UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

JOHN DOE,

Plaintiff,

-against-

DONALD J. TRUMP, as President of the United States of America; JOHN F. KELLY, as Secretary of the Department of Homeland Security; THE DEPARTMENT OF HOMELAND SECURITY; LORI SCIALABBA, as Acting Director of the U.S. Citizenship and Immigration Services; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; REX W. TILLERSON, as Secretary of State; U.S. DEPARTMENT OF STATE; and THE UNITED STATES OF AMERICA,

Defendants.

Civil Action No.: 17-cv-112

Chief Judge William M. Conley

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S RENEWED APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Regulations

Other Authorities

PRELIMINARY STATEMENT

This is an action to enjoin the unlawful immigration ban that President Trump has now twice sought to implement by executive order, first on January 27, 2017, and then again on March 6, 2017. As the Court is aware, Plaintiff is a lawful resident alien who, after more than a year of thorough vetting by U.S. immigration authorities, was granted asylum status in May 2016 on account of the torture and persecution he had suffered in Syria and the risk of serious harm he faced there should he return. He promptly filed derivative petitions to secure asylum status for his wife and three-year old daughter, both of whom had been forced to stay behind in war-torn Aleppo. Under the Immigration and Nationality Act ("INA"), approval of those petitions should have been a foregone conclusion. Nevertheless, President Trump has signed two executive orders that, ostensibly in "the interests of the United States," seek to suspend the entry of all Syrians — and thus threaten to keep Plaintiff apart from his wife and young child, who remain in Aleppo, hiding from warring factions who wish them both dead.

The March 6 executive order (the "Executive Order") is President Trump's attempt to salvage the January 27 executive order, which the federal courts enjoined as unconstitutional. But Version 2.0 of the Executive Order is no better than Version 1.0. The Executive Order accomplishes the same unlawful goals through the same unlawful means as the January 27 order and should promptly be set aside. It violates the terms of the INA and frustrates Congress's purpose in passing that statute, which prohibits discrimination on the basis of national origin and was intended to secure the right of family integrity. It also violates the Constitution of the United States in multiple respects. By interfering with Plaintiff's fundamental right to family integrity in a manner that is not narrowly tailored to a compelling government interest, and without adequate procedures, the Executive Order violates the Due Process Clause. By banning

nationals from predominantly Muslim countries and reflecting an invidious purpose of disfavoring Muslims, it violates the Establishment Clause and the Fifth Amendment's guarantee of Equal Protection. And by banning the entry of Syrians based solely on their nationality, it violates Equal Protection.

Indeed, since President Trump first sought to implement a ninety-day travel ban — purportedly to give the Government time to study vetting procedures — it has become even clearer that there is no lawful justification for the ban. Unable to articulate a justification for the January 27 order in any of the legal challenges to that order, the Government sought post-hoc vindication through a study conducted by the Department of Homeland Security. But DHS came up empty, concluding that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity." President Trump nonetheless simply renewed the ninety-day travel ban, touting its promulgation to supporters as a strike against "radical Islamic terrorism." If the Government had been serious about devising more stringent vetting procedures (the ostensible goal of the Executive Order), then presumably it would have made some progress on that front in the more than five weeks since January 27. But there is no evidence that the Government has come up with anything other than pretextual justifications for the same anti-Muslim travel ban it sought to implement in the January 27 order.

Meanwhile, although the Government has been processing Plaintiff's derivative petitions since the time he filed this lawsuit, the unlawful Executive Order still threatens to visit irreparable injury upon Plaintiff and his family because it will, if enforced according to its terms, bar Plaintiff's wife and daughter from receiving visas or entering the United States. The Court should therefore enter temporary and/or preliminary injunctive relief barring the Government

from relying on the Executive Order in processing Plaintiff's petitions and otherwise adjudicating the entry of his family into the United States.

FACTUAL BACKGROUND[1]

A. Plaintiff Seeks Asylum in the United States for Himself and His Family

Plaintiff is a thirty-two-year-old Syrian man and Sunni Muslim who resides in Wisconsin. Before he came to the United States, he faced near-certain death at the hands of two warring forces in Aleppo: the Sunni-aligned Free Syrian Army ("FSA") and the Alawite-aligned Syrian Arab Army ("SAA"). The FSA and SAA have been engaged in a six-year civil war for control of Aleppo. In 2013, the FSA began targeting Plaintiff on the incorrect belief that Plaintiff was sympathetic to the SAA; the SAA, for its part, targeted Plaintiff because he was Sunni and owned a business in FSA-controlled territory. FSA and SAA soldiers extorted, falsely imprisoned, tortured, and threatened to kill Plaintiff. The SAA threatened to rape his wife.

After learning that he had been "marked for death" by the FSA and conscripted into the SAA, Plaintiff fled Syria in March 2014 and sought asylum in the United States. In April 2014, he filed an initial Application for Asylum and for Withholding of Removal with the United States Citizenship and Immigration Services ("USCIS"). While his initial application was under review, the building where his wife and children were hiding in Aleppo was hit by rocket fire. In the ensuing panic, Plaintiff's three-year-old son fell three stories and died. Unable to comfort his wife or mourn his son in person, Plaintiff redoubled his efforts to obtain asylum for himself and

[1] The facts set forth herein are supported by the accompanying Declaration of Andrew B. Breidenbach in Support of Plaintiff's Application for a Temporary Restraining Order, Preliminary Injunction, and Summary Judgment ("Breidenbach Decl.") (Feb. 13, 2017), Dkt. No. 10; Second Declaration of Andrew B. Breidenbach in Support of Plaintiff's Renewed Application for a Temporary Restraining Order and Preliminary Injunction ("Second Breidenbach Decl."); and Declaration of John Doe in Support of His Renewed Application for a Temporary Restraining Order and Preliminary Injunction.

his family and filed an amended asylum application in October 2015. In May 2016, an Immigration Judge granted Plaintiff asylum, finding that Plaintiff's return to Syria would threaten his life or freedom in violation of the U.N. Convention Against Torture.

As soon as the Immigration Judge's decision became final, Plaintiff sought asylum for his wife and daughter by filing Refugee/Asylee Relative Petitions with USCIS on form I-730. *See* INA 8 U.S.C. § 1158 (b)(3); 8 C.F.R. § 208.21. Plaintiff's derivative asylum petitions establish that he is an asylee and that his wife and daughter are qualifying beneficiaries. Plaintiff's wife does not bear hostile attitudes toward the United States, its Constitution, or its founding principles. Neither does his daughter, who is a three-year-old child incapable of holding such views. They have never engaged in acts of hatred, persecution, oppression, or terror. Like Plaintiff, they would be active and productive members of the Wisconsin community as soon as they are able. For now, though, they remain trapped in Syria, where they live in hiding from the SAA and FSA. They lack access to basic medical care and adequate food. And they are at imminent risk of rape or death.

As of January 26, 2017, approval of Plaintiff's derivative asylum petitions seemed like a sure thing. USCIS's processing center in Nebraska had reviewed the petitions, found them to be in order, and forwarded them to USCIS's Milwaukee office for a security check. That too cleared, and the petitions were sent back to Nebraska for final processing.

B. Mr. Trump Promises a Muslim Ban and Signs the First Executive Order

Before he was elected President, Donald Trump campaigned on a promise to effectuate a "complete shutdown of Muslims entering the United States." Breidenbach Decl. ¶ 2. Amid criticism, the then-candidate and his associates shifted their rhetoric, instead targeting countries with "a proven history of terrorism" as a proxy for Islam. Breidenbach Decl. Ex. F. Mr. Trump

acknowledged this pivot as "an expansion" of his proposed "Muslim ban," not a rollback. *See* Breidenbach Decl. Ex. H. And he repeatedly refused to distinguish between peaceful Muslims and terrorists, contending that "you don't know who is who." *See* Breidenbach Decl. ¶ 4.

Syrians, in particular, found themselves in Mr. Trump's cross-hairs during the campaign. One of Mr. Trump's campaign promises was to "stop the tremendous flow of Syrian refugees into the United States." Breidenbach Decl. ¶ 7. He urged citizens to "lock your doors" against Syrian refugees that had resettled in the United States. *Id.*

Mr. Trump began planning how to follow through on these invidious campaign promises even before taking office. In a television interview, Rudy Giuliani, a close advisor to Mr. Trump, explained that, after announcing his "Muslim ban," Mr. Trump "called [Mr. Giuliani] up. He said, 'Put a commission together. Show me the right way to do it legally.'" Breidenbach Decl. ¶ 18.

Executive Order 13769, titled "Protecting the Nation from Foreign Terrorist Entry into the United States" and signed by President Trump on January 27, 2017, was the result. The order barred from the United States the very groups of immigrants President Trump promised to target during his campaign, including all Syrians. *See* Breidenbach Decl. Ex. N. Thus, Section 3(c) of the original order categorically prohibited the entry of all aliens from seven Muslim-majority countries, including Syria, for ninety days. Section 5(a) suspended the U.S. Refugee Admissions Program for all countries for 120 days, and Section 5(c) suspended the entry of Syrian refugees indefinitely. These provisions applied whether or not a Syrian seeking entry posed any threat of violence or had any connection to terrorist organizations or activities. Indeed, Section 5(c) applied to Syrians of all ages, including young children like Plaintiff's three-year-old daughter, who is plainly incapable of posing a threat to the United States.

The first executive order also discriminated against Muslims. It directed the Secretary of State, upon resumption of refugee admissions, to "prioritize refugee claims made by individuals on the basis of religious-based persecution, *provided that the religion of the individual is a minority religion in the individual's country of nationality*." Jan. 27 Order § 5(b) (emphasis added); *see also id.* § 5(e) (allowing for exceptions to Section 5(a) "when the person is a religious minority in his country of nationality facing religious persecution"). President Trump was frank about his intent to favor Christians over Muslims. Immediately before signing the Executive Order, President Trump (falsely) asserted that, under earlier refugee policies, "[i]f you were a Muslim you could come in [to the United States], but if you were a Christian, it was almost impossible . . . . And I thought it was very, very unfair. So we are going to help them." Breidenbach Decl. ¶ 14.

At the signing ceremony for the executive order, President Trump stated that its purpose was to "establish[] new vetting measures to keep radical Islamic terrorists out of the United States of America." Breidenbach Decl. ¶ 16. He then added: "We all know what that means." Breidenbach Decl. ¶ 16, Ex. O.

C. Federal Courts Enjoin the First Executive Order, and the Government Continues Processing Plaintiff's Petitions

Federal courts began hearing legal challenges to the January 27 executive order almost as soon as President Trump signed it. And given the order's irrationality and discriminatory purpose and effect, courts were almost uniform in enjoining its enforcement.[2] Most notably, the

[2] *See Darweesh v. Trump*, No. 17 Civ. 480 (AMD), 2017 WL 388504, at *1 (E.D.N.Y. Jan. 28, 2017); *Vayeghan v. Kelly*, No. CV 17-0702, 2017 WL 396531, at *1 (C.D. Cal. Jan. 29, 2017); *Mohammed v. United States*, No. CV 17-00786 AB (PLAx), 2017 WL 438750, at *1–2 (C.D. Cal. Jan. 31, 2017); *Aziz v. Trump*, No. 1:17-cv-116 (LMB/TCB), 2017 WL 465917, at *1 (E.D. Va. Feb. 3, 2017); *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040, at *2

district court in *Washington v. Trump* issued a nationwide injunction against the order, finding that the plaintiffs had "shown that they are likely to succeed on the merits of the[ir] claims" that the order was unlawful. 2017 WL 462040, at *2.

The Government appealed the *Washington* district court's order and sought an emergency stay pending appeal. On February 9, the Court of Appeals denied the stay request, finding that the Government had not "shown a likelihood of success on the merits of its appeal." *Washington v. Trump*, 847 F.3d 1151, 1156 (9th Cir. 2017) (per curiam). Specifically, the court held that the Government had not established that the January 27 executive order satisfied the Due Process Clause because it did not "provide[] what due process requires, such as notice and a hearing prior to restricting an individual's ability to travel." *Id.* at 1164. The court also held that the plaintiffs' claims that the executive order violated the Establishment and Equal Protection Clauses "present[ed] significant constitutional questions" in light of "numerous statements by the President about his intent to implement a 'Muslim ban' as well as evidence [plaintiffs] claim suggests that the Executive Order was intended to be that ban." *Id.* at 1167–68.

On February 13, Plaintiff filed the instant lawsuit, seeking to permanently enjoin enforcement of the January 27 order because the nationwide TRO entered by the court in *Washington* was temporary; Plaintiff could not be sure that it would be sustained on appeal, given that the Government was challenging the *Washington* plaintiffs' standing to sue; and, based on information received from the Government, Plaintiff believed the Government was not processing his petitions notwithstanding the *Washington* injunction. In response to Plaintiff's motion for a temporary restraining order, preliminary injunction, and summary judgment in this

(W.D. Wash. Feb. 3, 2017); *Aziz v. Trump*, No. 1:17-cv-116 (LMB/TCB), 2017 WL 580855, at *7–10 (E.D. Va. Feb. 13, 2017).

case, the Government represented that it had stopped processing derivative asylum petitions once President Trump signed the January 27 order but had resumed processing such petitions (including Plaintiff's) following the *Washington* injunction. The Government also represented that President Trump would be signing a revised executive order promptly. Defs.' Response to Court's Order, Feb. 17, 2017, Dkt. No. 23. As a result of these representations, Plaintiff withdrew his request for a temporary restraining order, and the Court denied as moot Plaintiff's other requests without prejudice. Order, Feb. 17, 2017, Dkt. No. 25.

On February 24, Plaintiff received notice from USCIS that its Nebraska processing center had completed its review of his petitions. USCIS represented that it would transfer his petitions to the National Visa Center for processing at the U.S. Embassy in Amman, Jordan. Plaintiff's wife and daughter will then have to undergo an interview in Amman, be approved for visas, and arrange to travel to the United States.

D. President Trump Replaces the January 27 Executive Order with the New Executive Order

Soon after Plaintiff received the good news from USCIS, President Trump revived his efforts to ban the entry of Syrians, including Plaintiff's wife and child, by signing Executive Order 13780. The Executive Order, which goes into effect on March 16, is a repeat of the January 27 order in both purpose and effect. It is titled "Protecting the Nation from Foreign Terrorist Entry into the United States" — the same name as the January 27 order. Like the January 27 order, it bars for a renewed period of ninety days the entry of all nationals of six Muslim-majority countries, including Syria, ostensibly while the Government studies potential improvements to vetting procedures. (Unlike the January 27 order, it does not bar entry from Iraq.) *Id.* § 2(c). Entry from the affected countries may be prohibited beyond the ninety-day period if the countries do not provide the United States certain information about their nationals.

Id. § 3(e). And while the Executive Order no longer indefinitely bars entry by Syrian refugees, it suspends USRAP for 120 days, just like the January 27 order. *Id.* § 6(a). It also purports to limit the number of refugees the United States will accept in 2017 to 50,000. *Id.* § 6(b).

As the text and context of the Executive Order establish, it was intended to replicate the January 27 order as closely as possible. In a television interview on February 22, White House senior advisor Stephen Miller confirmed that the revised Executive Order (which was then in the works) would contain "mostly minor, technical differences" from the January 27 order, designed to "be responsive" to "flawed, erroneous and false" court orders. "Fundamentally," Miller said, "you are still going to have the same, basic policy outcome for the country." Second Breidenbach Decl. ¶ 6. And in a press briefing held on March 6, 2017 following the signing of the Executive Order, President Trump's press secretary emphasized that the "principles of the [new] executive order remain the same." Second Breidenbach Decl. ¶ 13.

If anything, it became even clearer between January 27 and March 6 that the Executive Order's purported national-security justification was a pretext designed to obscure the Order's true anti-Muslim motivations. Despite claiming that the nation's security was at risk, the Administration delayed signing the Executive Order on March 1 because doing so would have detracted from favorable media coverage for the President. Second Breidenbach Decl. ¶ 9 ("We want the [executive order] to have its own 'moment.'"). Shortly thereafter, two separate reports by the Department of Homeland Security concluded that a territory-based immigration ban did not further the Executive Order's ostensible national-security goals. Second Breidenbach Decl. ¶¶ 7, 8. Far from being an urgent matter of national security, a White House official revealed on March 5 that discussions about the Executive Order were motivated at least in part by a desire to put the President "in a better mood." Second Breidenbach Decl. Ex. NN. And, within moments

of signing the Executive Order, President Trump sent a fundraising email asserting that the Executive Order targets "radical Islamic terrorism," as he had promised to do during his campaign. Second Breidenbach Decl. Ex. QQ (stating that the Executive Order embodies "policies [President Trump's supporters] voted for").

E. The Executive Order Separates Plaintiff from His Wife and Daughter

The Executive Order, once it becomes effective, will immediately put a stop to Plaintiff's derivative asylum petitions. Although USCIS has concluded its review and is in the process of transferring Plaintiff's petitions to the embassy in Amman, the petitions have not yet been finally approved. For that reason, the Executive Order's exception for non-citizens "who ha[ve] been granted asylum," Exec. Order §§ 3(b)(vi), 12(e), does not apply to Plaintiff's wife and daughter, who still need to undergo visa interviews, be approved for visas, travel to the United States, and be granted admission by a customs officer, *see id.* § 3(a) (Order applies to foreign nationals who "are outside the United States" and "do not have a valid visa" by March 16).

Section 2(c) of the Executive Order bars at least the last three of those steps. But the Government may well stop processing Plaintiff's petitions altogether. The operative provisions of the Executive Order are the same as in the January 27 order, which the Government said halted the processing of derivative asylum petitions like those filed for Plaintiff's wife and child. Defs.' Response to Court's Order, Feb. 17, 2017, Dkt. No. 23. Available guidance from the Government states that I-730 derivative asylum petitions do not benefit from exceptions under the Order. Second Breidenbach Decl. ¶ 15. And, finally, the Government has not substantively responded to multiple emails and voicemails requesting a representation about the Executive Order's effect on Plaintiff's petitions, indicating that the Order affects his petitions. Thus, as a direct result of the Executive Order, and despite the obvious merit of Plaintiff's derivative

asylum petitions, Plaintiff is separated from his wife and daughter, who face grave danger in Syria.

ARGUMENT

The Court should grant a temporary restraining order and/or preliminary injunction prohibiting the Government from relying on the Executive Order to delay or deny Plaintiff's derivative asylum petitions. To obtain temporary or preliminary injunctive relief, the moving party must demonstrate (1) "some likelihood of success on the merits," (2) no adequate remedy at law, (3) irreparable harm in the absence of the injunction, and (4) a balance of the equities in his favor. *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 589 (7th Cir. 2012).[3] The "more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor." *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S., Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008) (internal quotation marks omitted).

Here, Plaintiff is highly likely to succeed on the merits of his claim. Just like the January 27 order, the Executive Order is unlawful for multiple reasons: (1) it exceeds the President's authority under the INA; (2) it violates Plaintiff's fundamental right to family integrity and thus violates his substantive and procedural due process rights; (3) it discriminates against Plaintiff on the basis of religion, in violation of the Establishment Clause and the Fifth Amendment's guarantee of Equal Protection; and (4) it discriminates against Plaintiff on the basis of national origin, also in violation of Equal Protection. Moreover, Plaintiff will suffer irreparable harm if the Order is not enjoined, and the equities tilt squarely in his favor.

[3] The standards for a temporary restraining order and a preliminary injunction are the same. *Winnig v. Sellen*, 731 F. Supp. 2d 855, 856 (W.D. Wis. 2010).

I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM

A. THE EXECUTIVE ORDER VIOLATES THE INA

In issuing the Executive Order, the President expressly invoked his authority under Sections 212(f) and 215(a) of the INA, 8 U.S.C. §§ 1182(f), 1185(a).[4] But those sections do not authorize the President to suspend entry of all Syrians, as the text and structure of the INA make apparent. *See Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2090 (2015) ("The Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue.").

1. To begin with, by temporarily halting the issuance of visas for Syrians, the Executive Order violates Section 202(a)(1)(A) of the INA, which prohibits discrimination based on nationality in the issuance of immigrant visas:

> Except as specifically provided in paragraph (2) and in sections 1101(a)(27), 1151(b)(2)(A)(i), and 1153 of this title, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

8 U.S.C. § 1152(a)(1)(A). This section "unambiguously direct[s] that no nationality-based discrimination shall occur." *Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State*, 45 F.3d 469, 473 (D.C. Cir. 1995), *vacated on other grounds*, 519 U.S. 1 (1996). The Executive Order plainly violates that requirement because, as the Seventh Circuit recently held, "targeting

[4] Section 212(f) provides, in relevant part: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." Section 212(a)(1) provides: "[I]t shall be unlawful . . . for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe."

Syrian refugees is discrimination on the basis of nationality." *Exodus Refugee Immigration, Inc. v. Pence*, 838 F.3d 902, 905 (7th Cir. 2016).

Sections 212(f) and 215(a) do not permit the President to disregard Section 202(a)(1)(A)'s antidiscrimination rule. It is well established that "[a] specific statute takes precedence over a more general statute, and a later enacted statute may limit the scope of an earlier statute." *Bhd. of Maint. of Way Emps. v. CSX Transp., Inc.*, 478 F.3d 814, 817 (7th Cir. 2007). That is the case here; Section 202(a)(1)(A) was enacted in 1965, thirteen years after Sections 212(f) and 215(a). *See* INA of 1965, Pub. L. 89-236, § 2, 79 Stat. 911, 911 (1965); INA of 1952, Pub. L. 82-414, §§ 212(e), 215(a), 66 Stat. 163, 188, 190 (1952). And Section 202(a)(1)(A) by its plain terms applies "[e]xcept as specifically provided" in four identified provisions of the INA — none of which is Section 212(f) or Section 215(a). 8 U.S.C. § 1152(a)(1)(A). Where, as here, "Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied." *Hillman v. Maretta*, 133 S. Ct. 1943, 1953 (2013) (internal quotation marks omitted). Because Section 202(a)(1)(A)'s antidiscrimination mandate does not include Sections 212(f) or 215(a) in its list of exceptions, it limits the President's authority under those sections. The President may not use Sections 212(f) or 215(a) to suspend the issuance of visas for a given nationality.

Section 202(a)(1)(A)'s legislative history confirms the point. Before 1965, U.S. immigration was governed by the "national origins system." H.R. Rep. No. 89-745, at 8 (1965) (Breidenbach Decl. Ex. Y). Designed "to maintain the ethnic balance of the American population as it existed in 1920," the national origins system created immigration quotas "based upon race and place of birth." *Id.* at 10. By 1965, however, it was clear that the national origins system, which "impl[ied] that men and women from some countries are, just because of where

they come from, more desirable citizens than others," was "incompatible with our basic American tradition." *Id.* at 11. In 1965, Congress thus passed amendments to the INA, the "primary objective" of which was to "abolish[] . . . the national origins quota system" and replace it with "a new system of selection." S. Rep. No. 89-748, at 11, 13 (1965) (Breidenbach Decl. Ex. Z); *see* H.R. Rep. No. 89-745, at 18. This new system, "designed to be fair, rational, humane, and in the national interest," would select immigrants "without regard to place of birth." H.R. Rep. No. 89-745, at 12; *see* S. Rep. No. 89-748, at 13–14.

Section 202(a)(1)(A) was central to achieving the 1965 Act's antidiscrimination goals. *See Olsen v. Albright*, 990 F. Supp. 31, 37 (D.D.C. 1997). By "flatly forbidding nationality-based discrimination," *Vietnamese Asylum Seekers*, 45 F.3d at 473, Section 202(a)(1)(A) ensured that the United States would never again close its borders to immigrants based solely on nationality. As President Johnson put it in a signing ceremony before the Statue of Liberty, "for over four decades the immigration policy of the United States ha[d] been twisted and . . . distorted by the harsh injustice of the national origins quota system." The 1965 Act corrected this "cruel and enduring wrong in the conduct of the American Nation." Breidenbach Decl. Ex. AA. In contravention of Congress's mandate, President Trump has sought to repeat what President Johnson called a "harsh injustice."

2. More generally, the President's reading of Sections 212(f) and 215(a) to permit him to suspend all refugee petitions and entry of all Syrians is inconsistent with the statutory scheme. Congress's guarantee of fairness and equality in matters of immigration would be a dead letter if Sections 212(f) or 215(a) permitted the President to override the carefully calibrated legislative scheme on the mere invocation of the "national interest." More than that, the Government's

interpretation of Sections 212(f) and 215(a) would allow the President to single-handedly dismantle the entire body of immigration and refugee law that Congress created.

Particularly relevant here is Congress's decision in the INA to impose precise requirements, procedures, quotas, and priorities for immigrant visas, *see* 8 U.S.C. §§ 1152–53, and admissions for refugees and asylees, *see id.* §§ 1157–58. If the President wishes to alter the number of refugees the United States will accept, he may do so only after "appropriate consultation" with Congress — a statutory term defined to mean meeting "with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation" and "to discuss" certain matters specified by statute. *Id.* § 1157(a)(2), (b), (e).[5] Sections 6(a) and 6(b) of the Executive Order, which unilaterally suspend USRAP and purport to cap the number of refugees that may enter the United States without undertaking the "consultation" the INA requires, are proof positive that the Government's reading of Section 212(f) would render the rest of the INA a nullity.

Similarly, Congress required "final administrative adjudication" of asylum applications to "be completed within 180 days after the date an application is filed." 8 U.S.C. § 1158(d)(5)(A)(iii). To add other "conditions or limitations," the Attorney General — not the President — must promulgate regulations (following notice and comment) that are "not inconsistent" with the INA. *Id.* § 1158(d)(5)(B). And the INA includes a number of provisions designed to favor family reunification in the application and processing of immigration matters.

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[5] Earlier in this litigation, the Government took the position that the January 27 order's suspension of USRAP for 120 days did not apply to Plaintiff's derivative asylum petitions. Defs.' Response to the Court's Order 2 n.1, Feb. 17, 2017, Dkt. No. 23. But to the extent that is no longer true under Section 6(a) of the new Executive Order, that section also exceeds the President's power. Sections 212(f) and 215(a), which govern the "entry" of aliens, do not empower the President to unilaterally suspend USRAP. Tellingly, Section 6(a) does not cite Section 212(f), Section 215(a), or any other statute providing the President with that power.

See id. §§ 1101(a)(27), 1153(a)–(e), 1154(a); S. Rep. No. 89-748, at 13 ("Reunification of families is to be the foremost consideration."). These provisions reflect not just a considered judgment by Congress to support family relations, but are also necessary for the United States to honor its obligations under international law. *See* DHS, Annual Flow Report, Refugees and Asylees: 2005 (Breidenbach Decl. Ex. BB) ("U.S. asylum policy is governed by the Refugee Act of 1980. The Refugee Act established a statutory process for granting asylum consistent with the 1951 Convention Relating to the Status of Refugees.").[6]

Congress could not have intended these and countless other detailed provisions to be mere suggestions that the President could override through unreviewable executive fiat by simply proclaiming that the "national interest" is different than what Congress enacted in the INA. As Justice Scalia colorfully explained for a unanimous Supreme Court, Congress does not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001); *see also FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000) (holding Congress did not intend to permit the FDA to regulate tobacco by granting it the authority to regulate "drugs"). The INA should not be "interpret[ed] … to negate [its] own stated purposes." *N.Y. State Dep't of Soc. Servs. v. Dublino,* 413 U.S. 405, 419–20 (1973).

The unchecked Presidential authority the Government reads into Sections 212(f) and 215(a) raises serious Article II concerns, since the Executive cannot "'consciously and expressly adopt[] a general policy' that is so extreme as to amount to an abdication of its statutory responsibilities." *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985). Indeed, Presidents have

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[6] *See* Final Act of the 1951 U.N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Recommendation B (Breidenbach Decl. Ex. CC) (declaring that "the unity of the family . . . is an essential right of the refugee" and calling upon governments to "take the necessary measures for the protection of the refugee's family").

never before understood their authority under Sections 212(f) or 215(a) to be unlimited in the way the Government now claims. In the long history of presidential proclamations based on those sections, not one has categorically excluded all aliens from a particular nation — until now. *See* Breidenbach Decl. Ex. J at 6–10; *see also* Breidenbach Decl. Ex. X ¶ 8.[7] The "lack of historical precedent" for the Executive Order is a "telling indication" that it is unlawful. *Luis v. United States*, 136 S. Ct. 1083, 1099 (2016) (internal quotation mark omitted).

The Executive Order, insofar as it bars Syrians entry into the United States, should be set aside, and Defendants should be ordered to consider Plaintiff's derivative petitions consistent with the INA.

B. THE EXECUTIVE ORDER UNLAWFULLY INTERFERES WITH PLAINTIFF'S FUNDAMENTAL RIGHT TO FAMILY INTEGRITY, IN VIOLATION OF DUE PROCESS

Even if the Executive Order could be justified on statutory grounds as a valid exercise of authority under the INA, it would still be unlawful because, in suspending Plaintiff's derivative petitions and barring entry of Syrians, it violates the Fifth Amendment's guarantee of due process. The Executive Order violates both substantive and procedural due process because it unfairly deprives Plaintiff of his fundamental right to family integrity without adequate justification or procedures.

1. As the Supreme Court long ago explained, the Fifth Amendment's prohibition of deprivations of liberty without due process protects "not merely freedom from bodily restraint

[7] President Reagan did issue a proclamation excluding many Cuban nationals, but that proclamation did not categorically exclude Cubans as immigrants and did not exclude them as nonimmigrants at all. Pres. Proc. No. 5517 (Aug. 22, 1986). It was also a direct response to Cuba's suspension of immigration between Cuba and the United States. *Id.* It thus provides no support for the Executive Order, which categorically excludes aliens from six different nations as immigrants and nonimmigrants based on nothing more than a generalized and unsupported assertion of risk.

but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

Consistent with that observation, the Supreme Court has since explained that the Due Process Clause protects against unwarranted governmental interference with numerous aspects of the marital relationship. *See Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (right of married couples to contraception); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (right to marry); *Obergefell v. Hodges*, 135 S. Ct. 2584, 2599 (2015) (right to same-sex marriage). It also protects against interferences with the right to rear children: "[T]he right of parents to 'establish a home and bring up children' and 'to control the education of their own'" is "perhaps the oldest of the fundamental liberty interests recognized by th[e] [Supreme] Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *see Meyer*, 262 U.S. at 402–03 (recognizing right of parents to have their child learn the German language); *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925) (recognizing fundamental right "of parents and guardians to direct the upbringing and education of children under their control").

These cases and others establish that the Due Process Clause provides heightened protection against government interference with the integrity of the unitary family. Government conduct that interferes with this fundamental right must be narrowly tailored to further a compelling government interest. *E.g.*, *Zablocki v. Redhail*, 434 U.S. 374, 368 (1978); *Moore v. City of E. Cleveland*, 431 U.S. 494, 500 (1977); *see also Brokaw v. Mercer Cty.*, 235 F.3d 1000,

1018–19 (7th Cir. 2000) (collecting cases recognizing the "constitutional right to familial relations").

2. The Executive Order contravenes the Due Process Clause's prohibition against unwarranted governmental intrusions with the "constitutional right to familial relations." *Brokaw*, 235 F.3d at 1018. It interferes with Plaintiff's fundamental right to family integrity by making it impossible for him to reunite with his wife and young child. Moreover, Plaintiff cannot return to them without facing further torture and likely death, as the Government found in granting him asylum.

To interfere with Plaintiff's fundamental right to family integrity in this way, the Executive Order must be narrowly tailored to advance a compelling state interest. *See, e.g.*, *Zablocki*, 434 U.S. at 368. But the Executive Order flunks that test because it is both over- *and* under-inclusive in achieving its purported justification of protecting against the entry of terrorists. The Executive Order is *over*-inclusive because it ensnares immigrants with no possible connection to terrorism. Plaintiff's daughter is a case in point: the Executive Order here serves only to protect America from the non-existent threat of a sick three-year-old girl entering the country to be reunited with her father. As one court put it, "[i]t is beyond reasonable argument to contend that a policy that purportedly deters [Syrian] four year olds from resettling . . . is narrowly tailored to serve the . . . asserted interest in public safety." *Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 737 (S.D. Ind.), *aff'd*, 838 F.3d 902 (7th Cir. 2016).

