Nos. 16-1436 and 16-1540

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

STATE OF HAWAII, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

JOINT APPENDIX
(VOLUME 1)

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PETITIONS FOR WRITS OF CERTIORARI FILED: JUNE 1 AND JUNE 26, 2017
CERTIORARI GRANTED: JUNE 26, 2017

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MARYLAND

Docket No. 8:17-cv-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, A PROJECT OF THE URBAN JUSTICE CENTER, INC., ON BEHALF OF ITSELF AND ITS CLIENTS, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
2/7/17	1	COMPLAINT against All Defendants (Filing fee $ 400 receipt number 0416-6486891.), filed by Jane Doe 1, John Doe1-4, Samaneh Takaloo, Allan Hakky, HIAS, Inc., International Refugee Assistance Project. (Attachments: # 1 Civil Cover Sheet)(Rocah, David) (Entered: 02/07/2017)
		* * * * *
2/7/17	5	MOTION for Other Relief *for Leave to Proceed Under Pseudonyms* by Jane Doe 1, John Doe1-4

DATE	DOCKET NUMBER	PROCEEDINGS
		(Attachments: # 1 Declarations of John Does 1-4 & Jane Doe 1, # 2 Declaration of Nicholas Espiritu & Exhibits A through V, # 3 Proposed Order)(Cox, Justin) (Entered: 02/07/2017)
		* * * * *
2/9/17	25	Summons Issued 60 days as to Michael Dempsey, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump, U.S. Attorney and U.S. Attorney General(jf3s, Deputy Clerk) (Entered: 02/09/2017)
		* * * * *
2/10/17	40	NOTICE by HIAS, Inc., Allan Hakky, International Refugee Assistance Project, Jane Doe 1, John Doe 1-4, Samaneh Takaloo of *Intent to File a Motion for Preliminary Injunction* (Cox, Justin) (Entered: 02/10/ 2017)
2/10/17	41	PAPERLESS NOTICE that a TELEPHONE STATUS CONFERENCE is scheduled to discuss 6 Notice of Intent to File Motion for

DATE	DOCKET NUMBER	PROCEEDINGS
		Leave to Proceed Under Pseudonyms and 40 Notice of Intent to File Motion for a Preliminary Injunction for February 13, 2017 at 3:30 p.m. Instructions for the call will be emailed to the parties. (ps2s, Chambers) (Entered: 02/10/2017)
		* * * * *
2/13/17	57	Case Management Conference held on 2/13/2017 before Judge Theodore D. Chuang.(FTR-KLS-2B.) (klss, Deputy Clerk) (Entered: 02/14/2017)
		* * * * *
2/14/17	59	ORDER deeming as filed 5 Motion for Leave to Proceed Under Pseudonyms; granting Plaintiffs leave to file Motions; scheduling a Motions hearing for March 28, 2017 at 9:30 a.m. Signed by Judge Theodore D. Chuang on 2/14/2017. (jf3s, Deputy Clerk) (Entered: 02/15/2017)
		* * * * *
2/22/17	63	MOTION for Discovery *on an Expedited Basis* by HIAS, Inc., Allan Hakky, International Refugee Assistance Project, Jane Doe 1, John Doe 1-4, Samaneh Takaloo

DATE	DOCKET NUMBER	PROCEEDINGS
		(Attachments: # 1 Exhibit 1 & 2) (Cox, Justin) (Entered: 02/22/2017)
2/22/17	64	MOTION for Preliminary Injunction *& MEMORANDUM OF LAW IN SUPPORT THEREOF* by HIAS, Inc., Allan Hakky, International Refugee Assistance Project, Jane Doe 1, John Doe 1-4, Samaneh Takaloo (Attachments: # 1 Declarations and Exhibits (J.R. 1-166)) (Cox, Justin) (Entered: 02/22/2017)
2/24/17	65	SUMMONS Returned Executed by Jane Doe 1, John Doe 1-4, Samaneh Takaloo, Allan Hakky, HIAS, Inc., International Refugee Assistance Project. All Plaintiffs. (Attachments: # 1 Exhibit Attachment to Certificate of Service)(Jadwat, Omar) (Entered: 02/24/ 2017)
3/1/17	66	MEMORANDUM ORDER granting Doe Plaintiffs' Motion for Leave to Proceed Under Pseudonyms. Signed by Judge Theodore D. Chuang on 3/1/2017. (jf3s, Deputy Clerk) (Entered: 03/01/2017)
		* * * * *
3/6/17	79	NOTICE by Michael Dempsey, Department of Homeland Security, Department of State, John F.

DATE	DOCKET NUMBER	PROCEEDINGS
		Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump *of Filing of Executive Order* (Attachments: # 1 Exhibit A)(Bennett, Michelle) (Entered: 03/06/2017)
		* * * * *
3/8/17	81	RESPONSE in Opposition re 63 MOTION for Discovery *on an Expedited Basis* filed by Michael Dempsey, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump.(Garg, Arjun) (Entered: 03/08/2017)
3/8/17	82	RESPONSE in Opposition re 64 MOTION for Preliminary Injunction & *MEMORANDUM OF LAW IN SUPPORT THEREOF* filed by Michael Dempsey, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump. (Garg, Arjun) (Entered: 03/08/2017)
3/9/17	83	Request for Conference (Espiritu, Nicholas) (Entered: 03/09/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
3/9/17	84	PAPERLESS NOTICE that a telephone Case Management Conference is scheduled for 9:15 a.m. on Friday, May 10, 2017 to discuss 83 Request for Conference. Instructions for the call have been emailed to the parties. (nr, Chambers) (Entered: 03/09/2017)
3/10/17	85	Case Management Conference held on 3/10/2017 before Judge Theodore D. Chuang.(FTR-KLS-2B.) (klss, Deputy Clerk) (Entered: 03/10/2017)
3/10/17	86	ORDER directing Plaintiffs to file an Amended Complaint by Friday, March 10, 2017 by 5:00 p.m.; granting plaintiffs leave to file motions—deemed timely if filed by Friday, March 10, 2017 by 5:00 p.m.; Motions hearing scheduled for Wednesday, March 15, 2017 at 9:30 a.m. Signed by Judge Theodore D. Chuang on 3/10/2017. (jf3s, Deputy Clerk) (Entered: 03/10/2017)
3/10/17	87	PAPERLESS ORDER. Plaintiffs are granted permission to file an oversize brief as to the consolidated Motion for a Temporary Restraining Order, Motion for a Preliminary Injunction, and Motion for Leave to

DATE	DOCKET NUMBER	PROCEEDINGS
		Proceed Under a Pseudonym. The Government is granted permission to file an oversize brief for its consolidated Memorandum in Opposition to that filing. Briefs should not exceed 40 pages and should be in 12-point font, including footnotes, with 1" margins on all sides. Plaintiffs are granted permission to file their renewed Motion for Expedited Discovery as a separate motion, to which the Government will then be entitled to file a separate Memorandum in Opposition. Signed by Judge Theodore D. Chuang on 3/10/2017. (nr, Chambers) (Entered: 03/10/2017)
		* * * * *
3/10/17	89	(FILED IN ERROR) AMENDED COMPLAINT against All Plaintiffs, filed by Jane Doe 1, John Doe 1-4, International Refugee Assistance Project, Allan Hakky, Samaneh Takaloo, HIAS, Inc.. (Attachments: # 1 Amended Complaint [REDLINED]) (Keaney, Melissa) Modified on 3/10/2017 (slss, Deputy Clerk). (Entered: 03/10/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
3/10/17	90	MOTION for Other Relief for *Jane Doe #2 to Proceed Under Pseudonym* by HIAS, Inc., Allan Hakky, International Refugee Assistance Project, Jane Doe 1, John Doe 1-4, Samaneh Takaloo (Attachments: # 1 Exhibit Decl. of Jane Doe #2) (Cox, Justin) (Entered: 03/10/2017)
3/10/17	91	MOTION for Temporary Restraining Order *and/or Preliminary Injunction* by HIAS, Inc., Allan Hakky, International Refugee Assistance Project, Jane Doe 1, John Doe 1-4, Samaneh Takaloo (Attachments: # 1 Exhibit IRAP Declaration, # 2 Exhibit HIAS Declaration, # 3 Exhibit MESA Declaration, # 4 Exhibit John Doe 1 Declaration, # 5 Exhibit John Doe 3 Declaration, # 6 Exhibit Mateab Declaration, # 7 Exhibit Jane Doe 2 Declaration, # 8 Exhibit Mohomed Declaration, # 9 Exhibit Harrison Declaration, # 10 Exhibit Hausman Declaration Pt. 1, # 11 Exhibit Hausman Declaration Pt. 2, # 12 Exhibit Hausman Declaration Pt. 3)(Jadwat, Omar) (Entered: 03/10/2017)
3/10/17	92	Supplemental MOTION to Expedite *Discovery* by HIAS, Inc., Allan

DATE	DOCKET NUMBER	PROCEEDINGS
		Hakky, International Refugee Assistance Project, Jane Doe 1, John Doe 1-4(Jadwat, Omar) (Entered: 03/10/2017)
3/10/17	93	AMENDED COMPLAINT against All Plaintiffs, filed by Jane Doe 1, John Doe 1-4, International Refugee Assistance Project, Allan Hakky, Samaneh Takaloo, HIAS, Inc.. (Attachments: # 1 Amended Complaint [Redacted])(Keaney, Melissa) (Entered: 03/10/2017)
3/11/17	94	NOTICE by HIAS, Inc., Allan Hakky, International Refugee Assistance Project, Jane Doe 1, John Doe 1-4, Samaneh Takaloo *of Corrected Brief and Exhibits* (Jadwat, Omar) (Entered: 03/11/2017)
3/11/17	95	Amended MOTION for Temporary Restraining Order *and/or Preliminary Injunction* by HIAS, Inc., Allan Hakky, International Refugee Assistance Project, Jane Doe 1, John Doe 1-4, Samaneh Takaloo (Attachments: # 1 Exhibit IRAP Declaration, # 2 Exhibit HIAS Declaration, # 3 Exhibit MESA Declaration, # 4 Exhibit John Doe #1 Declaration, # 5 Exhibit John Doe #3

DATE	DOCKET NUMBER	PROCEEDINGS
		Declaration, # 6 Exhibit Meteab Declaration, # 7 Exhibit Jane Doe #2 Declaration, # 8 Exhibit Mohomed Declaration, # 9 Exhibit Harrison Declaration, # 10 Exhibit Hausman Declaration Pt.1, # 11 Exhibit Hausman Declaration Pt.2, # 12 Exhibit Hausman Declaration Pt.3)(Jadwat, Omar) (Entered: 03/11/2017)
		* * * * *
3/12/17	98	RESPONSE in Support re 64 MOTION for Preliminary Injunction & *MEMORANDUM OF LAW IN SUPPORT THEREOF* filed by HIAS, Inc., Allan Hakky, International Refugee Assistance Project, Jane Doe 1, John Doe 1-4.(Keaney, Melissa) (Entered: 03/12/2017)
		* * * * *
3/13/17	113	RESPONSE to Motion re 90 MOTION for Other Relief *for Jane Doe #2 to Proceed Under Pseudonym* filed by Michael Dempsey, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump. (Garg, Arjun)

DATE	DOCKET NUMBER	PROCEEDINGS
		(Entered: 03/13/2017)
		* * * * *
3/13/17	117	RESPONSE in Opposition re 92 Supplemental MOTION to Expedite *Discovery* filed by Michael Dempsey, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump. (Garg, Arjun) (Entered: 03/13/ 2017)
		* * * * *
3/13/17	122	RESPONSE in Opposition re 91 MOTION for Temporary Restraining Order *and/or Preliminary Injunction* filed by Michael Dempsey, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump.(Garg, Arjun) (Entered: 03/13/2017)
		* * * * *
3/14/17	130	REPLY to Response to Motion re 95 Amended MOTION for Temporary Restraining Order *and/or Preliminary Injunction* filed by HIAS, Inc., Allan Hakky, International

DATE	DOCKET NUMBER	PROCEEDINGS
		Refugee Assistance Project, Jane Doe 1, John Doe 1-4, Samaneh Takaloo.(Jadwat, Omar) (Entered: 03/14/2017)
		* * * * *
3/15/17	144	Motion Hearing held on 3/15/2017 re 95 Amended MOTION for Temporary Restraining Order *and/or Preliminary Injunction* filed by John Doe 1-4, HIAS, Inc., Allan Hakky, Jane Doe 1, International Refugee Assistance Project, Samaneh Takaloo before Judge Theodore D. Chuang.(Court Reporter: Cindy Davis—2B) (klss, Deputy Clerk) (Entered: 03/15/2017)
		* * * * *
3/16/17	149	MEMORANDUM OPINION. Signed by Judge Theodore D. Chuang on 3/15/2017. (aos, Deputy Clerk) (Entered: 03/16/2017)
3/16/17	150	ORDER granting in part and denying in part 95 Amended MOTION for Temporary Restraining Order and/or Preliminary Injunction. Signed by Judge Theodore D. Chuang on 3/15/2017. (aos, Deputy Clerk) (Entered: 03/16/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
3/16/17	151	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings (TRO Hearing) held on March 15, 2017, before Judge Theodore D. Chuang. Court Reporter Cindy Davis, Telephone number (301) 344-3228. Total number of pages filed: 87. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained from the Court Reporter or through PACER. Redaction Request due 4/6/2017. Redacted Transcript Deadline set for 4/17/2017. Release of Transcript Restriction set for 6/14/2017. (cd, Court Reporter) (Entered: 03/16/2017)
3/17/17	152	PAPERLESS ORDER finding as moot 91 Motion for a Preliminary Injunction and/or Temporary Restraining Order in light of 95 Amended Motion for a Preliminary Injunction and/or Temporary Restraining Order. Signed by Judge Theodore D. Chuang on 3/17/2017. (ps2s, Chambers) (Entered: 03/17/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/17/17	160	NOTICE OF APPEAL as to 150 Order on Motion for TRO, 149 Memorandum Opinion by Michael Dempsey, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump. (Garg, Arjun) (Entered: 03/17/2017)
		* * * * *
3/17/17	163	ORDER granting 90 MOTION for Other Relief for Jane Doe #2 to Proceed Under Pseudonym. Signed by Judge Theodore D. Chuang on 3/17/2017. (jf3s, Deputy Clerk) (Entered: 03/17/2017)
3/17/17	164	USCA Case Number 17-1351 for 160 Notice of Appeal, filed by Rex W. Tillerson, Department of Homeland Security, Department of State, Office of the Director of National Intelligence, John F. Kelly, Michael Dempsey, Donald J. Trump. Case Manager—Jeffrey Neal (krc, Deputy Clerk) (Entered: 03/20/2017)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
3/20/17	167	ORDER scheduling a telephone status conference for March 21, 2017 at 3:00 p.m. Signed by Judge Theodore D. Chuang on 3/20/2017. (jf3s, Deputy Clerk) (Entered: 03/20/2017)
3/20/17	168	NOTICE of Intent to File a Motion for Preliminary Injunction of EO § 6 by HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Jane Doe # 2, John Does 1 & 3, Muhammed Meteab, Middle East Studies Association of North America, Inc. and Ibrahim Ahmed Mohomed (Cox, Justin) (Entered: 03/20/2017)
3/21/17	170	Case Management Conference held on 3/21/2017 before Judge Theodore D. Chuang. (FTR-KLS-2B.) (klss, Deputy Clerk) (Entered: 03/22/2017)
3/22/17	169	ORDER directing parties to submit briefing on issues of the Court's jurisdiction over the proposed motion; continuing the scheduled Motions Hearing. Signed by Judge Theodore D. Chuang on 3/22/2017. (jf3s, Deputy Clerk) (Entered: 03/22/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
3/22/17	171	NOTICE by HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Jane Doe # 2, John Does 1 & 3, Muhammed Meteab, Middle East Studies Association of North America, Inc., Ibrahim Ahmed Mohomed re 63 MOTION for Discovery *on an Expedited Basis Notice of Withdrawal* (Jadwat, Omar) (Entered: 03/22/2017)
3/23/17	172	PAPERLESS ORDER directing Plaintiffs to clarify whether they also intend to withdraw 92 Renewed Motion for Expedited Discovery. Signed by Judge Theodore D. Chuang on 3/23/2017. (ps2s, Chambers) (Entered: 03/23/2017)
		* * * * *
3/23/17	174	NOTICE by HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Jane Doe # 2, John Does 1 & 3, Muhammed Meteab, Middle East Studies Association of North America, Inc., Ibrahim Ahmed Mohomed re 92 Supplemental MOTION to Expedite *Discovery Notice of Withdrawal* (Jadwat, Omar) (Entered: 03/23/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
3/23/17	175	PAPERLESS ORDER, in light of 174 Notice of Withdrawal, finding as moot 63 Motion for Expedited Discovery and 92 Renewed Motion for Expedited Discovery. Signed by Judge Theodore D. Chuang on 3/23/2017. (ps2s, Chambers) (Entered: 03/23/2017)
3/23/17	176	STATUS REPORT by Daniel Coats, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump(Garg, Arjun) (Entered: 03/23/2017)
3/24/17	177	MOTION for Leave to File *Motion for Preliminary Injunction* by HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Jane Doe # 2, John Does 1 & 3, Muhammed Meteab, Middle East Studies Association of North America, Inc., Ibrahim Ahmed Mohomed(Espiritu, Nicholas) (Entered: 03/24/2017)
3/24/17	178	STATUS REPORT by Daniel Coats, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National

DATE	DOCKET NUMBER	PROCEEDINGS
		Intelligence, Rex W. Tillerson, Donald J. Trump (Attachments: # 1 Exhibit A)(Garg, Arjun) (Entered: 03/24/2017)
3/30/17	179	NOTICE by HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Jane Doe # 2, John Does 1 & 3, Muhammed Meteab, Middle East Studies Association of North America, Inc., Ibrahim Ahmed Mohomed (Attachments: # 1 Exhibit A—Hawaii Preliminary Injunction Order)(Keaney, Melissa) (Entered: 03/30/2017)
3/31/17	180	RESPONSE in Opposition re 177 MOTION for Leave to File *Motion for Preliminary Injunction* filed by Daniel Coats, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump.(Garg, Arjun) (Entered: 03/31/2017)
4/5/17	181	REPLY to Response to Motion re 177 MOTION for Leave to File *Motion for Preliminary Injunction* filed by HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Jane Doe # 2, John Does

DATE	DOCKET NUMBER	PROCEEDINGS
		1 & 3, Muhammed Meteab, Middle East Studies Association of North America, Inc., Ibrahim Ahmed Mohomed. (Attachments: # 1 Joint Record 1-127)(Keaney, Melissa) (Entered: 04/05/2017)
4/10/17	182	MEMORANDUM ORDER denying without prejudice 177 Plaintiff's Motion for Leave to File Motion for Preliminary Injunction; staying courts resolution of Plaintiff's Motion for Preliminary Injunction. Signed by Judge Theodore D. Chuang on 4/10/2017. (jf3s, Deputy Clerk) (Entered: 04/10/2017)
4/14/17	183	NOTICE by Daniel Coats, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex W. Tillerson, Donald J. Trump re 93 Amended Complaint re Intent to File *Unopposed Motion to Stay Response Deadline* (Attachments: # 1 Text of Proposed Order)(Garg, Arjun) (Entered: 04/14/2017)
4/19/17	184	ORDER staying 93 Amended Complaint, pending resolution of appellate proceedings. Signed by Judge

DATE	DOCKET NUMBER	PROCEEDINGS
		Theodore D. Chuang on 4/19/2017. (jf3s, Deputy Clerk) (Entered: 04/19/2017)
5/10/17	185	ORDER of USCA granting the unopposed motion to supplement the record include the "Supplemental Declaration of John Doe #3," executed on May 4, 2017, granting the motion and supplements the record on appeal pursuant to Federal Rule of Appellate Procedure 10(e) and Local Rule 10(d) as to 160 Notice of Appeal, filed by Rex W. Tillerson, Department of Homeland Security, Daniel Coats, Department of State, Office of the Director of National Intelligence, John F. Kelly, Donald J. Trump (Attachment: # 1 Declaration)(krc, Deputy Clerk) (Entered: 05/11/2017)
5/25/17	186	JUDGMENT of USCA affirming in part and vacating in part the Judgment of the USDC as to 160 Notice of Appeal, filed by Rex W. Tillerson, Department of Homeland Security, Daniel Coats, Department of State, Office of the Director of National Intelligence, John F. Kelly, Donald J. Trump. This judgment shall take effect upon issuance of this

