



October 4, 2016

Karen Neuman  
Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security



**RE: FOIA Request to U.S. Department of Homeland Security (DHS) Regarding Records Sent by or to DHS Secretary Jeh Johnson Concerning Subject of DHS OIG Report OIG-16-130**

Dear Ms. Neuman:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")<sup>1</sup> on behalf of itself and over 218,000 of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks any and all records, communications or briefings sent from, prepared by, sent to, received by, reviewed by, or in any way communicated to or by U.S. Department of Homeland Security ("DHS") Secretary Jeh Johnson, his aides, staff, agents or representatives, pertaining to the subject matter of the DHS Office of Inspector General ("OIG") Report, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records*, OIG-16-130, released September 8, 2016,<sup>2</sup> regarding actions of DHS, U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs

---

<sup>1</sup>The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

<sup>2</sup>U.S. DEP'T OF HOMELAND SEC. OFFICE OF INSPECTOR GEN., OIG-16-130, POTENTIALLY INELIGIBLE INDIVIDUALS HAVE BEEN GRANTED U.S. CITIZENSHIP BECAUSE OF INCOMPLETE FINGERPRINT RECORDS (Sept. 8, 2016), available at <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf> [hereinafter OIG-16-130].



Enforcement ("ICE"), and the DHS Office of Operations Coordination ("OPS"), mistakenly granting citizenship to a number of individuals from "special interest countries."

### **Background**

Pursuant to DHS FOIA regulation 6 C.F.R. §5.3(b), this Background addresses "the date, title or name, author, recipient, and subject matter of the record[s]" requested, to the extent known.

#### **I. DHS OIG Report**

The DHS OIG "released a report that found that USCIS granted U.S. citizenship to at least 858 individuals from special interest countries who had been ordered deported or removed under another name."<sup>3</sup> According to its release, "OIG learned that at least three individuals who became naturalized citizens after having been deported under a different identity had obtained credentials to conduct security-sensitive work at commercial airports or maritime facilities and vessels. Since being identified, all have had their credentials revoked."<sup>4</sup>

According to the Report:

As long as the older fingerprint records have not been digitized and included in the repositories, USCIS risks making naturalization decisions without complete information and, as a result, naturalizing additional individuals who may be ineligible for citizenship or who may be trying to obtain U.S. citizenship fraudulently.<sup>5</sup>

The DHS OIG found: "As naturalized citizens, these individuals retain many of the rights and privileges of U.S. citizenship, including serving in law enforcement, obtaining a security clearance, and sponsoring other aliens' entry into the United States."<sup>6</sup> He also found that, disturbingly, "ICE has investigated few of these naturalized citizens to determine whether they should be denaturalized, but is now taking steps to increase the number of cases to be investigated, particularly those who hold positions of public trust and who have security clearances."<sup>7</sup>

---

<sup>3</sup>U.S. Dep't of Homeland Sec. Office of Inspector Gen., Press Release – Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records (Sept. 19, 2016), available at <https://www.oig.dhs.gov/assets/pr/2016/oigpr-091916.pdf>.

<sup>4</sup>*Id.*

<sup>5</sup>OIG-16-130 *supra* note 2.

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

According to CNN, “the truth is the report is even worse than reported, with more than 1,800 individuals naturalized who should have been deported from the country.”<sup>8</sup> As CNN reported,

a footnote on page one of the report also states that there were, as of November 2015, an additional 953 individuals about whom the Inspector General couldn’t determine if there was a problem with the fingerprint records specifically, but also should have been deported. This other group consisted of members of a slightly broader classification, from countries of concern as well as from neighboring countries where there is a history of fraud.<sup>9</sup>

And as reported by Fox News:

DHS Inspector General John Roth also found fingerprints missing from federal databases for as many as 315,000 immigrants with final deportation orders or who are fugitive criminals. Immigration and Customs Enforcement has not reviewed about 148,000 of those immigrants’ files to add fingerprints to the digital record.<sup>10</sup>

## **II. Secretary Jeh Johnson’s Congressional Testimony**

On Tuesday, September 27, 2016, “Homeland Security Secretary Jeh Johnson told Congress the actual number is ‘somewhere around’ 750. But Johnson could not say how many of them were from countries known to be havens for terrorists.”<sup>11</sup>

One media outlet outlined the exchange as follows:

“Were any of them from special interest countries?” Sen. Ben Sasse, a member of the Senate Homeland Security Committee, asked Johnson.

“Not off hand,” Johnson replied. “I – I can’t – I can’t give you that breakdown offhand. It is a – I suspect it is a knowable fact, which we can provide you.”

“Were any of them from Iran, Syria, or Libya?” Sasse asked Johnson.

“I’d have to check. I don’t know sitting here right now, sir,” the secretary responded.

---

<sup>8</sup>Jake Tapper, *Number of Those Wrongly Given Citizenship Higher than Initially Reported*, CNN.COM (Sept. 20, 2016, 6:56 PM), <http://www.cnn.com/2016/09/20/politics/dhs-report-citizenship-deportations/>.

<sup>9</sup>*Id.*

<sup>10</sup>*Watchdog: Feds Wrongly Granted Citizenship to Hundreds Facing Deportation*, FOXNEWS.COM (Sept. 19, 2016), <http://www.foxnews.com/politics/2016/09/19/more-than-800-immigrants-mistakenly-granted-citizenship.html>.

<sup>11</sup>Susan Jones, *Jeh Johnson Doesn’t Know how Many People Mistakenly Granted Citizenship were from Iran, Syria, Libya*, CNSNEWS.COM (Sept. 28, 2016, 7:54 AM), <http://cnsnews.com/news/article/susan-jones/jeh-johnson-doesnt-know-how-many-people-mistakenly-granted-citizenship-were>.

