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# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*

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September 11, 2015

The Honorable John F. Kerry  
Secretary of State  
U.S. Department of State  
2201 C Street, NW  
Washington, D.C. 20520

Dear Secretary Kerry:

Thank you for coming to Capitol Hill on Wednesday to consult members of the House and Senate Judiciary Committees to discuss the worldwide refugee situation and provide us with the administration's recommendation on how many refugees should be resettled in the United States in the coming fiscal year. I wanted to follow up on some key concerns I have about our discussion, particularly the suggestion that the administration may exceed the number of refugees for Fiscal Year 2016 that was proposed to Congress and the administration's intent to admit into the country thousands of refugees from Syria.

First, during the meeting, you said that the administration is seeking a reasonable increase in refugees allowed into the United States in the upcoming fiscal year. According to the report provided to us, the administration would like to increase the number of refugees who would be admitted to the United States from 70,000 to 75,000. However, after you left the consultation, I asked Assistant Secretary Richard to clarify about whether that number would be increased at some point later in the fiscal year. She admitted that there are discussions within the administration about adding to the 75,000 number after the start of the new fiscal year, and the administration could use authority reserved for "unforeseen emergency refugee situations" to go above what it proposed to Congress in this week's consultation. The statute, however, requires that an additional consultation with Congress take place if the President plans to increase the number based on an emergency refugee situation.

- Will you commit to consulting Congress, particularly the House and Senate Committees on the Judiciary, about any internal discussions and plans to increase the number of refugees to be admitted to the United States beyond the initially proposed 75,000?
- If the administration does exceed the proposed number of 75,000, how will the administration pay for the costs associated with such additional refugee admissions?

Second, during our meeting on Wednesday, we discussed the Syrian refugee crisis. On December 9, 2014, Assistant Secretary Richard said that the State Department is "reviewing some 9,000 recent United Nations High Commissioner for Refugees referrals from Syria. We are receiving roughly a thousand new ones each month, and we expect admissions from Syria to

surge in 2015 and beyond.” In response to a follow-up question from the Senate Judiciary Committee, Principal Deputy Assistant Secretary Simon Henshaw said, “As of July 30, 2015, the Department of State has received more than 16,000 Syrian referrals from the United Nations High Commissioner for Refugees. As of July 30, the United States has admitted 1,042 Syrian refugees in FY 2015 and anticipates admitting a total of 1,500-1,800 Syrians this fiscal year. We anticipate admitting 5,000-8,000 Syrian refugees in FY 2016.” Yet, on Thursday, White House spokesman Josh Earnest said that the administration is considering admitting up to 10,000 Syrian refugees over the next year.

Before agreeing to accept thousands of Syrian refugees, the Obama administration must prove to the American people that it will take the necessary precautions to ensure that national security is a top priority, especially at a time when ruthless terrorist groups like ISIS are committed to finding ways to enter the United States and harm Americans. As reported by the Washington Times yesterday, Director of National Intelligence James Clapper publicly stated at a U.S. intelligence community conference this week that the “Islamic State’s ability to infiltrate waves of Syrian war refugees flowing into Europe and potentially the United States” is a “huge concern” to the intelligence community.<sup>1</sup>

This concern is not merely hypothetical. In fact, past efforts to bring war refugees from the Middle East into the United States have allowed terrorists to enter our country. For example, an ABC News investigation revealed in 2013 that the United States may have allowed “[s]everal dozen suspected terrorist bombmakers” to enter the United States as Iraqi war refugees.<sup>2</sup> In 2009, two such refugees were arrested in Kentucky and ultimately convicted for past support of, and association with, Al Qaeda in Iraq. As ABC News reported, the two admitted in court that they had attacked U.S. soldiers in Iraq, and were suspected of participating in an attack that killed four American soldiers.

- Although refugee vetting processes may have improved in recent years, how, specifically, will the administration screen Syrian refugees to ensure they have never been affiliated with a terrorist group?
- Will biometric screening be used? If so, how can the administration be confident that its biometric databases will identify terrorists who may never have been involved in past IED attacks that would have placed their fingerprints in the TEDAC databases (as reported by ABC News)?
- Will the current Syrian refugee vetting process be altered in any way if the annual allocation of 70,000 refugees is increased to 75,000? If so, how?
- How will the administration handle any Syrian refugees that it learns – after the refugees have entered the United States – were engaged in terrorist activity before coming here? Will they be returned to Syria if they cannot be convicted under U.S. criminal laws?

