

**No. 17-15589**

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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STATE OF HAWAII, et al.,  
*Plaintiffs-Appellees,*

v.

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

On Appeal from the United States District Court  
U.S. District Court for the District of Hawai'i  
17-00050 DKW-KSC  
Honorable Derrick K. Watson

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**BRIEF OF *AMICI CURIAE* DOE PLAINTIFFS IN SUPPORT OF  
PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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## INTERESTS OF *AMICI CURIAE*

*Amici curiae* are Joseph Doe, James Doe, and the Episcopal Diocese of Olympia (collectively, “*Doe Plaintiffs*”), who, with the Court’s permission,<sup>1</sup> submit this brief in support of affirmance and in opposition to Defendants-Appellants’ motion for a stay pending appeal. *Amici* have a significant interest in ensuring that Section 6 of Executive Order 13780, “Protecting the Nation from Foreign Terrorist Entry into the United States,” 82 Fed. Reg. 13209 (Mar. 6, 2017) (“EO-2”), remains enjoined. The Order’s 120-day ban on refugee admissions, *inter alia*, prolongs Joseph and James’ separation from family members who have already passed all required security and medical checks and frustrates the mission of the Episcopal Diocese. The *Doe Plaintiffs*’ First Amended Complaint<sup>2</sup> raises First Amendment Establishment Clause claims as

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<sup>1</sup> This Court granted the *Doe Plaintiffs* permission to file this brief of *amicus curiae* after denying their motion to intervene. Order (9th Cir. Apr. 21, 2017), Dkt. No. 203.

<sup>2</sup> The *Doe Plaintiffs* filed a complaint based on Executive Order 13769, “Protecting the Nation from Foreign Terrorist Entry into the United States,” 82 Fed. Reg. 8977 (Jan. 27, 2017) (“EO-1”) on February 7, 2017. Compl., *Doe v. Trump* (“*Doe*”), No. 17-178 (W.D. Wash. Feb. 7, 2017), Dkt. No. 1; The *Doe Plaintiffs* amended their complaint in response to EO-2 on March 14, 2017. First Am. Compl. (“FAC”), *Doe* (Mar. 14, 2017), Dkt. No. 10 (attached for the Court’s convenience as Exhibit (“Ex.”) 1 hereto).

well as Fifth Amendment Equal Protection, Substantive Due Process, and Procedural Due Process claims.<sup>3</sup>

Joseph Doe and James Doe are refugees—and now lawful permanent residents of the United States—who represent a proposed class of people harmed by EO-2:

All refugees and asylees, including those who have since adjusted their status to Lawful Permanent Resident, who now reside in Washington, and who have filed I-730 petitions for and await the arrival of their family members who have completed and cleared their final security screenings.

Mot. for Class Certification 2–3, *Doe v. Trump*, No. 17-178 (W.D. Wash. Apr. 11, 2017), Dkt. No. 19. Should the Court grant Defendants-Appellants’ motion and lift the lower court’s injunction of Section 6, their families’ anticipated travel to the United States will be in jeopardy—and perhaps indefinitely postponed—and their continued separation from their loved ones will cause irreparable harm.

Section 6 has not only disrupted the lives of Joseph and James Doe but has also forced the Episcopal Diocese of Olympia (“the Diocese”)

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<sup>3</sup> The FAC also includes claims under the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb-1 *et seq.*, Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.*, and Administrative Procedure Act, 5 U.S.C. §§ 501 *et seq.*

to dramatically alter its resettlement work: rather than adhere to its spiritual mission of welcoming and assisting vulnerable strangers in resettlement, it must instead counsel a frightened US-based population about the vagaries and impacts of EO-1 and EO-2.

The *Doe* Plaintiffs urge this Court to deny Defendants-Appellants' motion and maintain the injunction of EO-2.

## INTRODUCTION

As Plaintiffs-Appellees point out in their answering brief and as Defendant-Appellant Trump and his advisors themselves confirmed, EO-2 is intended to be a Muslim ban just like EO-1. Indeed, as recently as this week, Defendant-Appellant Trump once again revealed his true motivation. During a White House reception for conservative media guests on Monday, April 24th, 2017, Trump stated "I'm Christian,"<sup>4</sup> noted that he had done very well with Christian voters in the election,<sup>5</sup> reiterated that "[n]obody's has been treated worse, it seems to me, than

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<sup>4</sup> Scott Johnson, *At the White House with Trump*, Power Line (Apr. 26, 2017 9:50 AM), <http://www.powerlineblog.com/archives/2017/04/at-the-white-house-with-trump.php>.

<sup>5</sup> *Id.*

Christians in the Middle East,”<sup>6</sup> and once again argued that that it was easier for Muslims to come into the United States as refugees than Christians while it was far more dangerous for Christians there.<sup>7</sup> He then declared, “[w]e’re going to be helping the Christians big league.”<sup>8</sup>

### FACTUAL BACKGROUND

Joseph and James Doe are refugees who suffered and fled unspeakable horrors, and Section 6 seeks to bar them from reuniting with their families in this country. Their stories are heartbreaking, but by no means unusual for this class of plaintiffs.

Joseph Doe<sup>9</sup> is a Somali refugee who fled his country’s violent civil war with his family, hiding in the forest while trying to reach Kenya on foot. They were found by armed fighters, who raped his pregnant older sister and beat his mother when she tried to stop them. His sister bled to death. Joseph was only ten years old. He then spent 22 years in

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<sup>6</sup> Charlie Spiering, *Donald Trump Invites Conservative Media to White House for Exclusive Briefing*, Breitbart (Apr. 24, 2017), <http://www.breitbart.com/big-government/2017/04/24/donald-trump-invites-conservative-media-to-white-house-for-exclusive-briefing/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See Ex. 1, FAC ¶¶ 65–79; see also Decl. of Joseph Doe in Supp. of Pls.’ Mot. for Class Certification, *Doe* (Apr. 11, 2017), Dkt. No. 25 (attached as Ex. 2 hereto).

refugee camps in Kenya, where he later lost his parents and the rest of his siblings during a raid by an outside hostile group.

In 2014, after years of screenings,<sup>10</sup> evaluations, and multiple interviews, Joseph was granted refugee status in the United States. After he arrived in the United States, he filed an I-730 “follow-to-join” petition for his wife and children in June 2015.<sup>11</sup> He and his family are Muslim. Joseph’s wife and children had their final interviews in November 2016, which they successfully passed, and they have passed all required security and medical clearances. But because they did not

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<sup>10</sup> As Defendant-Appellant Department of State has explained, “[r]efugees are subject to the highest level of security checks of any category of traveler to the United States.” See U.S. Dep’t of State, *U.S. Refugee Admissions Program FAQs, Bureau of Population, Refugees, and Migration* (Jan. 20, 2017), <https://www.state.gov/j/prm/releases/factsheets/2017/266447.htm>.

<sup>11</sup> An I-730 “follow-to-join” petition allows refugees and asylees to petition to bring spouses and unmarried children under age 21 to join them in the United States. As with the principal refugee’s screening process, I-730 beneficiaries are subject to medical evaluations, which expire after six months, and rigorous security screening. See U.S. Dep’t of State, *9 FAM 302.2-3(C) (U) Validity Period of an Applicant’s Medical Examination for Immigrant Visa Applicants* (Sept. 15, 2016), <https://fam.state.gov/fam/09FAM/09FAM030202.html>; U.S. Dep’t of State, Bureau of Consular Affairs, *Follow-to-Join Refugees and Asylees* (Apr. 25, 2017 1:50 PM), <https://travel.state.gov/content/visas/en/immigrate/join-refugees-and-asylees.html>.

have travel scheduled as of the effective date of EO-2, they are subject to Section 6's suspension of travel under the U.S. Refugee Admissions Program, and Joseph Doe's reunion with his family may be delayed indefinitely.

James Doe,<sup>12</sup> an Eritrean national, is a refugee with a similarly difficult life story. In 2009, James was confined in an underground prison in Eritrea for months as punishment for expressing his political opinions. He managed to escape and began a six-year journey to obtain refugee status in the United States. His search for refugee protection took him through multiple countries, including Sri Lanka, where he was imprisoned for two years because of his nationality. The United Nations was able to help secure his release and, in 2015, he finally obtained refugee status in the United States.

In July 2015, James filed an I-730 "follow-to-join" petition for his wife and two children, one of whom was born while he was imprisoned, and whom he has never met. James' petition was approved in the fall of 2016, and his family members have passed their final medical and

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<sup>12</sup> See Ex. 1, FAC ¶¶ 80–94; see also Decl. of James Doe in Supp. of Pls.' Mot. for Class Certification, *Doe* (Apr. 11, 2017), Dkt. No. 26 (attached as Ex. 3 hereto).

security clearances to join him in the United States. Like Joseph Doe's family, James' family had not yet been scheduled for travel as of the effective date of EO-2. His family's travel is therefore subject to Section 6 of EO-2. James Doe's long-awaited reunion with his family has thus been thrown into uncertainty because of Defendants-Appellants' actions.

The Episcopal Diocese of Olympia (the "Diocese")<sup>13</sup> is also a *Doe* Plaintiff. The Diocese is a local affiliate of the Episcopal Migration Ministries, a voluntary agency that welcomes refugees through a Cooperative Agreement with the U.S. Department of State. The Diocese has operated a refugee resettlement program in the Seattle, Washington area since 1978 and has sponsored the resettlement of more than 15,000 refugees.

When EO-1 was issued, the Diocesan refugee resettlement office was actively preparing to welcome over 20 refugee families—including families from Syria, Iraq, and Somalia. As a result of the Diocesan efforts, these refugee families already had domestic arrangements to support their arrival and were approved for travel. Those travel plans

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<sup>13</sup> See Ex. 1, FAC ¶¶ 95–104.

were abruptly canceled by EO-1. The chaos surrounding both Executive Orders has also required the Diocese to expend additional, unplanned-for resources as its employees have been working around the clock to address the needs of families placed in crisis by the Executive Orders.

As a result of the judicial stay of EO-1, a handful of the refugees the Diocese was originally expecting have managed to arrive in the United States. But, as of March 14, 2017, the Diocese was expecting to receive and resettle over 35 families who have not yet arrived. These refugees will in all likelihood not be allowed to enter the United States if EO-2 goes into effect, and the considerable resources the Diocese has expended to welcome these families will have been largely wasted.

## ARGUMENT

### **A. The Deprivation of Constitutional Rights Constitutes Irreparable Injury.**

It is well established that “the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (*quoting Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also Washington v. Trump*, 847 F.3d 1151, 1168–69 (9th Cir. 2017) (same), *reconsideration en banc denied*, --- F.3d ----, No. 17-35105, 2017 WL 992527 (9th Cir. Mar. 15, 2017); *Nelson v. Nat’l*



*Aeronautics & Space Admin.*, 530 F.3d 865, 882 (9th Cir. 2008) (finding infringement of Constitutional right to privacy constitutes irreparable harm), *rev'd on other grounds*, 131 S. Ct. 746 (2011).

This Circuit has specifically applied the rule to a variety of constitutional claims. *See, e.g., Brown v. Cal. Dep't of Transp.*, 321 F.3d 1217, 1225 (9th Cir. 2003) (First Amendment claims); *Zepeda v. Immigration & Naturalization Servs.*, 753 F.2d 719 (9th Cir. 1983) (Fourth Amendment claims); *Am. Trucking Ass'ns v. City of L.A.*, 559 F.3d 1046, 1059 (9th Cir. 2009) (Commerce Clause claims). And it is not alone: indeed, “[w]hen an alleged deprivation of a constitutional right is involved, such as the right to free speech or freedom of religion, most courts hold that no further showing of irreparable injury is necessary.” 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2948.1 (3d ed. 2013) (citations omitted); *see also* Anthony DiSarro, *A Farewell to Harms: Against Presuming Irreparable Injury in Constitutional Litigation*, 35 Harv. J.L. & Pub. Pol’y 743, 744 (2012) (“[M]ost federal circuit courts have held that irreparable injury should be presumed in constitutional cases.”).

Further, Establishment Clause claims per se meet the irreparable harm requirement for a finding on a motion for a preliminary injunction. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 304 (D.C. Cir. 2006) (“a party alleging a violation of the Establishment Clause per se satisfies the irreparable injury requirement of the preliminary injunction calculus”); *ACLU of Ill. v. City of St. Charles*, 794 F.2d 265, 275 (7th Cir. 1986) (“an erosion of religious liberties cannot be deterred by awarding damages to the victims of such erosion”). “[W]hen an Establishment Clause violation is alleged, infringement occurs the moment the government action takes place.” *Chaplaincy*, 454 F.3d at 303. Finally, in evaluating whether the plaintiff raising a claim under the Establishment Clause has shown irreparable harm, “the court is not confined to the particular harm on which the plaintiff’s standing to sue is based; it can consider the effect of the defendant’s conduct on the interests protected by the clause if the injunction is not granted.” *ACLU of Ill.*, 794 F.2d at 275.

If the Court were to conclude, for any reason, that the Establishment Clause claims do not per se satisfy the irreparable harm requirement for a preliminary injunction or irreparable injury should

not be presumed based upon the other constitutional claims, then irreparable harm is otherwise traditionally defined as harm for which there is no adequate legal remedy. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). “Because intangible injuries generally lack an adequate legal remedy, ‘intangible injuries [may] qualify as irreparable harm.’” *Id.* (citation omitted). Here, no award of damages can compensate Joseph Doe and James Doe for their continued separation from their families, or the Diocese for the frustration of its mission. *Cf. id.* (holding that limitation of professional opportunities was irreparable).

**B. The *Doe* Plaintiffs Will Suffer Irreparable Injury if Section 6 Takes Effect.**

Joseph and James long for their families every day, and as their separations drag on, each additional day causes irreparable harm—lost time that they cannot get back. They worry for their families’ safety abroad, and they devote their waking hours to earning money to support their families, hoping for a future reunion that EO-2 seeks to unconstitutionally deny them. Joseph’s and James’ injuries are serious, ongoing, and cannot be remedied by money damages.

The Diocese also suffers the intangible harm of having its work in support of refugee resettlement completely disrupted. Numerous families whom the Episcopal Diocese was supporting in resettlement were granted refugee status and approved for travel to the United States but had their trips canceled as a result of the Orders, wasting precious resources and frustrating the activities of the Diocese. Money damages cannot compensate the Diocese for this impairment of its mission.

### CONCLUSION

The harm inflicted by Section 6 cuts both broadly and deeply. The *Doe* Plaintiffs can attest to the depth of that harm as it affects them as individuals and an organizational plaintiff. Accordingly, the *Doe* Plaintiffs respectfully request that the Court affirm the district court's grant of a preliminary injunction and deny Defendants-Appellants' motion for a stay pending appeal.

RESPECTFULLY SUBMITTED this 26th day of April, 2017.

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) because it contains 2,358 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii). I relied on the word count of Microsoft Word 2016 in preparing this certificate.

2. This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because the brief—in both its text and its footnotes—has been prepared in 14-point Century Schoolbook font.

I declare under penalty of perjury that the foregoing is true and correct.

s/ Lynn Lincoln Sarko

Lynn Lincoln Sarko

**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 2017, I electronically filed the foregoing with the U.S. Court of Appeals for the Ninth Circuit by using the Court's CM/ECF system. I certify that all appellate counsel of record to the parties to this appeal are registered with the Court's CM/ECF system.