DATE	DOCKET NUMBER	PROCEEDINGS
		court's mandate in accordance with Fed. R. App. P. 41. (Attachments: # 1 Published Opinion, # 2 Notice of Judgment)(krc, Deputy Clerk) (Entered: 05/25/2017)
5/31/17	187	ORDER of USCA amending the caption of the opinion in this case as follows: The words and its clients are added at the end of the party text for the first Plaintiff-Appellee listed in the caption to read, INTERNATIONAL REFUGEE ASSISTANCE PROJECT, a project of the Urban Justice Center, Inc., on behalf of itself and its clients. re: 160 Notice of Appeal, filed by Rex W. Tillerson, Department of Homeland Security, Daniel Coats, Department of State, Office of the Director of National Intelligence, John F. Kelly, Donald J. Trump (krc, Deputy Clerk) (Entered: 05/31/2017)
5/31/17	188	AMENDED PUBLISHED OPINION of USCA amending and superseding opinion dated 5/25/17 as to 160 Notice of Appeal, filed by Rex W. Tillerson, Department of Homeland Security, Daniel Coats, Department of State, Office of the Director

DATE	DOCKET NUMBER	PROCEEDINGS
		of National Intelligence, John F. Kelly, Donald J. Trump (krc, Deputy Clerk) (Entered: 05/31/2017)
6/5/17	189	SUPREME COURT Remark—petition for writ of certiorari filed 6/1/17 and placed on the docket 6/2/17 as No. 17-1436, re: 160 Notice of Appeal (USCA No. 17-1351)(krc, Deputy Clerk) (Entered: 06/05/2017)
6/15/17	190	AMENDED ORDER of USCA amending its opinion filed 5/25/17, as follows: On page 127, line three of text—the word the immediately preceding the word precisely is deleted; also on page 127, line six of text—the word million is corrected to read billion as to 160 Notice of Appeal, filed by Rex W. Tillerson, Department of Homeland Security, Daniel Coats, Department of State, Office of the Director of National Intelligence, John F. Kelly, Donald J. Trump (krc, Deputy Clerk) (Entered: 06/16/2017)
6/15/17	191	AMENDED OPINION of USCA affirming in part and vacating in part by superseding published opinion dated 5/25/17 as to 160 Notice of

DATE	DOCKET NUMBER	PROCEEDINGS
		Appeal, filed by Rex W. Tillerson, Department of Homeland Security, Daniel Coats, Department of State, Office of the Director of National Intelligence, John F. Kelly, Donald J. Trump (krc, Deputy Clerk) (Entered: 06/16/2017)
6/29/17	192	SUPREME COURT Remark—petition for writ of certiorari granted and application for stay of preliminary injunction granted in part (USCA No. 17-1351) re: 160 Notice of Appeal, filed by Rex W. Tillerson, Department of Homeland Security, Daniel Coats, Department of State, Office of the Director of National Intelligence, John F. Kelly, Donald J. Trump (krc, Deputy Clerk) (Entered: 06/29/2017)
7/17/17	193	MANDATE of USCA takes effect today as to 160 Notice of Appeal, filed by Rex W. Tillerson, Department of Homeland Security, Daniel Coats, Department of State, Office of the Director of National Intelligence, John F. Kelly, Donald J. Trump (krc, Deputy Clerk) (Entered: 07/17/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
7/17/17	194	ORDER of USCA recalling the mandate. The mandate issued this date due to clerical error is hereby withdrawn as to 160 Notice of Appeal, filed by Rex W. Tillerson, Department of Homeland Security, Daniel Coats, Department of State, Office of the Director of National Intelligence, John F. Kelly, Donald J. Trump (krc, Deputy Clerk) (Entered: 07/17/2017)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Docket No. 17-1351

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, A PROJECT OF THE URBAN JUSTICE CENTER, INC., ON BEHALF OF ITSELF AND ITS CLIENTS, ET AL., PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
3/17/17	1	Case docketed. Originating case number: 8:17-cv-00361-TDC. Case manager: JeffNeal. [17-1351] (JSN)
3/17/17	2	DOCKETING NOTICE issued Re: [1] Case Initial forms due within 14 days. Originating case number: 8:17-cv-00361-TDC. Mailed to: Sonia Kumar, Brad Rosenberg, Nicholas Steiner. [17-1351] (JSN)
3/17/17	3	BRIEFING ORDER filed. Opening Brief and Appendix due

DATE	DOCKET NUMBER	PROCEEDINGS
		04/26/2017. Response Brief due 05/26/2017. Mailed to Sonia Kumar, Brad Rosenberg, Nicholas Steiner. [17-1351] (JSN)
		* * * * *
3/21/17	8	ORDER filed [1000046140] substituting party (FRAP 43). Daniel R. Coats substituted for Michael Dempsey. Copies to all parties. Mailed to: Sonia Kumar, Brad Rosenberg, Nicholas Steiner. [17-1351] (JSN)
		* * * * *
3/22/17	12	(ENTRY RESTRICTED) MOTION by Appellants Daniel R. Coats, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson and Donald J. Trump to expedite decision, to accelerate case processing.. Date and method of service: 03/22/2017 ecf. [1000047126] [17-1351] —[Edited 03/23/2017 by JSN] H. Thomas Byron
3/22/17	13	NOTICE ISSUED to Justin Bryan Cox, Nicholas David Espiritu, Lee P. Gelernt, Omar C. Jadwat, Debo-

DATE	DOCKET NUMBER	PROCEEDINGS
		rah Jeon, Melissa S. Keaney, Daniel Mach, David Robert Rocah, Karen C. Tumlin, Cecillia D. Wang and Heather Lynn Weaver for Paul Harrison, Jane Doe #2, International Refugee Assistance Project, HIAS, Inc., Middle East Studies Association of North America, Inc., Muhammed Meteab, Ibrahim Ahmed Mohomed and John Does #1 & 3 requesting response to Motion to expedite decision [12], Motion to accelerate case processing [12]. Response due: 03/22/2017. [17-1351] (JSN)
3/22/17	14	Corrected MOTION by Appellants Daniel R. Coats, Department of Homeland Security, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson and Donald J. Trump to expedite decision, to accelerate case processing.. Date and method of service: 03/22/2017 ecf. [1000047229] [17-1351] H. Thomas Byron
		* * * * *
3/22/17	22	RESPONSE/ANSWER by Jane Doe #2, John Does #1 & 3, HIAS,

DATE	DOCKET NUMBER	PROCEEDINGS
		Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc. and Ibrahim Ahmed Mohomed to Motion to expedite decision [14], Motion to accelerate case processing [14]. [17-1351] Omar Jadwat
3/23/17	23	REPLY by Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland Security to Motion to expedite decision [14], Motion to accelerate case processing [14].. [17-1351] H. Thomas Byron
		* * * * *
3/23/17	25	COURT ORDER filed [1000048277] granting Motion to accelerate case processing [14]; granting Motion to expedite decision [14]; scheduling oral argument. Argument Date or Session: 05/08/2017. Copies to all parties. [17-1351] (JSN)
3/23/17	26	Accelerated BRIEFING ORDER filed.. Opening Brief and Appendix due 03/24/2017. Response Brief

DATE	DOCKET NUMBER	PROCEEDINGS
		due 04/14/2017. Reply Brief due 04/21/2017. [17-1351] (JSN)
3/24/17	27	CASE CALENDARED for oral argument. Date: 05/08/2017. Registration Time: 12:15-12:30. Daily Arguments Begin: 1:00. Oral argument acknowledgment form due within 5 days. (BY ORDER ENTERED 4/13/2017, ARGUMENT START TIME CHANGED TO 2:30 P.M. ON MAY 8, 2017) [17-1351]—[Edited 05/07/2017 by PSC] (JLC)
		* * * * *
3/24/17	34	Joint FULL ELECTRONIC APPENDIX and full paper appendix by Appellants Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland Security. Method of Filing Paper Copies: courier. Date paper copies mailed dispatched or delivered to court: 03/27/2017. [1000049094] [17-1351] H. Thomas Byron
3/24/17	35	MOTION by Appellants Daniel R. Coats, Department of State,

DATE	DOCKET NUMBER	PROCEEDINGS
		John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland Security for stay pending appeal. Date of action to be stayed, if applicable:3/16/17.. Date and method of service: 03/24/2017 ecf. [1000049095] [17-1351] Sharon Swingle
3/24/17	36	BRIEF by Appellants Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland Security in electronic and paper format. Type of Brief: OPENING. Method of Filing Paper Copies: courier. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 03/27/2017. [1000049096] [17-1351] Sharon Swingle
3/24/17	41	OPENING BRIEF (PAPER) filestamped, on behalf of Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland

DATE	DOCKET NUMBER	PROCEEDINGS
		Security. Number of pages: [73]. Sufficient: YES. Number of Copies: [4]. Entered on Docket Date: 03/28/2017. Received by clerk date: 03/28/2017. [1000050605] [17-1351] (JSN)
3/24/17	42	APPENDIX (PAPER) file-stamped, on behalf of Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland Security. Total number of volumes (including any sealed): 1. Total number of pages in all volumes: 823. Total number of sealed volumes: 0. Sufficient? Yes. CD/DVD/Other exhibit? No. Number of Copies: 4. Entered on Docket Date: 03/28/2017. Received by clerk date: 03/28/2017. [1000050610] [17-1351] (JSN)
		* * * * *
3/27/17	40	COURT ORDER filed [1000049798] directing filing of responses to court inquiry. Reponses due by 03/30/2017. Copies to all parties. [17-1351] (JSN)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/29/17	48	RESPONSE/ANSWER by Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland Security to court Order [40],court Order to court inquiry [40]. [17-1351] Sharon Swingle
		* * * * *
3/30/17	50	RESPONSE/ANSWER by Jane Doe #2, John Does #1 & 3, HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc. and Ibrahim Ahmed Mohomed to court Order [40],court Order to court inquiry [40]. [17-1351] Omar Jadwat
		* * * * *
3/31/17	74	RESPONSE/ANSWER by Jane Doe #2, John Does #1 & 3, HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc.

DATE	DOCKET NUMBER	PROCEEDINGS
		and Ibrahim Ahmed Mohomed to Motion for stay pending appeal [35]. Nature of response: in opposition. [17-1351] Omar Jadwat
		* * * * *
4/5/17	102	REPLY by Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland Security to Response [74].. [17-1351] Sharon Swingle
		* * * * *
4/10/17	108	COURT ORDER filed [1000059317] granting initial hearing en banc (FRAP 35) Copies to all parties. [17-1351] (PSC)
		* * * * *
4/13/17	125	ORDER filed [1000061649] scheduling oral argument. Argument Date or Session: 05/08/17 at 2:30 pm. Copies to all parties.. [17-1351] (JSN)
		* * * * *
4/14/17	132	(ENTRY RESTRICTED) RESPONSE/ANSWER by Jane

DATE	DOCKET NUMBER	PROCEEDINGS
		Doe #2, John Does #1 & 3, HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc. and Ibrahim Ahmed Mohomed to opening Brief [41]. [17-1351]—[Edited 04/20/2017 by JSN] Omar Jadwat
4/14/17	137	RESPONSE BRIEF (PAPER) file-stamped, on behalf of Jane Doe #2, John Does #1 & 3, HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc. and Ibrahim Ahmed Mohomed. Number of pages: [69]. Sufficient: YES. Number of Copies: [16]. Entered on Docket Date: 04/17/2017. Received by clerk date: 04/17/2017. [1000062773] [17-1351] (JSN)
		* * * * *
4/18/17	142	Corrected BRIEF by Appellees Jane Doe #2, John Does #1 & 3, HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc.

DATE	DOCKET NUMBER	PROCEEDINGS
		and Ibrahim Ahmed Mohomed in electronic and paper format. Type of Brief: RESPONSE. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 04/17/2017. [1000064113] [17-1351] Omar Jadwat
		* * * * *
4/21/17	221	BRIEF by Appellants Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland Security in electronic and paper format. Type of Brief: REPLY. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 03/24/2017. [1000066914] [17-1351] Anne Murphy
		* * * * *
4/21/17	260	REPLY BRIEF (PAPER) file-stamped, on behalf of Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United

DATE	DOCKET NUMBER	PROCEEDINGS
		States Department of Homeland Security. Number of pages: [40]. Sufficient: YES. Number of Copies: [16]. Entered on Docket Date: 04/25/2017. Received by clerk date: 04/25/2017. [1000068818] [17-1351] (JSN)
		* * * * *
4/24/17	254	MOTION by John Doe #8, Proposed Intervenor to intervene, to file amicus curiae brief (FRAP 29(e)) without consent of all parties on appeal within time allowed by FRAP 29(e).. Date and method of service: 04/24/2017 ecf. [1000067990] [17-1351] Lena Masri
		* * * * *
4/24/17	256	NOTICE ISSUED to Donald J. Trump, United States Department of Homeland Security, Department of State, Rex Tillerson, Office of the Director of National Intelligence, John F. Kelly, Daniel R. Coats, International Refugee Assistance Project, Paul Harrison, Jane Doe #2, HIAS, Inc., Middle East Studies Association of North America, Inc., Muhammed Meteab, Ibrahim Ahmed Mohomed and

DATE	DOCKET NUMBER	PROCEEDINGS
		John Does #1 & 3, requesting response to Motion to intervene [254] . Responses due:04/27/2017. [1000068038].. [17-1351] (JSN)
		* * * * *
4/27/17	280	RESPONSE/ANSWER by Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland Security to Motion to intervene [254], Motion to file amicus curiae brief [254]. Nature of response: in opposition. [17-1351] Lowell Sturgill
		* * * * *
5/3/17	283	COURT ORDER filed [1000075346] denying Motion to intervene [254]. Copies to all parties.. [17-1351] (JSN)
		* * * * *
5/4/17	287	MOTION by Appellees Jane Doe #2, John Does #1 & 3, HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc. and Ibrahim Ahmed Mohomed

DATE	DOCKET NUMBER	PROCEEDINGS
		to supplement record. Date and method of service: 05/04/2017 ecf. [1000076357] [17-1351] Omar Jadwat
5/4/17	288	(ENTRY RESTRICTED) Supplemental FULL ELECTRONIC APPENDIX and full paper appendix by Appellees Jane Doe #2, John Does #1 & 3, HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc. and Ibrahim Ahmed Mohomed. Method of Filing Paper Copies: mail. Date paper copies mailed dispatched or delivered to court: 05/04/2017. [1000076361] [17-1351] —[Edited 05/05/2017 by ABW] Omar Jadwat
5/5/17	289	Corrected Supplemental FULL ELECTRONIC APPENDIX and full paper appendix by Appellees Jane Doe #2, John Does #1 & 3, HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc. and Ibrahim Ahmed Mohomed. Method of Filing Paper

DATE	DOCKET NUMBER	PROCEEDINGS
		Copies: mail. Date paper copies mailed dispatched or delivered to court: 05/04/2017. [1000076932] [17-1351] Omar Jadwat
5/5/17	290	SUPPLEMENTAL APPENDIX (PAPER) file-stamped on behalf of Jane Doe #2, John Does #1 & 3, HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc. and Ibrahim Ahmed Mohomed. Sealed volume: N. Total number of volumes (including any sealed): 1. Total number of pages in all volumes: 4. CD/DVD/Other exhibit? N. Number of Copies: [16]. Entered on Docket Date: 05/05/2017. Received by clerk date: 05/05/2017. [1000076942] [17-1351] (AB)
5/5/17	291	RESPONSE/ANSWER by Daniel R. Coats, Department of State, John F. Kelly, Office of the Director of National Intelligence, Rex Tillerson, Donald J. Trump and United States Department of Homeland Security to Motion to supplement [287]. [17-1351] Sharon Swingle

DATE	DOCKET NUMBER	PROCEEDINGS
5/7/17	292	REPLY by Jane Doe #2, John Does #1 & 3, HIAS, Inc., Paul Harrison, International Refugee Assistance Project, Muhammed Meteab, Middle East Studies Association of North America, Inc. and Ibrahim Ahmed Mohomed to Response [291], Motion to supplement [287].. [17-1351] Omar Jadwat
5/8/17	293	EN BANC ORAL ARGUMENT heard before the Honorable Roger L. Gregory, Paul V. Niemeyer, Diana Gribbon Motz, William B. Traxler, Jr., Robert B. King, Dennis W. Shedd, G. Steven Agee, Barbara Milano Keenan, James A. Wynn, Jr., Albert Diaz, Henry F. Floyd, Stephanie D. Thacker and Pamela A. Harris. Attorneys arguing case: Mr. Jeffrey Bryan Wall for Appellants United States Department of Homeland Security, Department of State, Rex Tillerson, Office of the Director of National Intelligence, John F. Kelly, Donald J. Trump and Daniel R. Coats and Mr. Omar C. Jadwat for Appellees Paul Harrison, Jane Doe #2, International Refugee Assistance Project, HIAS, Inc., Middle East Stu-

DATE	DOCKET NUMBER	PROCEEDINGS
		dies Association of North America, Inc., Muhammed Meteab, Ibrahim Ahmed Mohomed and John Does #1 & 3. Courtroom Deputy: RJ Warren. [1000077923] [17-1351] (RW)
5/10/17	294	COURT ORDER filed [1000079712] granting Motion to supplement [287]. Copies to all parties.. [17-1351] (JSN)
5/25/17	295	PUBLISHED AUTHORED OPINION filed. Motion disposition in opinion denying Motion for stay pending appeal [35]. Originating case number: 8:17-cv-00361-TDC. [1000088535]. [17-1351] (JSN)
5/25/17	296	JUDGMENT ORDER filed. Disposition method: 17-1351 opn.p.arg. Decision: Affirmed in part, vacated in part. Originating case number: 8:17-cv-00361-TDC. Entered on Docket Date: 05/25/2017. [1000088546] Copies to all parties and the district court/agency.. [17-1351] (JSN)
5/25/17	297	OPINION ATTACHMENT. [17-1351] (JSN)
5/31/17	298	AMENDING ORDER filed. Copies to all parties.. [17-1351] (JSN)

DATE	DOCKET NUMBER	PROCEEDINGS
5/31/17	299	AMENDED OPINION filed amending and superseding opinion dated 05/25/2017. Originating case number: 8:17-cv-00361-TDC Copies to all parties.. [17-1351] (JSN)
6/5/17	300	SUPREME COURT REMARK—petition for writ of certiorari filed. 06/01/2017. 16-1436. [17-1351] (SJC)
6/15/17	301	AMENDING ORDER filed. Copies to all parties. [17-1351] (TW)
6/15/17	302	AMENDED OPINION filed amending and superseding opinion dated 5/25/17. Originating case number: 8:17-cv-00361-TDC. Copies to all parties. Annotation added to opinion reflecting Supreme Court history [17-1351]—[Edited 07/12/2017 by SJC] (TW)
6/29/17	303	SUPREME COURT REMARK—petition for writ of certiorari granted and application for stay of preliminary injunction granted in part. 06/26/2017 [17-1351] (SJC)
7/17/17	305	(ENTRY RESTRICTED) Mandate issued. ENTRY WITHDRAWN DUE TO CLERICAL ERROR.. [17-1351]—[Edited 07/17/2017 by JSN] (JSN)

DATE	DOCKET NUMBER	PROCEEDINGS
7/17/17	306	ORDER filed [1000119441] recalling mandate. Copies to all parties.. [17-1351] (JSN)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No.: 8:17-CV-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT,
A PROJECT OF THE URBAN JUSTICE CENTER, INC.,
ON BEHALF OF ITSELF AND ITS CLIENTS,
40 RECTOR ST, 9TH FL
NEW YORK, NY 10006;

HIAS, INC., ON BEHALF OF ITSELF AND ITS CLIENTS,
1300 SPRING STREET, SUITE 500
SILVER SPRING, MD 20910;

MIDDLE EAST STUDIES ASSOCIATION OF NORTH
AMERICA, INC., ON BEHALF OF ITSELF AND ITS MEMBERS,
3542 N. GERONIMO AVENUE
TUCSON, AZ 85705;

MUHAMMED METEAB
43 JEFFERSON AVENUE
SPRINGFIELD MA 01107;

PAUL HARRISON
1800 FULLER WISER ROAD, #717
EULESS, TX 76039-4610;

IBRAHIM AHMED MOHOMED
631 BRENT BOULEVARD, APT. C3
COLUMBUS, OH 43228

JOHN DOES # 1 & 3;

JANE DOE #2, PLAINTIFFS

v.

DONALD TRUMP, IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES
1600 PENNSYLVANIA AVENUE NW

WASHINGTON, D.C. 20035;
DEPARTMENT OF HOMELAND SECURITY,
SERVE ON: JOHN F. KELLY,
SECRETARY OF HOMELAND SECURITY
WASHINGTON, D.C. 20528;

DEPARTMENT OF STATE,
SERVE ON: REX W. TILLERSON,
SECRETARY OF STATE
2201 C STREET NW
WASHINGTON, D.C. 20520;

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,
SERVE ON: MICHAEL DEMPSEY,
ACTING DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, D.C. 20511;

JOHN F. KELLY
IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY
WASHINGTON, D.C. 20528;

REX W. TILLERSON
IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE
2201 C STREET NW
WASHINGTON, D.C. 20520;

MICHAEL DEMPSEY,
IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON , D.C. 20511, DEFENDANTS

[Mar. 10, 2017]

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUCTIVE RELIEF

INTRODUCTION

1. On March 6, 2017, President Trump signed an Executive Order entitled "Protecting the Nation from Terrorist Entry into the United States" (the "March 6 Order" or "Executive Order"). The March 6 Order, which Plaintiffs challenge in its entirety, was intended and designed to target and discriminate against Muslims, and it does just that in operation.

