The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

John Doe, Jack Doe, Jason Doe, Joseph Doe and James Doe, individually, and on behalf of all others similarly situated; the Episcopal Diocese of Olympia, and the Council on American Islamic Relations-Washington,

Plaintiffs,

v.

Donald Trump, President of The United States; U.S. Department of State; Rex Tillerson, Secretary of State; U.S. Department of Homeland Security; John Kelly, Secretary of Homeland Security; U.S. Customs and Border Protection; Kevin McAleenan, Acting Commissioner of U.S. Customs and Border Protection; and Michele James, Field Director of the Seattle Field Office of U.S. Customs and Border Protection

Defendants.

No. 2:17-cv-00178-JLR

**SECOND AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**



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## I. INTRODUCTION

1. Just as "the world is not made brand new every morning," *McCreary County v. American Civil Liberties Union of Kentucky*, 545 U.S. 844, 866 (2005), "a person is not made brand new simply by taking the oath of office." *Aziz v. Trump*, No. 17-116, 2017 WL 580855, at *8 (E.D. Va. Feb. 13, 2017). Impermissible animus cannot be cleansed with a few "mostly minor technical differences":[1] a Muslim ban is a Muslim ban.

2. One week after taking the oath of office as President of the United States, Defendant Trump carried out a promise he made repeatedly and explicitly on the campaign trail, launching "a total and complete shutdown of Muslims entering the United States" with his signature on Executive Order 13769 "Protecting the Nation from Foreign Terrorist Entry into the United States" (the "Original Executive Order" or "Original Order"), 82 Fed. Reg. 8977, on January 27, 2017. The vice chairman of Defendant Trump's transition team confirmed the next day that the Original Executive Order was, in fact, Defendant Trump's attempt to institute his "Muslim ban."[2]

3. With the stroke of a pen, he threw into chaotic uncertainty the lives of tens of thousands of individuals who had been granted valid student and work visas and disrupted the passage to safety for refugees and their families, including women and children who had been victimized by actual terrorists, all of whom had already been subjected to an exhaustive and thorough screening by the United States government

4. May 7, 2017, marked the 100th day since the signing of the Original Order.[3]

5. Multiple courts—including this Court and the Ninth Circuit Court of Appeals—recognized the ban for the affront to our Constitution it was and promptly stayed it. While continuing to insist "nothing was wrong" with the Original Order, Defendants openly advertised

[1] *See infra* note 116.

[2] *See infra* note 38.

[3] April 27, 2017, marked the 90th day which was the initial time frame for the travel ban.



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that the Revised Order would have "mostly minor technical differences" from the Original Order and "fundamentally" would be "the same basic policy outcome for the country."[4] Defendants then spent more than a month publicly struggling to figure out how to do exactly what they repeatedly said they wanted to do: ban Muslims.

6. In the meantime, Defendant Trump continued to stoke fear and sow misinformation, claiming "our country [is] in such peril. . . . People pouring in. Bad!"[5], "THE SECURITY OF OUR NATION IS AT STAKE!",[6] and "'77% of refugees allowed into U.S. since travel reprieve hail from seven suspect countries.' (WT) [sic] SO DANGEROUS!"[7]

7. Defendant Trump was supposed to issue the new order on March 1, 2017, the day after he addressed Congress.[8] But despite his public statements regarding the urgent national security need for the ban, Defendant Trump delayed signing a new order for five days more to maximize the favorable press coverage of his first address to Congress and to allow the executive order "to have its own 'moment.'"[9]

8. On March 6, 2017, Defendant Trump signed Executive Order 13780, also titled "Protecting the Nation from Foreign Terrorist Entry into the United Sates" ("Revised Executive Order" or "Revised Order"), 82 Fed. Reg. 13209. Despite the fact that Defendant Trump had originally claimed that "[i]f the ban were announced with a one week notice, the 'bad' would

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[4] *See infra* note 116.

[5] *See infra* note 109.

[6] *See infra* note 111.

[7] *See infra* note 112.

[8] *See infra* note 44.

[9] Laura Jarrett, Ariane de Vogue & Jeremy Diamond, *Trump Delays New Travel Ban After Well-Reviewed Speech*, CNN (Mar. 1, 2017), http://www.cnn.com/2017/02/28/politics/trump-travel-ban-visa-holders (last accessed Mar. 13, 2017); Marina Feng, *Pence Says Trump's Revised Immigration and Travel Ban Coming 'In a Few Days,'* Huffington Post (Mar. 1, 2017), http://www.huffingtonpost.com/entry/trump-revised-immigration-ban_us_58b6cc57e4b0a8a9b787b1f0 (last accessed Mar. 13, 2017).



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rush into our country during that week,"[10] the Revised Order was set to go into effect ten days after its signing, on March 16, 2017.

9. As Defendant Trump has admitted, the Revised Order is just a "watered-down version" of his first travel ban.[11]

10. The Revised Order is every bit as much of a Muslim ban as the Original Order and every bit as unconstitutional. It reflects Defendant Trump's explicit vow to "follow[ ] through on what I pledged to do"[12] and "keep my campaign promises."[13] True to that promise, Defendants made a few cosmetic changes to address some of the most obvious facial legal deficiencies with the Original Order.

11. But the Constitution is not so easily fooled. Cosmetic changes made openly and explicitly to evade judicial scrutiny fail to mask the discriminatory animus that continues to pervade the Order. Even if not as plain on its face as the Original Order, the Revised Order remains in contravention of "[t]he clearest command of the Establishment Clause . . . that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982).

12. Just like the Original Order, the Revised Order bans the entry into this country of nationals from the Muslim-majority countries of Iran, Libya, Somalia, Sudan, Syria, and Yemen (the "Designated Countries") and completely halts refugee entries for 120 days. And although Iraqis are no longer banned under the Revised Order, it targets no new countries.

13. Far from eliminating the need for judicial scrutiny, the combined Orders underscore the need for it. The secret revocation of tens of thousands of valid visas pursuant to the Original Order, the subsequent post hoc attempt to exempt green card holders—but not other

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[10] *See infra* note 101.

[11] *See infra* note 49.

[12] *See infra* note 41.

[13] *Id.*



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valid visa holders—from the Original Order, the implication by Defendant Trump that he would not abide by court orders staying the Original Order, and the eventual issuance of a Revised Order with an arcane waiver scheme dependent solely upon the discretion of individual consular officers has created an unstable, unpredictable, and uncertain situation for all Plaintiffs.

14. Plaintiffs are Washington residents from the Designated Countries with lawful non-immigrant status but without re-entry visas (e.g., expired multiple-entry visas or used single-entry visas) who are trapped inside the United States—unable to visit their families in their home countries or carry out education-related travel for fear they will be unable to return to their lives here ("the Non-Immigrant Visa Class"). Unlike similarly situated people from the non-Designated Countries, once members of the Non-Immigrant Visa class leave the country, they know they will be singled out: the default for them is denial of a new visa unless they are fortunate enough to procure a waiver from the general ban.

15. Plaintiffs are also refugees and asylees who reside in Washington and have filed petitions to reunify with their family members who have completed and cleared their final security screenings ("the Refugee Class"). They have fled war-torn countries, survived brutal conditions in refugee camps, and finally made it into the United States—some, after years of uncertainty and fear. They anxiously await reunification with dearly loved family members who were cleared for travel prior to the signing of the Original Order and now reasonably fear those family members will never make it into the United States. Plaintiffs seek to directly represent themselves and others similarly situated.

16. Also harmed by the Revised Order is Plaintiff the Episcopal Diocese of Olympia (the "Episcopal Diocese" or "Diocese"), a religious entity organized in the State of Washington to do charitable works, including to support the resettlement of refugees in Washington. The Diocese has had its refugee resettlement activities completely upended as a result of the Original and Revised Executive Orders which barred the arrival of persons admitted through the United States Refugee Admissions Program ("USRAP"). As of the filing of the Second Amended



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Complaint, nearly a dozen families from the Designated Countries and nearly the same number of families from other countries whom the Episcopal Diocese was supporting in resettlement were granted refugee status and approved for travel to the United States but had their trips canceled as a result of the Orders, wasting precious resources and frustrating the activities of the Diocese.

17. The Council on American-Islamic Relations-Washington ("CAIR-WA") is harmed by the Revised Order. CAIR-WA is a non-profit organization based in Seattle that works to promote an understanding of Islam through dialogue, education, protection of civil liberties, and coalition-building. As a result of the Orders, CAIR-WA has received numerous inquiries from its constituent about American-Muslim travelers who have become the target of unconstitutional ideological questioning by Transportation Security Administration and Customs and Border Protection agents about their personal beliefs. CAIR-WA has had to devote substantial, unplanned-for resources to respond.

18. The Episcopal Diocese of Olympia, CAIR-WA, and the individual Plaintiffs—on behalf of themselves and two classes of similarly situated people in Washington State—bring this suit to challenge the provisions and implementation of the Revised Executive Order that violate the First Amendment, the Fifth Amendment, the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb *et seq*., the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq*., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq*.

19. The individual Plaintiffs, the classes they seek to represent, the Episcopal Diocese, and CAIR-WA (collectively, "Plaintiffs"), currently suffer serious harm and will continue to suffer such harm until and unless this Court preliminarily and permanently enjoins the Revised Executive Order. Plaintiffs have no adequate remedy at law.



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## II. JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 over Plaintiffs' claims under the U.S. Constitution and federal statutes, as well as under the Administrative Procedure Act, 5 U.S.C. § 706.

21. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

22. Venue is proper under 28 U.S.C. § 1391(b)(2) and (e)(1). A substantial part of the events or omissions giving rise to the claims occurred in this district, and all individual Plaintiffs reside in this District. Further, Defendants are officers or employees of the United States acting in their official capacities, and agencies of the United States.

23. Plaintiff the Episcopal Diocese, also known as the Episcopal Church in Western Washington, is a diocese of the Episcopal Church in Washington State west of the Cascade Range. The Episcopal Diocese is headquartered in Seattle and is a registered 501(c)(3) corporation.

24. The Council on American-Islamic Relations-Washington (CAIR-WA) is a 501(c)(3) non-profit organization that operates from its offices in downtown Seattle.

## III. PARTIES

### A. Plaintiffs

#### 1. Plaintiff John Doe

25. Plaintiff John Doe is an Iranian national who resides in Seattle, Washington. John Doe is a fourth year Ph.D. candidate in Aeronautic and Astronautic Engineering at the University of Washington. John Doe is simultaneously studying for a master's degree in applied mathematics at the University of Washington. John Doe has a provisional patent, "patent pending," in the United States pertaining to battery function. He is also a graduate fellow with the Clean Energy Institute in Seattle.



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26. John Doe holds a multiple entry F-1 student visa that will expire in August 2017. This is his second such visa that allows him to pursue full-time educational study in the United States. John Doe received both of his F-1 visas after an intensive vetting and screening process abroad that included an in-person interview and proof of his admission status at the University of Washington as a full-time doctoral student.

27. John Doe first arrived in the United States in 2012. Before that he studied for a master's degree in civil engineering in the Netherlands, and then worked for a year in the Netherlands for an international offshore oil and gas company. John Doe has also served as a visiting researcher at ETH Zurich in Switzerland studying nonlinear solitary waves, and at the University of South Carolina studying nonlinear wave propagation. John Doe received his undergraduate bachelors of science degree in civil engineering in Iran.

28. John Doe's immediate and extended family, including maternal grandparents, all live in Iran.

29. John Doe is engaged in collaborative research with the Chinese Academy of Science. He co-authors publications with Chinese researchers and is actively advising and directing joint research with students in the United States and China on these projects. As part of this collaboration, John Doe conducted research in China for three months in 2016. John Doe was planning to return to China for further research and collaboration in April of 2017 but canceled that trip because of the travel ban. John Doe hopes to be able to go to China this summer but remains fearful of what position Defendants may take next that might potentially leave him stranded outside the country if he makes the trip.

30. As part of his doctorate studies, it is anticipated and expected that John Doe will participate in international conferences, because such endeavors are essential to his training and his ability to be fully active in the scientific and research community. There are numerous upcoming academic conferences that John Doe was planning to attend such as the International Renewable Energy Storage Conference in Dusseldorf, Germany on March 14-16, 2017, the



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International Conference on Hybrid and Organic Photovoltaics in Lausanne, Switzerland in May 2017, and the Third International Conference on Perovskite Solar Cells and Optoelectronics in Oxford, England in September 2017. However, as the submission deadline for the conferences are often several months before the event, and given the multiple times Defendants changed their mind while implementing the Original Order, John Doe either decided not to submit proposals for several of the conferences to which he otherwise would have applied to make presentations or canceled his travel plans to attend as a result of Defendants' actions. In addition, given the uncertainty that remains with the Revised Order, he continues to fear that if he leaves the United States to attend an academic conference, he may be prevented from re-entering the United States. John Doe's inability to reenter the United States would prevent him from completing his doctorate.

31. John Doe's research and career have suffered and will continue to suffer as long as the Revised Executive Order is in place.

32. John Doe is pursuing his claims anonymously because he is afraid of retaliation from the United States government or others for asserting his rights.

**2. Plaintiff Jack Doe**

33. Plaintiff Jack Doe is an Iranian national who resides in Seattle.

34. Jack Doe was born and raised in a Muslim family.

35. Jack Doe is a post-doctorate researcher at the University of Washington in a joint appointment that includes Electrical Engineering. Until recently, he was working under his F-1 visa Optional Practical Training ("OPT") status, and subsequent extension for STEM students ("STEM OPT"), which together allowed him, after completing his degree, to work for 3 years in academia. OPT is temporary employment that is directly related to an F-1 student's major area of study, and the STEM OPT extension allows certain F-1 students who receive science, technology, engineering, and mathematics (STEM) degrees, and who meet other specified



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requirements, to apply for a 24-month extension of their post-completion OPT. Application for both OPT and STEM OPT requires endorsement by the student's "designated school official" at the student's U.S. academic institution.

36. Jack Doe's OPT status was due to expire on May 31, 2017, and with it, his student visa. Recently, since the issuance of the Revised Order, Jack Doe received his H1-B status.

37. Jack Doe has an undergraduate degree in Electrical Engineering from Sharif University in Tehran.

38. Jack Doe first came to the United States in 2006 with an F-1 visa to work on a Ph.D. at the University of Maryland. He obtained his first F-1 student visa from the United States embassy in Cypress.

39. In 2008, Jack Doe returned briefly to Iran to visit his family. Most of his family lives in Iran. He also traveled to Dubai to obtain another F-1 single entry student visa that allowed him to return to the United States to continue his educational training. It has been years since he has been able to see his mother and sister in Iran. Because of the Executive Orders, Jack Doe has lost hope that he will be able to see family any time in the near future.

40. Since completing his Ph.D. in 2014 until the recent receipt of his H1-B status, Jack Doe was operating under the OPT provision of his visa to do post-doc research at the University of Washington.

41. Although Jack Doe is in the United States and working legally, the timing of his status change during the 90-day ban set out in Section 2(c) of the Revised Order has been a complicating factor. Prior to the issuance of the Executive Orders, Jack Doe had been interviewing with employers. His future employment prospects are now in complete jeopardy because he is at a significant disadvantage compared to other foreign nationals who are not from one of the Designated Countries and who can therefore travel freely both for the duration of the 90-day ban and in the future.



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42. Since the issuance of the Executive Orders, Jack Doe has felt marginalized, stigmatized, and less than a full member of the community. Jack Doe feels subjected to increased suspicion, scrutiny, and social and political isolation on the basis of his religion (or perceived religion) and national origin. He had plans to take some business and leisure trips within the United States but has cancelled them because he fears for his safety and the hostility he might face in places which are less exposed to immigrants and Muslims. Jack Doe is aware of recent press reports of evidence targeted at Muslims and fears for his safety as a result. In particular, the wide spread press coverage of the shooting of two Indian men in a Kansas bar who were asked what type of visa they held before being yelled at to "get out of my country"[14] and shot on the mistaken belief that they were from Iran cause Jack Doe substantial concern for his own safety and well-being.[15]

43. Jack Doe is pursuing his claims anonymously because he is afraid of retaliation from the United States government or others for asserting his rights.

**3. Plaintiff Jason Doe**

44. Plaintiff Jason Doe is a resident of Seattle.

45. Jason Doe is Muslim.

46. Jason Doe is an Iranian national. He first came to the United States in 2013 with his wife, who was enrolled in a doctorate program at the University of Washington. His wife held an F-1 visa, and he held an F-2 visa.

47. In 2014, Jason Doe was accepted into a 5-year doctorate program at the Business School of the University of Washington to study Information Systems. He is halfway through his

[14] Alyssa Ayres, *The Kansas City Shooting Is Quickly Changing How Indians View the U.S.*, Forbes (Mar. 3, 2017), https://www.forbes.com/sites/alyssaayres/2017/03/03/the-kansas-city-shooting-is-quickly-changing-how-indians-view-the-u-s/#9476acc60909 (last accessed May 4, 2017).

[15] Eric Levenson, *911 Calls Reveal the Kansas Suspect Thought He'd Shot 'Two Iranians,'* CNN (Feb. 28, 2017), http://www.cnn.com/2017/02/27/us/kansas-olathe-bar-shooting-indian-court/ (last accessed May 4, 2017).



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program and anticipates graduating in 2019. Jason Doe would like to stay in academia, as a researcher, writer, and professor in his field.

48. After he was admitted to the University of Washington, Jason Doe left the United States to obtain a multiple entry F-1 visa. He obtained one in 2014 and returned to the University of Washington to work on his Ph.D. Jason Doe's visa expired in August 2016, but he is in the United States lawfully because his F-1 status is valid until 2019 pursuant to his Form I-20. His F-1 status may also be extended if it takes him longer to finish his degree.

49. Jason Doe's wife currently holds an F-2 visa and associated I-20. Her F-2 status will also expire in 2019.

50. The majority of his family and his wife's family are in Iran.

51. Given Jason Doe's time horizon on graduation and the fact that he is halfway through his program, he should be starting to attend conferences to present papers, expand his contacts, and develop his expertise. Most of the conferences that would be appropriate for him to attend are international conferences, which would require travel outside of the United States in the coming months.

52. However, as a result of the travel ban, Jason Doe cannot leave the country for fear he will not be permitted to return. He is particularly reluctant to leave without his wife for fear that they will be separated. His research and career will suffer as long as the Revised Executive Order is in place.

53. Since the issuance of the Executive Orders, Jason Doe has felt marginalized, stigmatized, and less than a full member of the community. Jason Doe has felt subjected to increased suspicion, scrutiny, and social and political isolation on the basis of his religion (or perceived religion) and national origin. He read reports of an Iranian man in Oregon who was not Muslim but who returned home from a trip to find his house vandalized, sprayed with hate-filled racist graffiti ("F*** YOU TERRORIST") and a note weighted down by bullets in the shape of a



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cross that said "if I see you here next month, I will shoot you and burn your house."[16] When someone asks him where he is from or what his religion is, he is no longer comfortable answering that he is from Iran or that he is a Muslim because he is worried about the consequences. Jason Doe no longer feels safe walking in the streets at night because he worries someone might shoot him because of how he looks and because they hate Muslims.[17]

54. Jason Doe is pursuing his claims anonymously because he is afraid of retaliation from the United States government or others for asserting his rights.

**4. Plaintiff Joseph Doe**

55. Plaintiff Joseph Doe is a Somali national who currently resides in Des Moines, Washington.

56. Joseph Doe is a practicing Muslim.

57. Joseph Doe is married with three children.

58. Prior to arriving in the United States, Joseph Doe had lived in refugee camps in Kenya since 1992—for nearly 22 years. Joseph Doe's family fled Somalia during that country's violent civil war to escape persecution and the risk of being killed because of their clan membership. While trying to reach safety, Joseph Doe's family spent weeks in the forest without food. Fighters from one of the warring factions found them in the forest and raped Joseph Doe's older sister. His mother tried to stop the rape of her daughter, but the men clubbed her in the head with the butt of their guns. His sister, who was pregnant, bled to death following the rape. Joseph Doe was approximately ten years old at the time and witnessed all of these events. He struggles with these memories to this day.

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[16] Lizzy Acker, *Portland-Area Man's Home Vandalized with Death Threats and Racist Graffiti*, The Oregonian (Mar. 31, 2017), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2017/03/portland-area_mans_home_vandal.html (last accessed May 5, 2017).

[17] *See supra* notes 14-15.



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59. Joseph Doe's family eventually reached Kenya and began living in a refugee camp. Joseph Doe had his initial interview with the United Nations High Commissioner for Refugees ("UNHCR") in 2000 with his mother, two brothers, and three surviving sisters.

60. In 2004, Joseph Doe left the camp one morning as he often did to try to earn some money for his family. But when he returned, he found out that the local Turkana people had raided the camp, and in the subsequent fighting and upheaval, his family was nowhere to be found. To this day, Joseph Doe does not know where his mother or siblings are or what happened to them. He still hopes to find them someday.

61. When he was finally called for an interview with DHS/USCIS in 2011, Joseph Doe had just gotten married. He went through the screening process with DHS/USCIS starting in 2011 and completed it in December 2013.

62. Joseph Doe finally arrived in the United States on January 28, 2014, as a refugee. He only had refugee status for himself as the refugee process was begun for him with his mother and siblings when he was a child.

63. Joseph Doe became a legal permanent resident in 2016. Joseph Doe is currently working, sending money to his family in Kenya, and preparing for their arrival.

64. When he came to the United States, Joseph Doe had to leave behind in Kenya his wife and children, the youngest of whom was just about six months old at the time. His children are now 3, 4, and 9 years old.

65. Joseph Doe filed a Refugee/Asylee Relative Petition, Form I-730, for his wife and three children in June 2015. His wife and children had their final interviews in November 2016, which they successfully passed; they have completed the security clearance; they completed their medical clearance on January 31, 2017; and they received their final required injections on March 1, 2017. They are only waiting to be scheduled for travel to the United States.

66. Joseph Doe was told that the only thing left before his family would travel to the United States was for their travel arrangements to be finalized. However, as of the date of this



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filing, Joseph Doe's family members have not received their tickets for travel, and they have not been permitted to come to the United States.

67. Joseph Doe has been unable to learn why his family's travel has not been arranged or why they have not been able to travel to the United States.

68. Because of the Revised Order, Joseph Doe now understands that his family's travel to the United States will be delayed for at least 120 days, and possibly indefinitely if the refugee cap is met before they are admitted. With this delay, it is likely that his family's medical clearance will expire and they will be required to repeat that part of the process.

69. Joseph Doe's youngest son often cries for him, asks his mother where his dad is, and asks to talk to his dad. When Joseph Doe speaks with his son, his son constantly asks "Where are you?" and "Why can't you come for us?" Joseph Doe has applied for an I-131 travel document to visit his wife and children in Kenya. However, he is afraid to leave the country even with a travel document because he fears he will not be allowed to return to the United States.

70. The Revised Order has interfered with and delayed the arrival to the United States of the only family Joseph Doe has left. Joseph Doe is injured by that interference and delay.

71. Joseph Doe is pursuing his claims anonymously because he is afraid of retaliation from the United States government or others for asserting his rights.

