

Congress of the United States
Washington, DC 20510

October 12, 2018

The Honorable Michael R. Pompeo
Secretary
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20530

Dear Secretaries Pompeo and Nielsen:

We write to request further information on the administration's implementation of Presidential Proclamation 9645 (PP 9645), *Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats*.

Section 3(c) of PP 9645 authorizes waivers for foreign nationals for whom entry to the United States is limited or suspended. Waivers are to be granted if the foreign national meets criteria, including: (1) when a waiver is "in the national interest," (2) when "denying entry would cause undue hardship," and (3) when entry does "not pose a threat to the national security or public safety of the United States." The Secretaries of State and Homeland Security are directed to "adopt guidance addressing the circumstances in which waivers may be appropriate for foreign nationals seeking entry as immigrants or nonimmigrants."

Despite repeated requests from the Congress, the Administration has not been forthcoming with Members of Congress or the American people about the implementation of PP9645. Specifically, the Administration has not clarified the process by which the State Department determines whether or not an applicant is eligible to be considered for a waiver.

Furthermore, the Administration has not made clear how many visas it has issued to individuals granted waivers. In a letter to Senators Van Hollen, Murphy, and Blumenthal on June 22, the State Department stated it had cleared 768 applicants for waivers as of May 31, but the Department has declined to provide information on how many "cleared" applicants have actually received visas and extensive public reporting indicates that the number is very low.¹ Likewise, a State Department official told *Public Radio International* in August that "as of July 31, 2018, 1,246 applicants from the banned countries were cleared for waivers," but "would not provide a total number of people who had applied for a visa from the banned countries during that period,

¹ Hauslohner, Abigail, "Coveted exemptions from Trump's travel ban remain elusive for citizens of Muslim-majority countries." The Washington Post, May 22, 2018. https://www.washingtonpost.com/national/coveted-waivers-for-trumps-travel-ban-remain-elusive-for-citizens-of-muslim-majority-countries/2018/05/22/d48cc8d8-48b6-11e8-827e-190efaf1f1ee_story.html?utm_term=.7f2111378236

or the number of applicants who were granted a waiver and a visa, as opposed to those who were cleared for them.”²

Additionally, a report from *Slate* on June 15 quoted the sworn affidavit of a consular officer who resigned in March. In the affidavit, the officer stated:

“They gave us a list of things and we would go down the list one by one until we were able to determine at all possible cost that the person was not eligible to even apply for the waiver. My understanding was no one is to be eligible to apply. ... If for some reason an applicant made it through the list and we had no choice but to determine we could find an applicant eligible to apply, regardless of the [Presidential Proclamation] instructions that we had ‘discretion to grant the waiver,’ we were not allowed to exercise that discretion. We were mandated to send to Washington that we found this applicant eligible to apply and Washington would then make the decision to grant or deny the waiver.”³

Given this, we have serious concerns that the waiver process continues to be implemented unevenly and with little guidance—and that waivers granted through the process are not leading to the issuance of visas for cleared individuals. As a result, we request the following additional information that we hope will shed light on the Administration’s progress in implementing the waiver process by October 26, 2018:

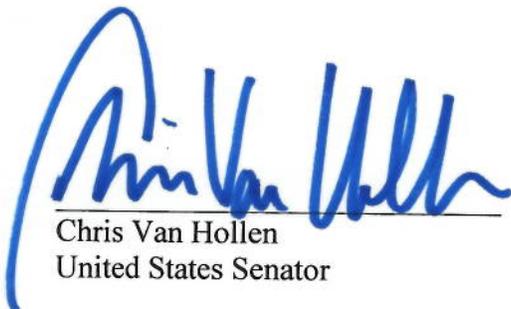
1. The number of visa applications received and processed from countries affected by PP 9645 as of October 12, 2018, including:
 - a. The total number of applications for nonimmigrant and immigrant visas for each of the identified countries
 - b. The number of applicants refused for reasons unrelated to the proclamation for each of the identified countries, disaggregated by basis for refusal
 - c. The number of applicants qualifying for an exception for each of the identified countries, disaggregated by basis for the exception
 - d. The number of applicants who failed to meet the criteria for a waiver for each of the identified countries, disaggregated by basis for denial
 - e. The number of applicants refused under the proclamation with waiver consideration for each of the identified countries, disaggregated by basis for refusal
 - f. The number of waivers approved for each of the identified countries, disaggregated by basis for approval
 - g. The number of visas issued to individuals granted waivers for each of the identified countries, disaggregated by basis for approval
 - h. The average number of days between waiver approval notice for each of the identified countries, disaggregated by basis for approval, and visa issuance.