*s/ Lynn Lincoln Sarko* \_\_\_\_\_

Lynn Lincoln Sarko

# EXHIBIT 1



The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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

Plaintiffs,

v.

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

Defendants.

No. 2:17-cv-00178-JLR

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

FIRST AMENDED CLASS  
ACTION COMPLAINT

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## I. INTRODUCTION

1 Just as “the world is not made brand new every morning,” *McCreary Cnty., Ky. v.*  
2 *Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 866 (2005), “a person is not made brand new  
3 simply by taking the oath of office.” *Aziz v. Trump*, No. 117CV116LMBTCB, 2017 WL 580855,  
4 at \*8 (E.D. Va. Feb. 13, 2017). Impermissible animus cannot be cleansed with a few “mostly  
5 minor technical differences”:<sup>1</sup> a Muslim ban is a Muslim ban.

6  
7 2. One week after taking the oath of office as President of the United States,  
8 Defendant Trump carried out a promise he made repeatedly and explicitly on the campaign trail,  
9 launching “a total and complete shutdown of Muslims entering the United States” with his  
10 signature on Executive Order 13769 “Protecting the Nation from Foreign Terrorist Entry into the  
11 United States” (the “Original Executive Order” or “Original Order”). A senior advisor confirmed  
12 the next day that the Original Executive Order was, in fact, Defendant Trump’s attempt to  
13 institute his “Muslim ban.”<sup>2</sup>

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

19 4. Multiple courts—including this Court and the Ninth Circuit Court of Appeals—  
20 recognized the ban for the affront to our Constitution it was and promptly stayed it. While  
21 continuing to insist there was “nothing wrong” with the original Order, Defendants openly  
22 advertised that the Revised Order would have “mostly minor technical differences” from the  
23 Original Order and “fundamentally” would be “the same basic policy outcome for the country.”<sup>3</sup>

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24  
25 <sup>1</sup> See *infra*, n. 79.

26 <sup>2</sup> See *infra*, n. 28.

<sup>3</sup> See *infra*, n. 79.

1 Defendants then spent more than a month publicly struggling to figure out how to do exactly  
2 what they repeatedly said they wanted to do: ban Muslims.

3 5. In the meantime, Defendant Trump continued to stoke fear and sow  
4 misinformation, claiming “our country [is] in such peril... People pouring in. Bad!”<sup>4</sup>, “THE  
5 SECURITY OF OUR NATION IS AT STAKE!”<sup>5</sup> -and ““77% of refugees allowed into U.S.  
6 since travel reprieve hail from seven suspect countries.’ (WT) [sic] SO DANGEROUS!”<sup>6</sup>

7 6. Defendant Trump was supposed to issue the new order on March 1, 2017, the day  
8 after he addressed Congress.<sup>7</sup> But despite his public statements regarding the urgent national  
9 security need for the ban, Defendant Trump delayed signing a new order for five days more to  
10 maximize the favorable press coverage of his first address to Congress and to allow the executive  
11 order “to have its own ‘moment.’”<sup>8</sup>

12 7. On March 6, 2017, Defendant Trump signed Executive Order 13769, also titled  
13 “Protecting the Nation from Foreign Terrorist Entry into the United States” (“Revised Executive  
14 Order” or “Revised Order”). Despite the fact that Defendant Trump had originally claimed that  
15 “[i]f the ban were announced with a one week notice, the ‘bad’ would rush into our country  
16 during that week,”<sup>9</sup> the Revised Order was set to go into effect ten days after its signing, on  
17 March 16, 2017.  
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21 <sup>4</sup> See *infra* n. 72.

22 <sup>5</sup> See *infra* n. 74.

23 <sup>6</sup> See *infra* n. 75.

24 <sup>7</sup> See *infra* n. 34.

25 <sup>8</sup> Laura Jarrett, Ariane de Vogue & Jeremy Diamond, *Trump Delays New Travel Ban After Well-Reviewed Speech*,  
CNN (Mar. 1, 2017), available at <http://www.cnn.com/2017/02/28/politics/trump-travel-ban-visa-holders> (last  
26 accessed Mar. 13, 2017). and Marina Feng, *Pence Says Trump’s Revised Immigration and Travel Ban Coming ‘In a  
Few Days’*, Huffington Post (Mar. 1, 2017), available at [http://www.huffingtonpost.com/entry/trump-revised-immigration-ban\\_us\\_58b6cc57e4b0a8a9b787b1f0](http://www.huffingtonpost.com/entry/trump-revised-immigration-ban_us_58b6cc57e4b0a8a9b787b1f0) (last accessed Mar. 13, 2017).

<sup>9</sup> See *infra* n. 64.

1           8.       The Revised Order is every bit as much of a Muslim ban as the Original Order  
2 and every bit as unconstitutional. It reflects Defendant Trump’s explicit vow to “follow[ ]  
3 through on what I pledged to do”<sup>10</sup> and “keep my campaign promises.”<sup>11</sup> True to his promise,  
4 Defendants made a few cosmetic changes to address some of the most obvious facial legal  
5 deficiencies with the Original Order.

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

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

16           11.      Far from eliminating the need for judicial scrutiny, the combined Orders  
17 underscore the need for it. The secret revocation of tens of thousands of valid visas pursuant to  
18 the Original Order, the subsequent post hoc attempt to exempt green card holders—but not other  
19 valid visa holders—from the Original Order, the implication by Defendant Trump that he would  
20 not abide by court orders staying the Original Order, and the eventual issuance of a Revised  
21 Order with an arcane waiver scheme dependent solely upon the discretion of individual consular  
22 officers has created an unstable, unpredictable, and uncertain situation for all Plaintiffs.

23           12.      Plaintiffs are Washington residents from the Designated Countries with expired  
24 (e.g. expired and used multiple entry or used single entry) non-immigrant visas who are trapped  
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26 <sup>10</sup> *See infra*, n. 31.

<sup>11</sup> *See infra*, n. 31.

1 inside the United States—unable to visit their families in their home countries or carry out  
2 education-related travel for fear they will be unable to return to their lives here (“the Non-  
3 Immigrant Visa Class”). Unlike similarly situated people from the non-Designated Countries,  
4 once members of the Non-Immigrant Visa class leave the country, they know they will be  
5 singled out: the default for them is denial of a new visa unless they are fortunate enough to  
6 procure a waiver from the general ban.

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

15 14. Also harmed by the Revised Order is Plaintiff the Episcopal Diocese of Olympia  
16 (the “Episcopal Diocese” or “Diocese”), a religious entity organized in the State of Washington  
17 to do charitable works, including to support the resettlement of refugees in Washington. The  
18 Diocese has had its refugee resettlement activities completely upended as a result of the Original  
19 and Revised Executive Orders which barred the arrival of persons granted refugee status by an  
20 administrative judge. As of the filing of the Amended Complaint, nearly 20 families from the  
21 Designated Countries and nearly 17 families from other countries whom the Episcopal Diocese  
22 was supporting in resettlement were granted refugee status and approved for travel to the United  
23 States but had their trips canceled as a result of the Orders, wasting precious resources and  
24 frustrating the activities of the Diocese.

25 15. The Council on American-Islamic Relations-Washington (“CAIR-WA”) is  
26 harmed by the Revised Order. CAIR-WA is a non-profit organization based in Seattle that works

1 to promote an understanding of Islam through dialogue, education, protection of civil liberties,  
2 and coalition-building. As a result of the Orders, CAIR-WA has received numerous inquiries  
3 from its constituent about American-Muslim travelers who have become the target of  
4 unconstitutional ideological questioning by Transportation Security Administration and Customs  
5 and Border Protection agents about their personal beliefs. CAIR-WA has had to devote  
6 substantial, unplanned-for resources to respond.

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

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

## 17 II. JURISDICTION AND VENUE

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

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

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



21. 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.

### III. PARTIES

#### A. Plaintiffs

##### 1. Plaintiff John Doe

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

23. John Doe holds a multiple entry F1 student visa that will expire in August 2017. This is his second such visa that allows him to pursue full-time educational study in the United States. John Doe received both of his F1 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.

24. 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.

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

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

27. As part of his doctorate studies, it is anticipated and expected that John Doe will participate in international conferences, because such endeavors are essential to his training and his ability to be fully active in the scientific and research community. There are numerous upcoming academic conferences that John Doe was planning to attend such as the International Renewable Energy Storage Conference in Dusseldorf, Germany on March 14-16, 2017, the International Conference on Hybrid and Organic Photovoltaics in Lausanne, Switzerland in May 2017, and the Third International Conference on Perovskite Solar Cells and Optoelectronics in Oxford, England in September 2017. However, as the submission deadline for the conferences are often several months before the event, and given the multiple times Defendants changed their mind while implementing the Original Order, John Doe either decided not to submit proposals for several of the conferences to which he otherwise would have applied to make presentations or canceled his travel plans to attend as a result of Defendants' actions. In addition, given the uncertainty that remains with the Revised Order, he continues to fear that if he leaves the United States to attend an academic conference, he may be prevented from re-entering the United States. John Doe's inability to reenter the United States would prevent him from completing his doctorate.

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

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

## 2. Plaintiff Jane Doe

30. Plaintiff Jane Doe is an Iranian national who resides in Seattle, Washington. Ms. Doe holds a multiple entry F1 student visa and is lawfully in the United States, studying to complete a master's degree at the University of Washington.

31. Jane Doe received her F1 visa after an intensive vetting and screening process abroad that included an in-person interview at the Vancouver consulate, and proof of her admission status at the University of Washington as a full-time student. Jane Doe first came to the United States in September 2016 to pursue her graduate studies. Jane Doe's dream in pursuing her graduate degree was to work in international public policy, including to perhaps work one day for the United Nations.

32. As part of her academic and professional training, Jane Doe was pursuing summer internships outside of the United States when the Original Executive Order issued. However, because of the Original Executive Order, Jane Doe's plans changed dramatically. As a direct result of the Original Executive Order, Jane Doe canceled all of her upcoming interviews for summer internships outside the United States for fear she would not be able to return. The Original Executive Order arrested Jane Doe's international plans for the summer and also disrupted her longer-term plans of international work. Without an international summer internship, Jane Doe's dreams of a career in international work may be permanently on hold.

33. In addition, Jane Doe fears that she will not be able to leave the United States to see her family—all of whom live overseas, including her elderly grandparents—and that they will not be able to come to the United States to visit her either for the duration of her studies.

34. Further, although Jane Doe receives some funding from UW and works as a teaching assistant, she still relies on financial support from her parents in Iran. Sanctions

1 imposed by the United States on Iran make money transfers from her parents to her extremely  
2 difficult, if not impossible, without in-person contact.

3 35. The Original Executive Order disrupted Jane Doe's work, study, and goals. It  
4 isolated her from her family, most of whom live in Iran, and forced her to cancel a visit she had  
5 planned with her brother (who lives in Paris, France) to celebrate the Persian New Year, Nowruz,  
6 in March. She now feels that the work and resources, including tuition, that she has put into her  
7 degree to date have been wasted. Jane Doe is strongly considering abandoning her graduate  
8 studies as a result of the Original Executive Order.

9 36. Given the multiple times Defendants changed their minds while implementing the  
10 Original Order and the uncertainty that remains with the Revised Order, Jane Doe continues to  
11 fear that she may be prevented from re-entering the United States if she leaves, which would  
12 prevent her from completing her graduate studies.

13 37. The Revised Executive Order thus also harms and will continue to harm Jane  
14 Doe's ability to pursue her studies.

15 38. Jane Doe is pursuing her claims anonymously because she is afraid of retaliation  
16 from the United States government or others for asserting her rights.

17 **3. Plaintiff Jack Doe**

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

19 40. Jack Doe is a post-doctorate researcher at the University of Washington in a joint  
20 appointment that includes Electrical Engineering. He is working under his F1 visa Optional  
21 Practical Training ("OPT") status, and subsequent extension for STEM students ("STEM OPT"),  
22 which together allow him, after completing his degree, to work for 3 years in academia. OPT is  
23 temporary employment that is directly related to an F-1 student's major area of study, and the  
24 STEM OPT extension allows certain F-1 students who receive science, technology, engineering,  
25 and mathematics (STEM) degrees, and who meet other specified requirements, to apply for a 24-  
26

1 month extension of their post-completion OPT. Application for both OPT and STEM OPT  
2 requires endorsement by the student's "designated school official" at the student's U.S. academic  
3 institution.

4 41. Jack Doe's OPT status will expire on May 31, 2017, and with it, his student visa.

5 42. Jack Doe has an undergraduate degree in Electrical Engineering from Sharif  
6 University in Tehran.

7 43. Jack Doe first came to the United States in 2006 with an F1 visa to work on a  
8 Ph.D at the University of Maryland. He obtained his first F1 student visa from the United States  
9 embassy in Cypress.

10 44. In 2008, Jack Doe returned briefly to Iran to visit his family. Most of his family  
11 lives in Iran. He also traveled to Dubai to obtain another F1 single entry student visa that allowed  
12 him to return to the United States to continue his educational training.

13 45. Since completing his Ph.D in 2014, Jack Doe has been operating under the OPT  
14 provision of his visa to do post-doc research at the University of Washington.

15 46. Although Jack Doe is in the United States and working legally, his status will  
16 change during the 90-day ban set out in Section 2(c) of the Revised Order. Jack Doe will lose his  
17 ability to work after May 31, 2017. Prior to the issuance of the Executive Orders, Jack Doe had  
18 been interviewing with employers. His future employment prospects are now in complete  
19 jeopardy because he is at a significant disadvantage compared to other foreign nationals who are  
20 not from one of the Designated Countries and who can therefore travel freely both for the  
21 duration of the 90-day ban and in the future.

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

24  
25 **4. Plaintiff Jason Doe**

26 48. Plaintiff Jason Doe is a resident of Seattle.

49. Jason Doe is an Iranian national. He first came to the United States in 2013 with his wife, who was enrolled in a doctorate program at the University of Washington. His wife held an F1 visa, and he held an F2 visa.

50. 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.

51. After he was admitted to the University of Washington, Jason Doe left the United States to obtain a multiple entry F1 visa. He obtained one in 2014 and returned to the University of Washington to work on his Ph.D. Jason Doe's visa expired in August 2016, but he is in the United States lawfully because his F1 status is valid until 2019 pursuant to his Form I-20. His F1 status may also be extended if it takes him longer to finish his degree.

52. Jason Doe's wife currently holds an F2 visa and associated I-20. Her F2 status will also expire in 2019.

53. The majority of his and his wife's families are in Iran.

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

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

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

**5. Plaintiff Julia Doe**

57. Plaintiff Julia Doe is an Iranian national who resides in Seattle, Washington. Julia Doe is a second-year Ph.D candidate at the University of Washington. Julia Doe has three or four years left of her studies before she completes her degree.

58. Julia Doe holds a single entry F1 student visa. Julia Doe received her F1 visa after engaging in an extensive vetting and screening process abroad that included an in-person interview and proof of her admission to the University of Washington as a full-time doctoral student.

59. Julia Doe first arrived in the United States in September 2015. Before that she received a Bachelor's degree from a university in Iran. Ms. Doe has done research and internships at prestigious academic and corporate institutions in Europe.

60. Julia Doe's immediate and extended family, including grandparents, all live in Iran. Julia Doe has not seen her family in two years. She had planned on returning to Iran for a visit later this year after she finished her qualifications for her Master's degree. The visit is important to her because she is very close to her family, her grandmother is ailing, and close family members have had children.

