

No. 17-1351

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, *et al.*
Defendants-Appellants

On Appeal from an Order of the United States District Court
for the District of Maryland (Chuang, J.)
Civil Action No. TDC-17-0361

**BRIEF OF *AMICUS CURIAE* T.A., A U.S. RESIDENT OF YEMENI
DESCENT, IN OPPOSITION TO APPELLANTS' MOTION FOR A STAY
PENDING EXPEDITED APPEAL**

WILLKIE FARR & GALLAGHER LLP
Richard D. Bernstein
rbernstein@willkie.com
1875 K Street, N.W.
Washington D.C. 20006-1238
Telephone: (202) 303-1000
Facsimile: (202) 303-2000
Counsel for Amicus Curiae T.A.

Date: March 31, 2017

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST 1

BACKGROUND 2

ARGUMENT 3

 I. Lack of Irreparable Injury Provides A Dispositive Ground To
 Deny A Stay..... 3

 II. The Government Has Not Shown Irreparable Harm From A
 Short Continuation Of This Country’s Current And Successful
 Vetting Procedures 4

 III. The Invocation Of National Security Is No Substitute For Facts
 In The Record 9

CONCLUSION 11

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Adams v. Vance</i> , 570 F.2d 950 (D.C. Cir. 1978)	10
<i>Ashcroft v. ACLU</i> , 542 U.S. 656 (2004)	3
<i>Doe v. Pub. Citizen</i> , 749 F.3d 246 (4th Cir. 2014)	1
<i>Fiallo v. Bell</i> , 430 U.S. 787 (1977)	11
<i>Hawaii v. Trump</i> , CV. No. 17-00050 DKW-KSC (D. Haw. Mar. 29, 2017), ECF. 270.....	2, 11
<i>International Refugee Assistance Project v. Trump</i> , No. TDC 17 0361 (D. Md. Mar. 15, 2017), ECF. 149	2, 3, 10
<i>Johnson v. Whitehead</i> , 647 F.3d 120 (4th Cir. 2011)	11
<i>Kleindienst v. Mandel</i> , 408 U.S. 753 (1972)	11
<i>Manning v. Hunt</i> , 119 F.3d 254 (4th Cir. 1997)	3
<i>Nat’l Audubon Soc’y v. Dept. of Navy</i> , 422 F.3d 174 (4th Cir. 2005)	9, 10
<i>Ortiz v. Fibreboard Corp.</i> , 527 U.S. 815 (1999)	4
<i>Rajah v. Mukasey</i> , 544 F.3d 427 (2d Cir. 2008)	11

Rostker v. Goldberg,
453 U.S. 57 (1981).....10

Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.,
549 U.S. 422 (2007).....4

Washington v. Trump,
847 F.3d 1151 (9th Cir. 2017)3

Winter v. NRDC, Inc.,
555 U.S. 7 (2008).....4

Statutes & Rules
Page(s)

8 U.S.C. § 1432(a)(3).....11

82 Fed. Reg. 89777

82 Fed. Reg. 132091

STATEMENT OF INTEREST

Amicus files this brief in opposition to Appellants' Motion for a Stay.

This brief focuses on the Motion's failure to provide any evidence showing irreparable harm to our national security. The absence of irreparable harm provides a dispositive reason to deny the Motion to Stay.

Section 2(c) of President Trump's Amended Executive Order, dated March 6, 2017 (the "Amended Order" or the "Amended Executive Order"), bars entry by nationals of six Muslim-majority countries. T.A.¹ is a United States citizen who was raised in Yemen. T.A. is a Muslim. T.A.'s father and many members of T.A.'s extended family hold Yemeni passports and reside abroad. They would be barred from entering the United States under the Amended Order. Although banned persons "could" apply for "[c]ase by case" waivers under Section 3 of the Amended Order, Section 16(c) provides that nothing in the Amended Order provides any "enforceable" right, "substantive or procedural." 82 Fed. Reg. 13209 (Amended Order) at § 16(c). The Amended Order does not even provide for any *unenforceable* opportunity to be heard as to any purported reason to deny

¹ This brief uses initials, rather than T.A.'s full name, to reduce the risk of potential reprisals to T.A. or his family members. *Doe v. Pub. Citizen*, 749 F.3d 246, 273 (4th Cir. 2014) (pseudonym appropriate, even for a party, where "identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties"). No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus* made a monetary contribution to its preparation or submission. This brief is filed with the consent of all parties.

entry, any timing for or notification of a denial, much less any reason, or any ability to appeal a denial.

BACKGROUND

On March 15, 2017, the District Court issued a preliminary injunction barring enforcement of Section 2(c) of the Amended Order. *See International Refugee Assistance Project v. Trump*, No. TDC 17 0361 (D. Md. Mar. 15, 2017), ECF. 149, at *43 (“*IRAP*”). The District Court found that “the record provides strong indications that the national security purpose is not the primary purpose of the travel ban.” *Id.* at *35-*37. In determining that the “balance of the equities and the public interest favor the issuance of an injunction,” Judge Theodore D. Chuang² found that the Government had “not shown, or even asserted that national security cannot be maintained without an unprecedented six-country travel ban.” *Id.* at *40. As the District Court in Hawaii found, “the record here” is “full of religious animus, invective and *obvious pretext*.” *Hawaii v. Trump*, CV. No. 17-00050 DKW-KSC (D. Haw. Mar. 29, 2017), ECF 270, at *17 (“Hawaii”) (emphasis added).

² Immediately prior to being nominated to the federal bench, Judge Chuang served as the Deputy General Counsel of the United States Department of Homeland Security.

ARGUMENT

This brief focuses on one of many fully sufficient grounds to deny the Appellants' Motion for Stay—the Motion failed to carry the Appellants' burden to show irreparable harm to “the Nation’s safety” if current vetting procedures continue during the expedited appeal. Mot. for Stay at 1. Accordingly, the Government has not shown the irreparable harm necessary for an appellate stay. *See Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) (holding there was no irreparable injury because there was no “evidence to explain the need for the Executive Order,” much less “an urgent need for the Executive Order to be immediately reinstated”).

I. Lack of Irreparable Injury Provides A Dispositive Ground To Deny A Stay

The District Court found that the United States had “not shown, or even asserted” that national security depended upon the Amended Order’s travel ban. *IRAP*, ECF 149 at *40. The District Court also found that the United States was “not directly harmed” by the injunction preventing the enforcement of the Amended Order. *Id.* at *39. These findings of a lack of harm are reviewable only for an abuse of discretion. *Cf. Ashcroft v. ACLU*, 542 U.S. 656, 664 (2004) (“This Court, like other appellate courts, has always applied the abuse of discretion standard on review of a preliminary injunction.”); *Manning v. Hunt*, 119 F.3d 254, 264 (4th Cir. 1997) (applying this standard to “irreparable harm”).

