

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

John Doe, Jack Doe, Jason Doe, Joseph Doe
James Doe, Jeffrey 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; Elaine Duke, Acting
Secretary of Homeland Security; U.S. Customs
and Border Protection; Kevin McAleenan,
Acting Commissioner of U.S. Customs and
Border Protection; Michele James, Field
Director of the Seattle Field Office of U.S.
Customs and Border Protection; Office of the
Director of National Intelligence; and Daniel
Coats, Director of the Office of the Director of
National Intelligence

Defendants.

No. 2:17-cv-00178-JLR

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

THIRD AMENDED CLASS
ACTION COMPLAINT

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I. INTRODUCTION

1. Just as “the world is not made brand new every morning,” *McCreary Cty. v. ACLU*, 545 U.S. 844, 866 (2005), “a person is not made brand new simply by taking the oath of office.” *Aziz v. Trump*, 234 F. Supp. 3d 724, 734 (E.D. Va. 2017). Impermissible animus cannot be cleansed with a few “mostly minor technical differences”:¹ a Muslim ban is a Muslim ban. Ten months into this Administration, Defendants have issued a third set of orders and memos that causes the same harms as Defendants’ prior actions, imposes an indefinite suspension on the admission of the spouses and children of former refugees, and continues to effectuate an unlawful Muslim ban. The order and memos cannot be separated from the context in which they arose.

2. One week after taking the oath of office as President of the United States, on January 27, 2017, 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”² with his signature on Executive Order 13769 “Protecting the Nation from Foreign Terrorist Entry into the United States.” 82 Fed. Reg. 8977 (Jan. 27, 2017) (“EO-1”).

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. 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 EO-1, Defendants openly advertised that the

¹ 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://fxn.ws/2lSaxl2> (last visited Nov. 4, 2017).

² 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 visited May 8, 2017).

1 revised order would have “mostly minor technical differences” from EO-1 and “fundamentally”
 2 would be “the same basic policy outcome for the country.”³ Defendants then spent more than a
 3 month publicly struggling to figure out how to do exactly what they repeatedly said they wanted
 4 to do: ban Muslims.

5 5. On March 6, 2017, Defendant Trump signed Executive Order 13780, also titled
 6 “Protecting the Nation from Foreign Terrorist Entry into the United States.” 82 Fed. Reg. 13209
 7 (Mar. 6, 2017) (“EO-2”). As Defendant Trump admitted, other than a few cosmetic changes to
 8 address some of the most obvious facial legal deficiencies, EO-2 was just a “watered-down
 9 version” of his first travel ban.⁴

10 6. Multiple courts again enjoined key provisions of EO-2, the Fourth and Ninth
 11 Circuits largely upheld those injunctions, and the Supreme Court declined to stay the injunctions
 12 except as to foreign nationals who lacked any credible claim to a bona fide relationship with a
 13 person or entity in the United States.

14 7. On September 24, 2017, Defendant Trump issued a Presidential Proclamation
 15 titled, “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the
 16 United States by Terrorists or Other Public-Safety Threats.” 82 Fed. Reg. 45,161 (Sept. 24,
 17 2017) (“EO-3”). EO-3 imposes an indefinite ban on the issuance of immigrant and non-
 18 immigrant visas to nationals of six Muslim-majority countries. For a third time, multiple courts
 19 have issued injunctions, blocking key provisions of EO-3 from going into effect.

20 8. EO-3 did not address the issue of refugee admissions. On October 23, 2017,
 21 Defendants Tillerson, Duke, and Coates issued a Memorandum to the President titled “Resuming
 22 the United States Refugee Admissions Program with Enhanced Vetting Capabilities” (“October
 23

24
 25 ³ See *supra* note 1.

26 ⁴ Matt Zapotosky, Kalani Takase & Maria Sacchetti, *Federal Judge in Hawaii Freezes President Trump’s New Entry Ban*, Wash. Post (Mar. 16, 2017), <http://wapo.st/2zm2Zfy> (last visited Nov. 6, 2017).

1 2017 Agency Memo”).⁵ The next day, on October 24, 2017, Defendant Trump signed Executive
 2 Order 13815 titled “Resuming the United States Refugee Admissions Program with Enhanced
 3 Vetting Capabilities.” 82 Fed. Reg. 50,055 (Oct. 24, 2017) (“EO-4”). EO-4 purports to resume
 4 the U.S. Refugee Admissions Program (“USRAP”) when in fact the October 2017 Agency
 5 Memo indefinitely bans many of the same refugees that courts already told Defendants they
 6 could not ban in EO-2.

7 9. The Constitution is not so easily fooled. Changes made openly and explicitly to
 8 evade judicial scrutiny fail to mask the discriminatory animus that pervades Defendants’ actions.
 9 Even if the discriminatory intent of EO-2, EO-3, and the October 2017 Agency Memo is not as
 10 plain on its face as with EO-1, the current set of orders remain in contravention of “[t]he clearest
 11 command of the Establishment Clause . . . that one religious denomination cannot be officially
 12 preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982).

13 10. Although the list of countries changed slightly from EO-1 and EO-2, EO-3
 14 indefinitely bans or severely restricts the entry into this country of nationals from six Muslim-
 15 majority countries: Chad, Iran, Libya, Somalia, Syria, and Yemen (the “Designated Countries”).

16 11. And although EO-4 purports to reinstate USRAP, the October 2017 Agency
 17 Memo makes clear Defendants will do no such thing: the October 2017 Agency Memo continues
 18 a de facto Muslim ban on refugees by banning refugees from eleven countries on the Security
 19 Advisory Opinion (“SAO”) list (“SAO List Countries”), *see infra* ¶ 215, and all I-730 following-
 20 to-join derivative (“I-730 follow to-join” or “follow-to-join”) refugees (the spouses and children
 21 of former refugees).

22 12. Far from eliminating the need for judicial scrutiny, EOs 1-3 and the October 2017
 23 Agency Memo (collectively “the Orders”) underscore the need for it. The Orders have created an
 24 unstable, unpredictable, and uncertain situation.

25
 26 ⁵ Memorandum from Rex W. Tillerson, Elaine Duke, and Daniel Coats to the President (Oct. 23, 2017),
<http://bit.ly/2z36fdw> (last visited Nov. 2, 2017), attached to this Complaint as Exhibit J.

13. 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 have their families (including grandparents and parents) visit them and unable to leave the United States 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.

14. 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 issuance of the Orders 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.

15. Also harmed by Orders 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 Orders which barred and continue to bar the arrival of persons admitted through the USRAP. As of the filing of the Third Amended Complaint, nearly thirty families from the SAO List Countries whom the Episcopal Diocese was supporting in resettlement, were granted refugee status, and approved for travel to the United States will have their trips canceled as a result of the Orders, wasting precious resources and frustrating the activities of the Diocese. In addition, several clients whom

1 the Diocese has helped file I-730 follow-to-join petitions—and whose families the Diocese had
2 assured—are now stuck in limbo.

3 16. The Council on American-Islamic Relations-Washington (“CAIR-WA”) is
4 harmed by the Orders. CAIR-WA is a non-profit organization based in Seattle that works to
5 promote an understanding of Islam through dialogue, education, protection of civil liberties, and
6 coalition-building. As a result of the Orders, CAIR-WA has received numerous inquiries from its
7 constituents about American-Muslim travelers who have become the target of unconstitutional
8 ideological questioning by Transportation Security Administration and Customs and Border
9 Protection agents about their personal beliefs. CAIR-WA has had to devote substantial,
10 unplanned-for resources to respond to this new spike.

11 17. The Episcopal Diocese, CAIR-WA, and the individual Plaintiffs—on behalf of
12 themselves and three classes of similarly situated people in Washington State—(collectively,
13 “Plaintiffs”) bring this suit to challenge the provisions and implementation of the Orders that
14 violate the First Amendment, the Fifth Amendment, the Religious Freedom Restoration Act
15 (“RFRA”), 42 U.S.C. § 2000bb *et seq.*, the Immigration and Nationality Act (“INA”), 8 U.S.C. §
16 1101 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

17 18. Plaintiffs currently suffer serious irreparable harm and will continue to suffer such
18 harm until and unless this Court preliminarily and permanently enjoins the Orders. Plaintiffs
19 have no adequate remedy at law.

20 **II. JURISDICTION AND VENUE**

21 19. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 over Plaintiffs’
22 claims under the U.S. Constitution and federal statutes, as well as under the APA, 5 U.S.C. §
23 706.

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

21. 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.

22. 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.

23. The 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

24. Plaintiff John Doe is an Iranian national who resides in Seattle, Washington. John Doe has F-1 status as a fifth-year Ph.D. candidate in Aeronautic and Astronautic Engineering at the University of Washington. John Doe simultaneously studied for a master's degree in applied mathematics at the University of Washington and graduated in April 2017. John Doe has a provisional patent, "patent pending," in the United States pertaining to battery function. He also was a graduate fellow with the Clean Energy Institute of Washington State.

25. John Doe holds a multiple-entry visa that expired on August 31, 2017. This was his second such visa that allowed him to pursue full-time educational study in the United States. John Doe received his F-1 status and both multiple-entry 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.

26. 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.

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

28. 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 has missed several opportunities to attend conferences abroad, including one where he was invited as the keynote speaker, because he was and continues to be fearful of what position Defendants may take next that might potentially leave him stranded outside the country if he travels.

29. 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. 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 EO-1 and EO-2, John Doe has not submitted proposals for several of the conferences to which he otherwise would have applied to make presentations as a result of Defendants' actions. In addition, given the uncertainty surrounding the enhanced screening and vetting (in addition to what he has already been through) and the uncertainty that remains with the waiver process required by EO-3, he continues to fear that if he leaves the United States to attend an academic conference, he may be

1 prevented from reentering the United States. John Doe's inability to reenter the United States
2 would prevent him from completing his doctorate.

3 30. John Doe's research and career have suffered and will continue to suffer as long
4 as the Orders are in place.

5 31. John Doe's parents were in the process of applying for a visa to visit him when
6 EO-3 issued. His parents have since put their plans on hold. He is now uncertain whether he will
7 be able to see his parents any time in the near future.

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

10 **2. Plaintiff Jack Doe**

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

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

13 35. Jack Doe has an undergraduate degree in Electrical Engineering from Sharif
14 University in Tehran. Jack Doe first came to the United States in 2006 with an F-1 visa to work
15 on a Ph.D. at the University of Maryland. He obtained his first F-1 student visa from the United
16 States embassy in Cypress. He completed his Ph.D. program in 2014.

17 36. Until a few months ago, Jack Doe was a post-doctorate researcher at the
18 University of Washington. He was working under his F-1 Optional Practical Training ("OPT")
19 status, and subsequent extension for STEM students ("STEM OPT"), which together allowed
20 him, after completing his degree, to work for three years in academia. OPT is temporary
21 employment that is directly related to an F-1 student's major area of study, and the STEM OPT
22 extension allows certain F-1 students who receive science, technology, engineering, and
23 mathematics (STEM) degrees, and who meet other specified requirements, to apply for a 24-
24 month extension of their post-completion OPT. Application for both OPT and STEM OPT
25
26

1 requires endorsement by the student's "designated school official" at the student's United States
2 academic institution.

3 37. The University of Washington also sponsored an academic H1-B visa for Jack
4 Doe. A few months ago, however, Jack Doe accepted a job offer in his field, which meant he no
5 longer had H1-B status. He is currently working pursuant to an Employment Authorization
6 Document ("EAD"), which he obtained based on a pending application for permanent residency.

7 38. Although Jack Doe is residing and working in the United States legally, the
8 Orders have made it very difficult for him to find long-term employment. Prior to the issuance of
9 the Orders, Jack Doe had been interviewing with employers. His future employment prospects
10 are now in jeopardy because his EAD is temporary and, as a result of EO-3, he would be unable
11 to get H1-B status if necessary to continue working after his EAD expires. Jack Doe fears that
12 employers will be reluctant to hire him for this reason, and he is therefore at a significant
13 disadvantage compared to other foreign nationals who are not from one of the Designated
14 Countries.

15 39. Most of Jack Doe's family lives in Iran, and he has not been able to see them
16 since 2008 when he was able to return to Iran for a brief visit. Jack Doe has not seen his parents
17 since 2012, when they came to the United States to visit him and his sister. More recently, his
18 parents had applied for visas to visit him, and while his mother's visa was approved, his father's
19 is still under "administrative processing," leaving Jack Doe uncertain as to what will happen with
20 his father's visa.

21 40. Since the issuance of the Orders, Jack Doe has felt marginalized, stigmatized, and
22 less than a full member of the community. Jack Doe feels subjected to increased suspicion,
23 scrutiny, and social and political isolation on the basis of his religion (or perceived religion) and
24 national origin. He had plans to take some business and leisure trips within the United States but
25 has cancelled them because he fears for his safety and the hostility he might face in places that
26 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 widespread 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”⁶ and shot, on the mistaken belief that they were from Iran, cause Jack Doe substantial concern for his own safety and well-being.⁷

41. 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

42. Plaintiff Jason Doe is a resident of Seattle.

43. Jason Doe is Muslim.

44. Jason Doe is an Iranian national. He first came to the United States in 2013 with F-2 status (for spouses of F-1 students), as his wife had F-1 status as a graduate student.

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

46. After he was admitted to the University of Washington, Jason Doe changed his status to F-1 and obtained a multiple-entry visa. Currently, Jason Doe’s wife is also enrolled in a doctorate program at the University of Washington, and they both have F-1 status.

47. Jason Doe’s multiple-entry 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.

⁶ Alyssa Ayres, *The Kansas City Shooting Is Quickly Changing How Indians View the U.S.*, Forbes (Mar. 3, 2017), <http://bit.ly/2hqQvt5> (last visited Nov. 2, 2017).

⁷ Eric Levenson, *911 Calls Reveal the Kansas Suspect Thought He’d Shot ‘Two Iranians,’* CNN (Feb. 28, 2017), <http://cnn.it/2A4Yhkb> (last visited Nov. 2, 2017).

1 48. Given Jason Doe's time horizon on graduation and the fact that he is halfway
 2 through his program, he should be starting to attend conferences to present papers, expand his
 3 contacts, and develop his expertise. Most of the conferences that would be appropriate for him to
 4 attend are international conferences, which would require travel outside of the United States in
 5 the coming months. In particular, there is an upcoming conference in December 2017 held in
 6 Seoul, Korea. This is the major conference in Jason Doe's field, and students often have their job
 7 interviews at that conference. Jason Doe has a paper accepted for presentation at the conference.

8 49. However, as a result of the EO-3, Jason Doe cannot leave the country for fear he
 9 will not be permitted to return. He is particularly reluctant to leave without his wife for fear that
 10 they will be separated. As a result, he will miss this important conference, not present his paper,
 11 and will have to forego the opportunity to interview with potential employers there. His research
 12 and career will suffer as long as the Orders are in place.

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

14 51. Jason Doe's in-laws have applied for visas to visit him and his wife, and they
 15 were scheduled for interviews at the time EO-3 was issued. The visit is particularly important to
 16 Jason Doe and his wife because his mother-in-law is battling cancer. Jason Doe's parents had
 17 also planned on applying for a visa to visit him. While Jason Doe and his wife have F-1 status,
 18 they would need to apply for a visa to reenter the United States if they were to travel outside of
 19 the country to see their family. He is now uncertain whether he and his wife will be able to see
 20 their parents any time in the near future.

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

1 cross that said “if I see you here next month, I will shoot you and burn your house.”⁸ When
 2 someone asks him where he is from or what his religion is, he is no longer comfortable
 3 answering that he is from Iran or that he is a Muslim because he is worried about the
 4 consequences. Jason Doe no longer feels safe walking in the streets at night because he worries
 5 someone might shoot him because of how he looks and because of hatred toward Muslims.⁹

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

8 **4. Plaintiff Joseph Doe**

9
 10 54. Plaintiff Joseph Doe is a Somali national who currently resides in Des Moines,
 11 Washington.

12 55. Joseph Doe is a practicing Muslim.

13 56. Joseph Doe is married with three children.

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

23
 24
 25 ⁸ Lizzy Acker, *Portland-Area Man’s Home Vandalized with Death Threats and Racist Graffiti*, Oregonian (Mar. 31,
 26 2017), <http://bit.ly/2hrxA1A> (last visited Nov. 2, 2017).

⁹ See *supra* notes 6-7.

58. 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.

59. 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. Until a few months ago, Joseph Doe did not know where his mother or siblings were or what happened to them. It was only a few months ago that they managed to track him down and call him. The surviving members of his family are still living in Kenya.

60. When he was finally called for an interview with the Department of Homeland Security/U.S. Citizenship and Immigration Services in 2011, Joseph Doe had just gotten married. He went through the screening process starting in 2011 and completed it in December 2013.

61. Joseph Doe finally arrived in the United States on January 28, 2014, as a refugee. He only had refugee status for himself, and not his wife and children, as the refugee application process was begun for him with his mother and siblings when he was still a child.

62. As a result, 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 four, five, and nine years old. While his children are considered Somali nationals, they have never been to Somalia.

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

64. Once he realized he had a right to ask for his family to join him in the United States, 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

1 medical clearance on January 31, 2017; and they received their final required immunizations on
 2 March 1, 2017. His family was assured by a Refugee Resettlement Office (“RRO”) on June 5,
 3 2017. They were only waiting to be scheduled for travel to the United States at the time EO-2
 4 was issued.

5 65. Joseph Doe was told that the only thing left before his family would travel to the
 6 United States was for their travel arrangements to be finalized. However, because of the delays
 7 caused by the Orders, Joseph Doe’s fears that his family’s medical clearances would expire has
 8 come true (their medical clearances expired on August 1, 2017), and his family has had to go
 9 through the medical examinations process all over again, further delaying the process. While two
 10 members of his family have received their new medical clearances, he now has to await the new
 11 medical clearance for two of his children, which he hopes will be issued in the very near future.

12 66. Joseph Doe fears that between the indefinite suspension of admissions for I-730
 13 follow-to-join derivative refugees mandated by the October 2017 Agency Memo and the
 14 possibility of the drastically decreased refugee cap for fiscal year 2018 being met soon, his
 15 family’s travel to the United States will be delayed indefinitely, and his suffering—and that of
 16 his family—will be prolonged indefinitely.

17 67. Joseph Doe speaks to his family regularly on the telephone. His wife often brings
 18 up the hardship of the long separation, which is approaching four years. Joseph Doe’s youngest
 19 son is not old enough to understand that it is not by choice that his father is far away from his
 20 family, and he often cries for his dad, asks his mother where his dad is, and asks to talk to his
 21 dad. When Joseph Doe speaks with his son, his son constantly asks, “Where are you?” and “Why
 22 can’t you come for us?”

23 68. There isn’t a day that goes by when Joseph Doe does not think of his wife and
 24 children, wish that he could just hold and hug them, and dream of being able to be a family
 25 again, all together in one place. Joseph Doe often cannot fall asleep at night because he is
 26

1 thinking about his family and wondering if the next day will be the day that he will get the news
2 that his family's travel has been scheduled so that he can be reunited with them.

3 69. Given the hardship of the extended separation, Joseph Doe has applied for an
4 I-131 travel document to visit his wife and children in Kenya. However, he is afraid to leave the
5 United States even with a travel document because he fears he will not be allowed to return.

6 70. The Orders have interfered with and delayed the arrival to the United States of
7 Joseph Doe's family. Joseph Doe is injured each day by that interference and delay.

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

10 **5. Plaintiff James Doe**

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

12 73. James Doe fled Eritrea in 2009 after being imprisoned because of his political
13 beliefs. In 2009, he was working at Sawa Military Training Camp ("Sawa") as part of his
14 mandatory national service, which is required of every Eritrean for eighteen months by law, but
15 in practice is a system of indefinite conscription. The Eritrean government requires all Eritrean
16 students to spend their last year of high school at Sawa, and James Doe was working as an
17 instructor there, teaching accounting, which was his focus of study at university. While he was
18 forced to work at Sawa, he was only able to go home to see his wife and children every three or
19 four months. At that time, his oldest child was about a year old, and his wife was expecting their
20 second child.

21 74. In or around March 2009, the Eritrean government called a meeting to ask people
22 at Sawa what changes they would like to see implemented, and James Doe participated in this
23 meeting and voiced his opinions. Two or three days later, government officers came to his room
24 at Sawa and arrested him.
25
26

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

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

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

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

20 79. In July 2015, James Doe filed a Refugee/Asylee Relative Petition, Form I-730, for
 21 his wife and children, including a daughter whom he had never met as he was arrested and taken
 22 away while his wife was pregnant.

23 80. James Doe became a lawful permanent resident of the United States in 2016. He
 24 currently works two jobs, one full-time and one part-time, to support his family. He provided
 25 financial support for his wife and children while they were waiting for the I-730 refugee relative
 26 screening process to be completed.

1 81. On June 13, 2017, James Doe was at last able to meet his eight-year-old daughter
2 for the first time when his wife, son, and daughter finally arrived in the United States.

3 82. Since the issuance of the Orders, James Doe has felt subjected to increased
4 suspicion, scrutiny, and social and political questioning on the basis of his religion (or perceived
5 religion) and national origin. Because of his features, coloring, and accent, James Doe is
6 frequently asked by customers at his workplace where he is from and if he is Muslim. He has
7 also had Muslim customers confide in him that they do not feel comfortable speaking in Arabic
8 in public because they are afraid of being discriminated against and that, as a result, they
9 consciously try to speak English in public to avoid being targeted as Muslim. A Somali Muslim
10 taxi driver also confided in him that when he arrived to pick up a customer, the passengers
11 refused his service when they realized he was Muslim. The number and frequency of questions
12 about his national origin and religion that James Doe has received have increased since the
13 issuance of the Executive Orders. When he responds that he is Christian, some customers have
14 confided in him that they “don’t like Muslims,” that they “think all Muslims are bad,” or that
15 they “think that Muslims are terrorists.”

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

18 **6. Plaintiff Jeffrey Doe**

19 84. Plaintiff Jeffrey Doe is a Somali national who resides in Federal Way,
20 Washington. He and his family are members of a minority tribe in Somalia. They are practicing
21 Muslims.

22 85. Jeffrey Doe, his mother, father, and siblings fled Somalia in 1993 when he was
23 four years old. One day, men dressed in military uniforms forced their way into their home to
24 demand money. His father ran for his life, knowing that the soldiers almost always kill the men.
25 The soldiers raped his aunt in the room next to where the family was being held, and he could
26

1 hear her screaming for help. The soldiers demanded money of his mother while holding his one-
 2 and-a-half-year-old sister at gunpoint. His family had no money to give, and when his aunt went
 3 to pick up his sister, the soldiers shot his sister. His aunt was holding his sister, and the bullet
 4 passed through his sister, killing both her and his aunt.

5 86. The family ran from the house and were able to find their father before fleeing the
 6 country that night. They traveled by sea for three days to arrive in Kenya.

7 87. Jeffrey Doe grew up in Kenyan refugee camps. He never had electricity in his
 8 home until he came to the United States. The camp had a de facto curfew of 7:30 pm because it
 9 was too dangerous to be out later. Jeffrey Doe's parents and his siblings still live in a Kenyan
 10 refugee camp.

11 88. Jeffrey Doe met his wife while living at the refugee camp, and they were married
 12 in 2008. They had three daughters while they were in the refugee camp. They also have one son
 13 who was born in the United States.

14 89. Jeffrey Doe's family's case was registered in July 2000, and they applied for
 15 refugee status through the U.S. Refugee Admissions/UNHCR program in December 2005. They
 16 started the paperwork with RSC (JVA) in March 2006. In June 2006, they had a USCIS
 17 interview, and in July 2006, they received an initial approval letter from USCIS. They received
 18 their first medical clearance shortly thereafter, and the family has since had numerous medical
 19 examinations—including DNA testing. Their most recent medical examination in March 2017
 20 has now, yet again, expired. His family has passed all the security and medical clearances
 21 required of refugees so that they can be assigned to a resettlement agency to prepare for their
 22 arrival in the United States. Jeffrey Doe's family has been assured by the Episcopal Diocese of
 23 Olympia since September 8, 2015. His family has been classified as Priority 1 refugees who are
 24 survivors of violence and torture.

25 90. Jeffrey Doe filed his own case in 2013 with USCIS, hoping to improve his
 26 chances of creating a better life for his wife and children. His case was separated from his

1 family's and combined with his wife's case, who had also received approval from the United
 2 States. They received UN approval in 2013, and they received final approval from USCIS in
 3 February 2015. They underwent medical examinations in June 2015. After 22 years of living in
 4 refugee camps, Jeffrey Doe arrived in the United States with his wife and children in December
 5 2015.

6 91. Jeffrey Doe has been continuously employed since he found his first job in
 7 February 2016, including at jobs that have required him to take multiple buses as well as a train
 8 to get to work.

9 92. Despite his joy in building his life in the United States with his wife and children,
 10 Jeffrey Doe misses his parents and siblings deeply. He texts with his family regularly, and they
 11 are able to speak on the phone several times a week. He speaks the most with his mother, his
 12 elder brother, and his younger sister. Jeffrey Doe's daughters ask him almost every day when
 13 they are going to get to see their grandmother again and cry because they miss her. Jeffrey Doe
 14 often wakes in the middle of the night thinking of his family and missing them.

15 93. Jeffrey Doe and his family are Muslim. There is a mosque not far from their home
 16 and they go every week on Saturdays and Sundays. They always pray for their family members
 17 still in the refugee camp, and that they will be reunited soon.

18 94. Jeffrey Doe, his wife, and his children applied for their green cards to become
 19 legal permanent residents. While Jeffrey Doe's wife and children have received their green
 20 cards, his application remains pending.