2. Once effective, the March 6 Order will rescind and replace a similar Executive Order, signed on January 27, 2017 (the "January 27 Order"; together, we refer to the January 27 and March 6 Executive Orders as the "Executive Orders"), that had the same purpose and effect, the implementation of which prompted chaos and widespread civil rights abuses in airports across the country. As a result of legal challenges to the January 27 Order, numerous courts enjoined several key provisions that banned the entry to the United States of both refugees and the nationals of seven predominantly Muslim countries.

3. The major provisions of the March 6 Order are nearly identical to those of the January 27 Order. The new order bans individuals from six of the seven predominantly Muslim countries identified in the January 27 Order—Yemen, Libya, Somalia, Sudan, Iran, and Syria—from entering the United States for at least 90 days. Like the previous order, the March 6 Order suspends the entire United States Refugee Admissions Program for at least 120 days and reduces the number of refugees allowed into the United States for the current fiscal year from 110,000 to 50,000. The March 6 Order also contains language that associates Muslims

with violence, terrorism, bigotry, and hatred, inflicting stigmatic and dignitary harms. As a result, the March 6 Order will have the same discriminatory and stigmatizing impact on Muslims as the January 27 Order, which was itself a product of the President's clearly expressed intent to prevent Muslims from entering the United States.

4. While the March 6 Order contains various additions and revisions intended to insulate it from the legal claims that led to the enjoining of the January 27 Order, the Trump Administration has made clear that the March 6 Order is intended to effectuate the same policy outcome as the January 27 Order. The March 6 Order likewise suffers from the same fundamental constitutional and statutory defects as the January 27 Order.

5. The President has been very clear about his desire to prevent Muslims from entering the United States. He specifically promised to do so as a candidate. Presented with early objections to that proposal, he asked advisors how he could implement a Muslim ban indirectly, and they helped him craft the January 27 Order. President Trump further admitted on national television that through the January 27 Order he intended to favor Christian refugees over Muslim refugees. Rarely in American history has governmental intent to discriminate against a particular faith and its adherents been so plain.

6. After key provisions of the January 27 Order were preliminarily enjoined, a Trump Administration spokesperson explained that the revised Executive Order (which was ultimately signed on March 6) would have only minor, technical changes from the original

Order, and would thus produce the same basic policy outcome. That basic goal and outcome was, and remains, the exclusion of Muslims from the United States.

7. Like the January 27 Order, the March 6 Order violates two of our most cherished constitutional protections: the guarantee that the government will not establish, favor, discriminate against, or condemn any religion, and the guarantee of equal protection of the laws.

8. The United States was born in part of an effort to escape religious persecution, and the Religion Clauses of the First Amendment reflect the harrowing history of our Founders. More than two centuries later, our nation is one of the most religiously diverse in the world and has become a sanctuary for immigrants and visitors of all faiths and no faith, including refugees fleeing persecution in their homelands.

9. Both the January 27 Order and the March 6 Order fly in the face of our historical commitment to welcoming and protecting people of all faiths, and no faith, and it violates the "clearest command of the Establishment Clause"—"one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982).

10. The United States was likewise founded on the principle that all people—regardless of their faith or where they are born—are created equal. The March 6 Order—which, like the January 27 Order, was motivated by animus toward Muslims and expressly dis-

criminates on the basis of national origin—runs afoul of this core constitutional value as well.

11. Plaintiffs challenge the March 6 Order under the Establishment Clause; the equal protection guarantee of the Due Process Clause of the Fifth Amendment; the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq*.; the anti-discrimination provisions of the INA, 8 U.S.C. § 1152(a)(1)(A); the Refugee Act of 1980, as amended; and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)-(D).

12. Plaintiffs respectfully request that the Court issue appropriate declaratory relief and preliminarily and permanently enjoin the March 6 Order as a whole.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiffs' claims under the U.S. Constitution and federal statutes. The Court has additional remedial authority under 28 U.S.C. §§ 2201-02.

14. Venue is proper under 28 U.S.C. §1391(e) and Local Rule 501.4.a.ii. Defendants are officers or employees of the United States acting in their official capacities, and agencies of the United States. Plaintiffs HIAS and John Doe #1 reside in the Southern Division of this District. No real property is involved in this action.

PARTIES

15. Plaintiff International Refugee Assistance Project ("IRAP"), a project of the Urban Justice Center, Inc., provides and facilitates free legal services for

vulnerable populations around the world, including refugees, who seek to escape persecution and find safety in the United States and other Western countries.

16. Founded in 2008 as a student organization at Yale Law School, IRAP initially served Iraqi refugees who were victims of the Iraq War. In 2010, IRAP became part of the Urban Justice Center and now has offices in New York as well as the Middle East. IRAP has expanded its client base since its inception to assist refugees from Afghanistan, Egypt, Eritrea, Ethiopia, Iran, Jordan, Kuwait, Libya, Pakistan, Palestine, Somalia, Sudan, Syria, Turkey, and Yemen. Through in-house casework, as well as supervision of 1,200 students from 29 law schools in the United States and Canada and pro bono attorneys from over 75 international law firms and multinational corporations, IRAP directly assists thousands of refugees in urgent registration, protection, and resettlement cases every year.

17. IRAP lawyers provide legal assistance to refugees and other immigrants to the United States throughout the resettlement process. IRAP lawyers advise their clients on the resettlement process, write legal briefs and compile physical evidence in advance of clients' interviews with United States Citizenship and Immigration Services ("USCIS"), prepare them for their oral testimony in their interviews, and then conduct regular follow-up with USCIS until the clients are safely resettled.

18. IRAP assists many individuals in the United States who need assistance filing family reunification petitions for family members overseas. IRAP also assists U.S.-based Iraqi and Syrian citizens and lawful

permanent residents in filing petitions in order to get their family members overseas into the Direct Access Program of the United States Refugee Admissions Program. Finally, IRAP also assists countless Iraqi and Afghan citizens who have served the United States government to obtain Special Immigrant Visas, with the support of U.S. citizen veterans of Iraq and Afghanistan.

19. Since its inception, IRAP has helped to resettle over 3,200 individuals to 55 countries, with the majority resettled to the United States. It has provided legal assistance to nearly 20,000 more individuals.

20. The overwhelming majority of IRAP's clients, including clients abroad and those within the United States, identify as Muslim.

21. As set forth in greater detail below, implementation of the Executive Orders has caused substantial harm to IRAP and its clients, and will continue to harm them. IRAP asserts claims on behalf of itself and its clients in the United States and abroad. The rights of its clients that IRAP seeks to vindicate here are inextricably bound up with its organizational mission and purpose, and its clients face numerous hurdles to bringing this suit in their own name.

22. Plaintiff HIAS, the world's oldest refugee resettlement agency, is a faith-based organization that aims to rescue people around the world whose lives are in danger. The organization works toward a world in which refugees find welcome, safety, and freedom. Founded in 1881 to assist Jews fleeing pogroms in Russia and Eastern Europe, HIAS now serves refu-

gees and persecuted people of all faiths and nationalities around the globe. Since HIAS's founding, the organization has helped more than 4.5 million refugees start new lives.

23. HIAS has offices in twelve countries worldwide, including headquarters in Silver Spring, Maryland, which is its principal place of business, and another domestic office in New York City. HIAS also provides resettlement experts in support of the United Nations High Commissioner for Refugees (UNHCR). Refugee resettlement lies at the heart of HIAS's work in the United States. It is one of nine non-profit organizations designated by the federal government to undertake this humanitarian work through contracts with the Department of State and the Department of Health and Human Services.

24. In 2016, HIAS provided services to more than 350,000 refugees and asylum seekers globally. HIAS's client base includes refugees abroad and in the United States who are from Syria, Iraq, Iran, Sudan, Somalia, Yemen, Ukraine, Bhutan, the Democratic Republic of Congo, Afghanistan, Eritrea, Tanzania, Ethiopia, Burundi, South Sudan, Uganda, Russia, Belarus, and Burma, among other countries. Many of these clients are Muslim.

25. HIAS provides programs and services to refugees, including employment, psychosocial, and legal services. HIAS has also been approved to refer cases of particularly vulnerable refugees directly for third-country resettlement to the United States and other countries. Around the world, HIAS provides legal ser-

vices to protect the rights of refugees, and to register, document, and secure the status of refugees.

26. HIAS is also assigned clients via the State Department's allocation process, which determines which refugee clients will be resettled by HIAS. For clients who have newly arrived in the United States, HIAS either provides direct resettlement services or partners with other organizations across the country to do so. These services include arranging housing and providing essential furnishings, food, clothing, initial cash assistance, initial health screening, cultural and community orientation, and, through case management services, assistance with enrollment in English language classes and employment services, as well as referrals for health and legal services.

27. HIAS, directly and through affiliated agencies, also provides assistance to refugee and asylee clients in the United States who are seeking to gain entry for family members abroad who still face persecution. As set forth in greater detail below, implementation of the January 27 Order has caused substantial harm to HIAS and its clients, and the March 6 Order will continue to harm them. HIAS asserts claims on behalf of itself and its clients. The rights of its clients that HIAS seeks to vindicate here are inextricably bound up with its organizational mission and purpose, and its clients face numerous hurdles to bringing this suit in their own name.

28. Plaintiff Middle East Studies Association (MESA) is a non-profit learned society that brings together scholars, educators, and those interested in the study of the Middle East from all over the world. From its inception in 1966 with 51 founding members,

MESA has increased its membership to more than 2,400 and now serves as an umbrella organization for fifty-five institutional members. MESA's membership includes both graduate students and faculty working in the field of Middle East studies.

29. As set forth in greater detail below, MESA and its members will be harmed in a variety of ways by the Executive Order. MESA asserts claims on behalf of itself and its members.

30. Plaintiff John Doe #1 is a lawful permanent resident and national of Iran who lives in Montgomery County, Maryland. He is a scientist. He came to the United States in 2014 on an exchange visitor visa. In 2016, he obtained his lawful permanent resident status through the National Interest Waiver program for people with extraordinary abilities. His pioneering scholarly works are recognized as cutting edge in the sciences. Both John Doe #1 and his wife, who is not a party, are non-practicing Muslims.

31. Plaintiff John Doe #3 is a lawful permanent resident and national of Iran who lives in Anne Arundel County, Maryland. He came to the United States in 2011 through the Green Card lottery. John Doe #3 worked as a teacher in Iran, and currently works in the engineering field.

32. Plaintif Jane Doe #2 is a U.S. citizen of Syrian origin who lives in Mecklenburg County, North Carolina. She is from a Muslim family and is enrolled in college where she is studying to become a healthcare technician. She filed a family-based visa petition for her sister who is a Syrian refugee currently living in a

refugee-designated area in Saudi Arabia with her husband and two young children.

33. Plaintiff Mohammed Meteab is a lawful permanent resident of the United States who lives in Springfield, Massachusetts. He came to the United States in 2015 as a refugee along with his wife and two children. He now has a third child, a U.S. citizen born in the United States. Plaintiff Meteab is one of five brothers; he, his wife, his two elder children, and all five brothers are Iraqi. One brother came to the United States as a refugee. The other three brothers have been approved as refugees by the United Nations High Commission for Refugees and remain in Jordan, awaiting resettlement. Two of the three are approved to come to the United States but do not yet have travel documents. Mr. Meteab is a Sunni Muslim, as are his brothers.

34. Plaintiff Paul Harrison is a citizen of the United States by birth who lives in Euless, Texas. In November 2015, he met his partner, an Iranian national who lives in Tehran, Iran. In March 2016, Mr. Harrison petitioned for his partner—now his fiancé—to join him in the United States on a K-1 visa. After his November 2016 interview at the U.S. Embassy in Ankara, Turkey, his application was approved and administrative processing complete on January 17, 2017. A visa has not yet been issued, however.

35. Plaintiff Ibrahim Ahmed Mohomed is a United States citizen of Somali origin who lives in Columbus, Ohio. He came to the United States as a refugee in 2009. In 2013, his wife and nine children were approved to come to the United States as refugees but they are

still in Ethiopia awaiting authorization to travel to the United States to join Mr. Mohomed. Mr. Mohomed and his family are Muslim.

36. As set forth in greater detail below, implementation of the Executive Orders has caused and will continue to cause harm to Plaintiffs Meteab, Harrison, Mohomed, Jane Doe #2 and John Does #1 and #3 (collectively, the "Individual Plaintiffs").

37. Defendant Donald Trump is the President of the United States. He is sued in his official capacity. In that capacity, he issued the Executive Orders challenged in this suit.

38. Defendant U.S. Department of Homeland Security ("DHS") is a cabinet-level department of the United States federal government. Its components include U.S. Citizenship and Immigration Services ("USCIS"), Customs and Border Protection ("CBP"), and Immigration and Customs Enforcement ("ICE"). CBP's responsibilities include inspecting and admitting immigrants and nonimmigrants arriving with U.S. visas at international points of entry, including airports and land borders. USCIS's responsibilities include adjudicating requests for immigration benefits for individuals located within the United States. ICE's responsibilities include enforcing federal immigration law within the interior of the United States. The Executive Orders assign DHS a variety of responsibilities regarding their enforcement.

39. Defendant U.S. Department of State ("DOS") is a cabinet-level department of the United States federal government. DOS is responsible for the issuance

of immigrant and nonimmigrant visas abroad. The Executive Orders assign DOS a variety of responsibilities regarding their enforcement.

40. Defendant Office of the Director of National Intelligence ("ODNI") is an independent agency of the United States federal government. The ODNI has specific responsibilities and obligations with respect to implementation of the Executive Orders.

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

42. Defendant John Kelly is the Secretary of Homeland Security. Secretary Kelly has responsibility for overseeing enforcement and implementation of the Executive Orders by all DHS staff. He is sued in his official capacity.

43. Defendant Michael Dempsey is the Acting Director of National Intelligence, and has responsibility for overseeing enforcement and implementation of the Executive Orders by all ODNI staff. He is sued in his official capacity.

FACTUAL ALLEGATIONS

President Trump's Expressed Intent To Target Muslims and To Favor Christians Seeking to Enter the Country

44. President Trump has repeatedly made clear his intent to enact policies that exclude Muslims from entering the United States and favor Christians seeking to enter the United States.

45. On December 7, 2015, then-Presidential candidate Trump issued a statement on his campaign website. Entitled, "DONALD J. TRUMP STATEMENT ON PREVENTING MUSLIM IMMIGRATION," the statement declared that "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on."

46. The statement, which remains on President Trump's campaign website to this day, invokes stereotypes of Muslims, falsely suggesting that all Muslims believe in "murder against non-believers who won't convert" and "unthinkable acts" against women.

47. Defending his proposed Muslim ban the next day, candidate Trump told Good Morning America, "What I'm doing is I'm calling very simply for a shutdown of Muslims entering the United States—and here's a key—until our country's representatives can figure out what is going on."

48. When asked the same day on MSNBC how his Muslim ban would be applied by customs officials, candidate Trump said, "That would be probably—they would say, are you Muslim?" A reporter followed up by asking, "And if they said yes, they would not be allowed in the country[?]" Candidate Trump responded, "That's correct."

49. Candidate Trump repeatedly reiterated his support for targeting Muslims seeking to enter the United States.

50. On March 9, 2016, candidate Trump stated, "I think Islam hates us. There's . . . a tremendous

hatred there . . . . There's an unbelievable hatred of us . . . . We can't allow people coming into this country who have this hatred of the United States . . . and [of] people that are not Muslim. . . ."

51. The next day, during a debate, candidate Trump said he would "stick with exactly" what he had said the night before. When asked if he was referring to all 1.6 billion Muslims worldwide, he explained, "I mean a lot of them." Candidate Trump stated later in the same debate, "There is tremendous hate. There is tremendous hate. Where large portions of a group of people, Islam, large portions want to use very, very harsh means."

52. On March 22, 2016, candidate Trump stated that "we're having problems with the Muslims, and we're having problems with Muslims coming into the country," adding, "You need surveillance. You have to deal with the mosques whether we like it or not . . . . These attacks aren't . . . done by Swedish people. That I can tell you."

53. The same day, candidate Trump stated on Twitter that a Democratic candidate for President, Hillary Clinton, wanted to "let the Muslims flow in."

54. On June 13, 2016, candidate Trump stated, "I called for a ban after San Bernardino and was met with great scorn and anger. But now many . . . are saying that I was right to do so."

55. In an interview aired on 60 Minutes on July 17, 2016, when asked about the proposed Muslim ban, candidate Trump replied: "Call it whatever you want. We'll call it territories, ok?" Asked again whether

Muslims would be banned, candidate Trump said that "there's nothing like" the Constitution "[b]ut it doesn't necessarily give us the right to commit suicide, as a country, okay?" He again reiterated: "Call it whatever you want."

56. In a July 24, 2016 interview on Meet the Press, candidate Trump was asked if a plan similar to the now-enacted Executive Order was a "rollback" from "[t]he Muslim Ban." Candidate Trump responded: "I don't think so. I actually don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territories."

57. Candidate Trump continued: "People were so upset when I used the 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."

58. This explanation that the Muslim ban would use nationality as a proxy was later confirmed by Rudolph Giuliani, an advisor to candidate Trump and later an advisor to him as President. After the Executive Order was signed, Mr. Giuliani explained that "when [candidate 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.'" In response to this edict, according to Mr. Giuliani, the commission decided to focus on territories, rather than explicitly naming Muslims as the subjects of the ban.

The January 27 Order

59. After conducting a campaign in which a ban on Muslim admissions was a key promise, President Trump

took action to carry out that promise by issuing the January 27 Order one week after being inaugurated.

60. Statements made by President Trump and his advisors around the time of the signing of the January 27 Order confirm President Trump's intent to discriminate against Muslims. In an interview with the Christian Broadcasting Network released the same day that he signed the January 27 Order, President Trump stated that the Order was designed to give Christians priority when applying for refugee status. "If you were a Muslim you could come in [to the United States], but if you were a Christian, it was almost impossible," he said. "[T]hey were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair. So we are going to help them."

61. Consistent with this expressed religious animus towards Muslims and preference for Christians, the January 27 Order disfavors Muslims while giving special treatment to non-Muslims.

62. Section 3, for example, bans any entry for 90 days for individuals from seven countries, each of which is more than ninety percent Muslim: Syria, Sudan, Iraq, Iran, Libya, Somalia, and Yemen.

63. The January 27 Order does not single out any countries for disfavored treatment that are not majority-Muslim.

64. The January 27 Order provides a mechanism for the government to extend and/or expand the 90-day ban at the end of the 90 day period. Sections 3 of the Order directs the Secretary of Homeland Security to "immediately conduct a review to determine the infor-

mation 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," and to "submit to the President a report on the results of the review . . . within 30 days of the date of this order." At that point, the "Secretary of State shall request all foreign governments that do not supply such information to start providing such information," and 60 days after that—precisely at the end of the initial 90 day ban period—the January 27 Order provides for the President to issue a proclamation indefinitely banning travelers from a list of countries deemed to be non-compliant "until compliance occurs." On information and belief, the 30-day review to be conducted by the Secretary of Homeland Security has not yet resulted in a report to the President.

65. Section 5 of the January 27 Order prohibits refugee admissions for 120 days, except for Syrian refugees, who are banned indefinitely.

66. The January 27 Order discriminates between persons of majority and minority faiths in their country of origin. Section 5(b) requires the government 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" once the 120-day ban on refugee admissions is complete.

67. During those 120 days, moreover, Section 5(e) allows the admission of certain refugees on a discretionary case-by-case basis, "only so long as [the Secre-

taries of State and Homeland Security] 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."

68. As the President conceded, these provisions are intended to allow Christian refugees to enter the United States, even while Muslim refugees from the same countries are prohibited from doing so. And indeed, Muslims would be severely disadvantaged under the minority-faith preferences set forth in Sections 5(b) and 5(e). During the past three fiscal years, only 12% of Muslim refugees hailed from a country where Islam is a minority faith.

69. There is no statutory, regulatory, or constitutional basis for favoring refugees from minority faiths over refugees from majority faiths. There is no basis in the Refugee Act of 1980, as amended—which governs the admission of refugees to the United States and their resettlement herein—to prioritize refugees fleeing persecution on the basis of religion, as opposed to the other congressionally-recognized bases. *See* 8 U.S.C. § 1101(a)(42) (defining "refugee").

70. Section 5(d) reduces, by more than half, the annual refugee admissions allotment that was set prior to the current fiscal year by President Obama (reducing from 110,000 to 50,000).

71. Upon information and belief, as of February 2017, approximately 41,000 refugees had already been resettled in the United States. Upon information and belief, the number of refugees already somewhere in

the U.S. Refugee Admissions Program pipeline—well over 50,000—would put the U.S. refugee resettlement total above Section 5(d)'s reduced admissions allotment of 50,000.

