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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
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January 30, 2017

The Honorable John Kelly
Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave NW
Washington, D.C. 20016

Dear Mr. Secretary:

We write regarding the Executive Order entitled, "Protecting the Nation From Foreign Terrorist Entry Into the United States" signed by President Trump on January 27, 2017.¹ We are deeply troubled by this unprecedented order and its implementation by the Department of Homeland Security (DHS).

In the Executive Order, President Trump suspended for 90 days the issuance of visas to nationals of Iran, Iraq, Syria, Yemen, Sudan, Somalia, and Libya, including individuals who have been granted lawful permanent resident status ("green card" holders).² Reportedly, senior career officials at the Department of Homeland Security were not consulted about the contents of the Executive Order until Friday, January 27, the day it was signed.³ On Friday evening, DHS senior officials interpreted the order to mean that legal permanent residents from the seven affected countries would not be prevented from traveling to or entering the U.S.,⁴ and you provided assurances to Senate Democratic leadership that legal permanent residents would not be affected. Overnight, you were reportedly overruled by the White House, specifically Stephen Miller and Stephen Bannon, who determined that legal permanent residents were subject to the Executive Order.⁵ On the evening of Sunday, January 29, you issued a statement outlining a third interpretation, saying that "absent the receipt of significant derogatory information indicating a

¹ The White House, *Executive Order: Protecting the Nation From Foreign Terrorist Entry Into the United States* (Jan. 27, 2017).

² *Id.* These orders did not even exempt foreign nationals who have provided critical assistance to the U.S. military at great risk to their lives.

³ *Inside the Confusion of the Trump Executive Order and Travel Ban*, CNN.com (Jan. 29, 2017).

⁴ *Id.*

⁵ *Id.*

serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations.”⁶

In order to better understand the analysis conducted by DHS and your plans to implement President Trump’s order as it applies to legal permanent residents, we request the following information:

- 1) The names, titles and qualifications of all officials who were involved in the drafting and/or review of the Executive Order prior to its issuance, including any political appointees, members of the “beachhead team”, special advisors, and consultants;
- 2) All legal analysis related to the Executive Order;
- 3) All communications within the Department and with other administration officials, including White House officials, related to whether the Executive Order applied to legal permanent residents, as well as a description of when and why you determined that the Executive Order would not apply to legal permanent residents, when and why that determination was changed, and at whose direction each determination was made;
- 4) What the process will be for individuals with green cards who have traveled or plan to travel outside of the United States and return; and
- 5) The instructions and guidance provided to DHS officials at U.S. ports of entry and all relevant international locations regarding the implementation of the Executive Order. If these instructions differed from location to location or from day to day, include all such instructions that were given to officials.

We also have grave concerns about the President's assertion on a television interview that our country would give preference to Christians seeking to obtain visas or admission to the U.S.⁷ This nation is founded on the bedrock principles of liberty and religious freedom, and a religious test for those seeking to enter this country abandons and violates these principles. In order to understand your interpretation of the President’s statement and your plans to implement President Trump’s order as it applies to the use of religious information, we request the following information:

- 1) Any processes currently in place to identify an individual’s religion prior to receiving a visa, admission, or other immigration benefit;
- 2) All legal analysis related to whether the U.S. government may request information regarding an individual’s religion prior to receiving a visa, admission, or other immigration benefit;

⁶ Department of Homeland Security, *Statement by Secretary John Kelly on the Entry of Lawful Permanent Residents into the United States* (Jan. 29, 2017).

⁷ *Trump Says US Will Prioritize Christian Refugees*, CNN.com (Jan. 28, 2017).

- 3) Whether religion will be considered as part of your review of information needed to adjudicate whether an individual may receive a visa, admission, or other immigration benefit; and
- 4) If the answer to the above question is yes, how the U.S. government plans to determine someone's religious beliefs. Will this entail investigations into their place of worship or their knowledge of religious tenets?

We request a meeting with you on or before Tuesday, January 31, to discuss your responses to these questions. We also request a thorough, written response as soon as practicable, and in no case later than February 10, 2017.

We urge you to postpone implementation of this Executive Order until these questions have been answered, and, more importantly, you have had an opportunity to ensure that the legal, policy, and practical impacts of President Trump's order have been fully and thoroughly reviewed.

Please contact Julie Klein with the Committee staff at (202) 224-6579 with any questions. Please send any official correspondence relating to this request to Amanda.Trosen@hsgac.senate.gov.

Sincerely,



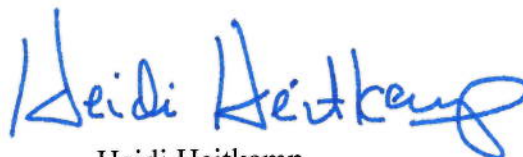
Claire McCaskill
Ranking Member



Tom Carper



Jon Tester



Heidi Heitkamp



Gary Peters



Maggie Hassan



Kamala Harris

The Honorable John Kelly
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cc: Ron Johnson
Chairman