**5. Plaintiff James Doe**

72. James Doe is an Eritrean national who resides in Seattle, Washington.

73. James Doe fled Eritrea in 2009 after being imprisoned because of his political beliefs. In 2009, he was working at Sawa Military Training Camp ("Sawa") as part of his mandatory national service, which is required of every Eritrean for 18 months by law, but in practice is a system of indefinite conscription. The Eritrean government requires all Eritrean students to spend their last year of high school at Sawa, and James Doe was working as an instructor there, teaching accounting, which was his focus of study at university. While he was



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forced to work at Sawa, he was only able to go home to see his wife and children every three or four months. At that time, his oldest child was about a year old, and his wife was expecting their second child.

74. In or around March 2009, the Eritrean government called a meeting to ask people at Sawa what changes they would like to see implemented, and James Doe participated in this meeting and voiced his opinions. Two or three days later, government officers came to his room at Sawa and arrested him.

75. They took him to an underground prison and kept him there for approximately five months. The prisoners were not given enough food to eat, and they had no water for washing. Many prisoners were tortured with beatings and by being tied up for long periods of time, including one technique well known in Eritrean prisons called the "helicopter," in which the hands and feet of a prisoner are tied behind his back and he is made to lie on the ground, face down, or suspended in the air. Sometimes the guards would remove prisoners and not bring them back, and the other prisoners did not know what became of them. James Doe knew not to speak out to the prison guards and was able to avoid being tortured, and eventually, he escaped the prison.

76. He fled first to Sudan, then through Egypt, and made it to Israel. Once he had made it to Israel, he was finally able to contact his wife and let her know what had happened to him.

77. James Doe stayed in Israel for a significant time, but he could not get permanent status in Israel as a refugee. He was able to get a visa for travel to Sri Lanka as a refugee, but after he arrived there, the Sri Lankan government began detaining Eritrean refugees. He was detained and kept in prison for almost two years.

78. The United Nations, investigating the Sri Lankan detention centers, became aware of him and worked with him to help him obtain refugee status in the United States. In April 2015, nearly six years after he escaped prison in Eritrea, he made it to the United States.



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79. In July 2015, James Doe filed a Refugee/Asylee Relative Petition, Form I-730, for his wife and children. His family is currently living in Ethiopia, and his children, including the daughter whom he has never met, are now 8 and 9 years old.

80. James Doe became a lawful permanent resident in 2016. He currently works two jobs, one full-time and one part-time, and provides financial support for his wife and children.

81. In late September 2016, James Doe's I-730 petition for his wife and children was approved. At that time, James Doe learned that his family would come to the United States within the next 4-5 months. His family had been interviewed at the US Embassy in Addis Ababa and had passed their security clearance. They also went through the required medical examinations and immunizations.

82. James Doe was told that the only thing left before his family would travel to the United States was for their travel arrangements to be finalized. However, as of the date of this filing, James Doe's family has not received their tickets for travel, and they have not come to the United States.

83. James Doe has been unable to learn why his family's travel has not been arranged or why they have not been able to travel to the United States.

84. Because of the Revised Order, James Doe now understands that his family's travel to the United States will be delayed for at least 120 days. With this delay, it is likely that his family's medical clearance will expire and they will be required to repeat that part of the process.

85. The Revised Order has interfered with and delayed James Doe's family's travel to the United States. James Doe is injured by that interference and delay.

86. Since the issuance of the Executive Orders, James Doe has felt subjected to increased suspicion, scrutiny, and social and political questioning on the basis of his religion (or perceived religion) and national origin. Because of his features, coloring, and accent, James Doe is frequently asked by customers at his workplace where he is from and if he is Muslim. He has



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also had Muslim customers confide in him that they do not feel comfortable speaking in Arabic in public because they are afraid of being discriminated against and that, as a result, they consciously try to speak English in public to avoid being targeted as Muslim. The number and frequency of questions about his national origin and religion that James Doe has received have increased since the issuance of the Executive Orders. When he responds that he is Christian, some customers have confided in him that they "don't like Muslims," that they "think all Muslims are bad," or that they "think that Muslims are terrorists."

87. James Doe is pursuing his claims anonymously because he is afraid of retaliation from the United States government or others for asserting his rights.

**6. Plaintiff The Episcopal Diocese of Olympia**

88. The Episcopal Diocese of Olympia, also known as the Episcopal Church in Western Washington, is a diocese of The Episcopal Church located in western Washington. It is headquartered in Seattle's Capitol Hill neighborhood.

89. The Episcopal Diocese is a local affiliate of the Episcopal Migration Ministries, a voluntary agency that welcomes refugees through a Cooperative Agreement with the Department of State. The Episcopal Diocese has operated a refugee resettlement program since 1978 and has sponsored more than 15,000 refugees of all religions and nationalities to resettle in the Seattle area. The Episcopal Diocese's Refugee Resettlement Office ("RRO") is located in South Seattle and receives and assists refugees from all over the world, including from each of the 7 countries targeted by the Original Executive Order, without regard to race, religion, or country of origin. The RRO is one of eleven ministries offered and provided for by the Episcopal Diocese. The Episcopal Diocese's refugee resettlement program stems from the moral obligation of the Episcopal faith to welcome and assist strangers, especially those who are poor, sick, and most in need of help.



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90. The RRO provides a multitude of services to refugees, including coordinating the arrival of refugees to the United States, housing assistance, job training, providing for basic household needs, advocacy, language tutoring, business training and microenterprise loans, and a savings program to help refugees purchase homes, vehicles, education, or businesses. The RRO has 9.5 full time employees, with 4 full-time equivalent staff working directly to support new arrivals and their survival needs during their first 90 days in the United States. Approximately two dozen volunteers assist the RRO in providing these services.

91. Before a refugee arrives in the United States, the RRO is notified by the Department of State that a family has been approved for refugee status and that the RRO should "assure" the case. The RRO is required to make contact with friends or relatives of the arriving refugees living in the U.S. (known as the "U.S. ties") who were listed on the refugee's application. The RRO expends significant time making phone calls, sending mail, and making in-person visits to meet with the U.S. tie to evaluate his or her capacity to help the RRO during the resettlement process. The evaluation process includes a home visit to view and evaluate the living space. If there is no possibility that the arriving refugee can live with a U.S. tie, the RRO further interviews the U.S. tie to determine if the relative or friend can assist with transportation, job search, enrollment of kids in school, or any of the other daily tasks with which newly arriving refugees need assistance.

92. If the U.S. tie cannot perform these tasks, the RRO invests its own resources to perform this pre-arrival legwork for the incoming refugees. These tasks include, among other things, searching for and obtaining safe housing, furnishing the residence, and stocking it with food and household items prior to the arrival of the refugees. If the refugee family or U.S. tie rejects the apartment or house, RRO staff begin a process of evaluating alternative locations. The RRO undertakes housing inspections that consume significant RRO staff time to ensure that the neighborhood is safe, that there is no bare wiring visible in the living space, no peeling or flaking interior paint or plaster, no visible mold or unsanitary odors, that all windows and doors have



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working locks, that heat, ventilation, lighting, and running water are adequate, that kitchen appliances and bathroom fixtures are in good repair, and that there are easily accessible storage or disposal facilities for garbage.

93. The RRO's pre-arrival services can also involve cultivation of community groups or churches to help refugees during the first months of their adjustment to life in America. The RRO staff spend time visiting churches and community groups to describe the refugee resettlement process, ask for assistance with specific families that are still en route, and organize committees to help refugee newcomers with specific tasks like searching for employment.

94. When the Original Executive Order was issued on January 27, 2017, the RRO was expecting to welcome over 20 refugee families—including families from Syria, Iraq, and Somalia—into the community in the coming days, weeks, and months, and had been actively preparing for their arrival and resettlement in the greater Seattle area by carrying out on their behalves the activities described above. As a result of the RRO's efforts, these refugee families already had domestic arrangements supporting their arrival in the United States and were approved for travel. Yet, these families had their dreams dashed when they had to abruptly cancel their travel plans as a result of the Original Executive Order.

95. Since the Original Executive Order, the RRO's work has been completely disrupted. The chaos surrounding the implementation of the Original and Revised Executive Orders has also required the RRO to expend additional, unplanned-for resources. RRO staff are working around-the-clock to address the immediate needs of these families in crisis and to respond to questions and concerns from their families and loved ones already in the United States who had been planning for the arrival of these already-approved refugees. In addition, many of the RRO's resources devoted to these refugee families over the past months have now been wasted.

96. The Revised Executive Order only exacerbates the harm to the Diocese and the population it serves. A few of the refugees the Diocese was expecting have arrived between the



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time the Original Order was halted by court orders and the effective date of the Revised Order. However as of the filing of this Second Amended Complaint, over a dozen families from the Designated Countries and nearly the same number of families from other countries the Diocese was expecting have not arrived and certainly will not be able to complete their trips once the Revised Order goes into effect.

97. The Diocese serves refugees and displaced persons of all faiths, but many of its clients are Muslim.

98. The Diocese and its RRO believe that the Executive Orders convey an official message of disapproval and hostility by the Defendants toward the Muslim refugees and their families with whom the RRO works, sending the message that the government deems them to be outsiders who are not and should not become full members of the political community. The Diocese and its RRO believe that the Executive Orders thus serve to marginalize these refugees and their families, subjecting them to suspicion, scrutiny, and social and political isolation on the basis of their religion or national origin, and inflicting other stigmatic and dignitary injuries on them.

99. Both the Original and Revised Executive Orders have caused and continue to cause significant additional harm to the most vulnerable population that the RRO and Episcopal Diocese are focused on serving. These refugees are fleeing persecution in their country of origin, and are now facing persecution in the safe haven they had been promised in the United States. The dramatic reduction in the overall number of refugees allowed this year will not only rob families of hope and a future but may also cost some of them their lives. The mission and efficacy of the RRO, and through it the Episcopal Diocese, has been thwarted by the Original Executive Order. Because the Revised Executive Order is substantively the same, these injuries will continue once the new Order takes effect.



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**7. Plaintiff The Council on American-Islamic Relations-Washington**

100. The Council on American-Islamic Relations-Washington (CAIR-WA) is a grassroots civil rights and advocacy group. CAIR-WA is a 501(c)(3) non-profit organization that was incorporated in 2004 and operates from its offices in downtown Seattle.

101. The mission of CAIR-WA is to enhance the understanding of Islam in Washington state and throughout the United States by encouraging dialogue, protecting civil liberties, empowering American Muslims, and building coalitions that promote justice and mutual understanding. CAIR-WA also provides direct service to its Muslim constituents in the form of information, training, and access to a network of over 50 pro bono attorneys.

102. Since January 27, 2017, and the issuance of the first Executive Order, CAIR-WA has received several inquiries from American-Muslim travelers in Washington who have become the target of unconstitutional and systematic ideological questioning by Transportation Security Administration and Customs and Border Patrol agents about their religious values and political views. The number of such inquiries has increased dramatically since January 27, 2016, and CAIR-WA has devoted and continues to devote considerable unplanned-for resources to respond to these inquiries and to educate the community about its rights in the face of the Executive Orders.

103. Since January 27, 2017, CAIR-WA has also been flooded with inquiries from affected persons about the impact of the Executive Orders on their ability or the ability of their families to travel, cross borders, or with respect to visa or immigration status. CAIR-WA has received over 90 such requests for help from US citizens and others between January 27, 2017 and April 30, 2017. In all of 2016, CAIR-WA opened a total of about 250 cases—but in just the first four months of 2017, it has already received over 250 requests for assistance, and opened as many cases in the first third of the year as it did in all of 2016.



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104. In addition to its direct staff, CAIR-WA also works with a network of over 20 pro bono attorneys in Washington who provide direct services to its constituents on civil rights, immigration, and visa issues.

105. CAIR-WA has provided referrals and advice to many United States citizens originally from the Affected Countries who are trying to reunite with their immediate families. For example, a Somali national has contacted CAIR-WA regarding his petition to be reunited with his wife and two children who remain in Djibouti. On January 23, 2017, the US Embassy in Djibouti scheduled screening interviews for his family. The Embassy canceled these interviews on January 29, 2017. Despite the injunction preventing the implementation of the Original Order, the US Embassy has refused to reschedule the interviews, and his family is now subject to the restrictions and delays of the Revised Order.

106. Another United States citizen originally from Sudan has contacted CAIR-WA regarding her petition for her Sudanese father to receive an IR-5 visa. Her father was scheduled for a screening interview at the US Embassy in the United Arab Emirates on February 15, 2017. The Embassy canceled the interview when the Original Order issued. The interview was rescheduled after the Original Order was enjoined, and her father received his visa on February 20, 2017. Unfortunately, however, her father's efforts to book travel to the United States have been thwarted, due to the issuance of the Revised Order. The airlines have required him to return to the US Embassy to ensure that his recently issued visa is still valid. Her father is now afraid to book his airline travel only to be detained or deported at the border when he tries to enter the United States.

107. CAIR-WA assists and advises American Muslims such as those described above and provides education, advocacy, and referrals so they may navigate both the stated and implied ramifications of the Defendants' Orders.

108. CAIR-WA has also experienced a dramatic increase in the number of inquiries from the Muslim community regarding the signed Executive Orders since January 27, 2017, in



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addition to inquiries about bullying, hate crimes, and other injuries suffered by those it serves as a direct result of Defendants' open antipathy for those observing the Muslim faith.

109. The Executive Orders convey an official message of disapproval and hostility toward CAIR-WA as well as its Muslim members and clients, making clear that the government deems them outsiders, not full members of the political community. CAIR-WA's Muslim clients in the United States have been marginalized as a result of this anti-Muslim message, have been subjected to baseless suspicion, scrutiny, and social and political isolation on the basis of religion and national origin, and have suffered other dignitary and stigmatic injuries.

110. CAIR-WA has had to hire a part-time civil rights team member to handle the extra work. This additional part-time position was not in CAIR's 2017 budget, but was deemed a necessary expenditure as part of CAIR-WA's commitment to providing a rapid response to the number of questions and reports of disruption in travel experienced by CAIR-WA constituents. CAIR-WA has also taken on the task of printing and distributing 10,000 business cards, depicted below, that have legal assistance contact information for immigrants and travelers stranded at U.S. airports as a result of the Executive Orders. CAIR-WA had not budgeted for this expense or forecasted its need prior to January 27, 2017, but CAIR-WA decided to do so in direct response to the turmoil caused by the Executive Orders. The printing costs for these business cards was yet another off-budget expenditure necessitated by Defendants' conduct.

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111. In direct response to the original and revised Executive Orders, CAIR-WA has also organized several informational presentations for the Washington Muslim community to address the confusion, concern, and fear the Orders have stimulated.

112. In 2015 and prior years, at least 98 percent of CAIR-WA's funding was from individual donors, almost all of whom reside in the state of Washington, or from matching funds from companies that employ its individual donors and volunteers. The remaining 2 percent of CAIR-WA's funding comes from sponsorship from locally-based non-profits, mosques, and businesses that serve Washington communities.

113. The mission and efficacy of CAIR-WA has been thwarted by the Original Executive Order. Because the Revised Executive Order is substantively the same, these injuries will continue once the new Order takes effect.

**B. Defendants**

114. Defendant Donald J. Trump is the President of the United States. He is sued in his official capacity.

115. Defendant U.S. Department of State ("DOS") is a cabinet department of the United States federal government that is responsible for issuing visas.



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116. Defendant Rex W. Tillerson is the Secretary of State and has responsibility for overseeing enforcement and implementation of the Original Executive Order by all DOS staff. He is sued in his official capacity.

117. Defendant U.S. Department of Homeland Security ("DHS") is a cabinet department of the United States federal government with the primary mission of securing the United States. Its sub-agencies include U.S. Citizenship and Immigration Services ("USCIS"), Customs and Border Protection ("CBP"), and Immigration and Customs Enforcement ("ICE").

118. Defendant John Kelly is the Secretary of DHS and has responsibility for overseeing enforcement and implementation of the Original Executive Order by all DHS staff. He is sued in his official capacity.

119. Defendant U.S. Customs and Border Protection ("CBP") is an agency within DHS with the primary mission of detecting and preventing the unlawful entry of persons and goods into the United States.

120. Defendant Kevin K. McAleenan is the Acting Commissioner of CBP has responsibility for overseeing enforcement and implementation of the Original Executive Order by all CBP staff. He is sued in his official capacity.

121. Defendant Michele James is the Field Director of the Seattle Field Office of CBP and has responsibility for overseeing enforcement and implementation of the Original Executive Order by all DHS staff in her area, which covers Washington State. She is sued in her official capacity.

## IV. FACTUAL BACKGROUND

### A. President Trump's January 27, 2017 Original Executive Order

122. On January 27, 2017, Defendant Trump signed the Original Executive Order entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States." A copy of this Original Executive Order is attached to this Complaint as Exhibit A.



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123. The Original Executive Order cited the threat of domestic terrorism committed by foreign nationals and purported to direct a variety of changes to the manner and extent to which non-citizens may seek and obtain admission to the United States.

124. Section 3(c) of the Original Executive Order suspended immigrant and nonimmigrant entry into the country for 90 days for all people from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. § 1187(a)(12), with narrow exceptions not relevant here. The Original Executive Order applied only to nationals of Syria, Sudan, Iraq, Iran, Libya, Somalia, and Yemen (the "Original Targeted Countries").[18] The ban applied regardless of whether such persons held valid visas and regardless of whether their visas were immigration or non-immigration related.

125. Section 5(a) suspended the U.S. Refugee Admissions Program for 120 days.

126. Section 5(b) stated that "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" will be prioritized.

127. Section 5(c) contained as its statement of government interest a proclamation "that "the entry of nationals of Syria as refugees is detrimental to the interests of the United States," and suspends the entry of Syrian refugees into the country.

128. Section 5(e) provided for nearly unfettered individual discretion by the Secretaries of State and Homeland Security to "jointly determine to admit individuals … as refugees on a case-by-case basis, "in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest—including when the person is a religious minority in his country of nationality facing religious persecution."

129. The Original Executive Order stated that "the United States should not admit those who engage in acts of bigotry or hatred (including . . . the persecution of those who

[18] *Fact Sheet: Protecting The Nation from Foreign Terrorist Entry to The United States*, Dep't of Homeland Sec. (Jan. 29, 2017), https://www.dhs.gov/news/2017/01/29/protecting-nation-foreign-terrorist-entry-united-states (last accessed Mar. 13, 2017).



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practice religions different from their own)" and yet it singled out practitioners of a single religion for exclusion. *See* Exhibit A, § 1.

**1. Visa Revocations Pursuant to the Original Executive Order**

130. The same day the Original Executive Order issued, the Deputy Assistant Secretary for Visa Services at the Bureau of Consular Affairs of the Department of State, relying on the Original Executive Order, issued a letter purporting to provisionally revoke all valid nonimmigrant and immigrant visas of nationals of the Original Targeted Countries, subject to exceptions not relevant here.

131. The Provisional Revocation Letter was not publicized; to the contrary, it was withheld from the public until it was filed four days later under a "Notice of Supplemental Authority" in court cases challenging the Original Executive Order.

132. Neither notice nor opportunity to be heard was provided to the members of the Non-Immigrant Visa Class, the members of the Refugee Class, the Episcopal Diocese, CAIR-WA, Plaintiffs, or indeed anyone else prior to the mass revocation of these visas.

133. The Provisional Revocation Letter compounded the chaos caused by the Original Executive Order. The federal government issued no public and legally binding guidance regarding the meaning or proper interpretation of the Provisional Revocation Letter. A copy of this letter is attached to this Complaint as Exhibit B.

134. The Provisional Revocation Letter also appeared to expand the scope of the Original Executive Order's application: it applied on its face to persons who were present inside the United States as well as persons outside the United States, rather than being limited to persons seeking to enter the United States. Under section 221(a)(1)(B) of the INA, 8 U.S.C. § 1227(a)(i)(B), "[a]ny alien . . . whose nonimmigrant visa . . . has been revoked under section 1201(i) of this title" INA § 221(i), referenced in the Provisional Revocation Letter "is deportable."



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135. The State Department estimated that it revoked up to 60,000 visas.[19]

136. The CBP stated on its website that all F-1, J-1, and M-1 visas belonging to persons from the affected countries were provisionally revoked.[20]

137. Upon information and belief, all H1B visas belonging to persons from the affected countries were also provisionally revoked.

**2. Chaos, Confusion, and Whiplash in the Implementation of the Original Executive Order**

138. The disastrous effects of the Original Executive Order were immediately apparent. Countless news reports document the chaotic scene at airports across the country as those who were legally entitled to entry when they boarded airplanes heading to the United States—refugees, immigrants, and those traveling on non-immigrant visas alike—were designated deportable by the time they landed. For example, 109 travelers from the Original Targeted Countries on non-immigrant visas were in transit to the country at the time the Original Executive Order was signed.[21] Up to 13 people were detained at the Seattle-Tacoma International Airport on January 28, 2017 pursuant to the Original Executive Order.[22]

139. Application of the Original Executive Order was inconsistent and confusing, with contradictory official statements issued within days of one another—further heightening

[19] Mary Emily O'Hara, *Over 100,000 Visas Have Been Revoked by Immigration Ban, Justice Dept. Reveals*, NBC News (Feb. 3, 2017), http://www.nbcnews.com/news/us-news/over-100-000-visas-have-been-revoked-immigration-ban-justice-n716121 (last accessed Mar. 13, 2017).

[20] *Q&A for [Original] Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States*, U.S. Customs & Border Prot. (Feb. 2, 2017), https://www.cbp.gov/document/faqs/questions-and-answers-protecting-nation-foreign-terrorist-entry-united-states (last accessed Mar. 13, 2017).

[21] Jeremy Diamond & Steve Almasy, *Trump's Immigration Ban Sends Shockwaves*, CNN (Jan. 30, 2017), http://www.cnn.com/2017/01/28/politics/donald-trump-executive-order-immigration-reaction/ (last accessed Mar. 13, 2017).

[22] Liz Jones & Isolde Raftery, *Roller Coaster of Heartbreak and Fury at Sea-Tac in Wake of Trump Order*, KUOW.org (Jan. 28, 2017), http://kuow.org/post/roller-coaster-heartbreak-and-fury-sea-tac-wake-trump-order (last accessed Mar. 13, 2017).



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Plaintiffs' reasonable and on-going fear that if they left the country, they would not be permitted to return to their work and studies.

140. For example, the Secretary of Homeland Security reportedly received his first full briefing on the Original Order as the President signed it,[23] resulting in DHS's position on the application of the Original Executive Order to lawful permanent residents, or green card holders, changing three times over the course of six days following the issuance of the Original Executive Order:

- On January 28, 2017, a spokesperson for DHS stated that lawful permanent residents, or green card holders, would be barred from entry pursuant to the Original Executive Order.
- Secretary Kelly reversed course the next day on January 29th, issuing a statement that: "In applying the provisions of the president's [Original] Executive Order, I hereby deem the entry of lawful permanent residents to be in the national interest. Accordingly, absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations."
- Two days later on January 31, 2017, U.S. Customs and Border Protection, a DHS sub-agency, issued a statement that, while repeating Secretary Kelly's January 29th statement, then stated in the "Questions and Answers" Section that the entry of lawful permanent residents would depend on receipt of a "national interest waiver[] consistent with the provisions of the [Original] Executive Order."
- DHS changed its position yet again two days later. This time, the February 2, 2017 version of the "Questions and Answers" stated that "[u]nder the recent guidance from the White House . . . the [Original] Executive Order [issued January 27, 2017,] does not apply to their [lawful permanent residents] entry to the United States." As of February 2, 2017, DHS had processed 1,610 waivers for legal permanent residents to re-enter the United States.

