, pose to the United States is consistent with the views
 8 of the President and Defendants.

9 72. During his campaign, then-candidate Trump infamously called for “a total and complete
 10 shutdown of Muslims entering the United States,” stating further “[i]t is obvious to anybody that
 11 the hatred is beyond comprehension. . . . [O]ur country cannot be the victims of horrendous
 12 attacks by people that believe only in Jihad, and have no sense of reason or respect for human
 13 life.” He later stated that “Islam hates us,” and that “[w]e can’t allow people coming into the
 14 country who have this hatred.”²³

15 73. After becoming President, President Trump re-tweeted anti-Muslim videos from a far-
 16 right British activist, which were titled: “Muslim migrant beats up Dutch boy on crutches!”;
 17 “Muslim destroys a statue of Virgin Mary!”; and “Islamist mob pushes teenage boy off roof and
 18 beats him to death!”²⁴ The videos were misleading and drew wide condemnation, but the White
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23 ²³ *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 594 (4th Cir.), *as amended* (May 31,
 24 2017), *as amended* (June 15, 2017), *cert. granted*, 137 S. Ct. 2080, and *vacated and remanded*
 25 *sub nom. Trump v. Int’l Refugee Assistance*, 138 S. Ct. 353 (2017). *See also Washington v.*
 26 *Trump*, 847 F.3d 1151, 1167 (9th Cir.), *reconsideration en banc denied*, 853 F.3d 933 (9th Cir.),
reconsideration en banc denied, 858 F.3d 1168 (9th Cir.), and *cert. denied sub nom. Golden v.*
Washington, 138 S. Ct. 448 (2017).

27 ²⁴ Ashley Parker & John Wagner, *Trump Retweets Inflammatory and Unverified Anti-Muslim*
 28 *Videos*, Wash. Post (Nov. 29, 2017), [https://www.washingtonpost.com/news/post-](https://www.washingtonpost.com/news/post-First-Amended-Complaint)
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House defended the President's actions, with the Press Secretary saying, "[T]he threat is real, and that is what the president is talking about."²⁵

74. President Trump has also repeatedly argued, inaccurately, that immigrants pose a threat to public safety.²⁶

75. Similarly, former-Attorney General Sessions, who oversaw publication of the Report, relied on a single outlier study of questionable methodology to claim that, despite the vast body of research showing that crime tends to decrease in areas where immigrants settle²⁷, "illegal aliens are more than twice as likely to be convicted of crimes as Arizonans," and that "[t]ens of thousands of crimes have been committed in this country that would never have happened if our immigration laws were enforced and respected like they ought to be."²⁸

politics/wp/2017/11/29/trump-retweets-inflammatory-and-unverified-anti-muslim-videos/?utm_term=.1a55596e88c1.

²⁵ *Id.*

²⁶ Salvador Rizzo, *Trump's Claim That Immigrants Bring 'Tremendous Crime' Is Still Wrong*, Wash. Post (Jan. 18, 2018), https://www.washingtonpost.com/news/fact-checker/wp/2018/01/18/trumps-claim-that-immigrants-bring-tremendous-crime-is-still-wrong/?utm_term=.20ec4a0e8626.

²⁷ Salvador Rizzo, *Questions Raised About Study That Links Undocumented Immigrants to Higher Crime*, Wash. Post (Mar. 21, 2018), https://www.washingtonpost.com/news/fact-checker/wp/2018/03/21/questions-raised-about-a-study-that-links-undocumented-immigrants-to-higher-crime/?utm_term=.5b04d784c153.

²⁸ Press Release, U.S. DOJ, *Attorney General Sessions Delivers Remarks on National Security and Immigration Priorities of the Administration* (Jan. 26, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-national-security-and-immigration-priorities>.

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76. And Homeland Security Secretary Nielsen has stated that even though the number of unlawful entries to the United States was at historically low levels, still it “is an unacceptable risk to public safety and national security.”²⁹

77. Consistent with these views, the Administration has used the Report to support its attempts to restrict lawful immigration and its ongoing stigmatization of Muslims.