21 95. Jeffrey Doe is pursuing his claims anonymously because he is afraid of retaliation
 22 from the United States government or others for asserting his rights.
 23
 24
 25
 26

1 **7. Plaintiff the Episcopal Diocese of Olympia**

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

5 97. The Episcopal Diocese is a local affiliate of the Episcopal Migration Ministries, a
6 voluntary agency that welcomes refugees through a Cooperative Agreement with the Department
7 of State. The Episcopal Diocese has operated a refugee resettlement program since 1978 and has
8 sponsored more than 15,000 refugees of all religions and nationalities to resettle in the Seattle
9 area. The Episcopal Diocese's Refugee Resettlement Office ("RRO") is located in South Seattle
10 and receives and assists refugees from all over the world, including from each of the countries
11 targeted by EO-1, without regard to race, religion, or country of origin. The RRO is one of
12 eleven ministries offered and provided for by the Episcopal Diocese. The Episcopal Diocese's
13 refugee resettlement program stems from the moral obligation of the Episcopal faith to welcome
14 and assist strangers, especially those who are poor, sick, and most in need of help.

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

22 99. Before a refugee arrives in the United States, the RRO is notified by the
23 Department of State that a family has been approved for refugee status and that the RRO should
24 "assure" the case. The RRO is required to make contact with friends or relatives of the arriving
25 refugees living in the United States (known as the "U.S. tie") who were listed on the refugee's
26 application. The RRO expends significant time making phone calls, sending mail, and making

1 in-person visits to meet with the U.S. tie to evaluate his or her capacity to help the RRO during
 2 the resettlement process. The evaluation process includes a home visit to view and evaluate the
 3 living space. If there is no possibility that the arriving refugee can live with a U.S. tie, the RRO
 4 further interviews the U.S. tie to determine if the relative or friend can assist with transportation,
 5 job searching, enrollment of kids in school, or any of the other daily tasks with which newly
 6 arriving refugees need assistance.

7 100. If the U.S. tie cannot perform these tasks, the RRO invests its own resources to
 8 perform this pre-arrival legwork for the incoming refugees. These tasks include, among other
 9 things, searching for and obtaining safe housing, furnishing the residence, and stocking it with
 10 food and household items prior to the arrival of the refugees. If the refugee family or U.S. tie
 11 rejects the apartment or house, RRO staff begin a process of evaluating alternative locations. The
 12 RRO undertakes housing inspections that consume significant RRO staff time to ensure that the
 13 neighborhood is safe, that there is no bare wiring visible in the living space, no peeling or flaking
 14 interior paint or plaster, no visible mold or unsanitary odors, that all windows and doors have
 15 working locks, that heat, ventilation, lighting, and running water are adequate, that kitchen
 16 appliances and bathroom fixtures are in good repair, and that there are easily accessible storage
 17 or disposal facilities for garbage.

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

23 102. When EO-1 was issued on January 27, 2017, the RRO was expecting to welcome
 24 over twenty refugee families—including families from Syria, Iraq, and Somalia—into the
 25 community in the coming days, weeks, and months, and had been actively preparing for their
 26 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 EO-1.

103. Since EO-1, the RRO's work has been completely disrupted. The chaos surrounding the implementation of the 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.

104. The October 2017 Agency Memo exacerbates the harm to the Diocese and the population it serves. A few of the refugees the Diocese was expecting have arrived between the time EO-1 was halted by court orders and the effective date of EO-2. However, as of the filing of this Third Amended Complaint, approximately thirty families from the SAO List Countries the Diocese was expecting (including the family of Plaintiff Jeffrey Doe, *see supra* Section III.A.6) have not arrived and will not be able to complete their trips because of the October 2017 Agency Memo. The Diocese also assists its clients to file I-730 petitions for their spouses and children, several of whom have already secured all required clearances; however, because of the October 2017 Agency Memo, those clients and their families who were already approved to come to the United States through the I-730 process—and whom the Diocese had assured—are now stuck in an indefinite limbo.

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

106. The Diocese and its RRO believe that the Orders convey an official message of disapproval and hostility by the Defendants—and, more broadly, this country—toward the

1 Muslim refugees and their families with whom the RRO works, sending the message that the
 2 government deems them to be outsiders who are not and should not become full members of the
 3 political community. The Diocese and its RRO believe that the Orders thus serve to marginalize
 4 these refugees and their families, subjecting them to suspicion, scrutiny, and social and political
 5 isolation on the basis of their religion or national origin, and inflicting other stigmatic and
 6 dignitary injuries on them.

7 107. The Orders have caused and continue to cause significant additional harm to the
 8 most vulnerable population that the RRO and Episcopal Diocese are focused on serving. These
 9 refugees are fleeing persecution in their country of origin, and are now facing persecution in the
 10 safe haven they had been promised in the United States. The dramatic reduction in the overall
 11 number of refugees allowed this year will not only rob families of hope and a future but may also
 12 cost some of them their lives. The mission and efficacy of the RRO, and through it the Episcopal
 13 Diocese, has been thwarted by Orders, and these injuries will continue.

14 15 **8. Plaintiff the Council on American-Islamic Relations-Washington**

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

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

24 110. Since January 27, 2017, and the issuance of EO-1, CAIR-WA has received
 25 several inquiries from American-Muslim travelers in Washington who have become the target of
 26 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, previously unplanned-for resources to respond to these inquiries and to educate the community about its rights in the face of the Executive Orders.

111. 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 100 such requests for help from United States citizens and others between January 27, 2017, and October 31, 2017. In all of 2016, CAIR-WA opened a total of about 250 cases—but in just the first four months of 2017, it had 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.

112. 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.

113. 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 U.S. 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 EO-1, the U.S. Embassy has refused to reschedule the interviews, and his family is now subject to the restrictions and delays of subsequent Orders.

114. 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 U.S. Embassy in the United Arab Emirates on February 15, 2017.

1 The Embassy canceled the interview when EO-1 issued. The interview was rescheduled after
 2 EO-1 was enjoined, and her father received his visa on February 20, 2017. Unfortunately,
 3 however, her father's efforts to book travel to the United States have been thwarted, due to the
 4 issuance of EO-2. The airlines have required him to return to the U.S. Embassy to ensure that his
 5 recently issued visa is still valid. Her father is now afraid to book his airline travel only to be
 6 detained or deported at the border when he tries to enter the United States.

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

10 116. CAIR-WA has also experienced a dramatic increase in the number of inquiries
 11 from the Muslim community regarding the Orders since January 27, 2017, in addition to
 12 inquiries about bullying, hate crimes, and other injuries suffered by those it serves as a direct
 13 result of Defendants' open antipathy for those observing the Muslim faith.

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

20 118. CAIR-WA has had to hire a part-time civil rights team member to handle the
 21 extra work. This additional part-time position was not in CAIR's 2017 budget, but was deemed a
 22 necessary expenditure as part of CAIR-WA's commitment to providing a rapid response to the
 23 number of questions and reports of disruption in travel experienced by CAIR-WA constituents.
 24 CAIR-WA has also taken on the task of printing and distributing 10,000 business cards, depicted
 25 below, that have legal assistance contact information for immigrants and travelers stranded at
 26 United States airports as a result of the Executive Orders. CAIR-WA had not budgeted for this

1 expense or forecasted its need prior to January 27, 2017, but CAIR-WA decided to do so in
 2 direct response to the turmoil caused by the Executive Orders. The printing costs for these
 3 business cards was yet another off-budget expenditure necessitated by Defendants' conduct.



19 119. In direct response to the Orders, CAIR-WA has also organized several
 20 informational presentations for the Washington Muslim community to address the confusion,
 21 concern, and fear the Orders have stimulated.

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

1 121. The mission and efficacy of CAIR-WA has been thwarted by Orders, and its
2 injuries will continue once the new Orders takes effect.

3 **B. Defendants**

4
5 122. Defendant Donald J. Trump is the President of the United States. He is sued in his
6 official capacity.

7 123. Defendant U.S. Department of State (“DOS”) is a cabinet department of the
8 United States federal government that is responsible for issuing visas.

9 124. Defendant Rex W. Tillerson is the Secretary of State and has responsibility for
10 overseeing the enforcement and implementation of the Orders by all DOS staff. He is sued in his
11 official capacity.

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

16 126. Defendant Elaine Duke is the Acting Secretary of DHS and has responsibility for
17 overseeing the enforcement and implementation of the Orders by all DHS staff. She is sued in
18 her official capacity.

19 127. Defendant U.S. Customs and Border Protection (“CBP”) is an agency within DHS
20 with the primary mission of detecting and preventing the unlawful entry of persons and goods
21 into the United States.

22 128. Defendant Kevin K. McAleenan is the Acting Commissioner of CBP has
23 responsibility for overseeing the enforcement and implementation of the Orders by all CBP staff.
24 He is sued in his official capacity.

1 129. Defendant Michele James is the Field Director of the Seattle Field Office of CBP
2 and has responsibility for overseeing the enforcement and implementation of the Orders by all
3 DHS staff in her area, which covers Washington State. She is sued in her official capacity.

4 130. Defendant Office of the Director of National Intelligence is a cabinet department
5 of the United States federal government that serves as the head of the U.S. Intelligence
6 Community, overseeing and directing the implementation of the National Intelligence Program
7 and acting as the principal advisor to the President, the National Security Council, and the
8 Homeland Security Council for intelligence matters related to national security.

9 131. Defendant Daniel Coats is the Director of the Office of the Director of National
10 Intelligence and has responsibility for overseeing the enforcement and implementation of the
11 Orders. He is sued in his official capacity.

12 **IV. FACTUAL BACKGROUND**

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

14 132. On January 27, 2017, Defendant Trump signed EO-1 entitled, "Protecting the
15 Nation from Foreign Terrorist Entry into the United States." A copy of EO-1 is attached to this
16 Complaint as Exhibit A.

17 133. EO-1 cited the threat of domestic terrorism committed by foreign nationals and
18 purported to direct a variety of changes to the manner and extent to which non-citizens may seek
19 and obtain admission to the United States.

20 134. Section 3(c) of EO-1 suspended immigrant and nonimmigrant entry into the
21 country for 90 days for all people from countries referred to in section 217(a)(12) of the INA, 8
22 U.S.C. § 1187(a)(12), with narrow exceptions not relevant here. EO-1 applied only to nationals
23 of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen (the "Original Targeted Countries").¹⁰
24

25
26 ¹⁰ Fact Sheet: Protecting the Nation from Foreign Terrorist Entry to the United States, U.S. Dep't of Homeland Sec.
(Jan. 29, 2017), <http://bit.ly/2kII8MQ> (last visited Nov. 2, 2017).

1 The ban applied regardless of whether such persons held valid visas and regardless of whether
2 their visas were immigration or non-immigration related.

3 135. Section 5(a) suspended the USRAP for 120 days.

4 136. Section 5(b) stated that “refugee claims made by individuals on the basis of
5 religious-based persecution, provided that the religion of the individual is a minority religion in
6 the individual’s country of nationality” will be prioritized.

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

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

15 139. EO-1 stated that “the United States should not admit those who engage in acts of
16 bigotry or hatred (including . . . the persecution of those who practice religions different from
17 their own)” and yet it singled out practitioners of a single religion for exclusion.

18 **1. Chaos, Confusion, and Whiplash in the Implementation of EO-1**

19 140. The disastrous effects of EO-1 were immediately apparent. Countless news
20 reports document the chaotic scene at airports across the country as those who were legally
21 entitled to entry when they boarded airplanes heading to the United States—refugees,
22 immigrants, and those traveling on non-immigrant visas alike—were designated deportable by
23 the time they landed. For example, 109 travelers from the Original Targeted Countries on non-
24 immigrant visas were in transit to the country at the time EO-1 was signed.¹¹ Up to thirteen
25

26 ¹¹ Jeremy Diamond & Steve Almasy, *Trump’s Immigration Ban Sends Shockwaves*, CNN (Jan. 30, 2017),
<http://cnn.it/2kyKYRb> (last visited Nov. 2, 2017).

1 people were detained at the Seattle-Tacoma International Airport on January 28, 2017, pursuant
2 to EO-1.¹²

3 141. Application of EO-1 was inconsistent and confusing, with contradictory official
4 statements issued within days of one another—further heightening Plaintiffs’ reasonable and on-
5 going fear that if they left the country, they would not be permitted to return to their work and
6 studies.

7 142. For example, the Secretary of Homeland Security reportedly received his first full
8 briefing on EO-1 as the President signed it,¹³ resulting in DHS’s position on the application of
9 EO-1 to lawful permanent residents, or green card holders, changing three times over the course
10 of six days following the issuance of EO-1:

- 12 • On January 28, 2017, a spokesperson for DHS stated that lawful permanent
13 residents, or green card holders, would be barred from entry pursuant to EO-1.¹⁴
- 14 • Secretary Kelly reversed course the next day on January 29, 2017, issuing a
15 statement that: “In applying the provisions of the president’s [EO-1], I hereby
16 deem the entry of lawful permanent residents to be in the national interest.
17 Accordingly, absent the receipt of significant derogatory information indicating a
18 serious threat to public safety and welfare, lawful permanent resident status will
19 be a dispositive factor in our case-by-case determinations.”¹⁵
- 20 • Two days later on January 31, 2017, CBP issued a statement that, while repeating
21 Secretary Kelly’s January 29, 2017 statement, then stated in the “Questions and

22 ¹² Liz Jones & Isolde Raftery, *Roller Coaster of Heartbreak and Fury at Sea-Tac in Wake of Trump Order*, KUOW
23 (Jan. 28, 2017), <http://bit.ly/2kH44It> (last visited Nov. 2, 2017).

24 ¹³ Michael D. Shear & Ron Nixon, *How Trump’s Rush to Enact an Immigration Ban Unleashed Global Chaos*,
N.Y. Times (Jan. 29, 2017), <http://nyti.ms/2k7mNtx> (last visited Nov. 2, 2017).

25 ¹⁴ Doina Chiacu, *Green Card Holders Will Need Additional Screening: White House*, Reuters (Jan. 28, 2017),
26 <http://reut.rs/2lQlWSC> (last visited Nov. 3, 2017).

¹⁵ Statement by Secretary John Kelly on the Entry of Lawful Permanent Residents into the United States, U.S. Dep’t
of Homeland Sec. (Jan. 29, 2017), <http://bit.ly/2khyiRz> (last visited Nov. 3, 2017).

Answers” section that the entry of lawful permanent residents would depend on receipt of a “national interest waiver[] consistent with the provisions of [EO-1].”¹⁶

- 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 . . . [EO-1] issued January 27, 2017, does not apply to their [lawful permanent residents] entry to the United States.”¹⁷

143. CBP officers were caught unaware and were blindsided, with even managers not seeming to have clear guidance.¹⁸ The chief of passenger operations for CBP at John F. Kennedy International Airport admitted, “[w]e are as much in the dark as everybody else.”¹⁹

144. In addition, according to two State Department officials, most officials at the department first heard of EO-1 through the media.²⁰ On the day Defendant Trump issued EO-1, Deputy Assistant Secretary for Visa Services at the DOS, Edward J. Ramotowski, issued a letter (“Provisional Revocation Letter”) that “provisionally revoke[d] all valid nonimmigrant and immigrant visas of nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen.” A copy of the Provisional Revocation Letter is attached to this Complaint as Exhibit B.²¹ 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

¹⁶ Protecting the Nation from Foreign Terrorist Entry into the United States, U.S. Dep’t of Homeland Sec. (Jan. 31, 2017), <https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states> (last visited Feb. 1, 2017).

¹⁷ Q&A for Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States, U.S. Dep’t of Homeland Sec. (Feb. 2, 2017), <http://bit.ly/2fWBmBX> (last visited Nov. 3, 2017).

¹⁸ See *supra* note 11.

¹⁹ Jonathan Allen & Brendan O’Brien, *How Trump’s Abrupt Immigration Ban Sowed Confusion at Airports, Agencies*, Reuters (Jan. 28, 2017), <http://reut.rs/2ykbmc7> (last visited Nov. 2, 2017).

²⁰ See *supra* note 13.

²¹ The letter was filed in *Louhghalam v. Trump*, No. 17-10154 (D. Mass. Jan. 31, 2017), Dkt. # 23-1.

1 there was “reasonable uncertainty” surrounding provisions of EO-1 such that he needed to clarify
 2 that Sections 3(c) and 3(e) of the Executive Order did not apply to lawful permanent residents.²²

3 145. Provisions of EO-1 relating to refugees also were inconsistently interpreted and
 4 applied by Defendants, further heightening the need for judicial intervention.

5 146. For example, although Section 5(a) of EO-1 unequivocally stated that “[t]he
 6 Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days,”
 7 four business days later, on February 2, 2017, and in a reversal of the clear mandate in EO-1, Ms.
 8 Lori L. Scialabba, Acting Director of the USCIS, issued a memorandum (“Scialabba Memo”)
 9 regarding guidance concerning EO-1 to all USCIS employees that “USCIS will adjudicate
 10 Refugee/Asylee Relative Petitions . . . for all beneficiaries, from any country of nationality,
 11 currently in the United States” A copy of the Scialabba Memo is attached to this Complaint
 12 as Exhibit C.

13 147. In further contradiction of the clear language of unequivocal suspension of
 14 USRAP, DHS instructed that “[a]dditionally, USCIS will continue refugee interviews in
 15 jurisdictions where there is a preexisting international agreement related to refugee processing.”

16 148. The Scialabba Memo to USCIS employees also stated that “USCIS will continue
 17 refugee interviews when the person is a religious minority in his or her country of nationality
 18 facing religious persecution.”

19 149. As summed up by ten former national security, foreign policy, and intelligence
 20 officials at the highest levels of the United States government, including John F. Kerry (former
 21 Secretary of State), Avril D. Haines (former Deputy National Security Advisor), Lisa O. Monaco
 22 (former Assistant to the President for Homeland Security and Counterterrorism and Deputy
 23

24
 25 ²² Memorandum from Donald F. McGahn II - Counsel to the President, to the Acting Secretary of State, the Acting
 26 Attorney General, and the Secretary of Homeland Security (Feb. 1, 2017), <http://politi.co/2ioohPF> (last visited
 Nov. 2, 2017).

1 National Security Advisor), and Susan E. Rice (former National Security Advisor) (collectively
 2 referred to as the “Ten National Security Experts”):

3
 4 [T]he repeated need for the Administration to clarify confusion after the Order
 5 issued suggest that that Order received little, if any advance scrutiny by the
 6 Departments of State, Justice, Homeland Security or the Intelligence Community.
 7 Nor have we seen any evidence that the Order resulted from experienced
 intelligence and security professionals recommending changes in response to
 identified threats.

8 Joint Declaration ¶ 7, *State v. Trump*, No. 17-35105 (9th Cir. Feb. 6, 2017), Dkt. # 28-2 (a copy
 9 of the Joint Declaration is attached to this Complaint as Exhibit D).

10 11 **2. The Discriminatory Intent Behind EO-1**

12 150. EO-1 and the Provisional Revocation Letter applied only to nationals of seven
 13 countries, all of which are majority-Muslim: Iraq, Iran, Libya, Somalia, Sudan, Syria, and
 14 Yemen.

15 151. EO-1, by its express terms, suspended immigrant and nonimmigrant entry into the
 16 United States based on nationality, place of birth, or place of residence.

17 152. The Provisional Revocation Letter similarly revoked “all valid nonimmigrant and
 18 immigrant visas of nationals” based on nationality, place of birth, or place of residence.

19 153. EO-1 was Defendant Trump’s fulfillment of a clearly stated campaign promise to
 20 ban Muslims from entering the United States. In a December 7, 2015 written statement, “Donald
 21 J. Trump Statement on Preventing Muslim Immigration,” then-candidate Trump said that he was
 22 “calling for a total and complete shutdown of Muslims entering the United States.” While the
 23 statement was briefly removed due to a glitch post-election, the statement was returned to the
 24
 25
 26

1 website and displayed on the official Trump-Pence website through the morning of May 8,
2 2017.²³

3 154. When questioned about the “shutdown,” and asked whether a customs agent
4 would ask a person his or her religion, then candidate Trump responded, “They would say, are
5 you Muslim?” The interviewer then asked, “And if they said yes, they would not be allowed in
6 the country?” “That’s correct,” Mr. Trump responded.²⁴

7 155. Defendant Trump repeatedly referred to a ban on Muslim immigration on the
8 campaign trail.²⁵ Defendant Trump stoked fears regarding Muslims to justify the ban, making
9 claims like, “I think Islam hates us. . . . There’s a tremendous hatred. . . . There’s an unbelievable
10 hatred of us” and “we can’t allow people coming into this country who have this hatred of the
11 United States, and of people that are not Muslim.”²⁶

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

17
18 Stahl: [I]n December, you [i.e., Pence] tweeted, and I quote you, “Calls to ban
19 Muslims from entering the U.S. are offensive and unconstitutional.”

20
21 ²³ See *supra* note 2; Emily Flitter, *Glitch Briefly Removes ‘Muslim Ban’ Proposal from Trump Website*, Reuters
22 (Nov. 10, 2016), <http://reut.rs/2z4DQ77> (last visited Nov. 2, 2017); Ann E. Marimow & Robert Barnes, *President Trump’s Lawyers on Revised Travel Ban Repeatedly Asked About Campaign Promises*, Wash. Post (May 8, 2017),
23 <http://wapo.st/2z10rUr> (last visited Nov. 2, 2017).

24 ²⁴ Nick Gass, *Trump Not Bothered by Comparisons to Hitler*, Politico (Dec. 8, 2015), <http://politi.co/1XYTrc8> (last
25 visited Nov. 2, 2017).

26 ²⁵ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 7, 2015, 2:32 PM), <http://bit.ly/2z1S4n1> (last visited Nov.
2, 2017); Jenna Johnson, *Trump Calls for ‘Total and Complete Shutdown of Muslims Entering the United States,’*
Wash. Post (Dec. 7, 2015), <http://wpo.st/OOuY2> (last visited Nov. 2, 2017).

²⁶ David Sherfinski, *Donald Trump: ‘I Think Islam Hates Us,’* Wash. Post (Mar. 10, 2016), <http://bit.ly/1R99PJn>
(last visited Nov. 2, 2017).

1 Trump: So you call it territories. OK? We're gonna do territories. We're gonna
2 not let people come in from Syria that nobody knows who they are.

3 . . .

4 Stahl: [S]o you're changing . . . your position.

5 Trump: —No, I—call it whatever you want. We'll call it territories, OK?

6 Stahl: So not Muslims?

7 Trump: You know—the Constitution—there's nothing like it. But it doesn't
8 necessarily give us the right to commit suicide, as a country, OK? And I'll tell
9 you this. Call it whatever you want, change territories [sic], but there are
10 territories and terror states and terror nations that we're not gonna allow the
11 people to come into our country.²⁷

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

15 I don't think so. I actually don't think it's a rollback. In fact, you could say it's an
16 expansion. I'm looking now at territory. People were so upset when I used the
17 word Muslim. Oh, you can't use the word 'Muslim.' Remember this. And I'm
18 okay with that, because I'm talking territory instead of Muslim²⁸

19 158. After the election, on December 22, 2016, a reporter asked Defendant Trump
20 whether his "plans to create a Muslim register or ban Muslim immigration to the United States"
21 had changed. Defendant Trump responded "[y]ou known my plans" and that he was "100%
22 correct" in his position.²⁹

23 ²⁷ Lesley Stahl, *The Republican Ticket: Trump and Pence*, CBS News (July 17, 2016), <http://cbsn.ws/29NrLqj> (last
24 visited Nov. 3, 2017).

25 ²⁸ Rebecca Shabad, *Donald Trump Says He's Expanding His Muslim Ban*, CBS News (July 25, 2016),
<http://cbsn.ws/2zU3pXG> (last visited Nov. 3, 2017).

26 ²⁹ Katie Reilly, *Donald Trump on Proposed Muslim Ban: 'You Know My Plans,'* Time (Dec. 21, 2016),
<http://ti.me/2hsjgWD> (last visited Nov. 3, 2017).

1 159. After reading the title of EO-1 when signing it, Defendant Trump said, “[w]e all
2 know what that means.”³⁰

3 160. On the day Defendant Trump issued EO-1, he gave an interview to the Christian
4 Broadcasting Network during which he confirmed his intent to prioritize non-Muslims nationals
5 over Muslim nationals of those countries:

6 They’ve been horribly treated. Do you know if you were a Christian in Syria it
7 was impossible, at least very tough to get into the United States? If you were a
8 Muslim you could come in, but if you were a Christian, it was almost impossible
9 and the reason that was so unfair, everybody was persecuted in all fairness, but
10 they were chopping off the heads of everybody but more so the Christians. And I
11 thought it was very, very unfair.³¹

12 161. Consistent with Defendant Trump’s expressed intent to favor Christians, Section
13 5(e) of EO-1 authorized the Secretaries of the Departments of State and Homeland Security to
14 admit individuals who are members of “a religious minority in [their] count[ries] of nationality
15 facing religious persecution.” This provision directly grants Christians preference over Muslim
16 refugees.

17 162. During a signing ceremony for EO-1 on January 27, 2017, Defendant Trump
18 stated that the purpose of EO-1 was to “establish[] new vetting measures to keep radical Islamic
19 terrorists out of the United States of America.”³²

20 163. Senior advisors to Defendant Trump have engaged in anti-Muslim rhetoric that
21 provide additional support for the notion that EO-1 was prompted by animus toward Islam and
22 Muslims.

23
24 ³⁰ Transcript of ceremonial swearing in of James Mattis as Secretary of Defense, CNN (Jan. 27, 2017),
<http://cnn.it/2lAhK9l> (last visited Nov. 3, 2017).

25 ³¹ David Brody, *Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority as Refugees*, CBN News (Jan. 27, 2017), <http://bit.ly/2kCqG8M> (last visited Nov. 3, 2017).

26 ³² Dan Merica, *Trump Signs Executive Order to Keep out ‘Radical Islamic Terrorists,’* CNN (Jan. 30, 2017),
<http://cnn.it/2jeLXsW> (last visited Nov. 3, 2017).

164. 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 EO-1 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.'"³³

165. On January 29, 2017, an anonymous "senior administration official" briefed a staffer of Breitbart on the intended purpose of EO-1: "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."³⁴

166. Defendant Trump subsequently tried to deny that EO-1 was "a Muslim ban, as the media [was] falsely reporting."³⁵ However, his own prior conflicting, recorded statements as well as those of his senior advisors make clear that EO-1 was, in fact, to ban Muslims from entering the United States.

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

167. 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."

³³ 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 visited Nov. 3, 2017).

³⁴ Neil Munro, *Left Protests While Trump Junks Obama's Global Immigration Plan*, Breitbart (Jan. 30, 2017), <http://bit.ly/2jvJZEA> (last visited Nov. 3, 2017).