72. As a result, upon information and belief, Defendants have already undertaken various actions to bring to a halt the U.S. refugee resettlement process as a result of Section 5(d)'s reduction in this fiscal year's figure.

73. For example, upon information and belief, shortly after the January 27 Order was signed, USCIS, a component of Defendant Department of Homeland Security, cancelled nearly all refugee processing interviews abroad.

74. Additionally, upon information and belief, Defendant Department of State has suspended security checks for refugees, a process that typically takes between 18-24 months.

75. Upon information and belief, Section 5(d)'s reduction in the annual refugee admissions allotment has all but ground to a halt the United States' refugee resettlement process.

76. Furthermore, Section 5(g) seeks to expand the limited role State and local governments have in the refugee resettlement process beyond that envisioned by Congress in order to authorize and facilitate the recently-stated desire and intent of some states and localities in the United States to discriminate against lawfully-admitted refugees on the basis of their nationality and/or religion. *See, e.g.*, *Exodus Refugee Immigration, Inc. v. Pence*, 838 F.3d 902 (7th Cir. 2016)

(affirming preliminary injunction on equal protection grounds of state executive order issued by then-Governor of Indiana, Mike Pence, that sought to prevent the resettlement in the State of refugees from Syria).

77. In addition to Sections 3 and 5, other sections of the January 27 Order reinforce stereotypes about Muslims and discriminate against them. Multiple sections, for example, associate Muslims with violence, bigotry, and hatred, inflicting stigmatic and dignitary harms, among other types of injury. These include Sections 1 and 2, which portray the ban as protecting citizens from foreign nationals "who would place violent ideologies over American law" and "who intend to commit terrorist attacks in the United States"; and Section 10, which requires the Secretary of Homeland Security to periodically publish information about the number of "foreign nationals" involved in, among other things, terrorism-related activities, radicalization, and "gender-based violence against women, including honor killings"—direct echoes of thencandidate Trump's broad statements denigrating Islam and Muslims.

78. Further, on information and belief, since the January 27 Order was signed, CBP has questioned foreign nationals entering from certain countries about their religious beliefs to determine whether or not they are Muslim, and has subjected Muslim travelers from countries other than the seven designation nations to disproportionate and unwarranted scrutiny and interrogation.

79. There is no sound basis for concluding that Muslims generally, or Muslims from particular countries, are more likely to commit violent acts of terror.

80. A previous program to track certain foreign nationals predominantly from Muslimmajority countries, the National Security Entry-Exit Registration System ("NSEERS"), did not lead to the conviction or even identification of a single terrorist, even though it subjected tens of thousands of people to additional screening and investigation.

81. Many alternatives exist that do not involve targeting individuals based on their faith or using nationality as a proxy for faith, are less restrictive than the January 27 Order, and are more closely tailored to legitimate national security concerns.

82. The January 27 Order remains in effect until March 16, 2017, when the March 6 Order becomes effective and rescinds and replaces the January 27 Order.

The Chaotic and Irregular Implementation of the January 27 Order

83. The preparation and implementation of the January 27 Order were extremely unusual and chaotic. Upon information and belief, the White House bypassed regular channels for input and cooperation with other components of the Executive Branch, including the Secretaries of Homeland Security, Defense, and State. Moreover, upon information and belief, CBP was not given clear operational guidance during critical times in the implementation of the January 27 Order.

84. The January 27 Order was signed without final review or legal analysis from DHS, which—along with the DOS—is principally charged with implementing the Order.

85. Secretary of Homeland Security Kelly was reportedly in the midst of a conference call to discuss the January 27 Order when someone on the call learned from watching television that the Order they were discussing had been signed.

86. Similarly, Secretary of Defense Mattis, who had publicly criticized President Trump's proposal to ban Muslims from the United States, reportedly did not see a final version of the January 27 Order until the day it was signed and was not consulted during its preparation.

87. The January 27 Order did not arise out of the usual process of consulting with the relevant cabinet-level officials and agencies before issuing an Executive Order. Instead, the January 27 Order was primarily drafted by a small team of Presidential aides, overseen by chief White House strategist Stephen K. Bannon.

88. Mr. Bannon has previously made anti-Muslim comments. He criticized former President George W. Bush for referring to Islam as "a religion of peace," calling President Bush "one of the dumbest presidents in the history of these United States."

89. Congressional staff who worked on the January 27 Order reportedly were required to sign nondisclosure agreements, and not even the members of Congress they served were allowed to know of their work

on the January 27 Order. On information and belief, this arrangement was also highly unusual.

90. During the days leading up to and following the signing of the January 27 Order, its scope and provisions were changed without any rational relationship to the purported reasons for the January Order.

91. For example, the night before the January 27 Order was signed, the Department of Homeland Security issued guidance interpreting § 3(c) of the January 27 Order as not applying to lawful permanent residents. Overnight, the White House overruled that guidance, applying the January 27 Order to lawful permanent residents subject to a case-by-case exception process, in a decision closely associated with Mr. Bannon.

92. After the detention at airports of many individuals, including lawful permanent residents, led to chaos nationwide, Secretary Kelly issued a statement "deem[ing] the entry of lawful permanent residents to be in the national interest." Secretary Kelly's statement was made pursuant to Section 3(g) of the order, which requires such a decision to be made jointly with the Secretary of State and "on a case-by-case basis."

93. Finally, on February 1, the Counsel to the President purported to interpret the January 27 Order as exempting lawful permanent residents from the ban entirely.

94. Similarly, initial guidance from the Department of State indicated that individuals with dual citizenship, with one country of citizenship subject to the ban, would be banned from entering the United States. Word of a change in that policy spread irregularly, with

notice being given to airlines and foreign nations but contradicted in official U.S. government communications.

95. Finally, CBP announced a changed policy, explaining, in response to the question "Does 'from one of the seven countries' mean citizen, national or born in?" that "Travelers are being treated according to the travel document they present." According to this policy, currently in place, the very same individual both is and is not subject to the travel ban depending only on the travel document she presents.

96. The government also reversed itself on its policy toward holders of Special Immigrant Visas from Iraq. Holders of these visas are clearly banned under the terms of the January 27 Order, and they were refused entry when it went into effect. However, on February 2, 2017, the government changed course and allowed them to enter the United States despite the January 27 Order.

97. Still other aspects of the January 27 Order and its implementation demonstrate utter disregard for the individuals affected by it. For example, the Administration knew that the January 27 Order would bar the entry of individuals who were literally mid-air when the order was issued. Nonetheless, and absent any exigency that would justify it, the order was signed late on a Friday afternoon. That decision had a number of predictable consequences, including: making it more difficult for the federal employees tasked with enforcing the order to obtain instruction on how to interpret and enforce the order's sloppily-written provisions; prolonging the detentions at airports of those affected,

and leading many to be wrongfully deported; and increasing the difficulty advocates had in accessing their clients and the courts.

98. In a tweet on January 30, 2017, President Trump appeared to justify the rushed implementation of the January 27 Order by claiming that "[i]f the ban were announced with a one week notice, the 'bad' would rush into our country during that week. A lot of bad 'dudes' out there!"

99. Even once advocates were able to access the courts and obtain temporary injunctive relief against aspects of the Executive Order, DHS officials frequently refused or otherwise failed to comply with the court orders, undermining bedrock constitutional principles and inflicting further unlawful injury on the affected individuals.

100. Other actions taken by DHS and DOS to enforce the January 27 Order exhibit a zealous desire to go beyond even the draconian measures the order actually requires.

101. Notwithstanding that Section 3 of the January 27 Order only bars "entry into the United States of aliens from" one of the aforementioned seven Muslim-majority countries, DHS interpreted it to prohibit the granting of *any* immigration-related benefit to anyone from those countries—including to individuals who are already in the United States. That decision would have wide-ranging consequences, including: delaying naturalization of lawful permanent residents ("LPRs") from those countries who wish to become U.S. citizens; rendering asylees from those countries unable to be

lawfully employed once their Employment Authorization Documents expire; and either expelling or making undocumented any individuals here on nonimmigrant visas (including student, employment, and tourist) that otherwise would have been renewed.

102. DOS, at the request of DHS, issued a letter purporting to provisionally revoke *all* immigrant and nonimmigrant visas of nationals of the seven designated countries on a categorical basis. The letter is dated January 27, 2017, but only came to light on January 31, 2017, when Department of Justice lawyers filed it in pending litigation. DOS has stated that this action was taken to "implement[]" the Executive Order.

103. Upon information and belief, DOS has never before revoked a broad swath of valid visas in this manner. Nor, on information and belief, is visa revocation ordinarily undertaken in secret, with no notice to the visa holder and no individualized consideration of whether any particular visa should be revoked.

104. Still further evidence of discriminatory intent and effect is reflected in the statements by President Trump and his Administration seeking to defend and justify the January 27 Order after it was issued.

105. President Trump, for example, falsely stated that only 109 people were detained over the weekend following the issuance of the January 27 Order, even though he knew or should have known that the number was far higher.

106. Indeed, pursuant to a federal district court order, the federal government has since revealed that at least 746 individuals were detained over a period of

just 27 hours during the weekend after the January 27 Order was signed. This 27-hour period did not begin until a day after the January 27 Order went into effect.

107. These chaotic, irregular, and irrational policies, policy changes, and statements indicate that the purported justifications for the January 27 Order are pretextual and that it was at least substantially motivated by an intent to discriminate against Muslims.

The Nationwide Preliminary Injunction Enjoining the January 27 Order

108. A February 3, 2017, order issued by the District Court for the Western District of Washington currently prohibits the government from enforcing Sections 3(c), 5(a), 5(b), and 5(e) of the January 27 Order. Upon issuance of this Order, which the District Court described as a temporary restraining order, the government appealed to the Ninth Circuit and sought a stay pending appeal.

109. After hearing oral argument, the Ninth Circuit declined to stay the Order, noting that "although courts owe considerable deference with respect to immigration and national security, it is beyond question that the federal judiciary retains the authority to adjudicate constitutional challenges to executive action." *Washington v. Trump*, 847 F.3d 1151, 1164 (9th Cir. 2017).

110. In reaching its holding, the Court noted that "[t]he government has pointed to no evidence that any alien from any of the countries named in the order has perpetrated a terrorist attack in the United States." *Id.* at 1168.

111. The Court also acknowledged "evidence of numerous statements by the President about his intent to implement a 'Muslim ban'" and observed that "[i]t is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims." *Id.* at 1167.

112. The Court also found that the February 3 Order, although styled a TRO, should be treated as a preliminary injunction.

113. Shortly after the Ninth Circuit's opinion issued, President Trump tweeted, "SEE YOU IN COURT, THE SECURITY OF OUR NATION IS AT STAKE!" He subsequently denounced the opinion as "a political decision" and stated, "[W]e're going to see them in court, and I look forward to doing that. It's a decision that we'll win, in my opinion, very easily."

114. On March 7, 2017, the government withdrew its appeal of the February 3 Order, leaving in place the preliminary injunction of Sections 3(c), 5(a), 5(b), and 5(e) of the January 27 Order.

The March 6 Order

115. In the weeks preceding the issuance of the March 6 Order, Stephen Miller, a senior advisor to President Trump, explained that the administration was preparing a new executive order "to be responsive to the judicial ruling" of the Ninth Circuit. He explained that the changes would be "mostly minor, technical differences. Fundamentally, you are still going to have the same, basic policy outcome for the country."

116. Consistent with Mr. Miller's statement, the March 6 Order, explicitly referring to the Ninth Circuit's ruling, exempts certain categories of noncitizens that have "prompted judicial concerns" from the ban, and alters the original order's "approach to certain other issues or categories of affected aliens" "in order to avoid spending additional time pursuing litigation" over the constitutionality of the January 27 Order.

117. Indeed, notwithstanding an expanded "Policy and Purpose" section and certain other changes discussed more fully below, the March 6 Order is extremely similar to the January 27 Order in most important respects.

118. Like the January 27 Order, the March 6 Order bans entry for a new 90 day period for individuals from the six of the same seven predominantly Muslim countries identified in the January 27 Order: Syria, Sudan, Iran, Libya, Somalia, and Yemen (Section 2(c)).

119. Like the January 27 Order, the March 6 Order also provides a mechanism for the government to extend and/or expand the 90-day ban at the end of the 90 day period. Section 2 of the Order directs the Secretary of Homeland Security to "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." In addition, the March 6 Order explicitly provides that the review need not be conducted in a consistent matter between countries: "The Secretary of Homeland Security may

conclude that certain information is needed from particular countries even if it is not needed from every country." Again, the order provides for the submission of a report on this review within 30 days of the date of the order, a period (50 days rather than 60) for countries to respond to the order, and a provision for the President to thereafter issue a proclamation indefinitely banning travelers from a list of countries deemed to be non-compliant.

120. The corresponding provisions of the January 27 Order were never suspended and remain in effect.

121. The country-by-country report required by the January 27, 2017 Order was due on February 26, 2017, eight days before the March 6 Order was issued. On information and belief, this report was not produced.

122. The March 6 Order states that "Iraq presents a special case" because of the "close cooperative relationship between the United States and the democratically elected Iraqi government" and because 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" (Section 4). With this justification, the March 6 Order exempts foreign nationals of Iraq from the categorical ban on entry applicable to other countries originally targeted by the January 27 Order. Instead, Iraqis are subject to "thorough review" and "consideration of whether the applicant has connections with ISIS or other terrorist organizations."

123. Like the January 27 Order, the March 6 Order allows for waivers to this ban on a discretionary case-by-case basis (Section 3(c)). In contrast to the January 27 Order, which simply stated that visas and other immigration benefits may be issued "when in the national interest," the March 6 Order provides nine examples of situations in which a waiver would be appropriate, such as when "the foreign national is an infant, a young child or adoptee" or "an individual needing urgent medical care" (Sections 3(c)(i)-(ix)). These and other similar circumstances enumerated in the March 6 Order reflect specific examples of individuals whose denial of entry pursuant to the January 27 Order resulted in the filing of lawsuits and widespread public outcry.

124. The March 6 Order also contains exceptions to this ban for, among others, lawful permanent residents and dual nationals traveling on passports issued by a non-designated country (Section 3(b)).

125. Like the January 27 Order, the March 6 Order cuts the number of refugees admissible to the United States for fiscal year 2017 from 110,000 to 50,000 and prohibits refugee admissions for 120 days, with an exception for discretionary case-by-case admissions (Sections 6(a), 6(b)). The March 6 Order also expressly suspends decisions on applications for refugee status for 120 days (Section 6(a)).

126. Defendant Department of State has informed Plaintiff HIAS that only refugees who are already booked for travel to the United States arriving at their port of entry through the end of March 15, 2017, i.e., before the March 6 Order's effective date of March 16,

2017 at 12:01 am, will be permitted to enter the United States. Defendant Department of State has indicated that no further bookings may be made.

127. Defendant Department of State has informed Plaintiff HIAS that all DHS screening interviews will continue to be suspended until further notice, unless exceptions are arranged on an individual basis.

128. Defendant Department of State has informed Plaintiff HIAS that no new Interagency Checks (IAC) and Security Advisory Opinion (SAC) security checks may be requested. Upon information and belief, all refugees must undergo both IAC and SAO security checks before traveling and being admitted to the US.

129. In addition to the provisions discussed above, the March 6 Order contains nearverbatim reproductions of all the other substantive provisions of the January 27 Order, including:

- Former Section 4(a), now Section 5(a), which requires the Secretaries of State and Homeland Security, the Attorney General, and the Director of National Intelligence to implement uniform screening standards 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."
- Former Section 5(g), now Section 6(d), which seeks to expand the limited role State and local governments have in the refugee resettlement process, potentially facilitating the stated desire

and intent of some states and localities in the United States to discriminate against lawfully-admitted refugees on the basis of their nationality and/or religion. *See, e.g.*, *Exodus Refugee Immigration*, 838 F.3d 902.

- Former Section 6, now Section 7, which directs the Secretaries of State and Homeland Security to consider rescinding certain waivers of terrorism-related inadmissibility grounds ("TRIG waivers") authorized by previous administrations. TRIG waivers have historically been used to facilitate the admission to the United States of certain individuals or groups of individuals—often refugees fleeing persecution—who have been forced to give aid to terrorist organizations under duress.
- Former Section 8, now Section 9, which suspends the Visa Interview Waiver Program.
- Former Section 10, now Section 11, which requires the Secretary of Homeland Security to periodically publish information about the number of "foreign nationals" involved in, among other things, terrorism-related activities, radicalization, and "gender-based violence against women, including so-called 'honor killings.'"

130. The signing and implementation of the March 6 Order was reportedly delayed because of the positive media reviews President Trump received after his address to a joint session of Congress on February 28, 2017. Although the Trump Administration had previously intended on releasing the revised executive

order the following day, on March 1, 2017, White House officials stated that they delayed the release of the revised Executive Order so that President Trump's speech could continue to receive positive press attention.

131. Upon information and belief, the delay following President Trump's congressional address marked the third time the administration put off the issuance of the revised Executive Order.

132. Before signing the March 6 Order, President Trump ordered the Department of Homeland Security and the Department of Justice to produce an intelligence report to demonstrate that the seven Muslim-majority countries originally identified in the January 27 Order present a substantial security threat and have exported terrorism to the United States.

133. Upon information and belief, such an attempt to reverse-engineer a national security justification for an executive action is not common practice.

134. In response, analysts at the Department of Homeland Security prepared a draft report, released to the press on February 24, 2017, indicating that there was insufficient evidence that the nationals of the seven Muslim-majority countries included in in the January 27 Order pose a terror threat to the United States.

135. The draft report found that citizenship is an "unlikely indicator" of terrorism threats to the United States, and that few people from the countries identified in the January 27 Order have carried out attacks or been involved in terrorism-related activities in the United States since Syria's civil war started in 2011.

136. A second Department of Homeland Security report, dated March 1, 2017, found that of the limited number of the foreign-born, U.S.-based violent extremists, most become radicalized after living in the U.S. for a number of years.

137. The Executive Order does not acknowledge or rely on either of these recent, specific security appraisals from the Department of Homeland Security. Instead, it relies on the State Department's Country Reports on Terrorism 2015 (June 2016). In relying on those reports, however, the Order disregards other countries that the State Department describes as safe havens for terrorists, and that pose a similar if not larger threat. For example, the State Department noted in its 2015 chapter on Terrorist Safe Havens that Venezuela has become a haven for terrorist groups, explaining that the country's "porous border with Colombia has made [it] attractive to the Revolutionary Armed Forces of Colombia and the National Liberation Army." Similarly, the State Department concluded that "[t]here are ungoverned, under-governed, and ill-governed areas of Mali that terrorist groups have used to organize, plan, raise funds, communicate, recruit, train and operative in relative security."

138. The Secretary of Homeland Security also said in an interview that many other countries not banned in the Executive Order raise similar security concerns. "There's probably thirteen or fourteen other countries —not all of them Muslim countries, not all of them in the Middle East—that have very questionable vetting procedures that we can rely on."

139. The Order also states that "more than 300 persons who entered the United States as refugees are currently subjects of counterterrorism investigations by the Federal Bureau of Investigation." The Order does not note that very few F.B.I. initial assessments of terrorism threats become intensive investigations: for example, in the four months from December 2008 to March 2009, the F.B.I. began 11,667 "assessments" related to terrorism, only 427 of which—less than 4%—led to more intensive investigations.

140. Over 970,000 individuals have been admitted to the United States as refugees between 2001 and the present.

141. The March 6 Order was motivated by the same anti-Muslim purpose that motivated the January 27 Order. In replicating much of the substance of the January 27 Order, the March 6 Order seeks to prevent the entry of Muslims into the United States and reinforces stereotypes about Muslims by associating them with terrorism, violence, bigotry, and hatred. .

142. White House spokesperson Sean Spicer echoed these comments on March 6, explaining, after President Trump signed the revised Order, "The principles of the executive order remain the same."

The Grave Harm to Plaintiffs and Their Clients

143. Implementation and enforcement of the January 27 Order has already caused Plaintiffs and their clients substantial, concrete, and particularized injury. Implementation of the March 6 Order threatens them with continued irreparable harm if not permanently enjoined.

144. Both Executive Orders suspend refugee resettlement and intentionally discriminate against Muslims. Both Executive Orders therefore frustrate IRAP's mission and impose a significant burden on IRAP's work. As a direct result of the imposition and enforcement of the January 27 Order, IRAP and its clients have suffered substantial, concrete injuries. Because the March 6 Order is substantively the same, these injuries will continue once the March 6 Order takes effect.

145. IRAP serves refugees and displaced persons of all faiths, but the vast majority of its clients are Muslim. IRAP counsels persecuted individuals on various legal avenues to safe countries and represents them throughout these processes, with a majority of its clients resettling in the United States.

146. The January 27 Order has already severely restricted IRAP's ability to carry out its work and mission. In the ten days immediately following the issuance of the January 27 Order, IRAP provided assistance to more than forty individuals from Iraq, Iran, Sudan, Libya, Syria, Somalia, and Yemen who, despite being vetted and given permission to enter the United States, had been prevented by the Order from doing so.

