

**DEPARTMENT OF HOMELAND SECURITY
OFFICE OF INSPECTOR GENERAL**

In the Matter of

MURPHY, BRIAN
PRINCIPAL DEPUTY UNDER SECRETARY
DEPARTMENT OF HOMELAND SECURITY
OFFICE OF INTELLIGENCE & ANALYSIS

Complainant.

Whistleblower Reprisal Complaint

Filed: September 10, 2020

SUPPLEMENTAL CLARIFICATION

The Complainant, Brian Murphy (“Mr. Murphy”), previously filed a Whistleblower Reprisal Complaint (“Complaint”) dated September 8, 2020. This Supplemental Clarification (“Supplement”), serves to address a factual issue that has been brought to our attention specifically in reference to former Secretary of Homeland Security, Kirstjen Nielsen (“Secretary Nielsen”).

Within the Complaint, Mr. Murphy outlined five tranches of protected disclosures. The first set concerned what was described as perjured testimony by Secretary Nielsen in Congressional hearings on December 20, 2018, and March 6, 2019. Specifically, the Complaint stated Secretary Nielsen provided inaccurate information during a December 20, 2018, hearing regarding the number of Known or Suspected Terrorist (“KST”) who had traveled into and entered the United States by way of the southwest border.

To be clear, Mr. Murphy stands by his original assertion in the Complaint that the information Secretary Nielsen publicly provided during the December 20, 2018, hearing was inaccurate. He also stands by his original assertion that in advance of Secretary Nielsen’s

March 6, 2019, Congressional testimony, he advised her of the discrepancy in her previous testimony regarding the number of KSTs and provided her with the actual accurate number. As outlined in detail in the Complaint, Mr. Murphy was overruled by Chad Wolf (“Mr. Wolf”) and Miles Taylor (“Mr. Taylor”), who advised that Secretary Nielsen should state that the clarifying information was classified and decline to elaborate further in open session. Mr. Murphy specifically advised Secretary Nielsen during the prep session in advance of the March 6, 2019, hearing, that the numbers were not classified and noted she had previously openly provided KST numbers to Congress and the press. Mr. Murphy, therefore, continues to maintain that Secretary Nielsen’s testimony on December 20, 2018, and March 6, 2019, constituted a knowing and deliberate submission of false material information by DHS. Whether Secretary Nielsen’s role constituted direct participation or was by unknowing omission is for investigators to determine.

Since the submission of the Complaint, however, and particularly the recent media attention to the matter, private counsel for Secretary Nielsen reached out seeking a correction to Mr. Murphy’s recitation of her December 20, 2018, testimony. Upon additional review of the factual circumstances, we are submitting this Supplement to clarify an element of factual confusion contained in the Complaint.

The Complaint asserted that in Secretary Nielsen’s December 20, 2018, testimony, she testified that 3,755 KSTs had been apprehended at the southwest border. That statement is inaccurate, and Mr. Murphy apologizes for the inadvertent mistake. In her testimony, Secretary Nielsen responded to a question from Congressman Darrell Issa (R-CA) regarding the utility of the border wall along the southwest border. An unofficial recitation of Secretary Nielsen’s specific and material testimony is detailed below:

Yes, Sir. In San Diego and you used two examples, once we had a wall [], the flow of illegal aliens dropped by 90%. It is extraordinarily significant. The reason they are important, I want to be able to assure the American people that we know who is coming into our country. As they come in illegally, I don't know who they are. The idea of having folks go to a port of entry [] is to ensure that the flow is safe and orderly. What I can tell you is we stopped 3,000 Special Interest Aliens at the border last year. *We stopped 10 known and suspected terrorists from attempting to travel to the United States each year.*

<https://www.c-span.org/video/?456086-1/homeland-security-department-oversight&start=9842>

(last accessed September 10, 2020)(emphasis added). As acknowledged, the figure of 3,755 KSTS was not mentioned in her public Congressional testimony, but the figure provided by Secretary Nielsen of 10 KSTs apprehended each year is, however, still false, to the extent it applies to the southwest border, which was the specific topic of the question. Mr. Murphy questions whether it constituted knowing and deliberate submission of false material information in light of the conversations he personally engaged in with Secretary Nielsen and other senior DHS officials.

It appears the origin of this particular controversy arose when on December 10, 2018, President Trump, in discussing his proposed border wall, stated “People are pouring into our country, including terrorists. We caught 10 terrorists over a short period of time.”