[23] Michael D. Shear & Ron Nixon, *How Trump's Rush to Enact an Immigration Ban Unleashed Global Chaos*, N.Y. Times (Jan. 29, 2017), https://www.nytimes.com/2017/01/29/us/politics/donald-trump-rush-immigration-order-chaos.html?_r=0 (last accessed May 4, 2017).



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141. Customs and Border Protection officers were caught unaware and were blindsided, with even managers not seeming to have clear guidance.[24] The chief of passenger operations for U.S. Customs and Border Protection at John F. Kennedy International Airport admitted, "[w]e are as much in the dark as everybody else."[25]

142. In addition, according to two State Department officials, most officials at the department first heard of the Original Executive Order through the media.[26] On the day Defendant Trump issued the Original Order, Deputy Assistant Secretary for Visa Services at the U.S. Department of State, Edward J. Ramotowski, issued a letter that [27] "provisionally revoke[d] all valid nonimmigrant and immigrant visas of nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen." But then on February 1, 2017, White House Counsel Donald F. McGahn II—who is not in the chain of command for any of the Executive Departments—issued "Authoritative Guidance," admitting there was "reasonable uncertainty" surrounding provisions of the Original Order such that he needed to clarify that sections 3(c) and 3(e) of the Executive Order did not apply to lawful permanent residents.[28]

143. Provisions of the Original Executive Order relating to refugees also were inconsistently interpreted and applied by Defendants, further heightening the need for judicial intervention.

144. For example, although Section 5(a) of the Original Executive Order unequivocally stated that "[t]he Secretary of State shall suspend the U.S. Refugee Admissions

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[24] *See supra* note 21.

[25] Jonathan Allen & Brendan O'Brien, *How Trump's Abrupt Immigration Ban Sowed Confusion at Airports, Agencies,* Reuters (Jan. 29, 2017), http://www.reuters.com/article/us-usa-trump-immigration-confusion-idUSKBN15D07S (last accessed May 4, 2017).

[26] *See supra* note 23.

[27] *Letter from Edward J. Ramotowski*, Deputy Assistant Secretary for Visa Services at the U.S. Dep't of State (Jan. 27, 2017), http://www.politico.com/f/?id=00000159-f6bd-d173-a959-ffff671a0001 (last accessed Mar. 14, 2017).

[28] Emergency Mot. Under Circuit Rule 27-3 for Admin. Stay & Mot. for Stay Pending Appeal at 72, *State v. Trump ("State")*, No. 17-35105 (9th Cir. Feb. 4, 2017), Dkt. # 14.



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Program (USRAP) for 120 days," four business days later on February 2, 2017, and in a reversal of the clear mandate in the Original Executive Order, the Acting Director of the U.S. Immigration and Citizenship Services ("USCIS"), a division of DHS, issued a guidance to all USCIS employees that "USCIS will adjudicate Refugee/Asylee Relative Petitions [ ] for all beneficiaries, from any country of nationality, currently in the United States . . . ." A copy of this guidance is attached as Exhibit C.

145. In further contradiction of the clear language of unequivocal suspension of USRAP, DHS instructed that "[a]dditionally, USCIS will continue refugee interviews in jurisdictions where there is a preexisting international agreement related to refugee processing." Exhibit C.

146. The February 2, 2017 guidance to USCIS employees also stated that "USCIS will *continue* refugee interviews when the person is a religious minority in his or her country of nationality facing religious persecution." *Id.* (emphasis added).

147. As summed up by the Ten National Security Experts:

> [T]he repeated need for the Administration to clarify confusion after the Order issued suggest that that Order received little, if any advance scrutiny by the Departments of State, Justice, Homeland Security or the Intelligence Community. Nor have we seen any evidence that the Order resulted from experienced intelligence and security professionals recommending changes in response to identified threats."

Joint Decl. ¶ 7, *State v. Trump*, No. 17-35105 (9th Cir. Feb. 6, 2017), Dkt. # 28-2 (attached as Exhibit D).

**3. The Discriminatory Intent Behind the Original Executive Order**

148. The Original Executive Order and the Provisional Revocation Letter applied only to nationals of seven countries, all of which are majority-Muslim: Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen.



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149. The Original Executive Order, by its express terms, suspended immigrant and nonimmigrant entry into the United States based on nationality, place of birth or place of residence.

150. The Provisional Revocation Letter similarly revoked "all valid nonimmigrant and immigrant visas of nationals" based on nationality, place of birth, or place of residence.

151. The Original Executive Order was Defendant Trump's fulfillment of a clearly stated campaign promise to ban Muslims from entering the United States. In a December 7, 2015 written statement, "Donald J. Trump Statement on Preventing Muslim Immigration," then-candidate Trump said that he was "calling for a total and complete shutdown of Muslims entering the United States." While the statement was briefly removed due to a glitch post-election, the statement was returned to the website and displayed on the official Trump-Pence website through the morning of May 8, 2017.[29]

152. When questioned about the "shutdown," and asked whether a customs agent would ask a person his or her religion, then candidate Trump responded, "They would say, 'Are you Muslim?'" The interviewer then asked, "And if they said, 'yes,' they would not be allowed in the country?" "That's correct," Mr. Trump responded.[30]

153. Defendant Trump repeatedly referred to a ban on Muslim immigration on the campaign trail.[31]

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[29] *Donald J. Trump Statement on Preventing Muslim Immigration*, DonaldJTrump.com (Dec. 7, 2015), https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration (last accessed May 8, 2017); Emily Flitter, *Glitch Briefly Removes 'Muslim Ban' Proposal from Trump Website*, Reuters (Nov. 10, 2016), http://www.reuters.com/article/us-usa-trump-immigration-idUSKBN135284 (last accessed May 8, 2017); Ann E. Marimow & Robert Barnes, *President Trump's Lawyers on Revised Travel Ban Repeatedly Asked about Campaign Promises,* Wash. Post (May 8, 2017), https://www.washingtonpost.com/local/public-safety/presidents-trump-revised-travel-ban-faces-new-legal-challenges/2017/05/08/c4c6f968-3387-11e7-b373-418f6849a004_story.html?hpid=hp_hp-more-top-stories_travelban-1238p%3Ahomepage%2Fstory&utm_term=.2642306be29e (last accessed May 8, 2017).

[30] Nick Gass, *Trump Not Bothered by Comparisons to Hitler*, Politico (Dec. 8, 2015), http://www.politico.com/trump-muslims-shutdown-hitler-comparison (last accessed Mar. 13, 2017).

[31] Donald J. Trump (@realDonaldTrump), Twitter (Dec. 7, 2015, 2:32 PM), https://twitter.com/realDonaldTrump/status/673993417429524480 (last accessed Mar. 13, 2017); Jenna Johnson,



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154. Defendant Trump also indicated that he knew that he would need to find an alternative way to describe the Muslim ban. In response to a question on the July 17, 2016 episode of 60 Minutes about the evolution of his earlier rhetoric of an outright ban on Muslim immigration to a ban on persons from territories that have a Muslim majority, the following exchange took place:

> Stahl: [I]n December, you [i.e., Pence] tweeted, and I quote you, "Calls to ban Muslims from entering the U.S. are offensive and unconstitutional."
>
> Trump: So you call it territories. OK? We're gonna do territories. We're not gonna let people come in from Syria that nobody knows who they are.
>
> ...
>
> Stahl: [S]o you're changing... your position.
>
> Trump: —No, I—call it whatever you want. We'll call it territories, OK?
>
> Stahl: So not Muslims?
>
> Trump: You know—the Constitution—there's nothing like it. But it doesn't necessarily give us the right to commit suicide, as a country, OK? And I'll tell you this. Call it whatever you want, change territories [sic], but there are territories and terror states and terror nations that we're not gonna allow the people to come into our country.[32]

155. Seven days later in response to a question on NBC's Meet the Press about whether his acceptance speech at the Republican National Convention was a rollback on his position, Defendant Trump reiterated the point when he replied:

> I don't think so. I actually don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territory. People were so upset when I used the

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*Trump Calls for 'Total and Complete Shutdown of Muslims Entering the United States,'* Wash. Post (Dec. 7, 2015), http://wpo.st/O0uY2 (last accessed Mar. 13, 2017).

[32] Lesley Stahl, *The Republican Ticket: Trump and Pence*, CBS (Jul. 17, 2016), http://www.cbsnews.com/news/60-minutes-trump-pence-republican-ticket/ (last accessed Mar. 13, 2017).



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> word Muslim. Oh, you can't use the word 'Muslim.' Remember this. And I'm okay with that, because I'm talking territory instead of Muslim.[33]

156. After the election, on December 22, 2016, a reporter asked Defendant Trump whether his "plans to create a Muslim register or ban Muslim immigration to the United States" had changed. Defendant Trump responded "you've known my plans all along" and that he was "100% correct" in his position.[34]

157. After reading the title of the Original Order when signing it, Defendant Trump said, "We all know what that means."[35]

158. On the day Defendant Trump issued the Original Executive Order, he gave an interview to the Christian Broadcasting Network during which he confirmed his intent to prioritize non-Muslims nationals over Muslim nationals of those countries:

> They've been horribly treated. Do you know if you were a Christian in Syria it was impossible, at least very tough to get into the United States? If you were a Muslim you could come in, but if you were a Christian, it was almost impossible and the reason that was so unfair, everybody was persecuted in all fairness, but they were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair.[36]

159. Consistent with Defendant Trump's expressed intent to favor Christians, Section 5(e) of the Original Executive Order authorized the Secretaries of the Departments of State and Homeland Security to admit individuals who are members of "a religious minority in [their]

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[33] Rebecca Shabad, *Donald Trump Says He's Expanding His Muslim Ban,* CBS News (July 25, 2016), http://www.cbsnews.com/news/donald-trump-says-hes-expanding-muslim-ban/ (last accessed Mar. 13, 2017).

[34] Katie Reilly, *Donald Trump on Proposed Muslim Ban: 'You Know My Plans,'* Time (Dec. 21, 2016), http://time.com/4611229/donald-trump-berlin-attack (last accessed Mar. 13, 2017).

[35] *Transcript of Ceremonial Swearing in of the Secretary of Defense*, CNN (Jan. 27, 2017), http://transcripts.cnn.com/TRANSCRIPTS/1701/27/cg.02.html (last accessed Mar. 13, 2017).

[36] David Brody, *Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority As Refugees*, CBN News (Jan. 27, 2017), http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees (last accessed Mar. 13, 2017).



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count[ries] of nationality facing religious persecution." Exhibit A. This provision directly grants Christians preference over Muslim refugees.

160. During a signing ceremony for the Original Executive Order on January 27, 2017, Defendant Trump stated that the purpose of the Original Executive Order was to "establish[] new vetting measures to keep radical Islamic terrorists out of the United States of America."[37]

161. Senior advisors to Defendant Trump have engaged in anti-Muslim rhetoric that provide additional support for the notion that the Original Executive Order was prompted by animus toward Islam and Muslims.

162. In an interview on January 28, 2017, one of Defendant Trump's senior advisors, Rudolph Giuliani, left no doubt that the ban on entry from nationals of the Original Targeted Countries was intended to carry out a ban on Muslims, and that the Original Executive Order was crafted to create a pretextual cover for a Muslim ban. Mr. Giuliani stated: "I'll tell you the whole history of it . . . . So, when [Defendant Trump] first announced it, he said, 'Muslim ban.' He called me up. He said, 'Put a commission together. Show me the right way to do it legally.'"[38]

163. On January 29, an anonymous "senior administration official" briefed a staffer of Breitbart.com on the intended purpose of the Original Executive Order: "The reality, though, is that the situation [of large Islamic populations] that exists today in parts of France, in parts of Germany, in Belgium, etcetera, is not a situation we want replicated inside the United States."[39]

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[37] Dan Merica, *Trump Signs [Original] Executive Order to Keep out 'Radical Islamic Terrorists,'* CNN (Jan. 30, 2017), http://www.cnn.com/2017/01/27/politics/trump-plans-to-sign-executive-action-on-refugees-extreme-vetting/ (last accessed Mar. 13, 2017).

[38] Amy B. Wang, *Trump Asked for a 'Muslim Ban,' Giuliani Says – and Ordered a Commission to Do it 'Legally,'* Wash. Post (Jan. 29, 2017), http://wpo.st/xzuY2 (last accessed Mar. 13, 2017).

[39] Neil Munro, *Left Protests While Trump Junks Obama's Global Immigration Plan*, Breitbart.com (Jan. 30, 2017), http://www.breitbart.com/big-government/2017/01/30/trump-changes-immigration-favor-american-values/ (parenthetical in original) (last accessed Mar. 13, 2017).



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164. While Defendant Trump has subsequently tried to deny that his Original Executive Order was "a Muslim ban, as the media [was] falsely reporting."[40] His own prior conflicting, recorded statements as well as those of his senior advisors make clear the rationale for the Original Executive Order is in fact to ban Muslims from entering the United States[.]

165. The Original Executive Order and the manner in which it was implemented caused individual Plaintiffs and members of the proposed classes direct, ongoing, and immediate harm by causing them to suffer "[t]he indignity of being singled out [by a government] for special burdens'" on the basis of religion or assumed religion. *Hassan v. City of New York*, 804 F.3d 277, 289 (3d Cir. 2015), *as amended* (Feb. 2, 2016) (quoting *Locke v. Davey*, 540 U.S. 712, 731 (2004) (Scalia, J., dissenting)).

**B. President Trump's March 6, 2017 Revised Executive Order**

166. During a February 16, 2017 news conference, Donald Trump twice declared that he would follow through on his campaign promise of a Muslim ban, albeit changing his terminology to "radical Islamic terrorists":

- "Some of the things I'm doing probably aren't popular but they're necessary for security and for other reasons…I'm here following through on what I pledged to do."
- "We have taken decisive action to keep radical Islamic terrorists out of our country. No parts are necessary and constitutional actions were blocked by judges, in my opinion, incorrect, and unsafe ruling. [sic]…I got elected on defense of our country. I keep my campaign promises, and our citizens will be very happy when they see the result. They already are, I can tell you that. Extreme vetting will be put in place and it already is in place in many places.[41]

[40] Press Release, *President Donald J. Trump Statement Regarding Recent [Original] Executive Order Concerning Extreme Vetting*, White House (Jan. 29, 2017), https://www.whitehouse.gov/the-press-office/2017/01/29/president-donald-j-trump-statement-regarding-recent-executive-order (last accessed Mar. 13, 2017).

[41] *Full Transcript: President Donald Trump's News Conference*, CNN (Feb. 16, 2017), http://www.cnn.com/2017/02/16/politics/donald-trump-news-conference-transcript/ (last accessed Mar. 13, 2017).



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167. Defendant Trump also announced during the February 16th news conference that he would be "issuing a new executive action next week that will comprehensively protect our country. . . . That will be done sometime next week, toward the beginning or middle at the latest part."[42] Defendant Trump did not issue a new order that following week.

168. On February 21, 2017, Stephen Miller, Senior Advisor to the President, described the administration's plans with regard to the Revised Order: "Fundamentally, you're still going to have the same basic policy outcome for the country, but you're going to be responsive to a lot of very technical issues that were brought up by the court and those will be addressed. But in terms of protecting the country, those basic policies are still going to be in effect."[43]

169. While the White House indicated that the new order would be signed on March 1, 2017—the day after Defendant Trump's first address to Congress on February 28th[44]—the signing of the new order was delayed yet again.

170. On February 28th, an administration official told a news outlet that the delay was due to the busy news cycle, that Defendant Trump wanted it to get plenty of attention, and "[w]e need [the executive order] to have its own time to breathe."[45]

171. On March 1, 2017, another senior Administration official told a different news outlet that Defendant Trump delayed plans to sign a reworked travel ban in the wake of positive reaction to his first address to Congress, explaining that "We want the (executive order) to have its own 'moment.'"[46]

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[42] *Id.*

[43] *See infra* note 116.

[44] Justin Fishel, *New Trump Order on Travel and Immigration Expected Wednesday*, ABC News (Feb. 2, 2017), http://abcnews.go.com/Politics/trump-order-travel-immigration-expected-wednesday/story?id=45814211 (last accessed on Mar. 13, 2017).

[45] Shane Goldmacher & Nahal Toosi, *Trump Delays Signing New Travel Ban Order, Officials Say*, Politico (Feb. 28, 2017), http://www.politico.com/story/2017/02/trump-delays-travel-ban-order-235548 (last accessed Mar. 13, 2017).

[46] *See supra* note 9.



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172. Five days later on March 6, 2017, Defendant Trump signed the Revised Executive Order that has the exact same title as the Original Order, "Protecting the Nation from Foreign Terrorist Entry into the United States." A copy of this Revised Executive Order is attached to this Complaint as Exhibit E.

173. Although the Revised Order was designed to appear facially neutral, Defendants cannot erase the history or facts preceding its issuance, *see supra* Section IV.A.2., the taint of the discriminatory motivation behind it, *supra* Section IV.A.3., or the complete arbitrariness of its requirements. *See infra* Section IV.C.

174. Indeed, Defendant Trump has openly promoted that the Revised Order was his continued fulfillment of his campaign promises. For example, on the day Defendant Trump signed the Revised Order, he sent a fundraising email requesting support for the Revised Order because he was "implement[ing] the policies you—and millions of American like you—voted for."[47] And at a press conference the next day on March 7, 2017, White House Press Secretary Sean Spicer confirmed that with the issuance of the Revised Order, Defendant Trump was "deliver[ing]" on one of his "most significant campaign promises: protecting the country against radical Islamic terrorism . . . ."[48]

175. At a March 15, 2017 rally, Defendant Trump admitted that the Revised Order is just a "watered-down version" of his first travel ban.[49]

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[47] Matt Zapotosky, David Nakamura, & Abigail Hauslohner, *Revised Executive Order Bans Travelers from Six Muslim-Majority Countries from Getting New Visas*, Wash. Post (Mar. 6, 2017), https://www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/3012a42a-0277-11e7-ad5b-d22680e18d10_story.html?utm_term=.c2b939d5bb80 (last accessed Mar. 13, 2017).

[48] *Press Briefing by Press Secretary Sean Spicer, 3/7/2017, #18*, White House (Mar. 7, 2017), https://www.whitehouse.gov/the-press-office/2017/03/07/press-briefing-press-secretary-sean-spicer-372017-18 (last accessed Mar. 13, 2017).

[49] Matt Zapotosky, Kalani Takase & Maria Sacchetti, *Federal Judge in Hawaii Freezes President Trump's New Entry Ban*, Wash. Post (Mar. 16, 2017), https://www.washingtonpost.com/local/social-issues/lawyers-face-off-on-trump-travel-ban-in-md-court-wednesday-morning/2017/03/14/b2d24636-090c-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.e95cfd5a6df1&wpisrc=nl_buzz&wpmm=1 (last accessed May 5, 2017).



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176. And as recently as April 24, 2017, Defendant Trump once again revealed his true motivation for the Revised Executive Order. During a White House reception for conservative media guests, Defendant Trump stated "I'm Christian,"[50] noted that "he had done very well with Christian voters in the election,"[51] reiterated that "[n]obody's been treated worse, it seems to me, than Christians in the Middle East,"[52] and once again argued that that it was easier for Muslims to come into the United States as refugees than Christians while it was far more dangerous for Christians there.[53] He then declared, "[w]e're going to be helping the Christians big league."[54]

177. Pursuant to Section 13 of the Revised Order, the Original Order will be revoked as of the effective date of the Revised Order.

178. Pursuant to Section 14 of the Revised Order, it will take effect on March 16, 2017.[55]

179. The Revised Order shares two fundamental features with the Original Order: it continues to violate the rights of non-immigrants who need to renew their visas, and it continues to violate the rights of refugees and asylees seeking to reunite with family members who have already cleared all security hurdles.

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[50] Scott Johnson, *At the White House with Trump*, Power Line (Apr. 25, 2017), http://www.powerlineblog.com/archives/2017/04/at-the-white-house-with-trump.php (last accessed May 4, 2017).

[51] *Id.*

[52] Charlie Spiering, *Donald Trump Invites Conservative Media to White House for Exclusive Briefing*, Breitbart.com (Apr. 24, 2017), http://www.breitbart.com/big-government/2017/04/24/donald-trump-invites-conservative-media-to-white-house-for-exclusive-briefing/ (last accessed May 4, 2017).

[53] *Id.*

[54] *Id.*

[55] On March 15, 2017, the Honorable Derrick Watson of the United States District Court for the District of Hawai'i temporarily enjoined the implementation of Sections 2 and 6 of the Revised Executive Order, Order Granting Motion for Temporary Restraining Order, *Hawai'i v. Trump*, No. 17-50 (D. Haw. Mar. 15, 2017), Dkt. # 219, and converted the temporary injunction into a preliminary injunction on March 29, 2017. Order Granting Mot. to Convert TRO to a Prelim. Inj., *Hawai'i* (Mar. 29, 2017), Dkt. # 270. Section 2(c) of the Revised Executive Order was also enjoined by the Honorable Theodore Chuang of the United States District Court for the District of Maryland on March 16, 2017. Mem. Order, *IRAP v. Trump*, No. 17-361 (D. Md. Mar. 16, 2017), Dkt. # 149.



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180. Six of the seven countries targeted in the Original Order are still targeted by the Revised Order. Sections 1(f) and 2(c) of the Revised Order suspend entry into the United States by the nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen for ninety days from the effective date of the Revised Order.

181. All six banned countries have overwhelmingly Muslim populations.

182. Pursuant to Section 2(e) of the Revised Order, at the end of the ninety-day ban, the Secretary of Homeland Security shall submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of categories of foreign nationals of countries that have not provided the requested information 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 names of additional countries may also be submitted to the President.

183. Pursuant to Section 3(a) of the Revised Order, the 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 the Revised Order.

184. Section 3 of the Revised Order provides for certain "exceptions" and potential "waivers" to the travel ban.

185. Section 3(b) states that the Revised Order will 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



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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.

186. Foreign nationals of the Targeted Countries who do not fall within the categories enumerated in Section 3(b) will be required to seek a waiver to enter the United States for the duration of the Revised Order. Section 3(c) allows a consular officer, or, as appropriate, the Commissioner, U.S. Customs and Border Protection (CBP), or the Commissioner's delegee, to 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.

187. This waiver provision is of little solace in light of statements and actions taken by Defendants in support of a Muslim ban, such as Defendant Trump's prior statement that a person who admitted being a Muslim should be denied entry into the country. *See supra* ¶ 152.

188. Defendant Trump's message and intent of the travel ban has clearly been heard by those with the discretion to admit people into this country and already used to harass Muslims or those perceived to be Muslim at our borders. For example:

- On February 4, 2017, a woman from the Montreal suburb of Brossard was denied entry into the U.S. after being fingerprinted, photographed and questioned in detail about her religion and her views on U.S. President Donald Trump;[56]
- On February 7, 2017, the U.S. Customs and Border Protection held Muhammad Ali Jr., the son of the late legendary boxer, as well as his mother for questioning

[56] Steve Rukavina, *Canadian Woman Turned Away from U.S. Border After Questions About Religion, Trump*, CBC News (Feb. 8, 2017), http://www.cbc.ca/news/canada/montreal/canadian-woman-turned-away-from-u-s-border-after-questions-about-religion-trump-1.3972019 (last accessed May 4, 2017).