³⁵ Press Release, *President Donald J. Trump Statement Regarding Recent Executive Order Concerning Extreme Vetting* (Jan. 29, 2017), <http://bit.ly/2ku5mWI> (last visited Nov. 3, 2017).

- “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.”³⁶

168. Defendant Trump also announced during the 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.”³⁷ Defendant Trump did not issue a new order that following week.

169. On February 21, 2017, Stephen Miller, Senior Advisor to the President, described the administration’s plans with regard to EO-2: “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.”³⁸

170. 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 28, 2017³⁹—the signing of the new order was delayed yet again.

171. On February 28, 2017, 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.”⁴⁰

³⁶ *Full Transcript: President Donald Trump’s News Conference*, CNN (Feb. 17, 2017), <http://cnn.it/2loVltG> (last visited Nov. 3, 2017).

³⁷ *Id.*

³⁸ *See supra* note 1.

³⁹ Justin Fishel, *New Trump Order on Travel and Immigration Expected Wednesday*, ABC News (Feb. 28, 2017), <http://abcn.ws/2m5tpvy> (last visited on Nov. 3, 2017).

⁴⁰ Shane Goldmacher & Nahal Toosi, *Trump Delays Signing New Travel Ban Order, Officials Say*, Politico (Feb. 28, 2017), <http://politi.co/2zdFZgR> (last visited Nov. 3, 2017).

1 172. On March 1, 2017, another senior administration official told a different news
2 outlet that Defendant Trump delayed plans to sign a reworked travel ban in the wake of positive
3 reaction to his first address to Congress, explaining that “[w]e want the (executive order) to have
4 its own ‘moment.’”⁴¹

5 173. Five days later, on March 6, 2017, Defendant Trump signed EO-2 that has the
6 exact same title as EO-1, “Protecting the Nation from Foreign Terrorist Entry into the United
7 States.” A copy of EO-2 is attached to this Complaint as Exhibit E.

8 174. Although EO-2 was designed to appear facially neutral, Defendants cannot erase
9 the history or facts preceding its issuance, *see supra* Section IV.A.2., the taint of the
10 discriminatory motivation behind it, *id.*, or the complete arbitrariness of its requirements. *See*
11 *infra* Section IV.E.

12 175. Indeed, Defendant Trump has openly promoted that EO-2 was his continued
13 fulfillment of his campaign promises. For example, on the day Defendant Trump signed EO-2,
14 he sent a fundraising email requesting support for EO-2 because he was “implement[ing] the
15 policies you—and millions of American like you—voted for.”⁴² And at a press conference the
16 next day on March 7, 2017, White House Press Secretary Sean Spicer confirmed that with the
17 issuance of EO-2, Defendant Trump was “deliver[ing]” on one of his “most significant campaign
18 promises: protecting the country against radical Islamic terrorism.”⁴³

19 176. At a March 15, 2017 rally, Defendant Trump admitted that EO-2 is just a
20 “watered-down version” of his first travel ban that had been “tailor[ed]” by lawyers in response
21

22 ⁴¹ Laura Jarrett, Ariane de Vogue & Jeremy Diamond, *Trump Delays New Travel Ban After Well-Reviewed Speech*,
23 CNN (Mar. 1, 2017), <http://cnn.it/2xWv1ur> (last visited Nov. 3, 2017); Marina Feng, *Pence Says Trump’s Revised*
Immigration and Travel Ban Coming ‘In a Few Days,’ Huffington Post (Mar. 1, 2017), <http://bit.ly/2zi6jsb> (last
24 visited Nov. 3, 2017).

25 ⁴² 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), <http://wapo.st/2AhQqju> (last
26 visited Nov. 3, 2017).

⁴³ Press Briefing by Press Secretary Sean Spicer, 3/7/2017, #18, White House (Mar. 7, 2017),
<http://bit.ly/2mW39oB> (last visited Nov. 3, 2017).

1 to prior legal challenges but that he thought “we ought to go back to the first one and go all the
2 way, which is what I wanted to do in the first place.”⁴⁴

3 177. And as recently as April 24, 2017, Defendant Trump once again revealed his true
4 motivation for EO-2. During a White House reception for conservative media guests, Defendant
5 Trump stated “I’m Christian,”⁴⁵ noted that “he had done very well with Christian voters in the
6 election,”⁴⁶ reiterated that “[n]obody’s been treated worse, it seems to me, than Christians in the
7 Middle East,”⁴⁷ and once again argued that that it was easier for Muslims to come into the United
8 States as refugees than Christians while it was far more dangerous for Christians there.⁴⁸ He then
9 declared, “[w]e’re going to be helping the Christians big league.”⁴⁹

10 178. Section 13 of EO-2, revoked EO-1 as of the effective date of EO-2, which was set
11 to take effect on March 16, 2017.⁵⁰

12 179. EO-2 shares two fundamental features with EO-1: (1) it continues to violate the
13 rights of non-immigrants who need to renew their visas, and (2) it continues to violate the rights
14 of refugees and asylees seeking to reunite with family members who have already cleared all
15 security hurdles.

16
17 ⁴⁴ Cathleen Decker, *Trump Embraces the Blame Game, While Brushing Aside Some Inconvenient Realities*, L.A.
Times (Mar. 16, 2017), <http://lat.ms/2h25461> (last visited Nov. 3, 2017).

18 ⁴⁵ Scott Johnson, *At the White House with Trump*, Power Line (Apr. 25, 2017), <http://bit.ly/2ziHMTJ> (last visited
19 Nov. 3, 2017).

20 ⁴⁶ *Id.*

21 ⁴⁷ Charlie Spiering, *Donald Trump Invites Conservative Media to White House for Exclusive Briefing*, Breitbart
(Apr. 24, 2017), <http://bit.ly/2pcB4Ys> (last visited Nov. 3, 2017).

22 ⁴⁸ *Id.*

23 ⁴⁹ *Id.*

24 ⁵⁰ 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 EO-2, Order Granting Motion for Temporary
25 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 Motion to Convert
Temporary Restraining Order to a Preliminary Injunction, *Hawai‘i* (Mar. 29, 2017), Dkt. # 270. Section 2(c) of
EO-2 was also enjoined by the Honorable Theodore D. Chuang of the United States District Court for the District
26 of Maryland on March 15, 2017. Memorandum Opinion, *IRAP v. Trump*, No. 17-361 (D. Md. Mar. 16, 2017),
Dkt. # 149.

180. Six of the seven countries targeted in EO-1 are still targeted by EO-2. Sections 1(f) and 2(c) of EO-2 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 EO-2.

181. All six banned countries have overwhelmingly Muslim populations.

182. Section 2(c) of EO-2 suspends for ninety days the entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen.

183. Pursuant to Section 2(e) of EO-2, 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.

184. Section 3 of EO-2 explains the scope of the order and provides for certain “exceptions” and potential “waivers” to the travel ban. 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* ¶ 154.

185. 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.”⁵¹

⁵¹ Steve Rukavina, *Canadian Woman Turned Away from U.S. Border After Questions About Religion, Trump*, CBC News (Feb. 8, 2017), <http://bit.ly/2kU80ES> (last visited Nov. 3, 2017).

- On February 7, 2017, the CBP held Muhammad Ali Jr., the son of the late legendary boxer, as well as his mother for questioning in a Florida airport because of their Arabic-sounding names, repeatedly asking them, “[w]here did you get your name from?” and “[a]re you a Muslim?”⁵²
- On or about February 27, 2017, a Canadian doctor originally from Afghanistan was held for over five hours at the United States 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.”⁵³
- On April 23, 2017, Dr. Osman “Ozzie” Ahmed, a former NASA shuttle mission physician and a United States citizen since 1991, who is an approved “low-risk” traveler, had his passport taken from him and was detained for about an hour by CBP officers upon his arrival at Tampa International Airport due to his Muslim name and birthplace (Egypt).⁵⁴
- On April 24, 2017, American composer Mohammed Fairouz was detained for nearly four hours at John F. Kennedy International Airport with the only reason given to him for his detention being his Muslim name.⁵⁵

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

186. Neither EO-1 nor EO-2 single out any countries for disfavored treatment that are not majority-Muslim.

187. Section 6(a) of EO-2 suspends all decisions on applications for refugee status as well as travel of refugees into the United States for 120 days. The suspension required in Section 6 does not apply to refugee applicants who, before the effective date of EO-2, have been formally scheduled for transit by the DOS.

⁵² 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://lat.ms/2lVV9Ts> (last visited Nov. 3, 2017).

⁵³ Ashifa Kassam, *Afghan-Canadian Doctor Detained at US Border and Asked About ‘Tribal Chief,’* Guardian (Mar. 1, 2017), <http://bit.ly/2iYrnK> (last visited Nov. 3, 2017).

⁵⁴ Christopher O’Donnell, *Former NASA Doctor Says He Was Detained at TIA Because of His Muslim Name*, Tampa Bay Times (Apr. 29, 2017), <http://bit.ly/2xYzs82> (last visited Nov. 3, 2017).

⁵⁵ Kristine Phillips, *American Composer Says He Was Detained at JFK Because of His ‘Super Common’ Muslim Name*, Wash. Post (May 2, 2017), <http://wapo.st/2j0Fgvn> (last visited Nov. 3, 2017).

1 188. Section 6(c) allows the Secretary of State and the Secretary of Homeland Security
 2 to jointly determine to admit individuals to the United States as refugees on a case-by-case basis.
 3 Like the waiver provision in Section 3 of the EO-2, the procedure set forth in section 6(e) is of
 4 little comfort as Defendant Trump continues to make it clear that his intent is “to be helping the
 5 Christians big league.”⁵⁶

6 189. Refugees or asylees who seek to have a family member(s) join them in the United
 7 States must file Refugee/Asylee Relative Petitions (Form I-730). However, EO-2 will suspend all
 8 decisions on these petitions as well as travel for these family members.

9 190. On March 6, 2017, the DHS issued a “Q&A: Protecting the Nation from Foreign
 10 Terrorist Entry to The United States.” A copy of the Q&A is attached to this Complaint as
 11 Exhibit F. The Q&A provides:

12
 13 Q27. Can the exception for refugee admission be used for Refugee/Asylee
 14 Relative Petitions (Form I-730) cases where a family member is requesting a
 beneficiary follow to join?

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

18 191. Defendant Tillerson issued a series of diplomatic cables implementing EO-2,⁵⁷
 19 including a March 10, 2017 State Department Cable, 17 STATE 23338, with the subject, “New
 20 Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United
 21 States - Guidance to Visa-Issuing Posts” (“Cable 23338”). A copy of Cable 23338 is attached to
 22 this Complaint as Exhibit G. The “guidance” in these cables include mandatory orders regarding
 23 implementation of EO-2 and thus constitute final agency action.

24
 25 ⁵⁶ See *supra* note 47.

26 ⁵⁷ Yeganeh Torbati, Mica Rosenberg & Arshad Mohammed, *Exclusive: U.S. Embassies Ordered to Identify Population Groups for Tougher Visa Screening*, Reuters (Mar. 23, 2017), <http://reut.rs/2j1wdtR> (last visited Nov. 3, 2017).

192. 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.

193. “V93 cases” refers to the follow-to-join I-730 petitions filed by refugees such as Plaintiffs James Doe and Joseph Doe for their spouses and unmarried children.

194. While EO-1 suspended USRAP for 120 days, EO-2 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.”

195. 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.

C. President Trump’s September 27, 2017 Proclamation

196. On September 24, 2017, Defendant Trump issued EO-3 titled, “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats.” A copy of EO-3 is attached to this Complaint as Exhibit H.

197. EO-3 states that a worldwide review of what additional information would be needed from each foreign country to assess adequately whether their nationals seeking to enter the United States pose a security or safety threat resulted in a determination that “a small number

1 of countries...remain deficient at this time with respect to their identity-management and
 2 information-sharing capabilities, protocols, and practices.” Unlike EO-1 and EO-2, EO-3
 3 removes most of the prior emphasis on terrorism, instead focusing on identity management and
 4 information sharing.

5 198. According to Section 1(e), the identity-management protocols, information
 6 sharing practices, and risk factors of sixteen countries were identified as “inadequate” and thirty-
 7 one additional countries were classified as “at risk” of becoming “inadequate” based upon these
 8 same criteria. EO-3 does not identify the sixteen countries that were identified as “inadequate” or
 9 the thirty-one countries that were classified as “at risk” of becoming “inadequate.”

10 199. However, according to Section 1(g), “Iraq did not meet the baseline” for the kinds
 11 of information required from foreign governments to support the United States government’s
 12 ability to confirm the identity of individuals seeking entry into the country (“Baseline
 13 Requirements”). Yet, no blanket ban is being imposed upon nationals from Iraq seeking
 14 immigrant or non-immigrant visas; rather, nationals of Iraq will “be subject to additional scrutiny
 15 to determine if they pose risks to the national security or public safety of the United States.”

16 200. On the other hand, according to Section 2(h)(i), Somalia was determined to satisfy
 17 the Baseline Requirements, yet nationals of Somalia seeking immigration visas continue to be
 18 indefinitely and categorically banned, per Section 2(h)(ii).

19 201. As stated by 49 former national security, foreign policy, and intelligence officials
 20 at the highest levels of the United States government, EO-3 does not impose any categorical
 21 restrictions on nationals of non-Muslim majority countries such as Belgium, a country with
 22 “widely-documented problems with information sharing, and whose nationals have carried out
 23 terrorist attacks on Europe.” Joint Declaration of Former National Security Officials (“Statement
 24 of 49 Former National Security Officials”) ¶ 12, *State v. Trump*, No. 17-141 (W.D. Wash. Oct.
 25 11, 2017), Dkt. # 194-18 (a copy of the Statement of 49 Former National Security Officials is
 26 attached to this Complaint as Exhibit I).

202. Sections (2)(a)-(c), (e), and (g)-(h) of EO-3 indefinitely suspends the entry of immigrants from Chad, Iran, Lybia, Syria, Yemen, and Somalia. All six of these countries have Muslim-majority populations.⁵⁸

203. Sections (2)(a)-(c), (e), and (g)-(h) of EO-3 impose restrictions on the issuance of nonimmigrant visas to nationals of the Muslim-majority countries Chad, Iran, Lybia, Syria, Yemen, and Somalia: It bans the issuance of all nonimmigrant visas to nationals of Syria; bans the issuance of all nonimmigrant visas except student (F and M) and exchange (J) visas to nationals of Iran; and bans the issuance of business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas to nationals of Chad, Libya, and Yemen. While nationals of Somalia seeking non-immigrant visas are not banned, they will be subject to additional scrutiny. The non-immigrant visas that have been banned are the most frequently used non-immigrant visas from these nations. Ex. I, Statement of 49 Former National Security Officials ¶ 12.

204. Section 2(d) of EO-3 restricts entry into the United States of nationals of North Korea who are not permitted to emigrate outside of their country, particularly to the United States. This provision will affect very few people. In 2016, the United States only issued one hundred visas to North Koreans, forty-two of which were diplomatic visas that are exempt from EO-4.⁵⁹

205. Section 2(f)(ii) of EO-3 suspends the entry of a very small number of nationals of Venezuela, only affecting “officials of government agencies of Venezuela involved in screening and vetting procedures . . . and their immediate family members” as nonimmigrants on business and tourist visas.

⁵⁸ See Pew-Templeton Global Religious Futures Project, Religious Demography: Affiliation (2010), <http://bit.ly/2zcED5U> (search country profiles for Chad, Iran, Libya, Syria, Yemen, and Somalia) (last visited Nov. 3, 2017).

⁵⁹ Emily Rauhala, *Almost No North Koreans Travel to the U.S., so Why Ban Them?*, Wash. Post (Sept. 25, 2017), <http://wapo.st/2hbNvUO> (last visited Nov. 3, 2017).

206. Section 7(b) mandates that the restrictions will apply to nationals of Iran, Libya, Syria, Yemen, and Somalia including those who have a bona fide relationship with a person or entity in the United States as of 12:01 a.m. eastern daylight time on October 18, 2017.

207. Section 3 of EO-3 explains the scope of the order and provides for certain “exceptions” and potential “waivers” to the travel ban. For the reasons previously explained in this Complaint, Plaintiffs have little reason to believe the waivers will be applied in a fair and non-discriminatory manner to them. Further on October 23, 2017, USCIS of Defendant DHS issued a Policy Memorandum rescinding a prior Policy Memorandum that had been in place since August 17, 2015, that gave deference to prior determinations for extension of nonimmigrant status except where there had been a prior material error, a substantial change in circumstances, or there was new material information impacting the individual’s eligibility.⁶⁰

208. The bans on the nationals of these Muslim-majority countries is categorical without regard to the individual’s age, health, or connection with the designated country. For example, EO-3 does not take into consideration if a national of a banned country has *never* resided in or visited their country of origin.

D. President Trump’s October 24, 2017 Executive Order and Agency Implementation of the Order

209. On October 23, 2017, Defendants Tillerson, Duke, and Coats issued a Memorandum to the President titled “Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities” (“October 2017 Agency Memo”); the next day, Defendant Trump signed EO-4, Executive Order 13815 titled “Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities.” A copy of the October 2017 Agency Memo and EO-4 are attached to this Complaint as Exhibits J and K.

⁶⁰ Policy Memorandum, U.S. Dep’t of Homeland Sec. (Oct. 23, 2017), <http://bit.ly/2zicwnN> (last visited Nov. 3, 2017).

1 210. Pursuant to Section 1(g) of EO-4, the restrictions and limitations of EO-3 “do not
2 apply to those who seek to enter the United States through the USRAP.”

3 211. Sections 2(a)-(b) explain that, after the Administration’s 120-day review of the
4 USRAP application and adjudication process, the heads of three administrative agencies advised
5 the President that the refugee screening process was “generally adequate to ensure the security
6 and welfare of the United States”:

7
8 The Secretary of State, the Secretary of Homeland Security, and the Director of
9 National Intelligence have advised that the improvements to the USRAP vetting
10 process are generally adequate to ensure the security and welfare of the United
11 States, that the Secretary of State and Secretary of Homeland Security may
12 resume that program, and that they will apply special measures to certain
13 categories of refugees whose entry continues to pose potential threats to the
14 security and welfare of the United States.

15 . . .

16 With the improvements identified by the section 6(a) working group and
17 implemented by the participating agencies, the refugee screening and vetting
18 process generally meets the uniform baseline for immigration screening and
19 vetting established by the section 5 working group. Accordingly, a general
20 resumption of the USRAP, subject to the conditions set forth in section 3 of this
21 order, is consistent with the security and welfare of the United States.

22 212. Accordingly, Section 2(c) declares that the suspension of USRAP and other
23 processes specified in EO-2 are no longer in effect. EO-4 authorized “the Secretary of State to
24 resume travel of qualified and appropriately vetted refugees into the United States, and the
25 Secretary of Homeland Security to resume adjudicating applications for refugee resettlement.”

26 213. Section 3(a) of EO-4 states that “Presidential action to suspend the entry of
refugees under the USRAP is not needed at this time to protect the security and interests of the
United States and its people.”

 214. Despite the conclusion in EO-4 that the suspension of the USRAP program is not
needed at this time and already having had at least 120 days to conduct a review of the USRAP

process, the October 2017 Agency Memo asserts a need for up to an additional 90 days to conduct a threat analysis and review for nationals and stateless persons who last habitually resided in eleven countries on the Security Advisory Opinion (“SAO”) list. The SAO list was established after the September 11th terrorist attacks, and the current list of countries was established in 2015.

215. Upon information and belief, SAO List Countries are “Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria and Yemen, as well as Palestinians who lived in those countries.”⁶¹ Most adult male refugees from these countries are already required to undergo higher-level security screening known as SAO’s under previously existing protocols.⁶² All but two of these countries, i.e., North Korea and South Sudan, are Muslim-majority countries.⁶³

216. During this review, refugee applicants from other non-SAO countries will be prioritized. Individuals from SAO List Countries may be considered during the review period but only if the person’s “will admit on a case-by-case basis only refugees whose admission is deemed to be in the national interest and poses no threat to the security of welfare of the United States.” Ex. J, October 2017 Agency Memo at 2. In other words, there will be a continued de facto Muslim refugee ban during this additional review period.

217. In addition, the October 2017 Agency Memo indefinitely suspends I-730 follow-to-join admission for the spouse and unmarried children under twenty-one of former refugees residing in the United States until additional security enhancements are in place. According to the addendum to the October 2017 Agency Memo, the additional security enhancements are:

⁶¹ Yeganeh Torbati & Mica Rosenberg, *Under Trump Plan, Refugees from 11 Countries Face Additional U.S. Barriers*, Reuters (Oct. 24, 2017), <http://reut.rs/2zBqfmA> (last visited Nov. 3, 2017).

⁶² *Id.*

⁶³ *Id.*

(1) ensuring that all following-to-join refugees receive the full baseline interagency checks that principal refugees receive; (2) requesting submission of the beneficiary's 1-590 application in support of the Form 1-730 petition earlier in the process to provide for more thorough screening; (3) vetting certain nationals or stateless persons against classified databases; and (4) expanding SAO requirements for this population in keeping with the agreed-to expansion for 1-590 refugee applicants.

218. The October 2017 Agency Memo neither clarifies who “certain nationals” are nor makes any distinction between processing follow-to-join applications for women and minor children versus spouses who are adult males.

219. Defendant Trump lowered the refugee cap in Fiscal Year 2018, which began on October 1, 2017, to 45,000 refugees,⁶⁴ the lowest number since the program began in 1975.⁶⁵

220. The October 2017 Agency Memo effectively eviscerates any chance refugees from the eleven SAO List Countries—including those who already have fulfilled all the rigorous eligibility requirements—have to get into the queue for the severely limited number of available spots left for refugees.

221. The October 2017 Agency Memo also establishes an indefinite ban on derivative refugees seeking non-discretionary admission pursuant to the Immigration & Nationality Act, 8 U.S.C. § 1157(c)(2)(A) and who have otherwise fulfilled all requirements, including their medical and security clearances. Even if the ban is eventually lifted, there will necessarily be far fewer spaces left for them as other refugees will be prioritized and using up the severely limited allotment of spots in the interim, leaving Joseph Doe, his wife and children, and others like them hoping for one of the few remaining spots there may be, if any, for before the refugee cap is met.

222. The October 2017 Agency Memo is a final agency action from which “legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation omitted).

⁶⁴ Statement, President Donald J. Trump is Taking a Responsible and Humanitarian Approach on Refugees, White House (Sept. 29, 2017), <http://bit.ly/2xEHB4x> (last visited Nov. 3, 2017).

⁶⁵ Geneva Sands & Conor Finnegan, *Trump Administration to Announce Decision on Refugee Program After 120-Day Ban*, ABC News, <http://abcn.ws/2i1ijnJ> (last visited Nov. 3, 2017).

223. The Agency Memo purports to deprive Plaintiffs of an entitlement, not a benefit.

224. The Orders and the manner in which they are being implemented, in effect, continue the unlawful Muslim Ban.

225. Further, the Orders cause 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)).

226. The Orders also cause Plaintiffs and members of the Refugee Class direct, ongoing, and immediate harm by preventing them from being reunited with their family members.

E. The Arbitrariness of the Orders

227. 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 EO-1 on February 3, 2017, to issue EO-2. 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.⁶⁶ Having now had months to review its screening and vetting protocols as well as the refugee admissions process while, in the interim, wreaking havoc on the lives of millions of people, Defendants now attempt to indefinitely bar the issuance of immigrant and non-immigrant visas to nationals of six Muslim-majority countries and continue the suspension of admission to follow-to-join refugees with the closest of familial ties to residents of this country—all without any genuine national security purpose,

⁶⁶ See *supra* note 41.

1. Arbitrariness of the Travel Ban

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

228. Section 1 of EO-1, 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 EO-1 stated that “[t]he Executive Order protects the United States from countries compromised by terrorism”⁶⁷ EO-2 continues to justify the actions of Defendants based on events from 2001. *See* Ex. E, EO-2 § 1(h).

229. Yet, none of the Orders 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 intelligence officer as saying, “The Saudi presence in ISIS is very large. What we have left are mainly Iraqis and Saudis.”⁶⁸

230. 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.”⁶⁹

231. Ten National Security Experts—all of whom were serving in their official capacities and four of whom “were current on active intelligence regarding all credible terrorist threat streams directed against the U.S,” Ex. D, Joint Declaration ¶ 2, up until January 20, 2017, just seven days prior to the issuance of EO-1 —stating that they were “unaware of any specific

⁶⁷ *See supra* note 10.

⁶⁸ Edwin Mora, *Report: More Citizens of Saudi Arabia Have Joined Islamic State Than Any Other Country*, Breitbart (Mar. 9, 2017), <http://bit.ly/2nmTHGQ> (last visited Nov. 3, 2017).

⁶⁹ Kyle Blaine & Julia Horowitz, *How the Trump Administration Chose the 7 Countries in the Immigration Executive Order*, CNN (Jan. 30, 2017), <http://cnn.it/2jkjiCC> (last visited Nov. 3, 2017).

1 threat that would justify the travel ban established by [EO-1]" and that "[t]here is no national
2 security purpose for a total bar on entry for aliens from the seven named countries. *Id.* ¶¶ 3-4.

3 232. These officials who were in office a mere seven days before EO-1 issued "kn[e]w
4 of no interagency process underway before January 20, 2017 to change current vetting
5 procedures, and the repeated need for the Administration to clarify confusion after the Order
6 issued suggest that that Order received little, if any advance scrutiny by the Departments of
7 State, Justice, Homeland Security or the Intelligence Community." *Id.* ¶ 7. Nor had the officials
8 seen "any evidence that the Order resulted from experienced intelligence and security
9 professionals recommending changes in response to identified threats." *Id.*

10 233. Therefore, in their opinion, EO-1 "[ould] not be justified on national security or
11 foreign policy grounds." *Id.* ¶ 3. They explained that:

13 Since September 11, 2001, not a single terrorist attack in the United States has
14 been perpetrated by aliens from the countries named in the Order. Very few
15 attacks on U.S. soil since September 11, 2001 have been traced to foreign
16 nationals at all. The overwhelming majority of attacks have been committed by
17 U.S. citizens. The Administration has identified no information or basis for
18 believing there is now a heightened or particularized future threat from the seven
19 named countries. Nor is there any rational basis for exempting from the ban
20 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.*

21 *Id.* ¶ 4 (emphasis added).