The Executive Order is also drastically *under*-inclusive. As the Seventh Circuit explained recently in *Pence*, "no Syrian refugees have been arrested or prosecuted for terrorist acts or attempts in the United States." 838 F.3d at 904. Nor have any fatal terrorist attacks been

committed in the United States by a national of any of the six countries covered by Section 2(c) in at least the past quarter-century. *See* Breidenbach Decl. Exs. K, S. Conversely, nationals from other countries *not* subject to the Executive Order have perpetrated fatal attacks in the United States in the last two decades. *Id.* None of the perpetrators of the September 11th, Boston Marathon, San Bernardino, or Orlando attacks came from Syria or any of the other five affected countries.

In fact, in two separate internal memoranda written between President Trump's two executive orders, the Department of Homeland Security concluded that the Executive Order would not materially advance the Government's national-security interests. DHS concluded that "most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns." Second Breidenbach Decl. ¶ 8. Even if extremists could be identified and screened before entry, the Executive Order's focus on nationality would be inapt because, as DHS explained, "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity." Second Breidenbach Decl. ¶ 7. Indeed, of the eighty-two U.S. residents DHS identified as having been involved in terrorism-related offenses since the beginning of the Syrian conflict, *not one* came from Syria. *Id.*

In light of the feeble national-security justification for the Executive Order, the Government has argued in cases challenging the January 27 order that its justifications must only be "facially legitimate and bona fide" where immigration is at stake. *Fiallo v. Bell*, 430 U.S. 787, 807 (1977); *Kleindienst v. Mandel,* 408 U.S. 753, 770 (1972). But, as the Ninth Circuit recently held in rejecting this argument, that more limited standard of review applies only to "lawsuits challenging an executive branch official's decision to issue or deny an individual visa

based on the application of a congressionally enumerated standard to the particular facts presented by that visa application," not to all executive exercises of immigration authority. *Trump*, 847 F.3d at 1162; *see also Fiallo*, 430 U.S. at 797–98 (challenging statutory scheme setting out special preference immigration status to aliens who qualify as the "children" or "parents" of United States citizens or lawful permanent residents). *Mandel*'s deferential standard of review, tailored to individual exercises of Executive discretion authorized by pre-existing law, is ill-equipped to account for the myriad interests implicated by the sweeping, unprecedented Executive Order. *Trump*, 847 F.3d at 1162–63.[8] *Mandel* provides no basis to override nearly a century of cases protecting the fundamental rights of persons in the United States from unwarranted incursions into the familial unit.

3. The Executive Order also violates the Due Process Clause because it deprives Plaintiff of adequate procedures. *See United States v. Salerno*, 481 U.S. 739, 746 (1987) ("When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976))). Plaintiff's procedural due process right in his derivative asylum petitions is directly implicated by his fundamental liberty interest in family integrity. *Cf. Bustamante v. Mukasey*, 531 F.3d 1059, 1062 (9th Cir. 2008) (joining the First, Second, and D.C. Circuits to

[8] In any event, the Executive Order cannot pass muster even under the *Mandel* test. "[P]rotecting the nation from foreign terrorist entry" is a facially legitimate reason to exclude certain classes of aliens. But there is overwhelming evidence that the real reason for the Executive Order is anti-Muslim animus. *See infra* at 25–26. Therefore, Defendants' asserted justification for the Executive Order is not *bona fide* and cannot stand. *See Wong Wing Hang v. INS*, 360 F.2d 715, 719 (2d Cir. 1966) (Friendly, J.) (executive immigration decisions cannot rest on "invidious discrimination against a particular race or group").

hold that a U.S. citizen raising a constitutional challenge to the denial of a visa to her husband is entitled to a limited judicial inquiry regarding the reason for the decision).[9]

There are three general factors that courts weigh to determine whether the process at issue is constitutional: (1) the private interest affected by the official actions; (2) the risk of an erroneous deprivation of the interest and the value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens the additional or substitute procedural requirements would impose. *Eldridge*, 424 U.S. at 335.[10] Whatever process is due here, however, the Executive Order does not provide it — it provides no process at all, as the Ninth Circuit recently observed in denying the Government's motion for a temporary stay. *See Trump*, 847 F.3d at 1164 ("[T]he Government does not contend that the Order provides for such process."). Accordingly, the Executive Order, as applied to Plaintiff's pending petitions for derivative asylum, violates Plaintiff's procedural due process rights.

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[9] Four members of the Supreme Court recently agreed with this rule in *Kerry v. Din*, 135 S. Ct. 2128, 2142 (2015) (Breyer, J., dissenting). In *Din*, Justices Kennedy and Alito found it unnecessary to decide whether there was such a right because they believed the government had granted adequate process under the circumstances of the case.

[10] Defendants have never explained why existing procedures are inadequate to consider pending derivative asylum petitions. Refugees and asylees are already subject to "the highest level of background and security checks of any category of traveler to the United States," in a process that often takes years to complete, and Syrian applicants are subject to "enhanced review." Breidenbach Decl. Ex. DD. Indeed, the Executive Order is likely to undermine U.S. national security interests. *See* Breidenbach Decl. Ex. X (Joint Declaration of Madeleine K. Albright et al., *Trump*, No. 17-35105) (detailing how the Executive Order will endanger U.S. troops and intelligence sources; disrupt key counterterrorism, foreign policy, and national-security partnerships; and "feed the recruitment narrative of ISIL and other extremists that portray the United States as at war with Islam").

C. THE EXECUTIVE ORDER VIOLATES THE ESTABLISHMENT CLAUSE AND EQUAL PROTECTION BY DISPROPORTIONATELY BURDENING MUSLIMS BASED ON ANTI-MUSLIM ANIMUS

The Executive Order also violates the Establishment Clause and the Fifth Amendment's guarantee of Equal Protection because it does what it was intended to do: disfavor Islam.[11] The Establishment Clause's "clearest command" is that "one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). "This prohibition is absolute." *Id.* at 246. Even a facially neutral law violates the Establishment Clause when it "(1) lacks a legitimate secular purpose; (2) has the primary effect of advancing or inhibiting religion; or (3) fosters an excessive entanglement with religion." *Doe ex rel. Doe v. Elmbrook School Dist.*, 687 F.3d 840, 849 (7th Cir. 2012) (citing *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971)); *see also School Dist. of Abingdon Twp. v. Schemp*, 374 U.S. 203, 222 (1963) ("The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution."). Similarly, the Fifth Amendment's Equal Protection guarantee forbids facially neutral laws that have a "disproportionately adverse effect" on a suspect class, including a religious denomination, if the "impact can be traced to a discriminatory purpose." *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979); *see Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 1000 (7th Cir. 2006).

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[11] Plaintiff's Establishment Clause claim is materially distinct from the claim found unlikely to succeed for lack of standing in *Louhghalam v. Trump*, No. 17-cv-10154, 2017 WL 479779, at *4–5 (D. Mass. Feb. 3, 2017). Unlike the *Louhghalam* plaintiffs, Plaintiff is already in the United States and is seeking admission for his family; the Executive Order thus directly affects his right to live with his wife and daughter. Plaintiff plainly has standing to enforce his own constitutional rights.

To determine whether a facially neutral law unconstitutionally burdens a religion or otherwise violates the Establishment Clause, a court should ask how a reasonable observer would understand the law in light of its context. *See McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 865–66 (2005). The Court may thus consider "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body." *Church of Lukami Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993); *see Trump*, 847 F.3d at 1167 ("[I]t is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims."). When "openly available data support[s] a commonsense conclusion that a religious objective permeated the government's action," it is unconstitutional. *McCreary*, 545 U.S. at 863; *see also Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265–66 (1977) ("When there is a proof that a discriminatory purpose has been a motivating factor in the decision, … judicial deference [to the political process] is no longer justified.").

Here, the Executive Order violates the Establishment Clause and the Fifth Amendment's Equal Protection guarantee because it has the purpose and effect of disfavoring Muslims. *See Aziz*, 2017 WL 580855, at *7–9 (finding the January 27 order likely violated the Establishment Clause). Section 2(c) of the Executive Order self-evidently burdens Muslims more harshly than any other religious group by barring entry from exclusively Muslim-majority countries. *See Larson*, 456 U.S. at 254 (holding the government may not impose "burdens . . . upon particular denominations").

This disparate impact on Muslims is no accident; it is the Executive Order's intended effect, the culmination of a public history of animus toward Muslims. As a candidate, President Trump expressed hostility toward Muslims and pledged — loudly and repeatedly — to ban them from entering the United States. *See* Breidenbach Decl. ¶¶ 2–8; *Trump*, 847 F.3d at 1167 (citing "numerous statements by the President about his intent to implement a 'Muslim ban' as well as evidence . . . that the Executive Order was intended to be that ban"); *Aziz*, 2017 WL 580855, at *8–9 (summarizing the President's anti-Muslim animus). The January 27 executive order was his attempt to enact his promised Muslim ban. Breidenbach Decl. ¶ 18. That order facially discriminated on the basis of religion by barring entry from Muslim-majority countries while simultaneously prioritizing members of the "minority religion in the individual's country of nationality." Jan. 27 Order §§ 3(c), 5(b), 5(e). And President Trump made clear that the order was intended to favor Christians at the expense of Muslims. *See* Breidenbach Decl. ¶ 14 ("[W]e are going to help [Christians].").

This history, which is further detailed in the accompanying affidavits, fatally infects the new Executive Order. As the White House has admitted, the Executive Order was intended to and does replace the January 27 order without altering its governing "policy" or "principles" in any way. Second Breidenbach Decl. ¶¶ 6, 13. What speaks volumes here is the fact that the Department of Homeland Security was tasked with bolstering the Executive Order's national-security justification and came up empty-handed on not one but two occasions, concluding that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity." Second Breidenbach Decl. ¶ 7. If the Executive Order's real goal was to facilitate a study of vetting procedures, the Government presumably would have channeled its resources toward that objective rather than manufacturing post-hoc justifications for the President's anti-Muslim

campaign promises. But there is no indication that the Government has made any progress in that respect, given that the new order, which goes into effect forty-eight days after President Trump first called for the Government to conduct a ninety-day study — more than halfway into the original time period — starts the ninety-day clock anew.

In sum, the Executive Order follows from the same expressions of anti-Muslim animus as the January 27 order, and its bar on entry from Muslim-majority countries disproportionately burdens Muslims in precisely the same way. As such, the Executive Order's representation that it does not target Muslims, *see* Exec. Order § 1(b)(iv), is a litigation-driven "sham" undeserving of judicial respect, *McCreary*, 545 U.S. at 844; *see Aziz*, 2017 WL 580855, at *8 n.10 (disregarding "post hoc statements . . . that this is not a Muslim ban" because "[s]uch rationalizations . . . are typically afforded little weight in an intent inquiry"). As the Supreme Court has explained, "the world is not made brand new every morning," and courts may not "turn a blind eye to the context in which [a] policy arose." *McCreary*, 545 U.S. 844 at 866 (internal quotation mark omitted). Here, the Executive Order's history makes clear that it was intended to do exactly what it does: discriminate against Muslims. It therefore violates the Establishment Clause and Equal Protection and should be enjoined.

D. THE EXECUTIVE ORDER UNCONSTITUTIONALLY DISCRIMINATES ON THE BASIS OF NATIONALITY

When confronted with the fact that a religion-based "Muslim ban" is unconstitutional, then-candidate Trump tried to pivot by characterizing his proposal as a ban that discriminates on the basis of "territory" or national origin, responding flippantly: "So you call it territories, ok? We're gonna do territories. We're gonna not let people come in from Syria." Breidenbach Decl. ¶ EE. Even looking past the fact that this was a change in name only, and is certainly not bona fide, this pivot from religion to nationality did nothing to alter the policy's unconstitutionality.

Indeed, classifications based on national origin are also inherently suspect and subject to strict scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

There can be no question that the Executive Order facially discriminates on the basis of national origin by barring all entry for non-citizens from Syria and five other identified countries. Exec. Order § 2(c). As the Seventh Circuit recently recognized in invalidating then-Governor (now-Vice President) Pence's denial of federal resettlement funds for Syrian refugees, such distinctions are illegal "discrimination on the basis of nationality." *Pence*, 838 F.3d at 904. Writing for the Court of Appeals, Judge Posner did not mince words:

> [In defending the order, Pence] argues that his policy of excluding Syrian refugees is based not on nationality and thus is not discriminatory, but is based solely on the threat he thinks they pose to the safety of residents of Indiana. But that's the equivalent of his saying (not that he does say) that he wants to forbid black people to settle in Indiana not because they're black but because he's afraid of them, and since race is therefore not his motive he isn't discriminating. But that of course would be racial discrimination, just as his targeting Syrian refugees is discrimination on the basis of nationality.

Id. at 904–05. So too here.

And because the Executive Order discriminates on the basis of national origin, it must satisfy strict scrutiny. But defendants can offer no compelling government interest to justify such blatant discrimination. Even if the Court were to accept the Executive Order's purported national-security justification — and, under the Seventh Circuit's decision in *Pence*, the Court could not — the Executive Order is, as previously explained, not narrowly tailored to advance that interest. It is both over- and under-inclusive, depriving all sorts of persons from entry into the United States regardless of their relationship to terrorism, such as Plaintiff's wife and three-year-old daughter. *See supra* at 19–20.

Even a lesser level of scrutiny would not change this conclusion. "The Constitution's guarantee of equality 'must at the very least mean that a bare . . . desire to harm a politically

unpopular group cannot' justify disparate treatment of that group." *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013) (quoting *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534–35 (1973)). The "sheer breadth" of the Executive Order — barring all Syrians — is "so discontinuous with the reasons offered for it" — protecting the nation from terrorist entry — "that [it] seems inexplicable by anything but animus toward the class it affects." *Romer v. Evans*, 517 U.S. 620, 632 (1996). The Executive Order thus lacks even "a rational relationship to legitimate state interests." *Id.*

E. THE GOVERNMENT CANNOT JUSTIFY THE EXECUTIVE ORDER BASED ON SO-CALLED PRESIDENTIAL POWERS

In cases challenging the January 27 order, the Government took the position that the Executive Order, however unlawful or unconstitutional it might be in other contexts, is nevertheless a valid — and unreviewable — exercise of the President's power over foreign affairs. Not so.

"Under Article 1, Section 8 of the United States Constitution, *Congress* is empowered to establish standards for immigration." *United States v. Tittjung*, 235 F.3d 330, 338 (7th Cir. 2000) (emphasis added). To be sure, the President receives a large degree of deference on matters concerning immigration and national security. But the President may not suspend constitutional or statutory mandates, even in the immigration and national-security context. *See, e.g.*, *id.* ("[T]he fact that Congress delegated authority to the Executive to oversee matters of immigration does not mean that the Attorney General was provided with exclusive control for the entire area."); *Zivotofsky*, 135 S. Ct. at 2090 ("The Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue."); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (plurality opinion). And, "in time of war as well as in time of peace," the Judiciary has a duty "to preserve unimpaired the constitutional safeguards of civil

liberty." *Ex parte Quirin*, 317 U.S. 1, 19 (1942); *see also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582–83, 590 (1952) (holding the President may not seize the nation's steel mills merely by proclamation, even upon finding that such a seizure "was necessary to avert a national catastrophe," and even where steel was "an indispensable component of substantially all . . . weapons and other materials" necessary for the United States in an ongoing war).

The President's Article II authority cannot abridge Article I or the Bill of Rights. Nor can the Executive's so-called "plenary powers" be used to rewrite U.S. law in order to fulfill a campaign promise of banning Muslims from the United States. Simply put, the new Executive Order is illegal. As with the one that it replaced, it should be enjoined to protect Plaintiff's interest in reuniting with his wife and three-year-old daughter.

II. PLAINTIFF STANDS TO SUFFER IRREPARABLE INJURY, AND THE EQUITIES STRONGLY TILT IN HIS FAVOR

Next, it is clear that Plaintiff satisfies the rest of the test for obtaining a temporary restraining order or preliminary injunction, given the immediate threat to him and his wife and young child.

As a general matter, the mere establishment of a constitutional violation of the sort at issue here establishes both irreparable injury and that the balance of the equities supports entry of an injunction. Constitutional violations are presumed to result in irreparable harm. *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011).[12] Similarly, it is "always in the public interest" to enjoin unconstitutional conduct. *Joelner v. Vill. of Wash. Park*, 378 F.3d 613, 620 (7th Cir.

[12] *See, e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (First Amendment); *Preston v. Thompson*, 589 F.2d 300, 303 (7th Cir. 1978); *Milwaukee Cty. Pavers Ass'n v. Fiedler*, 707 F. Supp. 1016, 1032 (W.D. Wis.), *modified*, 710 F. Supp. 1532 (W.D. Wis. 1989) (equal protection); *Jessen v. Vill. of Lyndon Station*, 519 F. Supp. 1183, 1189 (W.D. Wis. 1981) (equal protection, due process, and First Amendment).

2004) (internal quotation marks omitted); *see also Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) (stating that remedying a "continuing constitutional violation . . . certainly would serve the public interest"). Given Plaintiff's strong showing on the merits, the Court should enter immediate relief now to preserve the status quo.

But this case presents a particularly pronounced showing that immediate injunctive relief is warranted. As courts in this and other Circuits have recognized, separation from one's wife and child constitutes irreparable harm.[13] Plaintiff has not seen his wife in three years. He has not experienced any of the crucial "firsts" in his daughter's life: her first smile, her first steps, her first words. He could not be with his family to bury and mourn his son; he must grieve alone. And Aleppo remains a humanitarian disaster. Its residents, including Plaintiff's family, lack access to adequate food, shelter, and other basic services. Plaintiff's daughter is ill without access to basic medical care. The SAA, whose members threatened to rape Plaintiff's wife, is still active and in control of the neighborhood where she remains in hiding, too terrified to risk going outside absent an emergency. As long as the Executive Order is in effect, Plaintiff will live every day not knowing if he will ever see his family again. His injury is not subject to serious dispute.[14]

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[13] *E.g.*, *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011); *Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en banc); *Ramirez-Vicario v. Achim*, No. 04 C 0301, 2004 WL 392573, at *3 (N.D. Ill. Feb. 24, 2004); *Omar v. Kerry*, No. 15-CV-01760-JSC, 2015 WL 5964901, at *9 (N.D. Cal. Oct. 13, 2015); *Ping Ping Zhou v. Kane*, No. CV 07-0785-PHX-DGC (ECV), 2007 WL 1559938, at *4 (D. Ariz. May 29, 2007).

[14] The potential availability of a waiver from the travel ban, Exec. Order § 3(c), does not change this conclusion. The mere possibility that the Government may voluntarily relieve a party from an unlawful injury does not lessen the injury. In any event, there is no guarantee that Plaintiff's family will receive a waiver, and the Government has given no indication that it will provide one.

For the same reasons, the balance of equities strongly favors the entry of immediate relief. It is not hyperbole to say that such relief is a matter of life and death. By contrast, Defendants have no cognizable interest in continuing to implement an Executive Order that violates federal law and the Constitution. *See United States v. U.S. Coin & Currency*, 401 U.S. 715, 726 (1971); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). Nor does Defendants' pretextual "national security" interest outweigh Plaintiff's interests, given the Executive Order's failure to advance that purported interest in a tailored way. *See supra* at 19–20; *Trump*, 847 F.3d at 1168 (finding no harm to Government from stay of Executive Order because there is "no evidence that any alien from any of the countries named in the Order has perpetrated a terrorist attack in the United States").

CONCLUSION

Plaintiff respectfully asks this Court to enter a temporary restraining order and a preliminary injunction prohibiting enforcement of the Executive Order against Plaintiff and requiring Defendants to finish processing Plaintiff's derivative asylum petition.

Dated: New York, New York
March 10, 2017

Respectfully submitted,

By: /s/ Vincent Levy

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

JOHN DOE,

Plaintiff,

-against-

DONALD J. TRUMP, as President of the United States of America; JOHN F. KELLY, as Secretary of the Department of Homeland Security; THE DEPARTMENT OF HOMELAND SECURITY; LORI SCIALABBA, as Acting Director of the U.S. Citizenship and Immigration Services; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; REX W. TILLERSON, as Secretary of State; U.S. DEPARTMENT OF STATE; and THE UNITED STATES OF AMERICA,

Defendants.

Civil Action No.: 17-cv-112

Chief Judge William M. Conley

PLAINTIFF'S STATEMENT OF PROPOSED RECORD FACTS IN SUPPORT OF PLAINTIFF'S RENEWED APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to the Court's Procedure to Be Followed on Motions for Injunctive Relief, Plaintiff, by and through his undersigned counsel, hereby submits the following Statement of Proposed Record Facts:

Jurisdiction and Venue

1. This Court has subject matter jurisdiction over Plaintiff's federal claims under 28 U.S.C. § 1331 because this action arises under Article II of the United States Constitution, the First Amendment to the United States Constitution, the Fifth Amendment to the United States Constitution, the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1152, 1182(f), and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706.

2. Plaintiff's action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this district. *See* Declaration of John Doe in Support of His Renewed Application for a Temporary Restraining Order and Preliminary Injunction ("Doe Decl.") ¶¶ 21–22.

Parties

4. Plaintiff John Doe, who resides in the Western District of Wisconsin, is a Sunni Muslim asylee who was granted asylum status in May 2016. Doe Decl. ¶¶ 2, 20–21.

5. Defendant Donald J. Trump is President of the United States. President Trump signed both executive orders that are the subject of this action. He is sued in his official capacity.

6. Defendant John F. Kelly is the Secretary of the Department of Homeland Security. Defendant Kelly is responsible for implementing the INA and the Executive Order that is the subject of this action. He is sued in his official capacity.

7. Defendant Department of Homeland Security ("DHS") is a cabinet department within the U.S. federal government. Its functions include regulating entry into the United States and granting asylees prior approval to travel internationally. It is also responsible for implementing and enforcing the Immigration and Nationality Act.

8. Defendant Lori Scialabba is the Acting Director of the U.S. Customs and Immigration Services. She is sued in her official capacity.

9. Defendant U.S. Customs and Immigration Services ("USCIS") is an agency within DHS whose primary functions include adjudication of asylum and derivative asylum claims.

10. Defendant Rex W. Tillerson is the U.S. Secretary of State. The Secretary of State has authority to determine and implement certain asylum procedures for non-citizens. Defendant Tillerson is sued in his official capacity.

11. Defendant U.S. Department of State ("State Department") is responsible for, *inter alia*, facilitating issuance of visas for asylees and derivative asylees seeking entry into the United States.

Plaintiff's Derivative Asylum Petition

12. Plaintiff legally resides in the United States, having been granted asylum status by USCIS in 2016. *See* Doe Decl. ¶¶ 13–15, 20–21.

13. Shortly after receiving asylum status, Plaintiff filed two Refugee/Asylee Relative Petitions (also known as derivative asylum petitions) with USCIS on Form I-730 for his wife and three-year-old daughter. Doe Decl. ¶¶ 21–22.

14. USCIS was duly processing Plaintiff's Refugee/Asylee Relative Petitions until President Trump's issuance of Executive Order 13769, "Protecting the Nation from Foreign Terrorist Entry into the United States," dated January 27, 2017. Dkt. No. 13 ¶ 15; Dkt. No. 23 at 5–6.

15. In filings with this Court, the Government confirmed that provisions of the first executive order barred the processing of derivative asylum petitions. Dkt. No. 23 at 6 ("Following the signing of the Executive Order of January 27, 2017, Defendants endeavored to comply with the mandate . . . .").

16. The Government further represented that, after the TRO was entered in *Washington v. Trump*, No. C17-014JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), USCIS "resumed" processing derivative asylum petitions. Dkt. No. 23 at 6 ("[P]rocessing of Form I-730 derivative asylum petitions—such as Plaintiff's—*resumed* when the injunction was issued." (emphasis added)).

17. USCIS has approved both of his petitions and is in the process of transferring them to the National Visa Center for routing to the U.S. Embassy in Amman, Jordan. *See* Second Declaration of Andrew B. Breidenbach in Support of Plaintiff's Renewed Application for a Temporary Restraining Order and Preliminary Injunction ("Second Breidenbach Decl.") Ex. UU.

18. That stage is the final portion of the derivative asylum process; but for the Executive Order (described below), the U.S. Embassy would interview Plaintiff's wife and child upon receipt of the completed petitions, and, if approved, the Government would issue travel documents permitting them to enter the United States. Second Breidenbach Decl. Ex. TT.

19. The Government represented that the remaining portion of the review would require between one and four additional months to complete. Second Breidenbach Decl. Ex. UU.

20. On March 6, 2017, President Trump issued an updated Executive Order, No. 13780, also titled "Protecting the Nation from Foreign Terrorist Entry into the United States" (the "Executive Order"). Second Breidenbach Decl. Ex. FF.

21. The new Executive Order replaces the original executive order and will take effect on March 16, 2017. Second Breidenbach Decl. Ex. FF §§ 1(i), 14.

22. As indicated by numerous statements made by President Trump and his advisors, the new Executive Order reflects the same purpose as the original January order: to ban entry by Muslims into the United States. Second Breidenbach Decl. ¶¶ 6, 13–14.

23. The Executive Order contains the same provisions that the Government previously interpreted to require it to stop processing derivative asylum petitions. Second Breidenbach Decl. Ex. FF.

24. On its face and as interpreted by the Government, the new Executive Order harms Plaintiff by prohibiting the issuance of travel documents that Plaintiff's wife and daughter would need to be reunited with Plaintiff in the United States and by prohibiting them from entering the United States. Doe Decl. ¶¶ 25–26; Second Breidenbach Decl. Ex. RR.

25. On March 6, 2017, the day the new Executive Order was signed, Plaintiff's counsel contacted counsel for Defendants to inquire as to the effect of the new order on Plaintiff's pending petitions. Plaintiff's counsel requested an answer to the following questions by Wednesday, March 8 and advised that Plaintiff would take the Government's non-response as an indication that the Executive Order impacts his petitions:

- Please state whether the Government will continue to process derivative asylum petitions for beneficiaries residing in Syria once the new Executive Order takes effect.
- Please state whether the new Executive Order applies to the pending derivative petitions or otherwise affects our client's wife's and daughter's ability to enter the United States in any manner, including but not limited to, by delaying or barring the Government from processing the applications or delaying or barring the Department of State from interviewing or issuing travel documents to our client's wife and daughter;
- If the new Executive Order does affect the pending derivative applications or otherwise affects our client's wife's and daughter's ability to enter the United States in any manner, please identify which provisions of the Executive Order does so; and

- If the new Executive Order does not apply to or otherwise affect our client's wife's and daughter's ability to enter the United States in any manner, please identify the provisions of the Executive Order that make this clear.

Second Breidenbach Decl. Ex. UU.

26. Despite three follow-up emails, three unanswered calls, and three voicemail messages, the Government has not responded substantively to these questions as of this filing, other than to ask whether Plaintiff's wife and child are currently in Syria or Lebanon. Second Breidenbach Decl. ¶ 19 & Ex. UU.

27. The text of the Executive Order confirms that, once it becomes effective, it will bar the processing of Plaintiff's derivative petitions and/or the entry of Plaintiff's wife and child into the United States: (A) Under Section 2(c) of the Executive Order, Plaintiff's wife and daughter, as Syrian nationals, are barred from entry for a minimum of 90 days (starting on the Order's effective date). (B) Section 3(a) also makes clear that Plaintiff's wife and daughter are subject to the ban on entry because they (i) will be outside the United States on March 16, 2017; (ii) did not have a valid visa at 5:00 p.m., eastern standard time on January 27, 2017; and (iii) will not have a valid visa on March 16, 2017.

28. It will take at least 30 days from February 24 for Plaintiff's petitions to arrive in Jordan, which means that Plaintiff's wife and child will not have a visa by March 16, 2017. Second Breidenbach Decl. Ex. UU.

29. Plaintiff's wife and daughter do not fall under any of the exceptions in Section 3(b) of the Executive Order, because they will not, as of March 16, be: (i) lawful permanent residents of the United States; (ii) admitted to or paroled into the United States; (iii) in possession of travel documents other than a visa that permits them to travel to the United States and seek entry or admission, such as an advance parole document; (iv) dual nationals of a non-designated country; (v) in possession of diplomatic or diplomatic-type visas, North Atlantic

Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or (vi) asylees, refugees admitted to the United States, or individuals who have been granted withholding of removal, advance parole, or protection under the Convention Against Torture. Doe Decl. ¶ 26.

30. The discretionary waiver provisions under Section 3(c) of the Executive Order also do not help Plaintiff's wife and daughter because they must "demonstrate[] to [a Government] officer's satisfaction that denying entry during the suspension period would cause undue hardship, and that [their] entry would not pose a threat to national security and would be in the national interest." Moreover, the case-by-case waiver procedure will, as a practical matter, increase the amount of time for completion of the visa process, needlessly depriving Plaintiff of a reunion with his wife and daughter.

31. By the Government's own concessions in its February 16 response, Plaintiff's wife and daughter are not refugees, so they are ineligible for a waiver under Section 6(c) of the Executive Order. Dkt. No. 23.

32. Guidance issued by DHS in connection with the release of the new Executive Order indicates that Plaintiff's petitions will be harmed:

> **Can the exception for refugee admission be used for Refugee/Asylee Relative Petitions (Form I-730) cases where a family member is requesting a beneficiary follow to join?**
>
> No. Individuals who already have valid visas or travel documents that permit them to travel to the United States are exempt from the Executive Order. To the extent that an individual does not yet have such documents, please contact the Department of State.

Second Breidenbach Decl. ¶ 15.

33. The new Executive Order irreparably harms Plaintiff because it separates Plaintiff from his spouse and surviving child. Doe Decl. ¶¶ 4–7, 12, 14–19, 24–26.

34. The new Executive Order subjects Plaintiff's wife and daughter to further suffering due to a current lack of adequate medical and humanitarian services in Aleppo and to an imminent risk of rape and death. Doe Decl. ¶¶ 4–7, 12, 14–19, 24, 28–29.

35. Plaintiff's wife and daughter cannot leave Syria until they are officially invited for an interview at the U.S. Embassy in Amman, because only then will border authorities permit them to cross into Jordan. Doe Decl. ¶¶ 25–27.

36. Plaintiff's wife and daughter remain in hiding in Aleppo, where deadly fighting continues unabated. Doe Decl. ¶¶ 24, 28.

37. In late February, for example, Free Syrian Army forces bombed the neighborhood where Plaintiff's wife and daughter live. Doe Decl. ¶ 28. In July 2015, Plaintiff's two year old son fell three stories to his death while attempting to seek shelter during an artillery attack on their home. Doe Decl. ¶ 19.

38. Since February 24, Plaintiff has finalized arrangements for the (very dangerous) transport of Plaintiff's wife and daughter to Jordan, so that they may make the necessary trip once invited by the U.S. Embassy in Jordan. Doe Decl. ¶ 27.

Dated: New York, New York
March 10, 2017

Respectfully submitted,

By: /s/ Vincent Levy

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

JOHN DOE,

Plaintiff,

-against-

DONALD J. TRUMP, as President of the United States of America; JOHN F. KELLY, as Secretary of the Department of Homeland Security; THE DEPARTMENT OF HOMELAND SECURITY; LORI SCIALABBA, as Acting Director of the U.S. Citizenship and Immigration Services; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; REX W. TILLERSON, as Secretary of State; U.S. DEPARTMENT OF STATE; and THE UNITED STATES OF AMERICA,

Defendants.

Civil Action No.: 17-cv-112

Chief Judge William M. Conley

SECOND DECLARATION OF ANDREW B. BREIDENBACH IN SUPPORT OF PLAINTIFF'S RENEWED APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Andrew B. Breidenbach, an attorney duly admitted to practice in the United States District Court for the Western District of Wisconsin, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am an associate with the law firm of Holwell Shuster & Goldberg LLP, attorneys for Plaintiff in this action. The facts stated herein are true to the best of my knowledge, information, and belief.