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in a Florida airport because of their Arabic-sounding names, repeatedly asking them, "Where did you get your name from?" and "Are you Muslim?"[57]

- On or about February 27, 2017, a Canadian doctor originally from Afghanistan was held for over five hours at the US border and questioned about his "tribal chief," his life in Afghanistan, the family he had left behind and whether he had seen "a lot of gunmen" while growing up there.[58]

- On April 23, 2017, Dr. Osman "Ozzie" Ahmed, a former NASA shuttle mission physician and a U.S. citizen since 1991 who is an approved "low-risk" traveler, had his passport taken from him and was detained for about an hour by U.S. Customs and Border Protection officers upon his arrival at Tampa International Airport due to his Muslim name and birthplace (Egypt).[59]

- On April 24, 2017, American composer Mohammed Fairouz was detained for hours at John F. Kennedy International Airport with the only reason given to him for his detention being his Muslim name.[60]

These examples demonstrate that the waiver process is in grave danger of being administered in a discriminatory fashion.

189. Neither the Original nor Revised Order single out any countries for disfavored treatment that are not majority-Muslim.

190. Section 6(a) of the Revised Order suspends all decisions on applications for refugee status as well as travel of refugees into the United States for 120 days. The suspension

[57] Jennie Jarvie, *Muhammed Ali's Son May Sue After Being Detained at Florida Airport and Questioned About His Religion*, L.A. Times (Feb. 25, 2017), http://www.latimes.com/nation/la-na-muhammad-ali-son-detained-20170225-story.html (last accessed May 8, 2017).

[58] Ashifa Kassam, *Afghan-Canadian Doctor Detained at US Border and Asked About 'Tribal Chief,"* Guardian (Mar. 1, 2017), https://www.theguardian.com/world/2017/mar/01/canada-doctor-sardar-ahmad-us-border-detained (last accessed May 4, 2017).

[59] Christopher O'Donnell, *Former NASA Doctor Says He Was Detained at TIA Because of His Muslim Name*, Tampa Bay Times (Apr. 29, 2017), http://www.tbo.com/news/transportation/former-nasa-doctor-says-he-was-detained-at-tia-because-of-his-muslim-name/2322062 (last accessed May 4, 2017).

[60] Kristine Phillips, *American Composer Says He Was Detained at JFK Because of His 'Super Common' Muslim Name*, Wash. Post (May 2, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/04/29/american-composer-says-he-was-detained-for-hours-at-jfk-for-his-super-common-muslim-name/?utm_term=.1e729661f7a2 (last accessed May 5, 2017).



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required in Section 6 does not apply to refugee applicants who, before the effective date of the Revised Order, have been formally scheduled for transit by the Department of State.

191. Section 6(c) allows the Secretary of State and the Secretary of Homeland Security to 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.

192. Like the waiver provision in Section 3 of the Revised Executive Order, the procedure set forth in section 6(e) is of little comfort as Defendant Trump continues to make it clear that his intent is "to be helping the Christians big league."[61]

193. Refugees or asylees who seek to have a family member(s) join them in the United States must file Refugee/Asylee Relative Petitions (Form I-730). However, the Revised Order will suspend all decisions on these petitions as well as travel for these family members.

194. On March 6, 2017, the Department of Homeland Security issued a Q&A: Protecting the Nation from Foreign Terrorist Entry to The United States. A copy of the Q&A is attached as Exhibit F. The Q&A provides:

> 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.

[61] *See supra* note 52.



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195. Defendant Tillerson issued a series of cables implementing the Revised Order,[62] including a March 10, 2017 State Department Cable, 17 STATE 23338, with the subject, "New Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States – Guidance to Visa-Issuing Posts." ("Cable 23338") (attached as Exhibit G). The "guidance" in these cables include mandatory orders regarding implementation of EO-2 and thus constitute final agency action.

196. For example, Section 16 of Cable 23338 orders agency employees to suspend the processing of V93 cases:

> 16. (SBU) The U.S. Refugee Admissions Program (USRAP) is suspended for 120 days. This includes the processing of boarding foils for any V93 cases, regardless of nationality, since those follow-to-join cases are admitted to the United States as refugees. After receiving cable instructions to implement the new E.O., posts should halt the issuance of these cases immediately and cancel any scheduled V93 appointments. [The National Visa Center] will halt the processing of all V93 cases and will not forward these cases to posts. The Department will notify posts when the suspension is lifted.

197. "V93 cases" refers to the follow-to-join I-730 petitions filed by refugees such as Plaintiffs James Doe and Joseph Doe.

198. While the Original Order suspended USRAP for 120 days, the Revised Executive Order contains slightly different language, specifically suspending travel of refugees into the United States under USRAP as well as decisions on applications for refugee status. However, the cable states that USRAP "is suspended for 120 days."

199. In ordering agency employees to halt the processing of V93 cases and cancel any scheduled V93 appointments, Defendant Tillerson exceeded his authority under the law and failed to fulfill the requirements of the APA.

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[62] Yeganeh Torbati, Mica Rosenberg & Arshad Mohammed, *Exclusive: U.S. Embassies Ordered to Identify Population Groups for Tougher Visa Screening*, Reuters (Mar. 23, 2017), http://www.reuters.com/article/us-usa-immigration-visas-exclusive-idUSKBN16U12X (last accessed May 4, 2017).



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## C. The Arbitrariness of the Executive Orders

200. Despite repeated claims by Defendants regarding the immediate national security need for the Orders, Defendant Trump took thirty-one days after the time this Court issued the first injunction against the Original Order on February 3, 2017, to issue the Revised Order. At least five of those days were due purely to timing of press coverage desired by Defendant Trump and had nothing to do with national security.[63]

### 1. Arbitrariness of the Travel Ban

#### a. The Faulty Logic Behind Invoking the 9/11 Attacks to Justify the Travel Ban

201. Section 1 of the Original Executive Order, entitled "Purpose," stated that at the time of the September 11, 2001 ("9/11") terrorist attacks, "State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals" involved in those attacks. Further, DHS's Fact Sheet on the Original Executive Order stated that "[t]he [Original] Executive Order protects the United States from countries compromised by terrorism . . . ."[64] The Revised Order continues to justify the actions of Defendants based on events from 2001. *See* Exhibit E, § 1(h).

202. Yet, neither the Original nor the Revised Executive Order impose any restrictions on nationals of Egypt, Lebanon, Saudi Arabia, or the United Arab Emirates—the countries of which the 9/11 attackers were citizens. A March 9, 2017 Breitbart article stated that ISIS boasted that Saudi Arabia is the top provider of terrorists for its group, citing a high-ranking Iraqi

[63] *See supra* note 9.

[64] *See supra* note 18.



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intelligence officer as saying, "The Saudi presence in ISIS is very large. What we have left are mainly Iraqis and Saudis."[65]

203. According to an article published on CNN, "[i]n financial disclosure forms during the presidential campaign, [Defendant Trump] listed two companies with dealings in Egypt and eight with business in Saudi Arabia. And in the UAE, the Trump Organization is partnering with a local billionaire to develop two golf courses in Dubai."[66]

204. Ten former national security, foreign policy, and intelligence officials at the highest levels of the United States government, including John F. Kerry (former Secretary of State), Avril D. Haines (former Deputy National Security Advisor ), Lisa O. Monaco (former Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor), and Susan E. Rice (former National Security Advisor)—all of whom were serving in their official capacities and "were current on active intelligence regarding all credible terrorist threat streams directed against the U.S" up until January 20, 2017, just seven days prior to the issuance of the Original Executive Order ("Ten National Security Experts")—filed a joint, sworn declaration in *State v. Trump*, No. 17-35105 (9th Cir. Feb. 6, 2017), Dkt. # 28-2 ("Joint Declaration"), attached as Exhibit D, stating that they were "unaware of any specific threat that would justify the travel ban established by the [Original] Executive Order" and that "[t]here is no national security purpose for a total bar on entry for aliens from the seven named countries. *See* Exhibit D, ¶¶ 3–4.

205. These officials who were in office a mere seven days before the Original Order issued "kn[e]w of no interagency process underway before January 20, 2017 to change current vetting procedures, and the repeated need for the Administration to clarify confusion after the

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[65] Edwin Mora, *Report: More Citizens of Saudi Arabia Have Joined Islamic State Than Any Other Country*, Breitbart.com (Mar. 9, 2017), http://www.breitbart.com/national-security/2017/03/09/report-key-u-s-ally-saudi-arabia-no-1-jihadist-supplier-for-islamic-state/ (last accessed Mar. 13, 2017).

[66] Kyle Blaine & Julia Horowitz, *How the Trump Administration Chose the 7 Countries in the Immigration [Original] Executive Order*, CNN (Jan. 30, 2017), http://www.cnn.com/2017/01/29/politics/how-the-trump-administration-chose-the-7-countries/ (last accessed Mar. 13, 2017).



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Order issued suggest that that Order received little, if any advance scrutiny by the Departments of State, Justice, Homeland Security or the Intelligence Community." *Id.* ¶ 7. Nor had the officials seen "any evidence that the Order resulted from experienced intelligence and security professionals recommending changes in response to identified threats." *Id.*

206. Therefore, in their opinion, the Original Executive Order "c[ould] not be justified on national security or foreign policy grounds." *Id.* ¶ 3. They explained that:

> Since September 11, 2001, not a single terrorist attack in the United States has been perpetrated by aliens from the countries named in the Order. Very few attacks on U.S. soil since September 11, 2001 have been traced to foreign nationals at all. The overwhelming majority of attacks have been committed by U.S. citizens. The Administration has identified no information or basis for believing there is now a heightened or particularized future threat from the seven named countries. Nor is there any rational basis for exempting from the ban particular religious minorities (e.g., Christians), suggesting that the real target of the ban remains one religious group (Muslims). In short, *the Administration offers no reason why it abruptly shifted to group-based bans when we have a tested individualized vetting system developed and implemented by national security professionals across the government to guard the homeland, which is continually re-evaluated to ensure that it is effective.*

*Id.* ¶ 4 (emphasis added).

207. These respected civil servants, who have collectively "devoted decades to combatting the various terrorist threats that the United States faces in a dynamic and dangerous world" declared, in their professional opinions, that the Original Executive Order "does not perform its declared task" of "protecting the nation from foreign terrorist entry into the United States," and instead actually undermined the national security of the United States. *Id.* ¶¶ 2–3.

208. Specifically, the Joint Declaration stated that the Original Executive Order: (1) will endanger U.S. troops in the field; (2) will disrupt key counterterrorism, foreign policy, and national security partnerships that are critical to addressing the threat posed by terrorist groups such as ISIL; (3) will endanger intelligence sources in the field; (4) will likely feed the recruitment narrative of ISIL and other extremists that portray the United States as at war with



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Islam; (5) will disrupt ongoing law enforcement efforts; (6) will have a devastating humanitarian impact; and 7) will cause economic damage to American citizens and residents. *Id.* ¶ 5.

209. The Joint Declaration also described pre-existing national security-based immigration restrictions as "consistently tailored to respond to: (1) specific, credible threats based on individualized information, (2) the best available intelligence and (3) thorough interagency legal and policy review." *Id.* ¶ 6. The document further described:

> Since the 9/11 attacks, the United States has developed a rigorous system of security vetting, leveraging the full capabilities of the law enforcement and intelligence communities. This vetting is applied to travelers not once, but multiple times. Refugees receive the most thorough vetting of any traveler to the United States, taking on the average more than a year. Successive administrations have continually worked to improve this vetting through robust information sharing and data integration to identify potential terrorists without resorting to a blanket ban on all aliens and refugees. Because various threat streams are constantly mutating, as government officials, we sought continually to improve that vetting, as was done in response to particular threats identified by U.S. intelligence in 2011 and 2015. Placing additional restrictions on individuals from certain countries in the visa waiver program –as has been done on occasion in the past – merely allows for more individualized vettings before individuals with particular passports are permitted to travel to the United States.

*Id.* ¶ 6.

210. While the Original Order allowed for the Secretaries of State and Homeland Security to agree to admit travelers from these countries on a case-by-case basis, these experts concluded that "in our experience it would be unrealistic for these overburdened agencies to apply such procedures to every one of the thousands of affected individuals with urgent and compelling needs to travel." *Id.* ¶ 5.f.

211. On the unprecedented scope of the Original Order, these experts wrote:

> We know of no case where a President has invoked his statutory authority to suspend admission for such a broad class of people. Even after 9/11, the U.S. Government did not invoke the provisions of law cited by the Administration to broadly bar entrants based on nationality, national origin, or religious affiliation.



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> In past cases, suspensions were limited to particular individuals or subclasses of nationals who posed a specific, articulable threat based on their known actions and affiliations. In adopting this Order, the Administration alleges no specific derogatory factual information about any particular recipient of a visa or green card or any vetting step omitted by current procedures.

*Id.* ¶ 8.

212. Nearly 1,000 current State Department officials formally registered their dissent to the Original Order.[67] These career diplomats explained:

> A policy which closes our doors to over 200 million legitimate travelers in the hopes of preventing a small number of travelers who intend to harm Americans from using the visa system to enter the United States will not achieve its aim of making our country safer. Moreover, such a policy runs counter to core American values of nondiscrimination, fair play, and extending a warm welcome to foreign visitors and immigrants. Alternative solutions are available to address the risk of terror attacks which are both more effective and in line with Department of State and American values…
>
> [ ] This ban, which can only be lifted under conditions which will be difficult or impossible for countries to meet, will not achieve its stated aim of to protect the American people from terrorist attacks by foreign nationals admitted to the United States. Despite the Executive Order's focus on them, a vanishingly small number of terror attacks on U.S. soil have been committed by foreign nationals who recently entered the United States on an immigrant or nonimmigrant visa. Rather, the overwhelming majority of attacks have been committed by native-born or naturalized U.S. citizens--individuals who have been living in the United States for decades, if not since birth. In the isolated incidents of foreign nationals entering the U.S. on a visa to commit acts of terror, the nationals have come from a range of countries, including many (such as Pakistan or Saudi Arabia) which are not covered by the Executive Order.
>
> [ ] Given the near-absence of terror attacks committed in recent years by Syrian, Iraqi, Irani, Libyan, Somalia, Sudanese, and Yemeni citizens who are in the U.S. in after entering on a visa, this ban will have little practical effect in improving public safety…

[67] Steve Herman & Nike Ching, *Sources: Nearly 1,000 at State Department Officially Dissent on Immigration Order*, VOA News (Jan. 31, 2017), http://www.voanews.com/a/over-a-thousand-state-dept-personnel-officially-dissent-to-immigration-order/3700399.html (last accessed Mar. 13, 2017).



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> The end result of this ban will not be a drop in terror attacks in the United States; rather, it will be a drop in international good will towards Americans and a threat towards our economy.

A copy of this letter is attached as Exhibit H.[68]

213. The Original Order failed to cite a scintilla of evidence supporting the need for the travel ban of nationals from the seven originally banned countries. Nor did or could Defendants provide any such support in any of their briefings in the numerous courts where the Original Order was challenged in the weeks following its signing or the time leading up to the issuance of the Revised Order. This is because Defendants simply do not have the facts to do so.

**b. The Faulty Logic Behind Invoking 2015 Data to Justify the Travel Ban**

214. The best Defendants could do to try and justify the Revised Order was to cite to a June 2016 Department of State *Country Report on Terrorism 2015*. However, according to the report, the majority (i.e., over 55%) of all terrorist attacks took place in five countries *that are not subject to the travel ban*—Iraq, Afghanistan, Pakistan, India, and Nigeria.[69] In addition, 74% of all deaths due to terrorist attacks took place in five countries—Iraq, Afghanistan, Nigeria, Syria, and Pakistan— *none of which are subject to the travel ban*.[70]

215. The Revised Order cites facts purportedly demonstrating why the Targeted Countries continue to present heightened risks to security.[71] However, the facts are based on the

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[68] Document also available at https://assets.documentcloud.org/documents/3438487/Dissent-Memo.pdf.

[69] *Annex of Statistical Information: Country Reports on Terrorism 2015* at 3, Dep't of Homeland Sec. (June 2016), https://www.state.gov/documents/organization/257738.pdf (last accessed May 4, 2017).

[70] *Id.*

[71] Exhibit E, § 1(e).



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June 2015 data that is nearly two years old and which were specifically addressed by changes made to the Visa Waiver Program at that time to respond to the specific information.[72]

216. Further, in relying on information for data from two years ago (or more), Defendants ignore more recent data from not only respected research organizations sources but also the United States government's own national security experts.

217. According to a September 2016 report from the Cato Institute, "[i]ncluding those murdered in the terrorist attacks of September 11, 2001 (9/11), the chance of an American perishing in a terrorist attack on U.S. soil that was committed by a foreigner over the 41-year period studied here is 1 in 3.6 million per year."[73] Similarly, *The Boston Globe* reported in 2016 that "a person living in the United States is more than over 100 times more likely to be killed by falling objects than by a jihadi terrorist."[74] Indeed, it appears that in 2016, Americans were less likely to be killed by Muslim extremists (1 in six million) than for being Muslim (1 in one million).[75]

218. In the process of creating the Revised Order, the Office of Intelligence and Analysis within the Department of Homeland Security that is charged with equipping the Homeland Security Enterprise with timely intelligence and information,[76] developed a paper assessing the international terrorist threat to the United States and worldwide posed by citizens of

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[72] 8 U.S.C. § 1187; *Visa Waiver Program*, U.S. Dep't of State, https://travel.state.gov/content/visas/en/visit/visa-waiver-program.html (last accessed May 4, 2017).

[73] Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, 798 Policy Analysis Cato Institute 1 (Sept. 13, 2016), https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798_1_1.pdf (last accessed Mar. 13, 2017).

[74] Graham Allison, *Fear Death from Tree Limbs, Not Terrorists*, Boston Globe (Feb. 19, 2016), https://www.bostonglobe.com/opinion/editorials/2016/02/19/fear-death-from-tree-limbs-not-terrorists/2ZrHzpP54GBHwbv2AVD6aM/story.html (last accessed Mar. 13, 2017).

[75] Charles Kurzman, *Muslim-American Involvement with Violent Extremism, 2016* (Jan. 26, 2017), http://kurzman.unc.edu/muslim-american-terrorism/ (last accessed Mar. 13, 2017).

[76] *Office of Intelligence & Analysis*, Dep't of Homeland Sec. (last published date Jan. 30, 2017), https://www.dhs.gov/office-intelligence-and-analysis (last accessed Mar. 13, 2017).



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the seven Original Targeted Countries. Although the paper did not assess the risk of domestic terrorism, included in the key findings were:

- citizens of the seven Original Targeted Countries were rarely implicated in US-based terrorism;
- "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity"; and
- Of the 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 since the beginning of the Syrian conflict in March 2011, of the seven Original Targeted Countries, Iran, Sudan, and Yemen had 1 each, and there were no individuals from Syria.

*Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, Office of Intelligence & Analysis, Dep't of Homeland Sec. (Feb. 2017) (attached as Exhibit I).[77]

219. A second, March 1, 2017, Intelligence Assessment announced in its title that "Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland . . . ." ("March 1 Intelligence Assessment")[78] also negates the necessity of the Revised Order's travel ban. A copy of this report is as it appeared in the MSNBC article attached as Exhibit J.

220. The March 1 Intelligence Assessment was based on information available as of December 31, 2016. One of the key judgments of the March 1 Intelligence Assessment was that:

> [M]ost 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

[77] Document also available at https://assets.documentcloud.org/documents/3474730/DHS-intelligence-document-on-President-Donald.pdf.

[78] Rachel Maddow, *TRMS Exclusive: DHS Document Undermines Trump Case for Travel Ban*, MSNBC (Mar. 2, 2017), http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban (last accessed Mar. 13, 2017).



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> 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.
>
> *Id.*

221. The examples of terrorist activity cited in Section 1(h) of the Revised Order only underscore the points raised in all of these reports and statements by national security experts that the travel ban is unnecessary and will be ineffective. The first example cited relates to two Iraqi nationals; yet, the Revised Order removed Iraq from the list of targeted countries. The second example was of a native of Somali who had been brought to the United States as a child but then committed the act in question after he had been naturalized as a United States citizen and when he was an adult.

222. On March 10, 2017, more than 130 foreign policy and national security experts wrote an open letter to President Trump ("Open Letter") concluding that the Revised Order "suffers from the same core substantive defects as the previous version." The experts raise the concern that the Revised Order will "weaken U.S. national security" because it "jeopardize[s] 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." The Open Letter is attached as Exhibit K.[79]

223. The experts explain in the Open Letter: "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."[80]

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[79] Document also available at https://assets.documentcloud.org/documents/3515708/LetterFormerOfficialsonMarch6EO-Pdf.pdf.

[80] Exhibit K at 1.



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224. In addition, the Revised Order now allows automatic entry for nationals of the Designated Countries with valid visas, an admission by Defendants that the current screening and vetting process for the admission of non-immigrant visa holders is adequate and effective to protect this country's national security interests.

225. Adding to the evidence of the arbitrariness of the travel ban, on March 20, 2017, the Transportation Security Administration—a component of Defendant Department of Homeland Security— issued what was, at first, a confidential directive banning laptops, iPads and other electronics "larger than a cellphone" on flights from 10 airports because "'evaluated intelligence' emerged that terrorists favored 'smuggling explosive devices in various consumer items'".[81] The countries covered by the electronics ban are Jordan, Egypt, Turkey, Saudi Arabia, Morocco, Qatar, Kuwait and the United Arab Emirates[82]—none of which are covered by either the Original or Revised Executive Orders.

226. Rather than wasting the resources of our security agencies banning millions of individuals who are already being thoroughly analyzed through current procedures put in place by national security experts, Defendants should be focusing on the small but very dangerous individuals for whom they have specific information that will lead to actually stopping attacks in this country.

**2. Arbitrariness of the Suspension of the Refugee Admissions Program**

227. In priming the country for the Revised Order, Defendant Trump relies upon arbitrary and irrational animus towards refugees with no factual basis. For example, in discussing refugees at a February 18, 2017 rally in Melbourne, Florida, he claimed: "We've allowed

[81] Sam Thielman & Sam Levin, *Experts Criticize US Electronic Devices Ban on Some Flights from Middle East, Guardian* (Mar. 21, 2017), https://www.theguardian.com/us-news/2017/mar/21/us-electronic-devices-ban-flights-tsa-airports (last accessed May 4, 2017).

[82] *Id.*



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thousands and thousands of people into our country and there was no way to vet those people. There was no documentation. There was no nothing. So we're going to keep our country safe."[83]

228. However, according to the State Department's January 20, 2017 Bureau of Population, Refugees, and Migration Fact Sheet:

> All refugees undergo the most intensive security screening of any traveler to the United States. This screening includes multiple federal intelligence, security, and law enforcement agencies, including the National Counterterrorism Center, the FBI Terrorist Screening Center, and the Departments of Homeland Security, State, and Defense. Syrian refugees go through yet additional forms of security screening. A refugee applicant cannot be approved for travel until all required security checks have been completed and cleared.[84]

229. The U.S. Government has a great deal of experience screening and admitting large numbers of refugees from chaotic environments, including where intelligence holdings are limited.