147. Of IRAP's 599 open cases, 402 families are from Syria, Iran, Sudan, Somalia, Libya, or Yemen or are refugees from other countries and therefore potentially affected by the new March 6 Order. IRAP has already used a significant portion of its financial resources and time to represent these 402 families through legal adjudications and to provide counseling through the demanding vetting process. Restricting

issuance of visas wastes that investment of resources and time.

148. Furthermore, the March 6 Order will create a significant backlog in the U.S. Refugee Admissions Program, delaying the processing of many of IRAP's clients' cases. This delay forces IRAP to exhaust more of its resources, as the average lifespan of a case now grows significantly.

149. IRAP attorneys are not providing only limited representation in certain new cases, which, prior to the Executive Order would have received full representation, as a result of the exorbitant delays in USRAP processing that the Executive Order will cause.

150. IRAP relies on volunteers from its law school chapters and pro bono firms to meet the needs of their vast client base. With the increased demands of their caseload resulting from the Executive Order, IRAP now has very limited capacity to open new law school chapters or begin new relationships with law firms to place cases for direct representation.

151. Under the Executive Order's freeze of the USRAP, IRAP may also be unable to place new cases with existing chapters or law firms because there is no movement on any refugee cases. IRAP risks losing hundreds of volunteers, and relationships with numerous law firms, because they are unable to provide them with a way to partner with them on cases.

152. IRAP's law firm partners also provide financial support to IRAP. If IRAP no longer has cases to place at law firms, and thus have to decrease our num-

ber of law firm partners, it will significantly cut into the corporate funding IRAP receives.

153. As a result of the Executive Order, IRAP's Resettlement Deployment Scheme with UNHCR, which allows IRAP resettlement experts since early 2016 to be deployed to UNHCR for assisting with their resettlement operations, may be terminated due to the drastic decrease in resettlement slots available in the United States and worldwide. This would lead to the termination of three IRAP staff as well as a revenue loss of approximately $260,000.

154. The delay also endangers the lives of IRAP's clients, because the longer it takes for their cases to be decided, the longer they are in life-threatening environments. In addition, some of the IRAP clients abroad have family ties to IRAP clients already in the United States, and those U.S. clients are suffering harm as a result of the ongoing delay in reunification with their family members, as well as the risk that their family members may suffer persecution or death in the meantime.

155. Both the January 27 Order and the March 6 Order, moreover, marginalize IRAP's Muslim clients, subject them to suspicion, scrutiny, and social isolation on the basis of religion and national origin, and inflict stigmatic and dignitary injuries. IRAP clients who are already inside the U.S. are afraid and fear they are not welcome. Some IRAP clients have been subjected to harassment by law enforcement agencies allegedly conducting "new" security checks. Others have been detained at airports, or rejected from flights multiple times even though they are presenting valid visas.

156. Both the January 27 Order and the March 6 Order, furthermore, have forced IRAP to devote substantial resources to addressing the order's effects on IRAP's clients and those similarly situated. Following the signing of the January 27 Order on January 27, 2017 at 4:42 P.M. EST, two IRAP clients, Mr. Hameed Khalid Darweesh and Mr. Haider Sameer Abdulkhaleq Alshawi, were detained at John F. Kennedy Airport ("JFK") despite having valid entry documents. As a result, IRAP attorneys were present at JFK from 2 am to 6:30 pm on January 28, 2017 attempting to secure their lawful release. Furthermore, together with co-counsel, IRAP filed a habeas petition on behalf of those two clients, together with a motion for class certification (*Darweesh et al. v. Trump et al.*, No. 1:17-cv-480 (E.D.N.Y. filed Jan. 28, 2017)). That litigation is ongoing. These actions are not in the scope of normal IRAP legal assistance, as previous IRAP clients were allowed to enter at U.S. Ports of Entry after receiving final approval to travel.

157. Both the January 27 Order and the March 6 Order have further caused IRAP to divert its resources as IRAP has become the focal point organization for volunteer attorneys all across the country who have gone to airports to attempt to secure the release of individuals detained pursuant to both Executive Orders. In addition to being the first organization to put out a call to volunteer attorneys, IRAP created and maintains a unique hotline email address (airport@refugeerights.org) to advise attorneys and affected individuals. Since the creation of this email address on January 28, 2017, IRAP has received and

responded to over a thousand email messages. IRAP has also developed templates and informational materials for attorneys, affected family members in the United States, and individuals overseas who have been denied travel pursuant to the Order.

158. IRAP also provides safe housing for clients whose lives are in immediate danger while they await the outcomes of USRAP. Clients in urgent situations who face additional four-month delays on their applications (at a minimum) will require IRAP to expend significant funding to ensure continued safe housing.

159. HIAS and its clients have likewise been significantly harmed by the January 27 and March 6 Orders. HIAS's refugee resettlement work is grounded in, and an expression of, the organization's sincere Jewish beliefs. The Torah, Judaism's central and most holy text, commands followers to welcome, love, and protect the stranger. The Jewish obligation to the stranger is repeated throughout the Torah, more than any other teaching or commandment. HIAS believes that this religious commandment demands concern for and protection of persecuted people of all faiths. The Torah also teaches that the Jewish people are to welcome, protect, and love the stranger because "we were strangers in the land of Egypt" (Leviticus 19:34). Throughout their history, violence and persecution have made the Jewish people a refugee people. Thus, both history and values lead HIAS to welcome refugees in need of protection. A refusal to aid persecuted people of any one faith, because of stigma attached to that faith, violates HIAS's deeply held religious convictions.

160. Like the January 27 Order, the March 6 Order severely impedes HIAS's religious mission and work by intentionally discriminating against Muslims and prohibiting the entry of all refugees into the United States for 120 days.

161. Before the January 27 and March 6 Orders were signed, arrangements had been made for many of HIAS's refugee clients to arrive in the United State in January, February, and the coming months. Despite having been previously vetted and granted refugee status, however, clients from Iran, Sudan, Somalia, Ukraine, Bhutan, the Democratic Republic of Congo, Afghanistan, Eritrea, Tanzania, Ethiopia, Uganda, Russia, Belarus, and Burma were delayed in or prevented from entering the country because of the January 27 Order. If the Temporary Restraining Order barring enforcement of the January 27 Order is lifted, or if the March 6 Order goes into effect, HIAS's clients will continue to face significant delays or be denied entry into the United States altogether.

162. Specifically, HIAS has identified nearly 1,400 clients worldwide who were allocated through the Department of State process, have been vetted, and have been approved for refugee status. These refugees have already been allocated and assured to one of HIAS's resettlement sites. Of these clients, less than 60 have been scheduled for travel following the signing of the March 6 Order. That means that any travel for the remaining approved refugees will be significantly delayed, and many will be unable to come at all in this Fiscal Year.

163. Under the Executive Order, the earliest that refugee resettlement could resume would be early July 2017. This would leave Resettlement Agencies, at most, with only two-and-a-half months before the end of the fiscal year to resettle hundreds or thousands of refugees who were supposed to be resettled over a much longer period of time. Refugee processing would be impacted by the 120-day ban since security checks and processing would be suspended during that time. Because security and medical clearances have expiration dates, it is likely that some refugees would lose their readiness for travel during the suspension period and lengthy checks would need to be repeated.

164. In addition, after the January 27 Order was issued, the U.S. Department of State notified HIAS that its resettlement commitment will be cut by 39 percent for the remainder of FFY 2017 due to the Order's drastic reduction in the planned level of refugee admission from 110,000 to 50,000. Thus, some of HIAS's clients who have been vetted and approved as refugees will simply not be able to enter the country in FFY 2017.

165. Of the nearly 1,400 HIAS clients worldwide who were allocated through the Department of State process, have been vetted, and have been approved for refugee status, 500 are nationals of one of the six banned countries. The overwhelmingly majority of these individuals are Muslim. Because they are national of the six banned countries, they will likely be ineligible for the case-by-case exception to the 120-day ban on for refugee applicants set forth in Section 6(c) of the March 6 Executive Order.

166. Every day that HIAS clients' entry is delayed, they remain in precarious situations.

167. Many of HIAS's clients abroad, whose refugee status has been approved but have yet to be scheduled for travel, including clients from the six banned countries, have family members in the United States, also HIAS clients, who will suffer as a result of the delay in reuniting with their family members. Some of these U.S. ties are, in fact, individuals who petitioned for refugee status (often through HIAS) for their family members.

168. In addition, more than 1,300 refugee applications initiated through HIAS by family members residing in the United States remain pending for HIAS clients abroad. The adjudication of these applications has been or will be substantially delayed because of the March 6 Order. In fact, since the Orders were signed, consideration of most refugee applicant cases in need of security checks have been suspended. This means that, for many refugees in the pipeline, security checks that typically lasted 18-24 months will now be paused and restarted, potentially adding years to their wait for stable resettlement. The delay in processing of these applications will subject these clients to further risk of persecution and abuse in their current situations, and their family members who petitioned for them to come to the United States will remain in limbo as to whether they will ever be reunited.

169. The Executive Orders convey an official message of disapproval and hostility toward HIAS's Muslim clients, making clear that the government deems them outsiders, not full members of the political com-

munity. HIAS's Muslim clients in the United States have been marginalized as a result of this anti-Muslim message, have been subjected to baseless suspicion, scrutiny, and social and political isolation on the basis of religion and national origin, and have suffered other dignitary and stigmatic injuries.

170. Additionally, as a result of the January 27 Order, at least one of HIAS's Muslim clients in the United States was detained at an airport for an extended period, handcuffed and separated from his family, and many other clients have otherwise had their travel significantly delayed.

171. Because HIAS is a non-profit resettlement organization that has a cooperative agreement with the federal government on a per-capita basis for each refugee served, and because the Department of State asked HIAS to increase its capacity from the 3,884 refugees resettled in federal fiscal year ("FFY") 2016 to 4,794 refugees in FFY 2017, HIAS would be denied crucial funding as a result of the March 6 Order, which bans all refugees for 120 days, bars all entry for the six Muslim-majority countries for 90 days, and limits the number of refugees to be admitted in the current fiscal year at 50,000, which is less than half the number the Department of State told the resettlement agencies to collectively plan to resettle.

172. After the January 27 Order was issued, the U.S. State Department notified HIAS that its resettlement obligation for FFY 2017 would be slashed from nearly 4,800 to just over 2900 refugees. The financial losses to HIAS and its affiliate network—up to $2.2 million—will be crippling, especially for many of HIAS's

affiliates, which are heavily dependent on funding that flows through HIAS. These losses will translate to irreparable harm to HIAS, its affiliates, and its clients because they will cause (and have already caused) a substantial reduction in program services and closure of resettlement sites. When this happens, the local expertise, relationships, and good will—developed by affiliate staff, often over years and years—are lost entirely or substantially diminished. Building a new resettlement site can take months or years of relationship-building, including cooperation with local government and elected officials, businesses who would be potential employers, landlords, volunteers, and the refugee communities themselves. In addition, fewer resettlement sites may limit the type of specialized assistance and services (e.g., for LGBT refugees) that clients can receive.

173. The January 27 and March 6 Orders would also result in the waste of HIAS resources. For example, in the past year, HIAS has devoted substantial private resources to developing a program with several congregations in Westchester, New York, to welcome Syrian refugee families. Because of the 90-day and 120-day bans, as well as the unexpected and dramatic lowering of the refugee admissions level, both the January 27 Order and the March 6 Order would put those resources to waste. Congregations and family members of HIAS clients have extended resources to prepare for anticipated refugees, by renting apartments and purchasing furnishings. In addition, some refugees who were anticipating resettlement through HIAS left jobs or travelled through other countries and now

face precarious situations as a direct result of the January 27 Order and March 6 Order.

174. In the weeks and months prior to the order, HIAS concluded a formal plan with the Department of State to increase HIAS's national resettlement capacity by 23.4% from 3,884 refugees in federal fiscal year 2016 to 4,794 refugees in federal fiscal year 2017. This plan caused HIAS to invest substantial resources into expanding existing resettlement sites and opening new refugee resettlement sites in Wisconsin, Delaware, New York, Illinois, and Massachusetts, as approved by the Department of State. These resources will be wasted, at least in part, because of the January 27 Order and the March 6 Order.

175. In addition, HIAS has been forced to divert substantial resources, and will continue to to do so, to dealing with the fallout from both executive orders and their effect on HIAS's clients, including devoting staff time to working with clients, and their families in the United States, who were denied entry and face precarious situations overseas.

176. Plaintiff MESA and its members will also be harmed by the March 6 Order. MESA has members from the six designated countries who are outside the United States and lack U.S. visas. Because of the March 6 Order, these members will not be able to travel to the United States to attend academic conferences, including an annual meeting sponsored by MESA. Participation in academic conferences is crucial to the professional success of both graduate students and professors, and to their ability to fully engage with the ideas and scholarship of the broader Middle Eastern

studies community. Many important conferences, including the MESA annual meeting, take place in the United States

177. Graduate students who are MESA members or are studying under MESA members in the United States often leave the country to complete field work for advanced degrees. Because of the Executive Order, many such students from the six designated countries fear exclusion from the United States if they leave the country. The inability to leave the United States with an assurance they will be permitted to reenter will impair their ability to engage in research and participate in academic conferences. Such students will also lose their ability to visit family and friends abroad with an assurance they will be permitted to reenter. For example, Iranian students affiliated with MESA have cancelled plans to return home for Persian New Year, an important holiday that will occur on March 21, because of the Executive Order.

178. MESA members who are U.S.-based faculty will be impacted by the Executive Order because potential students from the designated countries will be unable to obtain visas to study with them in the United States. Similarly, their current U.S.-based students from the designated countries will not be able to travel abroad for field work with an assurance they will be permitted to reenter, impacting faculty members' ability to facilitate quality research and educational opportunities. Likewise, U.S.-based MESA faculty members will forego opportunities to travel abroad for research and academic conferences for fear that they will not be readmitted, or will be subjected to

harassment or discrimination upon application for reentry to the United States. MESA members will also be precluded from traveling to the designated countries for research or academic conferences when those countries institute reciprocal actions in response to the Executive Order, as Iran has done.

179. A large number of MESA members are Muslim or are institutional members whose officers, employees, or members are Muslim. The Executive Orders convey an official message of disapproval and hostility toward these Muslim members, making clear that the government deems them outsiders, not full members of the political community. This marginalizes them, subjects them to suspicion, scrutiny, and social and political isolation on the basis of religion and national origin, and inflicts other stigmatic and dignitary injuries.

180. MESA itself will also be harmed by the Executive Order. As part of its goal to advance learning, facilitate communication, and promote cooperation, MESA sponsors an annual meeting that is a leading international forum for scholarship, intellectual exchange, and pedagogical innovation. Approximately thirty percent of MESA members are based outside of the United States and must travel to the United States to attend MESA's annual conference. At least 46 citizens of the six designated countries traveled to the United States to attend the last annual meeting. MESA expects that a substantial number of scholars will be unable to attend this year's meeting because of the restrictions imposed by the Executive Order. Moreover, in part because of the stigmatic message of the Executive Order, many members based in Europe and the Middle

East are likely to heed international calls to boycott academic conferences in the United States in protest of the Executive Order, including the MESA annual conference. The absence of these scholars, attributable to the Executive Order, will have a substantial negative effect on the meeting. These and other impacts of the Executive Order will negatively impact MESA's mission of fostering the study and public understanding of the Middle East.

181. In addition, the Executive Order will cause serious financial harms to MESA. A large portion of MESA's annual budget is funded through annual membership dues and registration fees to attend the annual meeting. For each individual who cannot or will not attend the annual meeting, MESA will lose $90-250 in registration fees. MESA will also suffer other financial injuries related to its annual meeting as a result of the executive order. Some individuals who cannot or will not attend the meeting will allow their MESA membership to lapse as a result. For each such lapsed membership, MESA will lose $25-300 in membership dues.

182. Plaintiff John Doe #1, a lawful permanent resident, has suffered and will continue to suffer harm because of the Executive Order. In August 2016, while John Doe #1's application to become a lawful permanent resident was pending, he married an Iranian national who lives in Iran. She applied for a visa as John Doe #1's dependent and her application was approved on November 3, 2016. As of January 9, 2017 John Doe #1 and his wife had submitted all of the requisite documentation and paid immigrant visa processing

fees, and were waiting for notification that an interview was scheduled. At the time the Executive Order went into effect, John Doe #1 expected his wife's interview to be scheduled within no more than six weeks based on information published by the National Visa Center. Under the Executive Order, John Doe #1's wife will not be interviewed or granted a visa.

183. The Executive Order's travel ban on Iranian nationals has created significant fear, anxiety and insecurity for John Doe #1 and his wife regarding their future. After her mother's unexpected death in 2013, John Doe #1's wife has been alone in Tehran. The Executive Order's ban forces John Doe to choose between his career and being together with his wife, who remains in Tehran.

184. Plaintiff John Doe #3, a lawful permanent resident, has suffered and will continue to suffer harm because of the Executive Order. John Doe #3 recently applied to become a naturalized citizen, and that petition remains pending with USCIS.

185. In the summer of 2014, John Doe #3 married a national of Iran. In October 2014, John Doe #3 applied for an immigration visa on her behalf. Approximately 19 months later, in May 2016, she had her interview at the U.S. Embassy. At that time, she was informed that her documentation was complete and she needed to wait for administrative processing, but that she should be able to join her husband in two to three months. She therefore resigned from her job and began preparing to join her husband in the United States. The Executive Order, however, puts the couple's plans in peril, as it has at least delayed, and could prevent,

John Doe #3's wife from obtaining her visa and joining her husband in United States.

186. Since moving to the United States, John Doe #3 has returned to Iran on several occasions to visit his wife, but is now fearful of leaving the United States. He had planned to visit her in February 2017, but put his plans on hold in light of the Executive Order. John Doe #3 is afraid that if he leaves the United States to see his wife, he will not be permitted to reenter the United States or could be detained by immigration officials at the airport upon his return. As a result, if John Doe #3 must leave the United States to visit Iran for an urgent family member, he feels he must make plans for his apartment, car, savings account, and other aspects of his personal life in the United States in order to prepare for the possibility that he may not be allowed to return.

187. Their continued separation has placed extraordinary stress on John Doe #3 and his wife, and their relationship. John Doe #3 and his wife are young and feel as though they've been unable to start their lives together because of the delays and uncertainty caused by the Executive Order.

188. Plaintif Jane Doe #2, a U.S. citizen, has suffered and will continue to suffer harm because of the Executive Order. She is enrolled in a local college where she is studying to become a healthcare technician. She filed a family-based visa petition for her sister who is a Syrian refugee currently living in Saudi Arabia on the border with Yemen. The petition is currently pending a decision. Approval of the petition

would allow Jane Doe #2's sister to access the U.S. Refugee Admissions Program (USRAP).

189. Jane Doe #2's sister, who is Muslim, was born in Damascus, Syria, where she grew up and spent most of her life. She worked as a French teacher and her husband was a sales manager at a local business. They have two young children. In 2012, continuous bombing of her neighborhood forced her and her family to move to her parent-in-laws with nothing more than their passports and the clothes on their backs. The bombing of her neighborhood continued and she was never able to re-enter her home.

190. While internally displaced in Syria, Jane Doe #2's sister and husband learned that the Syrian government's selective service might be expanded to include men over the age of 30, which would include her husband. After some of her husband's friends were conscripted for the selective service, they determined that he should flee immediately to Yemen. Because Jane Doe #2's sister was a government employee, she was required to apply for government approval before stopping work and could not flee with him immediately. As a result, she and her oldest child remained in Syria —at the time she was pregnant with their youngst child. When, in 2013, she finally received government approval to discontinue work, she and her child fled to join her husband in Yemen. In Yemen, she registered with the U.N High Commissioner for Refugees, which provided her with a temporary protection certificate explaining that she should be protected from forcible return to Syria.

191. As a result of the war in Yemen, Jane Doe #2's sister and her family had to flee again, this time to Saudi Arabia, where they now live in a refugee hotel close to the border of Yemen. They remain under constant threat from nearby rocket file and military conflict. The shelling where they currently live is so constant that the local school is only open one to two days per week, if at all. Jane Doe #2's children are unable to go to school and are receiving no formal education.

192. The building where Jane Doe #2's family is living is infested with bugs and human refuse from the bathroom in the unit above theirs leaks into their room. Jane Doe #2 and her family, are constantly sick and her children regularly vomit. The Saudi Arabian government is also regularly turning off the power to the building there they live with other refugees in order to make life so intolerable that they will leave.

193. Jane Doe #2's sister and her family also face sever discrimination in Saudi Arabia on account of their status as Syrian refugees. Her husband has had a very difficult time finding work and even when he can work, he is often cheated out of his wages and otherwise exploited. Jane Doe #2's sister is unable to leave the apartment where they are staying in the daytime because without being accompanied by her husband, the risk that she would be abducted as a Syrian refugee woman is too high. As a result, her children did not believe that the sun rose and set in Saudi Arabia because the room that they are staying in does not have any windows and they only left the room at night when Jane Doe #2's husband could accompany them.

