

August 22, 2022

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington, D.C. 20528

The Honorable Antony Blinken
Secretary of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Mayorkas and Secretary Blinken:

On June 8, 2022, the Department of Homeland Security (DHS) and Department of State determined that they will no longer bar individuals who provide “insignificant material support” or “limited material support” to terrorist organizations from admission into the United States (“June 8 Determination”). We write because the American people deserve an explanation regarding the broad, open-ended nature of this authority for exempting individuals who would otherwise be barred from immigration to the United States for supporting a terrorist organization.

Under federal law, persons who have engaged or assisted in terrorist activities are generally ineligible to immigrate to the United States. The Secretaries of Homeland Security and State can exempt certain persons from this prohibition, however. 8 U.S.C. § 1182(d)(3)(B)(i). Usually, such an exemption is limited to specific groups or conflicts for obvious reasons.

For example, in 2019, this authority was applied to visa or other immigration-related applications for an activity or association relating to the Lebanese Forces militias (“2019 Determination”). The 2019 Determination is narrowly tailored and does not apply outside the context of the Lebanese civil war that occurred between 1975 and 1990. It also clearly states that it does not apply to any alien that engaged in terrorist activity or knowingly provided any level of material support to terrorist activities that targeted noncombatants or U.S. interests.

Similarly, in 2012, this exemption authority was applied with respect to aliens in the context of activities or associations relating to the uprisings against Saddam Hussein’s government in Iraq (“2012 Determination”). Like the 2019 Determination, the 2012 Determination is confined to a specific group of aliens from a certain geographic area during a specified period of time.

In contrast, your June 8 Determination widely exempts persons who provided “insignificant material support” or “limited material support under circumstances” to a designated terrorist organization. According to a DHS press release, the intent of this determination is to help “vulnerable Afghans.” Yet, the June 8 Determination makes no mention of Afghanistan or Afghan refugees and is not limited to the categories of Afghan individuals described in your press release or persons connected with the war in Afghanistan. Indeed, it is not limited to certain conflicts, terrorist organizations, geographic regions, or time periods at all.

In contrast, on the same day that you issued the June 8 Determination, you issued a separate determination that was specifically limited to individuals who were employed as civil servants in Afghanistan during a specific time frame. The geographic, circumstantial, and temporal specificity in this second determination highlights and calls into question the broad, open-ended nature of the June 8 Determination, which is not in any way limited to vulnerable Afghans or persons involved with the conflict in Afghanistan.

Instead, the June 8 Determination broadly permits the admission of foreign individuals who provided material support to terrorist organizations that the Biden Administration deems insignificant or limited. This could include, for example, current or former members of Iran's Islamic Revolutionary Guard Corps (IRGC) and IRGC-linked entities, which are responsible for the deaths of hundreds of U.S. service members in Iraq and Afghanistan. It could include individuals seeking asylum at the southern border.

The timing of the June 8 Determination, nearly a year after the Administration's botched withdrawal from Afghanistan, also raises questions. If its intent is to ensure that Afghan refugees are able to gain asylum in the United States, there is no explanation regarding why this decision was not made months ago with prudent restrictions limiting its application to Afghan refugees.

The June 8 Determination alters U.S. immigration policy and for obvious reasons affects the security of the United States by making individuals who provided material support to terrorist organizations eligible to enter the United States and receive "immigration benefits or other status[es]" at the expense of American taxpayers. This sort of substantial, inadequately explained change to U.S. immigration policy implicating obvious U.S. national security interests merits further explanation and congressional scrutiny.

Therefore, we request that you provide answers to the following questions regarding the June 8 Determination:

1. Please provide a detailed description of the Afghan nationals to whom the June 8 Determination has been or will be applied and provide examples of the insignificant material support or limited material support they provided to designated terrorist organizations.
2. Please provide a detailed description, and the number to date, of the non-Afghan nationals to whom the June 8 Determination has been or will be applied and provide examples of the insignificant material support or limited material support they provided to designated terrorist organizations.
3. Has the June 8 Determination been applied, or will it be applied, to any individuals who have provided insignificant material support or limited material support to the Iranian Revolutionary Guard Corps or any IRGC-linked entities? If so, provide examples of the insignificant material support or limited material support they provided.

4. Has the June 8 Determination been applied, or will it be applied, to any individuals entering the United States at our border with Mexico? If so, provide examples of the insignificant material support or limited material support they provided.
5. Why is the language in the June 8 Determination not limited to Afghan nationals or persons involved in the conflict in Afghanistan?
6. Why was this June 8 Determination made nearly a year after the United States began evacuating vulnerable Afghan allies?
7. How do your departments define and apply the concept of “insignificant material support” to terrorist organizations?
8. To how many individuals has the June 8 Determination been applied? To how many individuals do you currently project it will be applied?

In addition to providing written responses to these questions, we also request a briefing from the appropriate officials to discuss any outstanding questions.

Further, we write to confirm that you will comply with the requirements of the CRA in taking this action.

Under the CRA, an agency action that falls within the definition of a “rule” must be submitted to Congress for review before it can take effect. 5 U.S.C. § 801(a)(1)(A). “The definition of a rule under the CRA is very broad.” Government Accountability Office B-323772, at 3 (Sept. 4, 2012), available at <https://www.gao.gov/assets/b-323772.pdf>. In pertinent part, the CRA defines a rule as: “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.” 5 U.S.C. § 551(4). This is not limited to directives requiring notice, public comment, or similar Administrative Procedure Act procedures.

This appears to be an agency statement of general applicability that prescribes new immigration law altering terrorist-related exclusions, in which case it must be submitted for congressional review.

Thank you for your attention to this letter, and given the important national security interests at stake, we respectfully request a reply by September 12, 2022.

Sincerely,


Bill Hagerty
United States Senator


Rick Scott
United States Senator



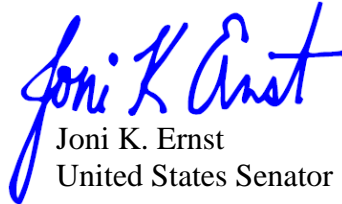
Kevin Cramer
United States Senator



Ted Cruz
United States Senator



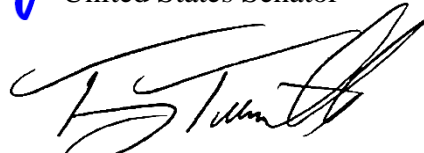
Marco Rubio
United States Senator



Joni K. Ernst
United States Senator



Roger Marshall, M.D.
United States Senator



Tommy Tuberville
United States Senator



John Hoeven
United States Senator



Steve Daines
United States Senator

CC: Secretary of the Treasury Janet Yellen and Attorney General Merrick Garland