61. As part of her academic work, Julia Doe anticipated and expected that she will participate in international conferences. Julia Doe already has identified four international conferences that are all taking place outside of the United States that she would like to attend but cannot because of the travel ban and the uncertainty regarding her ability to return to the United States. One of these conference is in Vancouver, Canada, later this year. All of her colleagues are planning to drive to the conference. However, she cannot attend. The limitations on her ability to participate in international conferences negatively impact her academic growth and her professional development.



62. Given the multiple times Defendants changed their minds while implementing the Original Order and the uncertainty that remains with the Revised Order, Julia Doe continues to fear that she may be prevented from re-entering the United States if she leaves, which would prevent her from completing her graduate studies.

63. The Revised Executive Order thus also harms and will continue to harm Julia Doe's ability to pursue her studies.

64. Julia Doe is pursuing his claims anonymously because she is afraid of retaliation from the United States government or others for asserting her rights.

## **6. Plaintiff Joseph Doe**

65. Plaintiff Joseph Doe is a Somalian national who currently resides in Des Moines, Washington.

66. Joseph Doe is married with three children.

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

68. 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.



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

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

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

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

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

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

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

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

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

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

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

## **7. Plaintiff James Doe**

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

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

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

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

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

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

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

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

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

89. In late September 2016, James Doe’s I-730 petition for his wife and children was approved. At that time, James Doe learned that his family would come to the United States

1 within the next 4-5 months. His family had been interviewed at the US Embassy in Addis Ababa  
2 and had passed their security clearance. They also went through the required medical  
3 examinations and immunizations.

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

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

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

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

16 94. 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 **8. Plaintiff The Episcopal Diocese of Olympia**

19  
20 95. The Episcopal Diocese of Olympia, also known as the Episcopal Church in  
21 Western Washington, is a diocese of The Episcopal Church located in western Washington. It is  
22 headquartered in Seattle's Capitol Hill neighborhood.

23 96. The Episcopal Diocese is a local affiliate of the Episcopal Migration Ministries, a  
24 voluntary agency that welcomes refugees through a Cooperative Agreement with the Department  
25 of State. The Episcopal Diocese has operated a refugee resettlement program since 1978 and has  
26 sponsored more than 15,000 refugees of all religions and nationalities to resettle in the Seattle

1 area. The Episcopal Diocese's Refugee Resettlement Office ("RRO") is located in South Seattle  
2 and receives and assists refugees from all over the world, including from each of the 7 countries  
3 targeted by the Original Executive Order, without regard to race, religion, or country of origin.  
4 The RRO is one of eleven ministries offered and provided for by the Episcopal Diocese. The  
5 Episcopal Diocese's refugee resettlement program stems from the moral obligation of the  
6 Episcopal faith to welcome and assist strangers, especially those who are poor, sick, and most in  
7 need of help.

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

15 98. Before a refugee arrives in the United States, the RRO is notified by the  
16 Department of State that a family has been approved for refugee status and that the RRO should  
17 "assure" the case. The RRO is required to make contact with friends or relatives of the arriving  
18 refugees living in the U.S. (known as the "U.S. ties") who were listed on the refugee's  
19 application. The RRO expends significant time making phone calls, sending mail, and making  
20 in-person visits to meet with the U.S. tie to evaluate his or her capacity to help the RRO during  
21 the resettlement process. The evaluation process includes a home visit to view and evaluate the  
22 living space. If there is no possibility that the arriving refugee can live with a U.S. tie, the RRO  
23 further interviews the U.S. tie to determine if the relative or friend can assist with transportation,  
24 job search, enrollment of kids in school, or any of the other daily tasks with which newly  
25 arriving refugees need assistance.  
26

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

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

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

25           102. Since the Original Executive Order, the RRO's work has been completely  
26 disrupted. The chaos surrounding the implementation of the Original and Revised Executive

1 Orders has also required the RRO to expend additional, unplanned-for resources. RRO staff are  
2 working around-the-clock to address the immediate needs of these families in crisis and to  
3 respond to questions and concerns from their families and loved ones already in the United  
4 States who had been planning for the arrival of these already-approved refugees. In addition,  
5 many of the RRO's resources devoted to these refugee families over the past months have now  
6 been wasted.

7 103. The Revised Executive Order only exacerbates the harm to the Diocese and the  
8 population it serves. A few of the refugees the Diocese was expecting have arrived between the  
9 time the Original Order was halted by court orders and the effective date of the Revised Order.  
10 However as of the filing of this Amended Complaint, nearly 20 families from the Designated  
11 Countries and nearly 17 families from other countries the Diocese was expecting have not  
12 arrived and certainly will not be able to complete their trips once the Revised Order goes into  
13 effect.

14 104. Both the Original and Revised Executive Orders have caused and continue to  
15 cause significant additional harm to the most vulnerable population that the RRO and Episcopal  
16 Diocese are focused on serving. These refugees are fleeing persecution in their country of origin,  
17 and are now facing persecution in the safe haven they had been promised in the United States.  
18 The dramatic reduction in the overall number of refugees allowed this year will not only rob  
19 families of hope and a future but may also cost some of them their lives. The mission and  
20 efficacy of the RRO, and through it the Episcopal Diocese, has been thwarted by the Original  
21 Executive Order.

## 22 9. Plaintiff The Council on American-Islamic Relations-Washington

23 105. The Council on American-Islamic Relations-Washington (CAIR-WA) is a  
24 grassroots civil rights and advocacy group. CAIR-WA is a 501 (c) (3) non-profit organization  
25 that was incorporated in 2004 and operates from its offices in downtown Seattle.  
26



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

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

14           108. Since January 27, 2017, CAIR-WA has also been flooded with inquiries from  
15 affected persons about the impact of the Executive Orders on their ability or the ability of their  
16 families to travel, cross borders, or with respect to visa or immigration status. CAIR-WA has  
17 received over 70 such requests for help from US citizens and others since January 27, 2017.

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

21           110. CAIR-WA has provided referrals and advice to many United States citizens  
22 originally from the Affected Countries who are trying to reunite with their immediate families.  
23 For example, a Somali national has contacted CAIR-WA regarding his petition to be reunited  
24 with his wife and two children who remain in Djibouti. On January 23, 2017, the US Embassy  
25 in Djibouti scheduled screening interviews for his family. The Embassy canceled these  
26 interviews on January 29, 2017. Despite the injunction preventing the implementation of the



Original Order, the US Embassy has refused to reschedule the interviews, and his family is now subject to the restrictions and delays of the Revised Order.

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

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

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

114. CAIR-WA has had to hire a part-time civil rights team member to handle the extra work. This additional part-time position was not in CAIR's 2017 budget, but was deemed a necessary expenditure as part of CAIR-WA's commitment to providing a rapid response to the number of questions and reports of disruption in travel experienced by CAIR-WA constituents.

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

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

**B. Defendants**

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

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

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

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

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

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

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

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

#### IV. FACTUAL BACKGROUND

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

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

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

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

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

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<sup>12</sup> *Fact Sheet: Protecting The Nation from Foreign Terrorist Entry to The United States*, Dep't of Homeland Security (Jan. 29, 2017), available at <https://www.dhs.gov/news/2017/01/29/protecting-nation-foreign-terrorist-entry-united-states> (last accessed Mar. 13, 2017).

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

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

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

12           132. The Original Executive Order stated that “the United States should not admit  
13 those who engage in acts of bigotry or hatred (including . . . the persecution of those who  
14 practice religions different from their own)” and yet it singled out practitioners of a single  
15 religion for exclusion. *See* Exhibit A, Sec. 1.

16  
17           **1. Visa Revocations Pursuant to the Original Executive Order**

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

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

1           135. Neither notice nor opportunity to be heard was provided to the Episcopal Diocese,  
2 members of the Non-Immigrant Visa Class, Plaintiffs, or indeed anyone else prior to the mass  
3 revocation of these visas.

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

8           137. The Provisional Revocation Letter also appeared to expand the scope of the  
9 Original Executive Order's application: it applied on its face to persons who were present inside  
10 the United States as well as persons outside the United States, rather than being limited to  
11 persons seeking to enter the United States. Under section 221(a)(1)(B) of the INA, 8 U.S.C. §  
12 1227(a)(i)(B), "[a]ny alien . . . whose nonimmigrant visa . . . has been revoked under section  
13 1201(i) of this title" INA § 221(i), referenced in the Provisional Revocation Letter "is  
14 deportable."

15           138. The State Department estimated that it revoked up to 60,000 visas.<sup>13</sup>

16           139. The CBP stated on its website that all F1, J1, and M1 visas belonging to persons  
17 from the affected countries were provisionally revoked.<sup>14</sup>

18           140. Upon information and belief, all H1B visas belonging to persons from the  
19 affected countries were also provisionally revoked.  
20  
21  
22  
23

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24 <sup>13</sup> Mary Emily O'Hara, *Over 100,000 Visas Have Been Revoked by Immigration Ban, Justice Dept. Reveals*, NBC  
25 (Feb. 3, 1027), available at <http://www.nbcnews.com/news/us-news/over-100-000-visas-have-been-revoked-immigration-ban-justice-n716121> (last accessed Mar. 13, 2017).

26 <sup>14</sup> *Q&A for Original Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States*,  
U.S. Customs and Border Protection (Feb. 2, 2017), available at <https://www.cbp.gov/document/faqs/questions-and-answers-protecting-nation-foreign-terrorist-entry-united-states> (last accessed Mar. 13, 2017).

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

141. The disastrous effects of the Original Executive Order were immediately apparent. Countless news reports document the chaotic scene at airports across the country as those who were legally entitled to entry when they boarded airplanes heading to the United States—refugees, immigrants, and those traveling on non-immigrant visas alike—were designated deportable by the time they landed. For example, 109 travelers from the Original Targeted Countries on non-immigrant visas were in transit to the country at the time the Original Executive Order was signed.<sup>15</sup> Up to 13 people were detained at the Seattle-Tacoma International Airport on January 28, 2017 pursuant to the Original Executive Order.<sup>16</sup>

142. Application of the Original Executive Order was inconsistent and confusing, with contradictory official statements issued within days of one another—further heightening Plaintiffs’ reasonable and on-going fear that if they left the country, they would not be permitted to return to their work and studies.

143. For example, DHS’s position on the application of the Original Executive Order to lawful permanent residents, or green card holders, changed three times over the course of six days following the issuance of the Original Executive Order:

- On January 28, 2017, a spokesperson for DHS stated that lawful permanent residents, or green card holders, would be barred from entry pursuant to the Original Executive Order.
- Secretary Kelly reversed course the next day on January 29th, issuing a statement that: “In applying the provisions of the president’s Original Executive Order, I hereby deem the entry of lawful permanent residents to be in the national interest. Accordingly, absent the receipt of significant derogatory information indicating a

<sup>15</sup> Jeremy Diamond & Steve Almasy, *Trump’s immigration ban sends shockwaves*, CNN (Jan. 30, 2017), available at <http://www.cnn.com/2017/01/28/politics/donald-trump-executive-order-immigration-reaction/> (last accessed Mar. 13, 2017).

<sup>16</sup> Liz Jones & Isolde Raftery, *Roller coaster of heartbreak and fury at Sea-Tac in wake of Trump order*, KUOW.org (Jan. 28, 2017), available at <http://kuow.org/post/roller-coaster-heartbreak-and-fury-sea-tac-wake-trump-order> (last accessed Mar. 13, 2017).

serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations.”

- Two days later on January 31, 2017, U.S. Customs and Border Protection, a DHS sub-agency, issued a statement that, while repeating Secretary Kelly’s January 29th statement, then stated in the “Questions and Answers” Section that the entry of lawful permanent residents would depend on receipt of a “national interest waiver[] consistent with the provisions of the Original Executive Order.”
- DHS changed its position yet again two days later. This time, the February 2, 2017 version of the “Questions and Answers” stated that “[u]nder recent guidance from the White House...the Original Executive Order issued January 27, 2017, does not apply to their [lawful permanent residents] entry to the United States.” As of February 2, 2017, DHS had processed 1,610 waivers for legal permanent residents to re-enter the United States.

144. In addition, on the day Defendant Trump issued the Original Order, Deputy Assistant Secretary for Visa Services at the U.S. Department of State, Edward J. Ramotowski, issued a letter that <sup>17</sup> “provisionally revoke[d] all valid nonimmigrant and immigrant visas of nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen.” But then on February 1, 2017, White House Counsel Donald F. McGahn II—who is not in the chain of command for any of the Executive Departments—issued “Authoritative Guidance,” admitting there was “reasonable uncertainty” surrounding provisions of the Original Order such that he needed to clarify that sections 3(c) and 3(e) of the Executive Order did not apply to lawful permanent residents.<sup>18</sup>

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

<sup>17</sup> Letter from Edward J. Ramotowski, Deputy Assistant Secretary for Visa Services at the U.S. Dep’t of State (Jan. 27, 2017), available at <http://www.politico.com/f/?id=00000159-f6bd-d173-a959-ffff671a0001> (last accessed Mar. 14, 2017).

<sup>18</sup> Emergency Motion Under Circuit Rule 27-3 for Administrative Stay & Motion for Stay Pending Appeal at 72, *Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 4, 2017), ECF No. 14.



1           146. For example, although Section 5(a) of the Original Executive Order  
2 unequivocally stated that “[t]he Secretary of State shall suspend the U.S. Refugee Admissions  
3 Program (USRAP) for 120 days,” four business days later on February 2, 2017, and in a reversal  
4 of the clear mandate in the Original Executive Order, the Acting Director of the U.S.  
5 Immigration and Citizenship Services (“USCIS”), a division of DHS, issued a guidance to all  
6 USCIS employees that “USCIS will adjudicate Refugee/Asylee Relative Petitions [ ] for all  
7 beneficiaries, from any country of nationality, currently in the United States...”. A copy of this  
8 guidance is attached as Exhibit C.

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

13           148. The February 2, 2017 guidance to USCIS employees also stated that “USCIS will  
14 *continue* refugee interviews when the person is a religious minority in his or her country of  
15 nationality facing religious persecution.” Exhibit C (emphasis added).

16           149. As summed up by the Ten National Security Experts:

17  
18           the repeated need for the Administration to clarify confusion after the Order  
19 issued suggest that that Order received little, if any advance scrutiny by the  
20 Departments of State, Justice, Homeland Security or the Intelligence Community.  
21 Nor have we seen any evidence that the Order resulted from experienced  
intelligence and security professionals recommending changes in response to  
identified threats.”

22 Joint Declaration at ¶7.  
23  
24  
25  
26



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

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

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

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

153. The Original Executive Order was Defendant Trump’s fulfillment of a clearly stated campaign promise to ban Muslims from entering the United States. In a December 7, 2015 written statement, “Donald J. Trump Statement on Preventing Muslim Immigration,” then-candidate Trump said that he was “calling for a total and complete shutdown of Muslims entering the United States.” This statement is still displayed on the official Trump-Pence website as of the filing of this Complaint.<sup>19</sup>

154. When questioned about the “shutdown,” and asked whether a customs agent would ask a person his or her religion, then candidate Trump responded, “They would say, ‘Are you Muslim?’” The interviewer then asked, “And if they said, ‘yes,’ they would not be allowed in the country?” “That’s correct,” Mr. Trump responded.<sup>20</sup>

155. Defendant Trump repeatedly referred to a ban on Muslim immigration on the campaign trail.<sup>21</sup>

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<sup>19</sup> Press Release, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015), available at <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> (last accessed Mar. 13, 2017).