78. For example, the White House issued a statement that the Report shows that “our current immigration system jeopardizes American security” and used the Report to justify its calls to end the visa lottery and migration preferences to support family reunification.³⁰

79. Similarly, former-Attorney General Sessions stated that the Report “reveals an indisputable sobering reality—our immigration system has undermined our national security and public safety.”³¹

80. In her statement on the Report’s release, Homeland Security Secretary Nielsen said that it “is a clear reminder of why we cannot continue to rely on immigration policy based on pre-9/11 thinking that leaves us woefully vulnerable to foreign-born terrorists, and 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.”³²

²⁹ Written Testimony of DHS Secretary Nielsen Before the U.S. Senate Committee on the Judiciary (Jan. 16, 2018), <https://www.judiciary.senate.gov/imo/media/doc/01-16-18%20Nielsen%20Testimony.pdf>.

³⁰ Fact Sheet, White House, *Our Current Immigration System Jeopardizes American Security* (Jan. 16, 2018), <https://www.whitehouse.gov/briefings-statements/current-immigration-system-jeopardizes-american-security/>.

³¹ DOJ Press Release, *supra* note 9.

³² *Id.*

81. She also warned the Senate Judiciary Committee that the Report was “just the tip of the iceberg” and repeated the conclusion that supposedly three-fourths of individuals convicted of international terrorism in U.S. federal courts were foreign born in her testimony in January 2018 as part of her justification for the travel ban against nationals of six Muslim-majority countries.³³

The Report’s use in public discourse and its harmful effects on Muslim communities.

82. The Report has also—and predictably—been widely used to promote anti-Muslim, anti-immigrant rhetoric by commentators in the public sphere. In the days following its publication, it was described in news outlets as “linking terrorism with our broken immigration system, full of holes.”³⁴ On one of the most-watched television news programs in the country,³⁵ the host described the Report as showing that “America’s terror threat is clearly . . . an immigration

³³ Anna Giaritelli, *DHS Chief: Foreign-born Have Made Up 3 in 4 of International Terrorism Convictions in US Courts Since Sept. 11 Attacks*, Wash. Examiner (Jan. 16, 2018), <http://www.washingtonexaminer.com/dhs-chief-foreign-born-have-made-up-3-in-4-of-international-terrorism-convictions-in-us-courts-since-sept-11-attacks/article/2646031>; *see also* Testimony of Secretary Kirstjen Nielsen, Homeland Security Oversight, C-Span (Jan. 16, 2018), <https://www.c-span.org/video/?439257-1/homeland-security-secretary-kirstjen-nielsen-faces-questions-daca>.

³⁴ *Fox News @ Night – Shannon Bream – January 16, 2018 – Archive*, YouTube (Jan. 17, 2017), <https://www.youtube.com/watch?v=OaJmY2WoEb8> (at 1:54); *see also Special Report with Bret Baier 1/16/18 | Special Report Fox News Tuesday January 16, 2018*, YouTube (Jan. 16, 2018), <https://www.youtube.com/watch?v=pa4jJOJ4xjw> (at 13:20); *Fox News @ Night – Shannon Bream – January 16, 2018 – Archive*, YouTube (Jan. 17, 2017), <https://www.youtube.com/watch?v=OaJmY2WoEb8> (at 1:54 and 6:40).