² Jaafari, Shirin, “‘There is real suffering’: How the travel ban is tearing some families apart.” PRI, August 17, 2018. <https://www.pri.org/stories/2018-08-17/there-real-suffering-how-travel-ban-tearing-some-families-apart>

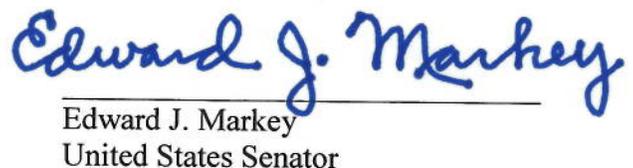
³ Stahl, Jeremy, “‘The Waiver Process Is Fraud.’” *Slate*, June 15, 2018. <https://slate.com/news-and-politics/2018/06/trump-travel-ban-waiver-process-is-a-sham-two-consular-officers-say.html>

2. The number of waivers granted to diversity visa winners from each of the identified countries and the number of visas issued to those individuals.
3. Any guidance or other documents provided to embassies and consulates regarding PP9645 and waiver criteria, including 17 STATE 97682 and 17 STATE 56801.
4. Did the Secretary of Homeland Security perform the required 180-day review of the listed countries in consultation with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies?
 - a. If so, what findings or conclusions were reported to the President?
 - b. What was communicated to the governments of the affected countries regarding their information sharing and/or security deficiencies as a result of the review and reporting process?
5. What steps is the administration taking to publicize information regarding the waiver application process?
 - a. Have embassies and consulates been instructed to post information regarding application and appeal procedures for waivers on their public websites?
 - b. Have embassy and consular staff conduct outreach to visa applicants from countries listed under Section 2 of PP 9645 regarding the application and appeal process for waivers?
6. After a denial, is an applicant's file held at the embassy or consulate or returned to the National Visa Center?
7. How does the Department of State adjudicate the "undue hardship" standard without accepting evidence? What is the basis in law for the "undue hardship" standard?

Sincerely,



Chris Van Hollen
United States Senator



Edward J. Markey
United States Senator



Richard Blumenthal
United States Senator



Kirsten Gillibrand
United States Senator



Jeanne Shaheen
United States Senator



Cory A. Booker
United States Senator



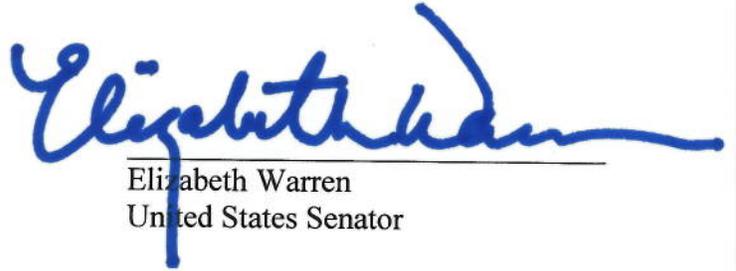
Jeffrey A. Merkley
United States Senator