230. According to the U.S. Citizenship and Immigration Services ("USCIS"), the government agency that oversees lawful immigration to the United States:

> Refugee applicants are subject to intensive biographic and biometric security checks. Through close coordination with the federal law enforcement and intelligence communities, these checks are continually reviewed and enhanced to address specific populations that may pose particular threats.
>
> The United Nations High Commissioner for Refugees (UNHCR) identifies and refers many refugees to the U.S. Refugee Admissions Program ("USRAP") for resettlement consideration. UNHCR also provides important information about the worldwide refugee situation.
>
> The Department of State (State) coordinates and manages the USRAP. Resettlement Support Centers (RSCs) work with State to carry out administrative

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[83] Jacob Gardenswartz, *Transcript: President Donald Trump's Rally in Melborne, Florida*, Vox (Feb. 18, 2017), https://www.vox.com/2017/2/18/14659952/trump-transcript-rally-melbourne-florida (last accessed Mar. 13, 2017).

[84] *Fact Sheet: U.S. Refugee Admissions Program FAQ's*, U.S. Dep't of State-Bureau of Population, Refugees, and Migration (Jan. 20, 2017), https://www.state.gov/j/prm/releases/factsheets/2017/266447.htm (last accessed Mar. 13, 2017).



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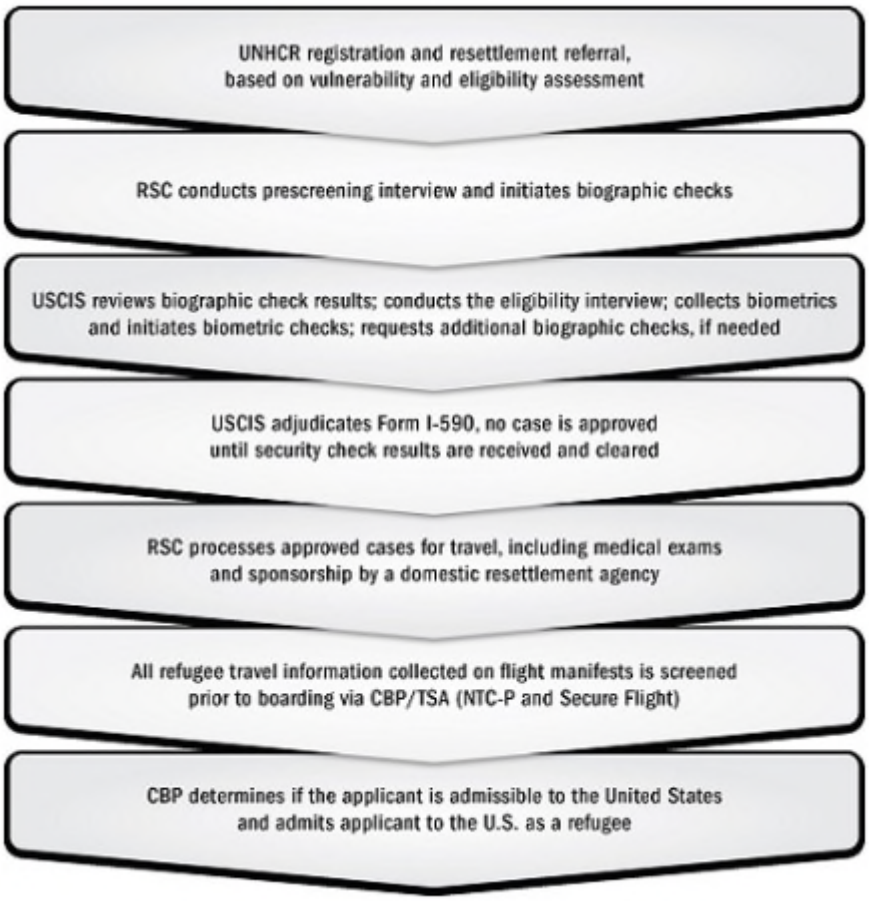
and processing functions, such as file preparation, data collection, and out-processing activities during the refugee admissions process.

USCIS conducts interviews with applicants to determine their eligibility for refugee status, including whether they are credible, meet the refugee definition, and are otherwise admissible to the United States under U.S. law.[85]

231. The general refugee process encompasses the following: [86]




232. The non-existent vetting process claimed by Defendant Trump actually consists of the following numerous steps:

[85] *Refugee Processing and Security Screening*, U.S. Citizenship & Immigration Servs., Dep't of Homeland Sec. (last reviewed/updated Dec. 3, 2015), https://www.uscis.gov/refugeescreening (last accessed Mar. 2, 2017).

[86] *Id.*



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**USRAP Screening**

USRAP screening is a shared responsibility. It includes both biometric and biographic checks at multiple stages during the process, including immediately before a refugee's departure to the United States and upon his or her arrival in the United States.

The screening of refugee applicants involves numerous biographic checks that are initiated by the RSCs and reviewed and/or resolved by USCIS. These include:

The Department of State's Consular Lookout and Support System (CLASS)

State initiates CLASS name checks for all refugee applicants when they are being prescreened by an RSC. Name checks are conducted on the applicant's primary names as well as any variations used by the applicant. Responses are received before the USCIS interview, and possible matches are reviewed and adjudicated by USCIS headquarters. Evidence of the response is included in the case file. If a new name or variation is identified at the interview, USCIS requests another CLASS name check on the new name and places the case on hold until that response is received.

CLASS is owned by State. The name-check database provides access to critical information for adjudicating immigration applications. The system contains records provided by numerous agencies and includes information on individuals who have been denied visas, immigration violations, criminal histories, and terrorism concerns, as well as intelligence information and child support enforcement data.

In addition to containing information from State sources, CLASS also includes information from:

- National Counterterrorism Center/Terrorist Screening Center (terrorist watch lists),
- TECS,
- Interpol,
- Drug Enforcement Administration,
- Health and Human Services, and
- FBI (extracts of the National Crime Information Center's Wanted Persons File, Immigration Violator File, Foreign Fugitive File, Violent Gang and Terrorist Organization File (and the Interstate Identification Index)).

Security Advisory Opinion (SAO)

State initiates SAO name checks for certain refugee applicants when they are being prescreened by an RSC. The SAO biographic check is conducted by the FBI and intelligence community partners. SAOs are conducted for an applicant who is a member of a group or nationality that the U.S. government



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has designated as requiring this higher level check. SAOs are processed, and a response must be received before finalizing the decision. If there is a new name or variation identified at the interview, USCIS requests another SAO for the new name and places the case on hold until that response is received.

The SAO process was implemented after Sept. 11, 2001, to provide an additional security mechanism to screen individuals in certain higher-risk categories who are seeking to enter the United States through a variety of means, including refugee applicants.

Interagency Check (IAC)

The IAC screens biographic data, including names, dates of birth, and other additional data of all refugee applicants within designated age ranges. This information is captured at the time the applicant is prescreened and is provided to intelligence community partners. This screening procedure began in 2008 and has expanded over time to include a broader range of applicants and records. These checks occur throughout the process.

At the time of USCIS interview, USCIS staff collects fingerprints and begins biometric checks. These checks include:

- **FBI Fingerprint Check through Next Generation Identification (NGI):** Recurring biometric record checks pertaining to criminal history and previous immigration data.

- **DHS Automated Biometric Identification System (IDENT - f/n/a US-VISIT):** A biometric record check related to travel and immigration history as well as immigration violations, and law enforcement and national security concerns. Enrollment in IDENT also allows U.S. Customs and Border Protection (CBP) to confirm the applicant's identity at U.S. ports of entry.

- **DOD Defense Forensics and Biometrics Agency (DFBA)'s Automated Biometric Identification System (ABIS):** A biometric record check of the Department of Defense's (DOD) records collected in areas of conflict (predominantly Iraq and Afghanistan). DOD screening began in 2007 for Iraqi applicants and has now been expanded to all nationalities. CBP's National Targeting Center-Passenger (NTC-P) conducts biographic vetting of all ABIS biometric matches against various classified and unclassified U.S. government databases.

**USCIS Interview**



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The USCIS refugee interview is an important part of the refugee screening process. Highly trained USCIS officers conduct extensive interviews with each refugee applicant to learn more about the applicant's claim for refugee status and admissibility. These officers have undergone specialized and extensive training on:

- Refugee law,
- Grounds of inadmissibility,
- Fraud detection and prevention,
- Security protocols,
- Interviewing techniques,
- Credibility analysis, and
- Country conditions research.

Before deploying overseas, officers also receive additional training on the specific population that they will be interviewing, detailed country of origin information, and updates on any fraud trends or security issues that have been identified.

Officers conducting interviews of Syrian applicants undergo an expanded 1-week training focusing on Syria-specific topics, including a classified intelligence briefing. During the interview, the officer develops lines of questioning to obtain information on whether the applicant has been involved in terrorist activity, criminal activity, or the persecution/torture of others. The officer will also conduct a credibility assessment on each applicant.

**Controlled Application Review and Resolution Process (CARRP)**

During the process of adjudicating any USCIS benefit, if any national security concerns are raised, either based on security and background checks or personal interviews or testimony, USCIS conducts an additional review through the internal CARRP process. CARRP is an internal USCIS process that a case can go through to ensure that immigration benefits or services are not granted to individuals who pose a threat to national security and/or public safety, or who seek to defraud our immigration system.

**Enhanced Review for Syrian Applicants**

USCIS' Refugee, Asylum, and International Operations Directorate and Fraud Detection and National Security Directorate (FDNS) work together to provide enhanced review of certain Syrian cases. This review involves FDNS providing intelligence-driven support to refugee adjudicators, including identifying threats and suggesting topics for questioning. FDNS also monitors terrorist watch lists and disseminates intelligence information reports on any applicants who are determined to present a national security threat.

**CBP Vetting**



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> CBP inspects all applicants who are approved for refugee resettlement to the United States to determine their admissibility before they are admitted as refugees. CBP receives a manifest of all approved individuals who have been booked for travel to the United States. CBP receives this manifest 8 days before the scheduled travel. CBP begins vetting the individuals before they arrive at a U.S. airport and then conducts an inspection and additional background checks of these individuals upon their arrival at a U.S. airport.[87]

233. Defendant Trump has misrepresented that "there was no way to vet those people" in an attempt to justify his arbitrary and unjustified suspension of the refugee admissions program. However, USCIS Director León Rodriguez's explained in his September 28, 2016 written testimony for a Senate Committee on the Judiciary, Subcommittee on Immigration and the National Interest hearing that "[a]ll refugees entering our country are subject to the highest level of security check of any category of any traveler to the United States and admitted only after successfully completing a stringent security screening process."[88] He further detailed:

> Recognizing that a well-trained cadre of officers is critical to protecting the integrity of the refugee process, we have focused our efforts on providing the highest quality training to our officers. In addition to the basic training required of all USCIS officers, refugee officers receive nine weeks of specialized training that includes comprehensive instruction on all aspects of the job, including refugee law, grounds of inadmissibility, fraud detection and prevention, security protocols, interviewing techniques, credibility analysis, and country conditions research. Before deploying overseas, officers also receive pre-departure training, which focuses on the specific population that they will be interviewing. This includes information on the types of refugee claims that they are likely to encounter, detailed country of origin information, and updates on any fraud trends or security issues that have been identified. With the advent of large-scale processing of Iraqi applicants in 2007, USCIS officers who adjudicate Iraqi refugee applications began receiving an additional two-day training on country-specific issues, including briefings from outside experts from the law enforcement, intelligence, policy, and academic communities. This training has

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[87] *Id.*

[88] *Written Testimony of USCIS Director Leon Rodriguez for a Senate Committee on Immigration and the National Interest Hearing titled "Oversight of the Administration's FY 2017 Refugee Resettlement Program*," Dep't of Homeland Sec. (Sep. 28, 2016), https://www.dhs.gov/news/2016/09/28/written-testimony-uscis-director-senate-judiciary-subcommittee-immigration-and (last accessed Mar. 13, 2017).



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> since expanded to a one-week training in order to include Syria-specific topics in addition to Iraqi ones.
>
> In order to fully explore refugee claims and to identify any possible grounds of ineligibility, specially-trained USCIS officers conduct an in-person, in-depth interview of every principal refugee applicant. The officer assesses the credibility of the applicant and evaluates whether the applicant's testimony is consistent with known country conditions. These officers also interview each accompanying family member age 14 and older. All applicants must establish admissibility to the United States before the case (i.e., the collection of applicants) is approved. In addition, refugee applicants are subject to robust security screening protocols to identify potential fraud, criminal or national security issues. All refugee status determinations made by interviewing officers undergo supervisory review before a final decision is made. Refugee Affairs Division policy requires officers to submit certain categories of sensitive cases – including certain national security-related cases – to Refugee Affairs Division Headquarters to obtain concurrence prior to the issuance of a decision. This allows for Headquarters staff to conduct additional research, liaise with law enforcement or intelligence agencies, or consult with an outside expert before finalizing the decision.[89]

234. In addition, as recently as January 20, 2017, the U.S. Department of State issued a Fact Sheet that makes clear that the reality of the refugee screening process was, is, and continues to be the complete opposite of what Defendant Trump has claimed:

> *No traveler to the United States is subject to more rigorous security screening than the refugees the U.S. Government considers for admission*. Only after the U.S. Government's rigorous and lengthy security screening process has been completed and an applicant is not found to pose a threat does the U.S. Government grant that individual refugee admission to the U.S. Security screening of all refugees involves multiple U.S. agencies, including the Departments of State, Homeland Security (DHS), and Defense, the Federal Bureau of Investigation, The National Counterterrorism Center, the Terrorist Screening Center, and two federal intelligence agencies.[90]

Emphasis added.

235. Finally, the Open Letter from the foreign policy and national security experts affirms:

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[89] *Id.*

[90] *See supra* note 84.



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> [r]efugees 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.[91]

236. A person who is granted refugee status in the United States can petition to have their spouse and children join them. However, the family members are subject to a lengthy screening process that includes, *inter alia*,[92] confirming the beneficiary's identity and relationship to the petitioner in the United States, the collection of fingerprint scans, medical examinations, and interviews. The required medical clearances have a limited shelf life and expire after six months, so if travel is not scheduled within six months of receiving medical clearance, medical clearance must be obtained again.[93]

237. The actual facts are that the already existing refugee admissions process is stringent, robust, lengthy, and rigorous. Extreme vetting is already in place.

238. Flailing for additional support for the misguided suspension of refugee travel into the United States, the Executive Order includes two curious anecdotes from 2013 and 2014. The first situation was one that was specifically addressed by the previous administration.[94] The second situation involved a refugee brought to this country as a child refugee and radicalized years after he had arrived, only amplifying the finding in the March 1, 2017 Intelligence Assessment that most foreign-born, US-based violent extremists are radicalized years after

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[91] Exhibit K at 1.

[92] *Follow-to-Join Refugees and Asylees*, U.S. Dep't of State-Bureau of Consular Affairs, https://travel.state.gov/content/visas/en/immigrate/join-refugees-and-asylees.html (last accessed May 4, 2017).

[93] *9 FAM 302.2-3(C) (U) Validity Period of an Applicant's Medical Examination for Immigrant Visa Applicants*, U.S. Dep't of State (Sept. 15, 2016), https://fam.state.gov/fam/09FAM/09FAM030202.html (last accessed May 4, 2017).

[94] *See supra* note 72.



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entering the United States, calling into question the effectiveness of the refugee travel ban in the Revised Order.[95]

239. The Revised Order also claims 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.[96] But according to a Washington Post article:

> [O]fficials 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.[97]

240. Defendant Trump repeatedly demonized Syrian refugees,[98] and made clear his intention to ban them from the country:

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[95] *See supra* note 78.

[96] Exhibit E, § 1(h).

[97] Devlin Barrett, Abigail Hauslohner & David Nakamura, *International Trump Administration Data Undercuts Travel Ban*, Wash. Post (Mar. 16, 2017), https://www.washingtonpost.com/world/national-security/internal-trump-administration-data-undercuts-travel-ban/2017/03/16/9a2dc6b4-098e-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.fcc94e54867e (last accessed May 5, 2017).

[98] Jesselyn Cook, *7 Lies Donald Trump Has Spread About Syrian Refugees Entering the U.S.*, Huffington Post (Oct. 20, 2016), http://www.huffingtonpost.com/entry/donald-trump-refugee-crisis_us_5807809ae4b0180a36e7ac14



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241. In line with his rhetoric and on the list of goals of his chief strategist,[99] the Original Order indefinitely suspended the admission of Syrian refugees because the "entry of nationals of Syria as refugees is detrimental to the interests of the United States." Original Order Section 5(c).

242. The Revised Order removed the provision suspending the admission of Syrian refugees indefinitely, further demonstrating the farce behind the assertion in the Original Order that their entry was detrimental to the national interests of the country and highlighting the arbitrary nature in which Defendants have gone about developing and implementing both the Original and Revised Executive Orders.

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(last accessed Mar. 13, 2017); Donald J. Trump (@realDonaldTrump), Twitter (Apr. 7, 2016, 7:48 PM), https://twitter.com/realDonaldTrump/status/718269255872081922.

[99] Z. Byron Wolf, *Steve Bannon's White House Whiteboard Revealed*, CNN (May 3, 2017), http://www.cnn.com/2017/05/03/politics/steve-bannons-white-house-whiteboard/index.html (listed and checked off on the white board of Steve Bannon, White House Chief Strategist, is "[s]uspend the Syrian refugee program") (last accessed May 4, 2017).



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## D. President Trump's Continuing Defiance of Court Orders Regarding the Executive Orders

243. Although both this Court and other courts around the country have granted writs of habeas, temporary restraining orders and preliminary injunctions (some nationwide) and the Original Order has been rescinded, Plaintiffs are compelled to continue this action to ensure their rights are protected. Many, if not all, of the existing litigation and court orders do not help Washington residents who entered the country on single entry or now expired multiple entry non-immigrant visas. They are now stuck inside the country. In addition, numerous Washington residents who are asylees still await the arrival of their families who have completed the rigorous refugee security clearance process.

244. In addition, despite the fact that he revoked the Original Executive Order, Defendants' repeated actions and statements make it far from clear that Defendant Trump will not revert to his original position.

245. Immediately after the first nationwide stay was granted, *see Darweesh v. Trump*, No. 17-480, 2017 WL 388504, at *1 (E.D.N.Y. Jan. 28, 2017), Defendant DHS issued a statement that "President Trump's Original Executive Orders remain in place—prohibited travel will remain prohibited, and the U.S. government retains its right to revoke visas at any time if required for national security or public safety."[100] And Defendant Trump claimed, "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!"[101]

246. On January 30, 2017, acting United States Attorney General Sally Yates issued a memorandum to Department of Justice employees instructing them to not act to enforce the

[100] *Department of Homeland Security Response To Recent Litigation*, Dep't of Homeland Sec. (Jan. 29, 2017), https://www.dhs.gov/news/2017/01/29/department-homeland-security-response-recent-litigation (last accessed Mar. 13, 2017).

[101] Donald J. Trump (@realDonaldTrump, Twitter (Jan. 30, 2017 5:31 AM), https://twitter.com/realdonaldtrump/status/826060143825666051.



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Original Executive Order because she was "not convinced . . . that the [Original] Executive Order is lawful."[102] Ms. Yates wrote:

> My responsibility is to ensure that the position of the Department of Justice is not only legally defensible, but is informed by our best view of what the law is after consideration of all the facts. In addition, I am responsible for ensuring that the positons we take in court remain consistent with this institution's solemn obligation to always seek justice and stand for what is right. At present, I am not convinced that the defense of the [Original] Executive Order is consistent with these responsibilities nor am I convinced that the [Original] Executive Order is lawful.[103]

247. Within hours of her issuance of this statement, and its hand-delivery to Defendant Trump, Defendant Trump fired Ms. Yates, calling her statement a "betrayal."

248. After this Court issued a Temporary Restraining Order ("TRO") on February 3, 2017 and the Ninth Circuit issued a unanimous decision upholding the TRO on February 9, 2017, Defendants vowed to keep fighting the court orders.

249. Even more unusual were Defendant Trump's statements that followed the District Court and Ninth Circuit's Orders:

- @realDonaldTrump: "The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!" -- 5:12 AM - 4 Feb 2017[104]
- @realDonaldTrump: "What is our country coming to when a judge can halt a Homeland Security travel ban and anyone, even with bad intentions, can come into U.S.?" -- 12:44 PM - 4 Feb 2017[105]

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[102] *Letter from Sally Yates to Dep't of Justice*, N.Y. Times (Jan. 30, 2017), https://www.nytimes.com/interactive/2017/01/30/us/document-Letter-From-Sally-Yates.html?_r=1 (last accessed Mar. 13, 2017).

[103] *Id.*

[104] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 5:12 AM), https://twitter.com/realdonaldtrump/status/827867311054974976.

[105] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 12:44 PM), https://twitter.com/realDonaldTrump/status/827981079042805761.



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- @realDonaldTrump: "Because the ban was lifted by a judge, many very bad and dangerous people may be pouring into our country. A terrible decision" -- 1:44 PM - 4 Feb 2017[106]

- @realDonaldTrump: "Why aren't the lawyers looking at and using the Federal Court decision in Boston, which is at conflict with ridiculous lift ban decision?" -- 3:37 PM - 4 Feb 2017[107]

- @realDonaldTrump: "The judge opens up our country to potential terrorists and others that do not have our best interests at heart. Bad people are very happy!" -- 4:48 PM - 4 Feb 2017[108]

- @realDonaldTrump: "Just cannot believe a judge would put our country in such peril. If something happens blame him and court system. People pouring in. Bad!" -- 12:39 PM - 5 Feb 2017[109]

- @realDonaldTrump: "I have instructed Homeland Security to check people coming into our country VERY CAREFULLY. The courts are making the job very difficult!" -- 12:42 PM - 5 Feb 2017[110]

- @realDonaldTrump: "SEE YOU IN COURT, THE SECURITY OF OUR NATION IS AT STAKE!" -- 3:35 PM - 9 Feb 2017[111]

- @realDonaldTrump" "Our legal system is broken! '77% of refugees allowed into U.S. since travel reprieve hail from seven suspect countries.' (WT) [sic] SO DANGEROUS!" -- 4:12 AM - 11 Feb 2017[112]

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[106] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 1:44 PM), https://twitter.com/realDonaldTrump/status/827996357252243456.

[107] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 3:37 PM), https://twitter.com/realDonaldTrump/status/828024835670413312.

[108] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 4:48 PM), https://twitter.com/realDonaldTrump/status/828042506851934209.

[109] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 5, 2017, 12:39 PM), https://twitter.com/realDonaldTrump/status/828342202174668800.

[110] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 5, 2017, 12:42 PM), https://twitter.com/realDonaldTrump/status/828343072840900610.

[111] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 9, 2017, 3:35 PM), https://twitter.com/realDonaldTrump/status/829836231802515457.

[112] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 11, 2017, 4:12 AM), https://twitter.com/realDonaldTrump/status/830389130311921667.



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250. The day before the Ninth Circuit issued its ruling, Defendant Trump declared that the Original Order was "so simple and so beautifully written and so perfectly written"[113] and cast further aspersions this country's judicial system, stating, "I don't ever want to call a court biased, so I won't call it biased. And we haven't had a decision yet. But courts seem to be so political and it would be so great for our justice system if they would be able to read a statement and do what's right."