³⁵ A.J. Katz, *January 2018 Ratings: Fox News Is Cable News’ Most-Watched Network For 16 Years Straight*, TV Newser (Jan. 30, 2018), <http://www.adweek.com/tvnewser/january-2018-ratings-fox-news-is-now-cable-newss-most-watched-network-for-16-straight-years/356285>; Mark Joyella, *Is Tucker Carlson The New King Of Cable News?*, Forbes (May 31, 2017), <https://www.forbes.com/sites/markjoyella/2017/05/31/is-tucker-carlson-the-new-king-of-cable-news/#7c7f84985370>.

issue.”³⁶ And multiple think tanks and commentators seized upon the Report as an opportunity to promote anti-Muslim, anti-immigrant rhetoric and policies.³⁷

83. The damaging stigma the Report has caused is further amplified by an entirely foreseeable mischaracterization of its findings. The Report found (misleadingly) that 73 percent of all individuals convicted of *international* terrorism-related offenses were foreign-born. But numerous government officials and anti-immigrant outlets have stated that 73 percent of individuals convicted of *all* terrorism-related offenses were foreign-born. For example, President Trump tweeted on its release date that the report “shows that nearly 3 in 4 individuals convicted of terrorism-related charges are foreign-born.”³⁸ On the same day, then-House Judiciary Chairman Bob Goodlatte stated that “[o]f the 549 terror-related convictions since the

³⁶ Attorney General Jeff Sessions and Tucker Carlson Discuss Immigration – MGTOW, YouTube (Jan. 18, 2018), https://www.youtube.com/watch?v=o_244_Rf-Co (at 0:22).

³⁷ See, e.g., David Horowitz, *Man up, DC! Immigrants are 73 percent of terrorism convictions*, Conservative Review (Jan. 17, 2018), <https://www.conservativereview.com/articles/man-dc-immigrants-73-percent-terrorism-convictions/>; Hans A. von Spakovsky, *The importance of public safety and national security in the immigration debate*, Fox News (Jan. 25, 2018), <http://www.foxnews.com/opinion/2018/01/25/importance-public-safety-and-national-security-in-immigration-debate.html>; Andrew R. Arthur, *We Need Better Vetting, Better Screening, and Better Laws*, Center for Immigration Studies (Jan. 16, 2018), <https://cis.org/Arthur/We-Need-Better-Vetting-Better-Screening-and-Better-Laws>; Kevin Daley, *Defending The Travel Ban Just Got A Little Easier*, The Daily Caller (Jan. 16, 2018), <http://dailycaller.com/2018/01/16/dhs-report-may-help-travel-ban-defense/>.

³⁸ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 16, 2018), https://twitter.com/realDonaldTrump/status/953406423177859073?ref_src=twsrc%5Etfw&ref_url=http%3A%2F%2Fnymag.com%2Fdaily%2Fintelligencer%2F2018%2F01%2Ftrumps-plan-to-end-chain-migration-isnt-populist.html&tfw_creator=ericlevitz&tfw_site=intelligencer; see also Salvador Rizzo, *President Trump’s Claim That ‘Nearly 3 in 4’ Convicted of Terrorism Are Foreign-Born*, Wash. Post (Jan. 22, 2018), https://www.washingtonpost.com/news/fact-checker/wp/2018/01/22/president-trumps-claim-that-nearly-3-in-4-convicted-of-terrorism-are-foreign-born/?utm_term=.2df7ec64132c.

attacks on September 11, 2011, 75% of those convicted were foreign born.”³⁹ And former-
 Attorney General Sessions stated in an appearance on a television news program: “we know that
 . . . 73% of the people who’ve been arrested for terrorism came here—were born abroad.”⁴⁰ This
 was repeated in articles published by numerous media outlets and think tanks, which ran
 headlines such as: “3 out of 4 convicted of terrorism are immigrants”⁴¹ and “DHS and DOJ
 Report: 73 percent of Convicted Terrorists Were Foreign-born.”⁴² Because the Report was
 presented as purportedly responsive to the requirements of Section 11 of EO 13780—which
 requires an analysis of *all* terrorism-related offenses—that mischaracterization was a predictable
 outcome of the Report and the agencies’ statements about it.

