

August 22, 2022

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

RECEIVED
By ESEC at 7:20 am, Aug 23, 2022

The Honorable Anthony 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



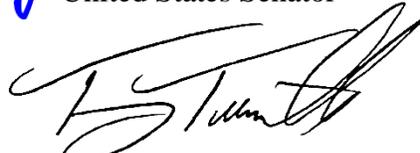
Marco Rubio
United States Senator



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

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Camp Springs, MD 20588-0009



U.S. Citizenship
and Immigration
Services

October 21, 2022

The Honorable Bill Hagerty
United States Senate
Washington, DC 20510

Dear Senator Hagerty:

Thank you for your August 22, 2022 letter to U.S. Department of Homeland Security and U.S. Department of State regarding exemptions from the terrorism-related inadmissibility grounds described in section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA) and the recent exercises of that authority. Secretary Mayorkas asked that I respond on his behalf, and I apologize for the delay in my response.

Please see the enclosure for detailed responses to the questions in your letter.

The cosigners of your letter will each receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou".

Ur M. Jaddou
Director

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Senator Bill Hagerty's August 22, 2022, Letter**

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.

U.S. Citizenship and Immigration Services (USCIS) implemented the June 8 Determination (i.e., the Certain Limited or Insignificant Material Support (CLMS/IMS) to a Designated Terrorist Organization exemption) on August 29, 2022.¹ As of September 27, 2022, the CLMS/IMS to a Designated Terrorist Organization exemption has been applied to one USCIS benefit application for an Afghan national who paid utility bills for electricity on four to five occasions after August 2021 when the Taliban assumed control of Afghanistan. Due to the payment of utility bills during this time, the applicant was inadmissible under the terrorism-related inadmissibility grounds (TRIG) for providing material support to the Taliban. The applicant needed electricity, among other reasons, to operate a pump that provided water for his family. USCIS applied an exemption for certain limited material support.

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.

As of September 27, 2022, the CLMS/IMS to a Designated Terrorist Organization exemption has not been applied to any USCIS benefit application for non-Afghan nationals.

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.

On April 8, 2019, the Department of State (DOS) announced that it would designate the Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization (FTO) under section 219 of the Immigration and Nationality Act (INA), effective April 15, 2019. Accordingly, the IRGC meets the definition of an FTO under INA 212(a)(3)(B)(vi)(I) (referring to a designated foreign terrorist organization) after this date, and officials, employees, and other individuals with relevant INA-defined ties to this designated FTO are inadmissible.

Along with the IRGC designation, the Secretary of State signed two exercises of authority on April 15, 2019, to exempt certain government groups and businesses or other organizations from meeting the definition of an undesignated terrorist organization under the INA solely on account of their provision of material support to a foreign government sub-entity that has been designated as an FTO, or met the definition of an undesignated terrorist organization.² These two

¹ See U.S. Citizenship and Immigration Services, "Implementation of the Discretionary Exemption Authority," Under Immigration and Nationality Act (INA) § 212(d)(3)(B)(i) for the Provision of Certain Limited or Insignificant Material Support to Designated Organizations," U.S. Citizenship and Immigration Services Policy Memorandum, PM-602-0191, August 10, 2022, available at <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-trig-situational-exemptions>.

² DOS Notice, [84 FR 17230](#) (April 24, 2019); DOS Notice, [84 FR 17227](#) (April 24, 2019).

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exemptions prevent allied foreign governments or humanitarian non-profits from potentially being considered undesigned "Tier III" terrorist organizations through a minimal interaction with the IRGC. These exemptions are separate and distinct from the June 14, 2022, DHS press release and subsequent Federal Register Notice, which were unrelated to IRGC designation.^{3,4}

As of September 27, 2022, the CLMS/IMS to a Designated Terrorist Organization exemption has not been applied to any USCIS benefit application for an individual who has provided insignificant material support or limited material support to the IRGC or any IRGC-linked entities. The use of the CLMS/IMS exemption for IRGC conscripts or affiliates is not anticipated at this time. Notably, this exemption is only available to exempt the provision of material support under limited criteria and does not exempt the applicability of other TRIG violations, such as individuals who are a current member of a terrorist organization, received military-type training from a terrorist organization, or committed a terrorist activity.

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.

As of September 27, 2022, the CLMS/IMS to a Designated Terrorist Organization exemption has not been applied to any USCIS benefit application for an individual entering the United States at our border with Mexico.

5. Why is the language in the June 8 Determination not limited to Afghan nationals or persons involved in the conflict in Afghanistan?

The language used in the CLMS/IMS to a Designated Terrorist Organization exemption is consistent with prior exercises of authority for TRIG exemptions.⁵ The exemption was carefully drafted in order to accomplish the objectives delineated in the June 14, 2022, DHS press release, including "[ensuring] that vulnerable Afghans who ... supported and worked with the United States in Afghanistan, and who have undergone rigorous screening and vetting, can qualify for protection and other immigration benefits in the United States."⁶ This exemption may, however, also be applicable in similar situations outside of the Afghan context, in areas where designated terrorist organizations similarly exercised considerable control over the everyday life of residents

³ See DHS, *DHS and DOS Announce Exemptions Allowing Eligible Afghans to Qualify for Protection and Immigration Benefits* (June 14, 2022), <https://www.dhs.gov/news/2022/06/14/dhs-and-dos-announce-exemptions-allowing-eligible-afghans-qualify-protection-and> ("June 14, 2022 DHS Press Release").