An absence of irreparable harm provides a dispositive basis for this Court to deny a stay. Under *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, this Court may deny a stay on any threshold, non-merits ground without reaching either Article III standing or the merits. 549 U.S. 422, 431 (2007) (“[N]or must a federal court decide whether the parties present an Article III case or controversy before abstaining . . .”). *Sinochem* held that a “federal court has leeway to choose among threshold grounds for” denying relief on non-merits grounds. *Id.* For example, a court can deny class certification without reaching Article III standing. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 831 (1999). *A fortiori*, this Court should decline to stay the District Court’s order here because the lack of irreparable harm to the United States provides a non-merits, dispositive threshold ground. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008) (movant is required to show that he “is likely to suffer irreparable harm before a decision on the merits can be rendered”) (quoting 11A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948.1, p. 139 (2d ed. 1995)).

II. The Government Has Not Shown Irreparable Harm From A Short Continuation Of This Country’s Current And Successful Vetting Procedures

The Government must show a very specific irreparable harm to national security—namely “irreparable harm before a decision on the merits can be rendered,” *id.*, on the expedited appeal. The earliest a stay could issue is April 6,

2017—the day after the Appellants’ Reply in Support of Motion for Stay is due. The longest a stay would likely last is until approximately May 22, 2017, which assumes the merits panel takes 14 days after the May 8, 2017 oral argument to issue its opinion in the expedited appeal itself. By comparison, the Ninth Circuit took *two* days between its oral argument and its decision in *Washington*.

Not one word of the Government’s Motion purports to show any evidence of any threat to national security if current vetting procedures continue for the 46 days from April 6, 2017 to approximately May 22, 2017. Nor could it.

Although the Government has cited the suspension of the visa waiver program that began in 2015-16 for nationals of these six countries as support for the travel ban, *see* Gov’t Appeal Br. at 2, 5-6, experience since the visa waiver suspension rebuts the Government’s assertion of irreparable harm. Since that visa waiver suspension, nationals of the six countries “go through the full vetting of the regular visa process, which includes *an in-person interview at a U.S. embassy or consulate.*” Karoun Demirjian & Jerry Markon, *Obama administration rolls out new visa waiver program rules in wake of terror attacks*, Washington Post (Jan. 21, 2016) (emphasis added)); U.S. Customs and Border Protection, *Visa Waiver Program Improvement and Terrorist Travel Prevention Act Frequently Asked Questions* (Nov. 28, 2016), <https://www.cbp.gov/travel/international-visitors/visa-waiver-program/visa-waiver-program-improvement-and-terrorist-travel->

prevention-act-faq. Since the visa waiver suspension, the Government cites *no terrorist attack or attempted terrorist attack* in this country by any national of any of the six countries.

A March 10, 2017 letter to President Trump from more than 130 generals and national security experts from across the political spectrum—including two former Secretaries of the Department of Homeland Security—stands un rebutted. That letter explains that the United States has been able to “implement any necessary [vetting] enhancements without a counterproductive ban or suspension on entry of nationals of particular countries or religions.” Ex. 1 (Nat’l Security Experts’ March 10, 2017 Letter to President Trump).

The Amended Order cites only one example from *before* the visa waiver suspension that involved a native of any of the six countries. “[I]n 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.” *Id.* (emphasis added). The Amended Order, however, cannot claim that this person was radicalized before he came to this country as a “child refugee,” so this cannot be an example of failed vetting.

Since the original January 27, 2017 Executive Order, the Administration has been reviewing existing vetting procedures. 82 Fed. Reg. 8977 (“Original Order”) at § 3(c). Although 63 days of that review have already passed, the Government still cannot cite any evidence that irreparable harm would ensue if the country’s current vetting procedures continue from April 6, 2017 to approximately May 22, 2017.

The Government does not and cannot blame its lack of evidence on any TRO or preliminary injunction. A vetting review undoubtedly has continued at all times. The Government has not claimed that the President needed an executive order to direct cabinet members, or the Director of National Intelligence, to engage in a vetting review. To the contrary, such presidential direction to appointed officials is usually accomplished by phone call, email, letter, or other informal communication.

The problem for the Government is that its vetting review has contradicted any purported national security justification for the travel ban. A DHS draft report, made public on February 25, 2017, concluded that being a national from one of the six countries is an “unlikely indicator” of terrorism threats against the United States. Ex. 2 (DHS Report, *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*). Moreover, a second DHS report, dated March 1, 2017, concludes that “most foreign-born, U.S.-based violent

extremists [are] likely radicalized several years *after* their entry to the United States.” J.R. 164-170 (DHS Report, *Most Foreign-born, U.S. based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist* (March 1, 2017)) (emphasis added). Internal FBI data also “undermine[s] a key premise of the travel ban” because that data reveals that “most” foreign nationals who have posed a risk to the United States have hailed from “countries unaffected” by the Amended Order. *See* Ex. 3 (Devlin Barrett, *Internal Trump Administration Data Undercuts Travel Ban*, Washington Post (Mar. 16, 2017)). In sum, a “significant amount of internal government data” demonstrates the Amended Order “is not likely to be effective in curbing the threat of terrorism in the United States.” *Id.*

Finally, the Administration’s own delays belie any claim of the necessary irreparable harm to national security. The Administration itself took 31 days after February 3, 2017, when the District Court in the Western District of Washington restrained the Original Order’s enforcement, to roll out what the President himself has stated is a mere “watered down version of the first one.” Ex. 4 (Katie Reilly, *Read President Trump’s Response to the Travel Ban Ruling: It ‘Makes Us Look Weak’*, Time (Mar. 16, 2017)). A week of that delay occurred *after* the Amended Order was *already completed* because the President’s Administration did not want to disrupt favorable press coverage of a presidential

speech. J.R. 276-78 (Laura Jarrett, Ariane de Vogue & Jeremy Diamond, *Trump delays new travel ban after well-reviewed speech*, CNN (Mar. 1, 2017 6:01 AM ET)). Section 14 of the Amended Order further delayed its effective date for another 10 days—for a sub-total delay of 41 days. And the Government has not yet moved for a stay of either the nationwide TRO or preliminary injunction issued by the District Court for the District of Hawaii. Thus, 15 additional days have gone by since two courts enjoined or restrained Section 2(c) of the Amended Order—for a total of 56 days and counting. The nation has suffered no harm from the 56-day continuation of existing vetting procedures from February 3, 2017, to March 31, 2017. The Government has provided no evidence indicating that a shorter, approximately 46-day continuation of existing vetting procedures, *see supra* at 5, would constitute irreparable harm.

