

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 31, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Mr. Secretary:

We are writing to express grave concerns about widespread reports that U.S. Customs and Border Protection (CBP) agents are failing to comply with federal court orders staying actions relating to the President's Executive Order banning refugees broadly and travelers from seven specific Muslim-majority nations.¹

The U.S. district court in Brooklyn issued an emergency temporary restraining order blocking the government from "in any manner, or by any means, removing individuals" who were legally authorized to enter the U.S., including refugees and holders of valid immigrant and non-immigrant visas.²

A second ruling from a federal district court in Virginia ordered the government to "permit lawyers access to all legal permanent residents being detained at Dulles International Airport" and forbid their removal for a seven-day period.³

The Department of Homeland Security (DHS) issued a response to the federal rulings, stating DHS would both "comply with judicial orders" and "implement the president's Executive Orders to ensure that those entering the United States do not pose a threat to our country or the American people."⁴ DHS also stated: "We are and will remain in compliance with judicial orders."⁵

¹ See, e.g., *Customs Agents Ignore Judge, Enforce Trump's Travel Ban*: ACLU, New York Post (Jan. 29, 2017) (online at <http://nypost.com/2017/01/29/customs-agents-ignore-judge-enforce-trumps-travel-ban-aclu/0>); *Trump's Border Patrol Defies Judge, U.S. Senator at Dulles Airport as His First Constitutional Crisis Unfolds*, Daily Beast (Jan. 29, 2017) (online at www.thedailybeast.com/articles/2017/01/29/trump-s-border-patrol-defies-judge-u-s-senator-at-dulles-airport-at-his-first-constitutional-crisis-unfolds.html).

² Decision and Order, *Darweesh v. Trump*, 17 Civ. 480 (E.D.N.Y. 2017).

³ Temporary Restraining Order, *Aziz v. Trump*, 1:17-cv-116 (E.D.V.A. Jan. 28, 2017).

⁴ Department of Homeland Security, *Department of Homeland Security Response to Recent Litigation* (Jan. 29, 2017) (online at www.dhs.gov/news/2017/01/29/departments-homeland-security-response-recent-litigation).

⁵ Department of Homeland Security, *Department of Homeland Security Statement on Compliance with*

However, those statements run contrary to the experiences of a number of Members of Congress, including on our Committee.

On Sunday afternoon, four Members of Congress, including Rep. Gerald E. Connolly, Rep. Jamie Raskin, Rep. Donald Beyer, and Rep. John Delaney, went to Washington Dulles International Airport to demand that detainees be permitted access to counsel, as ordered by federal District Judge Leonie M. Brinkema. While at the airport, Mr. Connolly spoke by phone with CBP Congressional Affairs requesting to meet in person with a CBP representative at the airport. CBP leadership at the airport refused to meet with those Members of Congress. They also refused to permit those Members of Congress or any attorneys to have access to any individuals targeted by the Executive Order who were being detained or subjected to secondary inspection, or to verify that no individuals were being detained. On the evening before, Senator Cory Booker went to Dulles airport and warned that the Administration had “violated” Judge Brinkema’s order by denying individuals access to counsel.⁶

According to press reports, DHS officials initially interpreted the Executive Order as not applying to lawful permanent residents, or “green card holders,” but White House senior staff, including Steve Bannon and Stephen Miller, overruled that interpretation, prompting DHS to detain numerous lawful permanent residents at airports across the country on Saturday night.⁷ Two of Mr. Connolly’s own constituents from Virginia’s 11th district, legal permanent residents living in Fairfax, were detained on Saturday. One was a 71-year-old Iranian with a heart condition. While we are thankful that those detainees have now been released, we remain concerned about others who have been or will be detained and denied access to legal counsel.

Appearing on national television on Sunday morning, White House Chief of Staff Reince Priebus appeared to deny these reports, stating: “We didn’t overrule the Department of Homeland Security, as far as green card holders moving forward, it doesn’t affect them.”⁸

The Executive Order appears to have been written and issued publicly by the White House before it was vetted through the normal interagency process. According to press reports, when the Executive Order was issued, DHS officials did not know which countries it would apply to, had not vetted its legality or how it would be applied, and had not obtained an opinion on its legality from the Department of Justice’s Office of Legal Counsel. According to court

Court Orders and The President’s Executive Order (Jan. 29, 2017) (online at www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-president%E2%80%99s-executive-orders).

⁶ *Trump’s Border Patrol Defies Judge, U.S. Senator at Dulles Airport as His First Constitutional Crisis Unfolds*, Daily Beast (Jan. 29, 2017) (online at www.thedailybeast.com/articles/2017/01/29/trump-s-border-patrol-defies-judge-u-s-senator-at-dulles-airport-at-his-first-constitutional-crisis-unfolds.html).