<sup>20</sup> Nick Gass, *Trump Not Bothered by Comparisons to Hitler*, Politico (Dec. 8, 2015), available at <http://www.politico.com/trump-muslims-shutdown-hitler-comparison> (last accessed Mar. 13, 2017).

<sup>21</sup> Donald J. Trump (@realDonaldTrump), Twitter (Dec. 7, 2015, 2:32 PM), <https://twitter.com/realDonaldTrump/status/673993417429524480> (last accessed Mar. 13, 2017);

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

6  
7           Stahl: [I]n December, you [i.e., Pence] tweeted, and I quote you, “Calls to ban  
8 Muslims from entering the U.S. are offensive and unconstitutional.”

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

11 ...

12           Stahl: [S]o you’re changing... your position.

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

14           Stahl: So not Muslims?

15           Trump: You know—the Constitution—there’s nothing like it. But it doesn’t  
16 necessarily give us the right to commit suicide, as a country, OK? And I’ll tell  
17 you this. Call it whatever you want, change territories [sic], but there are  
territories and terror states and terror nations that we’re not gonna allow the  
people to come into our country.<sup>22</sup>

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

21  
22           I don’t think so. I actually don’t think it’s a rollback. In fact, you could say it’s an  
23 expansion. I’m looking now at territory. People were so upset when I used the

24  
25 and Jenna Johnson, *Trump calls for ‘total and complete shutdown of Muslims entering the United States’*, The  
Washington Post (Dec. 7, 2015), available at <http://wpo.st/OOuY2> (last accessed Mar. 13, 2017).

26 <sup>22</sup> Lesley Stahl, *The Republican Ticket: Trump and Pence*, CBS (Jul. 17, 2016), available at  
<http://www.cbsnews.com/news/60-minutes-trump-pence-republican-ticket/> (last accessed Mar. 13, 2017).

word Muslim. Oh, you can't use the word 'Muslim.' Remember this. And I'm okay with that, because I'm talking territory instead of Muslim.<sup>23</sup>

158. After the election, on December 22, 2016, a reporter asked Defendant Trump whether his "plans to create a Muslim register or ban Muslim immigration to the United States" had changed. Defendant Trump responded "you've known my plans all along" and that he was "100% correct" in his position.<sup>24</sup>

159. After reading the title of the Original Order when signing it, Defendant Trump said, "We all know what that means."<sup>25</sup>

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

They've been horribly treated. Do you know if you were a Christian in Syria it was impossible, at least very tough to get into the United States? If you were a Muslim you could come in, but if you were a Christian, it was almost impossible and the reason that was so unfair, everybody was persecuted in all fairness, but they were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair.<sup>26</sup>

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

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<sup>23</sup> Rebecca Shabad, *Donald Trump says he's expanding his Muslim ban*, CBS (July 24, 2016), available at <http://www.cbsnews.com/news/donald-trump-says-hes-expanding-muslim-ban/> (last accessed Mar. 13, 2017).

<sup>24</sup> Katie Reilly, *Donald Trump on Proposed Muslim Ban: 'You Know My Plans'*, Time (Dec. 21, 2016), available at <http://time.com/4611229/donald-trump-berlin-attack> (last accessed Mar. 13, 2017).

<sup>25</sup> *Transcript of Ceremonial Swearing in of the Secretary of Defense*, CNN (Jan. 27, 2017), available at <http://transcripts.cnn.com/TRANSCRIPTS/1701/27/cg.02.html> (last accessed Mar. 13, 2017).

<sup>26</sup> David Brody, *Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority As Refugees*, CBN News (Jan. 27, 2017), available at <http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees> (last accessed Mar. 13, 2017).

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

162. During a signing ceremony for the Original Executive Order on January 27, 2017, Defendant Trump stated that the purpose of the Original Executive Order was to “establish[] new vetting measures to keep radical Islamic terrorists out of the United States of America.”<sup>27</sup>

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

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 the Original Executive Order was crafted to create a pretextual cover for a Muslim ban. Mr. Giuliani stated: “I’ll tell you the whole history of it. . . . So, when [Defendant Trump] first announced it, he said, ‘Muslim ban.’ He called me up. He said, ‘Put a commission together. Show me the right way to do it legally.’”<sup>28</sup>

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

<sup>27</sup> Dan Merica, *Trump signs Original Executive Order to keep out ‘radical Islamic terrorists’*, CNN (Jan. 30, 2017), available at <http://www.cnn.com/2017/01/27/politics/trump-plans-to-sign-executive-action-on-refugees-extreme-vetting/> (last accessed Mar. 13, 2017).

<sup>28</sup> Amy B. Wang, *Trump asked for a ‘Muslim ban,’ Giuliani says — and ordered a commission to do it ‘legally’*, The Washington Post (Jan. 29, 2017), available at <http://wpo.st/xzuY2> (last accessed Mar. 13, 2017).

<sup>29</sup> Neil Munro, *Left Protests While Trump Junks Obama’s Global Immigration Plan*, Brietbart.com (Jan. 30, 2017), available at <http://www.breitbart.com/big-government/2017/01/30/trump-changes-immigration-favor-american-values/> (parenthetical in original) (last accessed Mar. 13, 2017).

166. While Defendant Trump has subsequently tried to deny that his Original Executive Order was “a Muslim ban, as the media [was] falsely reporting.”<sup>30</sup> His own prior conflicting, recorded statements as well as those of his senior advisors make clear the rationale for the Original Executive Order is in fact to ban Muslims from entering the United States[.]

167. The Original Executive Order and the manner in which it was implemented caused individual Plaintiffs and members of the proposed classes direct, ongoing, and immediate harm by causing them to suffer “[t]he indignity of being singled out [by a government] for special burdens” on the basis of religion or assumed religion. *Hassan v. City of New York*, 804 F.3d 277, 289 (3d. Cir. 2015), *as amended* (Feb. 2, 2016) (quoting *Locke v. Davey*, 540 U.S. 712, 731, (2004) (Scalia, J., dissenting)).

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

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

- “Some of the things I’m doing probably aren’t popular but they’re necessary for security and for other reasons...I’m here following through on what I pledged to do.”
- “We have taken decisive action to keep radical Islamic terrorists out of our country. No parts are necessary and constitutional actions were blocked by judges, in my opinion, incorrect, and unsafe ruling. [sic]...I got elected on defense of our country. I keep my campaign promises, and our citizens will be very happy when they see the result. They already are, I can tell you that. Extreme vetting will be put in place and it already is in place in many places.”<sup>31</sup>

<sup>30</sup> Press Release, *President Donald J. Trump Statement Regarding Recent Original Executive Order Concerning Extreme Vetting*, The White House (Jan. 29, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/01/29/president-donald-j-trump-statement-regarding-recent-executive-order> (last accessed Mar. 13, 2017).

<sup>31</sup> *Full Transcript: President Donald Trump’s News Conference*, CNN (Feb. 16, 2017), available at <http://www.cnn.com/2017/02/16/politics/donald-trump-news-conference-transcript/> (last accessed Mar. 13, 2017).

169. Defendant Trump also announced during the February 16<sup>th</sup> 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.”<sup>32</sup> Defendant Trump did not issue a new order that following week.

170. On February 21, 2017, Stephen Miller, Senior Advisor to the President, described the administration’s plans with regard to the Revised Order: “Fundamentally, you’re still going to have the same basic policy outcome for the country, but you’re going to be responsive to a lot of very technical issues that were brought up by the court and those will be addressed. But in terms of protecting the country, those basic policies are still going to be in effect.”<sup>33</sup>

171. 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<sup>th</sup>,<sup>34</sup> the signing of the new order was delayed yet again.

172. On February 28<sup>th</sup>, 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.”<sup>35</sup>

173. On March 1, 2017, another senior Administration official told a different news outlet that Defendant Trump delayed plans to sign a reworked travel ban in the wake of positive reaction to his first address to Congress, explaining that “We want the (executive order) to have its own ‘moment.’”<sup>36</sup>

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<sup>32</sup> See *supra*, n. 31.

<sup>33</sup> See *infra*, n. 79.

<sup>34</sup> Justin Fishel, *New Trump Order on Travel and Immigration Expected Wednesday*, ABC News (Feb. 2, 2017), available at <http://abcnews.go.com/Politics/trump-order-travel-immigration-expected-wednesday/story?id=45814211> (last accessed on Mar. 13, 2017).

<sup>35</sup> Shane Goldmacher & Nahal Toosi, *Trump Delays Signing New Travel Ban Order, Officials Say*, Politico (Feb. 28, 2017), available at <http://www.politico.com/story/2017/02/trump-delays-travel-ban-order-235548> (last accessed Mar. 13, 2017).

<sup>36</sup> See *supra*, n. 34.

1           174. Five days later on March 6, 2017, Defendant Trump signed the Revised Executive  
2 Order that has the exact same title as the Original Order, “Protecting the Nation from Foreign  
3 Terrorist Entry into the United States.” A copy of this Revised Executive Order is attached to  
4 this Complaint as Exhibit D.

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

9           176. Indeed, Defendant Trump has openly promoted that the Revised Order was his  
10 continued fulfillment of his campaign promises. For example, on the day Defendant Trump  
11 signed the Revised Order, he sent a fundraising email requesting support for the Revised Order  
12 because he was “implement[ing] the policies you—and millions of American like you—voted  
13 for.”<sup>37</sup> And at a press conference the next day on March 7, 2017, White House Press Secretary  
14 Sean Spicer confirmed that with the issuance of the Revised Order, Defendant Trump was  
15 “deliver[ing]” on one of his “most significant campaign promises: protecting the country against  
16 radical Islamic terrorism...”<sup>38</sup>

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

19           178. Pursuant to Section 14 of the Revised Order, it will take effect on March 16,  
20 2017.

21  
22  
23 <sup>37</sup> Matt Zapotosky, David Nakamura, & Abigail Hauslohner, *Revised Executive Order Bans Travelers from Six*  
24 *Muslim-Majority Countries from Getting New Visas*, Washington Post (Mar. 6, 2017), available at  
25 [https://www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/3012a42a-0277-11e7-ad5b-d22680e18d10\\_story.html?utm\\_term=.c2b939d5bb80](https://www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/3012a42a-0277-11e7-ad5b-d22680e18d10_story.html?utm_term=.c2b939d5bb80) (last accessed Mar. 13, 2017).

26 <sup>38</sup> *Press Briefing by Secretary Sean Spicer, No. 18*, The White House (Mar. 7, 2017), available at  
<https://www.whitehouse.gov/the-press-office/2017/03/07/press-briefing-press-secretary-sean-spicer-372017-18>  
(last accessed Mar. 13, 2017).



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

5           180. Six of the seven countries targeted in the Original Order are still targeted by the  
6 Revised Order. Section 2(c) of the Revised Order suspends entry into the United States by the  
7 nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen for ninety days from the effective  
8 date of the Revised Order.

9           181. All six banned countries have overwhelmingly Muslim populations.

10           182. Pursuant to Section 2(e) of the Revised Order, at the end of the ninety-day ban,  
11 the Secretary of Homeland Security shall submit to the President a list of countries recommended  
12 for inclusion in a Presidential proclamation that would prohibit the entry of categories of foreign  
13 nationals of countries that have not provided the requested information until they do so or until  
14 the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or  
15 has adequately shared information through other means. The names of additional countries may  
16 also be submitted to the President.

17           183. Pursuant to Section 3(a) of the Revised Order, the Order shall apply only to  
18 foreign nationals of the designated countries who: (i) are outside the United States on the  
19 effective date of this order; (ii) did not have a valid visa at 5:00 p.m., eastern standard time on  
20 January 27, 2017; and (iii) do not have a valid visa on the effective date of the Revised Order.

21           184. Section 3 of the Revised Order provides for certain “exceptions” and potential  
22 “waivers” to the travel ban.

23           185. Section 3(b) states that the Revised Order will not apply to: (i) any lawful  
24 permanent resident of the United States; (ii) any foreign national who is admitted to or paroled  
25 into the United States on or after the effective date of this order; (iii) any foreign national who  
26 has a document other than a visa, valid on the effective date of this order or issued on any date



1 thereafter, that permits him or her to travel to the United States and seek entry or admission, such  
2 as an advance parole document; (iv) any dual national of a country designated under section 2 of  
3 this order when the individual is traveling on a passport issued by a non-designated country;  
4 (v) any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty  
5 Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or  
6 (vi) any foreign national who has been granted asylum; any refugee who has already been  
7 admitted to the United States; or any individual who has been granted withholding of removal,  
8 advance parole, or protection under the Convention Against Torture.

9 186. Section 3(c) allows a consular officer, or, as appropriate, the Commissioner, U.S.  
10 Customs and Border Protection (CBP), or the Commissioner's delegee, to decide on a case-by-  
11 case basis to authorize the issuance of a visa to, or to permit the entry of, a foreign national for  
12 whom entry is otherwise suspended if the foreign national has demonstrated to the officer's  
13 satisfaction that denying entry during the suspension period would cause undue hardship, and  
14 that his or her entry would not pose a threat to national security and would be in the national  
15 interest.

16 187. This waiver provision is of little solace in light of statements and actions taken by  
17 Defendants in support of a Muslim ban, such as Defendant Trump's prior statement that a person  
18 who admitted being a Muslim should be denied entry into the country. *See supra* ¶ 154.

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

21 189. Section 6(a) of the Revised Order suspends all decisions on applications for  
22 refugee status as well as travel of refugees into the United States for 120 days. The suspension  
23 required in Section 6 does not apply to refugee applicants who, before the effective date of the  
24 Revised Order, have been formally scheduled for transit by the Department of State.

25 190. Section 6(c) allows the Secretary of State and the Secretary of Homeland Security  
26 to jointly determine to admit individuals to the United States as refugees on a case-by-case basis,

1 in their discretion, but only so long as they determine that the entry of such individuals as  
2 refugees is in the national interest and does not pose a threat to the security or welfare of the  
3 United States, including in circumstances such as the following: the individual'  
4 s entry would enable the United States to conform its conduct to a preexisting international  
5 agreement or arrangement, or the denial of entry would cause undue hardship.

6 191. 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, the Revised Order  
8 will suspend all decisions on applications as well as travel for these family members.

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

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 C. The Arbitrariness of the Executive Orders

19 193. Despite repeated claims by Defendants regarding the immediate national security  
20 need for the Orders, Defendant Trump took thirty-one days after the time this Court issued the  
21 first injunction against the Original Order on February 3, 2017 to issue the Revised Order. At  
22 least five of those days were due purely to timing of press coverage desired by Defendant Trump  
23 and had nothing to do with national security.<sup>39</sup>

24  
25  
26  

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<sup>39</sup> See *supra*, n. 34.

## 1. Arbitrariness of the Travel Ban

194. Section 1 of the Original Executive Order, entitled “Purpose,” stated that at the time of the September 11, 2001 (“9/11”) terrorist attacks, “State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals” involved in those attacks. Further, DHS’s Fact Sheet on the Original Executive Order stated that “[t]he Original Executive Order protects the United States from countries compromised by terrorism . . . .”<sup>40</sup> The Revised Order continues to justify the actions of Defendants based on events from 2001. *See* Revised Order, Section (1)(h).