III. The Invocation Of National Security Is No Substitute For Facts In The Record

The Government does not cite any authority that its mere incantation of the words “national security” is a substitute for facts in the record showing the Government’s irreparable harm. The two cases that the Government cites did not involve a motion by the Government for a stay or any other relief where the Government had to show its own irreparable harm. And both had substantial evidence of Government harm. *Nat’l Audubon Soc’y v. Dept. of Navy*, 422 F.3d 174 (4th Cir. 2005), partially vacated a grant of summary judgment and a

permanent injunction, ruling on the merits that “the necessity of [the Navy’s] substantive decision exceed[s] the permissible scope of judicial review in a NEPA case,” and relying on an admiral’s “declaration” that the injunction impaired “naval aviation readiness.” *Id.* at 203. *Adams v. Vance*, 570 F.2d 950 (D.C. Cir. 1978), vacated a preliminary injunction ordering the Secretary of State to object to an international limit on whaling by U.S. Eskimos. *Adams* relied on an “affidavit” from an Assistant Secretary of State showing that the objection would derail the Department’s efforts to enforce and renegotiate the “International Whaling Convention.” *Id.* at 956 & n.13.

Far more apt cases are precedent addressing constitutional issues. They establish that the judiciary examines the support, or lack of support, cited for the Executive’s invocation of national security. *See IRAP*, at *37 (citing cases); *see also Washington*, 847 F.3d at 1161-62 (citing Supreme Court cases). When national security is asserted, “[d]eference does not mean abdication,” and the judiciary has the “ultimate responsibility to decide the constitutional question.” *Rostker v. Goldberg*, 453 U.S. 57, 67, 70 (1981).

The Government also cites no holding supporting its “blindness” argument under which, because the Government invokes national security, courts would have to ignore the public record even if President Trump gave a speech, waived the Amended Order, and declared: “This is the Muslim ban I promised.”

Among many other distinctions, the visa applicant in *Kleindienst v. Mandel*, 408 U.S. 753, 758 (1972), did not rely on publicly-stated reasons different from those offered by the sole decision maker, the consular official. The Government’s other citations are also inapposite. *See Rajah v. Mukasey*, 544 F.3d 427, 438-39 (2d Cir. 2008) (rejecting claim made “without evidence other than that one fact”—*i.e.*, that countries were “predominantly Muslim”—but noting that if there were animus “based on . . . religion, ethnicity, gender, [or] race,” the courts would provide a “remedy”); *Johnson v. Whitehead*, 647 F.3d 120, 127 (4th Cir. 2011) (noting that “*Fiallo* [*v. Bell*, 430 U.S. 787 (1977)] applied rational basis review to a legal classification based on legitimacy” and finding that 8 U.S.C. § 1432(a)(3) “surely is” rational); *see also Fiallo*, 430 U.S. at 795 n. 6 (“That is not to say that the Government’s power in this area [of immigration] is never subject to judicial review.”). As the District Court in Hawaii held, no precedent requires the Court to “crawl into a corner, pull the shutters closed, and pretend it has not seen what it has.” *Hawaii*, at *17 (footnote and citation omitted).

CONCLUSION

Appellants’ Motion for Stay should be denied.

WILLKIE FARR & GALLAGHER LLP

By: /s/ Richard D. Bernstein
1875 K Street, N.W.
Washington D.C. 20006-1238
Telephone: (202) 303-1000
Facsimile: (202) 303-2000

Counsel for Amicus Curiae T.A.

EXHIBIT 1

March 10, 2017

The Honorable Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20050

Dear Mr. President,

We have worked for years, under both Democratic and Republican administrations, to protect America's national security. We are deeply concerned that the March 6, 2017 executive order halting refugee resettlement and suspending visa issuance and travel from six Muslim-majority countries will, like the prior version, weaken U.S. national security and undermine U.S. global leadership. The United States faces serious threats from terrorist networks and must take all prudent and effective steps to combat them, including the appropriate vetting of travelers to the United States. But the recent order suffers from the same core substantive defects as the previous version.

The revised executive order will jeopardize our relationships with allies and partners on whom we rely for vital counterterrorism cooperation and information-sharing. To Muslims— including those victimized by or fighting against ISIS—it will send a message that reinforces the propaganda of ISIS and other extremist groups, that falsely claim the United States is at war with Islam. Welcoming Muslim refugees and travelers, by contrast, exposes the lies of terrorists and counters their warped vision.

We must remain vigilant to keep our nation safe from terrorists, whether foreign or homegrown. At the same time, we must remain true to our ideals. These are not mutually exclusive goals. In fact, resettlement initiatives advance U.S. national security interests by protecting the stability of U.S. allies and partners struggling to host large numbers of refugees.

Following the 9/11 attacks, the United States developed a rigorous system of security vetting for travelers to our homeland, leveraging the full capabilities of the intelligence and law enforcement communities. Since then, the U.S. has added enhanced vetting procedures for travelers and has revised them continuously. Our government applies this process to travelers not once, but multiple times. Refugees are vetted more intensively than any other category of traveler. They are screened by national intelligence agencies and INTERPOL, their fingerprints and other biometric data are checked against terrorist and criminal databases, and they are interviewed several times. These processes undergo review on an ongoing basis to ensure that the most updated and rigorous measures are applied, and any additional enhancements can be added without halting refugee resettlement or banning people from certain countries.

We welcome the removal of Iraq from the 90-day travel ban, but we remain concerned that the Iraqis who risked their lives to work with the U.S. military, U.S. government and other U.S. organizations will be left in harm's way for even longer due to the order's 120-day suspension of the U.S. Refugee Admissions Program and overall reduction in refugee admissions. These individuals were given priority access to U.S. resettlement under the Refugee Crisis in Iraq Act, but their resettlement, like that of many

other vetted refugees, will now likely be delayed as security clearances and other approvals expire, adding many more months onto their processing. The United States has a moral obligation to protect these allies.

Bans like those included in this order are harmful to U.S. national security and beneath the dignity of our great nation. Further, the order's drastic reduction in the number of refugees to be resettled in this fiscal year after the 120-day moratorium weakens this country's ability to provide global leadership and jeopardizes our national security interests by failing to support the stability of our allies that are struggling to host large numbers of refugees. America's much-admired compassion and openness are sources not of weakness but strength. These qualities accord with the ideals on which our nation was founded, and on which our greatness rests.

