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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 29, 2016

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
Washington, DC 20230

The Honorable Jeh Johnson
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

The Honorable James B. Comey
Director
Federal Bureau of Investigation
Washington, DC 20535

Dear Attorney General Lynch, Secretary Johnson, and Director Comey:

The bombing attacks in New York and New Jersey perpetrated by Ahmad Khan Rahami are a stark reminder that radical Islamic terrorism remains a grave threat to the safety and security of Americans. We are fortunate that these bombs did not do more damage. While 29 people were injured, fortunately, none were killed or sustained life-threatening injuries. Of course, Rahami's ineffectiveness as a bomber should give us no comfort. Although law enforcement was able to swiftly identify and apprehend Rahami through its impressive investigative work, it is not enough to catch terrorists after they strike. We must do better in preventing them from striking in the first place.

Law enforcement, to be sure, will never be able to prevent every conceivable attack. That is an impossible standard. But as the facts of this particular case continue to emerge, it is clear that the federal government's law enforcement and counterterrorism agencies are not as effective as they could be in spotting and monitoring potential terrorists.

The Rahami case is rife with red flags that went unheeded. It has been reported that Rahami, a naturalized citizen from Afghanistan, frequently traveled to regions with a significant terrorist presence.¹ In 2011, for instance, he spent several weeks in Kandahar, Afghanistan, and Quetta, Pakistan, a notorious Taliban stronghold, where he married a Pakistani woman whom he eventually brought to the United States.² On another trip, Rahami spent almost a year—from

¹ Pamela Brown, Shimon Prokupecz, Evan Perez, Jim Sciutto, and Samantha Reyes, *Bombings suspect spent time in Afghanistan, Pakistan, official says*, CNN (September 20, 2016), <http://www.cnn.com/2016/09/19/us/ny-nj-bombings-rahami-afghanistan-trips/>.

² Catherine Shoichet, Shimon Prokupecz, and Evan Perez, *Ahmad Khan Rahami's wife left US before bombings*, CNN (September 20, 2016), <http://www.cnn.com/2016/09/20/us/ahmad-khan-rahami-wife/>

April 2013 to March 2014—in Pakistan.³ On each occasion, when he returned to the United States, customs officials subjected him to additional or “secondary” screening but apparently failed to detect his increasing radicalization.⁴ Customs officials were sufficiently concerned with his repeated journeys to Afghanistan and Pakistan, however, that they did flag Rahami to the FBI in 2014.⁵ That happened to be the same year that Rahami’s father told the FBI that Rahami was a “terrorist” following a violent altercation with his brother.⁶ But none of this was apparently enough for the FBI to deem Rahami a sufficient threat to monitor.

It is particularly troubling that these red flags bear a remarkable resemblance to red flags in other cases. For example, one of the Boston bombers—Tamerlan Tsarnaev—had traveled to Dagestan where, the Russians informed us, he may have had contact with terrorist groups.⁷ One of the San Bernardino shooters—Syed Rizwan Farook—traveled to Saudi Arabia where he met his future wife and accomplice Tashfeen Malik, whom he brought to the United States.⁸ And the Orlando shooter—Omar Mateen—had a history of violence and had even claimed to have ties to terrorists.⁹ In each of these cases, like the Rahami case, the FBI was aware of red flags and yet concluded that the individuals did not pose a threat.

Most worrisome of all is that, in some of these cases, the FBI had even interviewed the individuals. Tsarnaev was interviewed at least once.¹⁰ And Mateen was interviewed three times.¹¹ (Inexplicably, the FBI did not interview Rahami, despite his father’s accusation that he was a terrorist.¹²) Although never interviewed by the FBI, Malik was nevertheless interviewed by government officials on two occasions in relation to her applications for a visa and subsequent permanent resident status.¹³ None of these interviews uncovered any indication that

³ Pamela Brown, Shimon Prokupez, Evan Perez, Jim Sciutto, and Samantha Reyes, *Bombings suspect spent time in Afghanistan, Pakistan, official says*, CNN (September 20, 2016), <http://www.cnn.com/2016/09/19/us/ny-nj-bombings-rahami-afghanistan-trips/>.

⁴ *Id.*

⁵ Marc Santora, Pir Zubair Shah, Joseph Goldstein, and Adam Goldman, “‘Keep an Eye on Him,’ Ahmad Khan Rahami’s Father Says He Told F.B.I.”, *New York Times* (September 22, 2016), <http://www.nytimes.com/2016/09/23/nyregion/ahmad-khan-rahami-bombing.html>.

