

BRENNAN
CENTER
FOR JUSTICE
TWENTY
YEARS

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January 19, 2018

Via Certified Mail and E-Mail

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Director of Public Affairs at the Office of Public Affairs,
Department of Justice,
950 Pennsylvania Avenue N.W.
Washington, DC 20530-0001

Re: FOIA and Request for Expedited Processing & Fee Waiver

Dear Sir/Madam:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Department of Justice regulations relating to requests for disclosure of records, 28 C.F.R. §§ 16.1 to 16.2. The Brennan Center for Justice at NYU School of Law (“Brennan Center”) seeks records about public/unsealed international terrorism and terrorism-related convictions from September 11, 2001, through December 31, 2016. We also seek expedited processing under 28 C.F.R. §§ 16.5(e)(1)(ii), (iv) and request a fee waiver under 28 C.F.R. § 16.10(c), (d), & (k).

I. Factual Background

The National Security Division of the United States Department of Justice (“DOJ”) maintains a chart of public/unsealed international terrorism and terrorism related convictions since September 11, 2001. This chart has been publicly released annually for the last seven years, most recently in response to FOIA request by Shirin Sinnar of Stanford Law School.¹ The chart obtained by Ms. Sinnar, however, only contained data through December 31, 2015.² Information on the number of convictions between December 31, 2015, and December 31, 2016, has not been publicly released to date.

On January 16, 2018, the DOJ, in conjunction with the Department of Homeland Security (“DHS”), released a report titled “Executive Order 13780: *Protecting the Nation from Foreign Terrorist Entry Into the United States* Initial Section 11 Report” (“Section 11 Report”). The report cited “a list maintained by DOJ’s National Security Division” of individuals convicted of “international terrorism-related charges in U.S. federal courts between September 11, 2001, and December 31, 2016.”³ The report goes on to break down the list of 549 individuals by citizenship status and to provide examples of relevant cases.⁴

II. Formal Request

The Brennan Center hereby requests the DOJ National Security Division’s Chart of Public/Unsealed International Terrorism and Terrorism-Related Convictions from 9/11/01 to 12/31/16.

¹ See, e.g. “National Security Division Statistics on Unsealed International Terrorism and Terrorism-Related Convictions, 9/11/01 - 3/18/10,” archived at <https://www.hsdl.org/?view&did=25289>; “National Security Division Statistics on Unsealed International Terrorism and Terrorism-Related Convictions, 9/11/01 – 12/31/11,” updated June 6, 2012, archived at <http://fas.org/irp/agency/doj/doj060612-stats.pdf>; “National Security Division Chart of Public/Unsealed Terrorism and Terrorism-Related Convictions 9/11/01-12/31/14,” updated August 7, 2015, archived at

https://web.archive.org/web/20170129031427/http://www.sessions.senate.gov/public/_cache/files/6e9a95e6-3552-45f7-bb0c-4fd41f5a28ca/01.13.16-original-doj-nsd-list.pdf; “National Security Division Chart of Public/Unsealed Terrorism and Terrorism-Related Convictions, 9/11/01-12/31/15,” updated August 26, 2016, archived at <http://www.humanrightsfirst.org/sites/default/files/NSD-Terrorism-Related-Convictions.pdf>.

² Shirin Sinnar, “More Misleading Claims on Immigrants and Terrorism,” *Just Security*, March 4, 2017, <https://www.justsecurity.org/38341/misleading-claims-immigrants-terrorism/>; see also “National Security Division Chart of Public/Unsealed Terrorism and Terrorism-Related Convictions, 9/11/01-12/31/15,” updated August 26, 2016, archived at <http://www.humanrightsfirst.org/sites/default/files/NSD-Terrorism-Related-Convictions.pdf>.

³ Department of Homeland Security & Department of Justice, *Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States Initial Section 11 Report 2* (January 2018) (hereinafter “Section 11 Report”).

⁴ *Id.* at 2-7.

III. Application for Expedited Processing

The Brennan Center requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and implementing regulation 28 C.F.R. §16.5(e)(1)(ii) & (e)(1)(iv). The Brennan Center has a “compelling need” for these records, to urgently “inform the public” regarding a matter of “widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. §16.5(e)(1)(ii); 28 C.F.R. §16.5(e)(1)(iv).