The revised executive order is damaging to the strategic and national security interests of the United States. We urge that, in moving forward, the United States: ensure any vetting enhancements are necessary, non-discriminatory and otherwise consistent with the U.S. Constitution; implement any necessary enhancements without a counterproductive ban or suspension on entry of nationals of particular countries or religions; and immediately restart a strong non-discriminatory refugee resettlement initiative, which will in turn advance U.S. global leadership and national security interests.

We firmly believe that these steps will strengthen U.S. national security and appreciate your attention to the concerns we raise in this letter.

Sincerely,
(names in alphabetical order)

Wally Adeyemo
Former Deputy Assistant to the President and
Deputy National Security Advisor for International
Economics

Christopher Le Mon
Former Special Assistant to the President for
National Security Affairs

Dr. Madeleine K. Albright
Former Secretary of State

Marcel Lettre
Former Under Secretary of Defense for
Intelligence

Steven L. Arnold
Lieutenant General
U.S. Army (Ret.)

George Little
Former Assistant Secretary of Defense for Public
Affairs

Alyssa Ayres
Former Deputy Assistant Secretary of State for
South Asia

Albert J. Madora
Major General
U.S. Army (Ret.)

Jeremy Bash
Former Chief of Staff,
Department of Defense

Kelly Magsamen
Former Principal Deputy Assistant Secretary of
Defense for Asian and Pacific Security Affairs

Rand Beers
Former Acting Secretary of the Department of
Homeland Security

Daniel Benjamin
Former Coordinator for Counterterrorism,
Department of State

Rob Berschinski
Former Deputy Assistant Secretary of State for
Democracy, Human Rights, and Labor

Nisha Biswal
Former Assistant Secretary of State for South and
Central Asian Affairs

Jarrett Blanc
Former Deputy Special Representative to
Afghanistan and Pakistan

Charles Blanchard
Former General Counsel
U.S. Air Force

Antony Blinken
Former Deputy Secretary of State

Max Boot
Jeane J. Kirkpatrick Senior Fellow in National
Security Studies
Council on Foreign Relations

David M. Brahms
Brigadier General
U.S. Marine Corps (Ret.)

Michael Breen
Retired United States Army Officer

Thomas Malinowski
Former Assistant Secretary of State for
Democracy, Human Rights, and Labor

Robert Malley
Former Special Assistant to the President and
White House Coordinator for the Middle East,
North Africa, and the Persian Gulf Region

Brian McKeon
Former Acting Under Secretary of Defense for
Policy

Pete McCloskey, Jr.
U.S. Congressman, 1967-1983
11th, 17th, and 12th Congressional Districts of CA

John McLaughlin
Former Deputy Director and Acting Director of
Central Intelligence Agency

Philip McNamara
Former Assistant Secretary for Partnerships and
Engagement, Department of Homeland Security

Bernadette Meehan
Former Special Assistant to the President for
National Security Affairs

Sarah Mendelson
Former Ambassador to the Economic and Social
Council, United Nations

James Miller
Former Undersecretary of Defense for Policy

Lisa Monaco
Former Assistant to President for Homeland
Security and Counterterrorism and Deputy
National Security Advisor

Rosa Brooks
Former Counselor to Under Secretary of Defense
for Policy

Alberto Mora
Former General Counsel, Department of the Navy

Ambassador (ret.) Nicholas Burns
Former Under Secretary of State for Political
Affairs, Ambassador to NATO and to Greece

Janet Napolitano
Former Secretary of the Department of
Homeland Security

Ambassador William J. Burns
Former Deputy Secretary of State

William L. Nash
Major General
U.S. Army (Ret.)

Luis C.deBaca
Former Ambassador at Large to Monitor and
Combat Trafficking in Persons

Thomas Nides
Former Deputy Secretary of State for
Management and Resources

Michael Carpenter
Former Deputy Assistant Secretary of Defense for
Russia, Ukraine, Eurasia

Michael P. Noonan
U.S. Army Veteran
Director of Research, Foreign Policy Research
Institute

Derek Chollet
Former Assistant Secretary of Defense for
International Security Affairs

Suzanne Nossel
Former Deputy Assistant Secretary of State for
International Organizations Affairs

Richard Clarke
Former National Coordinator for Security,
Infrastructure Protection and Counterterrorism
for the U.S.

James C. O'Brien
Former Special Envoy for Hostage Recovery

David Cohen
Former Deputy Director, Central Intelligence
Agency

Matthew Olsen
Former Director of the National Counterterrorism
Center

Bathsheba Crocker
Former Assistant Secretary of State for
International Organization Affairs

Rick Olson
Former Special Representative for Afghanistan
and Pakistan

Ryan C. Crocker
Former U.S. Ambassador to Lebanon, Kuwait,
Syria, Pakistan, Iraq, and Afghanistan

Charles Otstott
Lieutenant General
U.S. Army (Ret.)

James P. Cullen
Brigadier General
U.S. Army (Ret.)

Eric Pelofsky
Former Special Assistant to the President and
Senior Director for North Africa and Yemen

Mary DeRosa
Former Deputy Counsel to the President for
National Security Affairs

Gale Pollock
Major General
U.S. Army (Ret.)

Daniel Drezner
Professor
Fletcher School of Law and Diplomacy

Amy Pope
Former Deputy Homeland Security Advisor and
Deputy Assistant to the President for National
Security Affairs

Paul D. Eaton
Major General
U.S. Army (Ret.)

Michael Posner
Former Assistant Secretary of State for
Democracy, Human Rights and Labor

Mari K. Eder
Major General
U.S. Army (Ret.)

Samantha Power
Former United States Ambassador to the United
Nations

Brian Egan
Former Legal Adviser
U.S. State Department

Jeffrey Prescott
Former Senior Director for Iran, Iraq, Syria, and
the Gulf States, National Security Council

Evelyn Farkas
Former Executive Director, Commission on the
Prevention of WMD Proliferation and Terrorism

Ned Price
Former Special Assistant to the President and
National Security Council Spokesperson

Daniel Feldman
Former Special Representative for Afghanistan
and Pakistan

Dafna Rand
Former Deputy Assistant Secretary of State for
Democracy, Human Rights, and Labor

Steve Feldstein
Former Deputy Assistant Secretary of State for
Democracy, Human Rights, and Labor

William D. Razz Waff
Major General
U.S. Army (Ret.)

Jose W. Fernandez
Former Assistant Secretary of State for Economic,
Energy, and Business Affairs

Susan Rice
Former National Security Advisor to the President
of the U.S.