2. Attached as Exhibit FF[1] hereto is a true and correct copy of Executive Order

[1] On February 14, 2017, I submitted the Declaration of Andrew B. Breidenbach in Support of Plaintiff's Application for a Temporary Restraining Order, Preliminary Injunction, and Summary Judgment. *See* ECF No. 13. The exhibit names in this Second Declaration continue sequentially from those submitted with my first Declaration.

13780, *Protecting the Nation from Foreign Terrorist Entry into the United States*, dated March 6, 2017 (the "Executive Order"), which I obtained at https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states (last accessed March 10, 2017).

3. Attached as Exhibit GG hereto is a true and correct copy of a "tweet" issued by President Trump's official Twitter account on January 30, 2017, which I obtained at https://twitter.com/realDonaldTrump/status/826060143825666051 (last accessed March 10, 2017).

4. A video titled "Watch: White House Press Secretary Sean Spicer Joins Forum at George Washington University," dated January 31, 2017, is available at http://thenet24h.com/2611014/watch-white-house-press-secretary-sean-spicer-joins-forum-george-washington-university (last accessed March 10, 2017).

5. Attached as Exhibit HH hereto is a true and correct copy of a news article by Kevin Liptak for *CNN Politics*, titled "Trump: I wanted month delay before travel ban, was told no," dated February 9, 2017, which I obtained at http://www.cnn.com/2017/02/08/politics/donald-trump-travel-ban-delay/ (last accessed March 10, 2017). The article quotes President Trump as stating, "The law enforcement people said to me, 'Oh you can't give a notice[.]' . . . They said you can't do that because then people are gonna pour in before the toughness."

6. Attached as Exhibit II hereto is a true and correct copy of a news article by Taylor Link for *Salon*, dated February 22, 2017, titled "Stephen Miller admits the new executive order on immigration ban is same as the old," which I obtained at http://www.salon.com/2017/02/22/stephen-miller-admits-the-new-executive-order-on-

immigration-ban-is-same-as-the-old/ (last accessed March 10, 2017). At a town hall hosted by Fox News, White House adviser Stephen Miller explained that "[o]ne of the big differences that you are going to see in the executive order is that it is going to be responsive to the judicial ruling which didn't exist previously. . . . And so these are mostly minor, technical differences. Fundamentally, you are still going to have the same, basic policy outcome for the country."

7. Attached as Exhibit JJ hereto is a true and correct copy of a document that, according to media reports, is a Department of Homeland Security ("DHS") memorandum titled *Citizenship Likely an Unreliable Indicator or Terrorist Threat to the United States*, which I obtained at http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban (last accessed March 10, 2017). The report concludes, among other things, that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity." Moreover, the report states that of the eighty-two U.S. residents DHS has identified as having been involved in terrorism-related offenses since the beginning of the Syrian conflict, *not one* came from Syria.

8. Attached as Exhibit KK hereto is a true and correct copy of a document that, according to media reports, is a report by the Department of Homeland Security Office of Intelligence Analysis, titled *Intelligence Assessment: Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailed CVE Programs Exist*, dated March 1, 2017, which I obtained at http://www.cnn.com/2017/03/03/politics/homeland-security-assessment-radicalization/. The report concludes, among other things, that "most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns."

9. Attached as Exhibit LL hereto is a true and correct copy of a news article by Laura Jarrett, Ariane de Vogue and Jeremy Diamond for *CNN Politics*, titled "Trump delays new travel ban after well-reviewed speech," dated March 1, 2017, which I obtained at http://www.cnn.com/2017/02/28/politics/trump-travel-ban-visa-holders/ (last accessed March 10, 2017). The article states that the Trump Administration decided to delay the signing of the Executive Order: "Signing the executive order Wednesday, as originally indicated by the White House, would have undercut the favorable coverage [of President Trump's first address to Congress]. The [White House] official didn't deny the positive reception was part of the administration's calculus in pushing back the travel ban announcement. 'We want the (executive order) to have its own 'moment,' the official said.'"

10. Attached as Exhibit MM hereto is a true and correct copy of a news article by Greg Sargent for *The Washington Post*, titled "In leaked documents, the case for Trump's 'Muslim ban' takes another huge hit," dated March 5, 2017 (last accessed March 10, 2017).

11. Attached as Exhibit NN hereto is a true and correct copy of a news article by Philip Ricker, Robert Acosta, and Ashley Parker for *The Washington Post*, titled "Inside Trump's fury: The president rages at leaks, setbacks and accusations," dated March 5, 2017, which I obtained at https://www.washingtonpost.com/blogs/plum-line/wp/2017/03/03/in-leaked-document-the-case-for-trumps-muslim-ban-takes-another-huge-hit/?utm_term=.40fefede678d (last accessed March 10, 2017).

12. Attached as Exhibit OO hereto is a true and correct copy of a news article by Matthew Yglesias for *Vox*, titled "Report: Trump aides cheer up a moody president by talking about his travel ban," dated March 6, 2017, which I obtained at http://www.vox.com/policy-and-politics/2017/3/6/14827338/trump-travel-ban-cheer (last accessed March 10, 2017). This article

explains "that the details [of the Executive Order] were hashed out over dinner, with the president's chief political strategist in attendance but his national security adviser absent, at a lavish $200,000 initiation fee private beach club, with the purpose of brightening the president's mood."

13. Attached as Exhibit PP hereto is a true and correct copy of a news article by Elena Schor and Kyle Cheney for *Politico*, titled "GOP critics praise Trump's tweaked travel ban," dated March 6, 2017, which I obtained at http://www.politico.com/story/2017/03/donald-trump-new-travel-ban-congress-republicans-reaction-235726 (last accessed March 10, 2017). The article quotes White House Press Secretary Sean Spicer as stating that "the principles of the executive order remain the same."

14. Attached as Exhibit QQ hereto is a true and correct copy of a news article by Mark Joseph Stern for *Slate*, titled "In Fundraising Pitch, Trump Says His Not-a-Muslim Ban Will Fight 'Radical Islamic Terrorism,'" dated March 6, 2017, which I obtained at http://www.slate.com/blogs/the_slatest/2017/03/06/trump_says_his_not_a_muslim_ban_will_fight_radical_islamic_terrorism.html (last accessed March 10, 2017).

15. Attached as Exhibit RR hereto is a true and correct copy of an advisory memorandum created by the Trump Administration to help explain its revised Executive Order, titled *Q&A: Protecting the Nation from Foreign Terrorist Entry to the United States*, which I obtained at https://www.dhs.gov/news/2017/03/06/qa-protecting-nation-foreign-terrorist-entry-united-states (last accessed March 10, 2017). The report provides: "Can the exception for refugee admission be used for Refugee/Asylee Relative Petitions (Form I-730) cases where a family member is requesting a beneficiary follow to join? No. Individuals who already have valid visas or travel documents that permit them to travel to the United States are exempt from

the Executive Order. To the extent that an individual does not yet have such documents, please contact the Department of State."

16. Attached as Exhibit SS hereto is a true and correct copy of an advisory memorandum created by the Trump Administration to help explain its revised Executive Order, titled *Fact Sheet: Protecting the Nation from Foreign Terrorist Entry to the United States*, dated March 5, 2017, which I obtained at https://www.dhs.gov/news/2017/03/06/fact-sheet-protecting-nation-foreign-terrorist-entry-united-states (last accessed March 10, 2017). The report provides that "[f]or the next 90 days, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who are outside the United States on the effective date of the order, do not currently have a valid visa on the effective date of this order, and did not have a valid visa at 5:00 eastern standard time on January 27, 2017, are not eligible to travel to the United States."

17. Attached as Exhibit TT hereto is a true and correct copy of an excerpt of the *Foreign Affairs Manual* issued by the U.S. Department of States, 9 FAM § 205.5, which I obtained at https://fam.state.gov/Fam/FAM.aspx?ID=09FAM (last accessed March 10, 2017).

18. Attached as Exhibit UU hereto is a true and correct copy of email correspondence between Plaintiff's counsel, including myself, and Defendants' counsel, Ms. Yamileth Davila, spanning February 16, 2017 to March 9, 2017. Plaintiff's counsel responded to Ms. Davila's last email by providing Plaintiff's family's address, which we have omitted from the exhibit for purposes of confidentiality.

19. In addition to the email correspondence described in Paragraph 19, my firm left Ms. Davila voicemails at 4:52 p.m. EST on March 8, 2017, 11:06 a.m. EST on March 9, 2017, and again on 2:29 p.m. EST on March 9, 2017.

Executed on March 10, 2017 in New York, New York.

Andrew B. Breidenbach
Holwell Shuster & Goldberg LLP
750 Seventh Avenue, 26th Floor
New York, New York 10019
(646) 837-5151
Attorney for Plaintiff

EXHIBIT FF

the WHITE HOUSE

From the Press Office

Speeches & Remarks

Press Briefings

Statements & Releases

Presidential Actions

Executive Orders

Presidential Memoranda

Proclamations

Related OMB Material

Legislation

Nominations & Appointments

Disclosures

The White House

Office of the Press Secretary

For Immediate Release March 06, 2017

Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States

EXECUTIVE ORDER

- - - - - - -

PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., and section 301 of title 3, United States Code, and to protect the Nation from terrorist activities by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. Policy and Purpose. (a) It is the policy of the United States to protect its citizens from terrorist attacks, including those committed by foreign nationals. The screening and vetting protocols and procedures associated with the visa-issuance process and the United States Refugee Admissions Program (USRAP) play a crucial role in detecting foreign nationals who may commit, aid, or support acts of terrorism and in preventing those individuals from entering the United States. It is therefore the policy of the United States to improve the screening and vetting protocols and procedures associated with the visa-issuance process and the USRAP.

(b) On January 27, 2017, to implement this policy, I issued Executive Order 13769 (Protecting the Nation from Foreign Terrorist Entry into the United States).

(i) Among other actions, Executive Order 13769 suspended for 90 days the entry of certain aliens from seven countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. These are countries that had already been identified as presenting heightened concerns about terrorism and travel to the United States. Specifically, the suspension applied to countries referred to in, or designated under, section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), in which Congress restricted use of the Visa Waiver Program for nationals of, and aliens recently present in, (A) Iraq or Syria, (B) any country designated by the Secretary of State as a state sponsor of terrorism (currently Iran, Syria, and Sudan), and (C) any other country designated as a country of concern by the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence. In 2016, the Secretary of Homeland Security designated Libya, Somalia, and Yemen as additional countries of concern for travel purposes, based on consideration of three statutory factors related to terrorism and national security: "(I) whether the presence of an alien in the country or area increases the likelihood that the alien is a credible threat to the national security of the United States; (II) whether a foreign terrorist organization has a significant presence in the country or area; and (III) whether the country or area is a safe haven for terrorists." 8 U.S.C. 1187(a)(12)(D)(ii). Additionally, Members of Congress have expressed concerns about screening and vetting procedures following recent terrorist attacks in this country and in Europe.

(ii) In ordering the temporary suspension of entry described in subsection (b)(i) of this section, I exercised my authority under Article II of the Constitution and under section 212(f) of the INA, which provides in relevant part: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would

be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. 1182(f). Under these authorities, I determined that, for a brief period of 90 days, while existing screening and vetting procedures were under review, the entry into the United States of certain aliens from the seven identified countries -- each afflicted by terrorism in a manner that compromised the ability of the United States to rely on normal decision-making procedures about travel to the United States -- would be detrimental to the interests of the United States. Nonetheless, I permitted the Secretary of State and the Secretary of Homeland Security to grant case-by-case waivers when they determined that it was in the national interest to do so.

(iii) Executive Order 13769 also suspended the USRAP for 120 days. Terrorist groups have sought to infiltrate several nations through refugee programs. Accordingly, I temporarily suspended the USRAP pending a review of our procedures for screening and vetting refugees. Nonetheless, I permitted the Secretary of State and the Secretary of Homeland Security to jointly grant case-by-case waivers when they determined that it was in the national interest to do so.

(iv) Executive Order 13769 did not provide a basis for discriminating for or against members of any particular religion. While that order allowed for prioritization of refugee claims from members of persecuted religious minority groups, that priority applied to refugees from every nation, including those in which Islam is a minority religion, and it applied to minority sects within a religion. That order was not motivated by animus toward any religion, but was instead intended to protect the ability of religious minorities -- whoever they are and wherever they reside -- to avail themselves of the USRAP in light of their particular challenges and circumstances.

(c) The implementation of Executive Order 13769 has been delayed by litigation. Most significantly, enforcement of critical provisions of that order has been temporarily halted by court orders that apply nationwide and extend even to foreign nationals with no prior or substantial connection to the United States. On February 9, 2017, the United States Court of Appeals for the Ninth Circuit declined to stay or narrow one such order pending the outcome of further judicial proceedings, while noting that the "political branches are far better equipped to make appropriate distinctions" about who should be covered by a suspension of entry or of refugee admissions.

(d) Nationals from the countries previously identified under section 217(a)(12) of the INA warrant additional scrutiny in connection with our immigration policies because the conditions in these countries present heightened threats. Each of these countries is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or

contains active conflict zones. Any of these circumstances diminishes the foreign government's willingness or ability to share or validate important information about individuals seeking to travel to the United States. Moreover, the significant presence in each of these countries of terrorist organizations, their members, and others exposed to those organizations increases the chance that conditions will be exploited to enable terrorist operatives or sympathizers to travel to the United States. Finally, once foreign nationals from these countries are admitted to the United States, it is often difficult to remove them, because many of these countries typically delay issuing, or refuse to issue, travel documents.

(e) The following are brief descriptions, taken in part from the Department of State's Country Reports on Terrorism 2015 (June 2016), of some of the conditions in six of the previously designated countries that demonstrate why their nationals continue to present heightened risks to the security of the United States:

(i) Iran. Iran has been designated as a state sponsor of terrorism since 1984 and continues to support various terrorist groups, including Hizballah, Hamas, and terrorist groups in Iraq. Iran has also been linked to support for al-Qa'ida and has permitted al-Qa'ida to transport funds and fighters through Iran to Syria and South Asia. Iran does not cooperate with the United States in counterterrorism efforts.

(ii) Libya. Libya is an active combat zone, with hostilities between the internationally recognized government and its rivals. In many parts of the country, security and law enforcement functions are provided by armed militias rather than state institutions. Violent extremist groups, including the Islamic State of Iraq and Syria (ISIS), have exploited these conditions to expand their presence in the country. The Libyan government provides some cooperation with the United States' counterterrorism efforts, but it is unable to secure thousands of miles of its land and maritime borders, enabling the illicit flow of weapons, migrants, and foreign terrorist fighters. The United States Embassy in Libya suspended its operations in 2014.

(iii) Somalia. Portions of Somalia have been terrorist safe havens. Al-Shabaab, an al-Qa'ida-affiliated terrorist group, has operated in the country for years and continues to plan and mount operations within Somalia and in neighboring countries. Somalia has porous borders, and most countries do not recognize Somali identity documents. The Somali government cooperates with the United States in some counterterrorism operations but does not have the capacity to sustain military pressure on or to investigate suspected terrorists.

(iv) Sudan. Sudan has been designated as a state sponsor of terrorism since 1993 because of its support for international terrorist groups, including Hizballah and Hamas. Historically, Sudan provided safe havens for al-Qa'ida and other terrorist

groups to meet and train. Although Sudan's support to al-Qa'ida has ceased and it provides some cooperation with the United States' counterterrorism efforts, elements of core al-Qa'ida and ISIS-linked terrorist groups remain active in the country.

(v) Syria. Syria has been designated as a state sponsor of terrorism since 1979. The Syrian government is engaged in an ongoing military conflict against ISIS and others for control of portions of the country. At the same time, Syria continues to support other terrorist groups. It has allowed or encouraged extremists to pass through its territory to enter Iraq. ISIS continues to attract foreign fighters to Syria and to use its base in Syria to plot or encourage attacks around the globe, including in the United States. The United States Embassy in Syria suspended its operations in 2012. Syria does not cooperate with the United States' counterterrorism efforts.

(vi) Yemen. Yemen is the site of an ongoing conflict between the incumbent government and the Houthi-led opposition. Both ISIS and a second group, al-Qa'ida in the Arabian Peninsula (AQAP), have exploited this conflict to expand their presence in Yemen and to carry out hundreds of attacks. Weapons and other materials smuggled across Yemen's porous borders are used to finance AQAP and other terrorist activities. In 2015, the United States Embassy in Yemen suspended its operations, and embassy staff were relocated out of the country. Yemen has been supportive of, but has not been able to cooperate fully with, the United States in counterterrorism efforts.

(f) In light of the conditions in these six countries, until the assessment of current screening and vetting procedures required by section 2 of this order is completed, the risk of erroneously permitting entry of a national of one of these countries who intends to commit terrorist acts or otherwise harm the national security of the United States is unacceptably high. Accordingly, while that assessment is ongoing, I am imposing a temporary pause on the entry of nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen, subject to categorical exceptions and case-by-case waivers, as described in section 3 of this order.

(g) Iraq presents a special case. Portions of Iraq remain active combat zones. Since 2014, ISIS has had dominant influence over significant territory in northern and central Iraq. Although that influence has been significantly reduced due to the efforts and sacrifices of the Iraqi government and armed forces, working along with a United States-led coalition, the ongoing conflict has impacted the Iraqi government's capacity to secure its borders and to identify fraudulent travel documents. Nevertheless, the close cooperative relationship between the United States and the democratically elected Iraqi government, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment for Iraq. In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have shown steadfast determination and earned enduring

respect as they battle an armed group that is the common enemy of Iraq and the United States. In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to enhance travel documentation, information sharing, and the return of Iraqi nationals subject to final orders of removal. Decisions about issuance of visas or granting admission to Iraqi nationals should be subjected to additional scrutiny to determine if applicants have connections with ISIS or other terrorist organizations, or otherwise pose a risk to either national security or public safety.

(h) Recent history shows that some of those who have entered the United States through our immigration system have proved to be threats to our national security. Since 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States. They have included not just persons who came here legally on visas but also individuals who first entered the country as refugees. For example, in January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses. And in October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction as part of a plot to detonate a bomb at a crowded Christmas-tree-lighting ceremony in Portland, Oregon. The Attorney General has reported to me that more than 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations by the Federal Bureau of Investigation.

(i) Given the foregoing, the entry into the United States of foreign nationals who may commit, aid, or support acts of terrorism remains a matter of grave concern. In light of the Ninth Circuit's observation that the political branches are better suited to determine the appropriate scope of any suspensions than are the courts, and in order to avoid spending additional time pursuing litigation, I am revoking Executive Order 13769 and replacing it with this order, which expressly excludes from the suspensions categories of aliens that have prompted judicial concerns and which clarifies or refines the approach to certain other issues or categories of affected aliens.

Sec. 2. Temporary Suspension of Entry for Nationals of Countries of Particular Concern During Review Period. (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall conduct a worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public-safety threat. The Secretary of Homeland Security may conclude that certain information is needed from particular countries even if it is not needed from every country.

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President a report on the results of the worldwide review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed from each country for adjudications and a list of countries that do not provide adequate information, within 20 days of the effective date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State, the Attorney General, and the Director of National Intelligence.

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening and vetting of foreign nationals, to ensure that adequate standards are established to prevent infiltration by foreign terrorists, and in light of the national security concerns referenced in section 1 of this order, I hereby proclaim, pursuant to sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f) and 1185(a), that the unrestricted entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen would be detrimental to the interests of the United States. I therefore direct that the entry into the United States of nationals of those six countries be suspended for 90 days from the effective date of this order, subject to the limitations, waivers, and exceptions set forth in sections 3 and 12 of this order.

(d) Upon submission of the report described in subsection (b) of this section regarding the information needed from each country for adjudications, the Secretary of State shall request that all foreign governments that do not supply such information regarding their nationals begin providing it within 50 days of notification.

(e) After the period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, shall submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of foreign nationals of countries that have not provided the information requested until they do so or until the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or has adequately shared information through other means. The Secretary of State, the Attorney General, or the Secretary of Homeland Security may also submit to the President the names of additional countries for which any of them recommends other lawful restrictions or limitations deemed necessary for the security or welfare of the United States.

(f) At any point after the submission of the list described in subsection (e) of this section, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, may submit to the President the names of any additional countries recommended for similar treatment, as well as the names of any countries that they

recommend should be removed from the scope of a proclamation described in subsection (e) of this section.

(g) The Secretary of State and the Secretary of Homeland Security shall submit to the President a joint report on the progress in implementing this order within 60 days of the effective date of this order, a second report within 90 days of the effective date of this order, a third report within 120 days of the effective date of this order, and a fourth report within 150 days of the effective date of this order.

Sec. 3. Scope and Implementation of Suspension.

(a) Scope. Subject to the exceptions set forth in subsection (b) of this section and any waiver under subsection (c) of this section, the suspension of entry pursuant to section 2 of this order shall apply only to foreign nationals of the designated countries who:

(i) are outside the United States on the effective date of this order;

(ii) did not have a valid visa at 5:00 p.m., eastern standard time on January 27, 2017; and

(iii) do not have a valid visa on the effective date of this order.

(b) Exceptions. The suspension of entry pursuant to section 2 of this order shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any foreign national who is admitted to or paroled into the United States on or after the effective date of this order;

(iii) any foreign national who has a document other than a visa, valid on the effective date of this order or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document;

(iv) any dual national of a country designated under section 2 of this order when the individual is traveling on a passport issued by a non-designated country;

(v) any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or

(vi) any foreign national who has been granted asylum; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

(c) Waivers. Notwithstanding the suspension of entry pursuant to section 2 of this order, a consular officer, or, as appropriate, the Commissioner, U.S. Customs and Border Protection (CBP), or the Commissioner's delegee, may, in the consular officer's or the CBP official's discretion, decide on a case-by-case basis to authorize the issuance of a visa to, or to permit the entry of, a foreign national for whom entry is otherwise suspended if the foreign national has demonstrated to the officer's satisfaction that denying entry during the suspension period would cause undue hardship, and that his or her entry would not pose a threat to national security and would be in the national interest. Unless otherwise specified by the Secretary of Homeland Security, any waiver issued by a consular officer as part of the visa issuance process will be effective both for the issuance of a visa and any subsequent entry on that visa, but will leave all other requirements for admission or entry unchanged. Case-by-case waivers could be appropriate in circumstances such as the following:

(i) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the effective date of this order, seeks to reenter the United States to resume that activity, and the denial of reentry during the suspension period would impair that activity;

(ii) the foreign national has previously established significant contacts with the United States but is outside the United States on the effective date of this order for work, study, or other lawful activity;

(iii) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry during the suspension period would impair those obligations;

(iv) the foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry during the suspension period would cause undue hardship;

(v)the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;

(vi) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee) and the employee can document that he or she has provided faithful and valuable service to the United States Government;

(vii) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA),

22 U.S.C. 288 et seq., traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;

(viii) the foreign national is a landed Canadian immigrant who applies for a visa at a location within Canada; or

(ix) the foreign national is traveling as a United States Government-sponsored exchange visitor.

Sec. 4. Additional Inquiries Related to Nationals of Iraq. An application by any Iraqi national for a visa, admission, or other immigration benefit should be subjected to thorough review, including, as appropriate, consultation with a designee of the Secretary of Defense and use of the additional information that has been obtained in the context of the close U.S.-Iraqi security partnership, since Executive Order 13769 was issued, concerning individuals suspected of ties to ISIS or other terrorist organizations and individuals coming from territories controlled or formerly controlled by ISIS. Such review shall include consideration of whether the applicant has connections with ISIS or other terrorist organizations or with territory that is or has been under the dominant influence of ISIS, as well as any other information bearing on whether the applicant may be a threat to commit acts of terrorism or otherwise threaten the national security or public safety of the United States.

Sec. 5. Implementing Uniform Screening and Vetting Standards for All Immigration Programs. (a) The Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence shall implement a program, as part of the process for adjudications, to identify individuals who seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry. This program shall include the development of a uniform baseline for screening and vetting standards and procedures, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that applicants are who they claim to be; a mechanism to assess whether applicants may commit, aid, or support any kind of violent, criminal, or terrorist acts after entering the United States; and any other appropriate means for ensuring the proper collection of all information necessary for a rigorous evaluation of all grounds of inadmissibility or grounds for the denial of other immigration benefits.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Director of National Intelligence, shall submit to the President an

initial report on the progress of the program described in subsection (a) of this section within 60 days of the effective date of this order, a second report within 100 days of the effective date of this order, and a third report within 200 days of the effective date of this order.

Sec. 6. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend travel of refugees into the United States under the USRAP, and the Secretary of Homeland Security shall suspend decisions on applications for refugee status, for 120 days after the effective date of this order, subject to waivers pursuant to subsection (c) of this section. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication processes to determine what additional procedures should be used to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. The suspension described in this subsection shall not apply to refugee applicants who, before the effective date of this order, have been formally scheduled for transit by the Department of State. The Secretary of State shall resume travel of refugees into the United States under the USRAP 120 days after the effective date of this order, and the Secretary of Homeland Security shall resume making decisions on applications for refugee status only for stateless persons and nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that the additional procedures implemented pursuant to this subsection are adequate to ensure the security and welfare of the United States.

(b) Pursuant to section 212(f) of the INA, I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any entries in excess of that number until such time as I determine that additional entries would be in the national interest.

(c) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretary of State and the Secretary of Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the entry of such individuals as refugees is in the national interest and does not pose a threat to the security or welfare of the United States, including in circumstances such as the following: the individual's entry would enable the United States to conform its conduct to a preexisting international agreement or arrangement, or the denial of entry would cause undue hardship.

(d) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the

placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of State shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

Sec. 7. Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility. The Secretary of State and the Secretary of Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority permitted by section 212(d)(3)(B) of the INA, 8 U.S.C. 1182(d)(3)(B), relating to the terrorism grounds of inadmissibility, as well as any related implementing directives or guidance.

Sec. 8. Expedited Completion of the Biometric Entry-Exit Tracking System. (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry exit tracking system for in-scope travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive set forth in subsection (a) of this section. The initial report shall be submitted within 100 days of the effective date of this order, a second report shall be submitted within 200 days of the effective date of this order, and a third report shall be submitted within 365 days of the effective date of this order. The Secretary of Homeland Security shall submit further reports every 180 days thereafter until the system is fully deployed and operational.

Sec. 9. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1202, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions. This suspension shall not apply to any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; traveling for purposes related to an international organization designated under the IOIA; or traveling for purposes of conducting meetings or business with the United States Government.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that nonimmigrant visa-interview wait times are not unduly affected.

Sec. 10. Visa Validity Reciprocity. The Secretary of State shall review all nonimmigrant visa reciprocity agreements and arrangements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If another country does not treat United States nationals seeking nonimmigrant visas in a truly reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by that foreign country, to the extent practicable.

Sec. 11. Transparency and Data Collection. (a) To be more transparent with the American people and to implement more effectively policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available the following information:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reasons;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and who have engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States;

(iii) information regarding the number and types of acts of gender-based violence against women, including so-called "honor killings," in the United States by foreign nationals; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security or the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of Homeland Security shall release the initial report under subsection (a) of this section within 180 days of the effective date of this order and shall include information for the period from September 11, 2001, until the date of the initial report. Subsequent reports shall be issued every 180 days thereafter and reflect the period since the previous report.

Sec. 12. Enforcement. (a) The Secretary of State and the Secretary of Homeland Security shall consult with appropriate domestic and international partners, including countries and

organizations, to ensure efficient, effective, and appropriate implementation of the actions directed in this order.

(b) In implementing this order, the Secretary of State and the Secretary of Homeland Security shall comply with all applicable laws and regulations, including, as appropriate, those providing an opportunity for individuals to claim a fear of persecution or torture, such as the credible fear determination for aliens covered by section 235(b)(1)(A) of the INA, 8 U.S.C. 1225(b)(1)(A).

(c) No immigrant or nonimmigrant visa issued before the effective date of this order shall be revoked pursuant to this order.

(d) Any individual whose visa was marked revoked or marked canceled as a result of Executive Order 13769 shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry. Any prior cancellation or revocation of a visa that was solely pursuant to Executive Order 13769 shall not be the basis of inadmissibility for any future determination about entry or admissibility.

(e) This order shall not apply to an individual who has been granted asylum, to a refugee who has already been admitted to the United States, or to an individual granted withholding of removal or protection under the Convention Against Torture. Nothing in this order shall be construed to limit the ability of an individual to seek asylum, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States.

Sec. 13. Revocation. Executive Order 13769 of January 27, 2017, is revoked as of the effective date of this order.

Sec. 14. Effective Date. This order is effective at 12:01 a.m., eastern daylight time on March 16, 2017.

Sec. 15. Severability. (a) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other persons or circumstances shall not be affected thereby.

(b) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements.

Sec. 16. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
March 6, 2017.

EXHIBIT GG

Donald J. Trump 
@realDonaldTrump

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If the ban were announced with a one week notice, the "bad" would rush into our country during that week. A lot of bad "dudes" out there!

RETWEETS	LIKES
36,223	174,656

5:31 AM - 30 Jan 2017

50K 36K 175K

Josh Mikel @Joshua_Mikel · Jan 30
@realDonaldTrump Since 1975, 0  s have been killed in terror attacks on  soil by foreigners from the 7 nations included in your Muslim ban

115 763 4.0K

Josh Mikel @Joshua_Mikel · Jan 30
@realDonaldTrump However since 1975 nearly 3,000 Americans were killed by citizens from Saudi Arabia, the United Arab Emirates & Egypt

46 590 2.9K

Josh Mikel @Joshua_Mikel · Jan 30
@realDonaldTrump what do those nations have in common? You have multi-million $ licensing & development deals in all of those countries GTFO

35 549 3.2K

Josh Mikel @Joshua_Mikel · Jan 30
@realDonaldTrump but yeah, tell us more about the "bad dudes" you're protecting us from

24 316 2.4K

Josh Mikel @Joshua_Mikel · Jan 30
@realDonaldTrump and for the love of god, TEACH YOUR SUPPORTERS THE DIFFERENCE BETWEEN YOUR & YOU'RE

106 436 3.3K

EXHIBIT HH

Trump: I wanted month delay before travel ban, was told no

By Kevin Liptak, CNN White House Producer

Updated 6:31 AM ET, Thu February 9, 2017

Trump slams judges over travel ban 02:51

Story highlights

Trump said he argued for giving travelers a month's notice

"They said you can't do that because then people are gonna pour in before the toughness," he said

or applying for refugee status.

Washington (CNN) — President Donald Trump -- even as he blasted lawyers contesting his immigration executive order -- detailed for the first time Wednesday his own hesitations about the controversial plan before it was signed.

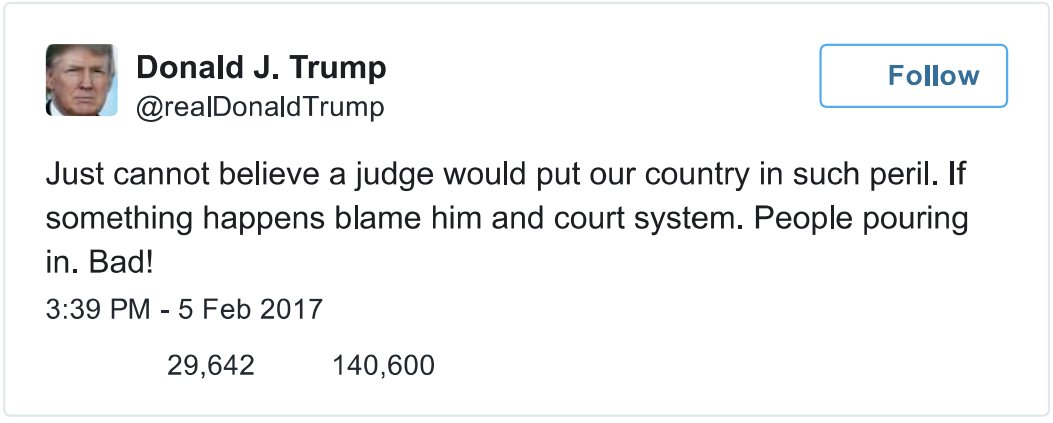
Trump, speaking to law enforcement officials in Washington, said he argued before the order was finalized for giving travelers a month's notice before cutting off entry to the US.