⁴ DHS and DOS, *Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act*, 87 FR 37523 (June 23, 2022), <https://www.federalregister.gov/documents/2022/06/23/2022-13472/exercise-of-authority-under-section-212d3bi-of-the-immigration-and-nationality-act>.

⁵ For example, see the CLMS and IMS to Undesignated Terrorist Organizations exemptions, available at <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-trig-situational-exemptions>. In comparison to these exemptions, the CLMS/IMS to a Designated Terrorist Organization exemption contains additional requirements, including that an individual must establish that they did not voluntarily and knowingly engage in terrorist activity (e.g., provide material support) on behalf of a designated terrorist organization.

⁶ "DHS and DOS Announce Exemptions Allowing Eligible Afghans to Qualify for Protection and Immigration Benefits," June 14, 2022, <https://www.dhs.gov/news/2022/06/14/dhs-and-dos-announce-exemptions-allowing-eligible-afghans-qualify-protection-and>.

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(e.g., control of utilities and checkpoints, serving members of such groups at one's place of business when to refuse would jeopardize one's safety and/or livelihood, etc.)

6. Why was this June 8 Determination made nearly a year after the United States began evacuating vulnerable Afghan allies?

Under INA § 212(d)(3)(B)(i), the Secretary of State and the Secretary of Homeland Security each have the unreviewable discretion, following consultations with one another and the Attorney General, to determine whether select terrorism-related inadmissibility grounds of the INA shall not apply to a particular group or individual. This is a deliberate and thorough process to ensure that any exercise of authority under consideration is appropriate and necessary. This process also ensures that any exercise of authority does not present any unintended consequences or risks to U.S. safety or security. The process and timeframe that the CLMS/IMS to a Designated Terrorist Organization exemption underwent is consistent and comparable to prior exercises of authority for TRIG exemptions.

The Department of Homeland Security (DHS) is committed to supporting vulnerable Afghan nationals, including those who worked alongside the United States in Afghanistan for the past two decades. DHS has been working to support Afghan nationals and has devoted significant resources across multiple agencies to implement the various programs and initiatives related to our work to support Afghan nationals. The joint decision by the Secretaries of Homeland Security and State, in consultation with the Attorney General, to exercise their congressionally provided discretionary authority to create these new exemptions was made following careful consideration and deliberation, which included thoroughly evaluating where exemptions may be most appropriate.

7. How do your departments define and apply the concept of “insignificant material support” to terrorist organizations?

As noted in the August 10, 2022, policy memo concerning CLMS/IMS to a Designated Terrorist Organization exemption, “Material support is ‘insignificant’ only if: (1) it is minimal in amount; and (2) an individual reasonably believed that it would be inconsequential in effect. USCIS officers evaluate whether the material support provided was minimal by considering its relative value, fungibility, quantity and volume, and duration and frequency.”⁷

On the question of application of the concept of insignificant material support, TRIG exemptions are discretionary, and decisions are made on a case-by-case basis and in the totality of circumstances, pursuant to the relevant laws and regulations. Exemptions enable, but do not require, USCIS officers to waive certain TRIG *only* when an individual:⁸

- (1) is otherwise eligible for the benefit or protection being sought;
- (2) has undergone and passed all required security and background checks;
- (3) has fully disclosed, to the best of their knowledge, in all relevant applications and/or interviews with U.S. government representatives and agents, the nature and circumstances of any material support provided and any other activity or association

⁷ See PM-602-0191, p. 6.

⁸ See PM-602-0191, pp. 3-4.

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implicating TRIG, as well as all contact with a terrorist organization and its members;
and

(4) has established that they pose no danger to the safety or security of the United States.

In addition to the general requirements, the CLMS/IMS to Designated Groups exemption further requires individuals to establish the following:

- they did not voluntarily and knowingly engage in terrorist activity (including providing material support) on behalf of a designated terrorist organization;
- they have not provided the material support with any intent or desire to assist any terrorist organization or terrorist activity;
- they have not provided material support that they knew or reasonably should have known could directly be used to engage in terrorist or violent activity;
- they have not provided material support to terrorist activities that they knew or reasonably should have known targeted noncombatant persons, U.S. citizens, or U.S. interests;
- they have not provided material support that they knew or reasonably should have known involved providing weapons, ammunition, explosives, or components thereof, or the transportation or concealment of such items;
- they are not otherwise inadmissible under section 212(a)(3)(B) of the Immigration and Nationality Act (INA), for which no exemption applies, and
- they warrant an exemption in the totality of the circumstances.

You can find more information on the USCIS webpage Terrorism-Related Inadmissibility Grounds (TRIG) – Situational Exemptions at: <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-trig-situational-exemptions>.

8. To how many individuals has the June 8 Determination been applied? To how many individuals do you currently project it will be applied?

As of September 27, 2022, the CLMS/IMS to a Designated Terrorist Organization exemption has been applied to one USCIS benefit application.

In addition, USCIS provides annual statistics to Congress on the number and category of TRIG exemptions applied in accordance with INA section 212(d)(3)(B)(ii), through “The Secretary’s Application of the Discretionary Authority Contained in Section 212(d)(3)(B)(i) of the Immigration and Nationality Act,” submitted to the Chairs and Ranking members of the House Committees on the Judiciary, Foreign Affairs, and Homeland Security, and to the Chairs and Ranking Members on the Senate Committees on the Judiciary, Foreign Relations, and Homeland Security and Government Affairs.

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

To schedule a briefing, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.