195. Yet, neither the Original nor the Revised Executive Order impose any restrictions on nationals of Egypt, Lebanon, Saudi Arabia, or the United Arab Emirates—the countries of which the 9/11 attackers were citizens. A March 9, 2017 Breitbart article stated that ISIS boasted that Saudi Arabia is the top provider of terrorists for its group, citing a high-ranking Iraqi intelligence officer as saying, “The Saudi presence in ISIS is very large. What we have left are mainly Iraqis and Saudis.”<sup>41</sup>

196. 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.”<sup>42</sup>

197. The Original Order failed to cite a scintilla of evidence supporting the need for the travel ban of nationals from the seven originally banned countries. Nor did or could Defendants provide any such support in any of their briefings in the numerous courts where the Original

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<sup>40</sup> *See supra*, n.12.

<sup>41</sup> Edwin Mora, Report: *More Citizens of Saudi Arabia Have Joined Islamic State Than Any Other Country*, Breitbart (Mar. 9, 2017), available at <http://www.breitbart.com/national-security/2017/03/09/report-key-u-s-ally-saudi-arabia-no-1-jihadist-supplier-for-islamic-state/> (last accessed Mar. 13, 2017).

<sup>42</sup> Kyle Blaine & Julia Horowitz, *How the Trump administration chose the 7 countries in the immigration Original Executive Order*, CNN (Jan. 30, 2017), available at <http://www.cnn.com/2017/01/29/politics/how-the-trump-administration-chose-the-7-countries/> (last accessed Mar. 13, 2017).

Order was challenged in the weeks following its signing or the time leading up to the issuance of the Revised Order. This is because Defendants simply do not have the facts to do so. And the best Defendants could do in the Revised Order was to cite to a June 2016 Department of State *Country Report on Terrorism 2015*. In relying on information for data from two years ago, Defendants ignore more recent data from not only respected research organizations sources but also the United States government's own national security experts.

198. According to a September 2016 report from the Cato Institute, “[i]ncluding those murdered in the terrorist attacks of September 11, 2001 (9/11), the chance of an American perishing in a terrorist attack on U.S. soil that was committed by a foreigner over the 41-year period studied here is 1 in 3.6 million per year.”<sup>43</sup> Similarly, *The Boston Globe* reported in 2016 that “a person living in the United States is more than over 100 times more likely to be killed by falling objects than by a jihadi terrorist.”<sup>44</sup> Indeed, it appears that in 2016, Americans were less likely to be killed by Muslim extremists (1 in six million) than for being Muslim (1 in one million).<sup>45</sup>

199. Ten former national security, foreign policy, and intelligence officials at the highest levels of the United States government, including John F. Kerry (former Secretary of State), Avril D. Haines (former Deputy National Security Advisor ), Lisa O. Monaco (former Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor), and Susan E. Rice (former National Security Advisor)—all of whom were serving in their official capacities and “were current on active intelligence regarding all credible

<sup>43</sup> Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, 798 CATO INSTITUTE POL’Y ANALYSIS 1 (Sept. 13, 2016), available at [https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798\\_1\\_1.pdf](https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798_1_1.pdf) (last accessed Mar. 13 2017).

<sup>44</sup> Graham Allison, *Fear death from tree limbs, not tourists*, BOSTON GLOBE (Feb. 1, 2016), available at <https://www.bostonglobe.com/opinion/editorials/2016/02/19/fear-death-from-tree-limbs-not-terrorists/2ZrHzpP54GBHwbv2AVD6aM/story.html> (last accessed Mar. 13, 2017).

<sup>45</sup> Charles Kurzman; *Muslim-American Terrorism: Muslim-American Involvement with Violent Extremism*, available at <http://kurzman.unc.edu/muslim-american-terrorism/> (last accessed Mar. 13, 2017).

1 terrorist threat streams directed against the U.S” up until January 20, 2017, just seven days prior  
2 to the issuance of the Original Executive Order (“Ten National Security Experts”)—filed a joint ,  
3 sworn declaration in *State of Washington, et al. v. Donald J. Trump et al.*, No. 17-35105 (9<sup>th</sup>  
4 Cir.) (Dkt. 28-2) (Feb. 6, 2017) (“Joint Declaration”), attached as Exhibit B, stating that they  
5 were “unaware of any specific threat that would justify the travel ban established by the Original  
6 Executive Order” and that “[t]here is no national security purpose for a total bar on entry for  
7 aliens from the seven named countries. *See* Exhibit F, Sec. 3-4.

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

15 201. Therefore, in their opinion, the Original Executive Order “c[ould] not be justified  
16 on national security or foreign policy grounds.” *Id.* They explained that:

18 [s]ince September 11, 2001, not a single terrorist attack in the United States has  
19 been perpetrated by aliens from the countries named in the Order. Very few  
20 attacks on U.S. soil since September 11, 2001 have been traced to foreign  
21 nationals at all. The overwhelming majority of attacks have been committed by  
22 U.S. citizens. The Administration has identified no information or basis for  
23 believing there is now a heightened or particularized future threat from the seven  
24 named countries. Nor is there any rational basis for exempting from the ban  
25 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.*

26 *Id.* at ¶ 4 (emphasis added).

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

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

204. 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.



1 *Id.* at ¶ 6.

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

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

8  
9       We know of no case where a President has invoked his statutory authority to  
10 suspend admission for such a broad class of people. Even after 9/11, the U.S.  
11 Government did not invoke the provisions of law cited by the Administration to  
12 broadly bar entrants based on nationality, national origin, or religious affiliation.  
13 In past cases, suspensions were limited to particular individuals or subclasses of  
14 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.

15 *Id.* at ¶ 8.

16       207. Nearly 1000 current State Department officials formally registered their dissent to  
17 the Original Order.<sup>46</sup> These career diplomats explained:

18  
19       A policy which closes our doors to over 200 million legitimate travelers in the  
20 hopes of preventing a small number of travelers who intend to harm Americans  
21 from using the visa system to enter the United States will not achieve its aim of  
22 making our country safer. Moreover, such a policy runs counter to core American  
23 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...

24  
25  
26 <sup>46</sup> Steve Herman & Nike Ching, *Sources: Nearly 1,000 at State Department Officially Dissent on Immigration Order*, VOA News (Jan. 31, 2017), available at <http://www.voanews.com/a/over-a-thousand-state-dept-personnel-officially-dissent-to-immigration-order/3700399.html> (last accessed Mar. 13, 2017).

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

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

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

A copy of this letter is attached to this Amended Complaint as Exhibit G.<sup>47</sup>

208. In the process of creating the Revised Order, the Office of Intelligence and Analysis within the Department of Homeland Security that is charged with equipping the Homeland Security Enterprise with timely intelligence and information,<sup>48</sup> developed a paper assessing the international terrorist threat to the United States and worldwide posed by citizens of the seven Original Targeted Countries. Although the paper did not assess the risk of domestic terrorism, included in the key findings were:

- citizens of the seven Original Targeted Countries were rarely implicated in US-based terrorism;
- "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity"; and

<sup>47</sup> Document available at <https://assets.documentcloud.org/documents/3438487/Dissent-Memo.pdf>.

<sup>48</sup> *Leadership and Organization*, Office of Intelligence and Analysis, Dep't of Homeland Security (last published Jan. 30, 2017), available at <https://www.dhs.gov/office-intelligence-and-analysis> (last accessed Mar. 13, 2017).



- Of the at least 82 primarily US-based individuals who died in the pursuit of or were convicted of any terrorism-related federal offense inspired by a foreign terrorist organization since the beginning of the Syrian conflict in March 2011, of the seven Original Targeted Countries, Iran, Sudan, and Yemen had 1 each, and there were no individuals from Syria.

*Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, Office of Intelligence and Analysis, Dep't of Homeland Security (2017), Exhibit H.<sup>49</sup>

209. 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”)<sup>50</sup> also negates the necessity of the Revised Order’s travel ban. A copy of this report is as it appeared in the MSNBC article attached as Exhibit I.

210. 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:

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.

211. The examples of terrorist activity cited in Section 1(h) of the Revised Order only underscore the points raised in all of these reports and statements by national security experts that the travel ban is unnecessary and will be ineffective. The first example cited relates to two

<sup>49</sup> *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, U.S., Dep't of Homeland Security (Feb. 2017), available at <https://assets.documentcloud.org/documents/3474730/DHS-intelligence-document-on-President-Donald.pdf> (last accessed Mar. 13, 2017).

<sup>50</sup> Rachel Maddow, *TRMS Exclusive: DHS Document Undermines Trump Case for Travel Ban*, MSNBC (Mar. 2, 2017), available at <http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban> (last accessed Mar. 13, 2017).

1 Iraqi nationals; yet, the Revised Order removed Iraq from the list of targeted countries. The  
2 second example was of a native of Somali who had been brought to the United States as a child  
3 but then committed the act in question after he had been naturalized as a United States citizen  
4 and when he was an adult.

5 212. On March 10, 2017, more than 130 foreign policy and national security experts  
6 wrote an open letter to President Trump (“Open Letter”) concluding that the Revised Order  
7 “suffers from the same core substantive defects as the previous version.” The experts raise the  
8 concern that the Revised Order will “weaken U.S. national security” because it “jeopardize[s]  
9 our relationships with allies and partners on whom we rely for vital counterterrorism cooperation  
10 and information sharing. To Muslims— including those victimized by or fighting against ISIS—  
11 it will send a message that reinforces the propaganda of ISIS and other extremist groups, that  
12 falsely claim the United States is at war with Islam.” The Open Letter is attached as Exhibit J.<sup>51</sup>

13 213. The experts explain in the Open Letter: “Following the 9/11 attacks, the United  
14 States developed a rigorous system of security vetting for travelers to our homeland, leveraging  
15 the full capabilities of the intelligence and law enforcement communities. Since then, the U.S.  
16 has added enhanced vetting procedures for travelers and has revised them continuously. Our  
17 government applies this process to travelers not once, but multiple times.”<sup>52</sup>

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

22 215. Rather than wasting the resources of our security agencies banning millions of  
23 individuals who are already being thoroughly analyzed through current procedures put in place  
24

25 <sup>51</sup> Document available at <https://assets.documentcloud.org/documents/3515708/LetterFormerOfficialsonMarch6EO-Pdf.pdf>.

26 <sup>52</sup> See *supra*, n. 51.

1 by national security experts, Defendants should be focusing on the small but very dangerous  
2 individuals for whom they have specific information that will lead to actually stopping attacks in  
3 this country.

## 4 5 **2. Arbitrariness of the Suspension of the Refugee Admissions Program**

6 216. In priming the country for the Revised Order, Defendant Trump relies upon  
7 arbitrary and irrational animus towards refugees with no factual basis. For example, in discussing  
8 refugees at a February 18, 2017 rally in Melbourne, Florida, he claimed: “We’ve allowed  
9 thousands and thousands of people into our country and there was no way to vet those people.  
10 There was no documentation. There was no nothing. So we’re going to keep our country safe.”<sup>53</sup>

11 217. However, according to the State Department’s January 20, 2017 Bureau of  
12 Population, Refugees, and Migration Fact Sheet:

14 All refugees undergo the most intensive security screening of any traveler to the  
15 United States. This screening includes multiple federal intelligence, security, and  
16 law enforcement agencies, including the National Counterterrorism Center, the  
17 FBI Terrorist Screening Center, and the Departments of Homeland Security,  
18 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.<sup>54</sup>

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

22  
23  
24 <sup>53</sup> Jacob Gardenswartz, *Transcript: President Donald Trump’s rally in Melbourne, Florida*, Vox (Feb. 18, 2017),  
25 available at <http://www.vox.com/2017/2/18/14659952/trump-transcript-rally-melbourne-florida> (last accessed  
Mar. 13, 2017).

26 <sup>54</sup> U.S. Dep’t of State Diplomacy in Action, *U.S. Refugee Admissions Program FAQ’s*, Bureau of Population,  
Refugees, and Migration (Jan. 20, 2017), available at  
<https://www.state.gov/j/prm/releases/factsheets/2017/266447.htm> (last accessed Mar. 13, 2017).

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

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

The United Nations High Commissioner for Refugees (UNHCR) identifies and refers many refugees to the U.S. Refugee Admissions Program (“USRAP”) for resettlement consideration. UNHCR also provides important information about the worldwide refugee situation.

The Department of State (State) coordinates and manages the USRAP. Resettlement Support Centers (RSCs) work with State to carry out administrative and processing functions, such as file preparation, data collection, and out-processing activities during the refugee admissions process.

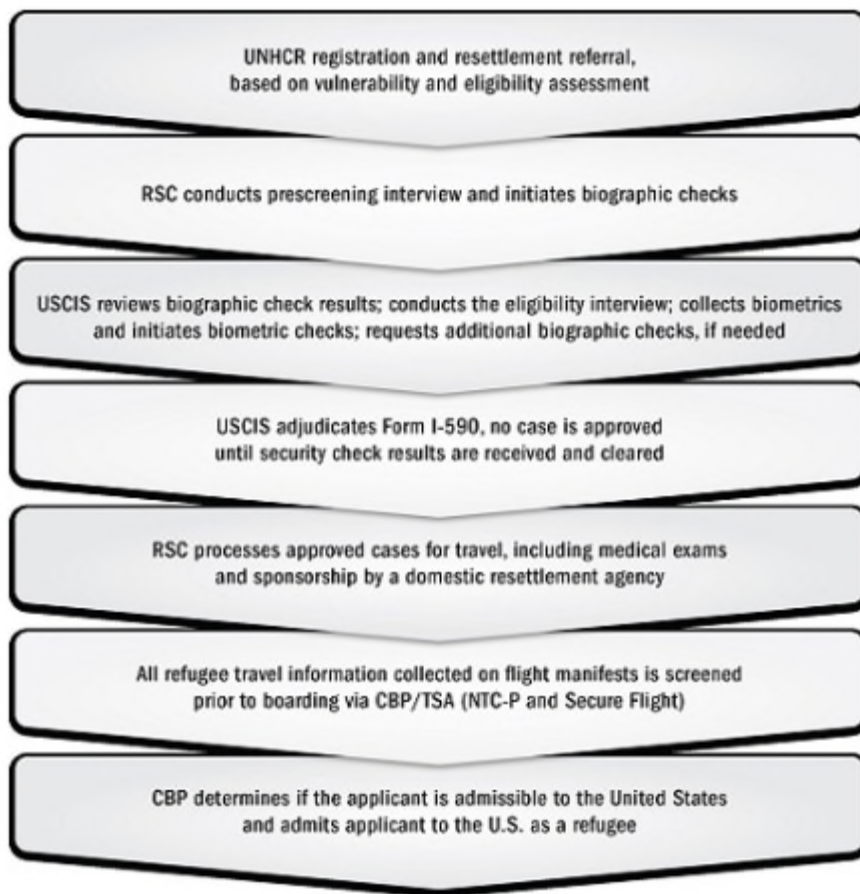
USCIS conducts interviews with applicants to determine their eligibility for refugee status, including whether they are credible, meet the refugee definition, and are otherwise admissible to the United States under U.S. law.<sup>55</sup>

220. The general refugee process encompasses the following:<sup>56</sup>

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<sup>55</sup>U.S. Citizenship and Immigration Services: *Refugee Processing and Security Screening*, U.S. Department of Homeland Security (last updated Dec. 3, 2015), available at <https://www.uscis.gov/refugeescreening> (last accessed on Mar. 2, 2017).