But he said he was overruled by law enforcement officials, who he didn't name, alleging the delay could prompt a flood of dangerous terrorists into the country -- an explanation that failed to account for the lengthy process of obtaining a US visa

Related Article: Trump to judges: Even a 'bad high school student' would rule in my favor

"The law enforcement people said to me, 'Oh, you can't give a notice,' " Trump said at a conference for the Major Cities Chiefs Association. "I suggested a month. And I said, 'What about a week?' They said you can't do that because then people are gonna pour in before the toughness."

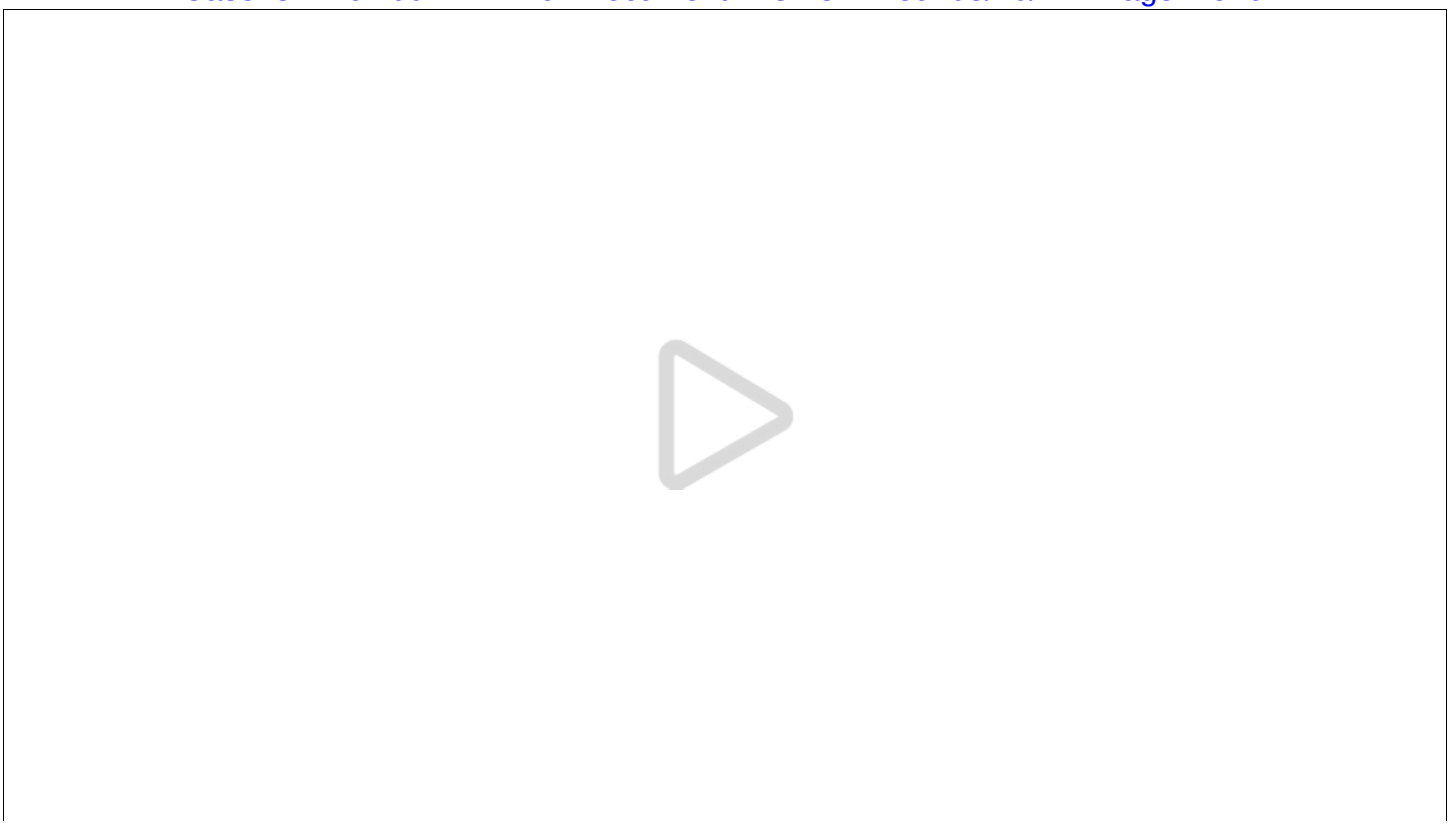
It was a surprising admission, given the President's full-throated defense of his travel ban. He even tweeted Sunday after a judge suspended its implementation: "Just cannot believe a judge would put our country in such peril. If something happens blame him and court system. People pouring in. Bad!"



Trump also insisted his administration properly went about enacting the order, which bars citizens of seven Muslim-majority countries from entering the US for 90 days, all refugees for 120 days and indefinitely halts refugees from Syria.

"We do things well. We did things right," Trump told the sheriffs. "It's as plain as you can have it."

In the week-and-a-half since Trump signed the contentious order, he's expressed no public reservations about its preparation or consequences, amid skepticism and protests. Even some of Trump's political allies bemoaned the rollout, which was drafted by a tight circle of Trump's aides with little input from lawmakers or the federal agencies who would ultimately be responsible for enforcing it.



Trump slams judges over travel ban 02:51

In defending his administration, Trump tweeted last week that advance warning on who the order would ban could have led to a flood of migrants into the US.

"If the ban were announced with a one week notice, the 'bad' would rush into our country during that week. A lot of bad 'dudes' out there!" Trump tweeted on January 30, without noting he'd expressed his own thoughts on delaying the ban before the order was signed.

Donald J. Trump
@realDonaldTrump

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If the ban were announced with a one week notice, the "bad" would rush into our country during that week. A lot of bad "dudes" out there!

8:31 AM - 30 Jan 2017

36,223 174,656

The White House didn't respond Wednesday when asked which law enforcement people advised Trump against giving advance notice of his impending order.

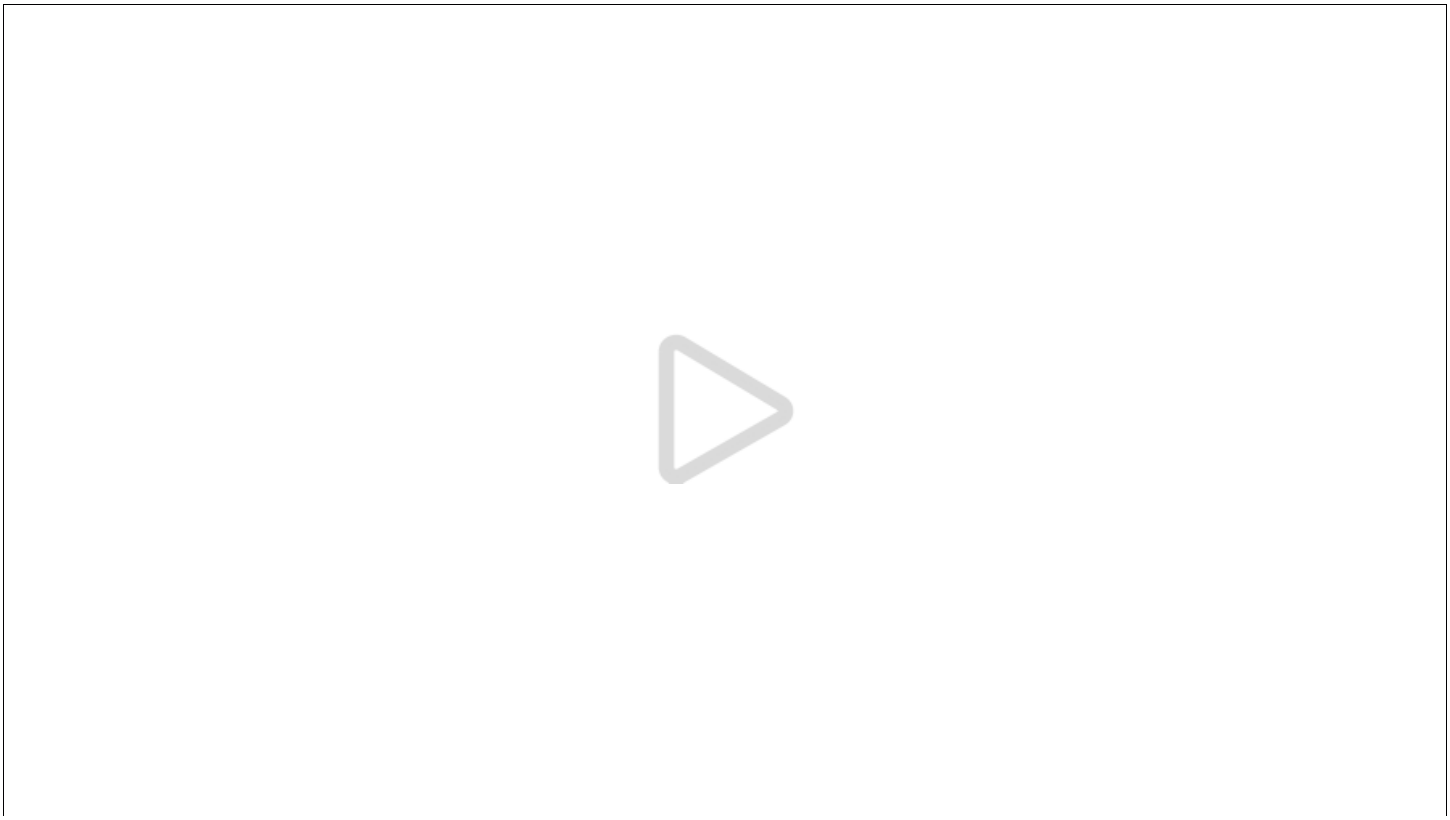
Their claim that such a move would encourage waves of immigration doesn't match the realities of obtaining a US visa, which can take months and wouldn't allow such a rush of migrants. Procedures already in place require the citizens of the seven countries on the administration's list to undergo background checks and intelligence reviews before obtaining permission to enter the US.

Refugees must also undergo lengthy vetting before being allowed to enter the US for resettlement.

But White House press secretary Sean Spicer said last week that delaying the order could place the country at risk.

"Everyone's saying, 'Well how did you have to go today? Why couldn't you have waited another day?' We don't know when the next threat faces this country. We don't know when the next terrorist is going to enter this country. We don't know when the next bomb's going to go off," Spicer said during a forum at George Washington University. "The last thing that you want to do is to say, 'Well, we could've done this Saturday, but we waited one more day.' "

Speaking before Congress Tuesday, Secretary of Homeland Security John Kelly suggested the rollout of the immigration restrictions could have been eased by greater transparency ahead of time.



Judges grill lawyers during travel ban hearing 02:45

"In retrospect, I should have -- and this is all on me, by the way -- I should have delayed it just a bit so I could talk to members of Congress," he told the House Homeland Security Committee. "The thinking was to get it out quick so that potentially people that might be coming here to harm us would not take advantage of some period of time they could jump on an airplane and get here."

In his speech on Wednesday, Trump didn't explain his reasoning in raising a month-long delay on the ban. The executive order, which he signed at the Pentagon on January 27, contends the restrictions on travel are necessary while US security agencies review vetting measures on travelers and enact more stringent requirements. The President didn't specify whether that review would also have been delayed.

Trump vs. Obama: A rocky relationship

Schwarzenegger's theory on Donald Trump

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Tim Kaine's son arrested after allegedly disrupting pro-Trump rally

EXHIBIT II

WEDNESDAY, FEB 22, 2017 02:30 PM EST

Stephen Miller admits the new executive order on immigration ban is same as the old

Just like Rudy Giuliani, Miller offered civil rights activists evidence they need to challenge the order

TAYLOR LINK Follow

SKIP TO COMMENTS

TOPICS: DONALD TRUMP, EXECUTIVE ORDER, IMMIGRATION BAN, MUSLIM IMMIGRATION BAN, STEPHEN MILLER, TRUMP ADMINISTRATION, NEWS, POLITICS NEWS

(Credit: Ron Sachs/mediapunch/ipx)

During a town hall hosted by Fox News Tuesday night, White House adviser Stephen Miller confirmed that President Donal Trump's new executive order — which will replace the immigration ban on seven majority-Muslim countries — will effectively have the same policy outcome.

As one of the architects of the first executive order, Miller insisted that "nothing was wrong with the first executive order" — although the 9th U.S. Circuit Court of Appeals refused to reinstate the ban earlier this month. Miller admitted that a new order was necessary to avoid the judicial rulings from the appellate courts.

Although there will be changes in the language of the upcoming executive order, Miller said the policy outcome will remain the same.

"One of the big differences that you are going to see in the executive order is that it is going to be responsive to the judicial ruling which didn't exist previously," Miller said. "And so these are mostly minor, technical differences. Fundamentally, you are still going to have the same, basic policy outcome for the country."

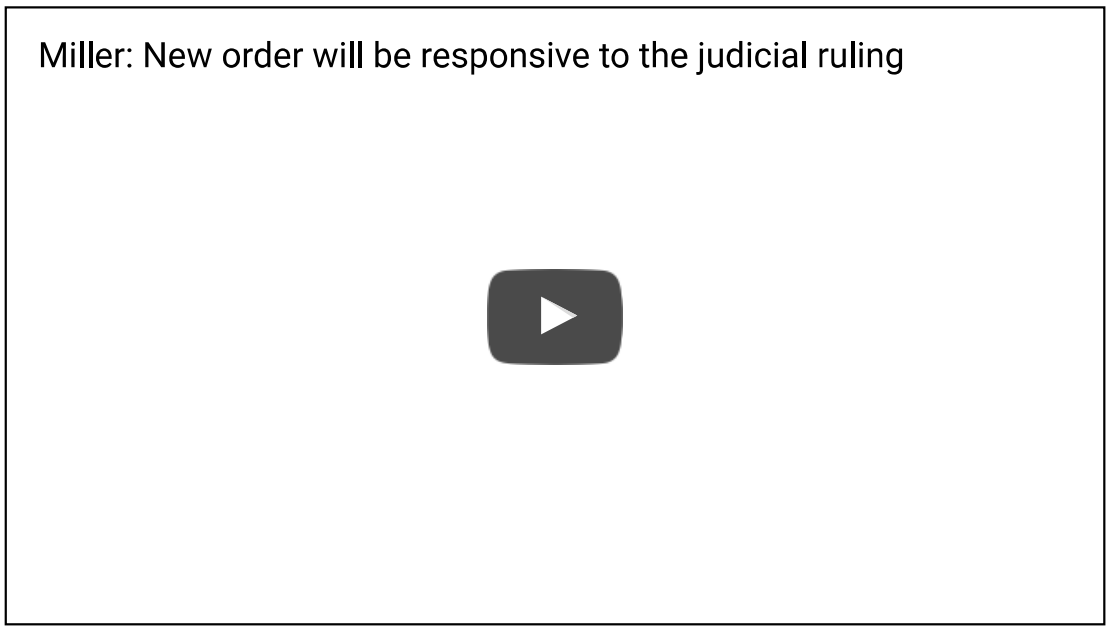
Critics were quick to point out that Miller had involuntarily provided civil rights organizations the material needed to challenge the order once it's signed by the president.

Lawyers that challenged the first executive order cited former New York mayor Rudy Giuliani's remarks on Fox News, when he said that Trump sought advice for a legal way to carry out a "Muslim ban." Civil rights activists argued that Giuliani's statement was evidence that the Trump administration wanted to discriminate against people of a certain religion.

Miller still believes the appellate courts' rulings were wrong.

"The rulings from those courts were flawed, erroneous and false," he said. "The president's actions were clearly legal and constitutional and consistent with the longstanding tradition of presidents of the past."

Watch a video of Miller's remarks on Fox News below:



*Taylor Link is a news writer at Salon. You can find him on Twitter at @taylorlink_*

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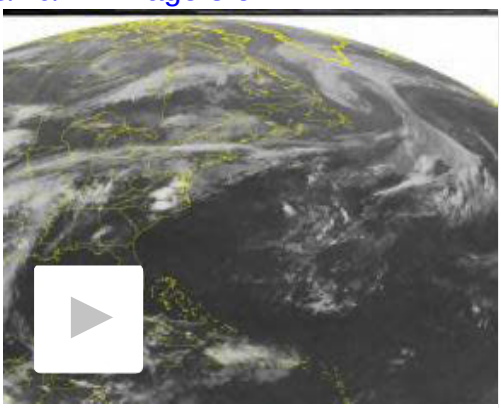

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EXHIBIT JJ

Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States

Scope Note: This paper was prepared at the request of the DHS Acting Under Secretary for Intelligence and Analysis. It assesses the international terrorist threat to the United States and worldwide by citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. Citizens of these seven countries were impacted by Section 3 of Executive Order (E.O.) 13769 "Protecting the Nation from Foreign Terrorist Entry into the United States." The assessment relies on unclassified information from Department of Justice press releases on terrorism-related convictions and terrorist attack perpetrators killed in the act, Department of State visa statistics, the 2016 Worldwide Threat Assessment of the US Intelligence Community, and the Department of State Country Reports on Terrorism 2015. This paper does not assess the threat of domestic terrorism.

Key Findings

- DHS I&A assesses that country of citizenship is unlikely to be a reliable indicator of potential terrorist activity. Since the beginning of the Syrian conflict in March 2011, the foreign-born primarily US-based individuals who were inspired by a foreign terrorist organization to participate in terrorism-related activity were citizens of 26 different countries, with no one country representing more than 13.5 percent of the foreign-born total.
- Relatively few citizens of the seven countries impacted by E.O. 13769, compared to neighboring countries, maintain access to the United States.
- Terrorist groups in Iraq, Syria, and Yemen pose a threat of attacks in the United States while groups in Iran, Libya, Somalia, and Sudan remain regionally focused.

Citizens of Countries Affected by E.O. 13769 Rarely Implicated in US-Based Terrorism

DHS I&A assesses that country of citizenship is unlikely to be a reliable indicator of potential terrorist activity. Since the beginning of the Syrian conflict in March 2011, at least 82 primarily US-based individuals, who died in the pursuit of or were convicted of any terrorism-related federal offense inspired by a foreign terrorist organization, according to a DHS study of Department of Justice press releases on convictions and terrorist attack perpetrators killed in the act.[1*] Of the 82 individuals we identified, slightly more than half were native-born United States citizens. Of the foreign-born individuals, they came from 26 different countries, with no one country representing more than 13.5 percent of the foreign-born total.

- The top seven origin countries of the foreign-born individuals are: Pakistan (5), Somalia (3), and Bangladesh, Cuba, Ethiopia, Iraq, and Uzbekistan (2).

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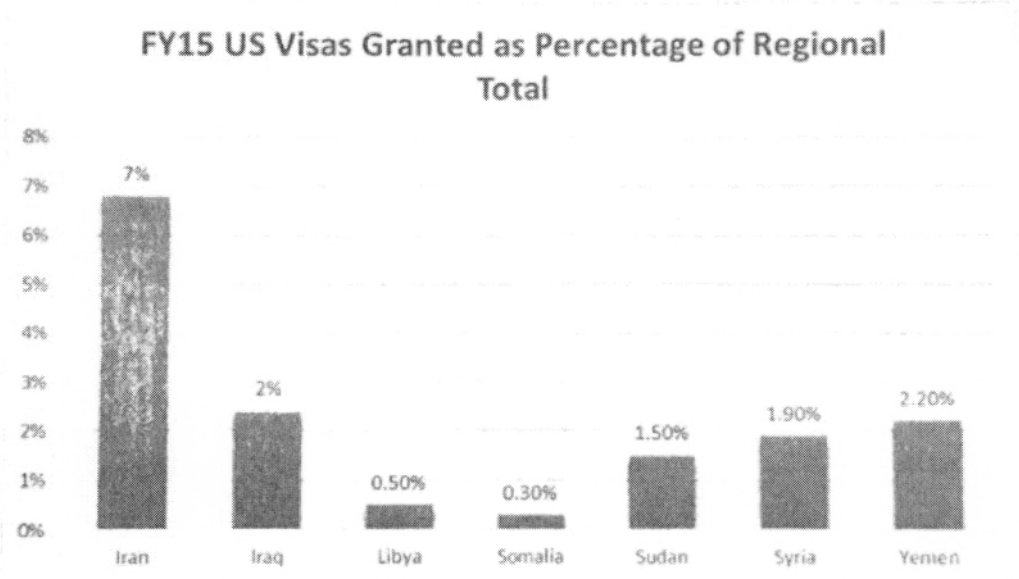
* For the purposes of this paper, we limited our data to individuals prosecuted under 18 U.S.C. Chapter 133B in support of or inspired by a Foreign Terrorist Organization (FTO). We excluded traveling or attempting to travel overseas to join a FTO and activities unrelated to FTOs, to include purely domestic terrorism.

- Of the seven countries impacted by E.O. 13769 that are not listed above, Iran, Sudan, and Yemen had 1 each, and there were no individuals from Syria.

Limited Access to the United States by Citizens of Impacted Countries

Relatively few citizens of the seven countries impacted by E.O. 13769, compared to neighboring countries, maintain access to the United States. None of the seven countries account for more than 7 percent of the US visas granted in their region—the Middle East and North Africa or Sub-Saharan Africa—in Fiscal Year 2015, according to publicly available Fiscal Year 2015 visa issuance data from the Department of State.[23†]



Few of the Impacted Countries Have Terrorist Groups that Threaten the West

Terrorist groups in Iraq, Syria, and Yemen pose a threat of attacks in the United States, while groups in Iran, Libya, Somalia, and Sudan are regionally focused, according to the 2016 Worldwide Threat Assessment of the US Intelligence Community and the Department of State Country Reports on Terrorism 2015.

Iran – Designated as a State Sponsor of Terrorism in 1984, Iran continued its terrorist-related activity in 2015, including support for Hizballah, Palestinian terrorist groups in Gaza, and various groups in Iraq and throughout the Middle East, according to the Country Reports on Terrorism 2015.[4] Iran used the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) to implement foreign policy goals, provide cover for intelligence operations, and create instability

† Fiscal Year 2015 is the most recent year we have visa issuance data for both immigrant and non-immigrant visas. A-1, A-2, A-3, C-2, NATO, G-1, G-2, G-3, and G-3 non-immigrant visas were excluded from these calculations to be consistent with section 3(c) in E.O. 13769.

in the Middle East. The IRGC-QF is Iran's primary mechanism for cultivating and supporting terrorists abroad.

Iraq and Syria – The Islamic State of Iraq and the Levant (ISIL) has become the preeminent terrorist threat because of its self-described caliphate in Syria and Iraq, its branches and emerging branches in other countries, and its increasing ability to direct and inspire attacks against a wide range of targets around the world, according to the 2016 Worldwide Threat Assessment.[5] ISIL's narrative supports jihadist recruiting, attracts others to travel to Iraq and Syria, draws individuals and groups to declare allegiance to ISIL, and justifies attacks across the globe.

Libya – Libya has been locked in civil war between two rival governments and affiliated armed groups, according to the 2016 Worldwide Threat Assessment.[6] The 17 December 2015 signing of a UN-brokered agreement to form a Government of National Accord resulted from a year-long political dialogue that sought to end the ongoing civil war and reconcile Libya's rival governments. Extremists and terrorists have exploited the security vacuum to plan and launch attacks in Libya and throughout the region.

Somalia – In 2015, al-Shabaab continued to commit deadly attacks in Somalia, seeking to reverse progress made by the Federal Government of Somalia and weaken the political will of the African Union Mission in Somalia troop contributing countries, according to the Country Reports on Terrorism 2015.[7]

Sudan – Sudan was designated as a State Sponsor of Terrorism in 1993 due to concerns about support to international terrorist groups, according to the Country Reports on Terrorism 2015.[8] In 2014, members of Hamas were allowed to raise funds, travel, and live in Sudan. However, in 2015 the use of Sudan by Palestinian designated terrorist groups appeared to have declined. The last known shipment was interdicted by Israel in 2014.

Yemen – Al-Qa'ida in the Arabian Peninsula remained a significant threat to Yemen, the region, and to the United States in 2015, as efforts to counter the group were hampered by the ongoing conflict in that country, according to the Country Reports on Terrorism 2015.[9] The Islamic State of Iraq and the Levant in Yemen also exploited the political and security vacuum to strengthen its foothold inside the country.

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[1] DHS I&A; DHS I&A Terrorism-Related Activities Study; 16 FEB 17; DOI 01 MAR 11 – 31 JAN 17; DHS I&A Terrorism-Related Activities Study

[2] https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXIV.pdf

[3] https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY15%20NIV%20Detail%20Table.xls

[4] https://www.state.gov/j/ct/rls/crt/2015/257520.htm

EXHIBIT KK

INTELLIGENCE ASSESSMENT

(U//FOUO) Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist

1 March 2017

Homeland Security

Office of Intelligence and Analysis

IA-0091-17

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Homeland Security
Office of Intelligence and Analysis

INTELLIGENCE ASSESSMENT

1 March 2017

(U//FOUO) Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist

(U//FOUO) Prepared by the Office of Intelligence and Analysis (I&A). Coordinated with CBP, the Department of State, ICE, NCTC, and USCIS.

(U) Scope

(U//FOUO) This *Assessment* examines the immigration history and radicalization of 88 foreign-born, US-based persons who participated in a terrorism-related activity inspired by at least one named foreign terrorist organization (FTO).* All examined individuals primarily resided in the United States either at the time of their involvement in a terrorism-related activity or prior to their travel to join an FTO. The list of individuals included in this study was derived from academic and government sources, including a Department of Justice (DOJ) list of unsealed international terrorism and terrorism-related cases. The terrorism-related activities these individuals engaged in were identified in US Government sources or reliable media reporting. These activities include conducting or attempting to conduct an attack in the United States, traveling or attempting to travel from the United States to join an FTO overseas, and providing funds, goods, or logistical assistance to support an FTO. All individuals examined in our study were indicted or killed between March 2011—the start of the Syrian conflict—and December 2016. Individuals who were minors at the time of their indictment or death were not included. Our review did not consider classified or non-disseminated investigative information.

(U//FOUO) This *Assessment* identifies several factors, some of which are constitutionally protected activity, which we assess contributed to the radicalization of foreign-born, US-based violent extremists mentioned in this report. None of these factors should be viewed as definitive indicators of radicalization to violence absent corroborative information revealing a link to violence or terrorism. This *Assessment* is intended to inform federal, state, local, tribal, and territorial counterterrorism, law enforcement, and countering violent extremism (CVE) officials, as well as immigrant screening and vetting officials on trends of foreign-born individuals engaged in terrorism activity in the Homeland. It also provides an overview of opportunities to prevent and detect future violent extremist radicalization. The information cutoff date is 31 December 2016.

(U) Key Judgments

(U//FOUO) We assess that most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns. We base this assessment on our findings that nearly half of the foreign-born, US-based violent extremists examined in our dataset were less than 16 years old when they entered the country and that the majority of foreign-born individuals resided in the United States for more than 10 years before their indictment or death. A separate DHS study that found recent foreign-born US violent extremists began radicalizing, on average, 13 years after their entry to the United States further supports our assessment.

(U//FOUO) We assess nearly all parents who entered the country with minor-age children likely did not espouse a violent extremist ideology at the time they entered or at any time since, suggesting these foreign-born individuals were likely not radicalized by their parents before or after their arrival in the Homeland. We base this judgment on their admissions to the United States by screening and vetting agencies who review all available derogatory information, our review of press interviews of parents after their child was arrested or killed, and the lack of arrests of the parents since their entry.

* (U//FOUO) DHS defines radicalization as the process through which an individual changes from a nonviolent belief system to a belief system that includes the willingness to actively advocate, facilitate, or use unlawful violence as a method to effect societal or political change.

(U//FOUO) We assess that the integration and mentoring services provided by federal, state or private sector entities to refugees and asylees offer an opportunity to help foreign-born US residents adjust to their new communities and raise their awareness of and resistance to violent extremist narratives and recruiters, and likely increase their resilience to radicalization.

(U//FOUO) The experiences and grievances we assessed as common within these individuals present opportunities for CVE programs focused on integration and mentorship. Such programs could address adolescent immigrants' feelings of isolation, anger, and depression caused by immigration experiences—which could in turn reduce the vulnerability of FTOs to exploit these feelings for recruitment. Program administrators would be positioned to assist adolescents if the administrators are made aware of common radicalization vulnerabilities and behavioral indicators, as well as effective counter-narratives to challenge FTO messaging.

(U//FOUO) Most Foreign-born, US-based Violent Extremists Likely Radicalized after Entering Homeland

(U//FOUO) We assess that most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns. We base this assessment on our findings that nearly half of the foreign-born, US-based violent extremists examined in our dataset were younger than 16 years old when they entered the country and that the majority of foreign-born individuals resided in the United States for more than 10 years before their indictment or death. A previous DHS study which found recent foreign-born US violent extremists began radicalizing, on average, 13 years after their entry to the United States further supports our assessment.*

» (U//FOUO) Miguel Diaz[USPER], who arrived in the United States from Cuba in 1989, likely first displayed signs of radicalization in 2015—26 years after his entry—by posting articles related to the self-proclaimed Islamic State of Iraq and ash-Sham (ISIS) and a picture of himself posing with a firearm on Facebook, according to a DOJ criminal complaint and DHS immigration records.[1,2] Diaz later discussed conducting sniper attacks and scratching "ISIS" into shell casings. He was arrested in April 2015 and subsequently pleaded guilty to being a felon in possession of a firearm. In July 2015, Diaz was sentenced to 10 years in prison followed by three years of supervised release.[3]

» (U//FOUO) Mohimanul Bhuiya[USPER] entered the United States from Bangladesh when he was 11 months old and resided in the country for 24 years before his arrest in 2014 for successfully traveling to Syria and joining ISIS, according to DHS immigration records and reliable press reporting.[4,5] He was likely radicalized by June 2014, when FBI learned that he may have had plans to travel to Syria, according to reliable press reporting.[6,7] In November 2014, he pleaded guilty to providing material support and receiving military training from a FTO.[8]

» (U//FOUO) A separate DHS examination of the radicalization of the seven foreign-born, US-based violent extremists who attempted or succeeded in conducting attacks between January 2015 and December 2016 found that they typically entered the United States 15 years before their arrest or attack, and often only began radicalizing two years before they attempted their attack. This suggests that, on average, 13 years passed between the time these foreign-born, US-based violent extremists entered the United States and subsequently began to radicalize.

(U//FOUO) Countries of Birth of Foreign-born, US-based Violent Extremists

(U//FOUO) The 88 foreign-born, US-based violent extremists that we examined were born in 33 different countries, none of which holds a majority. Many of the individuals born in these countries were associates of each other, lived in the same area in the United States, and participated in a terrorism-related incident as a group. Four countries—Somalia, Uzbekistan, Bosnia, and Pakistan—comprised the country of birth of about 40 percent of the individuals in our dataset. Some of the individuals in our dataset may have immigrated to the United States from a country other than their place of birth. For example, some of the individuals in our dataset resided in refugee camps in a country other than their birth country prior to immigrating to the United States.

» *(U//FOUO) At least eight of the 13 individuals in our dataset who were born in Somalia were associates of each other and provided*

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* (U//FOUO) For more information, please see I&A *Intelligence Assessment* "Commonalities in HVE Radicalization to Violence Provide Prevention Opportunities," published 10 February 2017. Some of the numbers cited in this previous paper slightly differ due to scoping differences.

material support to ISIS as a group, according to DOJ criminal complaints.[9,10]

» *(U//FOUO) In 2012, two individuals born in Uzbekistan were arrested for providing material support to the Islamic Jihad Union, according to DOJ criminal complaints.[11,12] Separately, four Uzbekistan-born individuals were arrested in 2015 for providing material support to ISIS, according to a DOJ criminal complaint and superseding indictment.[13,14] These two groups comprised six of the nine individuals in our dataset who were born in Uzbekistan.*

» *(U//FOUO) All seven individuals born in Bosnia were associates of each other. Six were arrested in 2015 for providing material support to ISIS and one died in 2014 after successfully joining ISIS in Syria, according to DOJ criminal complaints and a press report.[15,16]*

» *(U//FOUO) Two of the seven violent extremists in our dataset who were born in Pakistan were brothers who plotted together to provide material support to al-Qa'ida in the Arabian Peninsula (AQAP), according to a DOJ indictment.[17]*

(U//FOUO) We assess nearly all parents who entered the country with minor-age children likely did not espouse a violent extremist ideology at the time they entered or at any time since, suggesting these foreign-born individuals were likely not radicalized by their parents before or after their arrival in the Homeland. We base this judgment on their admissions to the United States by screening and vetting agencies who review all available derogatory information, our review of press interviews of parents after their child was arrested or killed, and the lack of arrests of the parents since their entry.