84. By contributing to the stigmatization of Muslims, the Report is also likely to contribute to
 increases in associated hate speech and violence. As many experts have noted, public rhetoric
 and policies targeting a disfavored group correlate with increases in violence targeting those
 groups.⁴³ And in fact, multiple reports have found significant increases in hate incidents against

³⁹ Press Release, H.R. Judiciary Comm., Goodlatte Statement on DOJ/DHS Report on Immigration and National Security (Jan. 16, 2018), <https://republicans-judiciary.house.gov/press-release/goodlatte-statement-doj-dhs-report-immigration-national-security/>.

⁴⁰ *Attorney General Jeff Sessions and Tucker Carlson Discuss Immigration – MGTOW*, YouTube (Jan. 18, 2018), https://www.youtube.com/watch?v=o_244_Rf-Co (at 5:26).

⁴¹ Daniel Greenfield, *3 out of 4 convicted of terrorism are immigrants*, FrontPage Mag (Jan. 16, 2018), <https://www.frontpagemag.com/point/269046/3-out-4-convicted-terrorism-are-immigrants-daniel-greenfield>.

⁴² *DHS and DOJ Report: 73 Percent of Convicted Terrorists Were Foreign-Born*, NumbersUSA (Jan. 16, 2018), <https://www.numbersusa.com/news/dhs-and-doj-report-73-percent-convicted-terrorists-were-foreign-born>.

⁴³ See Brian Levin, *Explaining the Rise in Hate Crimes Against Muslims in the US*, The Conversation (July 19, 2017), <https://theconversation.com/explaining-the-rise-in-hate-crimes-against-muslims-in-the-us-80304> (“the rhetoric politicians use after terrorist attacks is correlated closely to sharp increases...in hate crimes”); *Responses to the Increase in Religious Hate Crimes; Hearing Before the S. Comm. On the Judiciary*, 115th Cong. 5 (2017) (statement of First Amended Complaint

Muslims and persons perceived to be Muslim since the beginning of Trump’s presidential campaign and especially since the beginning of his presidency,⁴⁴ and one report found an explicit correlation to this administration’s anti-Muslim policies or slogans.⁴⁵ If left uncorrected, the Report is likely to contribute to this increase in violence and stigmatization experienced by Muslim communities.

Plaintiff’s Petition

85. On January 29, 2018, Plaintiff sent a petition to DOJ and DHS setting forth the ways in which the Report violates IQA Guidelines on information quality, as summarized in the preceding paragraphs, and requesting a retraction of the Report. *See* Att. B.

Vanita Gupta, President, Leadership Conference on Civil and Human Rights), <http://bit.ly/2xa29Bp> (“Policies singling out protected groups can normalize hate and legitimize hate-motivated violence directed at Muslims or people perceived to be Muslim.”).

⁴⁴ *See, e.g., CAIR Report Shows 2017 on Track to Becoming One of Worst Years Ever for Anti-Muslim Hate Crimes*, Council On Am.–Islamic Relations (July 17, 2017), https://www.cair.com/cair_report_shows_2017_on_track_to_becoming_one_of_worst_years_ever_for_anti_muslim_hate_crimes (reporting a 91 percent increase in the number of anti-Muslim hate crimes during the first half of 2017); Christopher Ingraham, *American Mosques—and American Muslims—Are Being Targeted for Hate Like Never Before*, Wash. Post (Aug. 8, 2017), <http://wapo.st/2x3nCty> (documenting at least 85 anti-Muslim incidents at mosques during the first half of 2017); Katayoun Kishi, *Assaults Against Muslims in U.S. Surpass 2001 Level*, Pew Research Ctr. (Nov. 15, 2017), <http://www.pewresearch.org/fact-tank/2017/11/15/assaults-against-muslims-in-u-s-surpass-2001-level/>; Chris Fuchs, *Reported Anti-Muslim Hate Incidents, Rhetoric Rose in Year After Election, Report Finds*, NBC News (Feb. 1, 2018), <https://www.nbcnews.com/news/asian-america/reported-anti-muslim-hate-incidents-rhetoric-rose-year-after-election-n843671>; Laura Pitter, *Hate Crimes Against Muslims in US Continue to Rise in 2016*, Human Rights Watch (May 11, 2017), <https://www.hrw.org/news/2017/05/11/hate-crimes-against-muslims-us-continue-rise-2016>.