Jonathan Finer
Former Director of Policy Planning, Department of
State

Bill Richardson
Former Governor of New Mexico and United
States Ambassador to the United Nations

Michele Flournoy
Former Under Secretary of Defense for Policy

Leon Rodriguez
Former Director, U.S. Citizenship and
Immigration Services

Eugene Fox
Major General
U.S. Army (Ret.)

Laura Rosenberger
Former Chief of Staff to the Deputy Secretary of
State

Danielle Garbe
Former Director for Lebanon and Jordan, National
Security Council

Tommy Ross
Former Deputy Assistant Secretary of Defense for
Security Cooperation

Dennis P. Geoghan
Brigadier General
U.S. Army (Ret.)

Murray G. Sagsveen
Brigadier General
U.S. Army (Ret.)

Suzy George
Former Deputy Assistant to the President, Chief of
Staff and Executive Secretary, National Security
Council

Eric Schwartz
Former Assistant Secretary of State for
Population, Refugees, and Migration

F. Stephen Glass
Rear Admiral, JAGC
U.S. Navy (Ret.)

Norman R. Seip
Lieutenant General
U.S. Air Force (Ret.)

Rachel Goldbrenner
Former Senior Policy Advisor to the U.S.
Ambassador to the United Nations

Wendy Sherman
Former Under Secretary of State for Political
Affairs

Mary Beth Goodman
Former Special Assistant to the President for
Development and Democracy

Vikram Singh
Former Deputy Assistant Secretary of Defense for
South and Southeast Asia

Philip Gordon
Former Special Assistant to the President and
White House Coordinator for the Middle East,
North Africa, and the Persian Gulf Region

Elissa Slotkin
Former Acting Assistant Secretary of Defense for
International Security Affairs

Wilton Scott Gorske
Major General
U.S. Army (Ret.)

Jeff Smith
Former General Counsel, Central Intelligence
Agency

Donald J. Guter
Rear Admiral, JACG
U.S. Navy (Ret.)

Julianne "Julie" Smith
Former Deputy National Security Advisor to the
Vice President of the United States

Ziad Haider
Former Special Representative for Commercial
and Business Affairs, U.S. Department of State

Tara Sonenshine
Former Under Secretary of State for Public
Diplomacy and Public Affairs

Irv Halter
Major General
U.S. Air Force (Ret.)

Matthew Spence
Former Deputy Assistant Secretary of Defense for
Middle East Policy

Lee H. Hamilton
U.S. Congressman, 1965-1999
9th Congressional District of IN

James Steinberg
Former Deputy Secretary of State

Keith Harper
Former Ambassador to the United Nations Human
Rights Council

Nik Steinberg
Former Counselor to the U.S. Permanent
Representative to the United Nations

Luke Hartig
Former Senior Director for Counterterrorism
National Security Council

Seth M.M. Stodder
Former Assistant Secretary of Homeland Security
for Border, Immigration & Trade Policy

Caitlin Hayden
Former National Security Council Spokesperson

Jake Sullivan
Former National Security Advisor to the Vice
President of the U.S.

Leif H. Hendrickson
Brigadier General
U.S. Marine Corps (Ret.)

Timothy S. Sullivan
Rear Admiral
U.S. Coast Guard (Ret.)

Heather Higginbottom
Former Deputy Secretary of State for
Management and Resources

Antonio M. Taguba
Major General
U.S. Army (Ret.)

John D. Hutson
Rear Admiral, JACG
U.S. Navy (Ret.)

Jim Townsend
Former Deputy Assistant Secretary of Defense for
European and NATO Policy

David. R. Irvine
Brigadier General
U.S. Army (Ret.)

Michael G. Vickers
Former Under Secretary of Defense for
Intelligence

John H. Johns
Brigadier General
U.S. Army (Ret.)

David Wade
Former Chief of Staff,
Department of State

Colin Kahl
Former National Security Advisor to the Vice
President of the United States

William Wechsler
Former Deputy Assistant Secretary of Defense for
Counterterrorism and Special Operations

Gil Kerlikowske
Former Commissioner, United States Customs and
Border Protection

Moira Whelan
Former Deputy Assistant Secretary of State for
Public Affairs

John Kerry
Former Secretary of State

Catherine Wiesner
Former Deputy Assistant Secretary of State,
Bureau of Population, Refugees, and Migration

Jeremy Konyndyk
Former Director, Office of U.S. Foreign Disaster
Assistance, USAID

Douglas Wilson
Former Assistant Secretary of Defense for Public
Affairs

Charles Kupchan
Former Special Assistant to the President for
National Security Affairs

Tamara Cofman Wittes
Former Deputy Assistant Secretary of State for
Near Eastern Affairs

Mark P. Lagon
Former U.S. Ambassador-at-Large to Combat
Trafficking in Persons

Jon Brook Wolfsthal
Former Special Assistant to the President for
National Security Affairs

Jonathan Lee
Former Deputy Chief of Staff,
Department of Homeland Security

Lee Wolosky
Former Special Envoy for Guantanamo Closure

Michael R. Lehnert
Major General
U.S. Marine Corps (Ret.)

Tom Wyler
Former Counselor to the Secretary of Commerce
and Senior Advisor for International Economics

Paul N. Lekas
Former Deputy General Counsel for Legal Counsel,
Department of Defense

Stephen N. Xenakis
Brigadier General
U.S. Army (Ret.)

CC:

The Honorable Rex W. Tillerson, Secretary of State
The Honorable James N. Mattis, Secretary of Defense
The Honorable Jefferson B. Sessions, Attorney General of the United States
The Honorable John F. Kelly, Secretary of Homeland Security
The Honorable Michael P. Dempsey, Acting Director of National Intelligence

EXHIBIT 2

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.

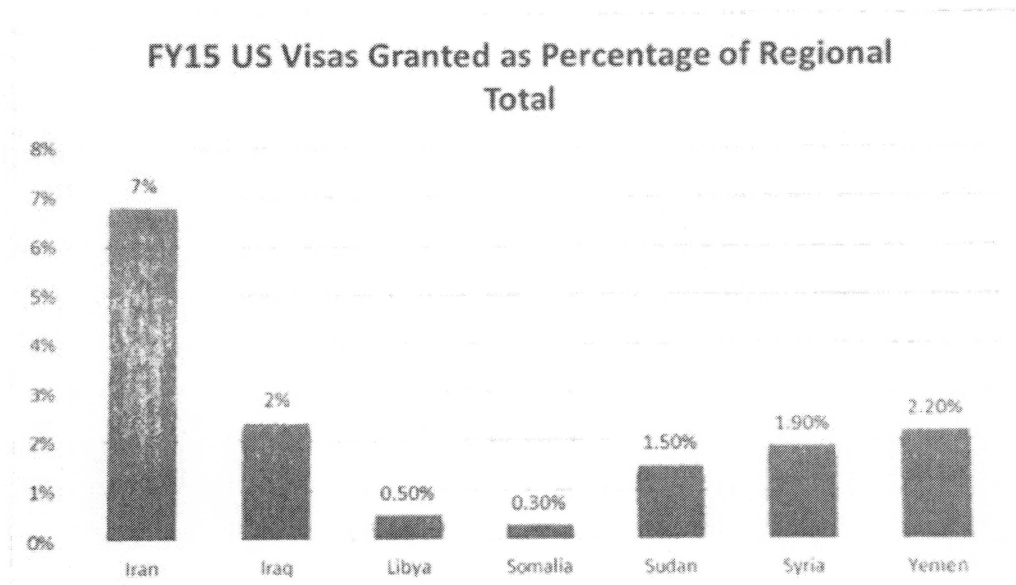
- The top seven origin countries of the foreign-born individuals are: Pakistan (5), Somalia (3), and Bangladesh, Cuba, Ethiopia, Iraq, and Uzbekistan (2).