<sup>56</sup> *Refugee Processing and Security Screening*, U.S. Citizenship and Immigration Services (last reviewed/updated Dec. 3, 2015), available at <https://www.uscis.gov/refugeescreening> (last accessed Mar. 13, 2017).



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

### 19 USRAP Screening

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

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

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

State initiates CLASS name checks for all refugee applicants when they are  
 being prescreened by an RSC. Name checks are conducted on the applicant's

primary names as well as any variations used by the applicant. Responses are received before the USCIS interview, and possible matches are reviewed and adjudicated by USCIS headquarters. Evidence of the response is included in the case file. If a new name or variation is identified at the interview, USCIS requests another CLASS name check on the new name and places the case on hold until that response is received.

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

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

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

#### Security Advisory Opinion (SAO)

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

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

#### Interagency Check (IAC)



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

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

- **FBI Fingerprint Check through Next Generation Identification (NGI):** Recurring biometric record checks pertaining to criminal history and previous immigration data.
- **DHS Automated Biometric Identification System (IDENT - f/n/a US-VISIT):** A biometric record check related to travel and immigration history as well as immigration violations, and law enforcement and national security concerns. Enrollment in IDENT also allows U.S. Customs and Border Protection (CBP) to confirm the applicant's identity at U.S. ports of entry.
- **DOD Defense Forensics and Biometrics Agency (DFBA)'s Automated Biometric Identification System (ABIS):** A biometric record check of the Department of Defense's (DOD) records collected in areas of conflict (predominantly Iraq and Afghanistan). DOD screening began in 2007 for Iraqi applicants and has now been expanded to all nationalities. CBP's National Targeting Center-Passenger (NTC-P) conducts biographic vetting of all ABIS biometric matches against various classified and unclassified U.S. government databases.

### USCIS Interview

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.<sup>57</sup>

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<sup>57</sup> See *supra*, n. 56.



222. Defendant Trump has misrepresented that “there was no way to vet those people” in an attempt to justify his arbitrary and unjustified suspension of the refugee admissions program. However, USCIS Director León 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.”<sup>58</sup> He further detailed:

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

<sup>58</sup> *Written Testimony of USCIS Director Leon Rodriguez for a Senate Committee on Immigration and the National Interest Hearing: Oversight of the Administration’s FY 2017 Refugee Resettlement Program*, Dep’t of Homeland Security (Sep. 28, 2016) available at <https://www.dhs.gov/news/2016/09/28/written-testimony-uscis-director-senate-judiciary-subcommittee-immigration-and> (last accessed Mar. 13, 2017).

1 identify potential fraud, criminal or national security issues. All refugee status  
2 determinations made by interviewing officers undergo supervisory review before  
3 a final decision is made. Refugee Affairs Division policy requires officers to  
4 submit certain categories of sensitive cases – including certain national security-  
5 related cases – to Refugee Affairs Division Headquarters to obtain concurrence  
6 prior to the issuance of a decision. This allows for Headquarters staff to conduct  
7 additional research, liaise with law enforcement or intelligence agencies, or  
8 consult with an outside expert before finalizing the decision.<sup>59</sup>

9  
223. In addition, as recently as January 20, 2017, the U.S. Department of State issued a  
10 Fact Sheet that makes clear that the reality of the refugee screening process was, is, and  
11 continues to be the complete opposite of what Defendant Trump has claimed:

12 *No traveler to the United States is subject to more rigorous security screening*  
13 *than the refugees the U.S. Government considers for admission. Only after the*  
14 *U.S. Government's rigorous and lengthy security screening process has been*  
15 *completed and an applicant is not found to pose a threat does the U.S.*  
16 *Government grant that individual refugee admission to the U.S. Security*  
17 *screening of all refugees involves multiple U.S. agencies, including the*  
18 *Departments of State, Homeland Security (DHS), and Defense, the Federal*  
19 *Bureau of Investigation, The National Counterterrorism Center, the Terrorist*  
20 *Screening Center, and two federal intelligence agencies.*<sup>60</sup>

21 Emphasis added.

22  
224. Finally, the Open Letter from the foreign policy and national security experts  
23 affirms:

24 [r]efugees are vetted more intensively than any other category of traveler. They  
25 are screened by national intelligence agencies and INTERPOL, their fingerprints  
26 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,

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<sup>59</sup> See *supra*, n. 58.

<sup>60</sup> See *supra*, n. 54.

and any additional enhancements can be added without halting refugee resettlement or banning people from certain countries.<sup>61</sup>

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

226. Defendant Trump repeatedly demonized Syrian refugees,<sup>62</sup> and made clear his intention to ban them from the country:



227. In line with his rhetoric, the Original Order indefinitely suspended the admission of Syrian refugees because the “entry of nationals of Syria as refugees is detrimental to the interests of the United States.” Original Order Section 5(c).

<sup>61</sup> See *supra*, n. 51.

<sup>62</sup> Jesselyn Cook, *7 Lies Donald Trump Has Spread About Syrian Refugees Entering the U.S.*, Huffington Post (Oct. 20, 2016), available at [http://www.huffingtonpost.com/entry/donald-trump-refugee-crisis\\_us\\_5807809ae4b0180a36e7ac14](http://www.huffingtonpost.com/entry/donald-trump-refugee-crisis_us_5807809ae4b0180a36e7ac14) (last accessed Mar. 13, 2017), and Donald J. Trump @realDonaldTrump, Twitter (Apr. 7, 2016, 7:22 PM), <https://twitter.com/realDonaldTrump/status/718269255872081922>

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

#### **D. Court Orders and President Trump's Continuing Defiance Thereof**

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

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

231. Immediately after the first nationwide stay was granted, *see Darweesh v. Trump*, No. 17 CIV. 480 (AMD), 2017 WL 388504, at \*1 (E.D.N.Y. Jan. 28, 2017), Defendant DHS issued a statement that "President Trump's Original Executive Orders remain in place—prohibited travel will remain prohibited, and the U.S. government retains its right to revoke visas at any time if required for national security or public safety."<sup>63</sup> And Defendant Trump claimed,

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<sup>63</sup> *Department of Homeland Security Response To Recent Litigation*, Dep't Homeland Security (Jan. 29, 2017), available at <https://www.dhs.gov/news/2017/01/29/departments-homeland-security-response-recent-litigation> (last accessed Mar. 13, 2017).

1 “If the ban were announced with a one week notice, the ‘bad’ would rush into our country during  
2 that week. A lot of bad ‘dudes’ out there!”<sup>64</sup>

3 232. On January 31, 2017, acting United States Attorney General Sally Yates issued a  
4 memorandum to Department of Justice employees instructing them to not act to enforce the  
5 Original Executive Order because she was “not convinced . . . that the Original Executive Order  
6 is lawful.”<sup>65</sup> Ms. Yates wrote:

7  
8 My responsibility is to ensure that the position of the Department of Justice is not  
9 only legally defensible, but is informed by our best view of what the law is after  
10 consideration of all the facts. In addition, I am responsible for ensuring that the  
11 positions we take in court remain consistent with this institution’s solemn  
obligation to always seek justice and stand for what is right. At present, I am not  
convinced that the defense of the Original Executive Order is consistent with  
these responsibilities, nor am I convinced that the Original Executive Order is  
lawful.<sup>66</sup>

12 233. Within hours of her issuance of this statement, and its hand-delivery to Defendant  
13 Trump, Defendant Trump fired Ms. Yates, calling her statement a “betrayal.”

14 234. After this Court issued a Temporary Restraining Order (“TRO”) on February 3,  
15 2017 and the Ninth Circuit issued a unanimous decision upholding the TRO on February 9,  
16 2017, Defendants vowed to keep fighting the court orders.

17 235. Even more unusual were Defendant Trump’s statements that followed the District  
18 Court and Ninth Circuit’s Orders:

23  
24 <sup>64</sup> Donald J. Trump (@realDonaldTrump, Twitter (Jan. 30, 2017 5:31 AM),  
<https://twitter.com/realdonaldtrump/status/826060143825666051>

25 <sup>65</sup> Letter from Sally Yates to Dep’t of Justice (Jan. 30, 2017), *available at*  
[https://www.nytimes.com/interactive/2017/01/30/us/document-Letter-From-Sally-Yates.html?\\_r=1](https://www.nytimes.com/interactive/2017/01/30/us/document-Letter-From-Sally-Yates.html?_r=1) (last accessed  
26 Mar. 13, 2017).

<sup>66</sup> See *supra*, n. 65.

- 1 • @realDonaldTrump: "The opinion of this so-called judge, which essentially takes  
2 law-enforcement away from our country, is ridiculous and will be overturned!" --  
3 5:12 AM - 4 Feb 2017<sup>67</sup>
- 4 • @realDonaldTrump: "What is our country coming to when a judge can halt a  
5 Homeland Security travel ban and anyone, even with bad intentions, can come  
6 into U.S.?" -- 12:44 PM - 4 Feb 2017<sup>68</sup>
- 7 • @realDonaldTrump: "Because the ban was lifted by a judge, many very bad and  
8 dangerous people may be pouring into our country. A terrible decision" -- 1:44  
9 PM - 4 Feb 2017<sup>69</sup>
- 10 • @realDonaldTrump: "Why aren't the lawyers looking at and using the Federal  
11 Court decision in Boston, which is at conflict with ridiculous lift ban decision?" --  
12 3:37 PM - 4 Feb 2017<sup>70</sup>
- 13 • @realDonaldTrump: "The judge opens up our country to potential terrorists and  
14 others that do not have our best interests at heart. Bad people are very happy!" --  
15 4:48 PM - 4 Feb 2017<sup>71</sup>
- 16 • @realDonaldTrump: "Just cannot believe a judge would put our country in such  
17 peril. If something happens blame him and court system. People pouring in. Bad!"  
18 -- 12:39 PM - 5 Feb 2017<sup>72</sup>
- 19 • @realDonaldTrump: "I have instructed Homeland Security to check people  
20 coming into our country VERY CAREFULLY. The courts are making the job  
21 very difficult!" -- 3:35 PM - 9 Feb 2017<sup>73</sup>

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22 <sup>67</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 5:12 PM),  
23 <https://twitter.com/realdonaldtrump/status/827867311054974976>.

24 <sup>68</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 12:44 PM),  
25 <https://twitter.com/realdonaldtrump/status/827981079042805761>.

26 <sup>69</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 1:44 PM),  
<https://twitter.com/realdonaldtrump/status/827996357252243456>.

<sup>70</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 3:37 PM),  
<https://twitter.com/realdonaldtrump/status/828024835670413312>.

<sup>71</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 4:48 PM),  
<https://twitter.com/realdonaldtrump/status/828042506851934209>.

<sup>72</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 5, 2017, 12:39 PM),  
<https://twitter.com/realdonaldtrump/status/828342202174668800>.

<sup>73</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 5, 2017, 12:42 PM),  
<https://twitter.com/realdonaldtrump/status/828343072840900610>.



- @realDonaldTrump: "SEE YOU IN COURT, THE SECURITY OF OUR NATION IS AT STAKE!" -- 12:42 PM - 5 Feb 2017<sup>74</sup>
- @realDonaldTrump "Our legal system is broken! '77% of refugees allowed into U.S. since travel reprieve hail from seven suspect countries.' (WT) [sic] SO DANGEROUS!" – 4:12 AM - 11 Feb 2017<sup>75</sup>

236. The day before the Ninth Circuit issued its ruling, Defendant Trump declared that the Original Order was "so simple and so beautifully written and so perfectly written"<sup>76</sup> and cast further aspersions this country's judicial system, stating, "I don't ever want to call a court biased, so I won't call it biased. And we haven't had a decision yet. But courts seem to be so political and it would be so great for our justice system if they would be able to read a statement and do what's right."

237. In their February 16, 2017 supplemental brief regarding review of the Ninth Circuit's decision to deny Defendant's request for a stay of the TRO by the entire panel, Defendants represented that "[r]ather than continuing this litigation, the President intends in the near future to rescind the Order and replace it with a new, substantially revised Executive Order..."<sup>77</sup>

238. Yet on that very same day, Defendant Trump directly contradicted the representations made to the Ninth Circuit in the supplemental briefing filed by the United States government on his behalf. During a news conference, Defendant Trump stated: "We're issuing a new executive action next week that will comprehensively protect our country. So we'll be going

<sup>74</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 9, 2017, 3:35 PM), <https://twitter.com/realDonaldTrump/status/829836231802515457>.

<sup>75</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 11, 2017, 4:12 AM), <https://twitter.com/realDonaldTrump/status/830389130311921667>.

<sup>76</sup> Matt Zapotosky & Robert Barnes, *As Judges weigh travel ban, Trump Asserts that Courts are "so political"*, Washington Post (Feb. 8, 2017), available at <http://www.chicagotribune.com/news/nationworld/politics/ct-trump-defends-travel-ban-20170208-story.html> (last accessed Mar. 13, 2017).

<sup>77</sup> Supplemental Brief at 154, *State of Washington, et al. v. Donald J. Trump, et al.*, No. 2:17-cv-00141, Dkt. No. 154 (W.D. Wash.), see also Motion for Stay at 14, *State of Washington, et al. v. Donald J. Trump, et al.*, No. 2:17-cv-00141, (W.D. Wash.).

1 along the one path and hopefully winning that, at the same time we will be issuing a new and  
2 very comprehensive order to protect our people.”<sup>78</sup>

3 239. Further, on February 21, 2017, senior policy adviser Stephen Miller not only  
4 claimed “[n]othing was wrong with the first executive order” but also revealed that the revised  
5 travel ban will have “mostly minor technical differences” from the Original Order and  
6 “fundamentally” would be “the same basic policy outcome for the country.”<sup>79</sup>

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

- 11 • On February 21, 2017: The President has “made very clear” that there will be  
12 a “dual-track system” and is <sup>80</sup>“confident that we’re still going to prevail on  
the case—the merits of the case.”
- 13 • On February 22, 2017: The President is “fighting this on both fronts, making  
14 sure that we keep evolving through the <sup>81</sup>court system on the existing EO,”  
15 while drafting an additional executive order.
- 16 • On February 23, 2017: “So with respect to the executive order [on  
17 immigration], there are several courts that this is being fought in—10 or so—  
18 and we continue to deal with that in all of those venues. And then again, I  
19 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

20 <sup>78</sup> *Presidential News Conference* (Feb. 16, 2017), transcript and video is available at  
21 <https://www.nytimes.com/video/us/politics/100000004937194/trump-labor-secretary.html> (last accessed on Mar.  
13, 2017).

22 <sup>79</sup> Martha McCallum, *Miller: New Order Will Be Responsive to the Judicial Ruling; Rep. Ron DeSantis: Congress*  
23 *has Gotten Off to a Slow Start*, Fox (Feb. 21, 2017) available at  
[http://www.foxnews.com/transcript/2017/02/21/miller-new-order-will-be-responsive-to-judicial-ruling-rep-ron-](http://www.foxnews.com/transcript/2017/02/21/miller-new-order-will-be-responsive-to-judicial-ruling-rep-ron-desantis/)  
24 [desantis/](http://www.foxnews.com/transcript/2017/02/21/miller-new-order-will-be-responsive-to-judicial-ruling-rep-ron-desantis/) (last accessed Mar. 13, 2017).