⁴⁵ *See Report: Communities on Fire: Confronting Hate Violence and Xenophobic Political Rhetoric*, South Asian Americans Leading Together (SAALT), <https://tinyurl.com/ycllxzd2> (documenting 302 incidents of hate incidents directed at Muslim, Arab, and South Asian individuals between November 2016 and November 2017, an over 45 percent increase from the previous year; finding that 82 percent of those incidents were motivated by anti-Muslim sentiment, that more than 213 involved actual violence (a 64 percent increase over the preceding year); and reporting that almost 1 in 5 of these incidents involved perpetrators who specifically invoked President Trump’s name, policies, or campaign slogans.

86. In the Petition, Plaintiff also explained that it is an “affected person” within the meaning of the IQA and its implementing Guidelines because, among other reasons,

Muslim Advocates works to ensure that policies enacted under the banner of national security do not wrongfully discriminate against Muslims and are not based on inaccurate or misleading information.

Muslim Advocates uses reliable information concerning the American immigration population in its work, and it, as well as its clients, is also “harmed” by the dissemination of the Report, which seeks to portray immigrants, and particularly Muslim immigrants, as inherently violent and likely to commit acts of terror. Moreover, the Report serves as a mechanism to justify the travel and refugee bans, which the Administration has attempted to justify, at least in part, by reference to the kinds of inaccurate data and biased findings contained in the Report. The Report serves as further post hoc justification for those efforts, which directly harm Muslim Advocates and its clients.

87. The petition was sent via email and Federal Express. The Federal Express deliveries arrived on January 30, 2018.

88. Under both DOJ and DHS Guidelines, Defendants had 60 days to respond for a request for correction or to notify the requestor that additional time is needed.

89. As detailed below, Plaintiff did not receive even an acknowledgement letter from Defendants until after the initial Complaint was filed in this case.

Defendants’ Responses to Plaintiff’s Petition

90. On June 15, 2018, after taking more than twice as much time as is permitted under its IQA guidelines to respond, Defendant DOJ provided a letter acknowledging receipt. DOJ further stated that additional time was required to “review and provide any response” and noted that it anticipated doing so “within sixty (60) days of this letter.” Att. C.

91. Defendant DHS followed suit with a nearly identical acknowledgment letter on June 19, 2018. DHS likewise stated that an additional sixty (60) days was needed to review and provide a response to the Petition. Att. D.

92. DOJ provided its first substantive response to the Petition in a July 31, 2018 letter. Att. E. This letter addressed briefly and inadequately the information quality errors set forth by Plaintiff in the Petition. DOJ's letter concluded that the agency's IQA guidelines did not require retraction or correction of the Report. *See id.* This conclusion was incorrect.

93. DHS provided a substantive response to the Petition on August 1, 2018. *See* Att. F. This response's analysis of the arguments set forth in the Petition was also incomplete and inadequate. The response did acknowledge that DHS planned to "refine the available data, provide more detail where practicable, and examine other datasets that might warrant release in the interest of transparency," taking the points raised in the Petition into consideration during the preparation of future Section 11 reports. *Id.* at 2. Despite this tacit admission of the Petition's merit, DHS concluded that retraction or correction was not warranted. *Id.*

94. Both the July 31 DOJ letter and the August 1 DHS letter provided notice of the opportunity to appeal the final decisions to deny the Petition.

Plaintiff's Appeal Petitions

95. Muslim Advocates submitted administrative appeals to DOJ and DHS on September 13, 2018, requesting reconsideration of the agencies' denials of Plaintiff's Petition. Atts. G, H (collectively the "Appeal Petitions").