194. As Syrian refugees, Jane Doe #2's sister and her family are eligible and qualify for the Priority-2 Direct Access Program for Iraqi and Syrian Beneficiaries of Form I-130 Petition for Alien Relatives. If the Executive Order remains in effect, Jane Doe #2's sister will not be interviewed or granted a visa. Moreover, she will have little chance of traveling to the United States as a refugee given the suspension of USRAP, the high likelihood that Syrian refugees will continued to be barred from entry to the United States, and the lowered refugee admissions cap of 50,000.

195. Plaintiff Meteab, a lawful permanent resident, has also suffered and will continue to suffer harm because of the Executive Order. After the U.S. invasion of Iraq in 2003, Mr. Meteab and his four brothers all cooperated with the U.S. military in helping to establish the transitional government, in the wake of the conflict in Najaf, Iraq. Because of their cooperation with the U.S. government, they were targeted and threatened by armed militia groups in Iraq.

196. Mr. Meteab is a SunniMuslim, as are his brothers. In Iraq, they lived together in a Shi'a neighborhood. In 2013, Mr. Meteab and his family were warned by neighbors and community members that if they failed to leave the area, their family would be killed. In 2013, Mr. Meteab's nephew Mosad was shot in the leg. After this, on December 25, 2013, Plaintiff Meteab's older brother fled to Jordan with his children and two of his nephews, including Mosad. Plaintiff Meteab and his wife and children joined them in Jordan on January 5, 2014. Plaintiff Meteab's three other brothers also fled to Jordan in 2014. All of them applied

for and received recognition as refugees from the United Nations High Commission for Refugees.

197. In August 2015, after being approved as a refugee, Plaintiff Meteab came to the United States with his wife and children. His three other brothers, Ali, Abdulateef, and Ahmed, have been approved as refugees but remain in Jordan awaiting resettlement,. Abdulateef was approved for resettlement in Canada but is awaiting final clearance. Mr. Meteab's brothers Ali and Ahmed, were approved for resettlement in the United States.

198. In November 2016, Plaintiff Meteab's brothers Ali and Ahmed were told by the International Organization for Migration that while their refugee applications had been approved, they still did not have travel documents to come to the United States. Jewish Family Services notified Plaintiff Meteab's family of this update at the same time. When Mr. Meteab's brothers learned about the Executive Order from the news in January 2017, they realized the travel ban would prevent them from joining him in the United States.

199. Since the January 27th Executive Order was released, Mr. Meteab and his wife have experienced anti-Muslim sentiment and felt very uncomfortable and insecure in their community, causing them acute mental stress. They have experienced hostility in public, with people staring at Mr. Meteab's wife, who wears a hijab, and refusing to stop for them at crosswalks. Their nieces, who also came to the United States as refugees, have been harassed in school.

200. Plaintiff Harrison has suffered and will continue to suffer harm as a result of the Executive Order. Mr. Harrison is a citizen of the United States and lives in Euless, Texas. His fiancé is a citizen and resident of Iran and is Muslim. They have been together since November 2015.

201. In March 2016, Plaintiff Harrison petitioned for a K-1 (fiancé) visa for his partner (now-fiancé). After the petition was approved, Plaintiff Harrison's partner was interviewed at the U.S. Embassy in Ankara, Turkey on November 7, 2016. His K-1 visa application was approved and administrative processing completed on January 17, 2017. The U.S. Embassy in Ankara informed Mr. Harrison's partner that he needed to submit his passport for the visa to be issued.

202. On January 30, 2017, after the January 27 Order was signed, the U.S. Embassy in Turkey emailed Plaintiff Harrison's fiancé and explained that his visa process was on hold and that he should contact them again when the travel ban had been lifted to continue the processing of his visa.

203. Subsequently on on February 7, 2017, the U.S. Embassy in Turkey sent a follow-up email to Plaintiff Harrison's fiancé, stating that the embassy had been informed of the ruling in *Washington v. Trump* and that he should send in his passport to the U.S. Embassy in Ankara, Turkey.

204. On March 3, 2017, Plaintiff Harrison and his fiancé traveled again to Turkey to submit the passport and to see one another. On March 6, 2017, the new executive order was announced. As the embassy has

not provided additional information or told Plaintiff Harrison's fiancé that they are no longer processing visas, they submitted his passport on March 8, 2017. They fear the U.S. Embassy in Ankara will not issue the visa before March 16. Even if there is a waiver process might apply to his fiancé, Mr. Harrison is concerned he may not receive the waiver and/or that his fiancé may be required to start the entire process over, resulting in prolonged separation and anxiety for both of them.

205. If the Executive Order remains in effect, Plaintiff Harrison and his partner will remain separated. Mr. Harrison cannot currently travel to Iran, which has put in place a reciprocal ban on U.S. citizen visitors, and the travel to Turkey to see one another is a significant financial burden for Mr. Harrison. Moreover, Plaintiff Harrison's partner has had some negative interactions with the morality police in Iran, leading to harassment and, in one instance, an assault on Mr. Harrison's partner.

206. Plaintiff Ibrahim Ahmed Mohomed has suffered and will continue to suffer harm as a result of the Executive Order. Mr. Mohomed is a United States citizen of Somali origin who lives in Columbus, Ohio. He came to the United States as a refugee in 2009. He is Muslim.

207. Mr. Mohomed's wife and nine children have been approved to come to the United States as refugees. They are all in Ethiopia waiting for authorization to travel to the United States.

208. Plaintiff Mohomed is a member of a minority clan in Somalia. When he and his family were living in Mogadishu, Mr. Mohomed was targeted and threatened by members of the majority clans in Mogadishu, who knew he did not have protection. He came to the United States as a refugee in March 2009.

209. With the rise of insurgents from al-Shabaab and increased fighting in Mogadishu, after Mr. Mohomed's departure, his wife and children fled first to Yemen and then, in 2011, to Ethiopia, where Mr. Mohomed was able to visit them. He applied for them to join him in the United States, and in 2013, they were approved for resettlement in the United States. However, they were still waiting for travel documents when the January 27 order was issued.

210. After the January 27 order was signed, Mr. Mohomed and his family learned from the news that under the new Executive Order, his family would not be able to come to the United States. They remain in Ethiopia waiting to join Mr. Mohomed.

211. The Executive Orders conveys an official message of disapproval and hostility toward the individual Muslim Plaintiffs and their families, making clear that the government deems them outsiders or second-class citizens who are not full members of the political community. This marginalizes them, subjects them to suspicion, scrutiny, and social and political isolation on the basis of religion and national origin, and inflicts other stigmatic and dignitary injuries.

Class Allegations

212. Individual Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b) (1) and (b) (2), on behalf of themselves and all other persons in the United States for whom the Executive Order either interferes with family reunification or the ability to travel internationally and return to the United States. This class includes:

a. Individuals in the United States who currently have an approved or pending petition to the United States government to be reunited with family members who are nationals of Iran, Libya, Somalia, Sudan, Syria or Yemen (the "Designated Countries"), or who will soon file such petition;

b. Refugees in the United States who have currently pending, or will soon file, a petition to the United States government to be reunited with family members; and

c. Nationals of the Designated Countries who reside in the United States and who wish to travel abroad and return to United States or who, prior to issuance of the Executive Order, did travel abroad with the intent to return and are currently abroad.

213. The Plaintiff Class is so numerous that joinder is impracticable. According to the Annual Report of the Visa Office, in 2015, the last year for which data are available, the United States issued approximately 70,000 immigrant and non-immigrant visas to nationals from the six Designated Countries. The U.S. govern-

ment previously estimated that between 60,000 and 100,000 people were affected by Section 3(c) of the January 27 Order.

214. The claims of the Plaintiff Class members share common issues of law, including but not limited to whether the Executive Order violates their associational, religious exercise and due process rights under the First and Fifth Amendments, the Religious Freedom Restoration Act, the Immigration and Nationality Act and the Administrative Procedure Act.

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

216. The claims or defenses of the named Plaintiffs are typical of the claims or defenses of members of the Plaintiff Class.

217. The named Plaintiffs will fairly and adequately protect the interests of the Plaintiff class. The named Plaintiffs have no interest that is now or may be potentially antagonistic to the interests of the Plaintiff class. The attorneys representing the named Plaintiffs include experienced civil rights attorneys who are considered able practitioners in federal constitutional litigation. These attorneys should be appointed as class counsel.

218. Defendants have acted, have threatened to act, and will act on grounds generally applicable to the

Plaintiff Class, thereby making final injunctive and declaratory relief appropriate to the class as a whole. The Plaintiff Class may therefore be properly certified under Federal Rule of Civil Procedure 23(b) (2).

219. Prosecution of separate actions by individual members of the Plaintiff Class would create the risk of inconsistent or varying adjudications and would establish incompatible standards of conduct for individual members of the Plaintiff Class. The Plaintiff Class may therefore be properly certified under Federal Rule of Civil Procedure 23(b)(1).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Establishment Clause, First Amendment to the U.S. Constitution)

220. The foregoing allegations are repeated and incorporated as though fully set forth herein.

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

SECOND CLAIM FOR RELIEF

(Equal Protection, Fifth Amendment to the U.S. Constitution)

222. The foregoing allegations are repeated and incorporated as though fully set forth herein.

223. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "No person

shall . . . be deprived of life, liberty, or property, without due process of law." The Clause contains an equal protection component.

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

225. Additionally, the Executive Order was substantially motivated by an intent to discriminate against Muslims, on whom it has a disparate effect, in further violation of the equal protection component of the Due Process Clause.

THIRD CLAIM FOR RELIEF

(Immigration and Nationality Act & Administrative Procedure Act)

226. The foregoing allegations are repeated and incorporated as though fully set forth herein.

227. The Immigration and Nationality Act provides, with certain exceptions not applicable here, that "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." 8 U.S.C. § 1152(a)(1)(A).

228. Several clients of IRAP are otherwise eligible and approved for refugee status, but pursuant to the Executive Order, their entry to the United States will be denied or delayed. The Executive Order on its face purports to deny entry to these clients of IRAP because

of their nationality, place of birth, and/or place of residence, in violation of § 1152(a)(1)(A).

229. Plaintiffs Harrison, Mohomed, Jane Doe #2 and John Does #1 and #3 have filed petitions for immigrant visas for members of their families, some of whom have subsequently received visas. Plaintiff Mohomed's wife and nine children's refugee visa applications have been approved, but they have not received travel documents or had their travel scheduled. Plaintiff Harrison's fiancé's visa has been approved and the processing complete but he still does not have a visa issued. Pursuant to the Executive Order, the processing of those petitions and/or the subsequent issuance of visas and travel documents will be delayed or denied, and/or their family members will be denied entry. The Executive Order on its face purports to deny or delay applications because Plaintiffs' family members' nationality, place of birth, and/or place of residence, in violation of § 1152(a)(1)(A).

230. The Executive Order on its face mandates discrimination against those who apply for and/or hold immigrant visas on the basis of their nationality, place of birth, and/or place of residence, in violation of § 1152(a)(1)(A).

231. The actions of Defendants, as set forth above, constitute final agency action and are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required

by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D).

FOURTH CLAIM FOR RELIEF

(Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq*.)

232. The foregoing allegations are repeated and incorporated as though fully set forth herein.

233. The Executive Order will have the effect of imposing a special disability on the basis of religious views or religious status, by denying or impeding Muslim Plaintiffs, on account of their religion, from accessing benefits relating to their own or their family members' immigration status. In doing so, the 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.

234. This substantial burden is not imposed in furtherance of a compelling governmental interest, and is not the least restrictive means of furthering a compelling governmental interest, in violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq*.

FIFTH CLAIM FOR RELIEF

(Refugee Act & Administrative Procedure Act)

235. The foregoing allegations are repeated and incorporated as though fully set forth herein.

236. Pursuant to the President's congressionally delegated authority under 8 U.S.C. § 1182(f), the Executive Order purports to limit the number of refugees who may be admitted in fiscal year 2017 to 50,000, despite

an earlier proclamation setting a limit of 110,000, in violation of the Refugee Act, 8 U.S.C. § 1157(a)(2).

237. President Trump did not engage in "appropriate consultation" prior to altering the number and allocation of refugee admissions for fiscal year 2017, in violation of the Refugee Act, 8 U.S.C. § 1157.

238. The Executive Order makes other alterations to the refugee admission process that are not authorized by the Refugee Act and are in violation of the Refugee Act.

239. The actions of Defendants that have been undertaken pursuant to Section 6 of the Executive Order, as set forth above, constitute final agency action and are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D).

SIXTH CLAIM FOR RELIEF

(Administrative Procedure Act)

240. The foregoing allegations are repeated and incorporated as though fully set forth herein.

241. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

242. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, are contrary to constitutional right, power, privilege, or immunity, including rights protected by the First and Fifth Amendments to the U.S. Constitution, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(B).

243. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, are in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C).

244. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, were without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(D).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. A preliminary and permanent injunction enjoining Defendants, their officials, agents, employees, assigns, and all persons acting in concert or participating with them from implementing or enforcing any portion of the Executive Order;

B. A declaration pursuant to 28 U.S.C. § 2201 that the entire Executive Order is unlawful and invalid;

C. An order awarding Plaintiffs costs of suit, and reasonable attorneys' fees and expenses pursuant to any applicable law;

D. Such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted, Dated: Mar. 10, 2017

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. TDC-17-0361

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, A PROJECT OF THE URBAN JUSTICE CENTER, INC., ON BEHALF OF ITSELF AND ITS CLIENTS, HIAS, INC., ON BEHALF OF ITSELF AND ITS CLIENTS, MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., ON BEHALF OF ITSELF AND ITS MEMBERS, MUHAMMED METEAB, PAUL HARRISON, IBRAHIM AHMED MOHOMED, JOHN DOES NOS. 1 & 3, AND JANE DOE NO. 2, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, DEPARTMENT OF HOMELAND SECURITY, DEPARTMENT OF STATE, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY, REX W. TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE, MICHAEL DEMPSEY, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF NATIONAL INTELLIGENCE, DEFENDANTS

Filed: Mar. 16, 2017

MEMORANDUM OPINION

On March 6, 2017, President Donald J. Trump issued an Executive Order which bars, with certain exceptions, the entry to the United States of nationals of six predominantly Muslim countries, suspends the

entry of refugees for 120 days, and cuts by more than half the number of refugees to be admitted to the United States in the current year. This Executive Order follows a substantially similar Executive Order that is currently the subject of multiple injunctions premised on the conclusion that it likely violates various provisions of the United States Constitution. Pending before the Court is Plaintiffs' Motion for a Temporary Restraining Order or a Preliminary Injunction, filed on March 10, 2017. At issue is whether the President's revised Executive Order, set to take effect on March 16, 2017, should likewise be halted because it violates the Constitution and federal law. For the reasons set forth below, the Motion is GRANTED IN PART and DENIED IN PART.

INTRODUCTION

On January 27, 2017, President Trump issued Executive Order 13,769, "Protecting the Nation from Foreign Terrorist Entry into the United States" ("First Executive Order" or "First Order"), 82 Fed. Reg. 8977 (Jan. 27, 2017). On February 7, 2017, Plaintiffs filed a Complaint alleging that the First Executive Order violated the Establishment Clause of the First Amendment to the United States Constitution, U.S. Const. amend. I; the equal protection component of the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101-1537 (2012); the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb-4 (2012); the Refugee Act, 8 U.S.C. §§ 1521-1524 (2012); and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706 (2012). On March 6, 2017, in the wake of

several successful legal challenges to the First Executive Order, President Trump issued Executive Order 13,780 ("Second Executive Order" or "Second Order"), which bears the same title as the First Executive Order. 82 Fed. Reg. 13209 (Mar. 9, 2017). The Second Executive Order, by its own terms, is scheduled to go into effect and supplant the First Executive Order on March 16, 2017.

On March 10, 2017, Plaintiffs amended their Complaint to seek the invalidation of the Second Executive Order. Plaintiffs substituted certain individual plaintiffs and added an organizational plaintiff. Their causes of action remain the same. That same day, Plaintiffs filed the pending Motion, seeking to enjoin the Second Executive Order in its entirety before it takes effect. Defendants have received notice of the Motion and filed a brief in opposition to it on March 13, 2017. After Plaintiffs filed a reply brief on March 14, 2017, the Court held a hearing on the Motion on March 15, 2017. With the matter fully briefed and argued, the Court construes the Motion as a Motion for a Preliminary Injunction. The Court now issues its findings of fact and conclusions of law and rules on the Motion.[1]

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[1] On February 22, 2017, Plaintiffs filed a Motion for a Preliminary Injunction of § 5(d) of the Executive Order, ECF No. 64, requesting that the Court enjoin a specific provision of the First Executive Order. With the agreement of the parties, the Court set a briefing and hearing schedule extending to March 28, 2017. The Court will resolve that Motion, which the parties have agreed should be construed to apply to the successor provision of the Second Executive Order, in accordance with the previously established schedule.

FINDINGS OF FACT

I. Executive Order 13,769

The stated purpose of the First Executive Order is to "protect the American people from terrorist attacks by foreign nationals admitted to the United States." 1st Order Preamble. To that end, the First Executive Order states that the United States must be "vigilant during the visa-issuance process," a process that "plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States." 1st Order § 1. The First Executive Order therefore mandates, as relevant here, two courses of action. The first, set forth in Section 3 entitled "Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern," invokes the President's authority under 8 U.S.C. § 1182(f) to suspend for 90 days "the immigrant and nonimmigrant entry into the United States of aliens" from the countries of Iraq, Iran, Libya, Sudan, Somalia, Syria, and Yemen as "detrimental to the interests of the United States." 1st Order § 3(c). Each of these countries has a predominantly Muslim population, including Iraq, Iran, and Yemen which are more than 99 percent Muslim. In addition to providing certain exceptions for diplomatic travel, the provision contains exceptions on a "case-by-case basis" when such an exception is "in the national interest," a term not defined elsewhere in the Order. 1st Order § 3(g). During this 90-day period, the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence are to "immediately conduct a review to determine the information needed from any country" to assess whether an

individual from that country applying for a "visa, admission, or other benefit . . . is not a security or public-safety threat" and provide a report on their review to the President within 30 days of the issuance of the Order. 1st Order § 3(a)-(b).

The second course of action relates to refugees. As set out in Section 5(d), the President ordered, pursuant to § 1182(f), 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 suspended the entry of any refugees above that figure. 1st Order § 5(d). The Order also immediately suspended the U.S. Refugee Admissions Program ("USRAP") for 120 days and imposed an indefinite ban on the entry of refugees from Syria. The Order further required changes to the refugee screening process "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." 1st Order § 5(b).

The drafting process for the First Executive Order did not involve traditional interagency review by relevant departments and agencies. In particular, there was no consultation with the Department of State, the Department of Defense, the Department of Justice, or the Department of Homeland Security. When the Order was issued in the early evening of Friday, January 27, 2017, the State Department immediately stopped conducting visa interviews of, and processing visa applications from, citizens of any of the seven banned countries. Between 60,000 and 100,000 visas have been revoked.

II. Legal Challenges to the First Executive Order

The First Executive Order prompted numerous legal challenges, including an action filed by the State of Washington and the State of Minnesota in the United States District Court for the Western District of Washington based on the Due Process, Establishment, and Equal Protection Clauses of the Constitution that resulted in a nationwide temporary restraining order against several sections of the First Order. On February 9, 2017, the United States Court of Appeals for the Ninth Circuit, construing the order as a preliminary injunction, upheld the entry of the injunction. *Washington v. Trump*, 847 F.3d 1151, 1165-66 (9th Cir. 2017). Although it did not reach the Establishment Clause claim, the Ninth Circuit noted that the asserted claim raised "serious allegations" and presented "significant constitutional questions." *Id.* at 1168. On February 13, 2017, the United States District Court for the Eastern District of Virginia found that plaintiffs had shown a likelihood of success on the merits of an Establishment Clause claim and issued an injunction against enforcement of Section 3(c) of the First Executive Order as to Virginia residents or students enrolled a Virginia state educational institution. *Aziz v. Trump*, --- F. Supp. 3d ---, No. 1:17-cv-116, 2017 WL 580855 (E.D. Va. Feb. 13, 2017). These injunctions remain in effect.

III. Executive Order 13,780

On March 6, 2017, President Trump issued a revised Executive Order, to become effective on March 16, 2017, at which point the First Executive Order will be revoked. 2d Order §§ 13, 14. The Second Executive

Order reinstates the 90-day ban on travel for citizens of Iran, Libya, Somalia, Sudan, Syria, and Yemen ("the Designated Countries"), but removes Iraq from the list based on its recent efforts to enhance its travel documentation procedures and ongoing cooperation between Iraq and the United States in fighting ISIS. The scope of the ban, however, was narrowed expressly to respond to "judicial concerns." 2d Order § (1)(i). The Order states that it applies only to individuals outside the United States who did not have a valid visa as of the issuance of the First Executive Order and who have not obtained one prior to the effective date of the Second Executive Order. In addition, the travel ban expressly exempts lawful permanent residents ("LPRs"), dual citizens traveling under a passport issued by a country not on the banned list, asylees, and refugees already admitted to the United States. The Second Executive Order also provides a list of specific situations in which a case-by-case waiver "could be appropriate." 2d Order § 3(c).