⁷ *Inside the Confusion of the Trump Executive Order and Travel Ban*, CNN (Jan. 29, 2017) (online at www.cnn.com/2017/01/28/politics/donald-trump-travel-ban/index.html).

⁸ *Priebus: Immigration Order ‘Doesn’t Include’ Green Card Holders, But Anyone Traveling to Banned Countries Will Be ‘Subjected to Further Screening,’* NBC News (Jan. 29, 2017) (online at www.nbcnews.com/politics/politics-news/priebus-immigration-order-doesn-t-include-green-card-holders-anyone-n713731).

filings, one CBP agent referred attorneys asking for guidance on the Executive Order to the President.⁹

On Sunday, you apparently tried to clarify the situation and ameliorate the impact on lawful permanent residents by declaring that you “hereby deem the entry of lawful permanent residents to be in the national interest.”¹⁰

Yesterday, Senators John McCain and Lindsey Graham issued the following statement:

Such a hasty process risks harmful results. We should not stop green-card holders from returning to the country they call home. We should not stop those who have served as interpreters for our military and diplomats from seeking refuge in the country they risked their lives to help. And we should not turn our backs on those refugees who have been shown through extensive vetting to pose no demonstrable threat to our nation, and who have suffered unspeakable horrors, most of them women and children.¹¹

We agree. We demand that you immediately cease and desist any actions that violate the judicial orders, direct all employees to do the same, and take all steps necessary to ensure full compliance across the country.

We also request that you provide the following documents and information as soon as possible, but no later than February 10, 2017:

1. all communications, internal and external, regarding the Executive Order;
2. all communications, internal and external, about court orders regarding the Executive Order, including all emails regarding complying with the court orders and any written guidance provided to immigration officials regarding complying with the court orders addressing the Executive Order;
3. the number of individuals detained, subjected to secondary inspection, or removed from flights since the Executive Order was issued;
4. the length of time these individuals were detained or subjected to secondary inspection;

⁹ *Inside the Confusion of the Trump Executive Order and Travel Ban*, CNN (Jan. 29, 2017) (online at www.cnn.com/2017/01/28/politics/donald-trump-travel-ban/index.html).

¹⁰ Department of Homeland Security, *Statement by Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States* (Jan. 29, 2017) (online at www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states).

¹¹ Offices of Senator John McCain and Lindsay Graham, *Statement by Senators McCain & Graham on Executive Order on Immigration* (Jan. 29, 2017) (online at www.mccain.senate.gov/public/index.cfm/press-releases?ID=587F2A2D-8A47-48F7-9045-CF30F0A77889).

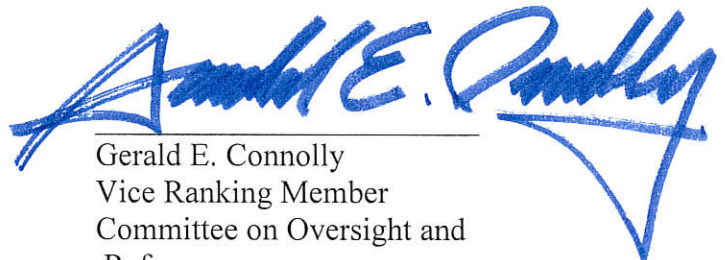
5. the nationalities of the individuals who were detained, subjected to secondary inspection, or removed from flights;
6. the locations at which the individuals were detained, subjected to secondary inspection, or removed from flights;
7. the immigration status of the individuals who were detained, subjected to secondary inspection, or removed from flights;
8. whether the individuals who were detained or subjected to secondary inspection then boarded flights to leave the United States, were then released into the United States, or remain detained;
9. whether the individuals who were detained or subjected to secondary inspection were ever relocated to offsite detention facilities;
10. whether the individuals who were detained or subjected to secondary inspection had access to legal counsel and if so, when they were provided that access; and
11. whether individuals subject to the Executive Order will have access to legal counsel while detained or subject to secondary inspection in the future.

Thank you for your prompt attention to this matter.

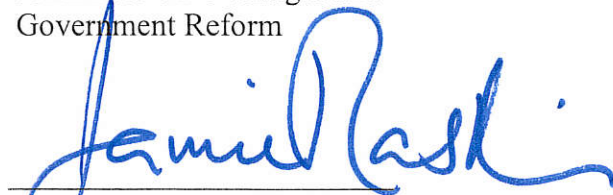
Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



Gerald E. Connolly
Vice Ranking Member
Committee on Oversight and
Reform



Jamie Raskin
Committee on Oversight and
Government Reform

cc. The Honorable Jason Chaffetz, Chairman
House Committee on Oversight and Government Reform