251. In their February 16, 2017 supplemental brief regarding review of the Ninth Circuit's decision to deny Defendant's request for a stay of the TRO by the entire panel, Defendants represented that "[r]ather than continuing this litigation, the President intends in the near future to rescind the Order and replace it with a new, substantially revised Executive Order . . . "[114]

252. Yet on that very same day, Defendant Trump directly contradicted the representations made to the Ninth Circuit in the supplemental briefing filed by the United States government on his behalf. During a news conference, Defendant Trump stated: "We're issuing a new executive action next week that will comprehensively protect our country. So we'll be going along the one path and hopefully winning that, at the same time we will be issuing a new and very comprehensive order to protect our people."[115]

253. Further, on February 21, 2017, senior policy adviser Stephen Miller not only claimed "[n]othing was wrong with the first executive order" but also revealed that the revised

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[113] Matt Zapotosky & Robert Barnes, *As Judges Weigh Travel Ban, Trump Asserts that Courts are 'so Political,'* Wash. Post (Feb. 8, 2017), http://www.chicagotribune.com/news/nationworld/politics/ct-trump-defends-travel-ban-20170208-story.html (last accessed Mar. 13, 2017).

[114] Suppl. Br. on *En Banc* Consideration at 4, *State* (9th Cir. Feb. 16, 2017), Dkt. # 154.

[115] *Presidential News Conference*, N.Y. Times (Feb. 16, 2017), transcript and video is available at https://www.nytimes.com/video/us/politics/100000004937194/trump-labor-secretary.html (last accessed Mar. 13, 2017).



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travel ban will have "mostly minor technical differences" from the Original Order and "fundamentally" would be "the same basic policy outcome for the country."[116]

254. In addition, during White House press briefings on February 21, 22, and 23, 2017, Press Secretary Sean Spicer stated that the Defendant Trump will continue to pursue the case in the Ninth Circuit. In particular, Mr. Spicer stated:

- On February 21, 2017: The President has "made very clear" that there will be a "dual-track system" and is [117]"confident that we're still going to prevail on the case—the merits of the case."
- On February 22, 2017: The President is "fighting this on both fronts, making sure that we keep evolving through the [118]court system on the existing EO," while drafting an additional executive order.
- On February 23, 2017: "So with respect to the executive order [on immigration], there are several courts that this is being fought in—10 or so—and we continue to deal with that in all of those venues. And then again, I guess, the only way to say this is, then obviously on the dual-track side we have the additional executive order that we've talked about earlier that will come out and further address the problems. We continue to believe that the issues that we face specifically in the 9th district—9th Circuit, rather, that we will prevail on, on the merits of that. But on the other challenges that have come and the other venues and the others—that we feel equally confident, as we did in Massachusetts and other venues. So it's not a single-track system."[119]

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[116] Martha McCallum, *Miller: New Order Will Be Responsive to the Judicial Ruling; Rep. Ron DeSantis: Congress has Gotten Off to a Slow Start*, Fox (Feb. 21, 2017), http://www.foxnews.com/transcript/2017/02/21/miller-new-order-will-be-responsive-to-judicial-ruling-rep-ron-desantis/ (last accessed Mar. 13, 2017).

[117] *Press Briefing by Press Secretary Sean Spicer, 2/21/17, #13*, White House (Feb. 21, 2017), https://www.whitehouse.gov/the-press-office/2017/02/21/press-briefing-press-secretary-sean-spicer-2212017-13 (last accessed Mar. 13, 2017).

[118] *Press Briefing by Press Secretary Sean Spicer, 2/22/17, #14*, White House (Feb. 22, 2017), https://www.whitehouse.gov/the-press-office/2017/02/22/press-briefing-press-secretary-sean-spicer-2222017-14 (last accessed Feb. 27, 2017).

[119] *Press Briefing by Press Secretary Sean Spicer, 2/23/17, #15*, White House (Feb. 23, 2017), https://www.whitehouse.gov/the-press-office/2017/02/23/press-briefing-press-secretary-sean-spicer-2232017-15 (last accessed Feb. 27, 2017).



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255. On February 27, 2017, Press Secretary Spicer reiterated that as to the Revised Order, "the goal is obviously to maintain the way that we did it the first time."[120]

256. Defendants' statements appear to be designed to inflame and incite further animus against persons affected by the ban, and grossly distort and misrepresent the actual process through which Plaintiffs were screened and reviewed before their admittance to the United States was allowed.

257. Defendants' statements underscore the continued discriminatory motive behind the Revised Order. And Defendants' statements make it abundantly clear that there is no guarantee that Defendants will not revert to the Original Order at some point in time.

258. Indeed, as recently as on March 1, 2017, Vice President Pence stated during an interview on CBS This Morning that "[t]he president is just determined to not only defend the first executive order in the courts, which we continue to believe is fully within his purview and in his presidential authority, but also to take that authority that is undisputed in the law within the executive order."[121]

259. Given the numerous, inconsistent positions Defendants have taken with regard to the Original and Revised Orders over time, individual Plaintiffs and members of the Non-Immigrant Visa Class reasonably fear that, if they attempt to enter or re-enter the United States, they will be denied permission to do so, notwithstanding their previously established lawful presence in the United States and the fact that they have otherwise been deemed appropriate by the U.S. government for admission.

260. Because the Revised Order continues to suspend the refugee admissions program, Joseph Doe and others similarly situated are left in the exact same purgatory they were in with the Original Order.

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[120] *Press Briefing by Press Secretary Sean Spicer, 2/27/17, #17*, White House (Feb 27, 2017), https://www.whitehouse.gov/the-press-office/2017/02/27/press-briefing-press-secretary-sean-spicer-2272017-17 (last accessed Mar. 13, 2017).

[121] *See supra* note 9.



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261. The Revised Order effectively traps members of the Non-Immigrant Visa Class in the United States, interferes with the relationships of the Non-Immigrant Visa Class as well as the I-730 Class and their family members, and imposes arbitrary and irrational burdens on them that do not serve any valid governmental interest.

## V. CLASS ACTION ALLEGATIONS

262. Plaintiffs Jack Doe and Jason Doe, bring this action as a class action pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2), on their own behalf and on behalf of all other Washington residents who are nationals of the Designated Countries with non-immigrant visas and who do not have unexpired multiple-entry visas ("the Non-Immigrant Visa Class").

263. Plaintiffs Joseph Doe and James Doe bring this action as a class action pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2), on their own behalf and on behalf of all other refugees and asylees, including those who have since adjusted their status to Lawful Permanent Resident, who now reside in Washington, and who have filed I-730 applications for and await the arrival of their family members who have completed and cleared their final security screenings as of the effective date of the Revised Order ("the Refugee Class").

264. Upon information and belief, both Plaintiff Classes are so numerous that joinder is impracticable. According to the Annual Report of the Visa Office of the U.S. Department of State, in 2015, the last year for which data are available, the United States issued over 58,663 non-immigrant visas to nationals from the Designated Countries.[122] 59% of all Muslim refugees who entered the United States in FY 2016 hailed from the six countries to which Section 2(c) of the new Executive Order applies. On information and belief, a large number of such persons reside in Washington.

[122] *Table XVIII: Nonimmigrant Visas Issued by Nationality (Including Border Crossing Cards) Fiscal Year 2006-2015*, U.S. Dep't of State-Bureau of Consular Affairs, https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2015AnnualReport/FY15AnnualReport-TableXVIII.pdf (last accessed Mar. 13, 2017).



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265. The claims of the Non-Immigrant Visa Class as well as the Refugee Class members share common issues of law, including but not limited to whether the Revised Executive Order violates their associational, religious exercise, and due process rights under the First and Fifth Amendments; the Religious Freedom Restoration Act; and the Administrative Procedure Act.

266. The claims of the Plaintiff Class members share common issues of fact, including but not limited to whether the Revised Executive Order is being or will be enforced so as to prevent them or their family members from entering the United States from abroad or from re-entering the United States should they choose to leave the United States briefly, even though they would otherwise be admissible.

267. The claims or defenses of the named Plaintiffs are typical of the claims or defenses of members of each of the Plaintiff Classes.

268. Jack Doe and Jason Doe will fairly and adequately protect the interests of the Non-Immigrant Visa Class, and Joseph Doe and James Doe will fairly and adequately protect the interests of the Refugee Class. None of the named Plaintiffs have any interest that is now or may be potentially antagonistic to the interests of the Plaintiff class they seek to represent. The attorneys representing the named Plaintiffs include experienced civil rights attorneys and are considered able practitioners in federal constitutional litigation. These attorneys should be appointed as class counsel.

269. Defendants have acted, have threatened to act, and will act on grounds generally applicable to both Plaintiff Classes, thereby making final injunctive and declaratory relief appropriate to the class as a whole. Both Plaintiff Classes may therefore be properly certified under Fed. R. Civ. P. 23(b)(2).

270. Prosecution of separate actions by individual members of either of the Plaintiff Classes would create the risk of inconsistent or varying adjudications and would establish



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incompatible standards of conduct for individual members of each Plaintiff Class. Both Plaintiff Classes may therefore be properly certified under Fed. R. Civ. P. 23(b)(1).

## VI. CAUSES OF ACTION

### COUNT ONE
### FIRST AMENDMENT – ESTABLISHMENT, FREE EXERCISE, SPEECH AND ASSEMBLY CLAUSES
### (Against All Defendants, Asserted by All Plaintiffs)

271. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

272. The First Amendment prohibits the establishment of a religion or the prohibition of the free exercise of religion.

273. The Original and Revised Executive Orders violate the Establishment Clause by singling out Muslims for disfavored treatment. It has the purpose and effect of inhibiting religion, and it is neither justified by, nor closely fitted to, any compelling governmental interest.

274. The Original and Revised Executive Order discriminates on the basis of religion and national origin, each a suspect classification, and is not narrowly tailored to serve a compelling governmental interest, and thereby violates the equal protection component of the Due Process Clause.

275. The Original and Revised Executive Orders constitute an unlawful attempt to discriminate against Muslims and to establish a preference for one religion over another. References in the Original and Revised Executive Orders to the Designated Countries are transparently a pretext to establish this preference. And the removal of the language prioritizing the admission of refugees of the minority religion of their countries that was in Section 5 of the Original Executive Order from Section 6 of the Revised Executive Order cannot erase the taint nor the true motivation behind either the Original or Revised Executive Orders. Singling out Muslims for disfavored treatment and granting special preferences to non-Muslims is neither justified by, nor closely fitted to, any compelling governmental interest.



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276. The Original and Revised Executive Orders also violate the rights of Plaintiffs the Episcopal Diocese and CAIR-WA to receive information and speech from, and to associate freely with, refugees who are Muslim or who are from the majority-Muslim Designated Countries.

**COUNT TWO**
**RELIGIOUS FREEDOM RESTORATION ACT**
**(Against All Defendants, Asserted by All Plaintiffs)**

277. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

278. Pursuant to the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 et seq., the government "shall not substantially burden a person's exercise of religion" unless it "(1) is in furtherance of a compelling government interest; *and* (2) is the least restrictive means of furthering that compelling governmental interest." *Id*. (emphasis added).

279. The Original and Revised Executive Orders have the effect of imposing a special disability on the basis of religious views or religious status, by withdrawing important immigration benefits principally from Muslims on account of their religion. In doing so, the Original and Revised Executive Orders place a substantial burden on Muslims' exercise of religion in a way that is not the least restrictive means of furthering a compelling governmental interest.

280. Defendants' actions therefore constitute a violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 *et seq*.

**COUNT THREE**
**FIFTH AMENDMENT – EQUAL PROTECTION**
**(Against All Defendants, Asserted by Jack Doe, Jason Doe and the Non-Immigrant Visa Class)**

281. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.



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282. The Original and Revised Executive Orders discriminate against Plaintiffs Jack Doe, Jason Doe and the members of the Non-Immigrant Visa Class on the basis of their country of origin without sufficient justification and therefore violates the equal protection component of the Due Process Clause of the Fifth Amendment.

283. The Original and Revised Orders bar them from traveling and imposes additional burdens such as requiring them to seek a waiver.

284. Additionally, the Original and Revised Executive Orders were substantially motivated by animus toward—and has a disparate effect on—Muslims, which also violates the equal protection component of the Due Process Clause of the Fifth Amendment.

**COUNT FOUR**
**FIFTH AMENDMENT – PROCEDURAL DUE PROCESS**
**(Against All Defendants, Asserted by All Plaintiffs except John Doe and Jack Doe)**

285. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

286. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall…be deprived of life, liberty, or property, without due process of law."

287. Procedural due process requires that the government be constrained before it acts in a way that deprives individuals of liberty or property interests protected under the Due Process Clause of the Fifth Amendment.

288. Defendants' actions, as described above, have deprived Plaintiffs of their liberty and/or property interests without notice or opportunity to be heard.

**COUNT FIVE**
**FIFTH AMENDMENT – SUBSTANTIVE DUE PROCESS**
**(Against All Defendants, Asserted by Jason Doe and the Non-Immigrant Visa Class)**

289. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.



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290. Plaintiffs Jack Doe, Jason Doe and members of the Non-Immigrant Visa Class have a constitutionally protected, fundamental liberty interest in freedom of movement that encompasses their right to travel abroad.

291. Defendants' actions, as described above, have denied Plaintiffs Jack Doe, Jason Doe and members of the Non-Immigrant Visa Class the opportunity to travel outside the United States for fear that they will be denied re-entry. Such actions, taken pursuant to the Revised Executive Order, are not justified by a compelling government interest and therefore violate the substantive due process rights guaranteed by the Fifth Amendment to Plaintiffs Jack Doe, Jason Doe, and members of the Non-Immigrant Visa Class.

**COUNT SIX**
**FIFTH AMENDMENT – SUBSTANTIVE DUE PROCESS**
**(Against All Defendants, Asserted by Joseph Doe, James Doe, and the Refugee Class)**

292. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

293. Plaintiffs Joseph Doe, James Doe, and members of the Refugee Class have a constitutionally protected, fundamental liberty interest in their marriage and their family lives.

294. Defendants' arbitrary suspension of the travel of refugees into the United States and the decision on applications for refugee status, including follow-to-join Refugee/Asylee Relative Petitions, violate the substantive due process rights guaranteed by the Fifth Amendment to them. Defendants' arbitrary suspension of the refugee program has deprived Plaintiffs Joseph Doe, James Doe, and members of the Refugee Class of their fundamental right to be with their families and is not justified by a compelling government interest.



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**COUNT SEVEN**
**VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**
**(Against all Defendants, Asserted by Jason Doe, Joseph Doe, James Doe, and the Non-Immigrant Visa and Refugee Classes)**

295. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

296. The formulation of policies pertaining to the entry of aliens is entrusted exclusively to Congress. *Galvan v. Press*, 347 U.S. 522, 531 (1954). Through the enactment of and amendments to the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*., Congress has established an extensive statutory scheme governing the admission and exclusion of aliens. Where Congress has delegated authority to the Executive, that authority remains constrained by the parameters of the INA. Defendants have exceeded the scope of their delegated authority because their actions are contrary to the INA.

297. Specifically, INA section 212(a) establishes, in detail, the classes of aliens who are ineligible for visas or admission into the United States, including under "Security and related grounds," section 212(a)(3), 8 U.S.C. § 1182(a)(3). INA section 212(a)(3)(C)(iii) prohibits ideological exclusions like those embodied in Defendants' Orders. Namely, an alien may not be excludable or subject to restrictions or conditions on entry "because of the alien's past, current, or expected beliefs, statements, or associations." 8 U.S.C. § 1182(a)(3)(C)(iii).

298. In enacting this provision of the INA, Congress specifically sought to end a practice of excluding or denying entry to aliens based on their beliefs.

299. Defendants, in issuing the Orders, have directly contradicted the expressed will of Congress and violated the INA. To the extent that the delegation of authority in INA section 212(f) is viewed as encompassing the authority to violate the expressed will of Congress, it is an unconstitutional delegation of authority.



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**COUNT EIGHT**
**ADMINISTRATIVE PROCEDURE ACT— PROCEDURAL VIOLATION**
**(Against all Defendants except Defendant Trump, Asserted by All Plaintiffs)**

300. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

301. Defendants U.S. Department of State, U.S. Department of Homeland Security. and U.S. Customs and Border Protection are "agencies" under the APA. *See* 5 U. S. C. § 551(1).

302. Sections 553 and 706 of the Administrative Procedure Act, 5 U. S. C. §§ 553 and 706 (2), require that federal agencies conduct formal rule making before engaging in action that impacts substantive rights.

303. The APA further requires courts to hold unlawful and set aside any agency action taken "without observance of procedure required by law." 5 U. S. C. § 706(2)(D).

304. The creation of the administrative rules contained in Sections 3 and 5 of the Original Executive Order and Sections 2, 3, and 6 of the Revised Executive Order was an agency action subject to the APA.

305. Additionally, in implementing Sections 3 and 5 of the Original Executive Order and Sections 2, 3, and 6 of the Revised Executive Order, Defendants federal agencies and Defendant secretaries and/or directors of those agencies have taken an agency action subject to the APA because they have changed the substantive criteria by which individuals from the Designated Countries may enter the United States, which impacts substantive rights.

306. In addition, in issuing Cable 23338, an agency action under the APA, Defendant Secretary of State failed to fulfill the procedural requirements of the APA. Defendants federal agencies and Defendant secretaries and/or directors of those agencies did not follow the procedures required by the APA before taking action impacting the substantive rights of the Plaintiffs.

307. By failing to follow the rulemaking procedures required of them prior to changing the substantive criteria by which individuals from the Designated Countries may enter the United



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States, Defendants federal agencies and Defendant secretaries and/or directors of those agencies violated the APA.

308. These violations continue to cause ongoing harm to Plaintiffs.

**COUNT NINE**
**ADMINISTRATIVE PROCEDURE ACT—SUBSTANTIVE VIOLATION**
**(Against all Defendants except Defendant Trump, Asserted by all Plaintiffs)**

309. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

310. Defendants U.S. Department of State, U.S. Department of Homeland Security. and U.S. Customs and Border Protection are "agencies" under the APA. *See* 5 U. S. C. § 551(1).

311. The Administrative Procedure Act prohibits federal agency action that is "contrary to constitutional right, power, privilege, or immunity," 5 U. S. C. § 706(2)(B), or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U. S. C. § 706(2)(C), or "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." 5 U. S. C. § 706(2)(A).

312. The creation of the administrative rules contained in Sections 3 and 5 of the Original Executive Order and Sections 2, 3, and 6 of the Revised Executive Order was an agency action subject to the APA.

313. Additionally, in implementing Sections 3 and 5 of the Original Executive Order and Sections 2, 3, and 6 of the Revised Executive Order, Defendants federal agencies and Defendant secretaries and/or directors of those agencies have taken unconstitutional and unlawful action, as alleged in this Complaint, in violation of the Administrative Procedure Act.

314. In implementing Sections 3 and 5 of the Original Executive Order and Sections 2(c), 3(c), and 6(c) and (d) of the Revised Executive Order, Defendants federal agencies have arbitrarily and capriciously exercised their discretion.

315. In implementing Sections 3 and 5 of the Original Executive Order and Sections 2, 3, and 6 of the Revised Executive Order, Defendants federal agencies and Defendant secretaries



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and/or directors of those agencies exceeded their statutory authority and engaged in nationality and religion-based discrimination in violation of RFRA.

316. In addition, the issuance of Cable 23338, an agency action under the APA, is arbitrary and capricious.

317. Finally, in implementing Sections 3 and 5 of the Original Executive Order and Sections 2, 3, and 6 of the Revised Executive Order, Defendants' actions as set forth above were arbitrary, capricious, or discriminatory. Defendants have offered no satisfactory explanation for the countries that are or are not included within the scope of the Revised Order while banning millions of people with no connection whatsoever to terrorism and causing harm to Plaintiffs. Accordingly, Defendants have violated the substantive requirements of the Administrative Procedure Act.

## PRAYER FOR RELIEF

**WHEREFORE**, Petitioners pray that this Court grant the following relief:

1. A determination that the Individual Plaintiffs' claims may properly be maintained as a class action pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2);

2. A declaration that Sections 3(c), 5(a)–(c), and 5(e) of the Original Executive Order and Sections 1(f), 2(c), and 6(a) of the Revised Executive Order violate the rights of all Plaintiffs as well as members of the Non-Immigrant Visa Class and the Refugee Class for the reasons set forth above.

3. A declaration that Sections 1(f), 2(c), and 6(a) of the Revised Executive Order and the manner in which they will be implemented are in violation of the rights of all Plaintiffs as well as members of the Non-Immigrant Visa Class and the Refugee Class for the reasons set forth above.

4. An injunction that the Original and Revised Executive Order may not be enforced as against Plaintiffs or members of members of the Non-Immigrant Visa Class or the Refugee Class in connection with their entry or re-entry into the United States;



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5. A permanent injunction of the Original and Revised Executive Orders as contrary to the Constitution;

6. An award to the Plaintiffs as well as members of the Non-Immigrant Visa Class and the Refugee Class of reasonable costs and attorneys' fees; and,

7. Such other and further relief that this Court may deem fit and proper.



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DATED this 14th day of May, 2017.

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION

By: /s/ Emily Chiang

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***Attorneys for Plaintiffs/Cooperating Attorneys for the American Civil Liberties Union Of Washington Foundation***

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2017, I electronically filed the foregoing Second Amended Class Action Complaint for Declaratory and Injunctive Relief with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses on the Court's Electronic Mail Notice List.

DATED this 8th day of May, 2017.

KELLER ROHRBACK L.L.P.

By: /s/ Tana Lin

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***Attorney for Plaintiffs/Cooperating Attorney for the American Civil Liberties Union Of Washington Foundation***

# EXHIBIT A

Federal Register
Vol. 82, No. 20
Wednesday, February 1, 2017

# Presidential Documents

**Title 3—**

**The President**

## Executive Order 13769 of Januar 27, 2017

## Protecting the Nation From Foreign Terrorist Entr Into the United States

By the authority vested in me as President by the Constitution and 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 American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

**Section 1**. *Purpose.* The visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Perhaps in no instance was that more apparent than the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutini ing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.

Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.

In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including ''honor'' killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.

**Sec. 2**. *Policy.* It is the policy of the United States to protect its citi ens from foreign nationals who intend to commit terrorist attacks in the United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.

**Sec. 3**. *Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern.* (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall immediately conduct a review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat.

(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 review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed for adjudications and a list of countries that do not provide adequate information, within 30 days of the date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State 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 utili ation of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C–2 visas for travel to the United Nations, and G–1, G–2, G–3, and G–4 visas).

(d) Immediately upon receipt of the report described in subsection (b) of this section regarding the information needed for adjudications, the Secretary of State shall request all foreign governments that do not supply such information to start providing such information regarding their nationals within 60 days of notification.

(e) After the 60-day period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the President a list of countries recommended for inclusion on a Presidential proclamation that would prohibit the entry of foreign nationals (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C–2 visas for travel to the United Nations, and G–1, G–2, G–3, and G–4 visas) from countries that do not provide the information requested pursuant to subsection (d) of this section until compliance occurs.

(f) At any point after submitting the list described in subsection (e) of this section, the Secretary of State or the Secretary of Homeland Security may submit to the President the names of any additional countries recommended for similar treatment.