The refugee provisions continue to suspend USRAP for 120 days and to reduce the number of refugees to be admitted in fiscal year 2017 to 50,000. However, the minority religion preferences in refugee applications and the complete ban on Syrian refugees have been removed entirely.

Unlike the First Executive Order, the Second Executive Order provides certain information relevant to the national security concerns underlying the decision to ban the entry of citizens of the Designated Countries. The Second Order notes that "the conditions in these countries present heightened threats" because each

country is "a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones." 2d Order § 1(d). It provides information from the State Department's *Country Reports on Terrorism 2015* identifying Iran, Sudan, and Syria as longstanding state sponsors of terrorism and describing the presence of members of certain terrorist organizations within those countries. The asserted consequences of these conditions are that the governments of these nations are less willing or less able to provide necessary information for the visa or refugee vetting process, and there is a heightened chance that individuals from these countries will be "terrorist operatives or sympathizers." 2d Order § (1)(d). In light of these factors, the Second Order concludes, the United States is unable "to rely on normal decision-making procedures about travel" as to individuals from these nations, making the present risk of admitting individuals from these countries "unacceptably high." 2d Order § 1(b)(ii), (f). The Second Order expressly disavows that the First Executive Order was motivated by religious animus.

The Second Order also states that "Since 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States" and references two Iraqi refugees who were convicted of terrorism-related offenses and a naturalized U.S. citizen who came to the United States from Somalia as a child refugee and has been convicted of a plot to detonate a bomb at a Christmas tree lighting ceremony. 2d Order § 1(h). The Second Order further states that more than 300 persons who entered the United States

as refugees are currently the subjects of counterterrorism investigations. It does not identify any instances of individuals who came from Iran, Libya, Sudan, Syria, or Yemen engaging in terrorist activity in the United States.

The same day that the Second Executive Order was issued, Attorney General Jeff Sessions and Secretary of Homeland Security John Kelly submitted a letter to the President recommending a temporary suspension on the entry to the United States of nationals of certain countries so as to facilitate a review of security risks in the immigration system, for reasons that largely mirror the statements contained in the Second Executive Order.

IV. Public Statements About the Executive Orders

On December 7, 2015, then-presidential candidate Donald Trump posted a "Statement on Preventing Muslim Immigration" on his campaign website in which he "call[ed] for a total and complete shutdown of Muslims entering the United States until our representatives can figure out what is going on." J.R. 85. Trump promoted the Statement on Twitter that same day, stating that he had "[j]ust put out a very important policy statement on the extraordinary influx of hatred & danger coming into our country. We must be vigilant!" J.R. 209. In a March 9, 2016 interview with CNN, Trump professed his belief that "Islam hates us," and that the United States had "allowed this propaganda to spread all through the country that [Islam] is a religion of peace." J.R. 255-57. Then, in a March 22, 2016 Fox Business interview, Trump reiterated his call for a ban on Muslim immigration, explaining that his call for

the ban had gotten "tremendous support" and that "we're having problems with the Muslims, and we're having problems with Muslims coming into the country." J.R. 261. In a July 24, 2016 interview on Meet the Press soon after he accepted the Republican nomination, Trump asserted that immigration should be immediately suspended "from any nation that has been compromised by terrorism." J.R. 219. When questioned whether his new formulation was a "rollback" of his December 2015 call for a "Muslim ban," Trump characterized it instead as an "expansion." J.R. 220. He explained that "[p]eople were so upset when I used the word Muslim," so he was instead "talking territory instead of Muslim." J.R. 220. On December 21, 2016, when asked whether a recent attack in Germany affected his proposed Muslim ban, President-Elect Trump replied, "You know my plans. All along, I've proven to be right. 100% correct." J.R. 245. In a written statement about the events, he lamented the attack on people "prepared to celebrate the Christmas holiday" by "ISIS and other Islamic terrorists [who] continually slaughter Christians in their communities and places of worship as part of their global jihad." J.R. 245.

On January 27, 2017, a week after his inauguration, President Trump stated in an interview on the Christian Broadcasting Network that the First Executive Order would give preference in refugee applications to Christians. Referring to Syria, President Trump stated that "[i]f you were a Muslim you could come in, but if you were a Christian, it was almost impossible," a situation that he thought was "very, very unfair." J.R. 201. When President Trump was preparing to sign

the First Executive Order later that day, he remarked, "This is the 'Protection of the Nation from Foreign Terrorist Entry into the United States.' We all know what that means." J.R. 142 The day after the Order was issued, former New York City Mayor Rudolph W. Giuliani appeared on Fox News and asserted that President Trump told him he wanted a Muslim ban and asked Giuliani to "[s]how me the right way to do it legally." J.R. 247. Giuliani, in consultation with others, proposed that the action be "focused on, instead of religion . . . the areas of the world that create danger for us," specifically "places where there are [*sic*] substantial evidence that people are sending terrorists into our country." J.R. 247-248.

In response to the court-issued injunctions against provisions of the First Executive Order, President Trump maintained at a February 16, 2017 news conference that the First Executive Order was lawful but that a new Order would be issued. J.R. 91. Stephen Miller, Senior Policy Advisor to the President, described the changes being made to the Order as "mostly minor technical differences," emphasizing that the "basic policies are still going to be in effect." J.R. 319. White House Press Secretary Sean Spicer stated that "[t]he principles of the [second] executive order remain the same." J.R. 118. As of February 12, 2017, Trump's Statement on Preventing Muslim Immigration remained on his campaign website. J.R. 207.

Upon the issuance of the Second Executive Order, Secretary of State Rex Tillerson described it as "a vital measure for strengthening our national security." J.R. 115. In a March 7, 2017 interview, Secretary of Home-

land Security Kelly stated that the Order was not a Muslim ban but instead was focused on countries with "questionable vetting procedures," then noted that there are 13 or 14 countries with questionable vetting procedures, "not all of them Muslim countries and not all of them in the Middle East." J.R. 150.

In a joint affidavit, 10 former national security, foreign policy, and intelligence officials who served in the White House, Department of State, Department of Homeland Security, and Central Intelligence Agency in Republican and Democratic Administrations, four of whom were aware of the available intelligence relating to potential terrorist threats to the United States as of January 19, 2017, have stated that "there is no national security purpose for a total bar on entry for aliens" from the Designated Countries and that they are unaware of any prior example of a president suspending admission for such a "broad class of people." J.R. 404, 406. The officials note that no terrorist acts have been committed on U.S. soil by nationals of the banned countries since September 11, 2001, and that no intelligence as of January 19, 2017 suggested any such potential threat. Nor, the former officials assert, is there any rationale for the abrupt shift from individualized vetting to group bans. J.R. 404.

V. The Plaintiffs

Plaintiffs, comprised of six individuals and three organizations, assert that they will be harmed by the implementation of the Second Executive Order. Collectively, they assert that because the Individual Plaintiffs are Muslim and the Organizational Plaintiffs serve or represent Muslim clients or members, the anti-Muslim

animus underlying the Second Executive Order inflicts stigmatizing injuries on them all. The Individual Plaintiffs, who each have one or more relatives who are nationals of one of the Designated Countries and are currently in the process of seeking permission to enter the United States, also claim that if the Second Executive Order is allowed to go into effect, their separation from their loved ones, many of whom live in dangerous conditions, will be unnecessarily prolonged.

Two of the Organizational Plaintiffs, the Hebrew Immigrant Aid Society and the International Refugee Assistance Project, which provide services to refugees, assert that injuries they have suffered under the First Executive Order will continue if the Second Executive Order goes into effect, including lost revenue arising from a reduction in refugee cases that may necessitate reductions in staff. They also assert that their clients, many of whom are refugees now re-settled in the United States, will be harmed by prolonged separation from relatives in the Designated Countries currently seeking to join them. Plaintiff Middle East Studies Association, many of whose members are nationals of one of the Designated Countries, claims that the Second Executive Order would make it more difficult for certain members to travel for academic conferences and field work, and that the inability of its members to enter the United States threatens to cripple its annual conference, on which it relies for a large portion of its yearly revenue.

In light of these alleged imminent harms, Plaintiffs now ask this Court to preliminarily enjoin enforcement of the Second Executive Order.

CONCLUSIONS OF LAW

In this Motion, Plaintiffs seek a preliminary injunction based on their claims that the Second Executive Order violates (1) the Immigration and Nationality Act and (2) the Establishment Clause.

I. Standing

Article III of the Constitution limits the judicial power of the federal courts to actual "Cases" or "Controversies." U.S. Const. art. III, § 2, cl. 1. To invoke this power, a litigant must have standing. *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). A plaintiff establishes standing by demonstrating (1) a "concrete and particularized" injury that is "actual or imminent," (2) "fairly traceable to the challenged conduct," (3) and "likely to be redressed by a favorable judicial decision." *Id.*; *Covenant Media of S.C., LLC v. City of N. Charleston*, 493 F.3d 421, 428 (4th Cir. 2007). Standing must be demonstrated for each claim. *Bostic v. Schaefer*, 760 F.3d 352, 370 (4th Cir. 2014). The presence of one plaintiff with standing renders a claim justiciable. *Id.* at 370-71.

A. Immigration and Nationality Act

Several Individual Plaintiffs, specifically John Doe No. 1, John Doe No. 3 and Jane Doe No. 2, have standing to assert the claim that the travel ban for citizens of the Designated Countries violates the INA's prohibition on discrimination in the issuance of immigrant visas on the basis of nationality, 8 U.S.C. § 1152(a). These Individual Plaintiffs are all U.S. citizens or lawful permanent residents who have sponsored relatives who are citizens of one of the Designated Countries and

now seek immigrant visas to enter the United States. They argue that the delay or denial of the issuance of visas will cause injury in the form of continued separation from their family members. *Cf. Covenant Media*, 493 F.3d at 428 (stating that not having an application processed in a timely manner is a form of cognizable injury).

Although neither the United States Supreme Court nor the United States Court of Appeals for the Fourth Circuit has explicitly endorsed this basis for standing, the Supreme Court has reviewed the merits of cases brought by U.S. residents with a specific interest in the entry of a foreigner challenging the application of the immigration laws to that foreign individual. *See Kerry v. Din*, 135 S. Ct. 2128, 2131, 2138-42 (2015) (considering an action brought by a U.S. citizen challenging the denial of her husband's visa that failed to result in a majority of the Court agreeing whether the plaintiff had a constitutionally-protected liberty interest in the processing of her husband's visa); *Kleindienst v. Mandel*, 408 U.S. 753, 756, 762-65 (1972) (considering the merits of a claim brought by American plaintiffs challenging the denial of a visa to a Belgian journalist whom they had invited to speak in various academic forums in the United States); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88-89 (1998) (stating that because standing relates to a court's power to hear and adjudicate a case, it is normally "considered a threshold question that must be resolved in [the litigant's] favor before proceeding to the merits"); *Abourezk v. Reagan*, 785 F.2d 1043, 1050 (D.C. Cir. 1986) ("Presumably, had the Court harbored doubts concerning federal court subject matter jurisdiction in

Mandel, it would have raised the issue on its own motion."). Other courts have done the same. *See Bustamante v. Mukasey*, 531 F.3d 1059, 1062 (9th Cir. 2008) (considering an action by a United States citizen challenging the denial of her husband's visa and holding that the citizen had a procedural due process right to a "limited judicial inquiry regarding the reason for the decision"); *Allende v. Shultz*, 845 F.2d 1111, 1114 & n.4 (1st Cir. 1988) (evaluating the merits of a claim brought by scholars and leaders who extended invitations to a foreign national challenging the denial of her visa).

The United States Court of Appeals for the District of Columbia Circuit has found that U.S. citizens and residents have standing to challenge the denial of visas to individuals in whose entry to the United States they have an interest. *See Abourezk*, 785 F.2d at 1050 (finding that U.S. citizens and residents had standing to challenge the denial of visas to foreigners whom they had invited to "attend meetings or address audiences" in the United States); *Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State, Bureau of Consular Affairs*, 45 F.3d 469, 471 (D.C. Cir. 1995), *vacated on other grounds*, 519 U.S. 1 (1996). In *Legal Assistance*, the court specifically held that U.S. resident sponsors had standing to assert that the State Department's failure to process visa applications of Vietnamese citizens in Hong Kong violated the provision at issue here, 8 U.S.C. § 1152. *Id.* at 471. The court articulated the cognizable injury to the plaintiffs as the prolonged "separation of immediate family members" resulting from the State Department's inaction. *Id.* Here, the

three Individual Plaintiffs who seek the entry of family members from the Designated Countries into the United States face the same harm of continuing separation from their respective family members. This harm is "fairly traceable to the challenged conduct" in that the Second Executive Order and its implementation, in barring their entry, would cause the prolonged separation, and the injury is "likely to be redressed by a favorable judicial decision" because invalidation of the relevant provisions of the Executive Order would remove a barrier to their entry. *Hollingsworth*, 133 S. Ct. at 2661.

Defendants nevertheless argue that the Individual Plaintiffs' harm does not arise from a "legally protected interest," citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (describing an "injury in fact" as a "legally protected interest" which is "concrete and particularized"). However, the case cited by *Lujan* in referencing the "legally protected interest" requirement referred to an injury "deserving of legal protection through the judicial process." *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972), *cited with approval in Lujan*, 504 U.S. at 561. Indeed, in *Lujan*, the Court also noted that "the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing." *Lujan*, 504 U.S. at 562-63. Since *Lujan*, courts have clarified that a party is not required to have a "substantive right sounding in property or contract" to articulate a legally protected injury. *Cantrell v. City of Long Beach*, 241 F.3d 674, 681 (9th Cir. 2001) (recognizing aesthetic and recreational enjoyment as a legally protected inter-

est); *see also Warth v. Seldin*, 422 U.S. 490, 500 (1975) (explaining that although standing "often turns on the nature and source of the claim asserted," "standing in no way depends on the merits" of a plaintiff's claim); *Judicial Watch, Inc. v. United States Senate*, 432 F.3d 359, 363-66 (D.C. Cir. 2005) (Williams, J., concurring) (suggesting that a legally protected interest is merely another label for a judicially cognizable interest). Plaintiffs' interests arising from the separation from family members are consistent with the injury requirement.

Because this claim is a statutory cause of action, these Individual Plaintiffs must also meet the requirement of having interests that fall within the "zone of interests protected by the law invoked." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1389 (2014). The APA grants standing to a person "aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702; *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 394 (1987). In the context of the APA, the "zone of interests" test is "not especially demanding." *Lexmark*, 134 S. Ct. at 1389. A plaintiff's interest need only "arguably" fall within the zone of interests, and the test "forecloses suit only when a plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress authorized that plaintiff to sue." *Id.* (internal quotation marks omitted) (quoting *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2210 (2012)). Because implementing the "underlying intention of our immigration laws regarding the

preservation of the family unit" is among the INA's purposes, the interests of these Individual Plaintiffs, who have sponsored family members who will be denied entry pursuant to the Second Executive Order, fall within the zone of interest protected by the statute. *Legal Assistance*, 45 F.3d at 471-72 (quoting H.R. Rep. No. 82-1365, at 29 (1952), *as reprinted in* 1952 U.S.C.C.A.N. 1653, 1680). The Court therefore finds that these three Individual Plaintiffs have standing to assert the claim under 8 U.S.C. § 1152.

Finally, although some of the Individual Plaintiffs' relatives may be eligible for a waiver under the Second Executive Order, because the waiver process presents an additional hurdle that would delay reunification, their claims are ripe. *See Jackson v. Okaloosa Cty.*, 21 F.3d 1531, 1541 (11th Cir. 1994) (finding in a Fair Housing Act action that plaintiffs' claim was ripe where, "assuming that [plaintiffs] successfully prove at trial that this [challenged] additional hurdle was interposed with discriminatory purpose and/or with disparate impact, then the additional hurdle itself is illegal whether or not it might have been surmounted").

B. Establishment Clause

At least three of the Individual Plaintiffs, Muhammed Meteab, John Doe No. 1, and John Doe No. 3, each of whom is a Muslim and a lawful permanent resident of the United States, have standing to assert the claim that the Second Executive Order violates the Establishment Clause. John Doe No. 1 and John Doe No. 3 each has a wife who is an Iranian national, currently residing in Iran, who would be barred from entry to the United States by the Executive Orders. John Doe No. 1

has stated that the travel ban has "created significant fear, anxiety, and insecurity" for him and his wife and that the "anti-Muslim views" underlying the Executive Orders have caused him "significant stress and anxiety" to the point that he "worr[ies] that I may not be safe in this country." J.R. 45. John Doe No. 3 has stated that the "anti-Muslim attitudes that are driving" the Executive Orders cause him "stress and anxiety" and lead him to "question whether I even belong in this country." J.R. 49. Meteab, who has Iraqi family members seeking entry as refugees but who are now subject to the Executive Orders' suspension of refugee admissions, has stated that the "official anti-Muslim sentiment" of the Executive Orders has caused "mental stress" and has rendered him "isolated and disparaged" in his community. J.R. 53.

Courts have recognized that for purposes of an Establishment Clause claim, noneconomic, intangible harms to "spiritual, value-laden beliefs" can constitute a particularized injury sufficient to support standing. *Suhre v. Haywood Cty.*, 131 F.3d 1083, 1086 (4th Cir. *1997)*; *Awad v. Ziriax*, 670 F.3d 1111, 1122-23 (10th Cir. 2012) (holding that a Muslim plaintiff residing in Oklahoma suffered a cognizable injury in the form of condemnation of his religion and exposure to "disfavored treatment" based on a voter-approved state constitutional amendment prohibiting Oklahoma state courts from considering Sharia law); *Catholic League v. City & Cty. of San Francisco*, 624 F.3d 1043, 1048 (9th Cir. 2010) (stating that a "psychological consequence" constitutes a concrete injury where it is "produced by government condemnation of one's own religion or

endorsement of another's in one's own community"). The injury, however, needs to be a "personal injury suffered" by the plaintiff "*as a consequence* of the alleged constitutional error." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 485 (1982). Such a "personal injury" can result, for example, from having "unwelcome direct contract with a religious display that appears to be endorsed by the state," *Suhre*, 131 F.3d at 1086, or from being a member of the geographic community in which the governmental action disfavoring their religion has an impact, *see Awad*, 670 F.3d at 1122-23; *Catholic League*, 624 F.3d at 1048 (finding that two devout Catholics and a Catholic advocacy group, all based in San Francisco, had standing to challenge an allegedly anti-Catholic resolution passed by the city government). Here, where the Executive Order was issued by the federal government, and the three Individual Plaintiffs have family members who are directly and adversely affected in that they are barred from entry to the United States as a result of the terms of the Executive Orders, these Individual Plaintiffs have alleged a "personal injury" as a "consequence" of the alleged Establishment Clause violation. *Valley Forge Christian Coll.*, 454 U.S. at 485.

The harm is "fairly traceable to the challenged conduct" in that the Second Executive Order and its implementation will allegedly effect the disfavoring of Islam, and the injury is "likely to be redressed by a favorable judicial decision" invalidating the relevant provisions of the Executive Order. *Hollingsworth*, 133 S. Ct. at 2661. The Court therefore finds that these three Individual

Plaintiffs have standing to assert an Establishment Clause challenge.

Having identified at least one plaintiff with standing to assert the claims to be addressed on this Motion, the Court need not address the standing arguments of the other Plaintiffs.

II. Legal Standard

To obtain a preliminary injunction, moving parties must establish that (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011). A moving party must satisfy each requirement as articulated. *Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 347 (4th Cir. 2009), *vacated on other grounds*, 559 U.S. 1089 (2010). Because a preliminary injunction is "an extraordinary remedy," it "may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

III. Likelihood of Success on the Merits

Because "courts should be extremely careful not to issue unnecessary constitutional rulings," *Am. Foreign Servo Ass'n v. Garfunkel*, 490 U.S. 153, 161 (1989) (per curiam), the Court first addresses the statutory claim and then proceeds, if necessary, to the constitutional claim.

A. Immigration and Nationality Act

Plaintiffs assert that the President's travel ban violated provisions of the INA. The formulation of immigration policies is entrusted exclusively to Congress. *Galvan v. Press*, 347 U.S. 522, 531 (1954). In the Immigration and Nationality Act of 1952, Pub. L. 82-414, 66 Stat. 163, Congress delegated some of its power to the President in the form of what is now Section 212(f) of the INA, codified at 8 U.S.C. § 1182(f) ("§ 1182(f)"), which provides that:

> 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 non-immigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

8 U.S.C. § 1182(f). In the Second Executive Order, President Trump invokes § 1182(f) in issuing the travel ban against citizens of the Designated Countries. *See* 2d Order § 2(c).