25 <sup>80</sup> *Press Briefing by Secretary Sean Spicer, #13*, The White House (Feb. 21, 2017), available at  
<https://www.whitehouse.gov/the-press-office/2017/02/21/press-briefing-press-secretary-sean-spicer-2212017-13>  
(last accessed Mar. 13, 2017).

26 <sup>81</sup> *Press Briefing by Secretary Sean Spicer, #14*, The White House (Feb. 22, 2017), available at  
<https://www.whitehouse.gov/the-press-office/2017/02/22/press-briefing-press-secretary-sean-spicer-2222017-14>  
(last accessed Feb. 27, 2017).



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.”<sup>82</sup>

241. On February 27, 2017, Press Secretary Spicer reiterated that as to the Revised Order, “the goal is obviously to maintain the way that we did it the first time.”<sup>83</sup>

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

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

244. Indeed, as recently as on March 1, 2017, Vice President Pence stated during an interview on CBS This Morning that “[t]he president is just determined to not only defend the first executive order in the courts, which we continue to believe is fully within his purview and in his presidential authority, but also to take that authority that is undisputed in the law within the executive order.”<sup>84</sup>

245. Given the numerous, inconsistent positions Defendants have taken with regard to the Original and Revised Orders over time, individual Plaintiffs and members of the Non-Immigrant Visa Class reasonably fear that, if they attempt to enter or re-enter the United States, they will be denied permission to do so, notwithstanding their previously established lawful

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<sup>82</sup> *Press Briefing by Secretary Sean Spicer, #15*, The White House (Feb. 23, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/02/23/press-briefing-press-secretary-sean-spicer-2232017-15> (last accessed Feb. 27, 2017).

<sup>83</sup> *Press Briefing by Secretary Sean Spicer, #17*, The White House (Feb 27, 2017) available at <https://www.whitehouse.gov/the-press-office/2017/02/27/press-briefing-press-secretary-sean-spicer-2272017-17> (last accessed Mar. 13, 2017).

<sup>84</sup> *See supra*, n.8.

1 presence in the United States and the fact that they have otherwise been deemed appropriate by  
2 the U.S. government for admission.

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

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

## 10 V. CLASS ACTION ALLEGATIONS

11  
12 248. Plaintiffs Jack Doe, Jason Doe, and Julia Doe bring this action as a class action  
13 pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2), on their own behalf and on behalf of all other  
14 Washington residents who are nationals of the Designated Countries with non-immigrant visas  
15 and who do not have unexpired multiple-entry visas (“the Non-Immigrant Visa Class”).

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

22 250. Upon information and belief, both Plaintiff Classes are so numerous that joinder  
23 is impracticable. According to the Annual Report of the Visa Office of the U.S. Department of  
24 State, in 2015, the last year for which data are available, the United States issued over 58,663  
25 non-immigrant visas to nationals from the Designated Countries.<sup>85</sup> 59% of all Muslim refugees

26 <sup>85</sup> Report of the Visa Office 2015, *Table XVIII: Nonimmigrant Visas Issued by Nationality*, U.S. Dep’t of State – Bureau of Consular Affairs (2015), *available at*

1 who entered the United States in FY 2016 hailed from the six countries to which Section 2(c) of  
2 the new Executive Order applies. On information and belief, a large number of such persons  
3 reside in Washington.

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

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

14 253. The claims or defenses of the named Plaintiffs are typical of the claims or  
15 defenses of members of each of the Plaintiff Classes.

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

23 255. Defendants have acted, have threatened to act, and will act on grounds generally  
24 applicable to both Plaintiff Classes, thereby making final injunctive and declaratory relief  
25

26 <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2015AnnualReport/FY15AnnualReport-TableXVIII.pdf> (last accessed Mar. 13, 2017).

appropriate to the class as a whole. Both Plaintiff Classes may therefore be properly certified under Fed. R. Civ. P. 23(b)(2).

256. Prosecution of separate actions by individual members of either of the Plaintiff Classes would create the risk of inconsistent or varying adjudications and would establish incompatible standards of conduct for individual members of each Plaintiff Class. Both Plaintiff Classes may therefore be properly certified under Fed. R. Civ. P. 23(b)(1).

## **VI. CAUSES OF ACTION**

### **COUNT ONE**

#### **FIRST AMENDMENT – ESTABLISHMENT, FREE EXERCISE, SPEECH AND ASSEMBLY CLAUSES**

##### **(Against All Defendants, Asserted by All Plaintiffs)**

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

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

259. The Revised Executive Order constitutes an unlawful attempt to discriminate against Muslims and to establish a preference for one religion over another. References in the Revised Executive Order to the Designated Countries are transparently a pretext to establish this preference. Singling out Muslims for disfavored treatment and granting special preferences to non-Muslims is neither justified by, nor closely fitted to, any compelling governmental interest.

260. The Revised Executive Order also violates the rights of Plaintiff the Episcopal Diocese to receive information and speech from, and to associate freely with, refugees.

### **COUNT TWO**

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

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

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

263. The Revised Executive Order has the effect of imposing a special disability on the basis of religious views or religious status, by withdrawing important immigration benefits principally from Muslims on account of their religion. In doing so, the Revised Executive Order places a substantial burden on Muslims’ exercise of religion in a way that is not the least restrictive means of furthering a compelling governmental interest.

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

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

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

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

267. The Revised Order bars them from traveling and imposes additional burdens such as requiring them to seek a waiver.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

281. Specifically, INA § 212(a) establishes, in detail, the classes of aliens who are ineligible for visas or admission into the United States, including under "Security and related



grounds,” § 212(a)(3), 8 U.S.C. § 1182(a)(3). INA § 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).

282. 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.

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

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

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

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

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

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

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

289. Additionally, in implementing Sections 2, 3, and 6 of the Revised Executive Order, Defendants federal agencies and Defendant secretaries and/or directors of those agencies



1 have taken an agency action subject to the APA because they have changed the substantive  
2 criteria by which individuals from the Designated Countries may enter the United States, which  
3 impacts substantive rights.

4 290. Such Defendants did not follow the procedures required by the Administrative  
5 Procedure Act before taking action impacting the substantive rights of the Plaintiffs.

6 291. By failing to follow the rulemaking procedures required of them prior to changing  
7 the substantive criteria by which individuals from the Designated Countries may enter the United  
8 States, Defendants federal agencies and Defendant secretaries and/or directors of those agencies  
9 violated the Administrative Procedure Act.

10 292. These violations continue to cause ongoing harm to Plaintiffs.

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

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

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

18 295. The Administrative Procedure Act prohibits federal agency action that is  
19 “contrary to constitutional right, power, privilege, or immunity,” 5 U. S. C. § 706(2)(B), or “in  
20 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U. S. C. §  
21 706(2)(C), or “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with  
22 law.” 5 U. S. C. § 706(2)(A).

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

25 297. Additionally, in implementing Sections 2, 3, and 6 of the Revised Executive  
26 Order, Defendants federal agencies and Defendant secretaries and/or directors of those agencies

1 have taken unconstitutional and unlawful action, as alleged in this Complaint, in violation of the  
2 Administrative Procedure Act.

3 298. In implementing Sections 3(c) and 6(c), Defendants federal agencies have  
4 arbitrarily and capriciously exercised their discretion.

5 299. In implementing Sections 2 and 3 of the Revised Executive Order, Defendants  
6 federal agencies and Defendant secretaries and/or directors of those agencies their statutory  
7 authority and engaged in nationality and religion-based discrimination in violation of RFRA.

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

#### 14 PRAYER FOR RELIEF

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

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

18 2. A declaration that the Revised Executive Order and the manner in which it will be  
19 implemented are in violation of the rights of all Plaintiffs as well as members of the Non-  
20 Immigration Visa Class and the Refugee Class for the reasons set forth above.

21 3. An injunction that the Revised Executive Order may not be enforced as against  
22 Plaintiffs or members of members of the Non-Immigration Visa Class or the Refugee Class in  
23 connection with their entry or re-entry into the United States;

24 4. A permanent injunction of the Revised Executive Order as contrary to the  
25 Constitution;  
26

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

3           6.       Such other and further relief that this Court may deem fit and proper.  
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1 DATED this 14th day of March, 2017.

2 AMERICAN CIVIL LIBERTIES UNION  
3 OF WASHINGTON FOUNDATION

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# EXHIBIT A

the WHITE HOUSE PRESIDENT DONALD J. TRUMP



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## The White House

Office of the Press Secretary

For Immediate Release

January 27, 2017

# EXECUTIVE ORDER: PROTECTING THE NATION FROM FOREIGN TERRORIST

# ENTRY INTO THE UNITED STATES

## EXECUTIVE ORDER

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### 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.

DONALD J. TRUMP



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# 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 D

the WHITE HOUSE PRESIDENT DONALD J. TRUMP



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## The White House

Office of the Press Secretary

For Immediate Release

March 06, 2017

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

EXECUTIVE ORDER

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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.

DONALD J. TRUMP

THE WHITE HOUSE,  
March 6, 2017.



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# EXHIBIT E



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

**Release Date:** March 6, 2017

March 6, 2017 11:30 a.m. EST

Office of Public Affairs

Contact: 202-282-8010

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

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

2017 (prior to 5:00 PM) or holds a valid visa on the effective date of the Executive Order is not barred from seeking entry.

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

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

(<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 \(/topics/homeland-security-enterprise\)](#) , [Immigration Enforcement \(/topics/immigration-enforcement\)](#)  
Keywords: [immigration \(/keywords/immigration\)](/keywords/immigration) , [immigration enforcement \(/keywords/immigration-enforcement\)](#)

Last Published Date: March 6, 2017

# EXHIBIT F

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 17-35105

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

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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]

# EXHIBIT G

## 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 H



## 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.<sup>1\*</sup> 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.

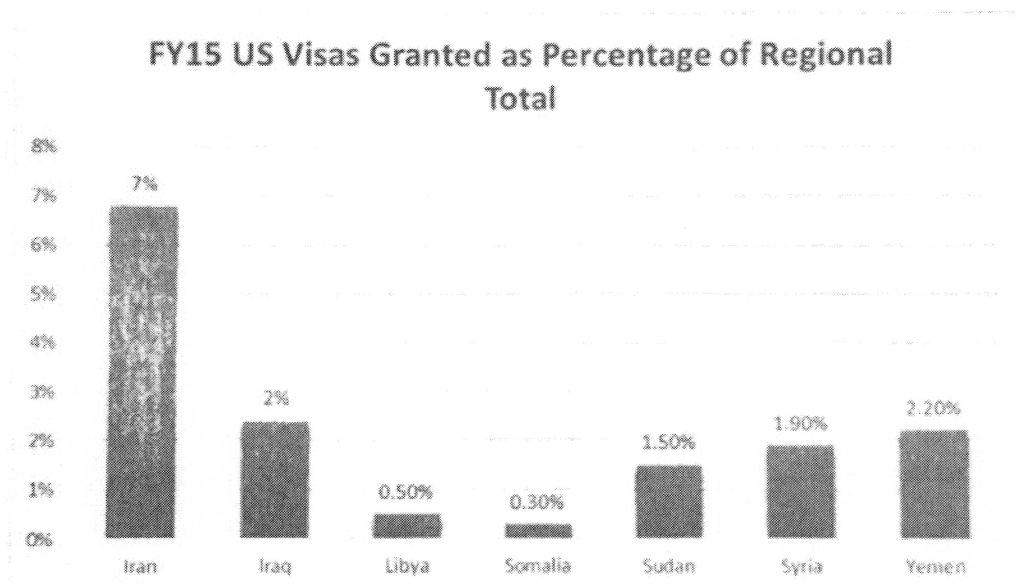
- The top seven origin countries of the foreign-born individuals are: Pakistan (5), Somalia (3), and Bangladesh, Cuba, Ethiopia, Iraq, and Uzbekistan (2).

\* 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.<sup>23†</sup>



#### 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.<sup>4</sup> Iran used the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) to implement foreign policy goals, provide cover for intelligence operations, and create instability

<sup>†</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

**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.<sup>8</sup> 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.<sup>9</sup> The Islamic State of Iraq and the Levant in Yemen also exploited the political and security vacuum to strengthen its foothold inside the country.

<sup>1</sup> 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

<sup>2</sup> <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXIV.pdf>

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

<sup>4</sup> <https://www.state.gov/j/ct/rls/crt/2015/257520.htm>

# EXHIBIT I

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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).<sup>\*</sup> 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.**

<sup>\*</sup> (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.<sup>9,10</sup>

- » (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.<sup>11,12</sup> Separately, four Uzbekistan-born individuals were arrested in 2015 for providing material support to ISIS, according to a DOJ criminal complaint and superseding indictment.<sup>13,14</sup> 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.<sup>15,16</sup>
- » (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.<sup>17</sup>

(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<sup>USPER</sup> 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.<sup>18</sup> 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.<sup>19</sup>
- » (U//FOUO) Harlem Suarez's<sup>USPER</sup> family was surprised by his arrest for plotting an attack in support of ISIS in 2015, according to a press report.<sup>20</sup> The family described Suarez, who was born in Cuba, as curious and unable to hurt anything, according to the same report.<sup>21</sup> Suarez is currently awaiting trial, according to another press report.<sup>22</sup>
- » (U//FOUO) Jose Pimentel's<sup>USPER</sup> 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.<sup>23,24,25</sup> 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.<sup>26</sup>

#### (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<sup>USPER</sup> and Alaa Saadeh<sup>USPER</sup>—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.<sup>27,28</sup> Similarly, Ibrahim Mohammad<sup>USPER</sup>, 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.<sup>29</sup>
- » (U//FOUO) Native-born Josh Van Haften<sup>USPER</sup>, 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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32,33,34</sup>
- » (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.<sup>35-39</sup> 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.<sup>40</sup> 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.<sup>41</sup>
- » (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.<sup>42</sup>

(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<sup>USPER</sup>, 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.<sup>43</sup>
- » (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<sup>USPER</sup> program called Voices for Change: Immigrant Women and State Policy.<sup>44</sup> 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.<sup>45</sup>

(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.<sup>46,47</sup> Somali-Americans Abdi Nur<sup>USPER</sup> 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.<sup>48</sup> Abdi Nur was indicted on conspiracy charges for providing material support to ISIS in 2014, according to a DOJ press release.<sup>49</sup>
- » (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.<sup>50</sup>



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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 includes the willingness to actively advocate, facilitate, or use unlawful violence as a method to effect societal or political change.

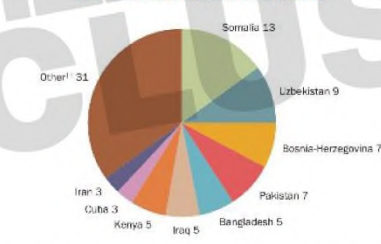
(U) **AGE OF ENTRY OF FOREIGN-BORN VIOLENT EXTREMISTS**



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

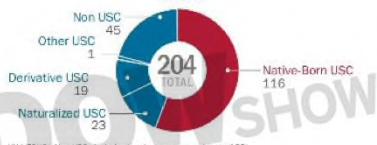


(U) **COUNTRIES OF BIRTH OF FOREIGN-BORN VIOLENT EXTREMISTS**



(U//FOUO) Other consists of individuals born in each of the following 24 countries: Albania, Afghanistan, Australia, Dominican Republic, Egypt, Ethiopia, India, Israel, Kazakhstan, Kuwait, Lebanon, Mexico, Morocco, Philippines, Romania, Saudi Arabia, Serbia, Lesotho, 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<sup>1</sup>**



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

(U) **TERRORISM-RELATED ACTIVITIES OF NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS<sup>2</sup>**



(U//FOUO) <sup>1</sup>Numbers include individuals who participated or were interested in more than one activity.