<https://www.theatlantic.com/international/archive/2018/12/trump-incorrectly-links-immigration-terrorism/576358/>. This statement caused a flurry of fact-checking from the media which noted the absence of documented evidence of KSTs being apprehended after attempting to specifically enter into the United States from the southwest border. https://twitter.com/CNN_newsroom/status/1072878195777650689?s=20 (last accessed September 10, 2020). In response, on December 12, 2018, the Department of Homeland Security's Twitter account, tweeted that in Fiscal Year 2017, DHS had prevented 3,755 KSTs from entering into the United States.

<https://twitter.com/SpoxDHS/status/1072880422563037185?s=20> (last accessed September 10,

2020). That tweet did not specifically clarify that the figure of 3,755 KSTs was meant to encompass *all methods of entry* into the entire United States, as opposed to attempts to enter exclusively by way of the southwest border, which again was the topic being publicly discussed and debated.

On Thursday, January 3, 2019, the White House further pushed this misleading explanation with an 8-page PowerPoint presentation (which, at the direction of Secretary Neilson, was provided to the White House by Messrs. Taylor and Wolf, as was told Mr. Murphy by Mr. David Glawe) it made available to Congress regarding border security. <https://www.whitehouse.gov/wp-content/uploads/2019/01/Border-Briefing.pdf> (last accessed September 10, 2020). Secretary Nielsen not only participated in the meeting with Congress at the White House, but she led it. <https://www.nbcnews.com/politics/congress/trump-doubles-down-wall-funding-demand-ahead-meeting-hill-leaders-n953956>. Thus, whether the information had been stated in her public testimony in December 2018 or not is irrelevant. Secretary Nielsen provided this figure directly to Congress.

The power point presentation was posted online the following day, Friday, January 4, 2019. Although virtually all of the information, data and policy arguments outlined in the PowerPoint presentation pertained exclusively to the southwest border, the presentation included the figure of 3,755 KSTs as having attempted to enter the United States in Fiscal Year 2017 without making clear that almost all of those individuals were apprehended at ports of entry unrelated to the border wall matter. It should be noted that these slides were created by or with substantial assistance from DHS, and the figure of 3,755 KSTs was prominently featured. In Mr. Murphy's view, this was a deliberate effort by DHS/White House to distort the facts and mislead the public with inaccurate insinuations for political purposes.

On Monday, January 7, 2019, Secretary Nielsen participated in a press briefing with Vice President Pence where she now stated that DHS prevents “10 known or suspected terrorists a day” from entering the United States. <https://www.whitehouse.gov/briefings-statements/remarks-vice-president-pence-dhs-secretary-kirstjen-nielsen-omb-deputy-director-russell-vought-press-briefing-border-security/>. Presumably, Secretary Nielsen meant to say “a year” but regardless, that number is still inaccurate. She added that “[t]he number itself is sensitive, and that’s why it’s difficult. It’s classified for obvious reasons — the ongoing investigations.” *Id.* This, too, was false and part of a pattern that was emerging as official departmental practice.

As Mr. Murphy explained in his Complaint, the preparation session in advance of Secretary Nielsen’s Congressional testimony on March 6, 2019, addressed to what extent this confusing and misleading information that had been made available to the public in late 2018, required correction. Mr. Murphy noted that the actual number of KSTs apprehended at the southwest border was no more than three people. Messrs. Wolf and Taylor, conversely, stated to Mr. Murphy that Secretary Nielsen should claim the information was classified and decline to provide clarification. Notably, Secretary Nielsen was present during this conversation.

At the hearing on March 6, 2019, in response to questions from Congressman Lou Correa (D-CA)(“Congressman Correa”), Secretary Nielsen was specifically asked if the 3,755 figure for KSTs largely applied to apprehensions at the airports, to which Secretary Nielsen accurately concurred. When pressed by Congressman Correa to provide clarification, however, on exactly how many KSTs had been stopped at the southwest border, Secretary Nielsen declined to answer, stating the information was classified. She then followed up and advised Congressman Correa there is a second category of individuals called “Special Interest Aliens” who she equated to terrorists. <https://www.c-span.org/video/?458250-1/immigration-border-security> (last

accessed September 10, 2020). Secretary Nielsen then repeated her refusal to provide the exact figure on the number of KSTs in response to questions from Congresswoman Elissa Slotkin (D-MI), stating again that the information was classified. <https://www.c-span.org/video/?458250-1/immigration-border-security> (last accessed September 10, 2020). As noted above, this testimony constituted a knowing and deliberate submission of false material information by DHS. Whether Secretary Nielsen's role constituted direct participation or was by unknowing omission is for investigators to determine.

We hope this clarifying information resolves any inadvertent confusion caused by the submission of the Complaint.

Respectfully submitted,

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