96. The Appeal Petitions explained that DOJ's and DHS's responses to the Petition were inadequate and did not cure the information quality errors in the Report. Among the reasons provided, the Appeal Petitions stated that:

- a. The DOJ and DHS responses failed to engage meaningfully with the Petition's arguments that the substitution of "foreign-born" for "foreign national" results in a biased and misleading presentation of the terrorist threat posed by immigrants, in violation of the

1 IQA's objectivity and utility requirements. Further, the responses failed to articulate a
2 reason why there is utility in distinguishing between U.S.-born and foreign-born citizens,
3 which does not reveal meaningful differences in rights or responsibilities, and is not a
4 distinction relied on by those who conduct counterterrorism work.

5
6 b. The decision to focus on international terrorism, and to ignore completely acts of
7 domestic terrorism, is neither objective nor useful because the omission artificially
8 inflates the proportion of terrorist incidents presented as having been committed by
9 foreign nationals and ignores a critical component of the counterterrorism discussion. In
10 their defense of the Report, Defendants asserted that data capturing instances of domestic
11 terrorism were not available to them, and that the Report was sufficiently clear about the
12 presentation of information. As the Appeal Petitions point out, however, such
13 information has been compiled by the government, including in the reports and studies
14 cited by Plaintiff, and so was readily available for Defendants in order to consider the
15 threat posed by domestic terrorism and thereby provide objective and useful information
16 to the public.

17
18 c. Defendants also failed to respond adequately to the Petition's argument that the Report's
19 inclusion of individuals who were only present in the United States because they were
20 brought here through extradition in the total number of terrorism-related convictions
21 misleadingly inflates the terrorist threat posed by foreign nationals. The responses'
22 assertion that these individuals were accurately described as having come to the United
23 States through extradition did not account for the misleading and useless presentation of
24 the information. Moreover, Defendants inexplicably failed to provide underlying data, in
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26
27

their possession, showing what percentage of the total number of individuals identified in the Report were included based on their extradition to the United States.

d. Defendants’ attempts to justify the Report’s profiling of eight “illustrative examples,” all of which appear to be Muslim men who arrived in the United States through the precise immigration provisions the Administration has sought to eliminate, were unpersuasive. Plaintiffs’ criticism is not “subjective,” as asserted by Defendants, but based in the objectivity and utility requirements of the IQA. Compounding this problem, the Report had failed to include any of the underlying data that might have allowed an outside observer to test whether these eight examples were, in any sense, illustrative, an omission the responses further failed to explain or discuss.

e. Finally, Defendants failed to address adequately the misleading and anti-Muslim information disseminated concerning so-called “honor killings,” which the Report portrays as a substantial issue in the United States, in part by relying on irrelevant and inaccurate data. The DHS and DOJ responses did not address specifically the Report’s inclusion of discredited and irrelevant data sources. The responses further asserted that the Report noted the lack of aggregate data discussing “honor violence” and that this transparency was sufficient. But none of these defenses save the Report, which fails to meet the IQA’s objectivity requirement.

97. The Appeal Petitions also emphasized the ways in which the Administration—both President Trump and Defendants—has used the Report to further stigmatize immigrants as dangerous and likely to be terrorists; important context for understanding the Report’s bias.

98. Contemporaneously with the submission of the Appeal Petitions, a group of former officials with extensive counter terrorism experiences submitted a letter to Defendants in support

1 of Plaintiff's appeals. *See* Att. A. This letter reinforced many of the arguments made by
 2 Plaintiff and further explained how continued dissemination of the Report can inflict damage on
 3 vital counterterrorism efforts. *Id.* at 3. As the authors of the letter stated, "[a]llowing
 4 misunderstandings to continue to circulate would undermine the objectives of effective
 5 counterterrorism policy and exacerbate the fear and division that terrorists seek to create." *Id.*

7 **Defendants' Responses to the Appeal Petitions**

8 99. DOJ did not acknowledge receipt of the administrative appeal until October 24, 2018,
 9 and offered no substantive response at that time, asserting instead that it would take an additional
 10 forty-five (45) days to review and provide a further response. Att. I.

