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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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August 7, 2018

**VIA ELECTRONIC TRANSMISSION**

The Honorable Michael R. Pompeo  
Secretary of State  
U.S. Department of State  
2201 C Street N.W.  
Washington, D.C. 20520

The Honorable Alex M. Azar II  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

The Honorable Kirstjen M. Nielsen  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
Nebraska Avenue Complex  
3801 Nebraska Avenue, N.W.  
Washington, D.C. 20528

Dear Secretaries Pompeo, Azar, and Nielsen:

We write to you today regarding the statutorily required refugee consultation process. As you are well aware federal law requires a Cabinet level designee of the President to engage in an “appropriate consultation” with both the Chairs and Ranking Members of the House and Senate Judiciary Committees.<sup>1</sup> This consultation is required before the President can set the annual refugee admission ceiling for the coming fiscal year.<sup>2</sup>

Current law requires the annual include not only “discussions in person . . . to review the refugee situation or emergency refugee situation,”<sup>3</sup> but also the submission of a report *before* the annual consultation discussing the number of refugees who will need to be resettled in the

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<sup>1</sup> 8 U.S.C. § 1157.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

coming year and the anticipated allocation of refugee admissions.<sup>4</sup> The reason federal law requires the submission of this report before the consultation is simple: it gives the Chairs and Ranking Members of the Committees of Jurisdiction ample time to review the administration's findings and prepare to engage in a *meaningful* discussion regarding our nation's refugee admission policies. To further promote this goal, the law requires the President or his designee to also provide "periodic discussions" regarding the changes in the worldwide refugee situation and the progress of refugee admissions.<sup>5</sup>

Unfortunately, over the last decade the annual consultation process and the periodic updates required by law have increasingly become both pro-forma and effectively meaningless. To be clear—and fair—this is not a new problem unique to the Trump Administration. The Executive Branch has failed to engage in a meaningful and appropriate consultation with Congressional leaders for decades, suggesting this problem is a systemic one. The Executive Branch simply cannot continue to repeat these mistakes and must take steps to ensure that the consultation process is both consistent with federal law and meaningful.

Accordingly, please answer the following questions by no later than September 1, 2018:

1. Where possible, federal law requires the draft refugee consultation report be delivered two weeks prior to the scheduled consultation to ensure that Members have adequate time to prepare. What is the timeline for delivering the draft report to Congress this year?
  - a. Will this timeline be consistent with federal law?
  - b. Is the timeline consistent with the date of transmittal of the draft report in prior years?
  - c. What specific steps will your respective agencies take to ensure that the draft report is transmitted to Congress in accordance with the timeline?
2. Do you plan on transmitting the draft report to Congress electronically as well as in print?
3. After the transmission of the draft report, when are you planning on holding a briefing for congressional staff?
  - a. What specific steps will your respective agencies take to ensure that this year's staff briefing occurs after Congress receives the draft report and *prior* to the actual consultation?
  - b. What steps will your respective agencies take to ensure that Congress is briefed on the draft report before the press is briefed?

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

4. What steps will your agencies take this coming fiscal year to engage in periodic discussions regarding the change in the worldwide refugee situation and the progress of refugee admissions?
- a. Will you commit to have appropriate staffers from your agencies brief interested members of our staff and the Committee *at least* quarterly on these issues?
  - b. Will you commit to having a Cabinet level designee of the President brief us and our House counterparts prior to any change in the refugee admission ceiling in the coming fiscal year?

Thank you in advance for your attention to our concerns and for your response. We look forward to working with you to ensure this year's consultation follows both the letter and spirit of the law. If you have any questions, please do not hesitate to contact either Aakash Singh with Chairman Grassley at 202-224-5225 or Jennifer Piatt with Ranking Member Feinstein at 202-224-7703.

Sincerely,

	
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Charles E. Grassley	Dianne Feinstein
Chairman	Ranking Member
Senate Judiciary Committee	Senate Judiciary Committee