22 234. These respected civil servants, who have collectively "devoted decades to
23 combatting the various terrorist threats that the United States faces in a dynamic and dangerous
24 world" declared, in their professional opinions, that EO-1 "does not perform its declared task" of
25 "protecting the nation from foreign terrorist entry into the United States," and instead actually
26 undermined the national security of the United States. *Id.* ¶¶ 2-3.

235. Specifically, the Joint Declaration stated that EO-1: (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 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.

236. 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.

237. While EO-1 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

1 to every one of the thousands of affected individuals with urgent and compelling needs to
 2 travel.” *Id.* ¶ 5.f.

3 238. On the unprecedented scope of EO-1, these experts wrote:

4
 5 We know of no case where a President has invoked his statutory authority to
 6 suspend admission for such a broad class of people. Even after 9/11, the U.S.
 7 Government did not invoke the provisions of law cited by the Administration to
 8 broadly bar entrants based on nationality, national origin, or religious affiliation.
 9 In past cases, suspensions were limited to particular individuals or subclasses of
 10 nationals who posed a specific, articulable threat based on their known actions
 11 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.

12 *Id.* ¶ 8.

13 239. Nearly 1,000 current State Department officials formally registered their dissent
 14 to EO-1.⁷⁰ These career diplomats explained:

15 A policy which closes our doors to over 200 million legitimate travelers in the
 16 hopes of preventing a small number of travelers who intend to harm Americans
 17 from using the visa system to enter the United States will not achieve its aim of
 18 making our country safer. Moreover, such a policy runs counter to core American
 19 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.

20 . . .

21 This ban, which can only be lifted under conditions which will be difficult or
 22 impossible for countries to meet, will not achieve its stated aim of to protect the
 23 American people from terrorist attacks by foreign nationals admitted to the United
 24 States. Despite the Executive Order’s focus on them, a vanishingly small number
 25 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

26 ⁷⁰ Steve Herman & Nike Ching, *Sources: Nearly 1,000 at State Department Officially Dissent on Immigration Order*, VOA News (Jan. 31, 2017), <http://bit.ly/2kOEUHR> (last visited Nov. 3, 2017).

1 naturalized U.S. citizens--individuals who have been living in the United States
 2 for decades, if not since birth. In the isolated incidents of foreign nationals
 3 entering the U.S. on a visa to commit acts of terror, the nationals have come from
 4 a range of countries, including many (such as Pakistan or Saudi Arabia) which are
 5 not covered by the Executive Order.

6 ...

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

11 ...

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

15 Memorandum, Dissent Channel: Alternatives to Closing Doors in Order to Secure Our
 16 Borders (Jan. 27, 2017) (a copy of the Dissent Channel is attached to this Complaint as
 17 Exhibit L).

18 240. EO-1 failed to cite a scintilla of evidence supporting the need for the travel ban of
 19 nationals from the seven originally banned countries. Nor did or could Defendants provide any
 20 such support in any of their briefings in the numerous courts where EO-1 was challenged in the
 21 weeks following its signing or the time leading up to the issuance of EO-2. This is because
 22 Defendants simply do not have the facts to do so.

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

25 241. The best Defendants could do to try and justify EO-2 was to cite to a June 2016
 26 DOS *Country Report on Terrorism 2015*. Ex. E, EO-2 § 1(e). However, according to the report,
 the majority (i.e., over 55%) of all terrorist attacks took place in five countries *that are not*

1 *subject to the travel ban*—Iraq, Afghanistan, Pakistan, India, and Nigeria.⁷¹ In addition, 74% of
 2 all deaths due to terrorist attacks took place in five countries—Iraq, Afghanistan, Nigeria, Syria,
 3 and Pakistan.⁷²

4 242. Section 1(e) of EO-2 cites facts purportedly demonstrating why the Targeted
 5 Countries continue to present heightened risks to security. However, the facts are based on the
 6 June 2015 data that is nearly two years old and which were specifically addressed by changes
 7 made to the Visa Waiver Program at that time to respond to the specific information.⁷³

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

11 244. According to a September 2016 report from the Cato Institute, “[i]ncluding those
 12 murdered in the terrorist attacks of September 11, 2001 (9/11), the chance of an American
 13 perishing in a terrorist attack on U.S. soil that was committed by a foreigner over the 41-year
 14 period studied here is 1 in 3.6 million per year.”⁷⁴ Similarly, the Boston Globe reported in 2016
 15 that “a person living in the United States is more than over 100 times more likely to be killed by
 16 falling objects than by a jihadi terrorist.”⁷⁵ Indeed, it appears that in 2016, “Americans were less
 17 likely to be killed by Muslim extremists (1 in six million) than for being Muslim (one in one
 18 million).”⁷⁶

19
 20
 21 ⁷¹ *Country Reports on Terrorism 2015* at 3, Dep’t of Homeland Sec. (June 2016), <http://bit.ly/2rtr2lW> (last visited Nov. 3, 2017).

22 ⁷² *Id.*

23 ⁷³ 8 U.S.C. § 1187; Visa Waiver Program, U.S. Dep’t of State, <http://bit.ly/1V9XIeB> (last visited Nov. 3, 2017).

24 ⁷⁴ Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, 798 Pol’y Analysis Cato Inst. 1 (Sept. 13, 2016),
<http://bit.ly/2hKSGKh> (last visited Nov. 3, 2017).

25 ⁷⁵ Graham Allison, *Fear Death from Tree Limbs, Not Terrorists*, Boston Globe (Feb. 19, 2016),
<http://bit.ly/2h4u24A> (last visited Nov. 3, 2017).

26 ⁷⁶ Charles Kurzman, *Muslim-American Involvement with Violent Extremism*, 2016 (Jan. 26, 2017),
<http://unc.live/1irAzzi> (last visited Nov. 3, 2017).

245. In the process of creating EO-2, the Office of Intelligence and Analysis within the DHS that is charged with equipping the Homeland Security Enterprise with timely intelligence and information,⁷⁷ developed a report assessing the international terrorist threat to the United States and worldwide posed by citizens of the seven Original Targeted Countries. Although the report 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.

Report, *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, U.S. Dep’t of Homeland Sec. (Feb. 2017) (a copy of the Report is attached to this Complaint as Exhibit M).

246. 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 EO-2’s travel ban. A copy of the March 1 Intelligence Assessment, as it appeared in the MSNBC article, is attached to this Complaint as Exhibit N.

247. 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:

⁷⁷ Office of Intelligence and Analysis, U.S. Dep’t of Homeland Sec. (last published date June 22, 2017), <http://bit.ly/2iZVWCU> (last visited Nov. 3, 2017).

⁷⁸ Rachel Maddow, *TRMS Exclusive: DHS Document Undermines Trump Case for Travel Ban*, MSNBC (Mar. 2, 2017), <http://on.msnbc.com/2mRo5ZF> (last visited Nov. 3, 2017).

[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 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. at 2.

248. The examples of terrorist activity cited in Section 1(h) of EO-2 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, EO-2 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.

249. On March 10, 2017, more than 130 foreign policy and national security experts wrote an open letter to President Trump (“Open Letter”) concluding that EO-2 “suffers from the same core substantive defects as the previous version.” The experts raise the concern that EO-2 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.” Open Letter to the Honorable Donald J. Trump (Mar. 10, 2017) at 1 (a copy of the Open Letter is attached to this Complaint as Exhibit O).

250. 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.

1 has added enhanced vetting procedures for travelers and has revised them continuously. Our
 2 government applies this process to travelers not once, but multiple times.” *Id.*

3 251. In addition, EO-2 now allows automatic entry for nationals of the affected
 4 countries with valid visas, an admission by Defendants that the current screening and vetting
 5 process for the admission of non-immigrant visa holders is adequate and effective to protect this
 6 country’s national security interests.

7 252. Adding to the evidence of the arbitrariness of the travel ban, on March 20, 2017,
 8 the Transportation Security Administration—a component of Defendant DHS— issued what
 9 was, at first, a confidential directive banning laptops, iPads and other electronics “larger than a
 10 cellphone” on flights from 10 airports because “‘evaluated intelligence’ emerged that terrorists
 11 favored ‘smuggling explosive devices in various consumer items’”.⁷⁹ The countries covered by
 12 the electronics ban are Jordan, Egypt, Turkey, Saudi Arabia, Morocco, Qatar, Kuwait and the
 13 United Arab Emirates⁸⁰—none of which are covered by any of the Orders.

14 253. The supposed national security justification for EO-3 fare no better than for EO-1
 15 and EO-2. According to 49 Former Nationals Security Officials, EO-3 “preserves the basic
 16 approach of the original two Orders, without providing any persuasive evidence that these
 17 measures are necessary to enhance our national security or foreign policy interests.” Ex. I,
 18 Statement of 49 Former National Security Officials ¶ 3. They further point out:

19
 20 As a national security measure, this Ban is unnecessary. . . . [EO-3] rests not on []
 21 tailored grounds, but rather, on (1) general bans (2) that are not responsive to an
 22 actual national security threat informed by intelligence, and (3) that emerged from
 23 a January Order that was not vetted through the kind of careful interagency legal
 24 and policy review that we would expect from a serious national security process.

25 The Ban is of unprecedented scope. . . . Even after the 9/11 attacks, the U.S.
 26 Government did not invoke the provisions of law cited by the Administration to

⁷⁹ Sam Thielman & Sam Levin, *Experts Criticize US Electronic Devices Ban on Some Flights from Middle East*, *Guardian* (Mar. 21, 2017), <http://bit.ly/2mPTuMC> (last visited Nov. 3, 2017).

⁸⁰ *Id.*

broadly bar entrants based on nationality, national origin, or religious affiliation. 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 Travel Ban 3.0, the Administration alleges no derogatory factual information about any particular recipient of a visa or green card or any credible threat from nationals of the countries banned.

...

The current individualized vetting system places the burden of proof on the traveler to prove her identity and eligibility for travel. If the traveler is unable to make this showing, the U.S. Government can deny her a visa based on an individualized review. This has been the policy of the U.S. Government across multiple administrations.

...

Removing most of the emphasis on terrorism, the new Ban is purportedly necessary “to elicit improved identity-management and information-sharing protocols and practices from foreign governments.” We have seen no evidence, however, that such a sweeping, country-based ban on travel is necessary for this objective.

In fact, the only concrete evidence to emerge from this administration on this point to date has shown just the opposite, that country-based bans are ineffective.

...

[EO-3] does not further—but instead harms—sound U.S. national security and foreign policy.

Id. ¶¶ 5-6, 8-10, 14.

254. 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 USRAP

255. In priming the country for suspending the USRAP, 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 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.”⁸¹

256. 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.⁸²

257. The United States government has a great deal of experience screening and admitting large numbers of refugees from chaotic environments, including where intelligence holdings are limited.

258. According to the USCIS, the government agency that oversees lawful immigration to the United States:⁸³

⁸¹ Jacob Gardenswartz, *Transcript: President Donald Trump’s Rally in Melbourne, Florida*, Vox (Feb. 18, 2017), <http://bit.ly/2y1Tnmy> (last visited Nov. 4, 2017).

⁸² Fact Sheet: U.S. Refugee Admissions Program FAQ’s, U.S. Dep’t of State (Jan. 20, 2017), <http://bit.ly/2jCcsqP> (last visited Nov. 4, 2017).

⁸³ Refugee Processing and Security Screening, Dep’t of Homeland Sec. (last reviewed/updated: Dec. 3, 2015), <http://bit.ly/1YodRyW> (last visited Nov. 4, 2017).

▼ Refugee Processing

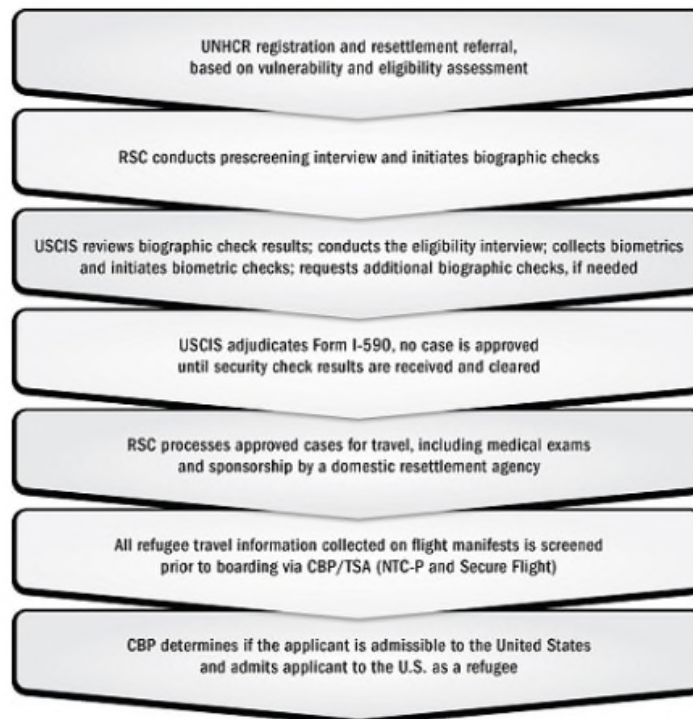
Refugee applicants are subject to intensive biographic and biometric security checks. Through close coordination with the federal law enforcement and intelligence communities, these checks are continually reviewed and enhanced to address specific populations that may pose particular threats.

The United Nations High Commissioner for Refugees (UNHCR) identifies and refers many refugees to the 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 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.

259. The general refugee process encompasses the following:⁸⁴



⁸⁴ *Id.*

260. The non-existent vetting process claimed by Defendant Trump actually consists of the following numerous steps:⁸⁵

▼ **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)).

⁸⁵ *Id.*

1 • **Security Advisory Opinion (SAO)**

2 State initiates SAO name checks for certain refugee applicants when they are
3 being prescreened by an RSC. The SAO biographic check is conducted by the
4 FBI and intelligence community partners. SAOs are conducted for an
5 applicant who is a member of a group or nationality that the U.S.
6 government has designated as requiring this higher level check. SAOs are
7 processed, and a response must be received before finalizing the decision. If
8 there is a new name or variation identified at the interview, USCIS requests
9 another SAO for the new name and places the case on hold until that
10 response is received.

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

15 • **Interagency Check (IAC)**

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

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

24 • **FBI Fingerprint Check through Next Generation Identification (NGI)**

25 Recurring biometric record checks pertaining to criminal history and
26 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

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**

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.

261. Defendant Trump has misrepresented that “there was no way to vet those people”⁸⁶ in an attempt to justify his arbitrary and unjustified suspension of the USRAP. However, USCIS Director León Rodríguez’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.”⁸⁷ 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

⁸⁶ See *supra* note 81.

⁸⁷ Written Testimony of USCIS Director León Rodríguez for a Senate Committee on the Judiciary, Subcommittee 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), <http://bit.ly/2h5A7Oo> (last visited Nov. 4, 2017).

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 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.⁸⁸

262. In addition, as recently as January 20, 2017, the DOS 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

⁸⁸ *Id.*

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.⁸⁹

263. Finally, the Open Letter from the more than 130 foreign policy and national security experts affirms:

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.⁹⁰

264. 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*,⁹¹ confirming the beneficiary's identity and relationship to the petitioner in the United States, the collection of fingerprint scans, medical examinations, and interviews. *See infra* ¶ 274. 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.⁹²

265. The existing refugee admissions process is stringent, robust, lengthy, and rigorous. Extreme vetting is already in place.

266. Flailing for additional support for the misguided suspension of refugee travel into the United States, Section 1(h) of EO-2 includes two curious anecdotes from 2013 and 2014. The

⁸⁹ See *supra* note 82 (emphasis added).

⁹⁰ Ex. Q, Open Letter at 1.

⁹¹ Follow-to-Join Refugees and Asylees, U.S. Dep't of State, <http://bit.ly/2ivGXwP> (last visited Nov. 4, 2017).

⁹² 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 (Aug. 4, 2017), <http://bit.ly/2A75hfA> (last visited Nov. 4, 2017).

1 first situation was one that was specifically addressed by the previous administration.⁹³ The
 2 second situation involved a refugee brought to this country as a child refugee and radicalized
 3 years after he had arrived, only amplifying the finding in the March 1, 2017 Intelligence
 4 Assessment that most foreign-born, US-based violent extremists are radicalized years after
 5 entering the United States, calling into question the effectiveness of the refugee travel ban in EO-
 6 2.⁹⁴

7 267. Section 1(h) of EO-2 also claims that more than 300 persons who entered the
 8 United States as refugees are currently the subjects of counterterrorism investigations by the
 9 Federal Bureau of Investigation. But according to a Washington Post article:

11 [O]fficials familiar with the list say that at least 70 percent of the people under
 12 review are from countries not targeted by the new travel ban. More than half are
 13 or were at one time Iraqi nationals. Officials familiar with the data said roughly
 14 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.

15 Roughly 20 percent of the individuals came to the United States from Somalia,
 16 which is covered by the ban. Others hail from a range of countries, including
 17 several that the Trump administration has never indicated as a national security
 18 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.

19 The list refers to people who are under some form of investigation, but officials
 20 familiar with the data cautioned that the classification of those people varies
 21 widely from individuals who have aroused serious suspicion to those who might
 22 have a relative who is a convicted or suspected terrorist. None of the individuals
 23 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.⁹⁵

24 ⁹³ See *supra* note 73.

25 ⁹⁴ See *supra* note 78.

26 ⁹⁵ Devlin Barrett, Abigail Hauslohner & David Nakamura, *Internal Trump Administration Data Undercuts Travel Ban*, Wash. Post (Mar. 16, 2017), <http://wapo.st/2zeYAvM> (last visited Nov. 4, 2017).

268. Defendant Trump repeatedly demonized Syrian refugees,⁹⁶ and made clear his intention to ban them from the country. For example, while on the campaign trail in the fall of 2015, Defendant Trump told a crowd in New Hampshire that Syrian refugees could be a terrorist army in disguise. “Did you ever see a migration like that?” he asked the crowd. “They’re all men, and they’re all strong-looking guys . . . There are so many men; there aren’t that many women.”⁹⁷ In fact, of the Syrian refugees admitted to the United States since the beginning of that country’s conflict, 72% are women and children under age fourteen.⁹⁸ Not one to be deterred by facts, Defendant Trump told the crowd that a proposal to accept 200,000 refugees could amount to accepting a “200,000-man army,” which “could be one of the great tactical ploys of all time.”⁹⁹ Of all refugees resettled in the United States in fiscal year 2016, over 72 percent of were women and children.¹⁰⁰

269. At another campaign event in November 2015, Defendant Trump again brought up Syrian refugees, saying “[w]e don’t even know who they are. There’s no paperwork. There’s no anything. . . . We have no documentation on these people. . . . [Y]ou look at this migration . . . they seem like so many men. They’re so strong. They’re strong-looking guys. . . . Is this a Trojan Horse?”¹⁰¹

⁹⁶ Jesselyn Cook, *7 Lies Donald Trump Has Spread About Syrian Refugees Entering the U.S.*, Huffington Post (Oct. 20, 2016), <http://bit.ly/2IP8FcG> (last visited Nov. 4, 2017); Donald J. Trump (@realDonaldTrump), Twitter (Apr. 7, 2016, 7:48 PM), <http://bit.ly/29176lp> (last visited Nov. 4, 2017).

⁹⁷ Jenna Johnson, *Donald Trump: Syrian Refugees Might be a Terrorist Army in Disguise*, Wash. Post (Sept. 30, 2015), <http://wapo.st/2yZY0RZ> (last visited Nov. 4, 2017).

⁹⁸ Jie Zong & Jeanne Batalova, *Syrian Refugees in the United States*, MPI (Jan. 12, 2017), <http://bit.ly/2zwm7Zh> (last visited Nov. 4, 2017).

⁹⁹ See *supra* note 97.

¹⁰⁰ Fact Sheet: Fiscal Year 2016 Refugee Admissions, U.S. Dep’t of State (Jan. 20, 2017), <http://bit.ly/2j5ZQdy> (last visited Nov. 6, 2017).

¹⁰¹ Michael Patrick Leahy, *Donald Trump Again Vows to ‘Bomb the S*** out of ISIS’; Ridicules Weakness of Obama and Clinton*, Breitbart (Nov. 17, 2015), <http://bit.ly/2j1zvNI> (last visited Nov. 4, 2017).

270. On April 7, 2016, Defendant Trump re-tweeted a graphic from a supporter showing him stopping and turning away Syrian refugees, telling them “Saudi Arabia has plenty of room for you.”¹⁰²



271. In line with his rhetoric and on the list of goals of his then-chief strategist,¹⁰³ Section 5(c) of EO-1 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.”

272. EO-2 removed the provision suspending the admission of Syrian refugees indefinitely, further demonstrating the farce behind the assertion in EO-1 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 the Orders.

¹⁰² See *supra* note 96.

¹⁰³ Z. Byron Wolf, *Steve Bannon's White House Whiteboard Revealed*, CNN (May 3, 2017), <http://cnn.it/2pZcUnB> (listed and checked off on the whiteboard of Steve Bannon, Trump's chief strategist, is “[s]uspend the Syrian refugee program”) (last visited Nov. 4, 2017).

273. The October 2017 Agency Memo asserts that additional security measures must be implemented for I-730 follow-to-join spouses and children with no explanation of why the current security measures these family members are already subjected to are inadequate and even though Section 3(a) of EO-4 concluded that “Presidential action to suspend the entry of refugees under the USRAP is not needed at this time to protect the security and interests of the United States and its people.”

274. Admission through the I-730 process requires numerous steps. For example,¹⁰⁴

1. **Petition Filing:** An individual (petitioner) who was granted asylum in the United States as a principal asylee or who was resettled to the United States as a principal refugee can file an I-730, Refugee/Asylee Relative Petition, within the first two years of arrival, with the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), on behalf of his or her spouse and unmarried child(ren) (beneficiary).
2. **National Visa Center (NVC) Pre-Processing Case Assignment:** If the beneficiary of an approved petition is located overseas, USCIS sends the approved Form I-730 petition to the National Visa Center (NVC).
3. **Beneficiary Interview:** The beneficiary will be interviewed by either a Department of State consular officer or USCIS officer at a U.S. Embassy or Consulate overseas. This interview will confirm the beneficiary’s identity, claimed relationship to the petitioner, and eligibility to travel to the United States. During the interview process, the beneficiary must provide ink-free, digital fingerprint scans. The beneficiary interview requires careful preparation, including having all required original documents available for the interview (*e.g.*, marriage certificate; birth certificate; certified adoption decree; documentation of any legal name change; six photographs of the beneficiary; one or more travel document(s), such as a passport, with a validity date at least six months beyond the beneficiary’s intended date of entry into the United States and/or picture identity card; other evidence of relationship between the beneficiary and petitioner such as photographs, available school records, family correspondence, phone bills, documentation demonstrating financial support; other proof that the relationship is genuine).

¹⁰⁴ See *supra* note 91.

- 1 4. **Approval to Travel as a Follow-to-Join Refugee or Follow-to-Join Asylee:**
2 The interviewing officer will tell the beneficiary if he or she has been found
3 eligible to travel to the United States.
- 4 5. **After Interview Processing:** Some cases require further administrative
5 processing, which takes additional time after the beneficiary's interview. Follow-
6 to-join refugee beneficiaries, for example, undergo post-approval processing to
7 arrange for sponsorship by a voluntary resettlement agency in the United States
8 upon arrival. (NOTE: All follow-to-join refugee beneficiaries are required to have
9 a sponsorship assurance from a resettlement agency before travel to the United
10 States in order to receive refugee benefits.)
- 11 6. **Medical Clearance:** Before the issuance of a follow-to-join refugee or asylee
12 boarding foil, every beneficiary, regardless of age, must undergo a medical
13 examination, which must be performed by an authorized panel physician.
- 14 7. **Issuance of Boarding Foil and Travel Packet:** An officer will place a boarding
15 foil in the approved beneficiary's passport or other travel document. The
16 beneficiary also will receive a sealed envelope – called a "travel packet" –
17 containing the documents for review by a DHS immigration official when the
18 beneficiary enters the United States.

19 275. Finally, Congress enacted section 207 of the INA to require that “[a] spouse or
20 child . . . of any refugee who qualifies for admission under paragraph (1) *shall* . . . be entitled to
21 the same admission status as such refugee if accompanying, or following to join, such refugee
22 and if the spouse or child is admissible . . . as an immigrant under this chapter.” 8 U.S.C. §
23 1157(c)(2)(A) (emphasis added). The October 2017 Agency Memo is contrary to law.

24 **F. President Trump's Continuing Defiance of Court Orders Regarding the Executive**
25 **Orders and Insistence on His Muslim Travel Ban**

26 276. Both this Court and other courts around the country have granted writs of habeas,
multiple temporary restraining orders and preliminary injunctions (some nationwide) regarding
EO-1 and EO-2. EO-1 has now been rescinded, and EO-2 has expired. But EO-3 and the October
2017 Agency Memo accompanying EO-4 perpetuate the violations: Washington residents who
are former refugees still await the arrival of their families who have completed the rigorous

1 refugee security clearance process and Washington residents who entered the country on single-
2 entry or now expired multiple-entry non-immigrant visas are now stuck inside the country.

3 277. In addition, Defendants' repeated actions and statements make it far from clear
4 that Defendant Trump will not revert to his original position.