11 100. DOJ responded substantively to the Appeal Petition by letter dated December 21, 2018.
 12 In this response, DOJ admitted that Plaintiff had raised valid concerns about the quality of the
 13 information presented in the Report. Specifically, DOJ stated that

15 [T]he Department concludes on reconsideration that ***information in the Report could be***
 16 ***criticized by some readers, consistent with some of the concerns voiced in your Request***
 17 ***for Reconsideration.*** ... Working closely with DHS, the Department will consider IQA
 principles in issuing future reports under Section 11 of Executive Order 13780 ***to better***
 18 ***present such information to the public.***

19 *See* Att. J at 1 (emphasis added).

20 101. Despite this admission, DOJ declined to retract or correct the Report. The justification it
 21 provided for doing so is inadequate and incorrect in light of the information submitted in support
 22 of the request for retraction.

23 102. DHS was even tardier in its response to the administrative appeal, acknowledging receipt
 24 on November 7, 2018, and stating that it would take an additional 45 days to review and consider
 25 its response. Att. K. On December 19, 2018, DHS again informed Plaintiff that it would take an
 26

1 additional 45 days to respond. Att. L. On January 31, 2019, DHS again stated by letter that it
 2 would take an additional 45 days to respond. Att. M.⁴⁶

3 103. Finally, on February 14, 2019—155 days since the Plaintiff submitted its administrative
 4 appeal—DHS provided a substantive response. Att. N.

5 104. DHS acknowledged the validity of Plaintiff's information quality concerns, stating, "it
 6 will take into consideration in future Section 11 Reports those points raised in both your
 7 Requests for Correction and Reconsideration." *Id.* at 1. Further, DHS admitted that Plaintiff's
 8 contention regarding the bias in the selection of the eight illustrative examples "is well-taken."
 9 *Id.* at 2.

10 105. Nevertheless, DHS declined to retract or correct the Report. *Id.* The justification it
 11 provided for doing so is inadequate and incorrect in light of the information submitted in support
 12 of the request for retraction.
 13

14 106. Defendants continue to promulgate the Report on their respective websites.
 15

16 **Claim for Relief: Violation of the Administrative Procedure Act**

17 107. Plaintiff hereby incorporates all allegations in the above paragraphs as if fully set forth
 18 herein.

19 108. The IQA, OMB's IQA Guidelines, and DOJ and DHS's IQA Guidelines require that
 20 information disseminated by agencies meet a requisite level of quality.

21 109. The Report is information disseminated by Defendants within the meaning of the IQA
 22 and its implementing Guidelines.
 23

24 110. The Report fails the objectivity and utility requirements of information quality; instead, it
 25 presents information in a deceptive, misleading, and incomplete manner, and in so doing,
 26

27 ⁴⁶ This delay was apparently attributable to the lapse in appropriations.

misrepresents the actual terror threat to the country, artificially inflating the threat that immigrants and Muslims pose to the United States.

111. Defendants' ongoing dissemination of the Report following their denials of Plaintiffs' Petition and Appeal Petitions violates the IQA and its implementing Guidelines, and is therefore arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required by law, and otherwise violative of the APA, 5 U.S.C. § 706(2).

Prayer for Relief

WHEREFORE, Plaintiff prays that this Court grant the following relief:

1. Declare that the Report disseminates information that fails the standard of quality required of federal agencies;
2. Declare that Defendants violated the IQA, its implementing Guidelines, and the APA;
3. Order Defendants to expressly retract or correct the Report and to cease dissemination of the Report;
4. Award Plaintiff its costs, reasonable attorneys' fees, and other disbursements incurred in this action; and
5. Grant such other relief as the Court may deem just and proper.

Date: April 1, 2019

Respectfully submitted,

/s/ Robin F. Thurston

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