» (U//FOUO) Two months before Somali immigrant Abdirizak Warsame[USPER] was arrested for conspiring to provide material support to ISIS, his mother lectured other parents about the importance of talking with their children about risks stemming from adhering to a violent extremist ideology and the need to work with the FBI, according to press reporting.[18] Warsame was sentenced to 30 months in prison in November 2016 because of his attempt to travel to Syria to join ISIS, according to a press report.[19]

» (U//FOUO) Harlem Suarez's[USPER] family was surprised by his arrest for plotting an attack in support of ISIS in 2015, according to a press report.[20] The family described Suarez, who was born in Cuba, as curious and unable to hurt anything, according to the same report.[21] Suarez is currently awaiting trial, according to another press report.[22]

» (U//FOUO) Jose Pimentel's[USPER] mother publicly apologized to the City of New York after his arrest in 2011, saying she was disappointed with her son's actions, according to multiple press reports.[23,24,25] Pimentel—who immigrated from the Dominican Republic with his family when he was five—was sentenced to 16 years in prison after pleading guilty in February 2014 to terrorism charges related to plotting to conduct an attack in the Homeland, according to a separate press report.[26]

(U//FOUO) Similar Radicalization Factors among Native- and Foreign-born US Violent Extremists

(U//FOUO) Our review of 116 native-born US violent extremists, who were publicly identified as having been arrested or killed between March 2011 and December 2016, showed that many had similar experiences and grievances to the 88 foreign-born violent extremists we examined. We assess that these experiences and grievances probably in part contributed to the radicalization of some native- and foreign-born, US-based violent extremists and included perceived injustices against Muslims in the Homeland and abroad because of US policies, feelings of anger and isolation, and witnessing violence as a child. The lack of extensive open source information detailing some of these US violent extremists' radicalization histories prevented us from identifying motivating factors for all individuals examined in our dataset.

» *(U//FOUO) Native-born brothers Nader Saadeh[USPER] and Alaa Saadeh[USPER]—who both pleaded guilty after their arrest in 2015 for providing material support to ISIS—believed the United States oppressed its own people and failed to protect Muslims, according to DOJ criminal complaints.[27,28] Similarly, Ibrahim Mohammad[USPER], born in the UAE and arrested in 2015 for providing material support to AQAP, believed the United States was actively at war with Islam, according another DOJ criminal complaint.[29]*

» *(U//FOUO) Native-born Josh Van Haften[USPER], who is awaiting his trial for attempting to travel overseas to join ISIS, became isolated from his peers after a sexual assault required him to register as a sex offender, according to press reporting.[30] He was told to leave his housing because he was a sex offender, and he was never able to have a romantic relationship, according to a press interview with Van Haften's mother and her partner.[31] The FBI assesses isolation to be one of many factors in Van Haften's radicalization, but not the primary one. Similarly, the now-deceased foreign-born former editor of AQAP's* Inspire *magazine, Samir Khan, and now-deceased ISIS foreign fighter Abdullah Ramo Pazara felt isolated or different from their communities and peers, according to multiple press reports.[32,33,34]*

» *(U//FOUO) At least five foreign-born US violent extremists were exposed to violence or substance abuse as children, according to a review of available press reporting.[35–39] We judge, however, there are likely additional individuals included in our dataset who were also exposed to violence during their childhood, based on our finding that 41 foreign-born US violent extremists in our dataset entered the United States as a refugee, asylee, or child of a refugee or asylee.*

(U//FOUO) CVE Opportunities to Prevent Radicalization of Foreign-born, US-based Individuals

(U//FOUO) We assess that the integration and mentoring services provided by federal, state, and private sector entities to refugees and asylees offer an opportunity to help foreign-born US residents adjust to their new communities and raise their awareness of and resistance to violent extremist narratives and recruiters, and likely increase their resistance to radicalization. Immigrants not entering the United States as refugees or asylees must prove their ability to provide basic needs for themselves before arriving in the United States, and thus they would not be eligible to receive many of these healthcare, housing, employment, and education services; however, there are many programs available to all immigrants to assist with integration into US society.

» (U) There are a variety of federal, state, local, and nongovernmental programs aimed at helping refugees and asylees integrate into US society by addressing their basic healthcare, housing, employment, and education needs.[40] Additionally, USCIS, through its Citizenship and Integration Grant Program, as of September 2016 awarded $63 million through 308 competitive grants in 37 states to help immigrants prepare and apply for US citizenship, according to USCIS.[41]

» (U) Many nonprofit organizations engage with immigrant communities, including a Georgia-based nonprofit that serves the cultural, psychological, and social-economic needs of refugees and immigrants in Atlanta, according to their website.[42]

(U//FOUO) The experiences and grievances we assessed as common within these individuals present opportunities for CVE programs focused on integration and mentorship. Such programs could address adolescent immigrants' feelings of isolation, anger, and depression caused by immigration experiences—which could in turn reduce the ability of FTOs to exploit these feelings for recruitment. Program administrators would be positioned to assist adolescents if the administrators are made aware of common radicalization vulnerabilities and behavioral indicators, as well as effective counter-narratives to challenge FTO messaging.

» (U//FOUO) Guled Omar[USPER], who was sentenced in 2016 for attempting travel overseas to join ISIS, claimed in a December 2016 press interview that after his older brother traveled to Somalia in 2007 to join al-Shabaab, he was shunned and isolated from the Somali-American community in Minneapolis, which led to his depression, drug use, and taunting by peers.[43]

» (U) Successful programs for adolescent immigrants could include convening youth from varying cultural backgrounds to promote cultural understanding and providing opportunities to counter anti-immigrant attitudes in mainstream culture, according to research published by a State University of New York at Albany[USPER] program called Voices for Change: Immigrant Women and State Policy.[44] Separately, the Department of Health and Human Services' Child Welfare Information Gateway offers online resources for immigrant youth, including a guide on living in America, educational and safety resources for parents, and a handbook for raising children in a new country.[45]

(U//FOUO) We also judge that open discussions with community and religious centers about overseas conflicts and ways that violent extremists may use religion to justify their actions would likely help dissuade some foreign-born, US-based individuals who are seeking answers to their questions from relying exclusively on research conducted online, which is often dominated by FTO messaging that offers only a violent extremist perspective.

» (U//FOUO) Some individuals in our dataset who became interested in conflict zones or their religion sought to educate themselves on the Internet—where they encountered videos and literature espousing violent extremist ideology—rather than their local religious or community leaders, according to press reporting.[4647] Somali-Americans Abdi Nur[USPER] and Guled Omar—who have since been indicted for attempting to provide material support to ISIS—were asked to leave their respective mosques because of their expressions of violent extremist beliefs, which, in effect, pushed their research underground, where they turned to the Internet and had their nascent violent extremist views reinforced, according to a press report.[48] Abdi Nur was indicted on conspiracy charges for providing material support to ISIS in 2014, according to a DOJ press release.[49]

» (U//FOUO) Abdizirak Warsame stated in his court appearance that he was always listening to one side, referring to the "radical" messages he saw online, according to a press report. Warsame claimed that at the time he did not realize innocent people were being killed, according to the same report, which was likely a reference to terrorists' targeting of civilians.[50]

Homeland Security
Office of Intelligence and Analysis

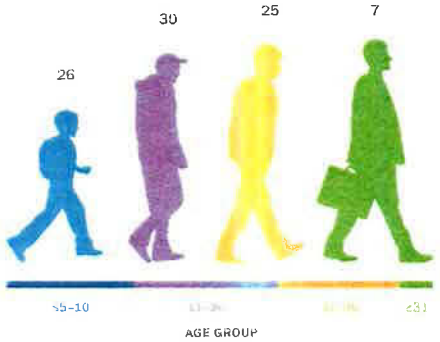
INTELLIGENCE ASSESSMENT
01 March 2017

Most Foreign-born, US-based Violent Extremists Probably Radicalize After Entering the Homeland

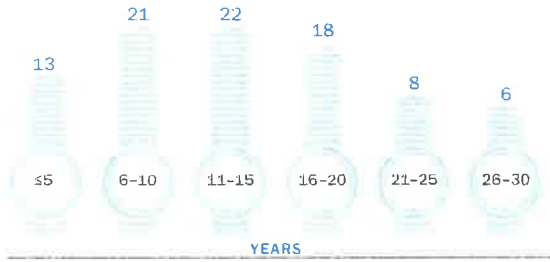
(U//FOUO) I&A examined the immigration history and radicalization activities of 88 foreign-born, US-based violent extremists who were indicted or killed as a result of their participation in a terrorism related activity inspired by at least one foreign terrorist organization between March 2011 and December 2016. We based this study primarily on DHS immigration records, publicly available court documents and reliable press reporting. Nearly half of the foreign-born violent extremists in our dataset entered the United States when they were under the age of 16 and a majority remained in the United States for over ten years before their indictment or death, suggesting most foreign-born, US-based violent extremists likely radicalized after entering the Homeland.

(U//FOUO) DHS defines radicalization as the process through which an individual changes from a non-violent belief system to a belief system that includes the willingness to actively advocate, facilitate, or use unlawful violence as a method to effect societal or political change.

(U) AGE OF ENTRY OF FOREIGN-BORN VIOLENT EXTREMISTS



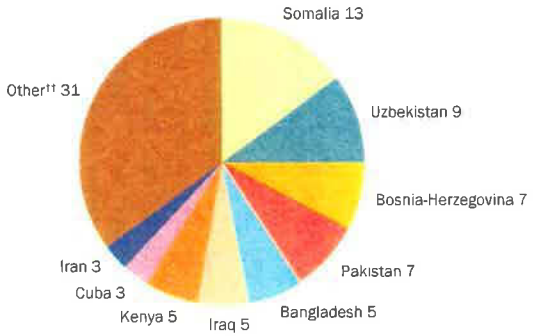
(U) LENGTH OF TIME IN US OF FOREIGN-BORN VIOLENT EXTREMISTS



(U//FOUO) For the purposes of this graphic, we compared our findings on foreign-born US-based violent extremists with those of 116 native-born US-based violent extremists indicted or killed during the same time period. We found that many native-and foreign-born US-based violent extremists had similar experiences and grievances that may have contributed, in part, to their radicalization, including perceived injustice against Muslims, grievances against the United States, and feelings of anger and isolation.

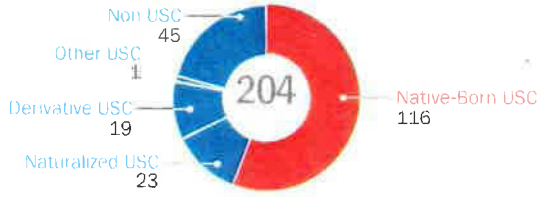
(U//FOUO) These factors alone do not indicate an individual has radicalized to violence.

(U) COUNTRIES OF BIRTH OF FOREIGN-BORN VIOLENT EXTREMISTS



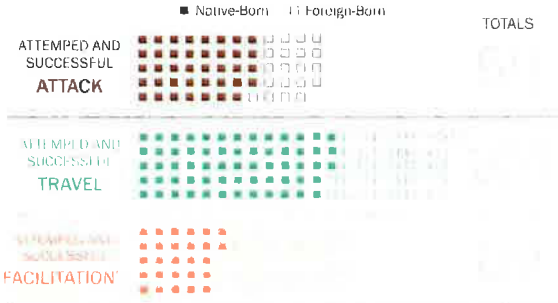
†† (U//FOUO) Either one or two individuals were born in each of the following 24 countries: Albania, Afghanistan, Australia, Dominican Republic, Egypt, Ethiopia, India, Israel, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Mexico, Morocco, Philippines, Russia, Saudi Arabia, Sierra Leone, Sudan, Syria, Turkey, United Arab Emirates, Yemen, Yugoslavia.

NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS US CITIZENSHIP (USC) STATUS AT TIME OF INDICTMENT OR DEATH‡



(U//FOUO) Non-USCs includes legal permanent residents (LPR), non-immigrant visa holders, refugees, and individuals with no status.

TERRORISM-RELATED ACTIVITES OF NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS§



§ (U//FOUO) Numbers include individuals who participated or were interested in more than one activity.

‡ (U//FOUO) Facilitation activities include financial or logistical support and terrorist recruitment.

(U) Source Summary Statement

(U//FOUO) This Assessment *is based primarily on I&A's review of DHS immigration and travel records and publicly available court documents as well as relevant reliable press reporting. The scope of our study did not include consideration of non-disseminated investigative information.*

(U//FOUO) I&A has ***moderate confidence*** *that most foreign-born US violent extremists likely radicalize several years after their entry to the United States, based on a review of court documents and press reporting from which we determined the first known sign of radicalization to violence among recent US violent extremists and a body of USCIS data from which we determined the length of time the individuals examined in our current dataset spent in the United States before their indictment or death. We note that there are challenges in determining the exact date that radicalization began, which is often a personal and individualized process that is difficult to observe. Additional reporting on the online activities of the US violent extremists, as well as information from the US violent extremists themselves or their family and friends about possible indicators of their loved ones' radicalization would further strengthen our confidence in this assessment. Our assessment is further supported by our finding that nearly half of the foreign-born individuals in our dataset entered the United States when they were younger than 16 years old, an age group that is typically younger than the age most violent extremists begin radicalizing.*

(U//FOUO) We have ***moderate confidence*** *in our assessment that nearly all parents who entered the country with these foreign-born, US-based violent extremists likely did not espouse a violent extremist ideology or exhibit any violent radicalization or mobilization indicators at the time they entered or since. Our assessment is based on a qualitative review of reliable press reporting describing the family life and parents of the individuals in our dataset. Additional information about the parents of these individuals—which is likely contained in immigration screening and vetting interview transcripts related to these individuals and their parents, which we lacked access to—would strengthen our confidence in this assessment.*

(U//FOUO) We have ***moderate confidence*** *that provision of services to refugees and asylees and programs tailored to adolescents offer opportunities to provide CVE programs to address radicalization factors possibly relevant to foreign-born US residents. Our assessment is based on a review of services provided to refugees and asylum seekers and current programs focused on immigrant youth, which, collectively, can address many of the common grievances and experiences of the foreign-born individuals in our dataset.*

(U//FOUO) We have ***moderate confidence*** *that open discussions with community and religious centers about overseas conflicts and ways violent extremists may use religion to justify their actions would likely help dissuade some foreign-born, US-based individuals from relying exclusively on Internet research. Our assessment is based on an analysis of current CVE programs and grievances cited by the individuals in our dataset to determine whether these programs would likely address the radicalization factors of these individuals. The inherent challenges involved in proving that CVE efforts have successfully countered radicalization of violent extremists or possible radicalization of vulnerable individuals limit our confidence in this assessment.*

(U) Report Suspicious Activity

(U) To report suspicious activity, law enforcement, Fire-EMS, private security personnel, and emergency managers should follow established protocols; all other personnel should call 911 or contact local law enforcement. Suspicious activity reports (SARs) will be forwarded to the appropriate fusion center and FBI Joint Terrorism Task Force for further action. For more information on the Nationwide SAR Initiative, visit http://nsi.ncirc.gov/resources.aspx.

(U) Tracked by: HSEC-8.1, HSEC-8.2, HSEC-8.3, HSEC-8.5

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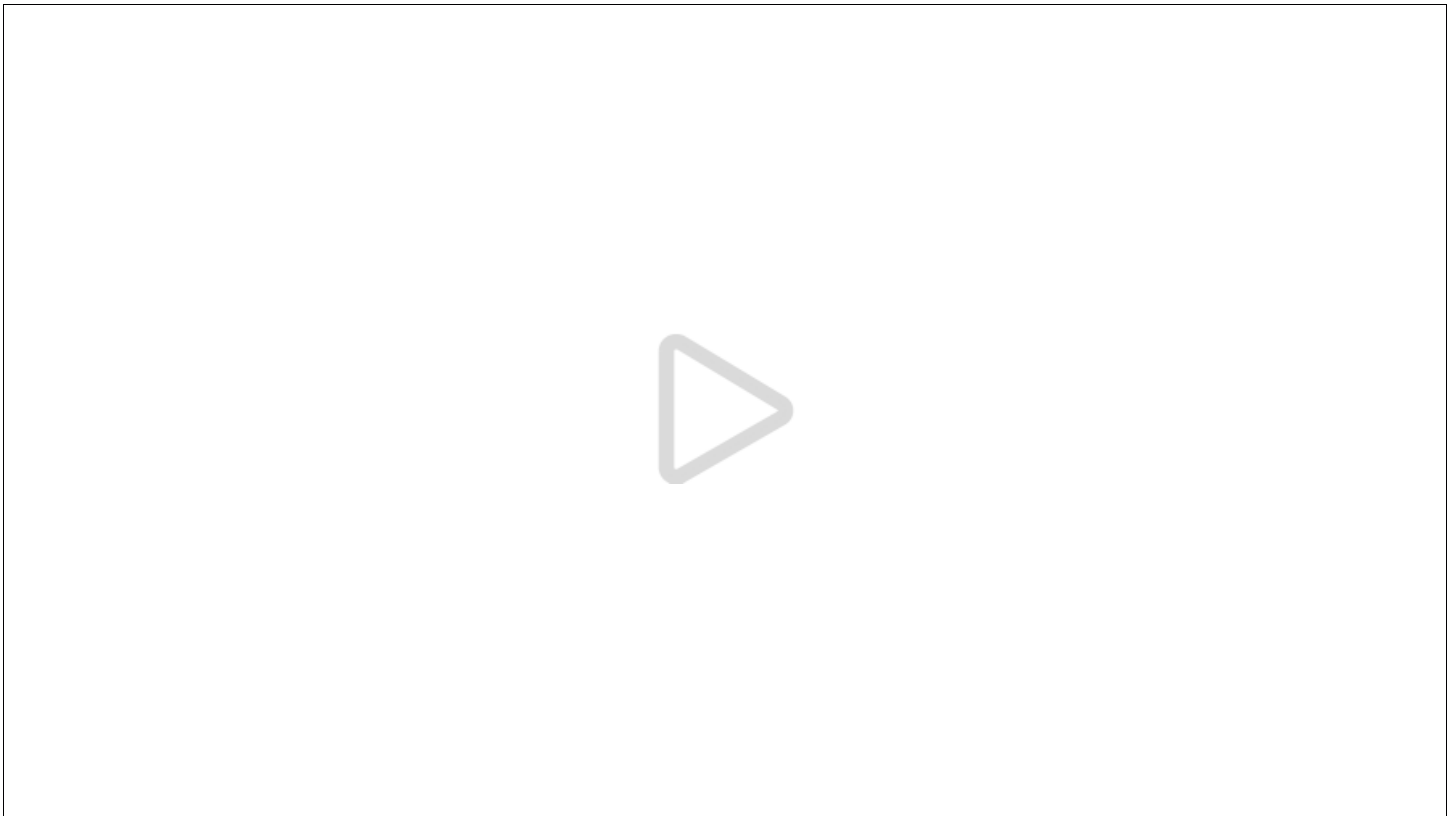
EXHIBIT LL

Trump delays new travel ban after well-reviewed speech

By Laura Jarrett, Ariane de Vogue and Jeremy Diamond, CNN

Updated 6:01 AM ET, Wed March 1, 2017



Immigration violations: The one thing to know 01:15

Story highlights

The new travel ban will exclude legal permanent residents and existing visa holders

Two sources also expect that the President will formally revoke the previous executive order

Washington (CNN) — President Donald Trump has delayed plans to sign a reworked travel ban in the wake of positive reaction to his first address to Congress, a senior administration official told CNN.

The decision came late Tuesday night as positive reviews flooded in for Trump's speech, which struck a largely optimistic and unifying tone.

Signing the executive order Wednesday, as originally indicated by the White House, would have undercut the favorable coverage. The official didn't deny the positive reception was part of the administration's calculus in pushing back the travel ban announcement.

"We want the (executive order) to have its own 'moment,'" the official said.

The sudden change of plans came as Trump and his top advisers returned to the White House after his address to a joint session of Congress on Tuesday night.

Trump's original executive order, signed a week after he took office, banned citizens of seven Muslim-majority countries from entering the US and temporarily suspended the entry of all refugees. A federal court issued a temporary stay that halted implementation of the travel ban earlier this month, a decision that was later upheld by a federal appeals court.

The new travel ban will exclude legal permanent residents and existing visa holders from the ban entirely, sources familiar with the plans told CNN earlier Tuesday.

While sources caution that the document has not yet been finalized and is still subject to change, there will be major changes:

· The new executive order will make clear that legal permanent residents (otherwise known as green card holders) are excluded from any travel ban.

· Those with validly issued visas will also be exempt from the ban.

· The new order is expected to revise or exclude language prioritizing the refugee claims of certain religious minorities.

Speaking in Munich, Germany, earlier this month, Department of Homeland Secretary John Kelly promised a "phased-in" approach to minimize disruption this time around.

But what remains to be seen are the other key aspects of the new executive order, especially in terms of refugees, including:

· What happens to the suspension of the refugee program for 120 days?

· Will Syrian nationals still be barred indefinitely?

· Will the cap on the number of refugees change? The first version of the executive order caps it at 50,000 for fiscal year 2017.

Two sources also expect that the President will formally revoke the earlier executive order, despite repeated statements from White House press secretary Sean Spicer that the two orders would co-exist on a "dual track."

The administration could potentially argue that the existing challenges to the original executive order are moot, but the challengers tell CNN the legal battles will likely continue even after the new order is signed.

"Exempting lawful permanent residents and current visa holders will not cure the core legal problem -- that the ban was motivated by religious discrimination, as evidenced by the President's repeated statements calling for a Muslim ban," ACLU attorney Lee Gelernt explained. "That discriminatory taint cannot be removed simply by eliminating a few words or clever tinkering by lawyers."

Trump vs. Obama: A rocky relationship

Admiral warns staff against talking too freely

Ivana Trump's ex-husband opening a pizza place near Mar-a-Lago

Trump meets with Clinton-backing tech philanthropist

EXHIBIT MM

The Washington Post

The Plum Line • Opinion

In leaked document, the case for Trump's 'Muslim ban' takes another huge hit

By Greg Sargent March 3

THE MORNING PLUM:

We keep hearing that President Trump will roll out the new version of his travel ban any day now. The White House delayed it earlier this week, because Trump advisers reportedly thought it could step on the good press he'd earned from his speech, thus inadvertently undercutting their own claims that enacting the ban is an urgent national security matter.

Here's the real reason for the delay: The Trump administration can't solve the problem that has always bedeviled this policy, which is that *there isn't any credible national security rationale for it*. Unlike on the campaign trail, when you're governing, you actually have to have justification for what you're proposing, or you often run into trouble.

MSNBC's Rachel Maddow had an important scoop on Thursday night that further undercuts the substantive case for Trump's ban, which would restrict entry into the country by refugees and migrants from select Muslim-majority countries. Maddow obtained a new internal Department of Homeland Security document that reached this key judgment:

> We assess that most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns.

This new document is separate from another DHS document that was leaked to the press last week. That one also undercut the case for the ban, concluding that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity."

The new document obtained by Maddow weakens the central rationale for the ban, which is to put a temporary delay on entry into the United States for the express purpose of tightening up our vetting procedures. DHS's conclusion appears to be that

vetting procedures in particular are not that useful in screening out people who *radicalize later*, and that most foreign-born emigrants to the United States who become violent extremists fall into that category.

"The national security justification for this whole ban — this setting up of extreme vetting — is bull-pucky," Maddow said. "There's nothing they can set up at the border to tell you years down the road who might become … a radical and violent person years from now."

This complements the conclusion of the other leaked memo. Taken together, they appear to mean that DHS's analysts believe that singling out those countries makes little sense *and* that the problem in preventing terrorism by immigrants does not lie in our vetting procedures as they are, which already screen out the immediate threats.

Now, an important caveat is necessary here — one that sheds more light on the Trump administration's actual rationale for the ban, which is crying out for more debate. The ban's main architects — Stephen K. Bannon and Stephen Miller — would probably argue that these new documents don't undercut their larger arguments for it.

As I have reported, the evidence is mounting that Bannon and Miller view the ban as part of a much broader, long-term demographic-reshaping project. Miller let slip in a recent interview that the ban isn't just about national security, but also about protecting U.S. workers from foreign competition. And the Los Angeles Times reports that Bannon and Miller have privately argued that the ban is in keeping with the need to combat immigration by people who "will not assimilate":

> Inside the West Wing, the two men have pushed an ominous view of refugee and immigration flows, telling other policymakers that if large numbers of Muslims are allowed to enter the U.S., parts of American cities will begin to replicate marginalized immigrant neighborhoods in France, Germany and Belgium that have been home to plotters of terrorist attacks in recent years, according to a White House aide familiar with the discussions.

Thus, the ban is of a piece with the long-term goals of protecting American workers from economic competition and preventing European-style immigrant communities (which incubate terror plotters) from developing here. Bannon and Miller could argue that these arguments are partly about national security, too. But this is a case that centers on *long-term demographics*. That does not support the administration's case for the immediate ban, since DHS has concluded that "extreme vetting" can't screen out the threat of radicalization later. If anything, those larger motives undermine the case for the ban, by throwing its stated short-term motive into doubt.

It's time for the Trump administration to kill the ban — the case for it is collapsing — and forthrightly debate this larger argument.

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*** WHAT'S NEXT IN THE RUSSIA AFFAIR:** NBC News reports that in the wake of Jeff Sessions's recusal, the probe will now be overseen by Acting Deputy Attorney General Dana Boente or the permanent one, Rod Rosenstein, if confirmed. What

about a special counsel?

> The U.S. Code sets out specific criteria to justify appointing a special counsel. First the attorney general or his or her proxy must determine that a criminal investigation is warranted. … Second, the attorney general or his or her proxy must determine that it would be a conflict of interest for the department or a U.S. attorney's office to conduct the investigation. Both determinations will now be up to Boente or [Rosenstein].

Who thinks either of those things is likely to happen anytime soon?

*** REPUBLICANS WILL BLOCK A BIPARTISAN INQUIRY:** Meanwhile, Carl Hulse reports that Republicans aren't going to support a serious, independent probe anytime soon:

> House and Senate Republicans remain unwilling to budge from their opposition to a special bipartisan inquiry into the extent of Russian meddling in the 2016 election, and into any connections to President Trump or those close to him. Changing their mind would probably require significant revelations of the sort that would make their current stance politically untenable.

Eroding the protective wall that Republicans have built around Trump is going to be difficult, but it is not impossible, particularly if such revelations are in the offing.

*** GOP LEADERS WILL 'STEAMROLL' THE RIGHT ON OBAMACARE:** Conservatives insist they will only support clean ACA repeal, but Politico reports that GOP leaders are set to force through a repeal-and-replace bill that does spend some money to cover some people:

> Privately, senior Republican lawmakers … say they have no problem steamrolling conservatives by daring them to vote against an Obamacare repeal that their constituents have demanded for years. "Conservatives are going to be in a box," said one senior Republican lawmaker. Trump, the source predicted, eventually will "go out front and … tell the conservatives … they're either for this or for keeping Obamacare."

It will be interesting to see whether conservatives decide to take on Trump, and related to that, whether there will be any serious clamor among conservative voters for total repeal.

*** TRUMP ADVISERS SPLIT ON PARIS DEAL:** The New York Times reports that a split has emerged over whether to pull the United States out of the global climate accord, between Stephen K. Bannon for pulling out, and Secretary of State Rex Tillerson and Ivanka Trump against it:

> On one side of that debate is Mr. Bannon, who as a former chief executive of Breitbart News published countless articles denouncing climate change as a hoax … On the other side are Ms. Trump, Mr. Tillerson, and a slew of foreign policy advisers and career diplomats who argue that the fallout of withdrawing from

> the accord could be severe, undercutting the United States' credibility on other foreign policy issues and damaging relations with key allies.

That seems like an evenly matched set of arguments.

*** PARENTS FACING DEPORTATION MAKE PLANS FOR KIDS:** Reuters delivers some important reporting:

> Parents who immigrated illegally to the United States and now fear deportation under the Trump administration are inundating immigration advocates with requests for help in securing care for their children in the event they are expelled from the country. ... About five million children under the age of 18 are living with at least one parent who is in the country illegally, according to a 2016 study ... Most of the children, 79 percent, were U.S. citizens, the study found.

Remember, one of the goals of expanding the pool of people subject to deportation is to frighten them into self-deporting. Looks like the effort to spread raw fear is having some success.

*** TRUMP IS GALVANIZING POLITICAL ACTION ON THE LEFT:** NPR reports that Trump's presidency is sparking an upsurge in political activity on both sides, but more so on the left. Note this, from Dana Fisher, a University of Maryland sociologist who studies protests:

> Fisher surveyed more than 500 participants in the Women's March on Washington the day after Trump's inauguration. A third never had protested before.

This, plus sustained engagement from civil society, will be crucial to any hopes of limiting the damage Trump can do.

*** AND REPUBLICANS DWELL IN TRUMP'S ALTERNATIVE REALITY:** Paul Krugman notes that Trump is far and away the most dishonest politician in recent memory, and adds:

> The moral vacuity of Republicans in Congress, and the unlikelihood that they'll act as any check on the president, becomes clearer with each passing day. ... Meanwhile, Republican primary election voters, who are the real arbiters when polarized and/or gerrymandered districts make the general election irrelevant for many politicians, live in a Fox News bubble into which awkward truths never penetrate.

Indeed, a recent poll found that 78 percent of Republican respondents trust Trump, rather than the news media, to tell them the truth, decreasing the pressure on GOP lawmakers to respond in a reality-based way to new revelations about him. Happy Friday!

EXHIBIT NN

The Washington Post

Politics

Inside Trump's fury: The president rages at leaks, setbacks and accusations

By Philip Rucker, Robert Costa and Ashley Parker March 5

President Trump spent the weekend at "the winter White House," Mar-a-Lago, the secluded Florida castle where he is king. The sun sparkles off the glistening lawn and warms the russet clay Spanish tiles, and the steaks are cooked just how he likes them (well done). His daughter Ivanka and son-in-law Jared Kushner — celebrated as calming influences on the tempestuous president — joined him. But they were helpless to contain his fury.

Trump was mad — steaming, raging mad.

Trump's young presidency has existed in a perpetual state of chaos. The issue of Russia has distracted from what was meant to be his most triumphant moment: his address last Tuesday to a joint session of Congress. And now his latest unfounded accusation — that Barack Obama tapped Trump's phones during last fall's campaign — had been denied by the former president and doubted by both allies and fellow Republicans.

When Trump ran into Christopher Ruddy on the golf course and later at dinner Saturday, he vented to his friend. "This will be investigated," Ruddy recalled Trump telling him. "It will all come out. I will be proven right."

"He was pissed," said Ruddy, the chief executive of Newsmax, a conservative media company. "I haven't seen him this angry."

Trump enters week seven of his presidency the same as the six before it: enmeshed in controversy while struggling to make good on his campaign promises. At a time when White House staffers had sought to ride the momentum from Trump's speech to Congress and begin advancing its agenda on Capitol Hill, the administration finds itself beset yet again by disorder and suspicion.

At the center of the turmoil is an impatient president increasingly frustrated by his administration's inability to erase the impression that his campaign was engaged with Russia, to stem leaks about both national security matters and internal discord and to implement any signature achievements.

This account of the administration's tumultuous recent days is based on interviews with 17 top White House officials, members of Congress and friends of the president, many of whom requested anonymity to speak candidly.

Gnawing at Trump, according to one of his advisers, is the comparison between his early track record and that of Obama in 2009, when amid the Great Recession he enacted an economic stimulus bill and other big-ticket items.

Trump's team is trying again to reboot this week, with the president expected to sign a new executive order Monday implementing an entry ban for some countries after the initial one was blocked in federal court. The administration also intends to introduce a legislative plan later in the week to repeal and replace Obama's health-care law, officials said.