The Brennan Center, a 501(c)(3) organization, regularly publishes reports on a wide range of U.S. policy issues, including counterterrorism and security. The Center has released over forty publications in the form of reports and publications in the last four years. As such, the Brennan Center meets the definition of an organization that is “primarily engaged in disseminating information” under 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. §16.5(e)(1)(ii).⁵ Recently, the Brennan Center has published a report, several fact sheets, and multiple articles on the intersection of national security and immigration policy.⁶ The Brennan Center urgently needs access to this information to inform the public of federal government activity that concerns the general public interest.

Specifically, the Section 11 Report, which is the subject of intense national interest and controversy,⁷ explicitly relied on the data that the Brennan Center now requests. The Trump administration has also cited the requested data to support new restrictions on immigration,⁸ including an end to the visa lottery program and limits on immigrants’ ability to bring extended family members to the United States.⁹

The Brennan Center seeks access to the DOJ’s data in order clarify and provide the public with further context for the Section 11 Report. The information sought clearly involves a matter of “widespread and exceptional media interest” and “possible questions about the

⁵ See also *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n. 5 (D.D.C. 2004) (quoting *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F.Supp. 2d 5, 11 (D.D.C. 2003)).

⁶ See, e.g. Harsha Panduranga, Faiza Patel, and Michael W. Price, *Extreme Vetting and the Muslim Ban*, Brennan Center for Justice, 2017; Harsha Panduranga, Faiza Patel, and Michael Price, “Extreme Vetting: Myths and Facts,” *Brennan Center for Justice*, October 11, 2017, <http://www.brennancenter.org/analysis/extreme-vetting-myths-and-facts>; Faiza Patel, “Extreme Vetting by Algorithm,” *Just Security*, November 20, 2017, <https://www.justsecurity.org/47239/extreme-vetting-algorithm/>.

⁷ See, e.g., Deborah Netburn, *Protesters take to the streets to oppose Trump’s travel ban 3.0*, L.A. Times (Oct. 15, 2017), <http://www.latimes.com/local/lanow/la-me-ln-travel-ban-protest-20171015-story.html>; Miriam Jordan, *Appeals Court Rules Against Latest Travel Ban*, N.Y. Times (Dec. 22, 2017), <https://www.nytimes.com/2017/12/22/us/travel-ban-court.html>; Michael Shear & Julie Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. Times (Dec. 23, 2017), <https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html>.

⁸ Donald J. Trump, Twitter (Jan. 16, 2018), <https://twitter.com/realDonaldTrump/status/953406423177859073>.

⁹ Julie Davis & Ron Nixon, *White House Fuels Immigration Debate With Terrorism Statistics*, N.Y. Times (Jan. 16, 2018).

government's integrity that affect public confidence." 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. § 16.5(e)(1)(iv). Indeed, previous versions of the DOJ's list have led to media interest and questions about government integrity, particularly when those numbers have been used to justify immigration policies.¹⁰ 28 C.F.R. § 16.5(e)(3). The timely release of recent data is urgently needed to inform the current public debate around these policies.

Publicly releasing the information that formed the basis of this recent report will enable members of the public to more meaningfully participate in the public debate on immigration issues implicated by Executive Order 13780, and to further the Order's goal of being "more transparent with the American people."¹¹

IV. Application for Waiver or Limitation of All Fees

The Brennan Center requests a waiver or limitation of all fees for document search, duplication, and review associated with this request. The Brennan Center is eligible for a waiver of all fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k). In the event that a full fee waiver is not granted, the Brennan Center should be eligible for limited fees for document duplication under 5 U.S.C. § 552(4)(A)(ii)(II) and 28 C.F.R. §§ 16.10(c)(1)(i) and 16.10(d)(1).

The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested herein for commercial use. Instead, the Center plans to analyze, publish, and publicly disseminate the information requested at no cost.

The Brennan Center conducts research and disseminates to the public information about issues affecting justice and democracy. It is engaged in social science research and therefore meets the definition of a noncommercial scientific institution entitled to a waiver of search and review fees. As a noncommercial requester, the Brennan Center also qualifies for waivers as an "educational institution" pursuant to 6 C.F.R. §§ 5.11(d). The Brennan Center qualifies as an educational institution because it is affiliated with the NYU School of Law, which is plainly an educational institution under the definition provided in 6 C.F.R. § 5.11(d)(1); see also *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381 (D.C. Cir. 1989). Finally, the Brennan Center

