

## Case Closed: The Justice Department Won't Stand Behind Its Report on Immigrants and Terrorism

By Benjamin Wittes

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Don't look now, but the United States Department of Justice just came perilously close to admitting that it engaged in disinformation about immigrants and terrorism in [a formal government report](#).

I say perilously close, because the department did not quite admit it; in fact, [the letter sent to a group of people](#), including me, who had raised concerns about a report the Justice Department published last January, announces that the department has concluded that “the Report should not be withdrawn or corrected.”

But the letter, sent to us by Deputy Assistant Attorney General Michael H. Allen, also concedes that “the Report could be criticized by some readers, consistent with some of the concerns presented,” and promises that the department will follow the “principles” of an obscure law known as the Information Quality Act better “in issuing future reports ... to better present such information to the public.” This is about as close as the Trump administration is going to get to admitting that it used a formal government report to distort data to slime Muslims and immigrants.

Let's back up and consider the whole story in context.

It all began in February 2017, when President Trump told this lie during his first [address to a joint session of Congress](#): “according to data provided by the Department of Justice, the vast majority of individuals convicted of terrorism and terrorism-related offenses since 9/11 came here from outside of our country.”

[As I later wrote](#), with Nora Ellingsen and Lisa Daniels:

We were suspicious of this claim, so Ellingsen and Daniels [dug into the data](#). They discovered that the publicly available Justice Department data simply did not show that a majority of terrorist or terrorist-related crimes were committed by people who came from abroad. For one thing, this data set does not include domestic terrorism convictions. That is, it does not capture domestic terrorism subjects, who are more likely to be white and natural-born U.S. citizens. Leaving out those convictions is a big mistake. [W]hen [Ellingsen and Daniels wrote](#) about President Trump's executive order, they found that 1,306 defendants had been convicted of domestic terrorism offenses in the U.S. since 1996. That's more than twice the number of international terrorism convictions during the same period.

What's more, the list included almost 100 foreign-born defendants who were extradited into the United States and therefore never would have been affected by U.S. immigration policy. That is, even excluding domestic terrorism cases, it was

possible to support the president's claim only if one counted as foreign-born terrorism suspects people the United States had actively imported in order to prosecute for terrorism or terrorism-related crimes.

In their original analysis, Ellingsen and Daniels [concluded](#):

what would the numbers look like if we excluded extradited subjects while including all of these domestic terrorists—the approach that seems to us the unbiased way to express the real rate at which foreign-born, as opposed to domestic-born, people are committing terrorist or terrorism-related crimes?

If we clean up the data to account for the issues described above, instead of accounting for between 63 and 71 percent of terrorism convictions, foreign-born persons would likely account for between only 18 and 21 percent of terrorism convictions.

The Justice Department long ago threw Trump under the bus as misrepresenting its data in the specific speech. In response to a Freedom of Information Act request I filed, the department provided correspondence showing, as [Ellingsen and I summarized](#), that,

career officials at the Justice Department did not, in fact, support the irresponsible and false statement the president made. Indeed, while they provided [a] list of cases, they specifically warned that the material excluded domestic terrorism matters and could only be used to support generic statements that the Justice Department had prosecuted a lot of cases. And while they worked with FBI to scrape together some national origin information, they did so only with respect to that dataset, and the FBI specifically warned that it might not be accurate.

What's more, last summer, the Justice Department [followed up with a letter to me](#) saying that it did not even *have* records reflecting the number of domestic terrorism prosecutions:

On June 12, 2018, you reached an agreement with [the Justice Department] to resolve certain issues in dispute in this litigation, whereby [Justice] would conduct a search for records containing data of (i) all individuals convicted of all terrorism-related offenses (domestic and international) between 2001 and the date of the initial search, or (ii) all individuals convicted of all domestic terrorism-related offenses between 2001 and the date of the initial search.... [N]o responsive records were located.

Yet even as this litigation was taking place, last January, the department—along with the Department of Homeland Security (DHS)—[produced the report](#) at issue in the current letter. That report stopped short of Trump's outright falsehoods, by avoiding the use of the term "terrorism" in a fashion that included only international terrorism and excluded the much larger category of domestic terrorism. Yet the report still contained gross distortions. As Ellingsen, Daniels and I [summarized at the time](#):

The Justice Department did not publish the data underlying its report but, instead, indicated that the department reviewed the cases of 549 individuals who were convicted of international terrorism-related charges in U.S. federal courts between Sept. 11, 2001, and Dec. 31, 2016. The National Security Division [previously released](#) the list of terrorism-related convictions between Sept. 11, 2001, and Dec. 31, 2015, in response to a FOIA request, but an updated list was not attached to this report. Note that the defendants on this list were not all convicted on material support or other terrorism charges per se. The pool is actually much larger and includes obstruction of justice, fraud, or immigration charges when there is a nexus to terrorism.

The new report actually adds little new information to the discussion. Regarding terrorism-related convictions, it provides only a couple of quick and sterile numbers: Of the 549 individuals who were convicted of international terrorism-related charges in U.S. federal courts, the report indicates that 402 of those individuals, or 73 percent, were foreign-born:

- 254 were not U.S. citizens;
- 148 were foreign-born, naturalized and received U.S. citizenship; and,
- 147 were U.S. citizens by birth.