5 278. Immediately after the first nationwide stay was granted, *see Darweesh v. Trump*,
6 No. 17-480, 2017 WL 388504, at *1 (E.D.N.Y. Jan. 28, 2017), Defendant DHS issued a
7 statement that "President Trump's Executive Orders remain in place—prohibited travel will
8 remain prohibited, and the U.S. government retains its right to revoke visas at any time if
9 required for national security or public safety."¹⁰⁵ And Defendant Trump claimed, "[i]f the ban
10 were announced with a one week notice, the 'bad' would rush into our country during that week.
11 A lot of bad 'dudes' out there!"¹⁰⁶

12 279. On January 30, 2017, acting United States Attorney General Sally Yates issued a
13 statement to top lawyers at the U.S. Department of Justice instructing them to not act to enforce
14 EO-1 because she was "not convinced . . . that [EO-1] is lawful."¹⁰⁷ Ms. Yates wrote:

15 My responsibility is to ensure that the position of the Department of Justice is not
16 only legally defensible, but is informed by our best view of what the law is after
17 consideration of all the facts. In addition, I am responsible for ensuring that the
18 positions we take in court remain consistent with this institution's solemn
19 obligation to always seek justice and stand for what is right. At present, I am not
20 convinced that the defense of [EO-1] is consistent with these responsibilities nor
21 am I convinced that [EO-1] is lawful.¹⁰⁸

22
23 ¹⁰⁵ Department of Homeland Security Response to Recent Litigation, Dep't of Homeland Sec. (Jan. 29, 2017),
<http://bit.ly/2kGuv0R> (last visited Nov. 4, 2017).

24 ¹⁰⁶ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 30, 2017, 5:31 AM), <http://bit.ly/2iYOW9r> (last visited
25 Nov. 4, 2017).

26 ¹⁰⁷ Statement from Sally Yates to the U.S. Department of Justice, N.Y. Times (Jan. 30, 2017),
<http://nyti.ms/2ivS5d2> (last visited Nov. 4, 2017).

¹⁰⁸ *Id.*

280. Within hours of her issuance of this statement, and its hand-delivery to Defendant Trump, Defendant Trump fired Ms. Yates, calling her statement a “betray[al].”¹⁰⁹

281. 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.

282. Even more unusual were Defendant Trump’s statements on Twitter, which should be ““considered official statements by the President of the United States,””¹¹⁰ that followed the District Court and Ninth Circuit’s Orders:

- “The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!”¹¹¹
- “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.?”¹¹²
- “Because the ban was lifted by a judge, many very bad and dangerous people may be pouring into our country. A terrible decision”¹¹³
- “Why aren’t the lawyers looking at and using the Federal Court decision in Boston, which is at conflict with ridiculous lift ban decision?”¹¹⁴

¹⁰⁹ Statement on the Appointment of Dana Boente as Acting Attorney General, White House (Jan. 30, 2017), <http://bit.ly/2khR7Rp> (last visited Nov. 4, 2017).

¹¹⁰ Aric Jenkins, *Sean Spicer Says President Trump Considers His Tweets ‘Official’ White House Statements*, Time (June 6, 2017), <http://ti.me/2rT57aQ> (last visited Nov. 4, 2017).

¹¹¹ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 5:12 AM), <http://bit.ly/2j07iqN> (last visited Nov. 4, 2017).

¹¹² Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 12:44 PM), <http://bit.ly/2eGVHYb> (last visited Nov. 4, 2017).

¹¹³ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 1:44 PM), <http://bit.ly/2f3F9tQ> (last visited Nov. 4, 2017).

¹¹⁴ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 3:37 PM), <http://bit.ly/2zi9a4m> (last visited Nov. 4, 2017).

- 1 • “The judge opens up our country to potential terrorists and others that do not have
2 our best interests at heart. Bad people are very happy!”¹¹⁵
- 3 • “Just cannot believe a judge would put our country in such peril. If something
4 happens blame him and court system. People pouring in. Bad!”¹¹⁶
- 5 • “I have instructed Homeland Security to check people coming into our country
6 VERY CAREFULLY. The courts are making the job very difficult!”¹¹⁷
- 7 • “SEE YOU IN COURT, THE SECURITY OF OUR NATION IS AT
8 STAKE!”¹¹⁸
- 9 • “Our legal system is broken! ‘77% of refugees allowed into U.S. since travel
10 reprieve hail from seven suspect countries.’ (WT) [sic] SO DANGEROUS!”¹¹⁹

11 283. The day before the Ninth Circuit issued its ruling, Defendant Trump declared that
12 EO-1 was “so simple and so beautifully written and so perfectly written” and cast further
13 aspersions this country’s judicial system, stating, “I don’t ever want to call a court biased, so I
14 won’t call it biased. And we haven’t had a decision yet. But courts seem to be so political and it
15 would be so great for our justice system if they would be able to read a statement and do what’s
16 right.”¹²⁰

17 284. On February 16, 2017, Defendants filed a supplemental brief regarding review of
18 the Ninth Circuit’s decision to deny Defendant’s request for a stay of the TRO by the entire
19 panel. Defendants represented that “[r]ather than continuing this litigation, the President intends

20 ¹¹⁵ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 4:48 PM), <http://bit.ly/2ziNpBo> (last visited Nov. 4, 2017).

21 ¹¹⁶ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 5, 2017, 12:39 PM), <http://bit.ly/2kGCibm> (last visited Nov. 4, 2017).

22 ¹¹⁷ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 5, 2017, 12:42 PM), <http://bit.ly/2iuW49S> (last visited Nov. 4, 2017).

23 ¹¹⁸ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 9, 2017, 3:35 PM), <http://bit.ly/2ks6vKR> (last visited Nov. 4, 2017).

24 ¹¹⁹ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 11, 2017, 4:12 AM), <http://bit.ly/2h3Xnfs> (last visited Nov. 4, 2017).

25 ¹²⁰ Matt Zapotosky & Robert Barnes, *As Judges Weigh Travel Ban, Trump Asserts That Courts Are ‘so Political,’*
26 Chi. Trib. (Feb. 8, 2017), <http://trib.in/2ivLbEx> (last visited Nov. 4, 2017).

1 in the near future to rescind the Order and replace it with a new, substantially revised Executive
2 Order”¹²¹

3 285. Yet on that very same day, Defendant Trump directly contradicted the
4 representations made to the Ninth Circuit in the supplemental briefing filed by the United States
5 government on his behalf. During a news conference, Defendant Trump stated: “We’re issuing a
6 new executive action next week that will comprehensively protect our country. So we’ll be going
7 along the one path and hopefully winning that, at the same time we will be issuing a new and
8 very comprehensive order to protect our people.”¹²²

9 286. Further, on February 21, 2017, senior policy adviser Stephen Miller not only
10 claimed “nothing was wrong with the first executive order” but also revealed that the revised
11 travel ban will have “mostly minor technical differences” from EO-1 and “fundamentally” would
12 be “the same basic policy outcome for the country.”¹²³

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

- 17 • On February 21, 2017: The President has “made very clear” that there will be
18 a “dual-track system” and is “confident that we’re still going to prevail on the
19 case—the merits of the case.”¹²⁴
- 20 • On February 22, 2017: The President is “fighting this on both fronts, making
21 sure that we keep evolving through the court system on the existing EO,”
while drafting an additional executive order.¹²⁵

22 ¹²¹ Supplemental Brief on *En Banc* Consideration at 4, *State* (9th Cir. Feb. 16, 2017), Dkt. # 154.

23 ¹²² Full Transcript: President Donald Trump’s News Conference, CNN (Feb. 17, 2017), <http://cnn.it/2lY8uHh> (last
visited Nov. 4, 2017).

24 ¹²³ *See supra* note 1.

25 ¹²⁴ Press Briefing by Press Secretary Sean Spicer, 2/21/17, #13, White House (Feb. 21, 2017),
<http://bit.ly/2iuhCmM> (last visited Nov. 4, 2017).

26 ¹²⁵ Press Briefing by Press Secretary Sean Spicer, 2/22/17, #14, White House (Feb. 22, 2017), <http://bit.ly/2lORrDI>
(last visited Nov. 4, 2017).

- On February 23, 2017: “So with respect to the executive order, 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.”¹²⁶

288. On February 27, 2017, press secretary Spicer reiterated that as to EO-2, “the goal is obviously to maintain the way that we did it the first time.”¹²⁷

289. 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.”¹²⁸

290. On June 3, 2017, Defendant Trump repeated his message of the “need to be smart vigilant and tough” and that “[w]e need the Travel Ban as an extra level of safety!”¹²⁹

291. Two days later, in referencing court decisions regarding EO-1 and EO-2, Defendant Trump again openly and repeatedly emphasized that his orders were, in fact, his travel ban: “the lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is, a TRAVEL BAN!”¹³⁰ He also stated, “[t]he Justice Dept. should have stayed with

¹²⁶ Press Briefing by Press Secretary Sean Spicer, 2/23/17, #15, White House (Feb. 23, 2017), <http://bit.ly/2nzNfN4> (last visited Nov. 4, 2017).

¹²⁷ Press Briefing by Press Secretary Sean Spicer, 2/27/17, #17, White House (Feb. 27, 2017), <http://bit.ly/2ziSd9U> (last visited Nov. 4, 2017).

¹²⁸ See *supra* note 41.

¹²⁹ Donald J. Trump (@realDonaldTrump), Twitter (June 3, 2017, 4:17 PM), <http://bit.ly/2lRgyhU> (last visited Nov. 4, 2017).

¹³⁰ Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:25 AM), <http://bit.ly/2Ak8f1e> (last visited Nov. 4, 2017).

1 the original Travel Ban, not the watered down, politically correct version they submitted to
 2 S.C.”¹³¹ He then tweeted, “[t]he Justice Dept. should ask for an expedited hearing of the watered
 3 down Travel Ban before the Supreme Court - & seek much tougher version!”¹³² Defendant
 4 Trump concluded with another attack on any court that might dare to disagree with him, claiming
 5 “[i]n any event we are EXTREME VETTING people coming into the U.S. in order to help keep
 6 our country safe. The courts are slow and political!”¹³³

7 292. Defendant Trump continued to give life to his campaign of hostility towards
 8 Muslims as recently as August 17, 2017. Hours after a deadly terrorist attack in Barcelona,
 9 President Trump tweeted, “[s]tudy what General Pershing of the United States did to terrorists
 10 when caught. There was no more Radical Islamic Terror for 35 years!”¹³⁴ This statement refers
 11 to the widely debunked story of General Pershing executing forty-nine out of fifty terrorists with
 12 bullets dipped in pigs’ blood, leaving the fiftieth person alive to tell the tale.

13 293. On September 15, 2017, less than two weeks before issuing EO-3, Defendant
 14 Trump tweeted, “[t]he travel ban into the United States should be far larger, tougher and more
 15 specific-but stupidly, that would not be politically correct!”¹³⁵
 16
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 20

21 ¹³¹ Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:29 AM), <http://bit.ly/2y2nbiW> (last visited
 Nov. 4, 2017).

22 ¹³² Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:37 AM), <http://bit.ly/2hGHZ2Z> (last visited
 23 Nov. 4, 2017).

24 ¹³³ Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:44 AM), <http://bit.ly/2yvGGVG> (last visited
 Nov. 4, 2017).

25 ¹³⁴ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 17, 2017, 11:45 AM), <http://bit.ly/2fO75Fi> (last visited
 Nov. 4, 2017).

26 ¹³⁵ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 15, 2017, 3:54 AM), <http://bit.ly/2zjLHzQ> (last visited
 Nov. 4, 2017).

1 294. On the day EO-3 was issued, Defendant Trump stated, “[t]he travel ban: The
2 tougher, the better.”¹³⁶ He repeated this theme a few days later on September 27, 2017: “I want
3 the toughest travel ban you can have.”¹³⁷

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

8 296. Defendants’ statements underscore the continued discriminatory motive behind
9 the Orders. And Defendants’ statements make it abundantly clear that there is no guarantee that
10 Defendants will not revert to EO-1 at some point in time.

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

17 298. Because the October 2017 Agency Memo continues the suspension of the USRAP
18 for I-730 follow-to-join derivative refugees and essentially continues to ban refugees from the
19 SAO List Countries, Joseph Doe, Jeffrey Doe, and others similarly situated are left in the exact
20 same purgatory they were in with EO-1 and EO-2.

21 299. EO-3 and the October 2017 Agency Memo effectively trap individual plaintiffs
22 and members of the Non-Immigrant Visa Class in the United States, interfere with the
23 relationships of the Non-Immigrant Visa Class as well as the Refugee Class and their family
24

25 ¹³⁶ Jeremy Redmon & Kelly Yamanouchi, *Trump Administration Announces New Travel Ban: “The Tougher, the
Better,”* AJC, <http://on-ajc.com/2zgIZJ9> (last visited Nov. 4, 2017).

26 ¹³⁷ Press Briefing: Press Gaggle by President Trump, White House (Sept. 27, 2017), <http://bit.ly/2fsswbB> (last
visited Nov. 4, 2017).

members, and impose arbitrary and irrational burdens on them that do not serve any valid governmental interest.

V. CLASS ACTION ALLEGATIONS

300. Plaintiffs John 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”).

301. 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, 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 their family members (“the I-730 Follow-To-Join Refugee Class”).

302. Plaintiff Jeffrey Doe brings this action as a class action pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2), on his own behalf and on behalf of all other refugees from the Muslim-majority countries on the SAO List, including those who have since adjusted their status, who now reside in Washington, and who await the arrival of their family members who have completed and cleared their final security screenings (“the SAO List Refugee Class”) (collectively with the I-730 Follow-to-Join Refugee Class, “the Refugee Classes”).

303. Upon information and belief, all three Plaintiff Classes are so numerous that joinder is impracticable. According to the Annual Report of the Visa Office of the DOS, in 2016, the last year for which data is available, the United States issued over 47,816 non-immigrant visas to nationals from the Designated Countries.¹³⁸ In FY 2016, 84,994 individuals arrived in the United States as refugees, with 35,237 of those refugees coming from just five of Muslim-

¹³⁸ Table XVII: Nonimmigrant Visas Issued Fiscal Year 2016, U.S. Dep’t of State, <http://bit.ly/2h4bAco> (last visited Nov. 4, 2017).

majority countries on the SAO List (*i.e.*, Iran, Iraq, Somalia, and Syria).¹³⁹ In fiscal year 2015, 2,035 follow-to-join refugees arrived in the United States.¹⁴⁰ On information and belief, a large number of such persons reside in Washington.¹⁴¹

304. The claims of the Non-Immigrant Visa Class members address common issues of law, including but not limited to whether EO-3 violates their associational, religious exercise, and due process rights under the First and Fifth Amendments; the RFRA; the INA, and the APA. Likewise, the claims of the I-730 Refugee Class as well as the SAO List Refugee Class members address common issues of law, including but not limited to whether the October 2017 Agency Memo violates their associational, religious exercise, and due process rights under the First and Fifth Amendments; the RFRA; the INA, and the APA.

305. The claims of the Plaintiff Class members concern common issues of fact, including but not limited to the Defendants' alleged animus and whether EO-3 or the October 2017 Agency Memo 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.

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

307. John Doe and Jason Doe will fairly and adequately protect the interests of the Non-Immigrant Visa Class, Joseph Doe and James Doe will fairly and adequately protect the interests of the I-730 Refugee Class, and Jeffrey Doe will fairly and adequately protect the interests of the SAO List 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

¹³⁹ See *supra* note 98.

¹⁴⁰ Annual Flow Report, Refugees and Asylees: 2015 at 3, U.S. Dep't of Homeland Sec. (Nov. 2016), <http://bit.ly/2k9eX2u> (last visited Nov. 4, 2017).

¹⁴¹ *Id.* at 4. See also *supra* note 98.

1 represent. The attorneys representing the named Plaintiffs include experienced civil rights
 2 attorneys and are considered able practitioners in the federal courts and in federal constitutional
 3 litigation. These attorneys should be appointed as class counsel.

4 308. Defendants have acted, have threatened to act, and will act on grounds generally
 5 applicable to all three Plaintiff Classes, thereby making final injunctive and declaratory relief
 6 appropriate to the class as a whole. All three Plaintiff Classes may therefore be properly certified
 7 under Fed. R. Civ. P. 23(b)(2).

8 309. Prosecution of separate actions by individual members of any of the Plaintiff
 9 Classes would create the risk of inconsistent or varying adjudications and would establish
 10 incompatible standards of conduct for individual members of each Plaintiff Class. All three
 11 Plaintiff Classes may therefore be properly certified under Fed. R. Civ. P. 23(b)(1).

12 VI. CAUSES OF ACTION

13 COUNT ONE

14 FIRST AMENDMENT – ESTABLISHMENT, FREE EXERCISE, SPEECH AND 15 ASSEMBLY CLAUSES

(Against All Defendants, Asserted by All Plaintiffs)

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

18 311. The First Amendment prohibits the establishment of a religion or the prohibition
 19 of the free exercise of religion.

20 312. EO-3 and the October 2017 Agency Memo violate the Establishment Clause by
 21 singling out Muslims for disfavored treatment. They have the purpose and effect of inhibiting
 22 religion, and are neither justified by, nor closely fitted to, any compelling governmental interest.

23 313. EO-3 and the October 2017 Agency Memo discriminate on the basis of religion
 24 and national origin, each a suspect classification, and are not narrowly tailored to serve a
 25 compelling governmental interest, and thereby violate the equal protection component of the Due
 26 Process Clause.

315. EO-3 and the October 2017 Agency Memo 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 and SAO List Countries.

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

317. Pursuant to the RFRA, 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).

318. EO-3 and the October 2017 Agency Memo 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, EO-3 and the October 2017 Agency Memo 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.

319. Defendants' actions therefore constitute a violation of the RFRA, 42 U.S.C. § 2000bb-1 *et seq.*

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

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

321. EO-3 and the October 2017 Agency Memo discriminate against Plaintiffs John Doe, Jack Doe, Jason Doe, Jeffrey Doe, and the members of the Non-Immigrant Visa and SAO List Refugee Classes on the basis of their country of origin without sufficient justification and therefore violate the equal protection component of the Due Process Clause of the Fifth Amendment.

322. EO-3 bars John Doe, Jack Doe, Jason Doe, Jeffrey Doe, and the members of the Non-Immigrant Visa Class from traveling and imposes additional burdens such as requiring them to seek a waiver.

323. The October 2017 Agency Memo imposes, in effect, yet another ban and additional conditions on refugees like the relatives of Jeffrey Doe and the members of the SAO List Refugee Class.

324. Additionally, EO-3 and the October 2017 Agency Memo were substantially motivated by animus towards—and have 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)

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

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

332. Defendants' actions, as described above, have denied Plaintiffs John Doe, 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. Nor can their parents or other close family members visit them here. Such actions, taken pursuant to EO-3 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, Jeffrey Doe, the Refugee
Classes)

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

334. Plaintiff Joseph Doe, Jeffrey Doe and members of the I-730 and SAO List Refugee Classes have a constitutionally protected, fundamental liberty interest in their marriage and their family lives.

335. Defendants' arbitrary suspension of the travel of I-730 follow-to-join and SAO List Countries refugees into the United States violates the substantive due process rights guaranteed by the Fifth Amendment. Defendants' arbitrary suspension of the admissions of I-730 follow-to-join and SAO List Countries refugees has deprived Plaintiffs Joseph Doe, Jeffrey Doe and members of the I-730 and SAO List Refugee Classes of their fundamental right to be with their families and is not justified by a compelling government interest.

COUNT SEVEN
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT
(Against all Defendants, Asserted by John Doe, Jack Doe, Jason Doe, and the
Non-Immigrant Visa Class)

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

337. 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 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.

338. 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 “[s]ecurity and related grounds,” 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).

339. 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.

340. Defendants, in issuing EO-3 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.

COUNT EIGHT
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT
(Against all Defendants, except Defendant Trump, Asserted by Joseph Doe, James Doe,
and the I-730 Refugee Class)

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

342. Congress established a statutory entitlement to the admission of spouses and unmarried children under twenty-one years old of refugees in INA section 207(c)(2)(A). 8 U.S.C. § 1157(c)(2)(A).

343. That statutory provision requires that “[a] spouse or child . . . of any refugee who qualifies for admission under paragraph (1) *shall . . . be entitled* to the same admission status as such refugee if accompanying, or following to join, such refugee and if the spouse or child is admissible . . . as an immigrant under this chapter.” *Id.* (emphasis added).

344. Plaintiff Joseph Doe’s wife and children, as well as the spouses and children of members of the Refugee Class, have met every requirement to be admitted as immigrants under the INA.

345. In implementing the October 2017 Agency Memo, which changes the rules after Plaintiffs had met all the requirements of the INA and continues the indefinite suspension of the admissions process for this group of I-730 refugees, Defendants violated the INA.

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

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

347. Defendants U.S. Department of State, U.S. Department of Homeland Security, U.S. Customs and Border Protection, and Office of the Director of National Intelligence are “agencies” under the APA. *See* 5 U.S.C. § 551(1).

348. The APA prohibits federal agency action that is “contrary to constitutional right, power, privilege, or immunity,” *id.* § 706(2)(B), or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” *id.* § 706(2)(C), or “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

349. The creation of the administrative rules contained in Sections 1(g) and 2 of EO-3 and the October 2017 Agency Memo was a final agency action subject to the APA.

350. Additionally, in implementing the aforementioned sections of EO-3 and the October 2017 Agency Memo, 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 APA.

351. In implementing the aforementioned sections of EO-3 and issuing the October 2017 Agency Memo, Defendants federal agencies and Defendant secretaries and/or directors of those agencies have arbitrarily and capriciously exercised their discretion.

352. In implementing the aforementioned sections of EO-3 and issuing the October 2017 Agency Memo, Defendants federal agencies and Defendant secretaries and/or directors of those agencies exceeded their statutory authority.

353. In implementing the aforementioned sections of EO-3, Defendants federal agencies and Defendant secretaries and/or directors of those agencies engaged in nationality and religion-based discrimination in violation of RFRA.

354. In addition, the issuance of the October 2017 Agency Memo, an agency action under the APA, is arbitrary and capricious and violated the INA. *See supra* Count Eight.

355. Finally, in implementing the aforementioned sections of EO-3 and the October 2017 Agency Memo, 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 EO-3, Nor have Defendants offered any satisfactory explanation for the need for yet another 90-day ban for the SAO List Countries or the suspension of the I-730 admissions process. Meanwhile Defendants are banning millions of people with no connection whatsoever to terrorism and causing harm to Plaintiffs. Accordingly, Defendants have violated the substantive requirements of the APA.

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

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

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

358. Section 553 of the APA, 5 U.S.C. § 553, requires that federal agencies provide notice and comment before issuing substantive rules.

1 4. An injunction that the Orders may not be enforced as against Plaintiffs or
2 members of the Non-Immigrant Visa Class or the Refugee Classes in connection with their entry
3 or re-entry into the United States;

4 5. A permanent injunction of the Orders as contrary to the Constitution;

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

7 7. Such other and further relief that this Court may deem fit and proper.
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1 DATED this 6th day of November, 2017.

2 AMERICAN CIVIL LIBERTIES UNION
3 OF WASHINGTON FOUNDATION

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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 November 6, 2017, I electronically filed the foregoing Third 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 6th day of November, 2017.

KELLER ROHRBACK L.L.P.

By: /s/ Tana Lin

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EXHIBIT A

Federal Register

Vol. 82, No. 20

Wednesday, February 1, 2017

Presidential Documents

Title 3—

Executive Order 13769 of January 27, 2017

The President

Protecting the Nation From Foreign Terrorist Entry 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 scrutinizing 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 citizens 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 utilization 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 prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioritization.

(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 prioritization 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 organization, 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 radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States, 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.

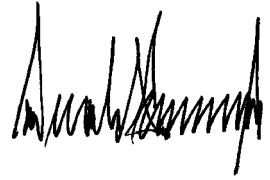
Sec. 11. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(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.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

THE WHITE HOUSE,
January 27, 2017.

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.

A handwritten signature in blue ink, appearing to read 'Edward J. Ramotowski', written over a horizontal line.

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 (MIS 2000)
Washington, DC 20529-2000

U.S. Citizenship
and Immigration
Services

FEB 2 2017

Memorandum

TO: All USCIS Employees

FROM: Lori L. Scialabba *Lori 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 C



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

U.S. Citizenship
and Immigration
Services

FEB 2 2017

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EXHIBIT D

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 17-35105

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

Madeline Albright

MADELEINE K. ALBRIGHT

EXECUTED this 5th day of February, 2017

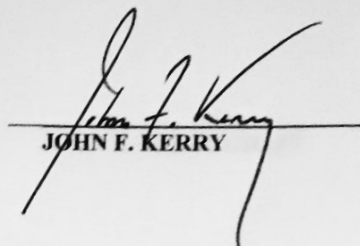


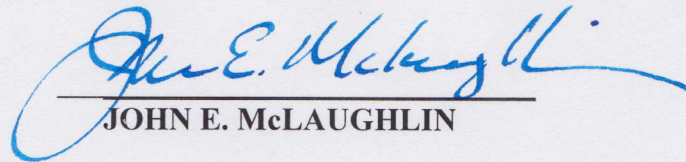
AVRIL D. HAINES

EXECUTED this 5th day of February, 2017


MICHAEL V. HAYDEN

EXECUTED this 5th day of February, 2017


JOHN F. KERRY



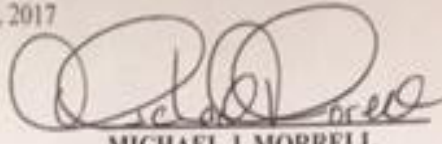
JOHN E. McLAUGHLIN

EXECUTED this 5th day of February, 2017

A handwritten signature in dark ink, appearing to read "Lisa Monaco", written in a cursive style.

LISA O. MONACO

EXECUTED this 5th day of February, 2017

A handwritten signature in dark ink, appearing to read "Michael J. Morrell", written over a horizontal line.

MICHAEL J. MORRELL

MORELL

Handwritten initials "mjm" enclosed within a hand-drawn circle.

EXECUTED this 5th day of February, 2017

_____/s/_____
JANET A. NAPOLITANO

13

EXECUTED this 5th day of February, 2017


LEONE 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—

Executive Order 13780 of March 6, 2017

The President

Protecting the Nation From Foreign Terrorist Entry Into the United States

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

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

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

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

(ii) In ordering the temporary suspension of entry described in subsection (b)(i) of this section, I exercised my authority under Article II of the Constitution and under section 212(f) of the INA, which provides in relevant part: “Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”

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

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

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

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

(d) Nationals from the countries previously identified under section 217(a)(12) of the INA warrant additional scrutiny in connection with our immigration policies because the conditions in these countries present heightened threats. Each of these countries is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones. Any of these circumstances diminishes the foreign government’s willingness or ability to share or validate important information about individuals seeking to travel to the United States. Moreover, the significant presence in each of these countries of terrorist organizations, their members, and others exposed to those organizations increases the chance that conditions will be exploited to enable terrorist operatives or sympathizers to travel to the United States. Finally, once foreign nationals from these countries are admitted to the United States, it is often difficult to remove them, because many of these countries typically delay issuing, or refuse to issue, travel documents.