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

(h) The Secretaries of State and Homeland Security shall submit to the President a joint report on the progress in implementing this order within 30 days of the date of this order, a second report within 60 days of the date of this order, a third report within 90 days of the date of this order, and a fourth report within 120 days of the date of this order.

**Sec. 4**. *Implementing Uniform Screening Standards for All Immigration Programs.* (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program, as part of the adjudication process for immigration benefits, to identify individuals seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of a uniform screening standard and procedure, 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 the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

**Sec. 5**. *Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017.* (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days. 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 process to determine what additional procedures should be taken to ensure that those approved for refugee admission do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of these revised procedures. Upon the date that is 120 days after the date of this order, the Secretary of State shall resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that such additional procedures are adequate to ensure the security and welfare of the United States.

(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioriti e 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. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioriti ation.

(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), 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 such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and 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 admission of such individuals as refugees is in the national interest—including when the person is a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship—and it would not pose a risk to the security or welfare of the United States.

(f) The Secretary of State shall submit to the President an initial report on the progress of the directive in subsection (b) of this section regarding prioriti ation of claims made by individuals on the basis of religious-based persecution within 100 days of the date of this order and shall submit a second report within 200 days of the date of this order.

(g) 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 Homeland Security 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. 6**. *Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility.* The Secretaries of State and Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority in section 212 of the INA, 8 U.S.C. 1182, relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda.

**Sec. 7**. *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 all 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 contained in subsection (a) of this section. The initial report shall be submitted within 100 days of the date of this order, a second report shall be submitted within 200 days of the date of this order, and a third report shall be submitted within 365 days of the date of this order. Further, the Secretary shall submit a report every 180 days thereafter until the system is fully deployed and operational.

**Sec. 8**. *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.

(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 non-immigrant visa-interview wait times are not unduly affected.

**Sec. 9**. *Visa Validity Reciprocity.* The Secretary of State shall review all nonimmigrant visa reciprocity agreements 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 a country does not treat United States nationals seeking nonimmigrant visas in a 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 the foreign country, to the extent practicable.

**Sec. 10**. *Transparency and Data Collection.* (a) To be more transparent with the American people, and to more effectively implement 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 within 180 days, and every 180 days thereafter:

(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, or material support to a terrorism-related organi- ation, or any other national security reasons since the date of this order or the last reporting period, whichever is later;

(ii) information regarding the number of foreign nationals in the United States who have been radicali ed after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organi ations in countries that pose a threat to the United States, since the date of this order or the last reporting period, whichever is later; and

(iii) information regarding the number and types of acts of gender-based violence against women, including honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later; and

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

(b) The Secretary of State shall, within one year of the date of this order, provide a report on the estimated long-term costs of the USRAP at the Federal, State, and local levels.

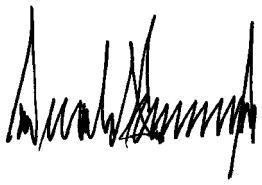
**Sec. 11**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(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.



THE WHITE HOUSE,
*January 27, 2017.*

[FR Doc. 2017–02281
Filed 1–31–17; 11:15 am]
Billing code 3295–F7–P

# EXHIBIT B

**United States Department of State**

*Deputy Assistant Secretary*
*for Visa Services*

*Washington, D.C. 20520*

January 27, 2017

Upon request of the U.S. Department of Homeland Security and pursuant to sections 212(f) and 221(i) of the Immigration and Nationality Act and 22 CFR 41.122 and 42.82, and in implementation of section 3(c) of the Executive Order on Protecting the Nation from Terrorist Attacks by Foreign Nationals, I hereby provisionally revoke all valid nonimmigrant and immigrant visas of nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen, subject to the exceptions discussed below.

The revocation does not apply to visas in the following nonimmigrant classifications: A-1, A-2, G-1, G-2, G-3, G-4, NATO, C-2, or certain diplomatic visas.

The revocation also does not apply to any visa exempted on the basis of a determination made by the Secretaries of State and Homeland Security pursuant to section 3(g) of the Executive Order on a case-by-case basis, and when in the national interest.

This document 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.

Edward J. Ramotowski

Deputy Assistant Secretary

Bureau of Consular Affairs

Department of State

# EXHIBIT C

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
*Office of the Director* (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

FEB 2 2017

# Memorandum

TO: All USCIS Employees

FROM: Lori L. Scialabba
Acting Director

SUBJECT: Guidance Concerning Executive Order on Immigration

On January 27, President Trump signed an Executive Order entitled "Protecting The Nation From Foreign Terrorist Entry Into The United States." This memorandum provides guidance from the Department of Homeland Security (DHS) regarding the impact of this Executive Order on various immigration benefit requests.

All USCIS employees should be aware of current guidance from DHS, specifically:

1. Section 3(c) of the Executive Order does not affect USCIS adjudication of applications and petitions filed for or on behalf of individuals in the United States regardless of their country of nationality. Section 3(c) also does not affect applications and petitions by lawful permanent residents outside the United States, or applications and petitions for individuals outside the United States whose approval does not directly confer travel authorization (including any immigrant or nonimmigrant visa petition). This includes, but is not limited to, the matters discussed more specifically in paragraphs 2, 3 and 5 below.

2. Applications to Register Permanent Residence or Adjust Status (Form I-485) may continue to be adjudicated, according to existing policies and procedures, for applicants who are nationals of countries designated in the Executive Order.

3. USCIS will adjudicate Refugee/Asylee Relative Petitions (Form I-730) for all beneficiaries, from any country of nationality, currently in the United States according to

existing policies and procedures. Further guidance will be issued with respect to beneficiaries currently outside of the United States.

4. USCIS will continue refugee interviews when the person is a religious minority in his or her country of nationality facing religious persecution. Additionally, USCIS will continue refugee interviews in jurisdictions where there is a preexisting international agreement related to refugee processing. USCIS will not approve a refugee application for an individual who we determine would pose a risk to the security or welfare of the United States.

5. USCIS will continue adjudicating all affirmative asylum cases according to existing policies and procedures.

Questions concerning the information contained in this memorandum may be addressed via your directorate or program office through appropriate supervisory channels.

# EXHIBIT D

**IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

No. 17-35105

| | |
|---|---|
| STATE OF WASHINGTON, et al.<br><br>Plaintiffs-Appellees,<br><br>vs.<br><br>DONALD J. TRUMP, President of the United States, et al.,<br><br>Defendants-Appellants. | **JOINT DECLARATION OF MADELEINE K. ALBRIGHT, AVRIL D. HAINES MICHAEL V. HAYDEN JOHN F. KERRY JOHN E. McLAUGHLIN LISA O. MONACO MICHAEL J. MORELL JANET A. NAPOLITANO LEON E. PANETTA SUSAN E. RICE** |

We, Madeleine K. Albright, Avril D. Haines, Michael V. Hayden, John F. Kerry, John E. McLaughlin, Lisa O. Monaco, Michael J. Morell, Janet A. Napolitano, Leon E. Panetta, and Susan E. Rice declare as follows:

1. We are former national security, foreign policy, and intelligence officials in the United States Government:

   a. Madeleine K. Albright served as Secretary of State from 1997 to 2001. A refugee and naturalized American citizen, she served as U.S. Permanent Representative to the United Nations from 1993 to 1997 and has been a member of the Central Intelligence Agency External Advisory Board since 2009 and the Defense Policy Board since 2011, in which capacities she has received assessments of threats facing the United States.

   b. Avril D. Haines served as Deputy Director of the Central Intelligence Agency from 2013 to 2015, and as Deputy National Security Advisor from 2015 to January 20, 2017.

   c. Michael V. Hayden served as Director of the National Security Agency from 1999 to 2005, and Director of the Central Intelligence Agency from 2006 to 2009.

   d. John F. Kerry served as Secretary of State from 2013 to January 20, 2017.

e. John E. McLaughlin served as Deputy Director of the Central Intelligence Agency from 2000-2004 and Acting Director of CIA in 2004. His duties included briefing President-elect Bill Clinton and President George W. Bush.
f. Lisa O. Monaco served as Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor from 2013 to January 20, 2017.
g. Michael J. Morell served as Acting Director of the Central Intelligence Agency in 2011 and from 2012 to 2013, Deputy Director from 2010 to 2013, and as a career official of the CIA from 1980. His duties included briefing President George W. Bush on September 11, 2001, and briefing President Barack Obama regarding the May 2011 raid on Osama bin Laden.
h. Janet A. Napolitano served as Secretary of Homeland Security from 2009 to 2013.
i. Leon E. Panetta served as Director of the Central Intelligence Agency from 2009-11 and as Secretary of Defense from 2011-13.
j. Susan E. Rice served as U.S. Permanent Representative to the United Nations from 2009-13 and as National Security Advisor from 2013 to January 20, 2017.

2. We have collectively devoted decades to combatting the various terrorist threats that the United States faces in a dynamic and dangerous world. We have all held the highest security clearances. A number of us have worked at senior levels in administrations of both political parties. Four of us (Haines, Kerry, Monaco and Rice) were current on active intelligence regarding all credible terrorist threat streams directed against the U.S. as recently as one week before the issuance of the Jan. 27, 2017 Executive Order on "Protecting the Nation from Foreign Terrorist Entry into the United States" ("Order").

3. We all agree that the United States faces real 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. We all are nevertheless unaware of any specific threat that would justify the travel ban established by the Executive Order issued on January 27, 2017. We view the Order as one that ultimately undermines the national security of the United States, rather than making us safer. In our professional opinion, this Order cannot be justified on national security or foreign policy grounds. It does not perform its declared task of "protecting the nation from foreign terrorist entry into the United States." To the contrary, the Order disrupts thousands of lives, including those of refugees and visa holders all previously vetted by standing procedures that the Administration has not shown to be inadequate. It could do long-term damage to our national security and foreign policy interests, endangering U.S. troops in the field and disrupting counterterrorism and national security partnerships. It will aid ISIL's propaganda effort and serve its recruitment message by feeding into the narrative that the United States is at war with Islam. It will hinder relationships with the very communities that law enforcement professionals need to address the threat. It will have a damaging humanitarian and economic impact on the lives and jobs of American citizens and residents. And apart from all of these concerns, the Order offends our nation's laws and values.

4. There is no national security purpose for a total bar on entry for aliens from the seven named countries. Since September 11, 2001, not a single terrorist attack in the United States has been perpetrated by aliens from the countries named in the Order. Very few attacks on U.S. soil since September 11, 2001 have been traced to foreign nationals at all. The overwhelming majority of attacks have been committed by U.S. citizens. The Administration has identified no information or basis for believing there is now a heightened or particularized future threat from the seven named countries. Nor is there any rational basis for exempting from the ban particular religious minorities (e.g., Christians), suggesting that the real target of the ban remains one religious group (Muslims). In short, the Administration offers no reason why it abruptly shifted to group-based bans when we have a tested individualized vetting system developed and implemented by national security professionals across the government to guard the homeland, which is continually re-evaluated to ensure that it is effective.

5. In our professional opinion, the Order will harm the interests of the United States in many respects:

a. The Order will endanger U.S. troops in the field. Every day, American soldiers work and fight alongside allies in some of the named countries who put their lives on the line to protect Americans. For example, allies who would be barred by the Order work alongside our men and women in Iraq fighting against ISIL. To the extent that the Order bans travel by individuals cooperating against ISIL, we risk placing our military efforts at risk by sending an insulting message to those citizens and all Muslims.
b. The Order will disrupt key counterterrorism, foreign policy, and national security partnerships that are critical to our obtaining the necessary information sharing and collaboration in intelligence, law enforcement, military, and diplomatic channels to address the threat posed by terrorist groups such as ISIL. The international criticism of the Order has been intense, and it has alienated U.S. allies. It will strain our relationships with partner countries in Europe and the Middle East, on whom we rely for vital counterterrorism cooperation, undermining years of effort to bring them closer. By alienating these partners, we could lose access to the intelligence and resources necessary to fight the root causes of terror or disrupt attacks launched from abroad, before an attack occurs within our borders.
c. The Order will endanger intelligence sources in the field. For current information, our intelligence officers may rely on human sources in some of the countries listed. The Order breaches faith with those very sources, who have risked much or all to keep Americans safe – and whom our officers had promised always to protect with the full might of our government and our people.
d. Left in place, the Executive Order will likely feed the recruitment narrative of ISIL and other extremists that portray the United States as at war with Islam. As government officials, we took every step we could to counter violent extremism. Because of the Order's disparate impact against Muslim travelers and immigrants, it feeds ISIL's narrative and sends the wrong message to the Muslim community here at home and all over the world: that

the U.S. government is at war with them based on their religion. The Order may even endanger Christian communities, by handing ISIL a recruiting tool and propaganda victory that spreads their message that the United States is engaged in a religious war.

e. The Order will disrupt ongoing law enforcement efforts. By alienating Muslim-American communities in the United States, it will harm our efforts to enlist their aid in identifying radicalized individuals who might launch attacks of the kind recently seen in San Bernardino and Orlando.

f. The Order will have a devastating humanitarian impact. When the Order issued, those disrupted included women and children who had been victimized by actual terrorists. Tens of thousands of travelers today face deep uncertainty about whether they may travel to or from the United States: for medical treatment, study or scholarly exchange, funerals or other pressing family reasons. While the Order allows for the Secretaries of State and Homeland Security to agree to admit travelers from these countries on a case-by-case basis, in our experience it would be unrealistic for these overburdened agencies to apply such procedures to every one of the thousands of affected individuals with urgent and compelling needs to travel.

g. The Order will cause economic damage to American citizens and residents. The Order will affect many foreign travelers, particularly students, who annually inject hundreds of billions into the U.S. economy, supporting well over a million U.S. jobs. Since the Order issued, affected companies have noted its adverse impacts on many strategic economic sectors, including defense, technology, medicine, culture and others.

6. As a national security measure, the Order is unnecessary. National security-based immigration restrictions have consistently been tailored to respond to: (1) specific, credible threats based on individualized information, (2) the best available intelligence and (3) thorough interagency legal and policy review. This Order rests not on such tailored grounds, but rather, on (1) general bans (2) not supported by any new intelligence that the Administration has claimed, or of which we are aware, and (3) not vetted through careful interagency legal and policy review. Since the 9/11 attacks, the United States has developed a rigorous system of security vetting, leveraging the full capabilities of the law enforcement and intelligence communities. This vetting is applied to travelers not once, but multiple times. Refugees receive the most thorough vetting of any traveler to the United States, taking on the average more than a year. Successive administrations have continually worked to improve this vetting through robust information-sharing and data integration to identify potential terrorists without resorting to a blanket ban on all aliens and refugees. Because various threat streams are constantly mutating, as government officials, we sought continually to improve that vetting, as was done in response to particular threats identified by U.S. intelligence in 2011 and 2015. Placing additional restrictions on individuals from certain countries in the visa waiver program –as has been done on occasion in the past – merely allows for more individualized vettings before individuals with particular passports are permitted to travel to the United States.

7. In our professional opinion, the Order was ill-conceived, poorly implemented and ill-explained. The "considered judgment" of the President in the prior cases where courts have

deferred was based upon administrative records showing that the President's decision rested on cleared views from expert agencies with broad experience on the matters presented to him. Here, there is little evidence that the Order underwent a thorough interagency legal and policy processes designed to address current terrorist threats, which would ordinarily include a review by the career professionals charged with implementing and carrying out the Order, an interagency legal review, and a careful policy analysis by Deputies and Principals (at the cabinet level) before policy recommendations are submitted to the President. We know of no interagency process underway before January 20, 2017 to change current vetting procedures, and the repeated need for the Administration to clarify confusion after the Order issued suggest that that Order received little, if any advance scrutiny by the Departments of State, Justice, Homeland Security or the Intelligence Community. Nor have we seen any evidence that the Order resulted from experienced intelligence and security professionals recommending changes in response to identified threats.

8. The Order is of unprecedented scope. We know of no case where a President has invoked his statutory authority to suspend admission for such a broad class of people. Even after 9/11, the U.S. Government did not invoke the provisions of law cited by the Administration to broadly bar entrants based on nationality, national origin, or religious affiliation. In past cases, suspensions were limited to particular individuals or subclasses of nationals who posed a specific, articulable threat based on their known actions and affiliations. In adopting this Order, the Administration alleges no specific derogatory factual information about any particular recipient of a visa or green card or any vetting step omitted by current procedures.

9. Maintaining the district court's temporary restraining order while the underlying legal issues are being adjudicated would not jeopardize national security. It would simply preserve the status quo ante, still requiring that individuals be subjected to all the rigorous legal vetting processes that are currently in place. Reinstating the Executive Order would wreak havoc on innocent lives and deeply held American values. Ours is a nation of immigrants, committed to the faith that we are all equal under the law and abhor discrimination, whether based on race, religion, sex, or national origin. As government officials, we sought diligently to protect our country, even while maintaining an immigration system free from intentional discrimination, that applies no religious tests, and that measures individuals by their merits, not stereotypes of their countries or groups. Blanket bans of certain countries or classes of people are beneath the dignity of the nation and Constitution that we each took oaths to protect. Rebranding a proposal first advertised as a "Muslim Ban" as "Protecting the Nation from Foreign Terrorist Entry into the United States" does not disguise the Order's discriminatory intent, or make it necessary, effective, or faithful to America's Constitution, laws, or values.

10. For all of the foregoing reasons, in our professional opinion, the January 27 Executive Order does not further – but instead harms – sound U.S. national security and foreign policy.

Respectfully submitted,

**s/MADELEINE K. ALBRIGHT***
**s/AVRIL D. HAINES**
**s/MICHAEL V. HAYDEN**
**s/JOHN F. KERRY**
**s/JOHN E. McLAUGHLIN**
**s/LISA O. MONACO**
**s/MICHAEL J. MORELL**
**s/JANET A. NAPOLITANO**
**s/LEON E. PANETTA**
**s/SUSAN E. RICE**

*All original signatures are on file with Harold Hongju Koh, Rule of Law Clinic, Yale Law School, New Haven, CT. 06520-8215 203-432-4932

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. [Individual signature pages follow]

EXECUTED this 5th day of February, 2017

Madeleine Albright

MADELEINE K. ALBRIGHT

EXECUTED this 5th day of February, 2017

AVRIL D. HAINES

EXECUTED this 5th day of February, 2017

MICHAEL V. HAYDEN

EXECUTED this 5th day of February, 2017

JOHN F. KERRY

EXECUTED this 3rd day of February, 2017

JOHN E. McLAUGHLIN

EXECUTED this 5th day of February, 2017

LISA O. MONACO

EXECUTED this 5th day of February, 2017

MICHAEL J. MORRELL

MORELL

EXECUTED this 5th day of February, 2017

/s/

**JANET A. NAPOLITANO**

EXECUTED this 5th day of February, 2017

LEON E. PANETTA

EXECUTED this 5th day of February, 2017

/s/
**SUSAN E. RICE**

# EXHIBIT E

Federal Register
Vol. 82, No. 45
Thursday, March 9, 2017

# Presidential Documents

**Title 3—**

**The President**

## Executive Order 13780 of March 6, 2017

## Protecting the Nation From Foreign Terrorist Entr 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 citi ens 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 organi ation 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 prioriti ation 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 organi ations, or contains active conflict ones. 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 organi ations, their members, and others exposed to those organi ations increases the chance that conditions will be exploited to enable terrorist operatives or sympathi ers 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 Hi ballah, 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 one, with hostilities between the internationally recogni ed 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 recogni e 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 Hi ballah 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 ones. 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 organi ations, 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 naturali ed United States citi en 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 utili ation 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 authori e 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 citi en, 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 organi ation designated under the International Organi ations 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 organi ation 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 organi ations 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 organi ations 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 organi ation 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 organi ation, or any other national-security-related reasons;

(ii) information regarding the number of foreign nationals in the United States who have been radicali ed after entry into the United States and who have engaged in terrorism-related acts, or who have provided material support to terrorism-related organi ations 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 organi ations, 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.

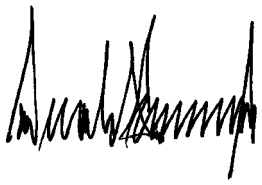
**Sec. 16**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(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.



THE WHITE HOUSE,
*March 6, 2017.*

[FR Doc. 2017–04837
Filed 3–8–17; 11:15 am]
Billing code 3295–F7–P

# EXHIBIT F

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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 G

**FROM**

## Live: U.S. Politics

MRN: 17 STATE 23338
Date/DTG: Mar 10, 2017 / 102253Z MAR 17
From: SECSTATE WASHDC
Action: SOMALIA, USMISSION ROUTINE ;
ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE ROUTINE
E.O.: 13526
TAGS: CMGT, KPAO, PTER, KHLS
Captions: SENSITIVE
Reference: A) 17 STATE 8708
B) 17 STATE 9516
C) 17 STATE 11004
D) 17 STATE 21026
Subject: (SBU) NEW EXECUTIVE ORDER 13780: PROTECTING THE NATION FROM FOREIGN
TERRORIST ENTRY INTO THE UNITED STATES - GUIDANCE TO VISA-ISSUING POSTS
1. (SBU) Summary: On March 6, 2017, the President issued a new Executive Order, E.O. 13780, (new E.O.), entitled Protecting the Nation from Foreign Terrorist Entry into the United States. The new E.O. contains provisions that will impact visa adjudication and issuance procedures beginning on the new E.O.'s effective date, 12:01 a.m. Eastern Daylight Time (EDT) March 16, 2017. The new E.O. rescinds its predecessor, E.O. 13769 ("old E.O."). We are working with the Department of Justice to determine when and how we may proceed with implementing the new E.O., in light of pending litigation. All visa issuing posts should carefully review and prepare to implement this guidance effective 12:01 a.m. EDT March 16, 2017. Although posts should be prepared to implement this guidance as of that date and time, do not begin implementation until you receive authorization to do so; such authorization will be sent in a subsequent cable. Any modifications to this guidance, due to litigation or other reasons, will also be sent in a subsequent cable. Public talking points and additional operational resources will be updated and available on CA Web. The full text of the E.O. is available here.

2. (SBU) Suspension of entry into the United States for aliens from certain countries: The new E.O. exercises the President's authority under sections 212(f) and 215(a)(1) of the Immigration and Nationality Act (INA) to suspend entry into the United States of certain aliens from the following countries for 90 days as of the new E.O.'s effective date, 12:01 a.m. EDT March 16, 2017: Iran, Libya, Somalia, Sudan, Syria, and Yemen. Additionally, posts must complete required additional visa screening steps for nationals of Iraq. Guidance will be sent septel outlining the new issuance procedures for Iraqi nationals. The suspension of entry in the new E.O. does not apply to individuals who are inside the United States on the effective date of the new E.O. (i.e., 12:01 a.m. EDT March 16, 2017), who have a valid visa on the effective date of the new E.O. or who had a valid visa at 5:00 p.m. EDT January 27, 2017, even after their visas expire or they leave the United States. The suspension of entry also does not apply to other categories of individuals, as detailed below. The new E.O. states that no visas will be revoked based on the new E.O. New applicants will be reviewed on a case-by-case basis, with consular officers taking into account the scope and exception provisions in the new E.O. and the applicant's qualification for a discretionary waiver. End summary.

Nonimmigrant Visas

3. (SBU) GSS vendors and posts should continue scheduling NIV applicants of the six indicated nationalities. The new E.O. provides for a number of exemptions from its scope and includes waiver provisions, and whether an applicant is exempt or qualified for a waiver can only be determined on a case-by-case basis during the course of a visa interview.