* 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.

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 3

Internal Trump administration data undercuts travel ban

By **Devlin Barrett**, **Abigail Hauslohner** and **David Nakamura**

March 16 at 12:01 PM

At least two sets of internal data that have been available to the Trump administration — but that have never been publicized — appear to undercut the government’s argument for a travel ban that it had hoped would take effect Thursday, according to several officials familiar with the documents.

One internal report, titled “Most Foreign-Born US-Based Violent Extremists Radicalized After Entering Homeland,” analyzed roughly 90 cases involving suspected or confirmed foreign-born terrorists, finding that most of them probably embraced extremist ideology after they arrived in the United States, not before.

Another report, drawn on classified FBI data, has been used by the Trump administration to bolster its claims that refugees pose a risk of terrorism. But the figures that are the basis for that report undermine a key premise of the travel ban, with most of the suspects cited in the report coming from countries unaffected by President Trump’s executive order, according to officials familiar with the report.

Taken together, the two reports show there is a significant amount of internal government data that suggests the travel ban Trump wants to implement is not likely to be effective in curbing the threat of terrorism in the United States, these people said. The officials spoke on the condition of anonymity because some of the data is classified and none of it has been approved for public dissemination.

White House spokesman Michael Short said the justification for the travel ban is “not in any way diminished by these selective and potentially criminal leaks being carried out by disgruntled government officials. The president is 100 percent committed to keeping this country safe from terrorism, and that’s exactly what this order will help achieve.”

A Department of Homeland Security spokesman defended the travel-ban executive order, saying it is a prudent response to security concerns about six countries “where state-sponsored terror and unstable governments make thorough investigation difficult.” The Justice Department, which has defended the travel ban in court, declined to comment.

The existence of the DHS document was previously reported by MSNBC.

The Trump administration had hoped to implement a new executive order this week that would have temporarily halted the resettlement of all refugees in the United States for the next four months and banned the issuance of new visas to citizens of six majority-Muslim countries. Administration officials have justified the ban as a necessary national security measure to exclude people from countries that pose “heightened concerns about terrorism.”

The new travel ban did not take effect Thursday morning as planned. A federal judge in Hawaii on Wednesday issued a freeze of the executive order hours before it would have temporarily suspended the admission of new refugees and barred the issuance of new visas to citizens of Iran, Libya, Somalia, Sudan, Syria and Yemen.

In the 43-page ruling, U.S. District Judge Derrick K. Watson said that past comments Trump and his advisers have made indicated the executive order “was issued with a purpose to disfavor a particular religion” and therefore probably violated the Constitution.

In nearly half of the radicalization cases studied for the government’s internal report, officials found that the individuals came to the United States when they were younger than 16 and in many instances the terrorism charges filed against them came more than 10 years after their arrival, according to officials who spoke on the condition of anonymity to discuss sensitive material.

The report was finalized this month after work on it began in the summer, when the issue of radicalization was a hot topic in the presidential campaign and Trump had spoken publicly about his desire for a “Muslim ban” and “extreme vetting.” The analysis focused on 88 cases between March 2011 and December 2016, citing examples including a Bangladeshi terrorism suspect who came to the United States as a baby and another suspect who was born in Cuba and did not show signs of embracing an extremist ideology until 26 years after moving to the United States.

The report on radicalization argues that “tailored” domestic de-radicalization programs would be the most effective way to fight the trend, according to people familiar with its contents. So far, the Trump administration has favored suspending refugee programs or visitors from specific countries.

A federal appeals court suspended an earlier version of the ban order that targeted a broader range of people from seven countries — including Iraq — after ruling that it violated the due-process rights of affected travelers.

Civil rights advocates and state governments, arguing that the order still constitutes a “Muslim ban” and would be harmful to U.S. interests and national security, filed legal challenges to the new ban, leading to the court ruling Wednesday. The new ban removes Iraq from the list of countries, allows for the entry of current holders of valid visas, and institutes waivers for new visa applicants from the banned countries.

To try to build support for the new travel ban, the Trump administration has said — and the Justice Department has argued in court — that there are more than 300 terrorism-related investigations into people who came to the United States as refugees.

The administration has declined to provide the nationalities of the people in question or any other details about that claim, which officials cited in support of the temporary provision to ban all refugee arrivals.

But officials familiar with the list say that at least 70 percent of the people under review are from countries not targeted by the new travel ban. More than half are or were at one time Iraqi nationals. Officials familiar with the data said roughly two-thirds of the people on the administration's tally also arrived seven or more years ago, before the government significantly tightened its vetting procedures for Iraqis entering the United States.

Roughly 20 percent of the individuals came to the United States from Somalia, which is covered by the ban. Others hail from a range of countries, including several that the Trump administration has never indicated as a national security threat. For example, there are more nationals from Ethiopia, Uzbekistan and Bosnia that are subjects in counterterrorism investigation than there are from some of the banned countries, such as Yemen, Iran and Libya.

The list refers to people who are under some form of investigation, but officials familiar with the data cautioned that the classification of those people varies widely from individuals who have aroused serious suspicion to those who might have a relative who is a convicted or suspected terrorist. None of the individuals on the list have been charged with a terrorism-related crime, and the number of people under investigation by the FBI at any given time fluctuates regularly as investigations are started and concluded.

Inside the Department of Homeland Security, some view the data and analysis as a refutation of the rationale behind the travel ban — the original version and the new reworked one. Another official who has read the documents said they do not present a convincing-enough argument to dismiss the administration's concerns about refugee terrorism risks.

