

United States Senate

WASHINGTON, DC 20510

January 31, 2018

The Honorable Rex Tillerson
Secretary of State
U.S. Department of State
2201 C St NW
Washington, DC 20520

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

We are writing to request clarity on the administration's implementation of Presidential Proclamation 9645, *Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats*, following the December 4 stay by the Supreme Court pending further proceedings in the courts of appeals. Specifically, we seek guidance on the standard for receiving a waiver authorized under PP 9645.

Under Section 3(c) of the Proclamation, the President authorizes "case-by-case" waivers for foreign nationals for whom entry to the United States is limited or suspended. Waivers are supposed to be granted if a consular officer or a U.S. Customs and Border Protection (CBP) officer determines that the foreign national meets any one of the enumerated criteria. These standards include: (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." Section 3(c)(ii) of the Proclamation further stipulates that the Secretaries of State and Homeland Security shall "adopt guidance addressing the circumstances in which waivers may be appropriate for foreign nationals seeking entry as immigrants or nonimmigrants."

To date, the administration has not offered any definitive guidance on the waiver program. An alert issued following the Supreme Court's December 4th decision refers back to the Proclamation, in response to the question of how applicants qualify for a waiver. It leaves unanswered critical questions, including what constitutes an "undue hardship," what criteria will determine whether a waiver is "in the national interest," and how a consular or CBP officer will determine whether a foreign national poses a threat. Furthermore, in the absence of this guidance, we have received reports of the near uniform denial of waivers for visas.

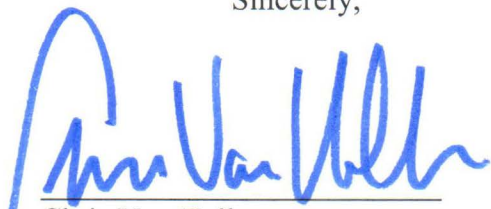
Given the lack of detailed information, we ask that you provide us with the following information by February 7, 2018:

- Guidance issued to any consular post, or consular or CBP officers on the criteria, policies and procedures for the waivers authorized under PP 9645, including:
 - How the Departments of State and Homeland Security are ensuring consistency of treatment for waiver applicants
 - How the waiver program is being standardized across the embassies and consulates primarily responsible for considering visas for nationals from the countries identified for suspension or restriction
- Guidance on the process for requesting a waiver, including:

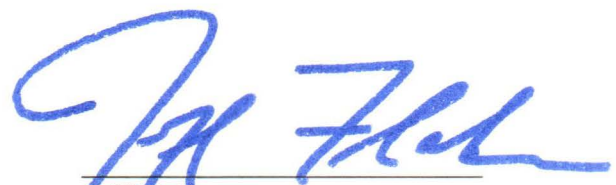
- The qualifications and standard of proof for establishing waiver eligibility
 - Whether consular officers proactively ask applicants to submit a waiver application during or after their interview
 - Whether officers are required to review all waiver applications
 - The number of personnel involved in the review and adjudication of a waiver application, including the title and rank of those individuals
 - Whether waivers are reviewed before or after an applicant is subject to a Security Advisory Opinion
 - Whether applicants are provided with forms or other guidance on preparing and submitting a waiver application
 - An explanation of the procedure for claiming a waiver or exception for an applicant still awaiting a decision, but interviewed prior to the effective date of PP 9645
 - Whether there is an appeals process for applicants denied visas pursuant to PP 9645
- The total number of visas requested and issued for each of the identified countries, pursuant to the issuance of PP 9645
 - The total numbers of waivers sought by visa applicants for each of the identified countries, pursuant to the implementation of PP 9645
 - The total number of waivers issued for each of the affected countries, pursuant to the implementation of PP 9645
 - The criteria by which waivers were approved or denied for the identified countries

We thank you for your attention to this important issue and look forward to your response. As always, we ask that this matter be handled in strict accordance with all applicable agency rules, regulations, and ethical guidelines.

Sincerely,



Chris Van Hollen
United States Senator



Jeff Flake
United States Senator