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

(i) *Iran*. Iran has been designated as a state sponsor of terrorism since 1984 and continues to support various terrorist groups, including Hizballah, Hamas, and terrorist groups in Iraq. Iran has also been linked to support

for al-Qa'ida and has permitted al-Qa'ida to transport funds and fighters through Iran to Syria and South Asia. Iran does not cooperate with the United States in counterterrorism efforts.

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

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

(iv) *Sudan*. Sudan has been designated as a state sponsor of terrorism since 1993 because of its support for international terrorist groups, including Hizballah and Hamas. Historically, Sudan provided safe havens for al-Qa'ida and other terrorist groups to meet and train. Although Sudan's support to al-Qa'ida has ceased and it provides some cooperation with the United States' counterterrorism efforts, elements of core al-Qa'ida and ISIS-linked terrorist groups remain active in the country.

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

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

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

(g) Iraq presents a special case. Portions of Iraq remain active combat zones. Since 2014, ISIS has had dominant influence over significant territory in northern and central Iraq. Although that influence has been significantly

reduced due to the efforts and sacrifices of the Iraqi government and armed forces, working along with a United States-led coalition, the ongoing conflict has impacted the Iraqi government's capacity to secure its borders and to identify fraudulent travel documents. Nevertheless, the close cooperative relationship between the United States and the democratically elected Iraqi government, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment for Iraq. In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have shown steadfast determination and earned enduring respect as they battle an armed group that is the common enemy of Iraq and the United States. In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to enhance travel documentation, information sharing, and the return of Iraqi nationals subject to final orders of removal. Decisions about issuance of visas or granting admission to Iraqi nationals should be subjected to additional scrutiny to determine if applicants have connections with ISIS or other terrorist organizations, or otherwise pose a risk to either national security or public safety.

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

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

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

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

shall provide a copy of the report to the Secretary of State, the Attorney General, and the Director of National Intelligence.

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

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

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

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

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

Sec. 3. Scope and Implementation of Suspension.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 *et seq.*, traveling for purposes of conducting meetings or business with the United States Government, or traveling

to conduct business on behalf of an international organization not designated under the IOIA;

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

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

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

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

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Director of National Intelligence, shall submit to the President an initial report on the progress of the program described in subsection (a) of this section within 60 days of the effective date of this order, a second report within 100 days of the effective date of this order, and a third report within 200 days of the effective date of this order.

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

United States under the USRAP 120 days after the effective date of this order, and the Secretary of Homeland Security shall resume making decisions on applications for refugee status only for stateless persons and nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that the additional procedures implemented pursuant to this subsection are adequate to ensure the security and welfare of the United States.

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

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

(d) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of State shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

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

Sec. 8. *Expedited Completion of the Biometric Entry-Exit Tracking System.*

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

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

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

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

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

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

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

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

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

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

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

Sec. 12. *Enforcement.* (a) The Secretary of State and the Secretary of Homeland Security shall consult with appropriate domestic and international partners, including countries and organizations, to ensure efficient, effective, and appropriate implementation of the actions directed in this order.

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

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

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

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

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

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

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

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

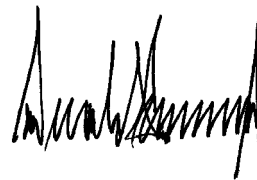
Sec. 16. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

THE WHITE HOUSE,
March 6, 2017.

EXHIBIT F



Official website of the Department of Homeland Security

U.S. Department of
Homeland Security

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). (<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 United 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. \(https://www.cbp.gov/travel/international-visitors/applying-admission-united-states\)](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 \(/topics/border-security/\)](/topics/border-security/), [Homeland Security Enterprise \(/topics/homeland-security-enterprise/\)](/topics/homeland-security-enterprise/), [Immigration Enforcement \(/topics/immigration-enforcement/\)](/topics/immigration-enforcement/)

Keywords: [immigration \(/keywords/immigration/\)](/keywords/immigration/), [immigration enforcement \(/keywords/immigration-enforcement/\)](/keywords/immigration-enforcement/)

Last Published Date: May 31, 2017

EXHIBIT G

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

EXHIBIT H

Presidential Documents

Proclamation 9645 of September 24, 2017

Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats

By the President of the United States of America

A Proclamation

In Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), on the recommendations of the Secretary of Homeland Security and the Attorney General, I ordered a worldwide review of whether, and if so what, additional information would be needed from each foreign country to assess adequately whether their nationals seeking to enter the United States pose a security or safety threat. This was the first such review of its kind in United States history. As part of the review, the Secretary of Homeland Security established global requirements for information sharing in support of immigration screening and vetting. The Secretary of Homeland Security developed a comprehensive set of criteria and applied it to the information-sharing practices, policies, and capabilities of foreign governments. The Secretary of State thereafter engaged with the countries reviewed in an effort to address deficiencies and achieve improvements. In many instances, those efforts produced positive results. By obtaining additional information and formal commitments from foreign governments, the United States Government has improved its capacity and ability to assess whether foreign nationals attempting to enter the United States pose a security or safety threat. Our Nation is safer as a result of this work.

Despite those efforts, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, has determined that a small number of countries—out of nearly 200 evaluated—remain deficient at this time with respect to their identity-management and information-sharing capabilities, protocols, and practices. In some cases, these countries also have a significant terrorist presence within their territory.

As President, I must act to protect the security and interests of the United States and its people. I am committed to our ongoing efforts to engage those countries willing to cooperate, improve information-sharing and identity-management protocols and procedures, and address both terrorism-related and public-safety risks. Some of the countries with remaining inadequacies face significant challenges. Others have made strides to improve their protocols and procedures, and I commend them for these efforts. But until they satisfactorily address the identified inadequacies, I have determined, on the basis of recommendations from the Secretary of Homeland Security and other members of my Cabinet, to impose certain conditional restrictions and limitations, as set forth more fully below, on entry into the United States of nationals of the countries identified in section 2 of this proclamation.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(f) and 1185(a), and section 301 of title 3, United States Code, hereby find that, absent the measures set forth in this proclamation, the immigrant and nonimmigrant entry into the United States of persons described in section 2 of this proclamation would be detrimental to the

interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Policy and Purpose. (a) It is the policy of the United States to protect its citizens from terrorist attacks and other public-safety threats. Screening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy. They enhance our ability to detect foreign nationals who may commit, aid, or support acts of terrorism, or otherwise pose a safety threat, and they aid our efforts to prevent such individuals from entering the United States.

(b) Information-sharing and identity-management protocols and practices of foreign governments are important for the effectiveness of the screening and vetting protocols and procedures of the United States. Governments manage the identity and travel documents of their nationals and residents. They also control the circumstances under which they provide information about their nationals to other governments, including information about known or suspected terrorists and criminal-history information. It is, therefore, the policy of the United States to take all necessary and appropriate steps to encourage foreign governments to improve their information-sharing and identity-management protocols and practices and to regularly share identity and threat information with our immigration screening and vetting systems.

(c) Section 2(a) of Executive Order 13780 directed 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.” That review culminated in a report submitted to the President by the Secretary of Homeland Security on July 9, 2017. In that review, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, developed a baseline for the kinds of information required from foreign governments to support the United States Government’s ability to confirm the identity of individuals seeking entry into the United States as immigrants and nonimmigrants, as well as individuals applying for any other benefit under the immigration laws, and to assess whether they are a security or public-safety threat. That baseline incorporates three categories of criteria:

(i) *Identity-management information.* The United States expects foreign governments to provide the information needed to determine whether individuals seeking benefits under the immigration laws are who they claim to be. The identity-management information category focuses on the integrity of documents required for travel to the United States. The criteria assessed in this category include whether the country issues electronic passports embedded with data to enable confirmation of identity, reports lost and stolen passports to appropriate entities, and makes available upon request identity-related information not included in its passports.

(ii) *National security and public-safety information.* The United States expects foreign governments to provide information about whether persons who seek entry to this country pose national security or public-safety risks. The criteria assessed in this category include whether the country makes available, directly or indirectly, known or suspected terrorist and criminal-history information upon request, whether the country provides passport and national-identity document exemplars, and whether the country impedes the United States Government’s receipt of information about passengers and crew traveling to the United States.

(iii) *National security and public-safety risk assessment.* The national security and public-safety risk assessment category focuses on national security risk indicators. The criteria assessed in this category include whether the country is a known or potential terrorist safe haven, whether it is

a participant in the Visa Waiver Program established under section 217 of the INA, 8 U.S.C. 1187, that meets all of its requirements, and whether it regularly fails to receive its nationals subject to final orders of removal from the United States.

(d) The Department of Homeland Security, in coordination with the Department of State, collected data on the performance of all foreign governments and assessed each country against the baseline described in subsection (c) of this section. The assessment focused, in particular, on identity management, security and public-safety threats, and national security risks. Through this assessment, the agencies measured each country's performance with respect to issuing reliable travel documents and implementing adequate identity-management and information-sharing protocols and procedures, and evaluated terrorism-related and public-safety risks associated with foreign nationals seeking entry into the United States from each country.

(e) The Department of Homeland Security evaluated each country against the baseline described in subsection (c) of this section. The Secretary of Homeland Security identified 16 countries as being "inadequate" based on an analysis of their identity-management protocols, information-sharing practices, and risk factors. Thirty-one additional countries were classified "at risk" of becoming "inadequate" based on those criteria.

(f) As required by section 2(d) of Executive Order 13780, the Department of State conducted a 50-day engagement period to encourage all foreign governments, not just the 47 identified as either "inadequate" or "at risk," to improve their performance with respect to the baseline described in subsection (c) of this section. Those engagements yielded significant improvements in many countries. Twenty-nine countries, for example, provided travel document exemplars for use by Department of Homeland Security officials to combat fraud. Eleven countries agreed to share information on known or suspected terrorists.

(g) The Secretary of Homeland Security assesses that the following countries continue to have "inadequate" identity-management protocols, information-sharing practices, and risk factors, with respect to the baseline described in subsection (c) of this section, such that entry restrictions and limitations are recommended: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. The Secretary of Homeland Security also assesses that Iraq did not meet the baseline, but that entry restrictions and limitations under a Presidential proclamation are not warranted. The Secretary of Homeland Security recommends, however, that nationals of Iraq who seek to enter the United States be subject to additional scrutiny to determine if they pose risks to the national security or public safety of the United States. In reaching these conclusions, the Secretary of Homeland Security considered the close cooperative relationship between the United States and the democratically elected government of Iraq, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combating the Islamic State of Iraq and Syria (ISIS).

(h) Section 2(e) of Executive Order 13780 directed the Secretary of Homeland Security to "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." On September 15, 2017, the Secretary of Homeland Security submitted a report to me recommending entry restrictions and limitations on certain nationals of 7 countries determined to be "inadequate" in providing such information and in light of other factors discussed in the report. According to the report, the recommended restrictions would help address the threats that the countries' identity-management protocols, information-sharing inadequacies, and other risk factors pose to the security and welfare of the United

States. The restrictions also encourage the countries to work with the United States to address those inadequacies and risks so that the restrictions and limitations imposed by this proclamation may be relaxed or removed as soon as possible.

(i) In evaluating the recommendations of the Secretary of Homeland Security and in determining what restrictions to impose for each country, I consulted with appropriate Assistants to the President and members of the Cabinet, including the Secretaries of State, Defense, and Homeland Security, and the Attorney General. I considered several factors, including each country's capacity, ability, and willingness to cooperate with our identity-management and information-sharing policies and each country's risk factors, such as whether it has a significant terrorist presence within its territory. I also considered foreign policy, national security, and counterterrorism goals. I reviewed these factors and assessed these goals, with a particular focus on crafting those country-specific restrictions that would be most likely to encourage cooperation given each country's distinct circumstances, and that would, at the same time, protect the United States until such time as improvements occur. The restrictions and limitations imposed by this proclamation are, in my judgment, necessary to prevent the entry of those foreign nationals about whom the United States Government lacks sufficient information to assess the risks they pose to the United States. These restrictions and limitations are also needed to elicit improved identity-management and information-sharing protocols and practices from foreign governments; and to advance foreign policy, national security, and counterterrorism objectives.

(ii) After reviewing the Secretary of Homeland Security's report of September 15, 2017, and accounting for the foreign policy, national security, and counterterrorism objectives of the United States, I have determined to restrict and limit the entry of nationals of 7 countries found to be "inadequate" with respect to the baseline described in subsection (c) of this section: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. These restrictions distinguish between the entry of immigrants and nonimmigrants. Persons admitted on immigrant visas become lawful permanent residents of the United States. Such persons may present national security or public-safety concerns that may be distinct from those admitted as nonimmigrants. The United States affords lawful permanent residents more enduring rights than it does to nonimmigrants. Lawful permanent residents are more difficult to remove than nonimmigrants even after national security concerns arise, which heightens the costs and dangers of errors associated with admitting such individuals. And although immigrants generally receive more extensive vetting than nonimmigrants, such vetting is less reliable when the country from which someone seeks to emigrate exhibits significant gaps in its identity-management or information-sharing policies, or presents risks to the national security of the United States. For all but one of those 7 countries, therefore, I am restricting the entry of all immigrants.

(iii) I am adopting a more tailored approach with respect to nonimmigrants, in accordance with the recommendations of the Secretary of Homeland Security. For some countries found to be "inadequate" with respect to the baseline described in subsection (c) of this section, I am restricting the entry of all nonimmigrants. For countries with certain mitigating factors, such as a willingness to cooperate or play a substantial role in combatting terrorism, I am restricting the entry only of certain categories of nonimmigrants, which will mitigate the security threats presented by their entry into the United States. In those cases in which future cooperation seems reasonably likely, and accounting for foreign policy, national security, and counterterrorism objectives, I have tailored the restrictions to encourage such improvements.

(i) Section 2(e) of Executive Order 13780 also provided that 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.” The Secretary of Homeland Security determined that Somalia generally satisfies the information-sharing requirements of the baseline described in subsection (c) of this section, but its government’s inability to effectively and consistently cooperate, combined with the terrorist threat that emanates from its territory, present special circumstances that warrant restrictions and limitations on the entry of its nationals into the United States. Somalia’s identity-management deficiencies and the significant terrorist presence within its territory make it a source of particular risks to the national security and public safety of the United States. Based on the considerations mentioned above, and as described further in section 2(h) of this proclamation, I have determined that entry restrictions, limitations, and other measures designed to ensure proper screening and vetting for nationals of Somalia are necessary for the security and welfare of the United States.

(j) Section 2 of this proclamation describes some of the inadequacies that led me to impose restrictions on the specified countries. Describing all of those reasons publicly, however, would cause serious damage to the national security of the United States, and many such descriptions are classified.

Sec. 2. *Suspension of Entry for Nationals of Countries of Identified Concern.* The entry into the United States of nationals of the following countries is hereby suspended and limited, as follows, subject to categorical exceptions and case-by-case waivers, as described in sections 3 and 6 of this proclamation:

(a) *Chad.*

(i) The government of Chad is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Chad has shown a clear willingness to improve in these areas. Nonetheless, Chad does not adequately share public-safety and terrorism-related information and fails to satisfy at least one key risk criterion. Additionally, several terrorist groups are active within Chad or in the surrounding region, including elements of Boko Haram, ISIS-West Africa, and al-Qa’ida in the Islamic Maghreb. At this time, additional information sharing to identify those foreign nationals applying for visas or seeking entry into the United States who represent national security and public-safety threats is necessary given the significant terrorism-related risk from this country.

(ii) The entry into the United States of nationals of Chad, as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(b) *Iran.*

(i) Iran regularly fails to cooperate with the United States Government in identifying security risks, fails to satisfy at least one key risk criterion, is the source of significant terrorist threats, and fails to receive its nationals subject to final orders of removal from the United States. The Department of State has also designated Iran as a state sponsor of terrorism.

(ii) The entry into the United States of nationals of Iran as immigrants and as nonimmigrants is hereby suspended, except that entry by such nationals under valid student (F and M) and exchange visitor (J) visas is not suspended, although such individuals should be subject to enhanced screening and vetting requirements.

(c) *Libya.*

(i) The government of Libya is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding on that cooperation, including in the areas of immigration and border management. Libya, nonetheless, faces significant challenges in sharing several types of information, including public-safety

and terrorism-related information necessary for the protection of the national security and public safety of the United States. Libya also has significant inadequacies in its identity-management protocols. Further, Libya fails to satisfy at least one key risk criterion and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. The substantial terrorist presence within Libya's territory amplifies the risks posed by the entry into the United States of its nationals.

(ii) The entry into the United States of nationals of Libya, as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(d) *North Korea.*

(i) North Korea does not cooperate with the United States Government in any respect and fails to satisfy all information-sharing requirements.

(ii) The entry into the United States of nationals of North Korea as immigrants and nonimmigrants is hereby suspended.

(e) *Syria.*

(i) Syria regularly fails to cooperate with the United States Government in identifying security risks, is the source of significant terrorist threats, and has been designated by the Department of State as a state sponsor of terrorism. Syria has significant inadequacies in identity-management protocols, fails to share public-safety and terrorism information, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Syria as immigrants and nonimmigrants is hereby suspended.

(f) *Venezuela.*

(i) Venezuela has adopted many of the baseline standards identified by the Secretary of Homeland Security and in section 1 of this proclamation, but its government is uncooperative in verifying whether its citizens pose national security or public-safety threats. Venezuela's government fails to share public-safety and terrorism-related information adequately, fails to satisfy at least one key risk criterion, and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. There are, however, alternative sources for obtaining information to verify the citizenship and identity of nationals from Venezuela. As a result, the restrictions imposed by this proclamation focus on government officials of Venezuela who are responsible for the identified inadequacies.

(ii) Notwithstanding section 3(b)(v) of this proclamation, the entry into the United States of officials of government agencies of Venezuela involved in screening and vetting procedures—including the Ministry of the Popular Power for Interior, Justice and Peace; the Administrative Service of Identification, Migration and Immigration; the Scientific, Penal and Criminal Investigation Service Corps; the Bolivarian National Intelligence Service; and the Ministry of the Popular Power for Foreign Relations—and their immediate family members, as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended. Further, nationals of Venezuela who are visa holders should be subject to appropriate additional measures to ensure traveler information remains current.

(g) *Yemen.*

(i) The government of Yemen is an important and valuable counterterrorism partner, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Yemen, nonetheless, faces significant identity-management challenges, which are amplified by the notable terrorist presence within its territory. The government of Yemen fails to satisfy critical identity-management requirements, does not share public-safety and terrorism-related information adequately, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Yemen as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(h) *Somalia*.

(i) The Secretary of Homeland Security's report of September 15, 2017, determined that Somalia satisfies the information-sharing requirements of the baseline described in section 1(c) of this proclamation. But several other considerations support imposing entry restrictions and limitations on Somalia. Somalia has significant identity-management deficiencies. For example, while Somalia issues an electronic passport, the United States and many other countries do not recognize it. A persistent terrorist threat also emanates from Somalia's territory. The United States Government has identified Somalia as a terrorist safe haven. Somalia stands apart from other countries in the degree to which its government lacks command and control of its territory, which greatly limits the effectiveness of its national capabilities in a variety of respects. Terrorists use under-governed areas in northern, central, and southern Somalia as safe havens from which to plan, facilitate, and conduct their operations. Somalia also remains a destination for individuals attempting to join terrorist groups that threaten the national security of the United States. The State Department's 2016 Country Reports on Terrorism observed that Somalia has not sufficiently degraded the ability of terrorist groups to plan and mount attacks from its territory. Further, despite having made significant progress toward formally federating its member states, and its willingness to fight terrorism, Somalia continues to struggle to provide the governance needed to limit terrorists' freedom of movement, access to resources, and capacity to operate. The government of Somalia's lack of territorial control also compromises Somalia's ability, already limited because of poor record-keeping, to share information about its nationals who pose criminal or terrorist risks. As a result of these and other factors, Somalia presents special concerns that distinguish it from other countries.

(ii) The entry into the United States of nationals of Somalia as immigrants is hereby suspended. Additionally, visa adjudications for nationals of Somalia and decisions regarding their entry as nonimmigrants should be subject to additional scrutiny to determine if applicants are connected to terrorist organizations or otherwise pose a threat to the national security or public safety of the United States.

Sec. 3. *Scope and Implementation of Suspensions and Limitations.* (a) *Scope.* Subject to the exceptions set forth in subsection (b) of this section and any waiver under subsection (c) of this section, the suspensions of and limitations on entry pursuant to section 2 of this proclamation shall apply only to foreign nationals of the designated countries who:

- (i) are outside the United States on the applicable effective date under section 7 of this proclamation;
- (ii) do not have a valid visa on the applicable effective date under section 7 of this proclamation; and
- (iii) do not qualify for a visa or other valid travel document under section 6(d) of this proclamation.

(b) *Exceptions.* The suspension of entry pursuant to section 2 of this proclamation 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 applicable effective date under section 7 of this proclamation;
- (iii) any foreign national who has a document other than a visa—such as a transportation letter, an appropriate boarding foil, or an advance parole document—valid on the applicable effective date under section 7 of this proclamation or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission;

(iv) any dual national of a country designated under section 2 of this proclamation 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 by the United States; 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 suspensions of and limitations on entry set forth in section 2 of this proclamation, a consular officer, or the Commissioner, United States Customs and Border Protection (CBP), or the Commissioner's designee, as appropriate, may, in their discretion, grant waivers on a case-by-case basis to permit the entry of foreign nationals for whom entry is otherwise suspended or limited if such foreign nationals demonstrate that waivers would be appropriate and consistent with subsections (i) through (iv) of this subsection. The Secretary of State and the Secretary of Homeland Security shall coordinate to adopt guidance addressing the circumstances in which waivers may be appropriate for foreign nationals seeking entry as immigrants or nonimmigrants.

(i) A waiver may be granted only if a foreign national demonstrates to the consular officer's or CBP official's satisfaction that:

(A) denying entry would cause the foreign national undue hardship;

(B) entry would not pose a threat to the national security or public safety of the United States; and

(C) entry would be in the national interest.

(ii) The guidance issued by the Secretary of State and the Secretary of Homeland Security under this subsection shall address the standards, policies, and procedures for:

(A) determining whether the entry of a foreign national would not pose a threat to the national security or public safety of the United States;

(B) determining whether the entry of a foreign national would be in the national interest;

(C) addressing and managing the risks of making such a determination in light of the inadequacies in information sharing, identity management, and other potential dangers posed by the nationals of individual countries subject to the restrictions and limitations imposed by this proclamation;

(D) assessing whether the United States has access, at the time of the waiver determination, to sufficient information about the foreign national to determine whether entry would satisfy the requirements of subsection (i) of this subsection; and

(E) determining the special circumstances that would justify granting a waiver under subsection (iv)(E) of this subsection.

(iii) Unless otherwise specified by the Secretary of Homeland Security, any waiver issued by a consular officer as part of the visa adjudication process will be effective both for the issuance of a visa and for any subsequent entry on that visa, but will leave unchanged all other requirements for admission or entry.

(iv) Case-by-case waivers may not be granted categorically, but may be appropriate, subject to the limitations, conditions, and requirements set forth under subsection (i) of this subsection and the guidance issued under subsection (ii) of this subsection, in individual circumstances such as the following:

(A) 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 applicable effective date under section 7 of this proclamation, seeks to reenter the United States to resume that activity, and the denial of reentry would impair that activity;

(B) the foreign national has previously established significant contacts with the United States but is outside the United States on the applicable effective date under section 7 of this proclamation for work, study, or other lawful activity;

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

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

(E) 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;

(F) 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 foreign national can document that he or she has provided faithful and valuable service to the United States Government;

(G) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 *et seq.*, traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;

(H) the foreign national is a Canadian permanent resident who applies for a visa at a location within Canada;

(I) the foreign national is traveling as a United States Government-sponsored exchange visitor; or

(J) the foreign national is traveling to the United States, at the request of a United States Government department or agency, for legitimate law enforcement, foreign policy, or national security purposes.

Sec. 4. *Adjustments to and Removal of Suspensions and Limitations.* (a) The Secretary of Homeland Security shall, in consultation with the Secretary of State, devise a process to assess whether any suspensions and limitations imposed by section 2 of this proclamation should be continued, terminated, modified, or supplemented. The process shall account for whether countries have improved their identity-management and information-sharing protocols and procedures based on the criteria set forth in section 1 of this proclamation and the Secretary of Homeland Security's report of September 15, 2017. Within 180 days of the date of this proclamation, and every 180 days thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies, shall submit a report with recommendations to the President, through appropriate Assistants to the President, regarding the following:

(i) the interests of the United States, if any, that continue to require the suspension of, or limitations on, the entry on certain classes of nationals of countries identified in section 2 of this proclamation and whether the restrictions and limitations imposed by section 2 of this proclamation should be continued, modified, terminated, or supplemented; and

(ii) the interests of the United States, if any, that require the suspension of, or limitations on, the entry of certain classes of nationals of countries not identified in this proclamation.

(b) The Secretary of State, in consultation with the Secretary of Homeland Security, the Secretary of Defense, the Attorney General, the Director of National Intelligence, and the head of any other executive department or agency (agency) that the Secretary of State deems appropriate, shall engage the countries listed in section 2 of this proclamation, and any other countries that have information-sharing, identity-management, or risk-factor deficiencies as practicable, appropriate, and consistent with the foreign policy, national security, and public-safety objectives of the United States.

(c) Notwithstanding the process described above, and consistent with the process described in section 2(f) of Executive Order 13780, if the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, and the Director of National Intelligence, determines, at any time, that a country meets the standards of the baseline described in section 1(c) of this proclamation, that a country has an adequate plan to provide such information, or that one or more of the restrictions or limitations imposed on the entry of a country's nationals are no longer necessary for the security or welfare of the United States, the Secretary of Homeland Security may recommend to the President the removal or modification of any or all such restrictions and limitations. The Secretary of Homeland Security, the Secretary of State, or the Attorney General may also, as provided for in Executive Order 13780, submit to the President the names of additional countries for which any of them recommends any lawful restrictions or limitations deemed necessary for the security or welfare of the United States.