That's it. The report adds some color to those numbers by highlighting eight terrorism cases that it describes as "illustrative examples" of international terrorism convictions and provides short blurbs on each defendant. These defendants come from Sudan, Uzbekistan, India, Somalia, Syria, Yemen and Pakistan and immigrated to the U.S. as early as 1980. As the White House is careful to [point out](#) in its press release, three of those men entered the U.S. on the basis of family ties and extended-family chain migration. Two others entered through the visa lottery program.

In addition, the report indicates that the administration is broadening the scope of its inquiry to include tracking the citizenship status of the parents of 147 natural-born U.S. citizens on its list. A footnote in the report indicates that information is not available at the time of publication, but the [White House noted](#), in response to the report's issuance, that terrorist attacks have been carried out by children of foreign-born individuals, including the Orlando nightclub and San Bernardino shootings.

Because the report adds little by way of new information, the numbers it reports are broadly consistent with the earlier Ellingsen-Daniels analysis. The report's data set is larger because more recent convictions were included—549 individuals compared to 455 individuals studied by Ellingsen and Daniels. Of those 549, 73 percent—or 402—were born abroad. Likewise, the Ellingsen-Daniels analysis showed that about 70 percent were born abroad. The trouble is that this top-line number is so misleading, for all the reasons the Ellingsen-Daniels analysis describes.

It was in response to this report that a group of us—Ben Berwick of Protect Democracy, Faiza Patel of the Brennan Center, Michael Crowley, Ellingsen and I—[filed a petition](#) under an obscure statute called the Information Quality Act to have

the report corrected or withdrawn. Two other groups, Democracy Forward and Muslim Advocates, filed a similar petition and have [received a similar response](#) from the Justice Department.

Let me confess at the outset that when Berwick, who has represented us in the matter and some accompanying litigation, approached me about the idea of an IQA petition, I was skeptical. I agreed to be part of it not because I thought the department would likely acknowledge error but because Protect Democracy was representing me in all of the FOIA litigation described above, Berwick clearly wanted to give this a try, and I thought the petition might be a good way of establishing a strong factual record of how the Trump administration was abusing data. I was very wrong. The results are pretty astonishing.

They were not, at first. Indeed, the [initial response](#) to our petition was pretty predictable. In a letter dated July 31, the department informed us that it “has determined that there is no inconsistency” between the report and the requirement of the IQA or its implementing guidelines. “The Department concludes that neither retraction nor correction of information in [the report] is required under the IQA Guidelines.”

[We appealed](#). And it was this appeal that the department rejected—sort of—with its [extraordinary letter](#) of late last year.

The letter responded to us on seven distinct points, on each of which it determined not to withdraw or correct the report. On none of the points did the department contend that our arguments about the data are incorrect; the most it argued was that its presentation of data was defensible and within the bounds of reasonable interpretation. And on several points, the department pretty explicitly ate a well-deserved dish of crow:

- On our concern that the inclusion in the report of foreign-born but naturalized U.S. citizens was wildly distortive, the department now says that, “[I]n future reports, the Department can strive to minimize the potential for misinterpretation through, to the extent possible, more thorough explanation of the context for information and clearer differentiation of the information presented, and by noting when information presented goes beyond the specific dictates of Section 11. The Department will proceed accordingly in future Section 11 reports.”
- On our concern that the department includes people brought to the U.S. for prosecution, the department writes that it “appreciates the suggestion that disaggregating information about foreign nationals brought to the United States for prosecution for terrorism-related offenses committed outside the United States, and providing a more thorough discussion of the limitations of the data presented, would further promote the perception of objectivity in the presentation of information.” It says it will “work with DHS [the Department of Homeland Security] in future reports” to do so.
- On our concern that the eight “illustrative examples” are cherry-picked and not representative, the department now “acknowledges that a focus on eight

seemingly similar 'illustrative examples' from a list of more than 400 convictions would cause some readers of the Report to question its objectivity." It agrees that "the objectivity and transparency of future Reports could be enhanced by releasing underlying data . . . and could provide readers with more complete information from which to draw their own conclusions." And it says that if examples are included in future reports, it will "work with DHS" to make sure they are "more varied" and will make clear they are "not intended to be representative of all cases."

- On our concerns about gross distortions of gender-based violence, while dismissing the matter as "mere editorial error," the department writes that it "appreciates being made aware of such errors so that they will not be repeated."

In short, the department's position appears to be that it acknowledges error and promises not to make such errors again in the future; it just doesn't acknowledge that the errors are bad enough to warrant correction.

Whatevs, guys. I could wax at some length about how wrong it is for the government to put out a report on a critical matter of national security designed to influence the public's understanding of national security and immigration policy, to acknowledge that is full of errors and could be perceived to lack objectivity, and yet to refuse to do anything about it. I could complain all day about a decision to let that report stand as the government's definitive statement on the matter, so that readers of the report won't have any way of knowing how flawed it is. But I'm not going to do that.

Because at this point, from my vantage point, the record is quite clear: The president of the United States told a frank falsehood to a joint session of Congress, citing Justice Department data that do not exist in order to do so. He did this despite warnings from career FBI and Justice Department officials that the real data could not support such statements. And the Justice Department, a year later, released a report that—while stopping short of the president's outright falsehoods—was designed to be as suggestive of them as possible; while the department will not retract this report, it also will not defend it, and it has committed itself, as I read its letter, to not repeating its error in this tawdry episode.

Here's hoping that, at least, is the truth.