The rest of Trump's legislative plan, from tax reform to infrastructure spending, is effectively on hold until Congress first tackles the Affordable Care Act.

White House legislative staffers concluded late last week that the administration was spinning in circles on the health-care plan, amid mounting criticism from conservatives that the administration was fumbling.

With Health and Human Services Secretary Tom Price on the road with Vice President Pence, a decision was made: Mick Mulvaney, director of the Office of Management and Budget, would become the point person, though officials insisted Price had not been sidelined.

On Friday, Mulvaney convened a meeting at the Eisenhower Executive Office Building with top administration officials and senior staff of House and Senate leaders to hammer out the final details of the proposal to replace the Affordable Care Act.

"Mulvaney has been essential in helping us get health care over the finish line," said Marc Short, the White House legislative affairs director.

On Capitol Hill, Price is seen by some Republicans as more knowledgeable about health-care policy than Mulvaney, given his experience as a physician and his time as chairman of the House Budget Committee. But Mulvaney benefits from the close relationships he has forged with Trump's top advisers and with the House's conservative wing.

Trump, meanwhile, has been feeling besieged, believing that his presidency is being tormented in ways known and unknown by a group of Obama-aligned critics, federal bureaucrats and intelligence figures — not to mention the media, which he has called "the enemy of the American people."

That angst over what many in the White House call the "deep state" is fomenting daily, fueled by rumors and tidbits picked up by Trump allies within the intelligence community and by unconfirmed allegations that have been made by right-wing commentators. The "deep state" is a phrase popular on the right for describing entrenched networks hostile to Trump.

Rep. Dana Rohrabacher (R-Calif.), an advocate of improved relations between the United States and Russia, said he has told friends in the administration that Trump is being punished for clashing with the hawkish approach toward Russia that is shared by most Democrats and Republicans.

"Remember what Dwight Eisenhower told us: There is a military-industrial complex. That complex still exists and has a lot of power," he said. "It's everywhere, and it doesn't like how Trump is handling Russia. Over and over again, in article after article, it rears its head."

The president has been seething as he watches round-the-clock cable news coverage. Trump recently vented to an associate that Carter Page, a onetime Trump campaign adviser, keeps appearing on television even though he and Trump have no significant relationship.

Stories from Breitbart News, the incendiary conservative website, have been circulated at the White House's highest levels in recent days, including one story where talk-radio host Mark Levin accused the Obama administration of mounting a "silent coup," according to several officials.

Stephen K. Bannon, the White House chief strategist who once ran Breitbart, has spoken with Trump at length about his view that the "deep state" is a direct threat to his presidency.

Advisers pointed to Bannon's frequent closed-door guidance on the topic and Trump's agreement as a fundamental way of understanding the president's behavior and his willingness to confront the intelligence community — and said that when Bannon spoke recently about the "deconstruction of the administrative state," he was also alluding to his aim of rupturing the intelligence community and its influence on the U.S. national security and foreign policy consensus.

Bannon's view is shared by some top Republicans.

"It's not paranoia at all when it's actually happening. It's leak after leak after leak from the bureaucrats in the [intelligence community] and former Obama administration officials — and it's very real," said Rep. Devin Nunes (R-Calif.), the chairman of

the House Intelligence Committee. "The White House is absolutely concerned and is trying to figure out a systemic way to address what's happening."

The mood at the White House on Tuesday night was different altogether — jubilant. Trump returned from the Capitol shortly before midnight to find his staff assembled in the residence cheering him. Finally, they all thought, they had seized control. The president had even laid off Twitter outbursts — a small victory for a staff often unable to drive a disciplined message.

"He nailed it, and he knew it," said Kellyanne Conway, counselor to the president.

The merriment came to a sudden end on Wednesday night, when The Washington Post first reported that Attorney General Jeff Sessions met with the Russian ambassador despite having said under oath at his Senate confirmation hearing that he had no contact with the Russians.

Inside the West Wing, Trump's top aides were furious with the defenses of Sessions offered by the Justice Department's public affairs division and felt blindsided that Sessions's aides had not consulted the White House earlier in the process, according to one senior White House official.

The next morning, Trump exploded, according to White House officials. He headed to Newport News, Va., on Thursday for a splashy commander-in-chief moment. The president would trumpet his plan to grow military spending aboard the Navy's sophisticated new aircraft carrier. But as Trump, sporting a bomber jacket and Navy cap, rallied sailors and shipbuilders, his message was overshadowed by Sessions.

Then, a few hours after Trump had publicly defended his attorney general and said he should not recuse himself from the Russia probe, Sessions called a news conference to announce just that — amounting to a public rebuke of the president.

Back at the White House on Friday morning, Trump summoned his senior aides into the Oval Office, where he simmered with rage, according to several White House officials. He upbraided them over Sessions's decision to recuse himself, believing that Sessions had succumbed to pressure from the media and other critics instead of fighting with the full defenses of the White House.

In a huff, Trump departed for Mar-a-Lago, taking with him from his inner circle only his daughter and Kushner, who is a White House senior adviser. His top two aides, Chief of Staff Reince Priebus and Bannon, stayed behind in Washington.

As reporters began to hear about the Oval Office meeting, Priebus interrupted his Friday afternoon schedule to dedicate more than an hour to calling reporters off the record to deny that the outburst had actually happened, according to a senior White House official.

"Every time there's a palace intrigue story or negative story about Reince, the whole West Wing shuts down," the official said.

Ultimately, Priebus was unable to kill the story. He simply delayed the bad news, as reports of Trump dressing down his staff were published by numerous outlets Saturday.

Trouble for Trump continued to spiral over the weekend. Early Saturday, he surprised his staff by firing off four tweets accusing Obama of a "Nixon/Watergate" plot to tap his Trump Tower phones in the run-up to last fall's election. Trump cited no evidence, and Obama's spokesman denied any such wiretap was ordered.

That night at Mar-a-Lago, Trump had dinner with Sessions, Bannon, Homeland Security Secretary John F. Kelly and White House senior policy adviser Stephen Miller, among others. They tried to put Trump in a better mood by going over their implementation plans for the travel ban, according to a White House official.

Trump was brighter Sunday morning as he read several newspapers, pleased that his allegations against Obama were the dominant story, the official said.

But he found reason to be mad again: Few Republicans were defending him on the Sunday political talk shows. Some Trump advisers and allies were especially disappointed in Sen. Marco Rubio (Fla.), who two days earlier had hitched a ride down to Florida with Trump on Air Force One.

Pressed by NBC's Chuck Todd to explain Trump's wiretapping claim, Rubio demurred.

"Look, I didn't make the allegation," he said. "I'm not the person that went out there and said it."

Damian Paletta contributed to this report.

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Robert Costa is a national political reporter at The Washington Post. Follow @costareports

Ashley Parker is a White House reporter for The Washington Post. She joined The Post in 2017, after 11 years at The New York Times, where she covered the 2012 and 2016 presidential campaigns and Congress, among other things. Follow @ashleyrparker

EXHIBIT OO

Vox EXPLAIN THE NEWS

Report: Trump aides cheer up a moody president by talking about his travel ban

It's about national security. Or something.

Updated by Matthew Yglesias | @mattyglesias | matt@vox.com | Mar 6, 2017, 10:00am EST

Donald Trump's top advisers try to cheer up the sulking commander in chief by reminding him of their looming plan to endanger the lives of some of the most desperate and vulnerable people on earth.

That fact comes to us not from Trump's political opponents or some nefarious conspiracy of "Obama holdovers" in the "deep state," but from Trump's closest friends and allies in politics.

This weekend was a bonanza of gossipy scoops from inside the White House, including **Politico's "Knives are out for Reince," CNN's "Trump angry and frustrated at staff over Sessions fallout,"** and **ABC News's "Trump flashes anger over Sessions recusal, Russia stories in tense Oval Office meeting."** But it's the **Washington Post's entrance into the genre**, by Philip Rucker, Robert Costa, and Ashley Parker, that delivers the single most chilling anecdote.

Like the other stories, it goes over Trump's bad mood — he's angry that Jeff Sessions recused himself from the investigation into ties to Russia, he's paranoid about leaks, and he's upset that more people aren't backing up his evidence-free accusation about Barack Obama ordering Trump Tower bugged.

And then:

> That night at Mar-a-Lago, Trump had dinner with Sessions, Bannon, Homeland Security Secretary John F. Kelly and White House senior policy adviser Stephen Miller, among others.

> They tried to put Trump in a better mood by going over their implementation plans for the travel ban, according to a White House official.

Obviously we don't know the full details of version 3.0 of what originated as Trump's campaign promise of a **"total and complete shutdown of Muslims entering the United States."**

But the upshot is that a great deal of hardship will be inflicted on some fairly broad categories of people. And there's no denying that the *vast* majority of the hardship will be inflicted on people who are not terrorists and who pose no national security risk to the United States. There will be direct hardship on people barred from entering this country, and indirect hardship on their friends and family already here. Most of all, there will be *intense* hardship visited upon refugees who would, if not for Trump, be candidates for resettlement in the United States of America.

These are the most vulnerable people in the world we are talking about. And when whatever the order says exactly faces legal challenges — which it surely will — the government's lawyers will argue that this cruel act was **needed to protect American citizens from terrorism**.

Yet here we have an official of Trump's own government telling the Washington Post that the details were hashed out over dinner, with the president's chief political strategist in attendance but his national security adviser absent, at a lavish $200,000 initiation fee private beach club, with the purpose of brightening the president's mood. Trump has had his share of frustrations over the course of his young presidency, but this is the part he finds fun.

Was this article helpful?

EXHIBIT PP

POLITICO

Senate Foreign Relations Chairman Bob Corker offered some limited praise of the new plan. | AP Photo

GOP critics praise Trump's tweaked travel ban

By **ELANA SCHOR** and **KYLE CHENEY** | 03/06/17 04:07 PM EST | Updated 03/06/17 06:12 PM EST

President Donald Trump's scaled-back order restricting travel from six majority-Muslim nations won over one of his biggest GOP critics Monday and drew tepid support from other Republicans who had criticized his initial travel ban.

Sen. Lindsey Graham, who has hounded Trump on his ties to Russia and called the president's first attempt at a travel ban a potential "self-inflicted wound in the fight against terrorism," embraced the White House's changes.

"This executive order will achieve the goal of protecting our homeland and will, in my view, pass legal muster," the South Carolina Republican said in a statement, adding that "the new order will withstand legal challenges as it's drafted in a fashion as to not be a religious ban, but a ban on individuals coming from compromised governments and failed states."

While Graham appears to be the biggest convert so far, other Republicans who had criticized the first travel order — issued in January and quickly halted in federal court — offered muted but positive reactions.

Sen. Lamar Alexander (R-Tenn.), who said Trump's initial ban "needed more vetting," on Monday said the revised version "appears to be a wiser approach to reviewing how we scrutinize those traveling to the United States from war-torn countries."

Trump eases up on travel ban with new executive order
By **JOSH GERSTEIN** and **NOLAN D. MCCASKILL**

Still, Alexander added, Monday's order "should last only as long as it takes to complete the review" of immigrant vetting procedures that Trump has proposed.

Another critic of the initial order, Sen. Susan Collins (R-Maine), said the revised edition "addresses some of the concerns I had with the original ban," including the removal of an "ill-conceived religious test" that would have signaled a preference for refugee applications from Christians residing in majority-Muslim countries.

Removing Iraqi citizens from the travel ban came after entreaties from Graham, Sen. John McCain of Arizona and other prominent Republicans — including Trump's secretaries of state and defense — in light of Iraqis' contributions to the fight against terrorism.

Senate Foreign Relations Chairman Bob Corker, who also criticized Trump's January travel ban, offered some limited praise for the roll-out of the new plan.

“I am very encouraged by the inter-agency approach the administration has taken to develop and implement the revised executive order,” said Corker, adding that he was pleased that Iraq was removed from the countries subject to visa restrictions. The Tennessee Republican also said reviewing the nation’s screening and vetting procedures is “an appropriate step” and that he is hopeful these programs will then be reinstated.

White House press secretary Sean Spicer emphasized Monday that the new travel order is based on the same principles that guided the first — but this time, he said, all stakeholders, including lawmakers, were extensively briefed on the contents.

How Trump's new travel ban targets the whole world

POLITICO's Foreign Affairs Correspondent, Nahal Toosi takes a look at President Trump's new executive order.

"We made sure that everybody knew what we were doing," he said, adding, "I think we did a phenomenal job of rolling it out."

But the White House’s engagement didn’t immediately draw an outpouring of support from the president’s allies on Capitol Hill.

House Republicans, in particular, appeared to be reserving judgment, offering sparse cover to a president who sprung his first travel ban on them with little warning, stoking turmoil

and energizing grassroots Trump opponents. The relative silence was notable given the Trump administration's apparent confidence that the communication problems plaguing the execution of its initial immigration order had been fixed this time around.

"There should be no surprises — whether it's in the media or on Capitol Hill," Homeland Security Secretary John Kelly told reporters at a news briefing on the order, after which no questions were taken.

House Speaker Paul Ryan (R-Wis.) was a notable exception to the GOP's reticence, offering a quick endorsement of Trump's new plan.

"This revised executive order advances our shared goal of protecting the homeland," said Ryan, who criticized the rollout of Trump's initial travel ban. "I commend the administration and Secretary Kelly in particular for their hard work on this measure to improve our vetting standards."

White House aides try to justify Trump's explosive wiretapping claim
By **LOUIS NELSON**

House Judiciary Committee Chairman Bob Goodlatte (R-Va.) also signaled support.

Backing for Trump among Republicans was slightly more robust in the Senate.

The new immigration order also diverged from Trump's first version in seeking to avoid affecting current visa holders, a tweak welcomed by Senate Judiciary Chairman Chuck Grassley (R-Iowa).

That change "should ensure the unintended consequences from the last order do not reoccur," Grassley said in a statement.

Other elements of Trump's initial immigration order, including a 120-day pause in the admission of refugees from around the world and a deep cut in the number of refugees admitted during the current year, remain intact.

Inquiries with a slew of moderate Republican lawmakers who had expressed concerns about Trump's first travel order were not immediately returned.

Khizr Khan claims travel privileges under review
By **NOLAN D. MCCASKILL**

Meanwhile, top Democrats quickly condemned the new immigration limits as little more than a warmed-over regurgitation of Trump's original travel ban, a hastily rolled-out plan that faltered in federal court and provoked mass protests at international airports across the country. They continued to refer to the effort as a “Muslim ban,” and they were emboldened further when Spicer told reporters Monday that “the principles of the executive order remain the same."

“A watered-down ban is still a ban," Senate Minority Leader Chuck Schumer (D-N.Y.) said in a statement. "Despite the administration’s changes, this dangerous executive order makes us less safe, not more, it is mean-spirited, and un-American."

Newly elected Democratic Sens. Maggie Hassan of New Hampshire and Catherine Cortez Masto of Nevada, who called for stricter evaluation of the refugee screening process on the campaign trail in 2015, on Monday slammed Trump's order as "a backdoor Muslim ban" and "immoral," respectively.

A few conservatives who backed Trump's previous order offered early praise for the revised edition. Rep. Paul Gosar of Arizona called it “refreshing to see a president that isn’t ashamed to uphold the most important job of the government … protecting the American people.”

EXHIBIT QQ

THE SLATEST YOUR NEWS COMPANION

MARCH 6 2017 3:27 PM

In Fundraising Pitch, Trump Says His Not-a-Muslim-Ban Will Fight "Radical Islamic Terrorism"

By Mark Joseph Stern

Donald Trump addresses Congress on Tuesday.

Chip Somodevilla/Getty Images

On Monday, Donald Trump **issued a new executive order** suspending America's refugee program and temporarily halting immigration from six Muslim-majority countries. This new travel ban has formally supplanted the notorious order that Trump issued in January, which had been blocked by multiple courts. One key charge against the previous order was that it violated the Establishment and Equal Protection clauses of the U.S. Constitution, which prohibit government discrimination on the basis of religion. As a federal judge in Virginia noted, the order **appeared to constitute** the "Muslim ban" that Trump bragged about implementing on the campaign trail. Moreover, the order itself **contained troubling language** that seemed to favor Christian refugees over Muslim ones and that **questioned Muslims' ability** to participate in democracy.

Trump's **new order** attempts to remedy these constitutional infirmities by **striking that dubious language** and declaring that the order "was not motivated by animus toward any religion." But given how receptive courts were to religious discrimination charges against the previous challenge, advocacy groups are **likely to return to court** to argue that the latest ban still reflects unlawful anti-Muslim animus.

In addition to pointing out campaign comments about a "Muslim ban," as well as the ban's focus on Muslim-majority countries, these plaintiffs will surely cite a fundraising email Trump sent out shortly after signing the order, which claims it will fight "radical Islamic terrorism":

Expect to see that email show up in court in the near future.

THE SLATEST YOUR NEWS COMPANION
MARCH 6 2017 12:26 PM

Trump Signs Revised Travel Ban Covering Six Muslim-Majority Countries

By Ben Mathis-Lilley

Donald Trump steps off Air Force One at Andrews Air Force Base in Maryland on Sunday.

Nicholas Kamm/AFP/Getty Images

President Trump has signed a **new executive order** baning travelers from several Muslim-majority countries from entering the U.S., the White House has announced. Trump is not speaking publicly about the order and no members of the press were present for the signing, but Secretary of State Rex Tillerson, Attorney General Jeff Sessions, and Homeland Security Secretary John Kelly gave brief remarks about it at a press conference.

Details that have carried over from the first ban, which was signed Jan. 27 and blocked via restraining order by a federal judge on Feb. 3:

EXHIBIT RR

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Q&A: Protecting the Nation From Foreign Terrorist Entry To The United States

Release Date: March 6, 2017

March 6, 2017 11:30 a.m. EST
Office of Public Affairs
Contact: 202-282-8010

Q1. Who is subject to the suspension of entry under the Executive Order?

Per the Executive Order, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen, who are outside the United States and who did not have a valid visa at 5 p.m. Eastern Standard Time on January 27, 2017, and do not have a valid visa on the effective date of this order are not eligible to enter the United States while the temporary suspension remains in effect. Thus any individual who had a valid visa either on January 27, 2017 (prior to 5:00 PM) or holds a valid visa on the effective date of the Executive Order is not barred from seeking entry.

Q2. Will "in-transit" travelers within the scope of the Executive Order be denied entry into the United States and returned to their country of origin?

Those individuals who are traveling on valid visas and arrive at a U.S. port of entry will still be permitted to seek entry into the United States. All foreign nationals traveling with a visa must continue to satisfy all requirements for entry, including demonstrating that they are admissible. Additional information on applying for admission to the United States is available on CBP.gov. (https://www.cbp.gov/travel/international-visitors/applying-admission-united-states)

Q3. I am a national from one of the six affected countries currently overseas and in possession of a valid visa, but I have no prior travel to the United States. Can I travel to the United States?

Per the Executive Order, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who have valid visas will not be affected by this Executive Order. No visas will be revoked solely based on this Executive Order.

Q4. I am presently in the United States in possession of a valid single entry visa but I am a national of one of the six impacted countries. Can I travel abroad and return to the United States?

Regardless of the Executive Order, your visa is not valid for multiple entries into the Unites States. While the Executive Order does not apply to those within the United States and your travel abroad is not limited, a valid visa or other document permitting you to travel to and seek admission to the United States is still required for any subsequent entry to the United States.

Q5. I am presently in the United States in possession of a valid multiple entry visa but am a national of one of the six affected countries, can I travel abroad and return to the United States?

Yes. Individuals within the United States with valid multiple entry visas on the effective date of the order are eligible for travel to and from the United States, provided the visa remains valid and the traveler is otherwise admissible. All foreign nationals traveling with a visa must satisfy all admissibility requirements for entry. Additional information on applying for admission to

the United States is available on CBP.gov. (https://www.cbp.gov/travel/international-visitors/applying-admission-united-states)

Q6. I am from one of the six countries, currently in the United States in possession of a valid visa and have planned overseas travel. My visa will expire while I am overseas, can I return to the United States?

Travelers must have a valid visa to travel to the United States, regardless of the Executive Order. Travelers who do not have a valid visa due to its expiration while abroad must obtain a new valid visa prior to returning to the United States.

Q7. Will the Department of Homeland Security (DHS) and the Department of State (DOS) be revoking the visas of persons ineligible to travel under the revised Executive Order?

Visas will not be revoked solely as a result of the Executive Order. The Department of State has broad authority under Section 221(i) of the Immigration and Nationality Act to revoke visas.

Q8. What is the process for overseas travelers affected by the Executive Order to request a waiver?

Waivers for overseas travelers without a valid U.S. visa will be adjudicated by the Department of State in conjunction with a visa application.

Q9. How are returning refugees and asylees affected by the Executive Order?

Returning refugees and asylees, i.e., individuals who have already been granted asylum or refugee status in the United States, are explicitly excepted from this Executive Order. As such, they may continue to travel consistent with existing requirements.

Q10. Are first-time arrival refugees with valid /travel documents allowed to travel to the United States?

Yes, but only refugees, regardless of nationality, whose travel was already formally scheduled by the Department of State, are permitted to travel to the United States and seek admission. The Department of State will have additional information.

Q11. Will unaccompanied minors within the scope of the Executive

Order be denied boarding and or denied entry into the United States?

The Executive Order applies to those who do not have valid visas. Any individuals, including children, who seek entry to the United States must have a valid visa (or other approved travel document) before travel to the United States. The Secretary of State may issue a waiver on a case-by-case basis when in the national interest of the United States. With such a waiver, a visa may be issued.

Q12. Is DHS complying with all court orders?

DHS is complying, and will continue to comply, with all court orders in effect.

Q13. When will the Executive Order be implemented?

The Executive Order is effective at 12:01 A.M., Eastern Standard Time, on March 16, 2017.

Q14. Will the Executive Order impact Trusted Traveler Program membership?

No. Currently, CBP does not have reciprocal agreements for a Trusted Traveler Program with any of the countries designated in the Executive Order.

Q15. When will CBP issue guidance to both the field and airlines regarding the Executive Order?

CBP will issue guidance and contact stakeholders to ensure timely implementation consistent with the terms of the Executive Order.

Q16. Will first-time arrivals with valid immigrant visas be allowed to travel to the U.S.?

Yes. Individuals holding valid visas on the effective date of the Executive Order or on January 27, 2017 prior to 5:00 PM do not fall within the scope of the Order.

Q17. Does this affect travelers at all ports of entry?

Yes, this Executive Order applies to travelers who are applying for entry into the United States at any port of entry—air, land, or sea—and includes preclearance locations.

Q18. What does granting a waiver to the Executive Order mean? How are waivers applied to individual cases?

Per the Executive Order, the Departments of Homeland Security and State can review individual cases and grant waivers on a

case-by-case basis if a foreign national demonstrates that his or her entry into the United States is in the national interest, will not pose a threat to national security, and that denying entry during the suspension period will cause undue hardship.

Q19. Does "from one of the six countries" mean citizen, national, or born in?

The Executive Order applies to both nationals and citizens of the six countries.

Q20. How does the lawsuit/stay affect DHS operations in implementing this Executive Order?

Questions regarding the application of specific federal court orders should be directed to the Department of Justice.

Q21. Will nationals of the six countries with valid green cards (lawful permanent residents of the United States) be allowed to return to the United States?

Per the Executive Order, the suspension of entry does not apply to lawful permanent residents of the United States.

Q22. Can a dual national who holds nationality with one of the

six designated countries traveling with a passport from an unrestricted country travel to the United States?

The Executive Order exempts from its scope any dual national of one of the six countries when the individual is traveling on a passport issued by a different non-designated country.

Q23. Can a dual national who holds nationality with one of the six designated countries and is currently overseas, apply for an immigrant or nonimmigrant visa to the United States?

Please contact the Department of State for information about how the Executive Order applies to visa applicants.

Q24. Are international students, exchange visitors, and their dependents from the six countries (such as F, M, or J visa holders) included in the Executive Order? What kind of guidance is being given to

foreign students from these countries legally in the United States?

The Executive Order does not apply to individuals who are within the United States on the effective date of the Order or to those individuals who hold a valid visa. Visas which were provisionally revoked solely as a result of the enforcement of Executive Order 13769 are valid for purposes of administering this Executive Order. Individuals holding valid F, M, or J visas may continue to travel to the United States on those visas if they are otherwise valid.

Please contact the State Department for information about how the Executive Order applies to visa applicants.

Q25. What happens to international students, exchange visitors or their dependents from the six countries, such as F, M or J visa holders if their visa expires while the Executive Order is in place and they have to depart the country?

The Executive Order does not affect F, M, or J visa holders if they currently have a valid visa on the effective date or held a valid visa on January 27, 2017 prior to the issuance of the Executive Order. With that said, travelers must have a valid visa to travel to the United States, regardless of the Executive Order. Travelers whose visa expires after the effective date of the Executive Order must obtain a new, valid visa to return to the United States.

Q26. Can U.S. Citizenship and Immigration Services (USCIS) continue refugee interviews?

The Departments of Homeland Security and State will conduct interviews as appropriate and consistent with the Executive Order. However, the Executive Order suspends decisions on applications for refugee status, unless the Secretary of Homeland Security and the Secretary of State jointly determine, on a case-by-case basis, that the entry of an individual as a refugee is in the national interest and would not pose a threat to the security or welfare of the United States.

Q27. Can the exception for refugee admission be used for Refugee/Asylee Relative Petitions (Form I-730) cases where a family member is requesting a beneficiary follow to join?

No. Individuals who already have valid visas or travel documents that permit them to travel to the United States are exempt from the Executive Order. To the extent that an individual does not yet have such documents, please contact the Department of State.

Q28. Does the Executive Order apply to those currently being

adjudicated for naturalization or adjustment of status?

USCIS will continue to adjudicate Applications for Naturalization (Form N-400) and Applications to Register Permanent Residence or Adjust Status (Form I-485) and grant citizenship consistent with existing practices.

Q29. Will landed immigrants of Canada affected by the Executive Order be eligible for entry to the United States?

Landed immigrants of Canada who hold passports from one of the six countries are eligible to apply for a visa, and coordinate a waiver, at a location within Canada.

Q30. Has CBP issued clear guidance to CBP officers at ports of entry regarding the Executive Order?

CBP has and will continue to issue any needed guidance to the field with respect to this Executive Order.

Q31. What coordination is being done between CBP and the carriers?

CBP has been and will remain in continuous communication with the airlines through CBP regional carrier liaisons. In addition, CBP

will hold executive level calls with airlines in order to provide guidance, answer questions, and address concerns.

Q32. What additional screening will nationals of restricted countries (as well as any visa applications) undergo as a result of the Executive Order?

In making admission and visa eligibility determinations, DHS and DOS will continue to apply all appropriate security vetting procedures.

Q33. Why is a temporary suspension warranted?

The Executive Order signed on March 6, 2017, allows for the proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals. The Executive Order protects the United States from countries compromised by terrorism and ensures a more rigorous vetting process. Protecting the American people is the highest priority of our Government and this Department.

Congress and the Obama Administration designated these six countries as countries of concern due to the national security risks associated with their instability and the prevalence of terrorist fighters in their territories.The conditions in the six designated countries present a recognized threat, warranting additional scrutiny of their nationals seeking to travel to and enter the United States. In order to ensure that the U.S. Government can conduct a thorough and comprehensive analysis of the national security risks, the Executive Order imposes a 90-day suspension on entry to the United States of nationals of those countries.

Based on commitments from the Government of Iraq, the suspension of entry in this Executive Order will not apply to nationals of Iraq. Iraq has taken steps to increase their cooperation with the United States in the vetting of Iraqi nationals and as such it was determined that a temporary suspension is not warranted.

DHS will faithfully execute the immigration laws and the President's Executive Order, and will treat all of those we encounter humanely and with professionalism.

Q34. Why is a suspension of the refugee program warranted?

Some of those who have entered the United States as refugees have also proved to be threats to our national security. For example, in October 2014, an individual admitted to the United States as a refugee from Somalia, and who later became a naturalized U.S. citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction in connection with a plot to set off a bomb at a Christmas tree-lighting ceremony in Portland, Oregon. The Federal Bureau of Investigation has reported that approximately 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations.

Q35. How were the six countries designated in the Executive Order selected?

The six countries, Iran, Libya, Somalia, Sudan, Syria, and Yemen, had already been identified as presenting concerns about terrorism and travel to the United States.Specifically, the suspension applies to countries referred to in, or designated under—except Iraq—section 217(a)(12) of the INA, 8 U.S.C. § 1187(a)(12).In that provision Congress restricted use of the Visa Waiver Program by dual nationals of, and aliens recently present

in, (A) Syria and Iraq, (B) any country designated by the Secretary of State as a state sponsor of terrorism (currently Iran, Syria, and Sudan), and (C) any other country designated as a country of concern by the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence.In 2016, the former Secretary of Homeland Security designated Libya, Somalia, and Yemen as additional countries of concern regarding aliens recently present in those countries.

For the purposes of this Executive Order, although Iraq has been previously identified, based on commitments from the Government of Iraq, the suspension of entry in this Executive Order will not apply to nationals of Iraq. However, those who are dual nationals of Iraq and aliens recently present in Iraq continue to have restricted use of the Visa Waiver Program.

On the basis of negotiations that have taken place between the Government of Iraq and the U.S. Department of State in the last month, Iraq will increase cooperation with the U.S. Government on the vetting of its citizens applying for a visa to travel to the United States.As such it was determined that a temporary suspension with respect to nationals of Iraq is not warranted at this time.

Q36. Why was Iraq treated differently in this Executive Order?

The close cooperative relationship between the United States and the democratically-elected Iraqi government, the strong U.S. diplomatic presence in Iraq, the significant presence of U.S. forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment.In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have earned special status.In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to provide additional information about its citizens for purposes of our immigration

decisions.Accordingly, it is no longer necessary to include Iraq in the temporary suspension applicable to the other six countries, but visa applications and applications for admission to the United States by Iraqi nationals will be subjected to additional scrutiny to determine if they have connections with ISIS or other terrorist organizations.

Q37. Are Iraqi nationals subject to the Executive Order? Will they require a waiver to travel to the United States?

This Executive Order does not presently suspend the entry of nationals of Iraq. However, all travelers must have a valid travel document in order to travel to the United States. Admissibility will be determined by a CBP officer upon arrival at a Port of Entry. Please contact the Department of State for information related to visa eligibility and application.

Topics: Border Security (/topics/border-security), Homeland Security Enterprise (/topics/homeland-security-enterprise), Immigration Enforcement (/topics/immigration-enforcement)

Keywords: immigration (/keywords/immigration), immigration enforcement (/keywords/immigration-enforcement)

Last Published Date: March 6, 2017

EXHIBIT SS

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Fact Sheet: Protecting the Nation From Foreign Terrorist Entry To The United States

Release Date: March 6, 2017

March 6, 2017 11:30 a.m. EST
Office of Public Affairs
Contact: 202-282-8010

The Executive Order signed on March 6, 2017, allows for the proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals. The United States has the world's most generous immigration system, yet it has been repeatedly exploited by terrorists and other malicious actors who seek to do us harm. In order to ensure that the U.S. Government can conduct a thorough and comprehensive analysis of the national security risks posed from our immigration system, the Executive Order imposes a 90-day suspension of entry to the United States of nationals of certain designated countries—countries that were designated by Congress and the Obama Administration as posing national security risks with respect to visa-free travel to the United States under the Visa Waiver Program.

The U.S. Government must ensure that those entering this country will not harm the American people after entering, and

that they do not bear malicious intent toward the United States and its people. The Executive Order, together with the Presidential Memorandum, protects the United States from countries compromised by terrorism and ensures a more rigorous vetting process. This Executive Order ensures that we have a functional immigration system that safeguards our national security.

This Executive Order, as well as EO 13767 and EO 13768, provide the Department of Homeland Security (DHS) with additional resources, tools, and personnel to carry out the critical work of securing our borders, enforcing the immigration laws of our Nation, and ensuring that individuals from certain designated countries who pose a threat to national security or public safety cannot enter or remain in our country. Protecting the American people is the highest priority of our government and this Department.