Sec. 5. *Reports on Screening and Vetting Procedures.* (a) The Secretary of Homeland Security, in coordination with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies shall submit periodic reports to the President, through appropriate Assistants to the President, that:

(i) describe the steps the United States Government has taken to improve vetting for nationals of all foreign countries, including through improved collection of biometric and biographic data;

(ii) describe the scope and magnitude of fraud, errors, false information, and unverifiable claims, as determined by the Secretary of Homeland Security on the basis of a validation study, made in applications for immigration benefits under the immigration laws; and

(iii) evaluate the procedures related to screening and vetting established by the Department of State's Bureau of Consular Affairs in order to enhance the safety and security of the United States and to ensure sufficient review of applications for immigration benefits.

(b) The initial report required under subsection (a) of this section shall be submitted within 180 days of the date of this proclamation; the second report shall be submitted within 270 days of the first report; and reports shall be submitted annually thereafter.

(c) The agency heads identified in subsection (a) of this section shall coordinate any policy developments associated with the reports described in subsection (a) of this section through the appropriate Assistants to the President.

Sec. 6. *Enforcement.* (a) The Secretary of State and the Secretary of Homeland Security shall consult with appropriate domestic and international partners, including countries and organizations, to ensure efficient, effective, and appropriate implementation of this proclamation.

(b) In implementing this proclamation, the Secretary of State and the Secretary of Homeland Security shall comply with all applicable laws and regulations, including those that provide an opportunity for individuals to enter the United States on the basis of a credible claim of fear of persecution or torture.

(c) No immigrant or nonimmigrant visa issued before the applicable effective date under section 7 of this proclamation shall be revoked pursuant to this proclamation.

(d) Any individual whose visa was marked revoked or marked canceled as a result of Executive Order 13769 of January 27, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry under the terms and conditions of the visa marked revoked or marked canceled. 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 proclamation shall not apply to an individual who has been granted asylum by the United States, 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 proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States.

Sec. 7. *Effective Dates.* Executive Order 13780 ordered a temporary pause on the entry of foreign nationals from certain foreign countries. In two cases, however, Federal courts have enjoined those restrictions. The Supreme Court has stayed those injunctions as to foreign nationals who lack a credible claim of a bona fide relationship with a person or entity in the United States, pending its review of the decisions of the lower courts.

(a) The restrictions and limitations established in section 2 of this proclamation are effective at 3:30 p.m. eastern daylight time on September 24, 2017, for foreign nationals who:

(i) were subject to entry restrictions under section 2 of Executive Order 13780, or would have been subject to the restrictions but for section 3 of that Executive Order, and

(ii) lack a credible claim of a bona fide relationship with a person or entity in the United States.

(b) The restrictions and limitations established in section 2 of this proclamation are effective at 12:01 a.m. eastern daylight time on October 18, 2017, for all other persons subject to this proclamation, including nationals of:

(i) Iran, Libya, Syria, Yemen, and Somalia who have a credible claim of a bona fide relationship with a person or entity in the United States; and

(ii) Chad, North Korea, and Venezuela.

Sec. 8. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the national security, foreign policy, and counterterrorism interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its other provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, 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 to conform with existing law and with any applicable court orders.

Sec. 9. *General Provisions.* (a) Nothing in this proclamation 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 proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation 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.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.

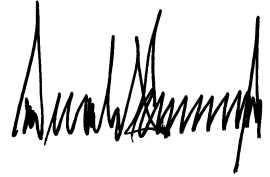


EXHIBIT I

DECLARATION OF JOINT FORMER NATIONAL SECURITY

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

CIVIL ACTION NO. 2:17-cv-00141-JLR

**JOINT DECLARATION OF
FORMER NATIONAL SECURITY OFFICIALS**

Pursuant to 28 U.S.C. § 1746(2), we, the below named former national security officials, hereby 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. She has also been a member of the Central Intelligence Agency External Advisory Board since 2009

and of the Defense Policy Board since 2011, in which capacities she has received assessments of threats facing the United States.

- b. Rand Beers served as Deputy Homeland Security Advisor to the President of the United States from 2014 to 2015.
- c. John B. Bellinger III served as the Legal Adviser for the U.S. Department of State from 2005 to 2009. He previously served as Senior Associate Counsel to the President and Legal Adviser to the National Security Council from 2001 to 2005.
- d. Daniel Benjamin served as Ambassador-at-Large for Counterterrorism at the U.S. Department of State from 2009 to 2012.
- e. Antony Blinken served as Deputy Secretary of State from 2015 to January 20, 2017. He previously served as Deputy National Security Advisor to the President of the United States from 2013 to 2015.
- f. John O. Brennan served as Director of the Central Intelligence Agency from 2013 to 2017. He previously served as Deputy National Security Advisor for Homeland Security and Counterterrorism and Assistant to the President from 2009 to 2013.
- g. R. Nicholas Burns served as Under Secretary of State for Political Affairs from 2005 to 2008. He previously served as U.S. Ambassador to NATO and as U.S. Ambassador to Greece.
- h. William J. Burns served as Deputy Secretary of State from 2011 to 2014. He previously served as Under Secretary of State for Political Affairs from 2008 to 2011, as U.S. Ambassador to Russia from 2005 to 2008, as Assistant Secretary of State for Near Eastern Affairs from 2001 to 2005, and as U.S. Ambassador to Jordan from 1998 to 2001.

- i. James Clapper served as U.S. Director of National Intelligence from 2010 to January 20, 2017.
- j. David S. Cohen served as Under Secretary of the Treasury for Terrorism and Financial Intelligence from 2011 to 2015 and as Deputy Director of the Central Intelligence Agency from 2015 to January 20, 2017.
- k. Eliot A. Cohen served as Counselor of the U.S. Department of State from 2007 to 2009.
- l. Bathsheba N. Crocker served as Assistant Secretary of State for International Organization Affairs from 2014 to 2017.
- m. Ryan Crocker served as U.S. Ambassador to Afghanistan from 2011 to 2012, as U.S. Ambassador to Iraq from 2007 to 2009, as U.S. Ambassador to Pakistan from 2004 to 2007, as U.S. Ambassador to Syria from 1998 to 2001, as U.S. Ambassador to Kuwait from 1994 to 1997, and U.S. Ambassador to Lebanon from 1990 to 1993.
- n. Thomas Donilon served as U.S. National Security Advisor from 2010 to 2013.
- o. Jen Easterly served as Special Assistant to the President and Senior Director for Counterterrorism from October 2013 to December 2016.
- p. Daniel Feldman served as U.S. Special Representative for Afghanistan and Pakistan from 2014 to 2015, Deputy U.S. Special Representative for Afghanistan and Pakistan from 2009 to 2014, and previously Director for Multilateral and Humanitarian Affairs at the National Security Council.
- q. Jonathan Finer served as Chief of Staff to the Secretary of State from 2015 until January 20, 2017, and Director of the Policy Planning Staff at the U.S. Department of State from 2016 to January 20, 2017.
- r. Michèle Flournoy served as Under Secretary of Defense for Policy from 2009 to 2013.

- s. Robert S. Ford served as U.S. Ambassador to Syria from 2011 to 2014, as Deputy Ambassador to Iraq from 2009 to 2010, and as U.S. Ambassador to Algeria from 2006 to 2008.
- t. Josh Geltzer served as Senior Director for Counterterrorism at the National Security Council from 2015 to 2017. Previously, he served as Deputy Legal Advisor to the National Security Council and as Counsel to the Assistant Attorney General for National Security at the Department of Justice.
- u. Suzy George served as Deputy Assistant to the President and Chief of Staff and Executive Secretary to the National Security Council from 2014 to 2017.
- v. Phil Gordon served as Special Assistant to the President and White House Coordinator for the Middle East, North Africa and the Gulf from 2013 to 2015, and Assistant Secretary of State for European and Eurasian Affairs from 2009 to 2013.
- w. Chuck Hagel served as Secretary of Defense from 2013 to 2015, and previously served as Co-Chair of the President's Intelligence Advisory Board. From 1997 to 2009, he served as U.S. Senator for Nebraska, and as a senior member of the Senate Foreign Relations and Intelligence Committees.
- x. Avril D. Haines served as Deputy National Security Advisor to the President of the United States from 2015 to January 20, 2017. From 2013 to 2015, she served as Deputy Director of the Central Intelligence Agency.
- y. Luke Hartig served as Senior Director for Counterterrorism at the National Security Council from 2014 to 2016.
- z. General (ret.) Michael V. Hayden, USAF, served as Director of the Central Intelligence Agency from 2006 to 2009. From 1995 to 2005, he served as Director of the National Security Agency.

- aa. Heather A. Higginbottom served as Deputy Secretary of State for Management and Resources from 2013 to 2017.
- bb. Christopher R. Hill served as Assistant Secretary of State for East Asian and Pacific Affairs from 2005 to 2009. He also served as U.S. Ambassador to Macedonia, Poland, the Republic of Korea, and Iraq.
- cc. John F. Kerry served as Secretary of State from 2013 to January 20, 2017.
- dd. Prem Kumar served as Senior Director for the Middle East and North Africa on the National Security Council staff of the White House from 2013 to 2015.
- ee. Richard Lugar served as U.S. Senator for Indiana from 1977 to 2013, and as Chairman of the Senate Committee on Foreign Relations from 1985 to 1987 and 2003 to 2007, and as ranking member of the Senate Committee on Foreign Relations from 2007 to 2013.
- ff. John E. McLaughlin served as Deputy Director of the Central Intelligence Agency from 2000 to 2004 and as Acting Director in 2004. His duties included briefing President-elect Bill Clinton and President George W. Bush.
- gg. 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.
- hh. Cameron P. Munter served as U.S. Ambassador to Pakistan from 2009 to 2012 and to Serbia from 2007 to 2009.
- ii. James C. O'Brien served as Special Presidential Envoy for Hostage Affairs from 2015 to January 20, 2017. He served in the U.S. Department of State from 1989 to 2001, including as Principal Deputy Director of Policy Planning and as Special Presidential Envoy for the Balkans.
- jj. Matthew G. Olsen served as Director of the National Counterterrorism Center from 2011 to 2014.

- kk. Leon E. Panetta served as Secretary of Defense from 2011 to 2013. From 2009 to 2011, he served as Director of the Central Intelligence Agency.
- ll. Jeffrey Prescott served as Special Assistant to the President and Senior Director for Iran, Iraq, Syria and the Gulf States from 2015 to 2017.
- mm. Samantha J. Power served as U.S. Permanent Representative to the United Nations from 2013 to January 20, 2017. From 2009 to 2013, she served as Senior Director for Multilateral and Human Rights on the National Security Council.
- nn. Susan E. Rice served as U.S. Permanent Representative to the United Nations from 2009 to 2013 and as National Security Advisor from 2013 to January 20, 2017.
- oo. Anne C. Richard served as Assistant Secretary of State for Population, Refugees and Migration from 2012 to January 20, 2017.
- pp. Kori Schake served as the Deputy Director for Policy Planning at the U.S. Department of State from December 2007 to May 2008. Previously, she was the director for Defense Strategy and Requirements on the National Security Council in President George W. Bush's first term.
- qq. Eric P. Schwartz served as Assistant Secretary of State for Population, Refugees and Migration from 2009 to 2011. From 1993 to 2001, he was responsible for refugee and humanitarian issues on the National Security Council, ultimately serving as Special Assistant to the President for National Security Affairs and Senior Director for Multilateral and Humanitarian Affairs.
- rr. Wendy R. Sherman served as Under Secretary of State for Political Affairs from 2011 to 2015.

- ss. Vikram Singh served as Deputy Special Representative for Afghanistan and Pakistan from 2010 to 2011 and as Deputy Assistant Secretary of Defense for Southeast Asia from 2012 to 2014.
- tt. Jeffrey H. Smith served as General Counsel of the Central Intelligence Agency from 1995 to 1996. Previously, he served as General Counsel of the Senate Armed Services Committee.
- uu. James B. Steinberg served as Deputy National Security Adviser from 1996 to 2000 and as Deputy Secretary of State from 2009 to 2011.
- vv. William Wechsler served as Deputy Assistant Secretary for Special Operations and Combating Terrorism at the U.S. Department of Defense from 2012 to 2015.
- ww. Samuel M. Witten served as Principal Deputy Assistant Secretary of State for Population, Refugees, and Migration from 2007 to 2010. From 2001 to 2007, he served as Deputy Legal Adviser at the State Department.

We have collectively devoted decades to combatting the various terrorist threats that the United States faces in a dynamic and dangerous world. We have held the highest security clearances, and many of us were current on active intelligence regarding all credible terrorist threat streams directed against the United States 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” (“Travel Ban 1.0”). A number of us signed a declaration that was filed on February 6, 2017 with the Ninth Circuit in this case, as an exhibit to the plaintiffs’ response to the defendants’ motion for a stay of this court’s temporary restraining order blocking that initial Executive Order.¹ Each of us also joined an amicus brief that was filed in the Supreme

¹ Joint Decl. of Madeline Albright et al., No. 17-35105 (9th Cir. Feb. 6, 2017).

Court in support of two separate groups of plaintiffs challenging the subsequent March 6, 2017 Executive Order (“Travel Ban 2.0”).²

2. The Administration has now replaced the Travel Ban 2.0 with a new Proclamation titled “Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats.” The Proclamation is dated September 24, 2017, and is scheduled to take effect fully on October 18, 2017 (“Travel Ban 3.0” or “Ban”).

3. The Ban preserves the basic approach of the original two Orders, without providing any persuasive evidence that these measures are necessary to enhance our national security or foreign policy interests. The Ban includes a few new exceptions to the prior Order, adds a couple of countries to the list (Chad, North Korea, and Venezuela) and removes a country (Sudan). But it still relies on unprecedented and sweeping nationality-based bans, directed at a list of almost exclusively Muslim-majority countries that is substantially similar to the prior lists. (The North Korea and Venezuela additions will affect exceedingly few people, and Chad is a majority-Muslim country.) The Ban blocks well over 150 million people from entering the United States.³

4. We 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. Yet, we are unaware of any national security threat that would justify Travel Ban 3.0. To the contrary, its enforcement would cause serious harm to the national security and foreign policy of the United States.

² Br. of Amici Curiae Former National Security Officials in Support of Respondents, Nos. 16-1436 and 16-1540 (U.S. Sup. Ct. Sept. 18, 2017).

³ This figure reflects the population of the listed countries in the Proclamation, excluding North Korea and Venezuela.

I. Travel Ban 3.0 Serves No Genuine National Security Purpose

5. As a national security measure, this Ban 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. Travel Ban 3.0 rests not on such tailored grounds, but rather, on (1) general bans (2) that are not responsive to an actual national security threat informed by intelligence, and (3) that emerged from a January Order that was not vetted through the kind of careful interagency legal and policy review that we would expect from a serious national security process.

6. The Ban is of unprecedented scope. Apart from Travel Bans 1.0 and 2.0, 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 the 9/11 attacks, 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. 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 Travel Ban 3.0, the Administration alleges no derogatory factual information about any particular recipient of a visa or green card or any credible threat from nationals of the countries banned.

7. 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. 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. Indeed, successive administrations have continually worked to improve this vetting through robust information-sharing and data integration, without resorting to multiple, sweeping bans on travel. We have seen no evidence from the Government for why the country suddenly needs to shift from this tested system of

individualized vetting, developed and implemented by national security professionals across the government, to a national origin-based ban.

8. The current individualized vetting system places the burden of proof on the traveler to prove her identity and eligibility for travel. If the traveler is unable to make this showing, the U.S. Government can deny her a visa based on an individualized review. This has been the policy of the U.S. Government across multiple administrations.

9. Travel Ban 3.0's generalized, country-based approach is substantially the same as its predecessors, although its bans on travel are now indefinite rather than temporary, and the stated rationale has shifted. Removing most of the emphasis on terrorism, the new Ban is purportedly necessary "to elicit improved identity-management and information-sharing protocols and practices from foreign governments." We have seen no evidence, however, that such a sweeping, country-based ban on travel is necessary for this objective.

10. In fact, the only concrete evidence to emerge from this administration on this point to date has shown just the opposite, that country-based bans are ineffective. A leaked DHS Office of Intelligence and Analysis memorandum analyzing the ban in the January Order found that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity." The memorandum went on to note that a majority of the U.S.-based individuals who were inspired by a foreign terrorist organization to participate in terrorism-related activity were citizens of the United States; the minority of foreign-born individuals were scattered from among twenty-six different countries; and most of the top origin countries of those individuals are not the countries listed in the Order.⁴

11. Imposing a ban on all or most of the travelers for a series of countries due to the information sharing practices of their government is a massively overbroad and imprecise response, especially *when the data does not show any particularized threat from those*

⁴ *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, <https://assets.documentcloud.org/documents/3474730/DHS-intelligence-document-on-President-Donald.pdf>.

countries. Defendants have provided no evidence or specific information that nationals of the banned countries pose a credible threat to the safety of Americans if they are allowed to enter the United States after individualized screenings, or of the alleged harm that would occur in the absence of the ban. The Ban targets a list of countries whose nationals have committed no deadly terrorist attacks on U.S. soil in the last forty years.⁵ In fact, a recent analysis by the Cato Institute shows that each new version of the travel ban is “even further divorced from threats of terrorism to the United States than the prior order.”⁶

In particular:

- a. The Ban newly adds Chad to the list of countries subject to a ban. No citizen of Chad has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. Chad, a Muslim-majority country, has long been one of the United States’ most effective counterterrorism partners in the region. Chad has been used as a staging ground by the U.S. Air Force in its surveillance of Boko Haram, hosted about 2,000 U.S. troops for an annual military exercise in March 2017, and is the base of the Multinational Joint Task Force, the coordinated effort to fight Boko Haram in the region. The presence of Boko Haram in Chad is dwarfed by their activity in other countries in the region that were not included in the ban. Chad’s inclusion on the Travel Ban 3.0 list reportedly occurred over objections by officials in the State Department, the Pentagon, the U.S. Embassy in Chad, and U.S. Africa Command, a decision that left administration officials “befuddled and frustrated.”⁷

⁵ Alex Nowrasteh, *President Trump’s New Travel Executive Order Has Little National Security Justification*, Cato Institute: Cato at Liberty, September 25, 2017.

⁶ David Bier, *New Travel Ban Would Not Have Prevented the Entry of Any Terrorists Since 9/11*, Cato Institute: Cato at Liberty, September 25, 2017.

⁷ Helene Cooper et al., *Chad’s Inclusion in Travel Ban Could Jeopardize American Interests, Officials Say*, N.Y. Times, Sept. 26, 2017.

- b. The Ban newly adds North Korea (DPRK) to the list of countries subject to a ban. No citizen of North Korea has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. Because of severe exit restrictions imposed by the North Korean government, very few North Koreans actually travel to the United States at all. North Korean defectors typically first receive South Korean passports in any event.⁸ In addition, such defectors would likely have a well-founded fear of political persecution if returned to North Korea, and thus deserve careful consideration for refugee status.
- c. The Ban newly adds Venezuela to the list of countries subject to a ban. No citizen of Venezuela has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. The Ban only applies to officials from government agencies involved in screening and vetting procedures. Such targeted sanctions are more appropriately done by the Treasury Department under the International Emergency Economic Powers Act and other legal authorities rather than through overbroad country bans.

12. Notably, the Ban does not include non-Muslim majority countries such as Belgium where there have been widely-documented problems with information sharing, and whose nationals have carried out terrorist attacks on Europe. And although for some of the countries, the Ban applies only to certain non-immigrant visas, together those visas are far and away the most frequently used non-immigrant visas from these nations.

⁸ Darla Cameron, *Why Trump's Latest Travel Ban Included These Eight Countries*, Wash. Post (Sept. 26, 2017); Emily Rauhala, *Almost No North Koreans Travel to the U.S., So Why Ban Them?*, Wash. Post (Sept. 25, 2017).

II. Travel Ban 3.0 Will Harm the National Security and Foreign Policy Interests of the United States

13. In our professional judgment, Travel Ban 3.0 would undermine the national security of the United States, rather than making us safer. If given effect, Travel Ban 3.0 would do long-term damage to our national security and foreign policy interests, and disrupt counterterrorism and national security partnerships. It would aid the propaganda effort of the Islamic State (“IS”) and serve its recruitment message by feeding into the narrative that the United States is at war with Islam. It would hinder relationships with the very communities law enforcement professionals need to engage to address the threat. And apart from all of these concerns, the Ban offends our nation’s laws and values.

In particular:

- a. The Ban would disrupt critical 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 IS. The Ban would further 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 would frustrate 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.
- b. The Ban would endanger intelligence sources in the field. For current information, our intelligence officers may rely on human sources in some of the countries listed. The Ban 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.

- c. The Ban would feed the recruitment narrative of IS 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 Ban's disparate impact on Muslim travelers and immigrants, it would fuel IS'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 hostile to them and their religion. The Ban also might endanger Christian communities, by handing IS a recruiting tool and propaganda victory that spreads their message that the United States is engaged in a religious war.
- d. The Ban would disrupt ongoing law enforcement efforts. By alienating Muslim-American communities in the United States, it would 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.
- e. The Ban would have a devastating humanitarian impact. The current bans have already disrupted the movement of countless people, including women and children, who are fleeing danger and have been victimized by actual terrorists. Travelers face deep uncertainty about whether they may travel to or from the United States: for medical treatment, funerals or other pressing family reasons.
- f. The Ban would cause serious economic damage to American citizens and residents. The Ban would affect many foreign travelers who annually inject hundreds of billions into the U.S. economy, supporting well over a million U.S. jobs. Affected companies have noted the adverse impact of the bans to date on many strategic economic sectors, including defense, technology, medicine, culture and others.

14. For all of the foregoing reasons, in our professional opinion, Travel Ban 3.0 does not further—but instead harms—sound U.S. national security and foreign policy. Issuing a new preliminary injunction against Travel Ban 3.0 would not jeopardize national security. It would simply preserve the status quo ante, still requiring individuals to be subjected to all the rigorous legal vetting processes that are currently in place. Allowing the Ban to take effect would wreak havoc on innocent lives and deeply held American values.

15. 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 as free as possible from 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” or “Enhancing Vetting Capabilities and Processes” does not disguise the Ban’s discriminatory intent, or make it necessary, effective, or faithful to America’s Constitution, laws, or values.

Respectfully submitted,

s/MADELINE K. ALBRIGHT
s/RAND BEERS
s/JOHN D. BELLINGER III
s/DANIEL BENJAMIN
s/ANTONY BLINKEN
s/JOHN O. BRENNAN
s/R. NICHOLAS BURNS
s/WILLIAM J. BURNS
s/JAMES CLAPPER
s/DAVID S. COHEN
s/ELIOT A. COHEN
s/BATHSHEBA N. CROCKER
s/RYAN CROCKER

s/THOMAS DONILON
s/JEN EASTERLY
s/DANIEL FELDMAN
s/JONATHAN FINER
s/MICHÈLE FLOURNOY
s/ROBERT S. FORD
s/JOSH GELTZER
s/SUZY GEORGE
s/PHIL GORDON
s/CHUCK HAGEL
s/AVRIL D. HAINES
s/LUKE HARTIG
s/MICHAEL V. HAYDEN
s/HEATHER A. HIGGINBOTTOM
s/CHRISTOPHER R. HILL
s/JOHN F. KERRY
s/PREM KUMAR
s/RICHARD LUGAR
s/JOHN E. MCLAUGHLIN
s/LISA O. MONACO
s/CAMERON P. MUNTER
s/JAMES C. O'BRIEN
s/MATTHEW G. OLSEN
s/LEON E. PANETTA
s/JEFFREY PRESCOTT
s/SAMANTHA J. POWER
s/SUSAN E. RICE
s/ANNE C. RICHARD
s/KORI SCHAKE
s/ERIC P. SCHWARTZ
s/WENDY R. SHERMAN
s/VIKRAM SINGH
s/JEFFREY H. SMITH
s/JAMES B. STEINBERG
s/WILLIAM WECHSLER
s/SAMUEL M. WITTEN

Executed on this 10th day of October, 2017.

*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.

EXHIBIT J

MEMORANDUM TO THE PRESIDENT

OCT 23 2017

FROM: Rex W. Tillerson
Secretary
Department of State

Elaine Duke
Acting Secretary
Department of Homeland Security

Daniel Coats
Director
Office of the Director of National Intelligence

RESUMING THE UNITED STATES REFUGEE ADMISSIONS
PROGRAM WITH ENHANCED VETTING CAPABILITIES

In section 6(a) of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), you directed a review to strengthen the vetting process for the U.S. Refugee Admissions Program (USRAP). You instructed the Secretary of State to suspend the travel of refugees into the United States under that program, and the Secretary of Homeland Security to suspend decisions on applications for refugee status, for a temporary, 120-day period, subject to certain exceptions. During the 120-day suspension period, Section 6(a) required the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, to 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 to implement such additional procedures.

The Secretary of State convened a working group to implement the review process under section 6(a) of Executive Order 13780, which proceeded in parallel with the development of the uniform baseline of screening and vetting standards and procedures for all travelers under section 5 of that Executive Order. The section 6(a) working group then compared the refugee screening and vetting process with the uniform baseline standards and procedures established by the section 5 working group. This helped to inform the section 6(a) working group's identification of a number of additional ways to enhance the refugee screening and vetting processes. The Secretary of State and the Secretary of Homeland Security have begun implementing those improvements.

Pursuant to section 6(a), this memorandum reflects our joint determination that the improvements to the USRAP vetting process identified by the 6(a) working group are generally adequate to ensure the security and welfare of the United States, and therefore that the Secretary

of State may resume travel of refugees into the United States and that the Secretary of Homeland Security may resume making decisions on applications for refugee status for stateless persons and foreign nationals, subject to the conditions described below.