4. (SBU) After the Department sends the cable instructing posts to begin implementing the new
E.O., NIV applicants presenting passports from any of the six countries included in the new E.O.
should be interviewed and adjudicated following these procedures:
a.) Officers should first determine whether the applicant is eligible for a visa under the INA, without regard to the new E.O. If the applicant is not eligible, the appropriate refusal code should be entered into the Consular Lookout and Support System (CLASS). See 9 FAM 303.3-4(A). Posts must follow existing FAM guidance in 9 FAM 304.2 to determine whether an SAO must be submitted. Applicants found ineligible for grounds unrelated to the new E.O. should be refused according to standard procedures.
b.) If an applicant is found otherwise eligible for the visa, the consular officer will need to
determine during the interview whether the applicant is exempt from the new E.O.'s suspension of entry provision (see paragraphs 8-9), and if not, whether the individual qualifies for a waiver (see paragraphs 10-14).
c.) Applicants who are not exempt from the new E.O.'s suspension of entry provision and who do not qualify for a waiver should be refused by entering the code "EO17" into the Consular Lookout and Support System (CLASS). As coordinated with DHS, this code represents a Section 212(f) denial under the new E.O. Immigrant Visas

5. (SBU) The National Visa Center (NVC) will continue to schedule immigrant visa (IV) appointments for all categories and all nationalities. However, NVC will not send any V93 cases to posts. After receiving cable instructions to begin implementing the new E.O., posts should halt the issuance of V93 foils immediately and cancel any scheduled V93 appointments (please see refugee paragraph below). Posts should continue to interview all other IV applicants presenting passports from any of the six countries included in the new E.O., following these procedures:
a.) Officers should first determine whether the applicant is eligible for the visa, without regard to the new E.O. If the applicant is not eligible, the application should be refused according to standard procedures.
b.) If an applicant is found otherwise eligible for the visa, the consular officer will need to
determine during the interview whether the applicant is exempt from the new E.O.'s suspension of entry provision (see paragraphs 8-9), and if not, whether the applicant qualifies for a waiver (paragraphs 10-14).
c.) Immigrant visa applicants who are not exempt from the new E.O.'s suspension of entry provision and who do not qualify for a waiver should be refused 221(g) and the consular officer should request an advisory opinion from VO/L/A. Diversity Visas

6. (SBU) For Diversity Visa (DV) applicants already scheduled for interviews falling after the new E.O. effective date of 12:01 a.m. EDT March 16, 2017, post should interview the applicants. After receiving cable instructions to implement the new E.O., posts should interview applicants following these procedures:
a.) Officers should first determine whether the applicant is eligible for the DV, without regard to the new E.O. If the applicant is not eligible, the application should be refused according to standard procedures.
b.) If an applicant is found otherwise eligible, the consular officer will need to determine during the interview whether the applicant is exempt from the new E.O.'s suspension of entry provision (see paragraphs 8-9), and if not, whether the applicant qualifies for a waiver (paragraphs 10-14). Based on the Department's experience with the DV program, we anticipate that very few DV applicants are likely to be exempt from the E.O.'s suspension of entry or to qualify for a waiver. If a scheduled applicant is not exempt and does not qualify for a waiver, please request an advisory opinion from VO/L/A.

7. (SBU) The Kentucky Consular Center (KCC) will schedule additional DV appointments on dates after the period of suspension ends for cases in which the

principal applicant is from one of these six nationalities. If a derivative applicant appears qualified but is subject to the new E.O., KCC will enter a case note in the DS-260 to alert post. If post becomes aware of a DV case that has not been scheduled from one of these six countries due to this guidance, but which may not be covered by the new E.O., or may qualify for a waiver, coordinate with KCC to schedule the case for an interview (if the case is current) and a determination by a consular officer of whether or not the E.O. applies.
Individuals Who Are Exempt from the New E.O.'s Suspension of Entry

8. (SBU) The new E.O.'s suspension of entry does not apply to the following:
a.) Any applicant who was in the United States on the new E.O.'s effective date of March 16, 2017;
b.) Any applicant who had a valid visa at 5:00 p.m. EST on January 27, 2017, the day the old E.O. 13769 was signed;
c.) Any applicant who had a valid visa on the new E.O.'s effective date of March 16, 2017.
d.) Any lawful permanent resident of the United States;
e.) Any applicant who is admitted to or paroled into the United States on or after the effective date of the new E.O.;
f.) Any applicant who has a document other than a visa, valid on the effective date of the new E.O. or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as advance parole;
g.) Any dual national of a country designated under the order when traveling on a passport issued by a non-designated country;
h.) Any applicant traveling on an A-1, A-2, NATO-1 through NATO-6 visa, C-2 for travel to the United Nations, C-3, G-1, G-2, G-3, or G-4 visa, or a diplomatic-type visa of any classification; and
i.) Any applicant 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.

9. (SBU) When issuing an IV or an NIV to an individual who falls into one of the categories listed in paragraph 8, the visa should be annotated to state, "Exempt from E.O. 13780." Interviewing officers must also enter a clear case note stating the specific reason why the applicant is exempt from the new E.O.'s suspension of entry.

Qualification for a Waiver and Process

10. (SBU) The new E.O. permits consular officers to grant waivers and authorize the issuance of
a visa on a case-by-case basis when the applicant demonstrates to the officer's satisfaction that:
a.) Denying entry during the 90-day suspension would cause undue hardship;
b.) His or her entry would not pose a threat to national security; and
c.) His or her entry would be in the national interest.

11. (SBU) The new E.O. lists the following examples of circumstances in which an applicant may be considered for a waiver, subject to meeting the three requirements above. Unless the adjudicating consular officer has particular concerns about a case, determining that a case falls under any circumstance listed in this paragraph is a sufficient basis for concluding a waiver is in the national interest. Determining that a case falls under some of these circumstances may also be a sufficient basis for concluding that denying entry during the 90-day suspension would cause undue hardship:
a.) The applicant had 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;
b.) The applicant has previously established significant contacts with the United States but is outside the United States on the effective date of the new E.O. for work, study, or other lawful activity;
c.) The applicant 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;
d.) The applicant 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 U.S. 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;
e.) The applicant 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;
f.) The applicant has been employed by, or on behalf of, the United States government (or is the 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;
g.) The applicant is traveling for purposes related to an international organization designated under the International Organizations Immunities Act, 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;
h.) The applicant is a legal resident of Canada who applies for a visa at a location within Canada; or
i.) The applicant is traveling as a U.S. government-sponsored exchange visitor.

12. (SBU) Listed in this paragraph are other circumstances in which an applicant may be considered for a waiver, subject to meeting the three requirements in paragraph 10. Unless the adjudicating consular officer has particular concerns about a case, determining that a case falls under any circumstance listed in this paragraph is a sufficient basis for concluding a waiver is in the national interest. Determining that a case falls under some of these circumstances may also be a sufficient basis for concluding that denying entry during the 90-day suspension would cause undue hardship:
a.) The applicant is a high-level government official traveling on official business who is not eligible for the diplomatic visa normally accorded to foreign officials of national governments (A or G visa). Examples include governors and other appropriate members of sub-national (state/local/regional) governments; and members of subnational and regional security forces;
b.) The applicant is traveling to participate in a Department of Defense (DoD) program that DoD deems mission critical;
c.) The applicant is traveling to participate in a major cultural, media, and other national event such as a U.S. Olympic Committee sponsored competition that would support U.S. government objectives; and
d.) Cases where all three criteria in paragraph 10 are met and the Chief of Mission or Assistant Secretary of a Bureau supports the waiver.

13. (SBU) If the applicant qualifies for a waiver based on criteria in paragraph 11 or 12, the consular officer may issue the visa with the concurrence of the Visa Chief (IV or NIV) or the Consular Section Chief. The visa should be annotated to read, “Waiver of Executive Order Approved.” Case notes must reflect the basis for the waiver; the undue hardship that would be caused by denying entry during the suspension; the national interest; and the position title of the manager concurring with the waiver. To document national interest in case notes in circumstances falling under paragraph 11 or paragraph 12(a), (b), or (c), the consular officer may write, “National interest was established by the applicant demonstrating satisfaction of the requirements for the waiver based on [insert brief description of category of waiver].”

14. (SBU) If the applicant does not qualify under one of the listed waiver categories in paragraphs 11 or 12, but the interviewing officer and consular manager believe that the applicant meets the requirements in paragraph 10 above and therefore should qualify for a waiver, then the case should be submitted to the Visa Office for consideration. These cases should be submitted via email to countries-of-concern-inquiries@state.gov. The Visa Office will review these requests and reply to posts within two business days. Consular officers should be able to approve the majority of waiver cases without review by the Visa Office due to the broad authority granted in the new E.O.

Special Visa Issuance Procedures for Nationals of Iraq

15. (SBU) Guidance will be sent septel outlining new issuance procedures for Iraqi nationals.
Refugees

16. (SBU) The U.S. Refugee Admissions Program (USRAP) is suspended for 120 days. This
includes the processing of boarding foils for any V93 cases, regardless of nationality, since those
follow-to-join cases are admitted to the United States as refugees. After receiving cable instructions to implement the new E.O., posts should halt the issuance of these cases immediately and cancel any scheduled V93 appointments. NVC will halt the processing of all V93 cases and will not forward these cases to posts. The Department will notify posts when the suspension is lifted.

V92 Cases

17. (SBU) Guidance on V92 cases will follow.

Revocations or Cancellations Under E.O. 13769

18. (SBU) The new E.O. states that any individual whose visa was marked revoked or marked
canceled as a result of the old E.O. shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry. CA has already begun working with CBP to issue travel documents for certain individuals whose visas were either cancelled or revoked. Please contact your VO/F post liaison officer for instructions if you are contacted by any individual requesting a travel document under Section 12(d) of the new E.O.

Interview Waiver Program

19. (SBU) The Interview Waiver Program guidance in ref A remains unchanged, except that
posts may now continue waiving interviews using current guidance for TECRO E-1 visa
applicants, in addition to the categories listed in ref A.

in CA/VO/F.
21. (U) Minimize considered.
Signature: Tillerson
by *cassandra.garrison* 3/23/2017 1:12:35 PM March 23 at 6:12 AM
View the full stream
Powered by ScribbleLive Content Marketing Software Platform

# EXHIBIT H

DISSENT CHANNEL

SENSITIVE BUT UNCLASSIFIED

TO:
FROM:
SUBJECT: Dissent Channel: Alternatives to Closing Doors in Order to Secure Our Borders

(U) The following is a Dissent Channel message from

(SBU) Summary: We are writing to register our dissent to the State Department's implementation of President Trump's Friday, January 27, 2017 Executive Order on "Protecting The Nation From Foreign Terrorist Entry Into The United States," which, among other things, blocks the Department of State from issuing immigrant and nonimmigrant visas to citizens of Syria, Iraq, Iran, Libya, Somalia, Sudan, and Yemen for a minimum 90 day period with an unclear timeline for when issuance would resume. As consular professionals, Foreign Service Officers, and members of the Civil Service, we see every day the value that "**Secure Borders and Open Doors**" brings to our nation. A policy which closes our doors to over 200 million legitimate travelers in the hopes of preventing a small number of travelers who intend to harm Americans from using the visa system to enter the United States will not achieve its aim of making our country safer. Moreover, such a policy runs counter to core American values of nondiscrimination, fair play, and extending a warm welcome to foreign visitors and immigrants. Alternative solutions are available to address the risk of terror attacks which are both more effective and in line with Department of State and American values.

**This Ban Does Not Achieve Its Aims--And Will Likely Be Counterproductive**

(SBU) This ban, which can only be lifted under conditions which will be difficult or impossible for countries to meet, will not achieve its stated aim of to protect the American people from terrorist attacks by foreign nationals admitted to the United States. Despite the Executive Order's focus on them, a vanishingly small number of terror attacks on U.S. soil have been committed by foreign nationals who recently entered the United States on an immigrant or nonimmigrant visa. Rather, the overwhelming majority of attacks have been committed by native-born or naturalized U.S. citizens--individuals who have been living in the United States for decades, if not since birth. In the isolated incidents of foreign nationals entering the

U.S. on a visa to commit acts of terror, the nationals have come from a range of countries, including many (such as Pakistan or Saudi Arabia) which are not covered by the Executive Order.

(SBU) Given the near-absence of terror attacks committed in recent years by Syrian, Iraqi, Irani, Libyan, Somalia, Sudanese, and Yemeni citizens who are in the U.S. in after entering on a visa, this ban will have little practical effect in improving public safety.

(SBU) If this ban will not prevent terror attacks from occurring, what will it do?

- (SBU) It will immediately sour relations with these six countries, as well as much of the Muslim world, which sees the ban as religiously-motivated. These governments of these countries are important allies and partners in the fight against terrorism, regionally and globally. By alienating them, we lose access the intelligence and resources need to fight the root causes of terror abroad, before an attack occurs within our borders.

- (SBU) It will increase anti-American sentiment. When the 220 million citizens of these countries lose the opportunity to travel to the U.S. overnight, hostility towards the United States will grow. Instead of building bridges to these societies through formal outreach and exchanges and through informal people-to-people contact, we send the message that we consider all nationals of these countries to be an unacceptable security risk. Almost one-third of these countries' combined populations are children under the age of 15; there is no question that their perception of the United States will be heavily colored by this ban. We are directly impact the attitudes of current and future leaders in these societies--including those for whom this may be a tipping point towards radicalization.

- (SBU) It will have an immediate and clear humanitarian impact. Every day foreign nationals come to the United States to seek medical treatment for a child with a rare heart condition, to attend a parent's funeral, or to help a relative in distress. For citizens of these countries, a blanket ban on travel will not just ruin vacation plans but potentially cut off access to life-saving medical treatment or impose terrible humanitarian burdens. While the Executive Order allows for the Secretary of State or the Secretary of Homeland security to admit travelers from these countries on a case-by-case basis, it is unrealistic to think that this will be feasible to implements for the thousands of aliens with urgent and compelling needs to travel.

- (SBU) It will have a negative impact on the U.S. economy. According to the Department of Commerce, foreign travelers collectively injected almost $250 billion into the U.S. economy in 2015 alone, supporting over one million American jobs. Foreign students along contribute more than $30 billion to the U.S. economy. Preventing travelers from these six countries from spending their money in the U.S. will immediately decrease that amount; more perniciously, this ban can be expected to cause an overall drop in traveler dollars as the U.S. quickly sheds its welcoming "Secure Borders, **Open Doors**" reputation.

(SBU) The end result of this ban will not be a drop in terror attacks in the United States; rather, it will be a drop in international good will towards Americans and a threat towards our economy.

**We Are Better Than This Ban**

(SBU) Looking beyond its effectiveness, this ban stands in opposition to the core American and constitutional values that we, as federal employees, took an oath to uphold.

(SBU) The United States is a nation of immigrants, starting from its very origins. The concept that immigrants and foreigners are welcome is an essential element of our society, our government, and our foreign policy. So, too, is the concept that we are all equal under the law and that we as a nation abhor discrimination, whether it is based on race, religion, sex, or national origin. Combined together, that means we have a *special* obligation to maintain an immigration system that is as free as possible from discrimination, that does not have implied or actual religious tests, and that views individuals as individuals, not as part of stereotyped groups.

(SBU) The Executive Order frames the ban as a 90-day suspension of entry for these nationals until their countries can set up arrangements to provide adequate information to determine that an individual seeking a benefit is who the individual claims to be and is not a security or public-safety threat. This is a high, vague, and nebulous bar. In some cases, the governments of these countries may be wholly incapable of providing this information; in others, the government may be unwilling. In either case, individual citizens will pay the price—a situation which runs counter to U.S. values of fair play and offering equal opportunities to all.

(SBU) Banning travelers from these seven countries calls back to some of the worst times in our history. Law enacted in the 1920s and which lasted through the 1960s severely restricted immigration based on national origin and, in some cases, race. The decision to restrict the freedom of Japanese-Americans in the U.S. and foreign citizens who wanted to travel to or settle in the U.S. during the 1940s has been a source of lasting shame for many in our country. Decades from now, we will look back and realize we made the same mistakes our predecessors: shutting borders in a knee-jerk reaction instead of setting up systems of checks that protect our interests and our values.

**Alternative Ways Forward**

(SBU) Just as equality and multiculturalism are core American values, so too is pragmatism. And there are pragmatic ways to achieve our common goals to protect the American people from terrorist attacks by foreign nationals admitted to the United States and to secure a better and more prosperous future.

(SBU) Rather than a blanket ban on the travel of over 200 million citizens, we need to strengthen our targeted and interagency approach to deterring, detecting, and subverting attacks. We should not focus our screening and vetting on specific nationalities at the expense of missing the forest for the trees but should turn those tools to cover the full range of sources of terror, including those who may hold "friendly" or even U.S. passports.

(SBU) There is no question that the visa process can be improved and refined to better detect individuals who intend to exploit United States immigration laws for malevolent purposes. We need to expand existing interagency cooperation between the different elements of the government responsible for border security and protection of the homeland. This includes cooperation with state, local, campus, and tribal law enforcement, who in many cases are best situated to detect threats. The Visa Security Program which embeds Department of Homeland Security staff into consular sections around the world has proven the effectiveness of incorporating a law enforcement perspective into the visa process; this approach should be expanded.

(SBU) Continuous vetting program for visa holders--which looks at all visa holders, not just those of specific nationalities--allows our law enforcement and intelligence bodies to act on new information and to focus on individuals that may become radicalized. This vetting should be expanded and made more comprehensive. Likewise, the Visa Viper Program, which allows posts overseas to

report on potential threats, should be strengthened to become a more reliable source of intelligence.

(SBU) The Department of State and the U.S. government already has numerous tools already at its disposal to secure its visa process: access to law enforcement databases, biometric screening, Security Advisory Opinions, continuous vetting. If we haven't accomplished our goals so far, then let's strengthen and improve these tools. And let's develop new tools: cutting-edge data analytics, social media tracking, data mining, aggressive outreach.

(SBU) We do not need to place a blanket ban that keeps 220 million people--men, women, and children--from entering the United States to protect our homeland. We do not need to alienate entire societies to stay safe. And we do not need to sacrifice our reputation as a nation which is open and welcoming to protect our families. It is well within our reach to create a visa process which is more secure, which reflects our American values, and which would make the Department proud.

# EXHIBIT I

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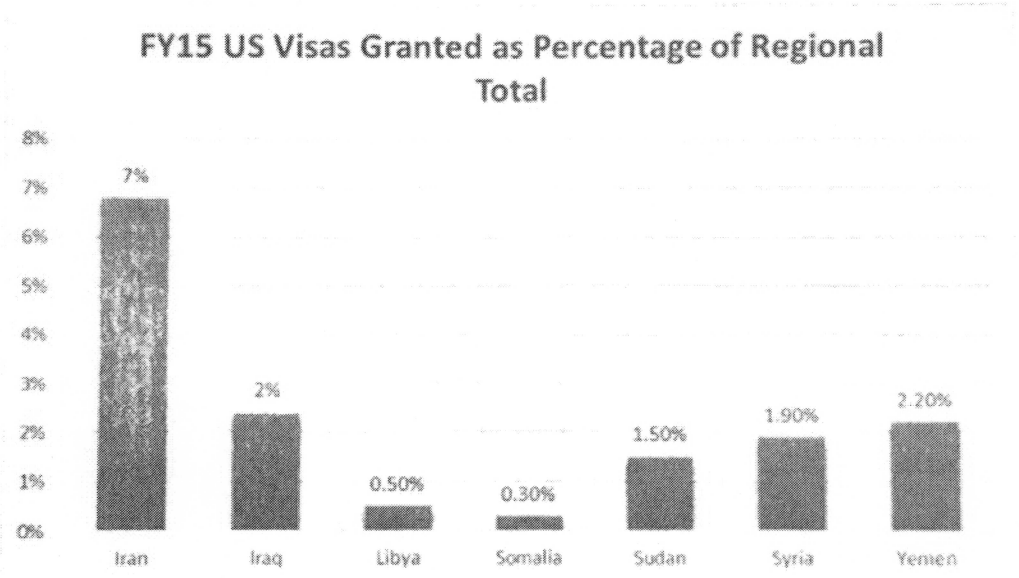
* For the purposes of this paper, we limited our data to individuals prosecuted under 18 U.S.C. Chapter 133B in support of or inspired by a Foreign Terrorist Organization (FTO). We excluded traveling or attempting to travel overseas to join a FTO and activities unrelated to FTOs, to include purely domestic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

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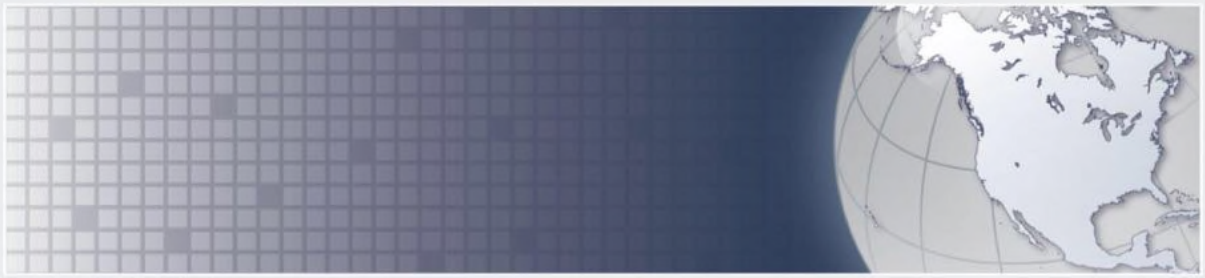
# INTELLIGENCE ASSESSMENT



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

1 March 2017

THE RACHEL MADDOW SHOW EXCLUSIVE

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.

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*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.*

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## (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.[46][47] 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]

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Homeland Security
Office of Intelligence and Analysis

INTELLIGENCE ASSESSMENT
01 March 2017

## (U//FOUO) 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.[a] 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.

[a] (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.

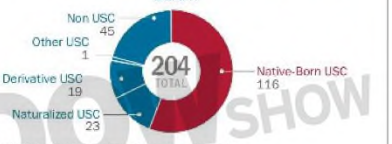
### (U) AGE OF ENTRY OF FOREIGN-BORN VIOLENT EXTREMISTS

### (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.[b]

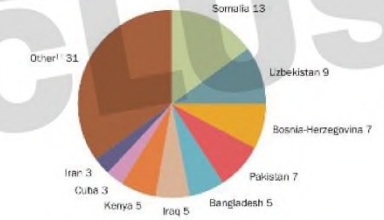
[b] (U//FOUO) These factors alone do not indicate an individual has radicalized to violence.

### (U) NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS US CITIZENSHIP (USC) STATUS AT TIME OF INDICTMENT OR DEATH[c]




[c] (U//FOUO) Non-USCs includes legal permanent residents (LPR), nonimmigrant visa holders, refugees, and individuals with no status.

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




[d] (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.

### (U) TERRORISM-RELATED ACTIVITES OF NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS[e]

[e] (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.

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## (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*

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**Explore: The MaddowBlog**

**Thursday's Mini-Report, 3.2.17**

**Team Trump's Russian communications come...**

# EXHIBIT K

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)

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The Honorable Jefferson B. Sessions, Attorney General of the United States
The Honorable John F. Kelly, Secretary of Homeland Security
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