DHS will faithfully execute the immigration laws and the President's Executive Orders, and will treat everyone we encounter humanely and with professionalism.

Authorities

The Congress provided the President of the United States, in section 212(f) of the Immigration and Nationality Act (INA), with the authority to suspend the entry of any class of aliens the President deems detrimental to the national interest. This authority has been exercised repeatedly for decades, and has been a component of immigration law since the enactment of the original INA in 1952.

Actions

For the next 90 days, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who are outside the United States on the effective date of the order, do not currently have a valid visa on the effective date of this order, and did not have a valid visa at 5:00 eastern standard time on January 27, 2017, are not eligible

to travel to the United States. The 90-day period will allow for proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals.

On the basis of negotiations that have taken place between the Government of Iraq and the U.S. Department of State in the last month, Iraq will increase cooperation with the U.S. Government on the vetting of its citizens applying for a visa to travel to the United States. As a result of this increased information sharing, Iraqi citizens are not affected by the Executive Order. Of course, all normal immigration processing requirements continue to apply, including the grounds of inadmissibility that may be applicable.

In the first 20 days, DHS will perform a global, country-by-country review of the identity and security information that each country provides to the U.S. Government to support U.S. visa and other immigration benefit determinations. Countries will then have 50 days to comply with requests from the U.S. Government to update or improve the quality of the information they provide.

The Executive Order does not apply to certain individuals, such as lawful permanent residents of the United States; foreign nationals admitted to the United States after the effective date of the order; individuals with a document that is valid on the effective date of the order or any date thereafter which permits travel to the United States; dual nationals when travelling on a passport issued by a non-designated country; foreign nationals traveling on diplomatic, NATO, C-2 for travel to the United Nations, G-1, G-2, G-3, or G-4 visas; and individuals already granted asylum or refugee status in the United States before the effective date of the order.

DHS and the Department of State have the discretionary authority, on a case-by-case basis, to issue visas or allow the entry of nationals of these six countries into the United States when a national from one of the countries demonstrates that the denial of entry would cause undue hardship, that his or her entry would not pose a threat to national security, and that his or her entry would be in the national interest.

Similarly, the Refugee Admissions Program will be temporarily suspended for the next 120 days while DHS and interagency partners review screening procedures to ensure refugees admitted in the future do not pose a security risk to the United States. Upon resumption of the Refugee Admissions Program, refugee admissions to the United States will not exceed 50,000 for fiscal year 2017. The Executive Order does not apply to those refugees who have already been formally scheduled for transit by the State Department. During this 120-day period, similar to the waiver authority for visas, the Secretary of State and Secretary of Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the entry of such individuals as refugees is in the national interest and would not pose a threat to the security or welfare of the United States.

The Department of Homeland Security, in conjunction with the Department of State, the Office of the Director of National Intelligence, and the Department of Justice, will develop uniform screening standards for all immigration programs government-wide as appropriate and in the national interest.

The Secretary of Homeland Security will expedite the completion and implementation of a biometric entry-exit system for all in-scope travelers entering and departing the United States.

As part of a broader set of government actions, the Secretary of State will review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal.

The Department of State will restrict the Visa Interview Waiver Program and require additional nonimmigrant visa applicants to undergo an in-person interview.

Transparency

In order to be more transparent with the American people and to more effectively implement policies and practices that serve the national interest, DHS will make information available to the

public every 180 days. Specifically, in coordination with the Department of Justice, DHS will make available to the public information regarding the number of foreign nationals who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national-security reasons; and information regarding the number and types of acts of gender-based violence against women, including so-called "honor killings," in the United States by foreign nationals.

Topics: Border Security (/topics/border-security), Homeland Security Enterprise (/topics/homeland-security-enterprise), Immigration Enforcement (/topics/immigration-enforcement)

Keywords: immigration (/keywords/immigration), immigration enforcement (/keywords/immigration-enforcement)

Last Published Date: March 6, 2017

EXHIBIT TT

9 FAM 203.5

(U) CASEWORK FOR FOLLOW-TO-JOIN ASYLEES AND REFUGEES

(CT:VISA-64; 02-26-2016)
(Office of Origin: CA/VO/L/R)

9 FAM 203.5-1 (U) INTRODUCTION

(CT:VISA-1; 11-18-2015)

a. **(U) V92 and V93 Introduction:**

(Previous location: 9 FAM Appendix O 203.2 c (first and second sentences) and 207 b; CT:VISA-1988 05-06-2013)

(1) **(U)** V92/93 beneficiaries are eligible for derivative status on the basis of their relationship to a principal asylee or principal refugee (see 9 FAM 203.5-4(A)). They are not required to establish that they have been persecuted, or have a well-founded fear of persecution (see 9 FAM 203.5-4(A) paragraph c(2)). However, consular officers must determine whether the beneficiary is barred, inadmissible, or subject to denial (see 9 FAM 203.5-4(B)).

(2) **(U)** The roles of consular officers in processing V92 and V93 cases are discussed in 9 FAM 203.5-2, and the need for confidentiality in handling such cases is covered in 9 FAM 203.5-3. Eligibility for V92 and V93 status is covered in 9 FAM 203.5-4, and detailed instructions on processing procedures for V92/V93 cases are provided in 9 FAM 203.6.

(Previous location: 9 FAM Appendix O 208.2 ; CT:VISA-1988 05-06-2013)

(3) **(U)** Use care when processing cases to be sure that you are using instructions appropriate for the type of automated system you're using, for the appropriate consular section roles (see 9 FAM 203.5-2), and for V92 vs. V93 benefits. V93 beneficiaries, like all refugees, have very specific processing and eligibility requirements, and are entitled to certain benefits that V92 beneficiaries do not receive. These include U.S. Government-funded medical exams, voluntary agency sponsorship, travel loans, and reception and placement benefits upon arrival to the United States.

(Previous location: 9 FAM Appendix O 201; CT:VISA-1988 05-06-2013)

b. **(U) Lifecycle of V92/V93 Case:** See 9 FAM 203.6 for detailed instructions on processing steps for V92/V93 cases. In overview, the lifecycle of a Form I-730, Refugee/Asylee Relative Petition, filed on behalf of a beneficiary overseas is as follows:

(1) **(U)** Petition is filed with and adjudicated at either the U.S. Citizenship and Immigration Services (USCIS) Nebraska or Texas Service Center. If the petition is approved, it is forwarded overseas via the National Visa Center (NVC) to the post having jurisdiction over the beneficiary's place of residence;

(2) **(U)** A USCIS officer or consular officer (where USCIS is not present) interviews the beneficiary to determine eligibility to travel to the United States;

(3) **(U)** If the beneficiary is approved to travel, the officer issues travel documentation to enable the beneficiary to travel to the U.S. and request admission at a U.S. port of entry (POE). For V93 cases, the officer also helps make travel arrangements. A U.S. Customs and Border Protection (CBP) officer makes the final decision whether to admit the beneficiary to the United States.

(4) **(U)** If the beneficiary is found ineligible to travel, the consular officer informs the beneficiary and returns the case as a Consular Return via the NVC to the appropriate USCIS Service Center for possible denial. If the evidence provided by the overseas office is insufficient to support a denial or is overcome by additional evidence provided by the petitioner, the USCIS Service Center reaffirms the case and sends it back to post for continued processing.

9 FAM 203.5-2 (U) ROLES IN V92 AND V93 CASES

(CT:VISA-64; 02-26-2016)

a. **(U)** USCIS **and Consular Authorities:**

(1) **(U)** As a matter of law, authority to adjudicate and process refugee and affirmative asylum claims, including Form I-730 follow-to-join derivatives of asylees and refugees, rests exclusively with DHS. (See INA 207, INA 208 and 6 USC 271)

(2) **(U)** USCIS is the DHS administering agency, and the USCIS Nebraska and Texas Service Centers have primary responsibility for all I-730 adjudications for spouse and children of refugees and asylees. (Note: The Executive Office for Immigration Review of the Department of Justice also adjudicates asylum claims filed defensively or referred by USCIS, but does not adjudicate Form I-730 applications for derivative refugee or asylee status.)

(3) **(U)** Consular officers act as agents of the USCIS Service Centers for the purpose of facilitating overseas V92/V93 case processing and verifying the eligibility of the approved beneficiaries, but not for final adjudication of the I-730. If a consular officer uncovers information during case processing that suggests USCIS should not have approved an I-730 petition, the officer should return the case via the NVC to the adjudicating USCIS Service Center for further action, following the guidance in 9 FAM 203.6-8 and 9 FAM 203.6-11 for reporting information that calls into question whether the beneficiary is eligible for derivative refugee or asylum status.

b. **(U) Consular Role in Case Processing:**

(1) **(U)** The role of consular officers in case processing differs depending on whether USCIS is present at post, whether the case is an asylee follow-to-join ("Visas 92" - V92) or a refugee follow-to-join ("Visas 93" - V93), and whether post has immigrant visa processing software (IVO) or is a non-IVO post.

(2) **(U)** 9 FAM 203.6 provides general guidance on processing V92/V93 cases. Where there is a difference in handling cases based on visa systems (NIV system vs. IVO), specific instructions are provided in the appropriate section (for example, system-related entries when a case is received in 9 FAM 203.6-2, or IVO status settings in consular returns in 9 FAM 203.6-8. Similarly, where there

are different eligibility standards (for example, in 9 FAM 203.5-4(B) on bars, discretionary denials or inadmissibilities), or different processing instructions for V92 vs. V93 cases (for example, instructions on medical exams and treatment in 9 FAM 203.6-4, or guidelines on travel arrangements in 9 FAM 203.6-8), the 9 FAM guidelines specify to which cases they apply. Posts must carefully follow guidelines for the particular kind of case they are processing.

(3) **(U)** With regard to USCIS and non-USCIS presence posts and the consular role in V92/V93 processing, posts should follow the guidelines below. Note that a USCIS-presence post is one where USCIS is co-located, has a permanent office and a counter-presence that regularly sees the public.

(a) **(U)** USCIS **Presence Posts:**

(i) **Unavailable**

(ii) **Unavailable**

(b) **Unavailable**

c. **(U) Workflow Description for V92/V93 Cases Handled by Both** USCIS **and Visa Units with IVO Systems:**

(1) **(U) How to Use This Section:**

(a) **Unavailable**

(b) **(U)** In addition, per paragraph b above, V93 eligibility standards and processing are different from those used in V92 cases – the example shown below notes steps which apply only to V93 or only to V92 case processing; if neither is specified, the instruction applies to both V92 and V93 cases.

(c) **(U)** Note that the following workflow descriptions are intended to show how USCIS and consular sections interact in V92/V93 cases, and to give consular sections information about USCIS instructions to its officers. However, IVO posts (with a USCIS presence) must follow applicable processing guidelines in 9 FAM 203.6 related to the processing steps for which they are responsible; such posts must not rely solely on the following workflow charts for processing instructions.

(2) **Unavailable**

(a) **Unavailable**

USCIS Action	Consular Action
Unavailable.	

(b) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

- **Unavailable**

- **Unavailable**

(v) **Unavailable**

(vi) **Unavailable**

(c) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(v) **Unavailable**

(vi) **Unavailable**

(d) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(v) **Unavailable**

(vi) **Unavailable**

USCIS Action	Consular Action
Unavailable.	

	Unavailable

(e) **Unavailable**

USCIS Action	Consular Action
Unavailable	**Unavailable**

(f) **Unavailable**

USCIS Action	Consular Action
Unavailable	**Unavailable**

(g) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(h) **Unavailable For Cases Not Approved to Travel:**

Unavailable	**Unavailable**
Unavailable	**Unavailable**

(i) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(j) **Unavailable**

Unavailable	**Unavailable**
Unavailable	**Unavailable**

(k) **Unavailable**

9 FAM 203.5-3 (U) CONFIDENTIALITY IN REFUGEE, ASYLEE, V92 AND V93 CASEWORK

(CT:VISA-1; 11-18-2015)
(Previous location: 9 FAM Appendix O 102; CT:VISA-2157 08-04-2014)

a. **(U) Overview:** Department of State records related to visa and refugee processing are considered "confidential" under INA 222(f) and use of these records is restricted to "the formulation, amendment, administration, or enforcement of immigration, nationality and other laws of the United States." With limited exceptions further described below, information regarding specific refugee cases may not be released to anyone other than the applicant himself or herself and authorized third parties, except as needed by organizations directly involved in the refugee processing system or for use by Members of Congress who have need of the information for "the formulation, amendment, administration, or enforcement of immigration, nationality, or other laws of the United States." See 9 FAM 603.1 for additional information on protecting visa information.

(1) **(U)** Confidentiality in this context refers to its disclosure and releasability, not its security classification. (See also 9 FAM 603.1-3.)

(2) **(U)** United Nations High Commissioner for Refugees (UNHCR) policy requires strict confidentiality regarding refugees and asylum seekers. Refugees referred to the U.S. refugee program by UNHCR have signed a confidentiality release to permit UNHCR to release personal information to resettlement governments and processing agencies.

(Previous location: 9 FAM Appendix O, 102.1; CT:VISA-2157 08-04-2014)

c. **(U) Guidance on Release of Information:**

(1) **(U) Applicant Inquiries:** A refugee applicant (beneficiary) may make a direct inquiry to the Resettlement Support Center (RSC) or consulate responsible for the processing of his/her V92/93 case – orally or in writing – concerning the status of his or her case. If an applicant has a serious impediment such as age,

illness, or physical disability that prevents him or her from asking on his or her own behalf, minimal case status information may be provided to a third party if the inquirer satisfactorily establishes his or her bona fides. Consular officers should exercise common sense and caution in responding to such inquiries and should provide only the minimum information necessary to respond to the inquiry. Case status information may also be provided to certain authorized third parties as described below.

(2) **(U) PRM,** UNHCR**, IOM, DHS and Other Official Entity Inquiries:** Consular officers may respond directly to oral or written inquiries about the status of cases made by t (PRM, UNHCR, and IOM, the sponsoring resettlement agency in the United States, or any other official entity such as a U.S. Embassy or DHS office that requires case information to facilitate processing of the case.

(3) **(U) Congressional Inquiries:**

(a) **(U)** Written (including emails) inquiries from Members of Congress or their staffs that do not specifically relate to adjudication decisions by DHS should be answered with only the information necessary to answer the inquiry. Case-specific information in response to telephonic inquiries from Members or their staffs may not be provided. No copies of documents or other items from a case file may be provided. Responses to case status inquiries should include a reminder that, pursuant to INA Section 222(f), the information:

(i) **(U)** is to be treated as confidential;

(ii) **(U)** is being provided to them solely for the purposes related to "the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States;"

(iii) **(U)** should not be shared with other Members of Congress or their staffs except as specifically needed for the aforementioned purposes; and

(iv) **(U)** should not be released to the public.

(b) **(U)** If the incoming Congressional letter requests that the Embassy respond directly to a constituent or other third party, the consular officer should provide the requested case summary information to the Member of Congress unless it relates to adjudication decisions made by DHS. Include the following statement: Pursuant to Section 222(f) of the Immigration and Nationality Act, "The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of immigration, nationality, and other laws of the United States". In accordance with law and policies governing the confidentiality of Department of State refugee processing records, we are unable to provide information on specific refugee cases directly to your constituent. The refugee applicant or a third party authorized by the applicant to receive information may obtain information about the case by inquiring directly to the Resettlement Support Center handling the case. We appreciate your understanding of the Department's concern to ensure confidentiality in the U.S. Refugee Admissions Program (USRAP).

(4) **(U) Third Party Inquiries:**

(a) **(U)** Written (including emails) inquiries from U.S. Government law enforcement entities that do not specifically relate to adjudication decisions by DHS, but are made for official purposes, will generally be answered with the requested information. Information in response to telephonic inquiries may not be provided. Responses must be coordinated with and sent from PRM/Refugee Admissions, with involvement of the Legal Adviser's Office, where needed.

(b) **(U)** Written (including email) inquiries for case status information from third parties such as attorneys or accredited representatives may be answered with the requested information if the request is accompanied by or preceded by a completed and signed Form G-28 or Form G-28I, which is issued by DHS.

(i) **(U)** The Form G-28 or Form G-28I must include complete and verified information, including signature, from the refugee applicant, as well as complete information, including signature, from the relevant third party. RSCs or consular officers should ensure that the applicant's signature on the form is verified against his/her signature on file, if available. Responses to case status inquiries may only be sent to the physical address or email address provided in the original Form G-28 or G-28I. Case status information in response to telephonic requests from third parties may not be provided.

(ii) **(U)** There is not a defined validity period for the G-28 or G-28I. However, it may be appropriate to check whether the G-28 or G-28I remains valid - whether the authorized third party remains the representative of the individual.

(c) **(U)** Written inquiries (including email) for case status information from other third parties, such as family members, may be answered with the requested information if the request is accompanied by or preceded by a letter from the applicant providing authorization that the information be shared with the third party. There is no specific format for this letter, but it must contain at a minimum the applicant's full name and USRAP case number, along with the full name of the third party to whom the information may be released, and it must be signed by the applicant. RSCs or consular officers should ensure that the applicant's signature on the letter is verified against his/her signature on file, if available. The letter must also contain a physical address and/or email address for the authorized third party. Case status information in response to telephonic requests from third parties may not be provided.

(d) **(U)** The information that can be provided to an authorized third party is limited to case status information. Inquiries for other information regarding specific refugee cases may not be provided to third parties, even if authorization has been provided. For example, an authorized third party may not inquire as to the reason a refugee applicant has been deemed ineligible for P-2 access. Further, an authorized third party is not permitted to accompany a refugee applicant to RSC intake and prescreening or engage in other forms of involvement in refugee processing.

(e) **(U)** If information disclosure to third parties has not be authorized, responses to inquiries must be limited to general descriptive material about

the USRAP or a description of program procedures that might be of assistance to the inquirer.

(5) **(U)** Contact the Office of Admissions in the Bureau of Population, Refugees and Migration (PRM/A) for further information on refugee records or templates for response to inquiries.

d. **Unavailable**

(Previous location: 9 FAM Appendix O 206.2; CT:VISA-1988 05-06-2013 and Appendix O 505.1-1 a and 605.1-1 a; CT:VISA-1956 02-05-2013)

(1) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(Previous location: 9 FAM Appendix O 206.3 a, b (first sentence), d; CT:VISA-1988 05-06-2013 and Appendix O 505.1-1 b (all) and c (first sentence), and 605.1-1 b (all) and c (first sentence); CT:VISA-1956 02-05-2013)

(2) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(Previous location: 9 FAM Appendix O Exhibit IV (d); CT:VISA-1956 02-05-2013)

(3) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

9 FAM 203.5-4 (U) ELIGIBILITY FOR FOLLOWING-TO-JOIN REFUGEE OR ASYLEE (V92/V93) STATUS

(CT:VISA-1; 11-18-2015)

a. **(U) Eligibility Guidelines:** To be eligible to travel to the U.S. as a family member of an individual granted refugee or asylee status:

(1) **(U)** The beneficiary must establish their identity and a qualifying relationship with the refugee or asylee (see 9 FAM 203.5-4(A)); and

(2) **(U)** The beneficiary must be determined to not be subject to any bars, inadmissibilities, or reasons for denial of their case, unless such issues have been satisfactorily resolved (see 9 FAM 203.5-4(B)).

(Previous location: 9 FAM Appendix O 203.2 c (first and second sentence) and 206.3 b (partial) and d (partial); CT:VISA-1988 05-06-2013 and 9 FAM Appendix O 505.1-1 c (partial) and 605.1-1 c (partial); CT:VISA-1956 02-05-2013)

b. **(U) No Adjudication of Refugee or Asylum Claim:** V92/93 beneficiaries are eligible for derivative status on the basis of their relationship to a principal asylee or principal refugee. They are not required to establish that they have been persecuted,

or have a well-founded fear of persecution (see 9 FAM 203.5-3 paragraph c(2)). Similarly, the credibility of the petitioner's original asylum or refugee claim is not within consular officers' jurisdiction to revisit (see 9 FAM 203.6-11 for guidance on cases in which information presented by the beneficiary indicates a significant issues with the petitioner's refugee or aslyee claim.)

c. **(U) Case Processing:** This section deals only with eligibility for V92 and V93 status. See general V92 and V93 case processing guidelines in 9 FAM 203.6.

9 FAM 203.5-4(A) (U) V92/V93 Qualifying Relationship with Refugee or Asylee

(CT:VISA-1; 11-18-2015)

a. **(U) Introduction:** There are two factors in demonstrating a qualifying relationships with a refugee or asylee:

(1) **(U)** An eligible petitioner – see paragraph b; and

(2) **(U)** A "spouse" or "child" relationship with the petitioner – see paragraph c for an overview of these qualifying relationships, paragraph d for information on the "spouse" relationship, and paragraph e for information on the "child" relationship. Other familial relationships (which cannot be the basis for V92/V93 status) are addressed in paragraph f.

b. **(U) Eligible Petitioner:**

(Previous location: 9 FAM Appendix O 203.1 a (first sentence); CT:VISA-1988 05-06-2013)

(1) **(U) Refugee or Asylee Status:** The Form I-730 Refugee/Asylee Relative Petition for V92/V93 beneficiaries may be filed by a refugee who was admitted to the United States as a principal refugee, or by an asylee who was granted asylum as a principal asylee either by USCIS or by the Department of Justice's Executive Office for Immigration Review. See also 9 FAM 203.6-2 paragraph a(1)(b) for information on petitions filed by LPRs and naturalized citizens who were refugees or asylees. For more general information on filing, adjudication and processing of I-730 petitions, see 9 FAM 203.6-2.

(Previous location: 9 FAM Appendix O 203.4-1; CT:VISA-1988 05-06-2013 and 9 FAM Appendix O 605.2-2; CT:VISA-1956 02-05-2013)

(2) **(U) Effect of Death of Petitioner:**

(a) **(U)** A beneficiary is ineligible for Form I-730 benefits if the petitioner dies before the beneficiary's arrival to the United States. In such circumstances, the beneficiary should not be issued travel authorization. Instead, the officer should obtain a death certificate or other evidence of the petitioner's death and return it along with the Form I-730 via the NVC to USCIS for the case to be reopened and denied (see 9 FAM 203.6-9 on consular returns).

(b) **(U)** In some circumstances, the beneficiary may apply for humanitarian parole with USCIS in order to travel to the United States. (See 9 FAM 202.3-4 for more information on humanitarian parole.)

(Previous location: 9 FAM Appendix O 203.2 a and c; CT:VISA-1988 05-06-2013)

c. **(U) Beneficiary Eligibility:**

(1) **(U) Spouse or Child:** A Form I-730 may be filed on behalf of either a spouse or a child as defined, respectively, in INA 101(a)(35) and INA 101(b)(1)(A-E) (see definitions in 9 FAM 102.3-1). A separate Form I-730 must be filed for each qualifying family member. Paragraphs d and e below provide additional information on spouse and child relationships; paragraph f addresses other familial relationships.

(2) **(U) Relationship Key to Eligibility:** V92/93 beneficiaries are eligible for derivative status on the basis of their relationship to a principal asylee or principal refugee. They are not required to establish that they have been persecuted, or have a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion as described in the first sentence of the refugee definition at INA 101(a)(42).

(a) **(U)** Unlike a principal refugee or asylum applicant, V92/93 beneficiaries may be eligible for derivative status even if they are firmly resettled in another country since the firm resettlement bar does not apply to them.

(b) **(U)** These beneficiaries also need not be the same nationality as the I-730 petitioner and may reside in their country of nationality or any other country.

(Previous location: 9 FAM Appendix O 203.4 a, b(partial), c and d; CT:VISA-1988 05-06-2013 and 605.2-1; CT:VISA-1956 02-05-2013)

(3) **(U) Nature of V92/93 Qualifying Relationships:**

(a) **(U)** In order to derive V92 or V93 status under 8 CFR 207.7(c) and 8 CFR 208.21(b), the qualifying relationship between the petitioner and the beneficiary:

(i) **(U)** Must have existed at the time that the petitioner was granted asylum (for V92 cases) or admitted to the United States as a refugee (for V93 cases), and

(ii) **(U)** Must continue to exist at the time of filing for Form I-730 following-to-join benefits, and at the time of the spouse or child's subsequent admission to the United States.

(b) **(U)** The exception to this is a child who had been conceived but was not born (was in utero) as of the date on which the petitioner acquired status (see paragraph e (2) below).

(c) **(U)** Relationships created after the date of the petitioner's asylum grant or refugee admission do not qualify for Form I-730 purposes, although the refugee or asylee may be eligible to file a Form I-130 for the same individual once that refugee or asylee adjusts to Lawful Permanent Resident (LPR) status.

(d) **(U)** A qualifying relationship will cease to exist if, prior to the approval of the Form I-730 or a beneficiary's admission into the United States, the petitioner and spouse divorce, the petitioner's child marries (see paragraph e(5) below), or the petitioner dies (see paragraph b(2) above).

(Previous location: 9 FAM Appendix O 203.2-1 a, 203.3 (4), and 203.4 b (partial); CT:VISA-1988 05-06-2013)

d. **(U) Eligibility of V92/V93 Spouse:**

(1) **(U) Qualifying Marriage:** To qualify as a V92/V93 beneficiary spouse, the individual must meet the definition of spouse as defined in INA 101(a)(35). A child's parent only qualifies as a beneficiary if married to the petitioner at the time the petitioner acquired asylee or refugee status.

(2) **(U) Proxy Marriage:** The terms "spouse," "wife," and "husband" do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other (i.e., proxy marriages), unless the marriage has been consummated.

(Previous location: 9 FAM Appendix O 203.2-1 b and c; CT:VISA-1988 05-06-2013)

(a) **(U)** If a proxy marriage has subsequently been consummated, then the date of the marriage is deemed to relate back to the date of the proxy marriage ceremony (i.e., the date of the proxy marriage contract). See 9 FAM 102.3-1's definition of "marriage". Thus, if a proxy ceremony has occurred prior to the petitioner's asylum grant or refugee admission, but consummation occurred after such grant or admission, that marriage is valid because the marriage date relates back to the proxy marriage ceremony date.

(b) **(U)** Consummation prior to the proxy marriage ceremony does not make the marriage valid. If the couple has not been in each other's presence since the proxy ceremony (i.e., could not have had any opportunity to engage in physical relations), then the marriage is not valid.

(Previous location: 9 FAM Appendix O 203.3 (5); CT:VISA-1988 05-06-2013)

(3) **(U) Marriage Fraud:** The beneficiary is not eligible to derive status if he/she is a husband or wife determined by USCIS to have attempted or conspired to enter into a marriage solely for the purpose of evading immigration laws.

(Previous location: 9 FAM Appendix O 203.2-2; CT:VISA-1988 05-06-2013)

e. **(U) Eligibility of V92/V93 Child:** To qualify as a V92/V93 beneficiary as a child, the individual must be unmarried and meet the definition of "child" in INA 101(b)(1)(A)-(E).

(1) **(U)** Child Status When I-730 Filed and Adjudicated, and at Admission:

(a) **(U)** The parent-child relationship must exist at the time the I-730 was filed, at the time of its adjudication, and at the time of the beneficiary's subsequent admission to the United States (see 8 CFR 208.21(b) and 207.7(c)).

(b) **(U)** Subject to certain situations governed by the Child Status Protection Act's (CSPA - Public Law 107-208) "aging out" provisions, a child includes only an unmarried person under the age of 21. Accordingly, the child must be both unmarried and under 21 years of age at the time he or she is issued the appropriate documentation for travel and at the time that he or she applies for admission to the United States, unless the CSPA applies. See paragraph (4) below for more information on CSPA provisions).

(2) **(U) Child in Utero:** 8 CFR 207.7(c) and 8 CFR 208.21(b) allow a child to qualify for V92 or V93 status even if the child was not born until after the petitioner was granted asylum or admitted as a refugee, provided such child was in utero (i.e., the child had been conceived but was not yet born) prior to the date on which the petitioner acquired such status. As such, a Form I-730 may be approved for a child who had been conceived but was not born as of the date on which the

petitioner acquired status, so long as the beneficiary falls within one of the definitions of "child" set forth in INA 101(b)(1).

(3) **(U) Bases for Child Status:**

(a) **(U)** Although a petitioner will usually be the biological parent of the in utero child claimed as the derivative, it is possible for such a beneficiary to qualify as a derivative even if the petitioner is not the biological father. This results from the breadth of the definition of "child" in INA 101(b). For example, such a child could be considered a stepchild which requires that the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred whether or not born out of wedlock and therefore qualify as a child under INA 101(b)(1)(C).

(b) **(U)** Other definitions of "child" such as step-child or adopted child may also create a qualifying relationship in cases where the petitioner is not a biological parent. Each circumstance must be reviewed on a case-by-case basis that will often involve not only U.S., but foreign laws and potentially international conventions, particularly if there is a biological parent who objects to his or her child going to the United States as the petitioner's child. Post should seek an advisory opinion from USCIS via CA/VO/F if there is any question as to whether an I-730 beneficiary qualifies as the petitioner's child or if there is an objection by the biological parent to the child's immigration to the United States.

(Previous location: 9 FAM Appendix O 203.3 (2) and (3); CT:VISA-1988 05-06-2013)

(c) **(U)** The beneficiary is not eligible to derive status if:

(i) **(U)** He/she is an adopted child whose adoption took place after the age of 16, or who has not been in the legal custody of and living with the adoptive parent(s) for at least two years (there is an exception to the 2 year residence requirement for certain children who have been battered or subjected to extreme cruelty). See INA 101(b)(1)(E); or

(ii) **(U)** He/she is a stepchild from a marriage that occurred after the child was 18 years old. See INA 101(b)(1)(B).

(Previous location: 9 FAM Appendix O 203.2-3; CT:VISA-1988 05-06-2013)

(4) **(U) Effect of Child Status Protection Act (CSPA) on I-730 Beneficiaries:**

(a) **(U)** The Child Status Protection Act (CSPA) (Public Law 107-208, 116 Statute 927, effective August 6, 2002) allows some children reaching the age of 21 to continue being classified as a "child" in order to derive eligibility for asylum or refugee status from a parent. This provision continues to protect the beneficiary through approval of the Form I-730 until he or she enters the U.S. as a derivative asylee or refugee. The CSPA applies if the child was under 21 when:

(i) **(U)** (For V92) The principal applicant filed his/her I-589, Application for Asylum and Withholding of Removal; or

(ii) **(U)** (For V93) The principal applicant was first interviewed by USCIS (the USCIS interview date as indicated in WRAPS is used to calculate CSPA eligibility for V93 beneficiaries, as there is no formal I-590, Registration for Classification as Refugee, filing date in refugee processing); and

(iii) **(U)** The child was listed on the I-589 or I-590 (Registration for Classification as Refugee), as appropriate, and the child is unmarried; or

(iv) **(U)** The child was not included in his/her parent's refugee or asylum application, but the child was under 21 when his/her parent filed the I-730, and the child is unmarried.

(b) **(U)** Children who turned 21 years of age prior to August 6, 2002 are not covered by the CSPA, unless either the Form I-730 or the petitioner's Form I-589 or I-590 was pending on that date. If the Form I-730 was approved prior to August 6, 2002, but the beneficiaries had not yet been issued documentation to travel to the United States, the form is still considered to be pending.

(c) **(U)** If a child marries after the I-730 was filed with USCIS, eligibility for CSPA protection ends, but a subsequent divorce before the beneficiary travels to the United States can make the individual eligible once for V92 or V93 status. The intent of Congress was for CSPA to be ameliorative and thus it is liberally construed. For example:

(i) **(U)** If a beneficiary was unmarried and under 21 at the time of the I-730 filing and adjudication, she or he is eligible for CSPA protection.

(ii) **(U)** If he or she turns 21 and marries before the consular interview, she or he loses CSPA protection. However, if he or she divorces before the interview, she or he is again eligible for CSPA protection and I-730 benefits.

(d) **(U)** For complete guidance on applying the CSPA to V92/93 processing, see the following USCIS memoranda, both available at USCIS website:

(i) **(U)** U.S. Citizenship and Immigration Service Memorandum, Processing Derivative Refugees and Asylees under the Child Status Protection Act, HQIAO 120/5.2, dated July 23, 2003; and

(ii) **(U)** U.S. Citizenship and Immigration Service Memorandum, The Child Status Protection Act -- Children of Asylees and Refugees, HWOPRD 70/6.1, dated August 17, 2004.