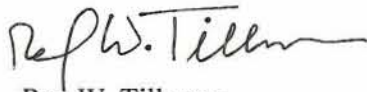
Notwithstanding the additional procedures identified or implemented during the last 120 days, we continue to have concerns regarding the admission of nationals of, and stateless persons who last habitually resided in, 11 particular countries previously identified as posing a higher risk to the United States through their designation on the Security Advisory Opinion (SAO) list. The SAO list for refugees was established following the September 11th terrorist attacks and has evolved over the years through interagency consultations. The current list of countries was established in 2015. To address these concerns, we will conduct a detailed threat analysis and review for nationals of these high risk countries and stateless persons who last habitually resided in those countries, including a threat assessment of each country, pursuant to section 207(c) and applicable portions of section 212(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1157(c) and 1182(a), section 402(4) of the Homeland Security Act of 2002, 6 U.S.C. 202(4), and other applicable authorities. During this review, the Secretary of State and the Secretary of Homeland Security will temporarily prioritize refugee applications from other non-SAO countries. DHS and DOS will work together to take resources that may have been dedicated to processing nationals of, or stateless persons who last habitually resided in, SAO countries and, during the temporary review period, reallocate them to process applicants from non-SAO countries for whom the processing may not be as resource intensive.

While the temporary review is underway, the Secretaries of Homeland Security and State will cooperate to carefully scrutinize the applications of nationals of countries on the SAO list, or of stateless persons who last habitually resided in those countries, and will consider individuals for potential admission whose resettlement in the United States would fulfill critical foreign policy interests, without compromising national security and the welfare of the United States. As such, the Secretary of Homeland Security will admit on a case-by-case basis only refugees whose admission is deemed to be in the national interest and poses no threat to the security or welfare of the United States. We will direct our staff to work jointly and with law enforcement agencies to complete the additional review of the SAO countries no later than 90 days from the date of this memorandum, and to determine what additional safeguards, if any, are necessary to ensure that the admission of refugees from these countries of concern does not pose a threat to the security and welfare of the United States.

Further, it is our joint determination that additional security measures must be implemented promptly for derivative refugees—those who are “following-to-join” principal refugees that have already been resettled in the United States—regardless of nationality.¹ At present, the majority of following-to-join refugees, unlike principal refugees, do not undergo enhanced DHS review, which includes soliciting information from the refugee applicant earlier

¹ When a refugee is processed for admission to the United States, eligible family members located in the same place as the refugee (spouses and/or unmarried children under 21 years of age) typically are also processed at the same time, and they receive the same screening as the principal refugee. Each year, however, resettled principal refugees also petition, through a separate process, for approximately 2,500 family members to be admitted to the United States as following-to-join refugees. The family member may be residing and processed in a different country than where the principal refugee was processed, and while most following-to-join refugees share the nationality of the principal, some may be of a different nationality.

in the process to provide for a more thorough screening process, as well as vetting certain nationals or stateless persons against classified databases. We have jointly determined that additional security measures must be implemented before admission of following-to-join refugees can resume. Based on an assessment of current systems checks, as well as requirements for uniformity identified by Section 5, we will direct our staffs to work jointly to implement adequate screening mechanisms for following-to-join refugees that are similar to the processes employed for principal refugees, in order to ensure the security and welfare of the United States. We will resume admission of following-to-join refugees once those enhancements have been implemented.



Rex W. Tillerson
Secretary
Department of State



Elaine Duke
Acting Secretary
Department of
Homeland Security



Dan Coats
Director
National Intelligence

UNCLASSIFIED**Addendum to Section 6(a) Memorandum****Executive Order 13780, *Protecting the Nation from Foreign Terrorist Entry into the United States***

Section 6(a) of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), required a review of the United States Refugee Admissions Program (USRAP) application and adjudication process during a 120-day period 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. The Secretary of State (State), in conjunction with the Secretary of Homeland Security (DHS) and in consultation with the Director of National Intelligence (ODNI) established an interagency working group (the Section 6(a) Working Group) to undertake this review.

This addendum provides a summary of the additional procedures that have been and will be implemented. A classified report provides further detail of this review and enhancements. The interagency working group has recommended and implemented enhanced vetting procedures in three areas: *application, interviews and adjudications, and system checks*.

Interagency Approach to the Review

To conduct the review, the Section 6(a) Working Group conducted a baseline assessment of USRAP application and adjudication processes and developed additional procedures to further enhance the security and welfare of the United States. The Section 6(a) Working Group ensured alignment with other concurrent and relevant reviews undertaken under the Executive Order, such as the review under Section 5, which established uniform baseline screening standards for all travelers to the United States.

All individuals admitted through the USRAP already receive a baseline of extensive security checks. The USRAP also requires additional screening and procedures for certain individuals from 11 specific countries that have been assessed by the U.S. government to pose elevated potential risks to national security; these individuals are subject to additional vetting through Security Advisory Opinions (SAOs)¹. The SAO list for refugees was established following the September 11th terrorist attacks and has evolved over the years through interagency consultations. The most recent list was updated in 2015. The Section 6(a) Working Group agreed to continue to follow this tiered approach to assessing risk and agreed that these nationalities continued to require additional vetting based on current elevated potential for risk. Each additional procedure identified during the 120-day review was evaluated to determine whether it should apply to stateless persons and refugees of all nationalities or only certain nationalities.²

¹ The SAO is a DOS-initiated biographic check conducted by the Federal Bureau of Investigation and intelligence community partners. SAO name checks are initiated for the groups and nationalities designated by the U.S. government as requiring this higher level check.

² Stateless persons in this regard means persons without nationality who last habitually resided in one of these countries.

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Additional Procedures for Refugee Applicants Seeking Resettlement in the United States

Application Process:

- **Increased Data Collection:** Additional data are being collected from all applicants in order to enhance the effectiveness of biographic security checks. These changes will improve the ability to determine whether an applicant is being truthful about his or her claims, has engaged in criminal or terrorist activity, has terrorist ties, or is otherwise connected to nefarious actors.
- **Enhanced Identity Management:** The electronic refugee case management system has been improved to better detect potential fraud by strengthening the ability to identify duplicate identities or identity documents. Any such matches are subject to further investigation prior to an applicant being allowed to travel. These changes will make it harder for applicants to use deceptive tactics to enter our country.

Interview and Adjudication Process:

- **Fraud Detection and National Security:** DHS's U.S. Citizenship and Immigration Services (USCIS) will forward-deploy specially trained Fraud Detection and National Security (FDNS) officers at refugee processing locations to help identify potential fraud, national security, and public safety issues on certain circuit rides to advise and assist interviewing officers. With FDNS officers on the ground, the United States will be better positioned to detect and disrupt fraud and identify potential national security and public safety threats.
- **New Guidance and Training:** USCIS is strengthening its guidance on how to assess the credibility and admissibility of refugee applicants. This new guidance clarifies how officers should identify and analyze grounds of inadmissibility related to drug offenses, drug trafficking, prostitution, alien smuggling, torture, membership in totalitarian parties, fraud and misrepresentation, certain immigration violations, and other criminal activity. USCIS has also updated guidance for refugee adjudicators to give them greater flexibility in assessing the credibility of refugee applicants, including expanding factors that may be considered in making a credibility determination consistent with the REAL ID Act. This enhanced guidance supplements the robust credibility guidance and training USCIS officers already receive prior to adjudicating refugee cases. Additionally, the updated guidance equips officers with tactics to identify inadequate or improper interpretation.
- **Expanded Information-Sharing:** State and USCIS are exchanging more in-depth information to link related cases so that interviewing officers are able to develop more tailored lines of questioning that will help catch potential fraud, national security threats, or public safety concerns.

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- **Updating Security Checks:** Measures have been put in place to ensure that if applicants change or update key data points, including new or altered biographic information, that such data is then subject to renewed scrutiny and security checks. This will add an additional layer of protection to identify fraud and national security issues.
- **Security Advisory Opinions (SAOs):** Departments and agencies have agreed to expand the classes of refugee applicants that are subject to SAOs, thereby ensuring that more refugees receive deeper vetting.
 - USCIS' Fraud Detection and National Security Directorate is also expanding its "enhanced review" process for applicants who meet SAO criteria. This includes checks against certain social media and classified databases.

Additional Review Process for Certain Categories of Refugee Applicants

The Department of Homeland Security continues to have concerns regarding the admission of nationals of, and stateless persons who last habitually resided in, 11 particular countries previously identified as posing a higher risk to the United States through their designation on the SAO list. The SAO list for refugees was established following the September 11th terrorist attacks and has evolved over the years through interagency consultations. The current list of countries was established in 2015.

As such, for countries subject to SAOs, the Secretary of State and the Secretary of Homeland Security, in consultation with the Director of National Intelligence and the Attorney General, will coordinate a review and analysis of each country, pursuant to existing USRAP authorities. This review will include an in-depth threat assessment of each country, to be completed within 90 days. Moreover, it will include input and analysis from the intelligence and law enforcement communities, as well as all relevant information related to ongoing or completed investigations and national security risks and mitigation strategies.

This review will be tailored to each SAO country, and decisions may be made for each country independently. While the temporary review is underway, the Secretaries of Homeland Security and State will cooperate to carefully scrutinize the applications of nationals of, and stateless persons who last habitually resided in, countries on the SAO list and will consider individuals for potential admission whose resettlement in the United States would fulfill critical foreign policy interests, without compromising national security and the welfare of the United States. As such, the Secretary of Homeland Security may admit on a case-by-case basis only refugees whose admission is deemed to be in the national interest and poses no threat to the security or welfare of the United States.

In addition, during this review period, the Secretary of State and the Secretary of Homeland Security will temporarily prioritize refugee applications from non-SAO countries. DHS and DOS will work together to take resources that may have been dedicated to processing nationals of, or stateless persons who last habitually resided in, SAO countries and, during the temporary

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review period, reallocate them to process applicants from non-SAO countries for whom the processing may not be as resource intensive. This means that refugee admissions for nationals of, and stateless persons who last habitually resided in, SAO countries will occur at a slower pace, at least during the temporary review period and likely further into the fiscal year, as the deployment of additional screening and integrity measures have historically led to lengthier processing times. While DHS prioritizes its resources in this manner until the additional analysis is completed, DHS will interview refugee applicants as appropriate from SAO countries on a discretionary basis.

Form I-730 Refugee Following-to-Join Processing

A principal refugee applicant may include his or her spouse and unmarried children under 21 years of age as derivative refugee applicants on his or her Form I-590, Registration for Classification as a Refugee. When these family members are co-located with the principal, the derivative applicants generally are processed through the USRAP and, if approved, travel to the United States with the principal refugee applicant. These family members receive the same baseline security checks as the principal refugee and, if found eligible, are admitted as refugees. Alternatively, a principal refugee admitted to the United States may file a Form I-730, Refugee/Asylee Relative Petition, for his or her spouse and unmarried children under 21 years of age, to follow-to-join the principal refugee in the United States. If DHS grants the petition after interview and vetting, the approved spouse or unmarried child is admitted as a refugee and counted toward the annual refugee ceiling. While the vast majority of eligible refugee family members admitted to the United States each year accompany, and are screened with, the principal refugee, principal refugees admitted to the United States file petitions for approximately 2,500 family members to join them in the United States through the following-to-join process. Following-to-join family members may be residing and processed in a different country than where the principal refugee was processed, and while most share the nationality of the principal refugee, some may be of a different nationality. In any given year, DHS receives petitions for beneficiaries representing over 60 different nationalities. In recent years, the nationalities most represented were Iraqi, Somali, Burmese, Congolese, Ethiopian and Eritrean.

The majority of following-to-join refugees do not receive the same, full baseline interagency checks that principal refugees receive. Nor do following-to-join refugees currently undergo enhanced DHS review, which includes soliciting information from the refugee earlier in the process to provide for more thorough screening and vetting of certain nationals or stateless persons against classified databases. DHS and State are expeditiously taking measures to better align the vetting regime for following-to-join refugees with that for principal refugees by 1) ensuring that all following-to-join refugees receive the full baseline interagency checks that principal refugees receive; 2) requesting submission of the beneficiary's I-590 application in support of the Form I-730 petition earlier in the process to provide for more thorough screening; 3) vetting certain nationals or stateless persons against classified databases; and 4) expanding SAO requirements for this population in keeping with the agreed-to expansion for I-590 refugee applicants. These additional security measures must be implemented before admission of following-to-join refugees—regardless of nationality—can resume. Once the security enhancements are in place, admission of following-to-join refugees can resume.

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EXHIBIT K

Presidential Documents

Executive Order 13815 of October 24, 2017

Resuming the United States Refugee Admissions Program With Enhanced Vetting Capabilities

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, it is hereby ordered as follows:

Section 1. Policy. (a) It is the policy of the United States to protect its people from terrorist attacks and other public-safety threats. Screening and vetting procedures associated with determining which foreign nationals may enter the United States, including through the U.S. Refugee Admissions Program (USRAP), play a critical role in implementing that policy. Those procedures enhance our ability to detect foreign nationals who might commit, aid, or support acts of terrorism, or otherwise pose a threat to the national security or public safety of the United States, and they bolster our efforts to prevent such individuals from entering the country.

(b) Section 5 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), directed the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence to develop a uniform baseline for screening and vetting standards and procedures applicable to all travelers who seek to enter the United States. A working group was established to satisfy this directive.

(c) Section 6(a) of Executive Order 13780 directed a review to strengthen the vetting process for the USRAP. It also instructed the Secretary of State to suspend the travel of refugees into the United States under that program, and the Secretary of Homeland Security to suspend decisions on applications for refugee status, subject to certain exceptions. Section 6(a) also required the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, to conduct a 120-day review of the USRAP application and adjudication process in order to determine, and implement, additional procedures to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States. Executive Order 13780 noted that terrorist groups have sought to infiltrate several nations through refugee programs and that the Attorney General had reported that more than 300 persons who had entered the United States as refugees were then the subjects of counterterrorism investigations by the Federal Bureau of Investigation.

(d) The Secretary of State convened a working group to implement the review process under section 6(a) of Executive Order 13780. This review was informed by the development of uniform baseline screening and vetting standards and procedures for all travelers under section 5 of Executive Order 13780. The section 6(a) working group compared the process for screening and vetting refugees with the uniform baseline standards and procedures established by the section 5 working group. The section 6(a) working group identified several ways to enhance the process for screening and vetting refugees and began implementing those improvements.

(e) The review process for refugees required by Executive Order 13780 has made our Nation safer. The improvements the section 6(a) working group has identified will strengthen the data-collection process for all refugee applicants considered for resettlement in the United States. They will also

bolster the process for interviewing refugees through improved training, fraud-detection procedures, and interagency information sharing. Further, they will enhance the ability of our systems to check biometric and biographic information against a broad range of threat information contained in various Federal watchlists and databases.

(f) Section 2 of Proclamation 9645 of September 24, 2017 (Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats), suspended and limited, subject to exceptions and case-by-case waivers, the entry into the United States of foreign nationals of eight countries. As noted in that Proclamation, those suspensions and limitations are in the interest of the United States because of certain deficiencies in those countries' identity-management and information-sharing protocols and procedures, and because of the national security and public-safety risks that emanate from their territory, including risks that result from the significant presence of terrorists within the territory of several of those countries.

(g) The entry restrictions and limitations in Proclamation 9645 apply to the immigrant and nonimmigrant visa application and adjudication processes, which foreign nationals use to seek authorization to travel to the United States and apply for admission. Pursuant to section 3(b)(iii) of Proclamation 9645, however, those restrictions and limitations do not apply to those who seek to enter the United States through the USRAP.

(h) Foreign nationals who seek to enter the United States with an immigrant or nonimmigrant visa stand in a different position from that of refugees who are considered for entry into this country under the USRAP. For a variety of reasons, including substantive differences in the risk factors presented by the refugee population and in the quality of information available to screen and vet refugees, the refugee screening and vetting process is different from the process that applies to most visa applicants. At the same time, the entry of certain refugees into the United States through the USRAP poses unique security risks and considerable domestic challenges that require the application of substantial resources.

Sec. 2. Resumption of the U.S. Refugee Admissions Program. (a) Section 6(a) of Executive Order 13780 provided for a temporary, 120-day review of the USRAP application and adjudication process and an accompanying worldwide suspension of refugee travel to the United States and of application decisions under the USRAP. That 120-day period expires on October 24, 2017. Section 6(a) further provided that refugee travel and application decisions could resume after 120 days for stateless persons and for the nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence jointly determine that the additional procedures identified through the USRAP review process are adequate to ensure the security and welfare of the United States. The Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have advised that the improvements to the USRAP vetting process are generally adequate to ensure the security and welfare of the United States, that the Secretary of State and Secretary of Homeland Security may resume that program, and that they will apply special measures to certain categories of refugees whose entry continues to pose potential threats to the security and welfare of the United States.

(b) With the improvements identified by the section 6(a) working group and implemented by the participating agencies, the refugee screening and vetting process generally meets the uniform baseline for immigration screening and vetting established by the section 5 working group. Accordingly, a general resumption of the USRAP, subject to the conditions set forth in section 3 of this order, is consistent with the security and welfare of the United States.

(c) The suspension of the USRAP and other processes specified in section 6(a) of Executive Order 13780 are no longer in effect. Subject to the conditions set forth in section 3 of this order, the Secretary of State may resume

travel of qualified and appropriately vetted refugees into the United States, and the Secretary of Homeland Security may resume adjudicating applications for refugee resettlement.

Sec. 3. *Addressing the Risks Presented by Certain Categories of Refugees.*

(a) Based on the considerations outlined above, including the special measures referred to in subsection (a) of section 2 of this order, Presidential action to suspend the entry of refugees under the USRAP is not needed at this time to protect the security and interests of the United States and its people. The Secretary of State and the Secretary of Homeland Security, however, shall continue to assess and address any risks posed by particular refugees as follows:

(i) The Secretary of State and the Secretary of Homeland Security shall coordinate to assess any risks to the security and welfare of the United States that may be presented by the entry into the United States through the USRAP of stateless persons and foreign nationals. Under section 207(c) and applicable portions of section 212(a) of the INA, 8 U.S.C. 1157(c) and 1182(a), section 402(4) of the Homeland Security Act of 2002, 6 U.S.C. 202(4), and other applicable authorities, the Secretary of Homeland Security, in consultation with the Secretary of State, shall determine, as appropriate and consistent with applicable law, whether any actions should be taken to address the risks to the security and welfare of the United States presented by permitting any category of refugees to enter this country, and, if so, what those actions should be. The Secretary of State and the Secretary of Homeland Security shall administer the USRAP consistent with those determinations, and in consultation with the Attorney General and the Director of National Intelligence.

(ii) Within 90 days of the date of this order and annually thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall determine, as appropriate and consistent with applicable law, whether any actions taken to address the risks to the security and welfare of the United States presented by permitting any category of refugees to enter this country should be modified or terminated, and, if so, what those modifications or terminations should be. If the Secretary of Homeland Security, in consultation with the Secretary of State, determines, at any time, that any actions taken pursuant to section 3(a)(i) should be modified or terminated, the Secretary of Homeland Security may modify or terminate those actions accordingly. The Secretary of Homeland Security and the Secretary of State shall administer the USRAP consistent with the determinations made under this subsection, and in consultation with the Attorney General and the Director of National Intelligence.

(b) Within 180 days of the date of this order, the Attorney General shall, in consultation with the Secretary of State and the Secretary of Homeland Security, and in cooperation with the heads of other executive departments and agencies as he deems appropriate, provide a report to the President on the effect of refugee resettlement in the United States on the national security, public safety, and general welfare of the United States. The report shall include any recommendations the Attorney General deems necessary to advance those interests.

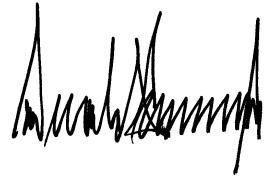
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(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.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

THE WHITE HOUSE,
October 24, 2017.

EXHIBIT L

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 alone 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 M

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

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

Key Findings

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

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

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

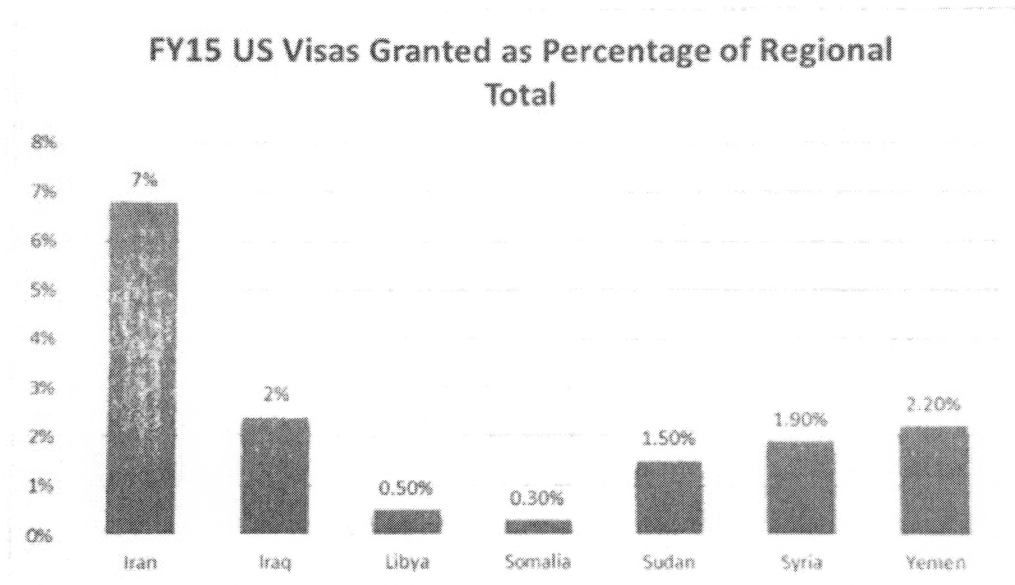
- The top seven origin countries of the foreign-born individuals are: Pakistan (5), Somalia (3), and Bangladesh, Cuba, Ethiopia, Iraq, and Uzbekistan (2).

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

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

Limited Access to the United States by Citizens of Impacted Countries

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



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

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

Iran – Designated as a State Sponsor of Terrorism in 1984, Iran continued its terrorist-related activity in 2015, including support for Hizballah, Palestinian terrorist groups in Gaza, and various groups in Iraq and throughout the Middle East, according to the Country Reports on Terrorism 2015.⁴ Iran used the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) to implement foreign policy goals, provide cover for intelligence operations, and create instability

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

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

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

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

Somalia – In 2015, al-Shabaab continued to commit deadly attacks in Somalia, seeking to reverse progress made by the Federal Government of Somalia and weaken the political will of the African Union Mission in Somalia troop contributing countries, according to the Country Reports on Terrorism 2015.⁷

Sudan – Sudan was designated as a State Sponsor of Terrorism in 1993 due to concerns about support to international terrorist groups, according to the Country Reports on Terrorism 2015.⁸ In 2014, members of Hamas were allowed to raise funds, travel, and live in Sudan. However, in 2015 the use of Sudan by Palestinian designated terrorist groups appeared to have declined. The last known shipment was interdicted by Israel in 2014.

Yemen – Al-Qa'ida in the Arabian Peninsula remained a significant threat to Yemen, the region, and to the United States in 2015, as efforts to counter the group were hampered by the ongoing conflict in that country, according to the Country Reports on Terrorism 2015.⁹ The Islamic State of Iraq and the Levant in Yemen also exploited the political and security vacuum to strengthen its foothold inside the country.

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

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

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

⁴ <https://www.state.gov/j/ct/rls/crt/2015/257520.htm>

EXHIBIT N

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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

**Homeland Security**

Office of Intelligence and Analysis

IA-0091-17

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(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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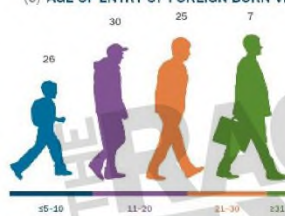


(U//FOUO) **Most Foreign-born, US-based Violent Extremists Probably Radicalize After Entering the Homeland**

(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. We based this study primarily on DHS immigration records, publicly available court documents and reliable press reporting. Nearly half of the foreign-born violent extremists in our dataset entered the United States when they were under the age of 16 and a majority remained in the United States for over ten years before their indictment or death, suggesting most foreign-born, US-based violent extremists likely radicalized after entering the Homeland.

(U//FOUO) DHS defines radicalization as the process through which an individual changes from a non-violent belief system to a belief system that uses violence to achieve political, religious, or other ideological goals as a means to effect societal or political change.

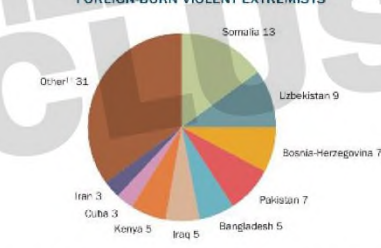
(U) **AGE OF ENTRY OF FOREIGN-BORN VIOLENT EXTREMISTS**



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

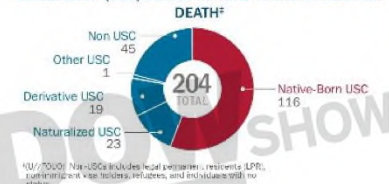


(U) **COUNTRIES OF BIRTH OF FOREIGN-BORN VIOLENT EXTREMISTS**



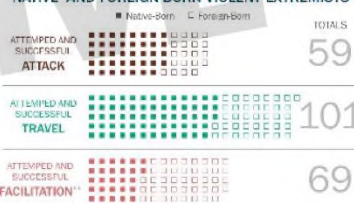
* (U//FOUO) Other countries include individuals born in each of the following 24 countries: Albania, Afghanistan, Australia, Dominican Republic, Egypt, Ethiopia, India, Israel, Kazakhstan, Kuwait, Lebanon, Lithuania, Mexico, Morocco, Philippines, Romania, Saudi Arabia, Serbia, Lebanon, Spain, Syria, Turkey, United Arab Emirates, Yemen, Yugoslavia.

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



(U//FOUO) Non-USC includes legal permanent residents (LPR), conditional permanent residents (CPR), and individuals with no status.

(U) **TERRORISM-RELATED ACTIVITIES OF NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS***



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

(U//FOUO) Facilitative 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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- ¹ (U); United States District Court, Southern District of Florida; "United States of America v. Miguel Moran Diaz"; 06 APR 2015.
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Explore: The MaddowBlog

Thursday's Mini-Report, 3.2.17

Team Trump's Russian communications come...

EXHIBIT O

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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CC:

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