Third, I have concerns about the administration once again abusing its authority to bypass the refugee process and parole individuals from Syria into the country. In March 2013, more than 70 members of the House of Representatives sent a letter to the Department of Homeland

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<sup>1</sup> “James Clapper: Islamic State could infiltrate U.S., West through migrants fleeing from Syria,” Washington Times, September 9, 2015, <http://www.washingtontimes.com/news/2015/sep/9/james-clapper-islamic-state-could-infiltrate-us-we/#>

<sup>2</sup> “U.S. May Have Let ‘Dozens’ of Terrorists Into the Country as Refugees,” ABC News, November 20, 2013, <http://abcnews.go.com/Blotter/al-qaeda-kentucky-us-dozens-terrorists-country-refugees/story?id=20931131>

Security asking that the Department parole into the United States all Syrian nationals with an approved immigrant petition.<sup>3</sup> The authors of the letter estimated such a parole program would cover about 6,000 individuals; assuming that number is not an underestimation, it has surely increased substantially since 2013. In response to a question I asked as part of the Department of Homeland Security Oversight hearing on April 28, 2015, the Department replied that it “considered whether to establish a parole program for Syrians in Syria but decided that establishing such a program was not warranted.” The Department added that it “is not considering establishing such a program at this time.” Of course, such a response means that a mass parole program for Syrians, like the existing Haitian Family Reunification Program, is not off the table.

- Has the administration reconsidered a parole program for Syrians? If so, what is being discussed?
- If it is being discussed as an option, how would such a program not be a violation of the statutory requirement that parole be granted only on a case-by-case basis?
- If it is being discussed as an option, how would such a program not constitute a violation of Congressional intent to prohibit use of parole “to circumvent Congressionally-established immigration policy or to admit aliens who do not qualify for admission under established legal immigration categories”?<sup>4</sup>
- If it is being discussed, why would establishing such a parole program for Syrian nationals be necessary at all in light of the existence of the United States Refugee Admissions Program?

Finally, I would like to know more about what the administration is doing to secure the assistance of other countries around the world to help with the Syrian refugee crisis. According to the Washington Post, there are several groups that are not pleased with the willingness of other Middle Eastern countries to help those fleeing Syria.<sup>5</sup> The Post writes:

*As Amnesty International recently pointed out, the "six Gulf countries — Qatar, United Arab Emirates, Saudi Arabia, Kuwait, Oman and Bahrain — have offered zero resettlement places to Syrian refugees." This claim was echoed by Kenneth Roth, executive director of Human Rights Watch, on Twitter.*

The United States welcomes more refugees than the rest of the world’s countries combined, and we need to continue to do what is reasonable to help with the crisis that is unfolding in the Middle East and Europe. But, the administration also needs to enlist the help of

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<sup>3</sup> Letter to Secretary of Homeland Security Janet Napolitano from Rep. Adam B. Schiff et al (March 27, 2013), available at <http://www.scribd.com/doc/170880979/Letter-to-DHS-Humanitarian-Parole-for-Syrians>.

<sup>4</sup> Section 523, House Rept. 104-469 (March 4, 1996), at 140-41 (available at <https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf>). See also *Cruz-Miguel v. Holder*, 650 F.3d 189, 198-200 (2nd Cir. 2011), footnote 15 (stating that Congress’ concern in enacting amendments to the parole authority was that “parole under § 1182(d)(5)(A) was being used by the executive to circumvent congressionally established immigration policy.”).

<sup>5</sup> “The Arab world’s wealthiest nations are doing next to nothing for Syria’s refugees,” The Washington Post, September 4, 2015, <https://www.washingtonpost.com/news/worldviews/wp/2015/09/04/the-arab-worlds-wealthiest-nations-are-doing-next-to-nothing-for-syrias-refugees/>

other capable, affluent nations in the Middle East to deal with the crisis in Syria to care for those neighbors who are fleeing violence and persecution.

- What factors led to the increase in the administration's estimate of Syrians being admitted – from the estimate provided to the committee by Principal Deputy Assistant Secretary Simon Henshaw to the estimate provided by White House spokesman Josh Earnest this week?
- Would the 10,000 Syrian refugee admissions be considered part of the 75,000 estimate provided to Congress this week, or would it be in excess of the 75,000 allocation?
- Has the administration made any commitments to other countries to admit a mass number of Syrian refugees? If so, please elaborate.
- What discussions have you had with other countries about their willingness and ability to take Syrian refugees? What has been their response? Please provide details on every country that has been contacted by the administration on this matter.

Again, I appreciate your work on this issue and the time you provided to members of Congress this week on refugee issues. I would appreciate responses to my questions no later than September 25, 2015. If you have any questions, please contact Kathy Nuebel Kovarik of my staff at (202) 224-5225. Thank you.

Sincerely,

  
Charles E. Grassley  
Chairman

cc: The Honorable Jeh Johnson  
Secretary, Department of Homeland Security