(Previous location: 9 FAM Appendix O 203.2-4; CT:VISA-1988 05-06-2013 and 9 FAM Appendix O 605.2-3; CT:VISA-1956 02-05-2013)

(5) **(U) Marriage of Child Beneficiary Prior to Travel:**

(a) **(U)** Consistent with procedures for immigrant visa derivatives, unmarried children approved as beneficiaries of Form I-730 petitions lose eligibility if they marry after approval of their travel authorization but prior to arrival in the United States. For this reason, I-730 child beneficiaries aged 14 and older are required to sign a Notice on Pre-Departure Marriage & Declaration at interview to affirm they are unmarried and understand they can no longer derive status from their petitioning parent if they marry before arriving in the United States (see 9 FAM 203.6-5 paragraph a(2)(g)).

(b) **(U)** However, if the married child subsequently divorces before traveling to the United States, he or she should be considered eligible, including any applicability of the CSPA, as if the marriage had not occurred. Per INA 101(a)(39), the term "unmarried" when used in reference to any individual

as of any time, means an individual who at such time is not married, whether or not previously married. As such, a child must be unmarried when he or she "seeks" (in present tense) to accompany or follow to join. A new I-730 does not need to be filed; the previously approved I-730 may still be used.

(c) **(U) Examples:**

(i) **(U)** If a beneficiary child married after the I-730 was filed and divorced before final adjudication of the I-730 or travel to the United States, that beneficiary is eligible for I-730 benefits;

(ii) **(U)** If the beneficiary child was married and divorced before the I-730 was even filed, that beneficiary is eligible for I-730 benefits;

(iii) **(U)** If the beneficiary child was married at the time the principal was granted asylum or admitted as a refugee or at the time an I-730 was filed on that beneficiary's behalf, even if the beneficiary subsequently divorced, that individual is not eligible for I-730 benefits. See 8 CFR 208.21(b) and 8 CFR 208.7(c), showing that the parent/child relationship must have existed at the time of the petitioner's asylum grant or refugee admission and "at the time of filing" the I-730).

(Previous location: 9 FAM Appendix O 203.3 (6) and (7); CT:VISA-1988 05-06-2013)

f. **(U) Other Familial Relationships:** A parent, sister, brother, grandparent, grandchild, uncle, aunt, nephew, niece, cousin, or in-law does not have a qualifying relationship, and is not eligible for V92/V93 status. In certain circumstances where an individual does not have the requisite relationship to the petitioner in order to qualify for follow-to-join benefits, humanitarian parole may be an option (see 9 FAM 202.3-4 for more information on humanitarian parole).

9 FAM 203.5-4(B) (U) Bars, Inadmissibilities, and Bases for Denial Affecting V92/V93 Beneficiaries

(CT:VISA-1; 11-18-2015)
(Previous location: 9 FAM Appendix O 207 b; CT:VISA-1988 05-06-2013)

a. **(U) V92/V93 Bars, Inadmissibilities, Denials - Introduction:**

(1) **(U)** It is the responsibility of the consular officer to elicit information pertaining to derogatory information to determine if the beneficiary is barred or inadmissible.

(2) **Unavailable**

(3) **(U)** Paragraph b below addresses a reason to not approve travel that affects both V92 and V93 cases. However, the bases for not approving cases for travel generally vary depending on whether the case involves a V92 or V93 beneficiary – paragraph c provides an overview of the applicability of various bars and inadmissibilities. See more detailed information in paragraph d, for issues involving V92 beneficiaries, and paragraph e, for issues involving V93 beneficiaries.

(Previous location: 9 FAM Appendix O 203.3 (1); CT:VISA-1988 05-06-2013)

b. **(U) Previous Grant of Asylum or Refugee Status for V92/V93 Beneficiary:** Even if a V92/V93 beneficiary is a spouse or unmarried child of the petitioner and

meets the criteria for relationship eligibility (see 9 FAM 203.5-4(A)), the beneficiary is not eligible to derive status if he/she was previously granted asylum or refugee status (see INA 207(c)(2)(A) and INA 208(b)(3)(A)).

(Previous location: 9 FAM Appendix O 207 a; CT:VISA-1988 05-06-2013)

c. **Unavailable**

(1) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(2) **(U)** See 9 FAM 203.6-7 for general information on processing V92/V93 cases which may involve bars or inadmissibilities.

(Previous location: 9 FAM Appendix O 207.1; CT:VISA-1988 05-06-2013)

d. **Unavailable**

(1) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(c) **Unavailable**

(d) **Unavailable**

(e) **Unavailable**

(f) **Unavailable**

(g) **Unavailable**

(Previous location: 9 FAM Appendix O 207.1-3 a (partial); CT:VISA-1988 05-06-2013 and 9 FAM Appendix O 507.2; CT:VISA-1956 02-05-2013)

(2) **Unavailable**

(Previous location: 9 FAM Appendix O 207.1-2 a (partial), b (partial), c, d; CT:VISA-1988 05-06-2013)

(3) **Unavailable**

(a) **Unavailable**

(b) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(v) **Unavailable**

(vi) **Unavailable**

(vii) **Unavailable**

(c) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(v) **Unavailable**

(vi) **Unavailable**

(vii) **Unavailable**

(viii) **Unavailable**

(ix) **Unavailable**

(x) **Unavailable**

(xi) **Unavailable**

(xii) **Unavailable**

(4) **(U) V92 Relief Provisions:** There are no waivers available for V92 applicants.

(5) **(U)** See 9 FAM 203.6-7 for instructions on processing cases which may involve V92 bars or discretionary denials.

e. **Unavailable**

(Previous location: 9 FAM Appendix O 207.2-1; CT:VISA-1988 05-06-2013)

(1) **Unavailable**

(Previous location: 9 FAM Appendix O 207.2-2 a-c; CT:VISA-1988 05-06-2013)

(2) **Unavailable**

(a) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(b) **Unavailable**

(i) **Unavailable**

(ii) **Unavailable**

(iii) **Unavailable**

(iv) **Unavailable**

(v) **Unavailable**

(c) **Unavailable**

(Previous location: 9 FAM Appendix O 207.3-3 a; CT:VISA-1988 05-06-2013 and 9 FAM Appendix O 607.3 d; CT:VISA-1956 02-05-2013)

(d) **Unavailable**

(3) **(U)** See 9 FAM 203.6-7 for instructions on processing cases which may involve V93 bars or inadmissibilities, and for information on waivers for INA 212(a) ineligibilities.

EXHIBIT UU

Andrew Breidenbach

From: Davila, Yamileth G (CIV) <Yamileth.G.Davila@usdoj.gov>
Sent: Friday, March 10, 2017 12:26 PM
To: Andrei Vrabie
Cc: Vincent Levy; Andrew Breidenbach; Kevin D. Benish
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)

Good afternoon Mr. Vrabie,
The location of the individuals determines where they are processed and interviewed. Plaintiff provided a Lebanese address on the I-730 petitions when filed in July. According to counsel, the spouse and child are now in Syria. Where the derivatives are located affects when and where they will be interviewed. Please provide the current physical address for the spouse and child as soon as possible.

Thank you,

Yamileth G. Davila
Senior Litigation Counsel
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 878
Ben Franklin Station
Washington, DC 20044
(202) 305-0137

From: Andrei Vrabie [mailto:avrabie@hsgllp.com]
Sent: Friday, March 10, 2017 10:14 AM
To: Davila, Yamileth G (CIV) <ydavila@CIV.USDOJ.GOV>
Cc: Vincent Levy <vlevy@hsgllp.com>; Andrew Breidenbach <abreidenbach@hsgllp.com>; Kevin D. Benish <KBenish@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)

Dear Ms. Davila,

Although we do not see the relevance, we confirm that our client's wife and daughter remain in Syria.

Best regards,
AV

Andrei Vrabie
Holwell Shuster & Goldberg LLP
750 Seventh Avenue, 26th Floor
New York, NY 10019
Tel: (646) 837-8483

Fax: (646) 837-8150
avrabie@hsgllp.com

From: Davila, Yamileth G (CIV) [mailto:Yamileth.G.Davila@usdoj.gov]
Sent: Thursday, March 09, 2017 9:14 PM
To: Andrei Vrabie <avrabie@hsgllp.com>
Cc: Vincent Levy <vlevy@hsgllp.com>; Andrew Breidenbach <abreidenbach@hsgllp.com>; Kevin D. Benish <KBenish@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)

Good evening counsel,
Thank you for your email and voicemail, I have contacted agency counsel and am awaiting responses. I will provide additional information as soon as I have it. In order to obtain accurate information, would counsel please confirm that Plaintiff's spouse and child are currently in Syria, as we have conflicting information that they are presently in Lebanon. Concerning your proposed briefing schedule, the Government declines to stipulate to the expedited briefing suggested by counsel.

Thank you,

Yamileth G. Davila
Senior Litigation Counsel
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 878
Ben Franklin Station
Washington, DC 20044
(202) 305-0137

From: Andrei Vrabie [mailto:avrabie@hsgllp.com]
Sent: Thursday, March 09, 2017 2:44 PM
To: Davila, Yamileth G (CIV) <ydavila@CIV.USDOJ.GOV>
Cc: Vincent Levy <vlevy@hsgllp.com>; Andrew Breidenbach <abreidenbach@hsgllp.com>; Kevin D. Benish <KBenish@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)
Importance: High

Dear Ms. Davila,

I write to follow up on my emails below and the voicemails I left today and yesterday.

You can reach me via email or by calling 646-837-8483. I hope to hear from you soon.

Thank you,
AV

Andrei Vrabie
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New York, NY 10019
Tel: (646) 837-8483
Fax: (646) 837-5150
avrabie@hsgllp.com

From: Andrei Vrabie
Sent: Wednesday, March 08, 2017 6:39 PM
To: 'Davila, Yamileth G (CIV)' <Yamileth.G.Davila@usdoj.gov>
Cc: Vincent Levy <vlevy@hsgllp.com>; Andrew Breidenbach <abreidenbach@hsgllp.com>; Kevin D. Benish <KBenish@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)
Importance: High

Dear Ms. Davila,

I write to follow up on my earlier voicemail and email. We wanted to let you know that, if we do not hear from you, we intend to file papers on or before 11:59pm (CST) on Thursday, March 9, 2017, seeking a TRO and/or a preliminary injunction. We note that guidance from the State Department states that the new Executive Order does affect I-730 applications, and will proceed on that basis unless we hear otherwise from you.

In that respect, please advise whether the Government is willing to stipulate, subject to the Court's approval, to the following briefing and hearing schedule in connection with our forthcoming motion for injunctive relief:

a. Plaintiff will file its amended complaint and its moving papers no later than 11:59 PM (CST) Thursday, March 9, 2017.
b. Government may file its opposition papers no later than 5:00 PM (CST) on Monday March 13, 2017.
c. Plaintiff will file its reply papers no later than 12:00 PM (CST) Tuesday, March 14, 2017.
d. Subject to the Court's availability, the Parties will be prepared to appear at a telephonic conference at the Court's convenience the morning of Wednesday, March 15, 2017.

I hope to hear from you shortly.

Best regards,
AV

Andrei Vrabie
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New York, NY 10019
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From: Andrei Vrabie
Sent: Monday, March 06, 2017 9:58 PM
To: 'Davila, Yamileth G (CIV)' <Yamileth.G.Davila@usdoj.gov>
Cc: Vincent Levy <vlevy@hsgllp.com>; Andrew Breidenbach <abreidenbach@hsgllp.com>; Kevin D. Benish <KBenish@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)

Dear Ms. Davila,

We write regarding the President's March 6, 2017 Executive Order entitled, "Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States" ("Executive Order").

We understand that, prior to issuance of the Executive Order, USCIS had processed our client's derivative asylum petitions and that the petitions were being transferred to the U.S. Department of State for an expedited review, to be completed at the U.S. Embassy in Amman, Jordan.

We now seek clarity about the impact of the Executive Order on our client and his wife and child, and request that you inform us of the Government's position on the following:

1. Please state whether the Government will continue to process derivative asylum petitions for beneficiaries residing in Syria once the new Executive Order takes effect.
2. Please state whether the new Executive Order applies to the pending derivative petitions or otherwise affects our client's wife's and daughter's ability to enter the United States in any manner, including but not limited to, by delaying or barring the Government from processing the applications or delaying or barring the Department of State from interviewing or issuing travel documents to our client's wife and daughter;
3. If the new Executive Order does affect the pending derivative applications or otherwise affects our client's wife's and daughter's ability to enter the United States in any manner, please identify which provisions of the Executive Order does so; and
4. If the new Executive Order does not apply to or otherwise affect our client's wife's and daughter's ability to enter the United States in any manner, please identify the provisions of the Executive Order that make this clear.

As we have noted previously, our client's wife and daughter are in grave danger and we are committed to a swift resolution of this matter. Consequently, we ask that you please provide answers to the four questions above no later than Wednesday March 8, 2017.

Please be advised that, given the urgency of this matter, we will interpret non-response by Thursday as indicating that the Executive Order will affect our client's wife's and daughter's ability to enter the United States, and intend to file additional papers in court promptly to vindicate our client's rights in keeping with that understanding.

Thank you very much in advance for your attention to this pressing matter.

Andrei Vrabie
Holwell Shuster & Goldberg LLP
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New York, NY 10019
Tel: (646) 837-8483
Fax: (646) 837-5150
avrabie@hsgllp.com

From: Davila, Yamileth G (CIV) [mailto:Yamileth.G.Davila@usdoj.gov]
Sent: Tuesday, February 28, 2017 9:28 PM
To: Andrei Vrabie <avrabie@hsgllp.com>
Cc: Vincent Levy <vlevy@hsgllp.com>; Andrew Breidenbach <abreidenbach@hsgllp.com>; Kevin D. Benish <KBenish@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)

Good evening Mr. Vrabie,
I received an update from my client today informing that the Nebraska Service Center has finished its processing of the I-730 petitions for plaintiff's spouse and child. The Department of State's National Visa Center was notified that the petitions are being forwarded for transmittal to Post abroad. We understand that the adjudication will be completed by USCIS Amman.

I have received no information indicating that DHS security checks are complete. Adjudication is ongoing and being processed on an expedited timeline. I will share any additional information as I receive it.

Thank you,

Yamileth G. Davila
Senior Litigation Counsel
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 878
Ben Franklin Station
Washington, DC 20044
(202) 305-0137

From: Andrei Vrabie [mailto:avrabie@hsgllp.com]
Sent: Thursday, February 23, 2017 9:00 PM
To: Davila, Yamileth G (CIV) <ydavila@CIV.USDOJ.GOV>
Cc: Vincent Levy <vlevy@hsgllp.com>; Andrew Breidenbach <abreidenbach@hsgllp.com>; Kevin D. Benish <KBenish@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)

Dear Ms. Davila,

Thank you for your prompt response.

We write with a few follow-up questions. First, please let us know whether you have an update concerning whether Plaintiff's beneficiaries have successfully completed DHS's security vetting. Second, you state that USCIS estimates 30 to 120 days of "total processing time for the petitions." Since Plaintiff's petitions were submitted well over 120 days ago—in July 2016—please provide a date range for a final decision on the petitions. Third, please provide us with the location of the USCIS office where the petitions are currently being processed. Fourth, we ask that you provide, as soon as possible what steps, if any, remain to be taken prior to a decision on the petitions.

Relatedly, we understand that within the last two days, Free Syrian Army forces attacked the neighborhood where our client's family is in hiding. They are in very real danger at this very moment. We appreciate your continued attention to this sensitive matter.

Best regards,
AV

Andrei Vrabie
Holwell Shuster & Goldberg LLP
750 Seventh Avenue, 26th Floor
New York, NY 10019
Tel: (646) 837-8483
Fax: (646) 837-5150
avrabie@hsgllp.com

From: Davila, Yamileth G (CIV) [mailto:Yamileth.G.Davila@usdoj.gov]
Sent: Wednesday, February 22, 2017 11:02 AM
To: Andrei Vrabie <avrabie@hsgllp.com>
Cc: Vincent Levy <vlevy@hsgllp.com>; Andrew Breidenbach <abreidenbach@hsgllp.com>; Kevin D. Benish <KBenish@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)

Good morning Mr. Vrabie,
We are still checking on your question regarding security checks. We can, however, share that USCIS estimates the total processing time for the petitions will be between 30-120 days, depending on whether a Request for Evidence (RFE) is issued. I will share additional information as it becomes available.

Thank you,

Yamileth G. Davila
Senior Litigation Counsel
United States Department of Justice
Civil Division

Office of Immigration Litigation
District Court Section
P.O. Box 878
Ben Franklin Station
Washington, DC 20044
(202) 305-0137

From: Davila, Yamileth G (CIV)
Sent: Tuesday, February 21, 2017 12:39 PM
To: 'Andrei Vrabie' <avrabie@hsgllp.com>
Cc: Vincent Levy <vlevy@hsgllp.com>; Andrew Breidenbach <abreidenbach@hsgllp.com>; Kevin D. Benish <KBenish@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)

Good afternoon Mr. Vrabie,
Consistent with the government's filing on Friday and our discussion with Judge Conley, we have already confirmed the petitions are being processed on an expedited basis. I will inquire as to the security screening and expected timeline for adjudication, although I anticipate the agency can only provide an estimate. I will provide you with an update as soon as I have additional information.

Thank you,

Yamileth G. Davila
Senior Litigation Counsel
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Washington, DC 20044
(202) 305-0137

From: Andrei Vrabie [mailto:avrabie@hsgllp.com]
Sent: Tuesday, February 21, 2017 12:24 PM
To: Davila, Yamileth G (CIV) <ydavila@CIV.USDOJ.GOV>
Cc: Vincent Levy <vlevy@hsgllp.com>; Andrew Breidenbach <abreidenbach@hsgllp.com>; Kevin D. Benish <KBenish@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)

Dear Ms. Davila,

Following the Court's instruction that the parties should work together, we write to request an update on Plaintiff's derivative asylum application.

In your email on Thursday night, you indicated that you had so far "been able to confirm very little" about Plaintiff's petitions. On Friday, the Government made certain representations "[b]ased on a preliminary review" about what "appear[ed]" to be the case. *See* Response at 5. Please confirm whether, in fact, Plaintiff's derivative petitions are being processed and when you expect the petitions to be decided. Please also confirm whether we are correct that Plaintiff's beneficiaries have already successfully completed DHS's security vetting. Finally, if you have any other information regarding the status of the petitions, we ask that you please share that with us as well.

Given the urgency of the situation, we appreciate your cooperation.

Best regards,
AV

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From: Davila, Yamileth G (CIV) [mailto:Yamileth.G.Davila@usdoj.gov]
Sent: Friday, February 17, 2017 1:34 PM
To: Andrei Vrabie <avrabie@hsgllp.com>
Cc: Vincent Levy <vlevy@hsgllp.com>
Subject: RE: Doe v. Trump 17-cv-112 (WDWI)

Thank you Mr. Vrabie,
We are available now. I can be reached at 202-305-0137.

Thanks,
Yami

From: Andrei Vrabie [mailto:avrabie@hsgllp.com]
Sent: Friday, February 17, 2017 1:27 PM
To: Davila, Yamileth G (CIV) <ydavila@CIV.USDOJ.GOV>
Cc: Vincent Levy <vlevy@hsgllp.com>
Subject: Re: Doe v. Trump 17-cv-112 (WDWI)

The court requested an immediate call back.

Please advise whether we should inform the Court that you are unavailable until then.

AV

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Pe 17 feb. 2017, la 13:25, Davila, Yamileth G (CIV) <Yamileth.G.Davila@usdoj.gov> a scris:

> Good afternoon Mr. Vrabie,
> We can be available for a call at 2pm (eastern).
>
> Thank you,
> Yami
>
> Yamileth G. Davila
> Senior Litigation Counsel
> United States Department of Justice
> Civil Division
> Office of Immigration Litigation
> District Court Section
> P.O. Box 878
> Ben Franklin Station
> Washington, DC 20044
> (202) 305-0137
>
> ---
>
> **From:** Andrei Vrabie [mailto:avrabie@hsgllp.com]
> **Sent:** Friday, February 17, 2017 1:22 PM
> **To:** Davila, Yamileth G (CIV) <ydavila@CIV.USDOJ.GOV>
> **Cc:** Vincent Levy <vlevy@hsgllp.com>
> **Subject:** Re: Doe v. Trump 17-cv-112 (WDWI)
>
> Dear Ms. Davila,
>
> Are you available for a call with the Court?
>
> Judge Conley would like to speak with us.
>
> Thanks very much
> Av
>
> Andrei Vrabie
> Holwell Shuster & Goldberg LLP
> 750 Seventh Avenue, 26th Floor
> New York, NY 10019
> Tel: (646) 837-8483
> Fax: (646) 837-5150
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>
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prohibited. If you believe that you have received this email in error, please notify the sender immediately and delete it from your system.

Pe 17 feb. 2017, la 09:27, Andrei Vrabie <avrabie@hsgllp.com> a scris:

> Dear Ms. Davila,
>
> We cannot consent to an extension under these circumstances, particularly in light of the irreparable harm further delay poses to our client and his family.
>
> Regards,
>
> AV
>
> Andrei Vrabie
> Holwell Shuster & Goldberg LLP
> 750 Seventh Avenue, 26th Floor
> New York, NY 10019
> Tel: (646) 837-8483
> Fax: (646) 837-5150
> avrabie@hsgllp.com
>
>
>
> Pe 16 feb. 2017, la 23:32, Davila, Yamileth G (CIV) <Yamileth.G.Davila@usdoj.gov> a scris:
>
> > Good evening Mr. Vrabie,
> > As you are aware, the government's response to the Court's Order of February 14, 2017, is due at noon (central) on Friday, February 17, 2017. We are still waiting to receive plaintiff's alien file and have been able to confirm very little about the pending I-730 petitions. Additionally, given recent developments, Defendants understand the January 27, 2017, Executive Order will be replaced in the near future and we are unable to fully respond to the Court's questions at this time. Accordingly, we are seeking a modest, one-week extension of time to file a response to the Court's Order. Would you please provide me with Plaintiff's position on the government's request at your earliest convenience.
> >
> > Thank you,
> > Yami

Yamileth G. Davila
Senior Litigation Counsel
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 878
Ben Franklin Station
Washington, DC 20044
(202) 305-0137

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

JOHN DOE,

Plaintiff,

-against-

DONALD J. TRUMP, as President of the United States of America; JOHN F. KELLY, as Secretary of the Department of Homeland Security; THE DEPARTMENT OF HOMELAND SECURITY; LORI SCIALABBA, as Acting Director of the U.S. Citizenship and Immigration Services; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; REX W. TILLERSON, as Secretary of State; U.S. DEPARTMENT OF STATE; and THE UNITED STATES OF AMERICA,

Defendants.

Civil Action No.: 17-cv-112

Chief Judge William M. Conley

DECLARATION OF JOHN DOE IN SUPPORT OF HIS RENEWED APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

STATE OF WISCONSIN)
) ss.:
COUNTY OF DANE)

JOHN DOE, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the Plaintiff in this action and make this declaration on the basis of my own personal knowledge.

2. I am a Sunni Muslim originally from Aleppo, Syria. *See* Named Decl. of John Doe in Support of his Renewed Application for a Temporary Restraining Order and Preliminary Injunction[1] ("Named Decl.") Ex. A at 2. I can be identified as Sunni by my family name.

[1] To be filed upon the Court's granting of Plaintiff's pending Motion to File Under Seal, filed March 10, 2017.

3. In 2011, I married my wife just as the first popular protests began in Aleppo, Damascus, and Daara. To support my family, I began managing my father's business, which required me to travel from our family home in one part of Aleppo to another part of the city where the business was located.

4. By the time our first child, a son, was born in 2012, Syria was in the midst of a full civil war. Aleppo was plunged into a humanitarian crisis, and our daily life was extremely difficult. Militias organized in and around Aleppo, and the security situation deteriorated. With police stations no longer functioning, rebel fighters were stealing cars and looting stores. Kidnappings for ransom were also becoming commonplace, as were incidents of rape and sexual assault on women.

5. By this time, armed militias had taken over different areas of Aleppo. While our home was in an area under the control of the Assad regime's al-Jaysh al-'Arabī as-Sūrī, or Syrian Arab Army ("SAA"), my family's businesses were in a region of Aleppo controlled by al-Jaysh as-Sūrī al-Ḥurr, or Free Syrian Army ("FSA"). The FSA is Sunni-aligned, while the SAA is Alawite. Consequently, the SAA came to suspect that Sunni Muslim civilians—including me—were FSA members or sympathizers. The FSA, meanwhile, came to suspect that civilians from SAA-controlled parts of Aleppo—including me—were SAA sympathizers.

6. The security situation made it impossible for me to commute from my home to my work. Road blocks and active shooting made it impossible to commute within Aleppo from SAA to FSA territory. Instead of a fifteen-minute drive to my father's business, I had to leave Aleppo altogether, circumvent the city, and reenter the FSA-controlled part of the city from a different road.

7. In June 2013, I attempted to visit my family's business. Because I had to

circumvent the city, the trip took approximately fifteen hours. When I arrived, I found that the FSA had commandeered my family's business. They forced me to pay them money for access to title and other legal documents located at the business. They also demanded that I pay them protection money. When I told them I could not, they attacked me with a knife and beat me so severely that I was hospitalized and received surgery. As a result, my abdomen is disfigured.

8. My parents and I subsequently obtained tourist visas to enter the United States. In September 2013, we came to the United States. My sister, a United States citizen, who now resides in the United States, also accompanied my parents and me. While here, my family stayed with my uncles, who are United States citizens and manage a family business here. *See* Named Decl. Ex. C at 2.

9. While in the United States in 2013, I was desperate to find a way to get my pregnant wife and one-year-old son out of Syria but could not.

10. I returned to Syria in January 2014 to see my new-born daughter, who had been born in November 2013. My return had to be in secret because I had been conscripted by the SAA but refused to fight for the Assad regime.

11. In February 2014, members of the SAA forced their way into my home and beat me. They wrongly suspected that I supported the FSA because I was Sunni and because SAA informants had reported seeing me in FSA-controlled territory in 2013. They did not believe me when I told them the truth—that I had to travel to that part of Aleppo to manage my family's business and support my family. After beating me, the SAA locked me in an underground prison and kept me there for two days. I had to pay them money in order for them to release me without beating me. SAA members also threatened to rape my wife.

12. By March 2014, my family's business was destroyed in the fighting between the

SAA and FSA. At this time, a subgroup within the FSA, Jabhat an-Nuṣrah li-ahli ash-Shām, or The Victory Front for the People of the Levant ("JN"), proclaimed that anyone that found me was permitted to kill me on sight. JN added me to a "wanted dead or alive" list that was displayed in the area of Aleppo where my family's business was located. The list identified me by my full name and by my parents' full names.

13. I fled to the United States that same month and requested asylum upon landing at Chicago O'Hare International Airport in late March 2014. *See* Named Decl. Ex. A at 1. USCIS officials determined that I had a credible fear of returning to Syria. *See* Named Decl. Exs. B–C.

14. During this time, single women in our neighborhood in Aleppo were being raped, killed, and kidnapped if they did not have a husband or father at home to protect them. With me gone, my wife moved with my children to stay with family in a different neighborhood. Tragically for my family, this neighborhood became a battleground between the FSA and SAA.

15. In April 2014, I applied for asylum with USCIS. *See* Named Decl. Ex. D. I also tried to find a way to bring my wife and children to safety here.

16. With the security situation in Aleppo deteriorating, I filed a motion to have my pending asylum application expedited, but that request was denied in March 2015. *See* Named Decl. Ex. E.

17. In the spring and summer of 2015, my wife and children were living under increasingly dangerous conditions. In addition to the SAA's threats of rape, my wife and children were living along the frontline of a battle between the FSA and SAA.

18. The house where my family was hiding was repeatedly struck by small-arms fire and shrapnel from artillery, and bombings in our neighborhood were commonplace. Named Decl. Ex. F at 20–22, 33–41. During one such attack between late May and early June, debris

struck my son, breaking his arm. *See* Named Decl. Ex. F at 42.

19. In July 2015, the home was hit with artillery fire. While attempting to seek shelter, my three-year-old son fell three stories and died. I could not travel to mourn with and comfort my wife and daughter. Given the security situation, he could not be given a proper burial, and his remains had to be hastily buried in an unmarked grave in a nearby public park. *See* Named Decl. Ex. F at 43–44.

20. In October 2015, I submitted an amended asylum application with USCIS. *See* Named Decl. Ex. G. That application was granted in May 2016 by the Immigration Court in Chicago, and the asylum became final in June 2016. *See* Named Decl. Ex. H. The Immigration Court ruled that sending me back to Syria would violate the Immigration and Naturalization Act as well as the United Nations Convention Against Torture. *See* Named Decl. Ex. H.

21. Receiving the Immigration Court's ruling in May 2016 was one of the most memorable moments of my life. I was finally reunited with my sisters, mother, and uncles in a safe and welcoming country. I was able to find a job through which I can support myself and my family. I regularly attend a local mosque here in Madison, Wisconsin, and I live with my elderly mother in Wisconsin. I felt, and continue to feel, so deeply grateful and relieved that the United States has given me the opportunity to live in security and freedom here. Yet, at the same time, I was terribly afraid for my wife and surviving daughter and I am desperate to get them to safety.

22. I filed a request for derivative asylum status with USCIS on behalf of my wife and surviving daughter in early July 2016. *See* Named Decl. Ex. I. My wife is a good person and is eager to contribute to American society. She has never engaged in acts of oppression against any person on the basis of race, gender, sexual orientation, or religion. The same is true of my daughter, who is being raised to never engage in such acts.

23. My derivative asylum application was forwarded to the USCIS processing center in Nebraska, which found it to be in order. It was then forwarded for processing to the USCIS's Milwaukee office for a background check, which was also approved. I filed this action after being informed that USCIS was no longer processing my petitions.

24. My wife and three-year-old daughter still reside in war-torn Aleppo.

25. I have been informed that USCIS has completed review of my petitions and that they have been approved. But the process is not over. My wife and daughter will not receive travel documents until a USCIS or consular officer interviews them in person in Amman, Jordan and deems them eligible to travel to the United States.

26. Without these travel documents, my wife and daughter cannot travel to the United States because they are not lawful permanent residents, admitted or parole foreign nationals, travel document holders, dual nationals, diplomatic visa holders, asylees, or individuals who have been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

27. Since February 24, I have finalized arrangements for the (very dangerous) transport of my wife and daughter to Amman, Jordan. But they cannot leave Syria until they are officially invited for an interview at the U.S. Embassy in Amman, because only then will border authorities permit them to cross into Jordan. Now that the Executive Order has been re-issued, I fear that invitation will never come.

28. In the meantime, my wife and daughter remain in hiding in Aleppo, where deadly fighting continues unabated. In late February, for example, Free Syrian Army forces bombed the neighborhood where my wife and daughter live.

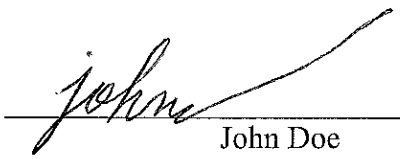
29. I have suffered a great deal to date through the tragic death of my son and the

physical and emotional pain to which I have been subjected by the SAA and FSA. Our family's home and business in Aleppo have been decimated. And I check Syrian news sites obsessively and with dread, fearful of reading of the final attack that ends my wife's or daughter's life. The security and humanitarian situation in Syria is a nightmare. My wife and daughter are homebound, too afraid of SAA checkpoints to leave their shelter. My daughter is suffering from tonsillitis, but lacks access to adequate medical care for what was once a routine operation in Syria.

30. In short, I am desperately afraid for them and spend many days in a fog of despair. The only goal that keeps me moving forward is the hope that I will be reunited with my wife and my daughter, and I hope with all my heart that they will be safely here with me in the United States, my new home.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: on this 10th day of March, 2017.



John Doe