The DHS prepared the report on radicalization, with input from FBI personnel at the National Counterterrorism Center, people familiar with the report said. The FBI compiled the data on current or former refugees under investigation.

Seamus Hughes, deputy director of the Program on Extremism at George Washington University, said the reports' findings generally match his research.

"There are still going to be individuals who want to come here and do us harm, but the data is the data, and you should adjust your policy based on the data," Hughes said. "Even the individuals who were refugees generally came here at a very young age and were arrested 20 years later. That's not a sleeper cell — that's a coma cell."

Hughes said most of the terrorism in the United States brews from within, fueled partly by online activity and partly through face-to-face contacts with like-minded people that lead to radicalization.

"You're mostly talking about U.S. citizens and permanent residents who are largely brought into it by connections they made online — which doesn't have a border," he said.

Hughes said it is not surprising that of the more than 300 refugees or former refugees who came under law enforcement scrutiny, Iraqis make up a large percentage, given the previously known cases.

The data “points to the central question about the travel ban, which is, are you addressing the issues you need to address when it comes to the threat?” he said. “In the U.S., you’re talking about much more of a homegrown terrorism problem, and because ISIS attracts such a wide swath of individuals, it’s very hard to do a nationality targeted approach.”

Correction: *An earlier version of this article incorrectly referred to the National Counterterrorism Center as being part of the FBI; personnel with the FBI work at the center. The article has been updated.*

Devlin Barrett writes about national security, homeland security and counterterrorism for The Post. He joined the newspaper in 2017 after 15 years with The Wall Street Journal and the AP. His first newspaper job was as a copy boy at the New York Post, and has covered law enforcement – from local cops to global manhunts - for more than 20 years. 🐦 Follow @https://twitter.com/DevlinBarrett

Abigail Hauslohner is a national reporter who covers Islam, Arab affairs and America. Before coming to Washington in 2015, she spent seven years covering war, politics and religion in the Middle East, and served as the Post’s Cairo bureau chief. She has also covered District politics and government. 🐦 Follow @ahauslohner

David Nakamura covers the White House. He has previously covered sports, education and city government and reported from Afghanistan, Pakistan and Japan. 🐦 Follow @davidnakamura

Share news tips with us confidentially

Do you have information the public should know? Here are some ways you can securely send information and documents to Post journalists.

Learn more »

EXHIBIT 4



President Donald Trump speaks at a rally on March 15, 2017 in Nashville, Tennessee. Andrea Morales/Getty Images

WHITE HOUSE

Read President Trump's Response to the Travel Ban Ruling: It 'Makes Us Look Weak'

Katie Reilly

Mar 16, 2017



President Donald Trump on Wednesday spoke at a rally in Nashville, Tenn., where he **responded** to a new ruling by a federal judge in Hawaii placing a **nationwide restraining order** on his **revised travel ban**.

Trump criticized the ruling as "an unprecedented judicial overreach."

"You don't think this was done by a judge for political reasons, do you? No," he said to applause. "This ruling makes us look weak, which, by the way, we no longer are. Believe me."

Read Trump's full remarks from the rally, where he also spoke about the **Republican health care plan**:

TRUMP: Thank you very much, everybody. Thank you.

61 percent -- 61 percent since inauguration day. Sixty-one percent; think about it.

(APPLAUSE)

And now people are saying we're not going to go there anymore 'cause we can't get in, so it's going to get better and better. We got to stop those drugs, though. We got to stop those drugs.

During the campaign, as I traveled all across this country, I met with many American families whose loved ones were viciously and violently killed by illegal immigrants because our government refused to enforce our already existing laws.

These American victims were ignored by the media. They were ignored by Washington. But they were not ignored by me and they're not ignored by you and they never will be ignored, certainly any longer. Not going to happen.

(APPLAUSE)

As we speak, we are finding the drug dealers, the robbers, thieves, gang members, killers, and criminals preying on our citizens. One by one -- you're reading about it, right?

(APPLAUSE)

They're being thrown out of our country, they're being thrown into prisons, and we will not let them back in.

(APPLAUSE)

We're also working night and day to keep our nation safe from terrorism.

(APPLAUSE)

We have seen the devastation from 9/11 to Boston to San Bernardino; hundreds upon hundreds of people from outside our country have been convicted of terrorism-related offenses. In the United States courts, right now we have investigations going on all over. Hundreds of refugees are under federal investigation for terrorism and related reasons.

We have entire regions of the world destabilized by terrorism and ISIS. For this reason, I issued an executive order to temporarily suspend immigration from places where it cannot safely occur.

(APPLAUSE)

AUDIENCE: USA! USA! USA!

TRUMP: But let me give you the bad news. We don't like bad news, right? I don't want to hear an alternative to good. But let me give you the bad, the sad news.

Moments ago, I learned that a district judge in Hawaii...

(BOOING)

... part of the much overturned 9th Circuit Court...

(BOOING)

... and I have to be nice. Otherwise I'll get criticized for...

(APPLAUSE)

... for speaking poorly about our courts. I'll be -- I'll be criticized by these people, among the most dishonest people in the world.

(APPLAUSE)

I will be criticized...

(BOOING)

(APPLAUSE)

I'll be criticized by them for speaking harshly about our courts. I would never want to do that.

A judge has just blocked our executive order on travel and refugees coming into our country from certain countries.

(BOOING)

The order he blocked was a watered down version of the first order that was also blocked by another judge and should have never been blocked to start with.

(APPLAUSE)

This new order was tailored to the dictates of the 9th Circuit, in my opinion, flawed ruling.

(APPLAUSE)

This is the opinion of many, an unprecedented judicial overreach.

(APPLAUSE)

The law and the Constitution give the President the power to suspend immigration when he deems -- or she -- or she -- fortunately it will not be Hillary-she.

(APPLAUSE)

When he or she deems it to be in the national interest of our country.

AUDIENCE: Lock her up! Lock her up! Lock her up!

TRUMP: So we have a lot of lawyers here. We also have a lot of smart people here. Let me read to you, directly from the federal statute, 212(f) of the immigration, and you know what I'm talking about, right? Can I read this to you? Listen to this.

Now, we're all smart people, we're all good students, were all everything. Some are bad students, but even if you're a bad student, this is a real easy one, let me tell you. Ready?

So here's the statute, when they don't even want to quote when they overrule it. And it was put here for the security of our country. And this goes beyond me, because there'll be other presidents and we need this. And sometimes we need it very badly for security -- security of our country.

It says -- now listen to easy -- how easy this is. Whenever the president finds that the entry of any aliens or any class of aliens would be detrimental to the interests of the United States, he may, by proclamation and for such period as he -- see, it wasn't politically correct, 'cause they should have said he or she. You know, today they'd say that.