Mazie K. Hirono
United States Senator



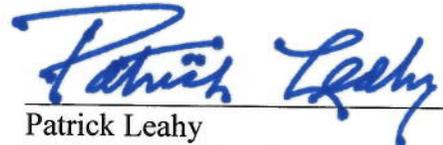
Tammy Duckworth
United States Senator



Elizabeth Warren
United States Senator



Ron Wyden
United States Senator



Patrick Leahy
United States Senator



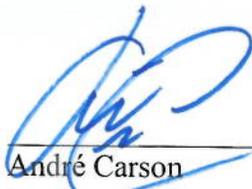
Kamala D. Harris
United States Senator



Patty Murray
United States Senator



Christopher A. Coons
United States Senator



André Carson
Member of Congress



Seth Moulton
Member of Congress



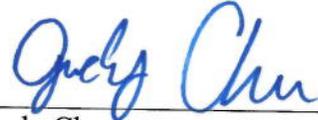
Karen Bass
Member of Congress



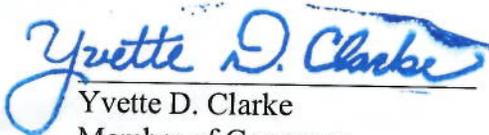
Don Beyer
Member of Congress



Earl Blumenauer
Member of Congress



Judy Chu
Member of Congress



Yvette D. Clarke
Member of Congress



Rosa L. DeLauro
Member of Congress



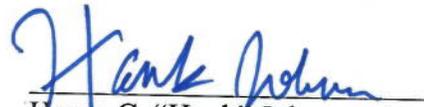
Debbie Dingell
Member of Congress



Keith Ellison
Member of Congress



Colleen Hanabusa
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



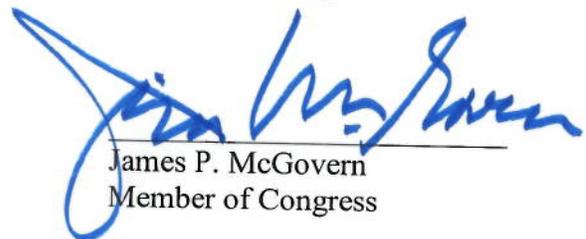
Joseph P. Kennedy, III
Member of Congress



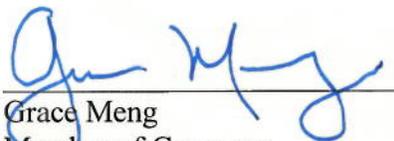
Ro Khanna
Member of Congress



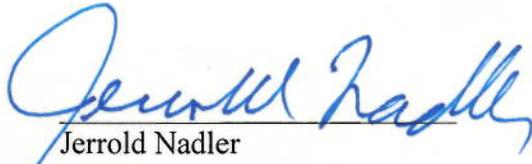
Zoe Lofgren
Member of Congress



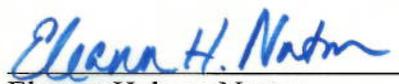
James P. McGovern
Member of Congress

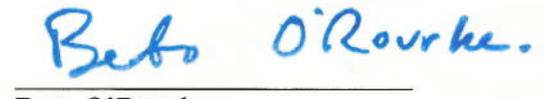

Grace Meng
Member of Congress

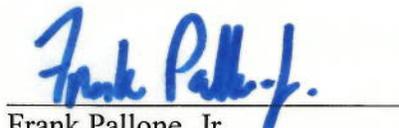

Gwen Moore
Member of Congress


Jerrold Nadler
Member of Congress


Richard E. Neal
Member of Congress

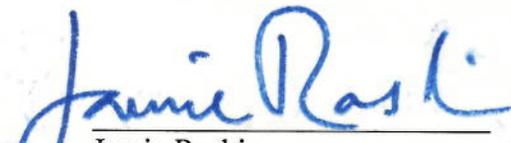

Eleanor Holmes Norton
Member of Congress

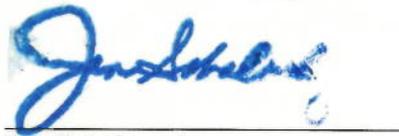

Beto O'Rourke
Member of Congress


Frank Pallone, Jr.
Member of Congress


Chellie Pingree
Member of Congress


Mark Pocan
Member of Congress


Jamie Raskin
Member of Congress


Jan Schakowsky
Member of Congress


Albio Sires
Member of Congress


Peter J. Visclosky
Member of Congress