¹⁰ See, e.g. Andrew Lindsay, "What the Data Tells Us About Immigration and Terrorism," *Brennan Center for Justice*, February 17, 2017, <http://www.brennancenter.org/blog/what-data-tells-us-about-immigration-and-terrorism>; Shirin Sinar, "More Misleading Claims on Immigrants and Terrorism," *Just Security*, March 4, 2017, <https://www.justsecurity.org/38341/misleading-claims-immigrants-terrorism/>; Nora Ellingsen and Lisa Daniels, "What the Data Really Show About Terrorists Who 'Came Here,' Part I: Introduction and Overview," *Lawfare*, April 11, 2017, <https://www.lawfareblog.com/what-data-really-show-about-terrorists-who-came-here-part-i-introduction-and-overview>; Phil Hirschorn, "Most Convicted Terrorists Are U.S. Citizens. Why Does the White House Say Otherwise?," *PBS NewsHour*, March 12, 2017, <https://www.pbs.org/newshour/nation/convicted-terrorists-citizens>.

¹¹ Executive Order 13780 § 11 (March 6, 2017).

qualifies for a waiver as a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II) based on its track record of regularly publishing reports and papers.

Finally, as an organization that is “primarily engaged in disseminating information” under 5 U.S.C. § 552(a)(6)(E), the Brennan Center also qualifies as a representative of the news media, an “entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 28 C.F.R. § 16.10(b)(6). The information sought will “contribute significantly to public understanding of the operations or activities of the government,” as the Brennan Center will use the underlying data to shed light on and provide context for the numbers cited in the Section 11 Report. 28 C.F.R. § 16.10(k)(2)(i)-(ii). The underlying information on terrorism convictions compiled by the National Security Division of the DOJ since December 31, 2015 is meaningfully informative and not currently available in the public domain. 28 C.F.R. § 16.10(k)(2)(ii)(A). Furthermore, the Brennan Center is well-positioned as an expert in matters of national security and civil liberties to convey this information to a “reasonably broad audience of persons interested in the subject.” 28 C.F.R. § 16.10(k)(2)(ii)(B). The Center has published extensively on civil liberties and national security policy issues in the last decade, and in the last year, on issues around Executive Order 13780 in particular,¹² including articles specifically analyzing reports citing numbers derived from prior iterations of the DOJ National Security Division’s chart on international terrorism convictions.¹³

V. Response Requested in 10 Days

Your attention to this request is appreciated, and the Brennan Center will anticipate your determination regarding our request for expedited processing with ten (10) calendar days. 5 U.S.C. § 552(a)(6)(E)(ii)(I); 28 C.F.R. § 16.5(e)(4). I certify that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi); 28 C.F.R. 16.5(e)(3).

¹² See, e.g. Faiza Patel, “Trump Administration’s Fuzzy Math on Terrorist Origins is More than Misleading – It’s Dishonest,” *Just Security*, January 16, 2018, <https://www.justsecurity.org/51084/trump-administrations-fuzzy-math-terrorist-origins-misleading-its-dishonest/>; Harsha Panduranga, Faiza Patel, and Michael W. Price, *Extreme Vetting and the Muslim Ban*, Brennan Center for Justice, 2017; Harsha Panduranga, Faiza Patel, and Michael Price, “Extreme Vetting: Myths and Facts,” *Brennan Center for Justice*, October 11, 2017,

<http://www.brennancenter.org/analysis/extreme-vetting-myths-and-facts>; Faiza Patel, “Extreme Vetting by Algorithm,” *Just Security*, November 20, 2017, <https://www.justsecurity.org/47239/extreme-vetting-algorithm/>.

¹³ Faiza Patel, “Trump Administration’s Fuzzy Math on Terrorist Origins is More than Misleading – It’s Dishonest,” *Just Security*, January 16, 2018, <https://www.justsecurity.org/51084/trump-administrations-fuzzy-math-terrorist-origins-misleading-its-dishonest/>; Andrew Lindsay, “What the Data Tells Us About Immigration and Terrorism,” *Brennan Center for Justice*, February 17, 2017, <http://www.brennancenter.org/blog/what-data-tells-us-about-immigration-and-terrorism>.

If you have any questions regarding this request, please contact me at your earliest convenience at the address above, by telephone at (646) 292-8335, or by email at michael.price@nyu.edu.

Sincerely,

A handwritten signature in black ink, appearing to be 'M. Price', with a long horizontal flourish extending to the right.

Michael Price
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A handwritten signature in black ink, appearing to be 'Faiza Patel', with a long horizontal flourish extending to the right.

Faiza Patel
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