⁶ “‘Keep an Eye on Him,’ Ahmad Khan Rahami’s Father Says He Told F.B.I.”, *New York Times*

⁷ Susan Zalkind, *FBI Admits It Missed Opportunities to Stop Tamerlan Tsarnaev*, *Boston Magazine* (April 11, 2014), <http://www.bostonmagazine.com/news/blog/2014/04/11/fbi-admits-missed-opportunities-stop-tamerlan-tsarnaev/>.

⁸ Saeed Ahmed, *Who Are Syed Rizwan Farook and Tashfeen Malik?*, CNN (Dec. 4, 2015), <http://www.cnn.com/2015/12/03/us/syed-farook-tashfeen-malik-mass-shooting-profile/>.

⁹ Mark Mazzetti, Eric Lichtblau & Alan Blinder, *Omar Mateen, Twice Scrutinized by FBI, Shows Threat of Lone Terrorists*, *N.Y. Times* (June 13, 2016), <http://www.nytimes.com/2016/06/14/us/politics/orlando-shooting-omar-mateen.html>.

¹⁰ Peter Bergen, *United States of Jihad* 228 (Crown 2016).

¹¹ Kevin Johnson, *FBI Defends Prior Reviews of Terror Suspects*, *USA Today* (Sept. 27, 2016).

¹² Melanie Hunter, *FBI Director Won’t Say Why FBI Did Not Interview NYC Bombing Suspect in 2014*, *cnsnews.com* (Sept. 28, 2016), <http://www.cnsnews.com/news/article/melanie-hunter/fbi-director-wont-say-why-fbi-did-not-interview-nyc-bombing-suspect-2014>.

¹³ Mark Hosenball, *California Shooter’s Visa Record Shows Routine Interview, No Flags Raised*, *Reuters* (Jan. 7, 2016), <http://www.reuters.com/article/us-california-shooting-visa-idUSKBN0UL0HP20160107>.

the individuals were potential threats, which suggests, perhaps, that the right questions were not asked.

The Government's failure to understand the significance of the common threads that unite these cases raises serious questions about the Obama administration's approach to counterterrorism. Instead of acknowledging the ideology that inspires acts of terrorism by radicalized Muslims, the administration has insisted that ideology is irrelevant in identifying potential terrorists and that all terrorists are simply "violent extremists." That is presumably why this administration has studiously avoided identifying the threat as radical Islamic terrorism—which could also be called "Salafi jihadism"¹⁴—and instead prefers meaningless bureaucratic jargon like "violent extremism." But it is dangerously naïve to presume that all types of terrorists are radicalized in the same way—that radical Islamic terrorists, for instance, follow the same path as an anarchist or environmental terrorist. Perhaps the Government's ideological blinders explain why it found nothing suspicious with Rahami's repeated trips to an overseas region known for Islamic radicalism, his marriage to a woman from that region, and his growing estrangement from his family in the United States.

To help Congress better understand the nature of the problem, please provide answers to the following questions:

- (1) What efforts have been made in the wake of the San Bernardino case to assess the potential that radicalization has occurred or could occur where a U.S. national marries a foreign spouse from a region where radical Islamic terrorism is prevalent?
- (2) What are the protocols for "secondary screening" interviews of individuals returning from regions where radical Islamic terrorism is prevalent?
- (3) In the "secondary screening" interviews, are customs officials permitted to ask individuals where they travelled and with whom they met? Are customs officials permitted to ask individuals to identify which mosques or schools, including religious schools, they visited?
- (4) Do customs officials make any effort to verify or corroborate answers that are given in "secondary screening" interviews?
- (5) Given the Tsarnaev precedent, were efforts made to assess Rahami's potential contact with radical Islamist persons, groups, mosques, or schools while on his travels?
- (6) On what basis did the FBI conclude that a direct accusation by Rahami's father of Rahami's terrorist inclinations was groundless and not worthy of further monitoring (especially given his violent behavior, his travel to terrorist havens, and his marital history)?

¹⁴ Rowan Scarborough, *Pentagon's Top Brass Explores Islamic Ideology's Ties to Terror*, Wash. Times (Sept. 25, 2016), <http://www.washingtontimes.com/news/2016/sep/25/pentagons-top-brass-explores-islamic-ideologys-tie/>.

(7) Was Rahami's case reviewed after the San Bernardino or Orlando attacks?

Please provide the requested information as soon as possible, but no later than **5:00 p.m.** on **Monday, October 17, 2016**. We appreciate your cooperation in this important matter and look forward to your response. If you have any questions, please contact Ryan Newman at (202) 224-5922.

Sincerely,



Ted Cruz
Chairman, Subcommittee on Oversight, Agency
Action, Federal Rights and Federal Courts