(U//FOUO) <sup>2</sup>Facilitation activities include financial or logistical support, and terrorist recruitment.

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(U) **Source Summary Statement**

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

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

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

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



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- <sup>48</sup> (U); Laura Yuen; MPR News; "Guled Omar: The Path to ISIS and The Story You Haven't Heard"; 22 DEC 2016; <https://www.mprnews.org/story/2016/12/21/path-to-isis-minnesota-guled-omar-mpr-interviews>; accessed on 27 DEC 2016.
- <sup>49</sup> (U); US Attorney's Office - District of Minnesota; Press Release; "To Minnesotans Charged with Conspiracy to Provide Material Support to Islamic State of Iraq and the Levant"; 25 NOV 2014; <https://www.justice.gov/usao-mn/pr/two-minnesotans-charged-conspiracy-provide-material-support-islamic-state-iraq-and-levants>; accessed on 29 DEC 2016.
- <sup>50</sup> (U); CBS Minnesota; "Abdirizak Mohamed Warsame And ISIS: A Cautionary Tale"; 09 APR 2016; <http://minnesota.cbslocal.com/2016/04/09/abdirizak-warsame/>; accessed on 29 DEC 2016.

## Explore: The MaddowBlog

Thursday's Mini-Report, 3.2.17

Team Trump's Russian communications come...

# EXHIBIT J

March 10, 2017

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

Dear Mr. President,

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

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

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

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

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



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

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

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

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

Sincerely,  
(names in alphabetical order)

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

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

Dr. Madeleine K. Albright  
Former Secretary of State

Marcel Lettre  
Former Under Secretary of Defense for  
Intelligence

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

George Little  
Former Assistant Secretary of Defense for Public  
Affairs

Alyssa Ayres  
Former Deputy Assistant Secretary of State for  
South Asia

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

Jeremy Bash  
Former Chief of Staff,  
Department of Defense

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

Rand Beers  
Former Acting Secretary of the Department of  
Homeland Security

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

Daniel Benjamin  
Former Coordinator for Counterterrorism,  
Department of State

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

Rob Berschinski  
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Democracy, Human Rights, and Labor

Brian McKeon  
Former Acting Under Secretary of Defense for  
Policy

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

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

Jarrett Blanc  
Former Deputy Special Representative to  
Afghanistan and Pakistan

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

Charles Blanchard  
Former General Counsel  
U.S. Air Force

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

Antony Blinken  
Former Deputy Secretary of State

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

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

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

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

James Miller  
Former Undersecretary of Defense for Policy

Michael Breen  
Retired United States Army Officer

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

Rosa Brooks  
Former Counselor to Under Secretary of Defense  
for Policy

Alberto Mora  
Former General Counsel, Department of the Navy

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

Janet Napolitano  
Former Secretary of the Department of  
Homeland Security

Ambassador William J. Burns  
Former Deputy Secretary of State

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

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

Thomas Nides  
Former Deputy Secretary of State for  
Management and Resources

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

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

Derek Chollet  
Former Assistant Secretary of Defense for  
International Security Affairs

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

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

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

David Cohen  
Former Deputy Director, Central Intelligence  
Agency

Matthew Olsen  
Former Director of the National Counterterrorism  
Center

Bathsheba Crocker  
Former Assistant Secretary of State for  
International Organization Affairs

Rick Olson  
Former Special Representative for Afghanistan  
and Pakistan

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

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Lieutenant General  
U.S. Army (Ret.)

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Brigadier General  
U.S. Army (Ret.)

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Senior Director for North Africa and Yemen

Mary DeRosa  
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U.S. Army (Ret.)

Samantha Power  
Former United States Ambassador to the United  
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Brian Egan  
Former Legal Adviser  
U.S. State Department

Jeffrey Prescott  
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the Gulf States, National Security Council

Evelyn Farkas  
Former Executive Director, Commission on the  
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Ned Price  
Former Special Assistant to the President and  
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Daniel Feldman  
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and Pakistan

Dafna Rand  
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Democracy, Human Rights, and Labor

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

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

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

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

Jonathan Finer  
Former Director of Policy Planning, Department of  
State

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

Michele Flournoy  
Former Under Secretary of Defense for Policy

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

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

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

Danielle Garbe  
Former Director for Lebanon and Jordan, National  
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Tommy Ross  
Former Deputy Assistant Secretary of Defense for  
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Brigadier General  
U.S. Army (Ret.)

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

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Former Deputy Assistant to the President, Chief of  
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U.S. Navy (Ret.)

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

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

Wendy Sherman  
Former Under Secretary of State for Political  
Affairs

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

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

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

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

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

Jeff Smith  
Former General Counsel, Central Intelligence  
Agency

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

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

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

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

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

Matthew Spence  
Former Deputy Assistant Secretary of Defense for  
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Lee H. Hamilton  
U.S. Congressman, 1965-1999  
9<sup>th</sup> Congressional District of IN

James Steinberg  
Former Deputy Secretary of State

Keith Harper  
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Rights Council

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

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National Security Council

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Former National Security Council Spokesperson

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Former National Security Advisor to the Vice  
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U.S. Marine Corps (Ret.)

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

Heather Higginbottom  
Former Deputy Secretary of State for  
Management and Resources

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

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

Jim Townsend  
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European and NATO Policy

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

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Former Under Secretary of Defense for  
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Brigadier General  
U.S. Army (Ret.)

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Department of State

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John Kerry  
Former Secretary of State

Catherine Wiesner  
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Bureau of Population, Refugees, and Migration

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Affairs

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National Security Affairs

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

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Former Special Assistant to the President for  
National Security Affairs

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

Lee Wolosky  
Former Special Envoy for Guantanamo Closure

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

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

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

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

CC:

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

## EXHIBIT 2

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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

Plaintiffs,

v.

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

Defendants.

No. 2:17-cv-00178-JLR

DECLARATION OF  
JOSEPH DOE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION

I, "Joseph Doe," do hereby declare and state:

DECLARATION OF JOSEPH  
DOE  
(2:17-cv-00178-JLR) - 1

AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, Washington 98164  
TELEPHONE: (206) 624-2184

KELLER ROHRBACK L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

1           1.     I have personal knowledge of the matters contained herein and, where I do not  
2 have direct knowledge, I believe them to be true and correct based upon the information  
3 available to me

4           2.     I am originally from Somalia. I currently live in Des Moines, Washington.

5           3.     When I was a child, my family and I fled Somalia because of the violent civil war  
6 in our country, to escape persecution and the risk of being killed because of our clan  
7 membership.

8           4.     While we were trying to reach safety, we spent weeks in the forest without food.  
9  
10 Fighters from one of the warring factions found us in the forest and raped my older sister. My  
11 mother tried to stop the rape, but the men clubbed her in the head with the butt of their guns. My  
12 sister was pregnant at that time, and she had so much bleeding after the assault that she died.

13           5.     We eventually got to Kenya and began living in a refugee camp. I lived in  
14 refugee camps in Kenya for nearly 22 years.

15           6.     I first initially interviewed with the United Nations High Commissioner for  
16 Refugees in 2000 with my mother, two brothers, and three surviving sisters. By the time I finally  
17 interviewed with USCIS/DHS in 2011, I had met my wife and gotten married. We have three  
18 children.

19           7.     I finally arrived in the United States on January 28, 2014, as a refugee, but my  
20 refugee status only applies to myself, not my wife and children, as the refugee process was  
21 started when we first arrived at a refugee camp when I was young.

22           8.     In June 2015, I filed a Refugee/Asylee Relative Petition, Form I-730, for my wife  
23 and for my children, who are now 3, 4, and 9 years old.

24           9.     I became a lawful permanent resident in 2016.

1           10.     My wife and children had their final interviews in November 2016, which they  
2 successfully passed; they have completed the security clearance; they completed their medical  
3 clearance on January 31, 2017; and they received their final required injections on March 1,  
4 2017. They are only waiting to be scheduled for travel to the United States.

5           11.     To date, no travel arrangements have been made for them. If travel of refugees to  
6 the U.S. is suspended by Defendants' executive order, my family's travel to the United States  
7 will be delayed for at least 120 days—and possibly indefinitely if the refugee cap is met before  
8 they are admitted, and I will be prevented from being reunited with my wife and children.

9           12.     With this delay, it is likely that my family's medical clearance will expire and  
10 they will be required to repeat that part of the process.

11           13.     I understand that a class action is a lawsuit brought by individuals on a  
12 representative basis, on behalf of others similarly situated, to obtain equitable relief and/or  
13 damages for the benefit of the group as a whole.

14           14.     I am serving as a class representative in this matter.

15           15.     I understand that as a class representative I am not only representing my interests,  
16 but I am representing the interests of all persons who, like me, are refugees and asylees who have  
17 filed I-730 petitions for their families and whose families have passed all the required screenings.

18           16.     I am familiar with the progress of the litigation and the claims that I have made on  
19 behalf of myself and the proposed classes.

20           17.     I will not put my personal interests before the interests of the class members, and I  
21 have accepted the responsibilities associated with serving as a class representative.

22           18.     As a class representative, I understand that I must consider the interests of the  
23 class just as I would consider my interests.

1           19. I am unaware of any conflicts that I have and/or may have with any other persons  
2 who may qualify as class members in this case.

3           20. As a class representative in this case, I have participated and will continue to  
4 actively participate in the lawsuit, will testify at trial if called upon, will answer written  
5 discovery, and will continue to keep generally aware of the status and progress of the lawsuit.  
6

7           21. I wish to proceed anonymously because I am concerned about retaliation against  
8 me, my wife, and my children by Defendants.

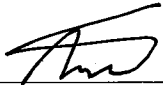
9           22. As a class representative, I recognize and accept that any resolution of this case, if  
10 certified as a class action lawsuit, such as by settlement or dismissal, is subject to Court approval  
11 and must be designed to be in the best interests of the class as a whole.

12           23. As a class representative, I recognize that I am not required to be particularly  
13 sophisticated or knowledgeable with respect to the legal framework of the lawsuit. I am not a  
14 lawyer and have no legal training. However, I am interested in the progress of the lawsuit, and  
15 have and will continue to provide my lawyers and the Court with all relevant facts of which I am  
16 aware.  
17

18           24. As a class representative, I have volunteered to represent other people with  
19 similar claims, because I believe that it is important that all benefit from the lawsuit.  
20

21 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
22 knowledge.

23 EXECUTED this 3<sup>rd</sup> day of April, 2017 at Des Moines, Washington.

24  
25   
26 Joseph Doe



# EXHIBIT 3

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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

Plaintiffs,

v.

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

Defendants.

No. 2:17-cv-00178-JLR

DECLARATION OF  
JAMES DOE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION

I, "James Doe," do hereby declare and state:

DECLARATION OF JAMES  
DOE  
(2:17-cv-00178-JLR) - 1

AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, Washington 98164  
TELEPHONE: (206) 624-2184

KELLER ROHRBACK L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

1           1.       I have personal knowledge of the matters contained herein and, where I do not  
2 have direct knowledge, I believe them to be true and correct based upon the information  
3 available to me.

4           2.       I am originally from Eritrea. I currently live in Seattle, Washington.

5           3.       I fled Eritrea in 2009 after being imprisoned because of my political beliefs.

6           4.       I was imprisoned in Eritrea for five months, but I was eventually able to escape. I  
7 fled first to Sudan, then through Egypt, and made it to Israel.  
8

9           5.       Once in Israel, I was finally able to contact my wife and let her know what had  
10 happened to me.

11           6.       Although I was unable to get permanent status as a refugee in Israel, I was able to  
12 get a visa to travel to Sri Lanka as a refugee. But soon after I arrived there, the Sri Lankan  
13 government began detaining Eritrean refugees, and I was imprisoned for another two years.  
14

15           7.       With the help of the United Nations, I worked to obtain refugee status in the  
16 United States. In April 2015, I finally made it to America.

17           8.       Once here, I filed a Refugee/Asylee Relative Petition, Form I-730, for my wife  
18 and children, who are currently living in Ethiopia. My children, including the daughter whom I  
19 have never met, are now 8 and 9 years old.

20           9.       Now a lawful permanent resident in the United States, I am awaiting the arrival of  
21 my family.  
22

23           10.      The I-730 petition for my family was approved in September 2016, and I was told  
24 that my family would arrive within 4-5 months. They have since passed their security clearances  
25 and medical examinations. However, they are still waiting for confirmation of their travel  
26 arrangements.

DECLARATION OF JAMES  
DOE  
(2:17-cv-00178-JLR) - 2

AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, Washington 98164  
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1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

1           11. I fear that if Defendants' Executive Order remains in place, my family's travel to  
2 the United States will be delayed for at least an additional 120 days.

3           12. With this delay, it is likely that my family's medical clearances will expire and  
4 they will be required to repeat that part of the process.

5           13. I understand that a class action is a lawsuit brought by individuals on a  
6 representative basis, on behalf of others similarly situated, to obtain equitable relief and/or  
7 damages for the benefit of the group as a whole.

8           14. I am serving as a class representative in this matter.

9           15. I understand that as a class representative I am not only representing my interests,  
10 but I am representing the interests of all persons who, like me, are refugees and asylees who have  
11 filed I-730 petitions for their families and whose families have passed all the required screenings.  
12

13           16. I am familiar with the progress of the litigation and the claims that I have made on  
14 behalf of myself and the proposed classes.

15           17. I will not put my personal interests before the interests of the class members, and I  
16 have accepted the responsibilities associated with serving as a class representative.

17           18. As a class representative, I understand that I must consider the interests of the  
18 class just as I would consider my own interests.

19           19. I am unaware of any conflicts that I have and/or may have with any other persons  
20 who may qualify as class members in this case.

21           20. As a class representative in this case, I have participated and will continue to  
22 actively participate in the lawsuit, will testify at trial if called upon, will answer written  
23 discovery, and will continue to keep generally aware of the status and progress of the lawsuit.  
24  
25  
26

DECLARATION OF JAMES  
DOE  
(2:17-cv-00178-JLR) - 3

AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, Washington 98164  
TELEPHONE: (206) 624-2184

KELLER ROHRBACK L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

1           21. I wish to proceed anonymously because I am concerned about retaliation against  
2 me, my wife, and my children by Defendants.

3           22. As a class representative, I recognize and accept that any resolution of this case, if  
4 certified as a class action lawsuit, such as by settlement or dismissal, is subject to Court approval  
5 and must be designed to be in the best interests of the class as a whole.

6           23. As a class representative, I recognize that I am not required to be particularly  
7 sophisticated or knowledgeable with respect to the legal framework of the lawsuit. I am not a  
8 lawyer and have no legal training. However, I am interested in the progress of the lawsuit, and  
9 have and will continue to provide my lawyers and the Court with all relevant facts of which I am  
10 aware.  
11

12           24. As a class representative, I have volunteered to represent other people with  
13 similar claims, because I believe that it is important that all benefit from the lawsuit.  
14

15           I declare under penalty of perjury that the foregoing is true and correct to the best of my  
16 knowledge.

17 EXECUTED this 4<sup>th</sup> day of April, 2017, at SEATTLE, WA.

18  
19   
20 \_\_\_\_\_  
21 James Doe  
22  
23  
24  
25  
26