(LAUGHTER)

That's (inaudible)

(LAUGHTER)

Actually, that's the only mistake they made -- as he shall deem necessary, suspend the entry of all aliens or any class of aliens, as immigrants or non-immigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

In other words, if he thinks there's danger out there, he or she, whoever is president can say, I'm sorry, folks, not now, please. We got enough problems.

(APPLAUSE)

We're talking about the safety of our nation, the safety and security of our people.

(APPLAUSE)

Now, I know you people aren't skeptical people, 'cause nobody would be that way in Tennessee. Nope, nobody. Not Tennessee.

You don't think this was done by a judge for political reasons, do you? No.

(APPLAUSE)

This ruling makes us look weak, which, by the way, we no longer are. Believe me.

(APPLAUSE)

Just look at our borders.

(APPLAUSE)

We're going to fight this terrible ruling. We're going to take our case as far as it needs to go, including all the way up to the Supreme Court.

(APPLAUSE)

We're going to win. We're going to keep our citizens safe. And regardless, we're going to keep our citizens safe. Believe me.

(APPLAUSE)

Even liberal democratic lawyer, Alan Dershowitz -- good lawyer; just said that we would win this case before the Supreme Court of the United States.

(APPLAUSE)

Remember this. I wasn't thrilled, but the lawyers all said, oh, let's tailor it. This is a watered down version of the first one. This is a watered down version.

And let me tell you something. I think we ought to go back to the first one and go all the way, which is what I wanted to do in the first place.

(APPLAUSE)

The danger is clear. The law is clear. The need for my executive order is clear. I was elected to change our broken and dangerous system and thinking in government that has weakened and endangered our country and left our people defenseless.

(APPLAUSE)

And I will not stop fighting for the safety of you and your families. Believe me. Not today, not ever. We're going to win it. We're going to win it.

(APPLAUSE)

We're going to apply common sense. We're going to apply intelligence. And we're never quitting and we're never going away and we're never, ever giving up.

The best way to keep foreign terrorists or, as some people would say in certain instances, radical Islamic terrorists from attacking our country is to stop them from entering our country in the first place.

(APPLAUSE)

We'll take it, but these are the problems we have. People are screaming break up the 9th Circuit and I'll tell you what. That 9th Circuit -- you have to see. Take a look at how many times they have been overturned with their terrible decisions. Take a look. And this is what we have to live with.

Finally, I want to get to taxes. I want to cut the hell out of taxes, but...

(APPLAUSE)

... but...

(APPLAUSE)

... before I can do that -- I would have loved to have put it first. I'll be honest. There is one more very important thing that we have to do and we are going to repeal and replace horrible, disastrous Obamacare.

(APPLAUSE)

If we leave Obamacare in place, millions and millions of people will be forced off their plans and your senators just told me that in your state you're down to practically no insurers. You're going to have nobody. You're going to have nobody. And this is true all over. The insurers are fleeing. The insurers are fleeing. It's a catastrophic situation.

And there's nothing to compare anything to because Obamacare won't be around for a year or two. It's -- it's gone. So it's not like, oh gee, they this -- Obamacare is gone.

(APPLAUSE)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Effective 12/01/2016

No. 17-1351 Caption: Int'l Refugee Assistance Project, et al. v. Trump, et al.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT
Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

Type-Volume Limit for Briefs: Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 13,000 words or 1,300 lines. Appellee's Opening/Response Brief may not exceed 15,300 words or 1,500 lines. A Reply or Amicus Brief may not exceed 6,500 words or 650 lines. Amicus Brief in support of an Opening/Response Brief may not exceed 7,650 words. Amicus Brief filed during consideration of petition for rehearing may not exceed 2,600 words. Counsel may rely on the word or line count of the word processing program used to prepare the document. The word-processing program must be set to include headings, footnotes, and quotes in the count. Line count is used only with monospaced type. See Fed. R. App. P. 28.1(e), 29(a)(5), 32(a)(7)(B) & 32(f).

Type-Volume Limit for Other Documents if Produced Using a Computer: Petition for permission to appeal and a motion or response thereto may not exceed 5,200 words. Reply to a motion may not exceed 2,600 words. Petition for writ of mandamus or prohibition or other extraordinary writ may not exceed 7,800 words. Petition for rehearing or rehearing en banc may not exceed 3,900 words. Fed. R. App. P. 5(c)(1), 21(d), 27(d)(2), 35(b)(2) & 40(b)(1).

Typeface and Type Style Requirements: A proportionally spaced typeface (such as Times New Roman) must include serifs and must be 14-point or larger. A monospaced typeface (such as Courier New) must be 12-point or larger (at least 10½ characters per inch). Fed. R. App. P. 32(a)(5), 32(a)(6).

This brief or other document complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) (cover page, disclosure statement, table of contents, table of citations, statement regarding oral argument, signature block, certificates of counsel, addendum, attachments):

- ☒ this brief or other document contains 2,563 [state number of] words
- ☐ this brief uses monospaced type and contains _____ [state number of] lines

This brief or other document complies with the typeface and type style requirements because:

- ☒ this brief or other document has been prepared in a proportionally spaced typeface using Microsoft Word _____ [identify word processing program] in Font size 14 Times New Roman _____ [identify font size and type style]; **or**
- ☐ this brief or other document has been prepared in a monospaced typeface using _____ [identify word processing program] in _____ [identify font size and type style].

(s) Richard D. Bernstein

Party Name Amicus Curiae T.A.

Dated: 3/31/2017

CERTIFICATE OF SERVICE

I certify that on this 31st day of March 2017, the foregoing brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

Dated: March 31, 2017

/s/ Richard D. Bernstein

Richard D. Bernstein
WILLKIE FARR & GALLAGHER LLP

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an [Application for Admission](#) before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at [Register for eFiling](#).

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 17-1351 as

☐ Retained ☐ Court-appointed(CJA) ☐ Court-assigned(non-CJA) ☐ Federal Defender ☒ Pro Bono ☐ Government

COUNSEL FOR: T.A.

_____ as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☒ amicus curiae ☐ intervenor(s) ☐ movant(s)

/s/ Richard D. Bernstein
(signature)

Richard D. Bernstein
Name (printed or typed)

202 303 1108
Voice Phone

Willkie Farr & Gallagher LLP
Firm Name (if applicable)

202 303 2108
Fax Number

1875 K Street, N.W. Washington, DC 2000
Address

rbernstein@willkie.com
E-mail address (print or type)

CERTIFICATE OF SERVICE

I certify that on March 31, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Richard D. Bernstein
Signature

3/31/2017
Date