"How – how would you not know that?" Sasse asked. "Why would that not be something that's urgent to you to understand the categories under the 700 –"

"Oh, yes. It's a knowable fact," Johnson repeated. "I can get you the information. Just sitting here right now, I don't have the list in front of me. You know, I don't want to be wrong."

"Do you think any of them were terrorists?" Sasse asked.

"I have no basis to believe that any of them were terrorists or suspect terrorists," Johnson said.<sup>12</sup>

And,

Sasse asked Johnson, "Is there any more important defense than knowing if any of those 750 were terrorists or likely terrorists?"

"I agree with you," Johnson replied. "I agree with your question, sir. And that's why we are going through this process right now to investigate each one of these cases using the resources we have."

Sasse followed up: "But in the 11 days, or whatever it's been since the I.G. made your department aware of the problem, you didn't think to ask if any were from Libya or Syria?"

"I – Senator, just sitting here right now, I cannot give you the answer to that question. It is an important question. Just sitting here right now, I cannot give you the answer to the question. And I don't want to be wrong."<sup>13</sup>

### **Records Requested**

For purposes of this Request, the term "record" is "any information" that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term "record" also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of

---

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*



*Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 15-5128 (D.C. Cir. July 5, 2016)<sup>14</sup> (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DHS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Homeland Security in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Homeland Security in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Homeland Security; all without regard to the component or office in which that person serves.

**For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is July 1, 2014, to the date this Request is processed.**

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the U.S. Department of Homeland Security produce the following within twenty (20) business days:

1. Any and all records, communications or briefings sent from, prepared by, sent to, received by, reviewed by, or in any way communicated to or by, Secretary Jeh Johnson, his aides, staff, representative or agents, **from July 1, 2016, to the date this Request is processed**, referencing or regarding in any way the subject matter of the DHS Office of Inspector General (“OIG”) Report, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records*, OIG-16-130, released September 8, 2016,<sup>15</sup> regarding actions of DHS, USCIS, ICE, and the DHS OPS, mistakenly granting citizenship to a number of individuals from “special interest countries,” including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

2. Any and all records, communications or briefings sent from, prepared by, sent to, received by, reviewed by, or in any way communicated to or by, Secretary Jeh Johnson, his

---

<sup>14</sup> *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 15-5128 (D.C. Cir. July 5, 2016), available at [https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/\\$file/15-5128-1622973.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/$file/15-5128-1622973.pdf).

<sup>15</sup> OIG-16-130 *supra* note 2.

aides, staff, representative or agents, **from July 1, 2014, to June 30, 2016**, referencing or regarding in any way the subject matter of the DHS Office of Inspector General ("OIG") Report, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records*, OIG-16-130, released September 8, 2016,<sup>16</sup> regarding actions of DHS, USCIS, ICE, and the DHS OPS, mistakenly granting citizenship to a number of individuals from "special interest countries," including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

3. Any and all records, communications or briefings sent from, prepared by, sent to, received by, reviewed by, or in any way communicated to or by, Secretary Jeh Johnson, his aides, staff, representative or agents, **from July 1, 2016, to the date this Request is processed**, referencing or regarding in any way the subject matter of the DHS Office of Inspector General ("OIG") Report, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records*, OIG-16-130, released September 8, 2016,<sup>17</sup> regarding actions of DHS, USCIS, ICE, and the DHS OPS, mistakenly granting citizenship to a number of individuals from "special interest countries," which reference Iraq, Libya, Syria, or any nation identified by DHS as a "special interest country" as that term was used in the OIG report, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

4. Any and all records, communications or briefings sent from, prepared by, sent to, received by, reviewed by, or in any way communicated to or by, Secretary Jeh Johnson, his aides, staff, representative or agents, **from July 1, 2016, to the date this Request is processed**, referencing or regarding in any way the subject matter of the DHS Office of Inspector General ("OIG") Report, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records*, OIG-16-130, released September 8, 2016,<sup>18</sup> regarding actions of DHS, USCIS, ICE, and the DHS OPS, mistakenly granting citizenship to a number of individuals from "special interest countries," which also reference Iraq, Libya, Syria, or any nation identified by DHS as a "special interest country" as that term was used in the OIG report, including but not limited to any record located on backup tapes, archives, any other recovery,

---

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

<sup>18</sup>*Id.*

backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

### CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .<sup>19</sup>

As such, if this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions.

---

<sup>19</sup>PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), *available at* [https://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct](https://www.whitehouse.gov/the_press_office/FreedomofInformationAct).

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jay Alan Sekulow, Chief Counsel  
Colby M. May, Senior Counsel  
Craig L. Parshall, Special Counsel  
Benjamin P. Sisney, Senior Litigation Counsel  
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

A handwritten signature in cursive script, reading "Jay Alan Sekulow".

Jay Alan Sekulow  
Chief Counsel

A handwritten signature in cursive script, reading "Colby M. May".

Colby M. May  
Senior Counsel

A handwritten signature in cursive script, reading "Benjamin P. Sisney".

Benjamin P. Sisney  
Senior Litigation Counsel

cc: DHS Office for Civil Rights and Civil Liberties (CRCL)  
Federal Law Enforcement Training Center (FLETC)  
DHS Office of Intelligence & Analysis (I&A)  
Transportation Security Administration (TSA)  
United States Immigration & Customs Enforcement (ICE)  
United States Customs & Border Protection (CBP)  
United States Citizenship and Immigrations Services (USCIS)