Plaintiffs argue that by generally barring the entry of citizens of the Designated Countries, the Second Order violates Section 202(a) of the INA, codified at 8 U.S.C. § 1152(a) ("§ 1152(a)"), which provides that, with certain exceptions:

> No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence[.]

8 U.S.C. § 1152(a)(1)(A).

Section 1152(a) was enacted as part of the Immigration and Nationality Act of 1965, which was adopted expressly to abolish the "national origins system" imposed by the Immigration Act of 1924, which keyed yearly immigration quotas for particular nations to the percentage of foreign-born individuals of that nationality who were living in the continental United States, based on the 1920 census, in order to "maintain, to some degree, the ethnic composition of the American people." H. Rep. No. 89-745, at 9 (1965). President Johnson sought this reform because the national origins system was at odds with "our basic American tradition" that we "ask not where a person comes from but what are his personal qualities." *Id.* at 11.

At first glance, President Trump's action appears to conflict with the bar on discrimination on the basis of nationality. However, upon consideration of the specific statutory language, the Court finds no direct conflict. Section 1182(f) authorizes the President to bar "entry" to certain classes of aliens. 8 U.S.C. § 1182(f). Section 1152(a) bars discrimination based on nationality in the "issuance of an immigrant visa." *Id.* § 1152(a)(1)(A). Although entry is not currently defined in the INA, until 1997 it was defined as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession, voluntary or otherwise." *Id.* § 1101(a)(13) (1994). In the same section of the current INA, the term "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). The term "immigrant visa" is sepa-

rately defined as "an immigrant visa required by this chapter and properly issued by a consular officer at his office outside the United States to an eligible immigrant under the provisions of this chapter." *Id.* § 1101(a)(16). The INA, in turn, makes clear that "[n]othing in this Act shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted to the United States." *Id.* § 1201(h). Thus, § 1152(a) and § 1182(f) appear to address different activities handled by different government officials. When two statutory provisions "are capable of co-existence, it is the duty of the courts . . . to regard each as effective." *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1976). Accordingly, an executive order barring entry to the United States based on nationality pursuant to the President's authority under § 1182(f) does not appear to run afoul of the provision in § 1152(a) barring discrimination in the issuance of immigrant visas.

Although the Second Executive Order does not explicitly bar citizens of the Designated Countries from receiving a visa, the Government acknowledged at oral argument that as a result of the Second Executive Order, any individual not deemed to fall within one of the exempt categories, or to be eligible for a waiver, will be denied a visa. Thus, although the Second Executive Order speaks only of barring entry, it would have the specific effect of halting the issuance of visas to nationals of the Designated Countries. Under the plain language of the statute, the barring of immigrant visas on that basis would run contrary to § 1152(a). Just as § 1152(a) does not intrude upon the President's

§ 1182(f) authority to bar entry to the United States, the converse is also true: the § 1182(f) authority to bar entry does not extend to the issuance of immigrant visas. The power the President has in the immigration context, and certainly the power he has by virtue of the INA, is not his by right, but derives from "the statutory authority conferred by Congress." *Abourezk*, 785 F.2d at 1061. Notably, the Government has identified no instance in which § 1182(f) was invoked to bar the issuance of visas based on nationality, a step not contemplated by the language of the statute.

To the extent the Government argues that § 1152(a) does not constrain the ability of the President to use § 1182(f) to bar the issuance of immigrant visas, the Court finds no such exception. Section 1152(a) requires a particular result, namely non-discrimination in the issuance of immigrant visas on specific, enumerated bases. Section 1182(f), by contrast, mandates no particular action, but instead sets out general parameters for the President's power to bar entry. Thus, to the extent that § 1152(a) and § 1182(f) may conflict on the question whether the President can bar the issuance of immigrant visas based on nationality, § 1152(a), as the more specific provision, controls the more general § 1182(f). *See Edmond v. United States*, 520 U.S. 651, 657 (1997) ("Ordinarily, where a specific provision conflicts with a general one, the specific governs."); *United States v. Smith*, 812 F.2d 161, 166 (4th Cir. 1987). Moreover, § 1152(a) explicitly excludes certain sections of the INA from its scope, specifically §§ 1101(a)(27), 1151(b)(2)(A)(i), and 1153. 8 U.S.C. § 1152(a)(1)(A). Section 1182(f) is not among the exceptions. Because

the enumerated exceptions illustrate that Congress "knows how to expand 'the jurisdictional reach of a statute,'" the absence of any reference to § 1182(f) among these exceptions provides strong evidence that Congress did not intend for § 1182(f) to be exempt from the anti-discrimination provision of § 1152(a). *Reyes-Gaona v. N.C. Growers Ass'n*, 250 F.3d 861, 865 (4th Cir. 2001) (quoting *Equal Emp't Opportunity Comm'n v. Arabian Am. Oil Co.*, 499 U.S. 244, 258 (1991)).

The Government further argues that the President may nevertheless engage in discrimination on the basis of nationality in the issuance of immigrant visas based on 8 U.S.C. § 1152(a)(1)(B), which states that "[n]othing in [§ 1152(a)] shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed." As that statutory provision expressly applies to the Secretary of State, it does not provide a basis to uphold an otherwise discriminatory action by the President in an Executive Order. Even if the Court were to construe Plaintiffs' claim to be that the State Department's anticipated denial of immigrant visas based on nationality for a period of 90 days would run contrary to § 1152(a), the text of § 1152(a)(1)(B) does not comfortably establish that such a delay falls within this exception. Although § 1152(a)(1)(B) specifically allows the Secretary to vary "locations" and "procedures" without running afoul of the nondiscrimination provision, it does not include within the exception any authority to make temporal adjustments. Because time, place, and

manner are different concepts, and § 1152(a)(1)(B) addresses only place and manner, the Court cannot readily conclude that § 1152(a)(1)(B) permits the imminent 90-day ban on immigrant visas based on nationality despite its apparent violation of the non-discrimination provision of § 1152(a)(1)(A).

Finally, the Government asserts that the President has the authority to bar the issuance of visas based on nationality pursuant to Section 215(a) of the INA, codified at 8 U.S.C. § 1185(a) ("§ 1185(a)"), which provides that:

> Unless otherwise ordered by the President, it shall be unlawful for an alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.

8 U.S.C. § 1185(a)(1). As support for this interpretation, the Government cites President Carter's invocation of 8 U.S.C. § 1185(a)(1) to bar entry of Iranian nationals during the Iran Hostage Crisis in 1979. Crucially, however, President Carter used § 1185(a)(1) to "prescribe limitations and exceptions on the rules and regulations" governing "Iranians holding nonimmigrant visas," a category that is outside the ambit of § 1152(a). 44 Fed. Reg. 67947, 67947 (1979). The Government has identified no instance in which § 1185(a) has been used to control the immigrant visa issuance process. Under the principle of statutory construction that "all parts of a statute, if at all possible, are to be given effect," *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 633 (1973), the Court

concludes that, as with § 1182(f), the most fair reading of § 1182(a)(1) is that it provides the President with the authority to regulate and control whether and how aliens enter or exit the United States, but does not extend to regulating the separate activity of issuance of immigrant visas.

Because there is no clear basis to conclude that § 1182(f) is exempt from the nondiscrimination provision of § 1152(a) or that the President is authorized to impose nationality-based distinctions on the immigrant visa issuance process through another statutory provision, the Court concludes that Plaintiffs have shown a likelihood of success on the merits of their claim that the Second Executive Order violates § 1152(a), but only as to the issuance of immigrant visas, which the statutory language makes clear is the extent of the scope of that anti-discrimination requirement. They have not shown a likelihood of success on the merits of the claim that § 1152(a) prevents the President from barring entry to the United States pursuant to § 1182(f), or the issuance of non-immigrant visas, on the basis of nationality.

Beyond § 1152(a), Plaintiffs make the additional argument under the INA that because the Second Executive Order's nationality-based distinctions are ostensibly aimed at potential terrorist threats, the Order conflicts with 8 U.S.C. § 1182(a)(3)(B), which renders an individual inadmissible based on an enumerated list of terrorism considerations. *See* 8 U.S.C. § 1182(a)(3)(B)(i)(I), (IV), and (VII). Plaintiffs contend that these provisions indicate that Congress has established a mechanism for the individualized assessment of the terror risk an immigrant poses, such that Congress did not envision that

terrorism would be addressed through broad nationality- or religion-based bans pursuant to § 1182(f). But Plaintiffs provide no support for their contention and make no showing that § 1182(a)(3)(B) and § 1182(f) "cannot mutually coexist." *Radzanower*, 426 U.S. at 155. Although Plaintiffs try to cast § 1182(a) as an emphatically individualized enterprise, neither § 1182(a) nor § 1182(f) purports to limit the President to barring entry only to classes of aliens delineated in § 1182(a). Thus, Plaintiffs are unlikely to succeed on the merits of this claim.

B. Establishment Clause

Plaintiffs assert that the travel ban on citizens from the Designated Countries is President Trump's fulfillment of his campaign promise to ban Muslims from entering the United States. They argue that the Second Executive Order therefore violates the Establishment Clause. The First Amendment prohibits any "law respecting an establishment of religion," U.S. Const. amend. I, and "mandates governmental neutrality between religion and religion, and between religion and nonreligion," *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). When a law does not differentiate among religions on its face, courts apply the test articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). *See Hernandez v. C.I.R.*, 490 U.S. 680, 695 (1989). Under the *Lemon* test, to withstand an Establishment Clause challenge (1) an act must have a secular purpose, (2) "its principal or primary effect must be one that neither advances nor inhibits religion," and (3) it must not "foster 'an excessive government entanglement with religion.'" *Id.* at 612-613 (quoting *Walz v. Tax*

Comm'n, 397 U.S. 664, 674 (1970)). All three prongs of the test must be satisfied. *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).

The mere identification of any secular purpose for the government action does not satisfy the purpose test. *McCreary Cty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860, 865 n.13 (2005). Such a rule "would leave the purpose test with no real bite, given the ease of finding some secular purpose for almost any government action." *Id.* ("[A]n approach that credits *any* valid purpose . . . has not been the way the Court has approached government action that implicates establishment." (emphasis added)). Thus, although governmental statements of purpose generally receive deference, a secular purpose must be "genuine, not a sham, and not merely secondary to a religious objective." *Id.* at 864. If a religious purpose for the government action is the predominant or primary purpose, and the secular purpose is "secondary," the purpose test has not been satisfied. *Id.* at 860, 862-65; *see also Edwards*, 482 U.S. at 594 (finding a violation of the Establishment Clause where the "primary purpose" of the challenged act was "to endorse a particular religious doctrine").

An assessment of the purpose of an action is a "common" task for courts. *McCreary*, 545 U.S. at 861. In determining purpose, a court acts as an "objective observer" who considers "the traditional external signs that show up in the text, legislative history, and implementation of the statute, or comparable official act." *McCreary*, 545 U.S. at 862 (internal quotation marks omitted) (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000)). An "understanding of official

objective" can emerge from "readily discoverable fact" without "judicial psychoanalysis" of the decisionmaker. *Id.*

Plaintiffs argue that the Second Executive Order fails the purpose prong because there is substantial direct evidence that the travel ban was motivated by a desire to ban Muslims as a group from entering the United States. Plaintiffs' evidence on this point consists primarily of public statements made by President Trump and his advisors, before his election, before the issuance of the First Executive Order, and since the decision to issue the Second Executive Order. Considering statements from these time periods is appropriate because courts may consider "the historical context" of the action and the "specific sequence of events" leading up to it. *Edwards*, 482 U.S. at 594-95. Such evidence is "perfectly probative" and is considered as a matter of "common sense"; indeed, courts are "forbid[den] . . . 'to turn a blind eye to the context in which [the] policy arose.'" *McCreary*, 545 U.S. at 866 (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 315 (2000)); *cf. Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267-68 (1987) (including the "historical background of the decision," the "specific sequence of events leading up [to] the challenged decision," and "contemporary statements of the decisionmaking body" as factors indicative of discriminatory intent), *cited with approval in Edwards*, 482 U.S. at 595.

> One consequence of taking account of the purpose underlying past actions is that the same government action may be constitutional if taken in the first instance and unconstitutional if it has a sectarian

> heritage. This presents no incongruity, however, because purpose matters.

McCreary, 545 U.S. at 866 n.l4.

Specifically, the evidence offered by Plaintiffs includes numerous statements by President Trump expressing an intent to issue a Muslim ban or otherwise conveying anti-Muslim sentiments. For example, on December 7, 2015, then a Republican primary candidate, Trump posted a "Statement on Preventing Muslim Immigration" on his campaign website "calling for a total and complete shutdown of Muslims entering the United States until our representatives can figure out what is going on." J.R. 85. In a March 9, 2016 interview with CNN, Trump professed his belief that "Islam hates us," and that the United States had "allowed this propaganda to spread all through the country that [Islam] is a religion of peace." J.R. 255-57. Then in a March 22, 2016 Fox Business interview, Trump reiterated his call for a ban on Muslim immigration, explaining that his call for the ban had gotten "tremendous support" and that "we're having problems with the Muslims, and we're having problems with Muslims coming into the country." into the country." J.R. 261. On December 21, 2016, when asked whether a recent attack in Germany affected his proposed Muslim ban, President-Elect Trump replied, "You know my plans. All along, I've proven to be right. 100% correct." J.R. 245. In a written statement about the events, Trump lamented the attack on people "prepared to celebrate the Christmas holiday" by "ISIS and other Islamic terrorists [who] continually slaughter Christians in

their communities and places of worship as part of their global jihad." J.R. 245.

Significantly, the record also includes specific statements directly establishing that Trump intended to effectuate a partial Muslim ban by banning entry by citizens of specific predominantly Muslim countries deemed to be dangerous, as a means to avoid, for political reasons, an action explicitly directed at Muslims. In a July 24, 2016 interview on Meet the Press, soon after becoming the Republican presidential nominee, Trump asserted that immigration should be immediately suspended "from any nation that has been compromised by terrorism." J.R. 219. When questioned whether his new formulation was a "rollback" of his call for a "Muslim ban," he described it as an "expansion" and explained that "[p]eople were so upset when I used the word Muslim," so he was instead "talking territory instead of Muslim." J.R. 220. When President Trump was preparing to sign the First Executive Order, he remarked, "This is the 'Protection of the Nation from Foreign Terrorist Entry into the United States.' We all know what that means." J.R. 142. The day after the First Executive Order was issued, Mayor Giuliani appeared on Fox News and asserted that President Trump told him he wanted a Muslim ban and asked Giuliani to "[s]how me the right way to do it legally." J.R. 247. Giuliani, in consultation with others, proposed that the action be "focused on, instead of religion . . . the areas of the world that create danger for us," specifically "places where there are [*sic*] substantial evidence that people are sending terrorists into our country." J.R. 247-48. These types of public state-

ments were relied upon by the Eastern District of Virginia in enjoining the First Executive Order based on a likelihood of success on an Establishment Clause claim, *Aziz*, 2017 WL 580855, at *11, and the Ninth Circuit in concluding that an Establishment Clause claim against that Order raised "serious allegations" and presented "significant constitutional questions." *Washington*, 847 F.3d at 1168.

These statements, which include explicit, direct statements of President Trump's animus towards Muslims and intention to impose a ban on Muslims entering the United States, present a convincing case that the First Executive Order was issued to accomplish, as nearly as possible, President Trump's promised Muslim ban. In particular, the direct statements by President Trump and Mayor Giuliani's account of his conversations with President Trump reveal that the plan had been to bar the entry of nationals of predominantly Muslim countries deemed to constitute dangerous territory in order to approximate a Muslim ban without calling it one precisely the form of the travel ban in the First Executive Order. *See Aziz*, 2017 WL 580855, at *4 (quoting from a July 17, 2016 interview during which then-candidate Trump, upon hearing a tweet stating "Calls to ban Muslims from entering the U.S. are offensive and unconstitutional," responded "So you call it territories. OK? We're gonna do territories."). Such explicit statements of a religious purpose are "readily discoverable fact[s]" that allow the Court to identify the purpose of this government action without resort to "judicial psychoanalysis." *McCreary*, 545 U.S. at 862. They constitute clear statements of religious

purpose comparable to those relied upon in *Glassroth v. Moore*, 335 F.3d 1282 (11th Cir. 2003), where the court found that a Ten Commandments display at a state courthouse was erected for a religious purpose in part based on the chief justice stating at the dedication ceremony that "in order to establish justice, we must invoke 'the favor and guidance of Almighty God.'" *Id.* at 1286, 1296 ("[N]o psychoanalysis or dissection is required here, where there is abundant evidence, including his own words, of the Chief Justice's purpose.").

Relying primarily on this record, Plaintiffs asks this Court to issue an injunction against the Second Executive Order on Establishment Clause grounds. In considering this request, the same record of public statements by President Trump remains highly relevant. In *McCreary*, where the Court was reviewing a third attempt to create a courthouse display including the Ten Commandments after two prior displays had been deemed unconstitutional, it held that its review was not limited to the "latest news about the last in a series of governmental actions" because "the world is not made brand new every morning," "reasonable observers have reasonable memories," and to impose such a limitation would render a court "an absentedminded objective observer, not one presumed familiar with the history of the government's action and competent to learn what history has to show." *McCreary*, 545 U.S. at 866.

The Second Executive Order, issued only six weeks after the First Executive Order, differs, as relevant here, in that the preference for religious minorities in the refugee process has been removed. It also removes Iraq from the list of Designated Countries,

exempts certain categories of individuals from the ban, and lists other categories of individuals who may be eligible for a case-by-case waiver from the ban. Despite these changes, the history of public statements continues to provide a convincing case that the purpose of the Second Executive Order remains the realization of the long-envisioned Muslim ban. The Trump Administration acknowledged that the core substance of the First Executive Order remained intact. Prior to its issuance, on February 16, 2017, Stephen Miller, Senior Policy Advisor to the President, described the forthcoming changes as "mostly minor technical differences," and stated that the "basic policies are still going to be in effect." J.R. 319. When the Second Executive Order was signed on March 6, 2017, White House Press Secretary Sean Spicer stated that "[t]he principles of the [second] executive order remain the same." J.R. 118. The Second Executive Order itself explicitly states that the changes, particularly the addition of exemption and waiver categories, were made to address 'judicial concerns," 2d Order § 1(i), including those raised by the Ninth Circuit, which upheld an injunction based on due process concerns, *Washington*, 847 F.3d at 1156.

The removal of the preference for religious minorities in the refugee system, which was the only explicit reference to religion in the First Executive Order, does not cure the Second Executive Order of Establishment Clause concerns. Crucially, the core policy outcome of a blanket ban on entry of nationals from the Designated Countries remains. When President Trump discussed his planned Muslim ban, he described not the prefer-

ence for religious minorities, but the plan to ban the entry of nationals from certain dangerous countries as a means to carry out the Muslim ban. These statements thus continue to explain the religious purpose behind the travel ban in the Second Executive Order. Under these circumstances, the fact that the Second Executive Order is facially neutral in terms of religion is not dispositive. *See Bd. Of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 699-702 (1994) (holding that a facially neutral delegation of civic power to "qualified voters" of a village predominantly comprised of followers of Satmas Hasidism was a "purposeful and forbidden" violation of the Establishment Clause); *cf. Church of the Lukumi Babalu Aye*, *Inc. v. City of Hialeah*, 508 U.S. 520, 534, 542 (1993) (holding that a facially neutral city ordinance prohibiting animal sacrifice and intended to target the Santeria faith violated the Free Exercise Clause because "the Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination" and action targeting religion "cannot be shielded by mere compliance with the requirement of facial neutrality").

Defendants do not directly contest that this record of public statements reveals a religious motivation for the travel ban. Rather, they argue that many of the statements may not be considered because they were made outside the formal government decisionmaking process or before President Trump became a government official. Although *McCreary*, relied upon by Defendants, states that a court considers "the text, legislative history, and implementation" of an action and "comparable" official acts, it did not purport to

list the only materials appropriate for consideration.[2] 545 U.S. at 862. Notably, in *Green v. Haskell County Board of Commissioners*, 568 F.3d 784 (10th Cir. 2009), the United States Court of Appeals for the Tenth Circuit considered quotes from county commissioners that appeared in news reports in finding that a Ten Commandments display violated the Establishment Clause. *Id.* at 701. Likewise, in *Glassroth*, the United States Court of Appeals for the Eleventh Circuit found an Establishment Clause violation based on a record that included the state chief justice's campaign materials, including billboards and television commercials, proclaiming him to be the "Ten Commandments Judge." 335 F.3d at 1282, 1284-85, 1297.

Although statements must be fairly "attributed to [a] government actor," *Glassman v. Arlington Cty.*, 628 F.3d 140, 147 (4th Cir. 2010), Defendants have cited no authority concluding that a court assessing purpose under the Establishment Clause may consider only statements made by government employees at the time that they were government employees. Simply because a decisionmaker made the statements during a campaign

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[2] In *Hamdan v. Rumsfeld*, 548 U.S. 557, 624 n.52 (2006), cited by Defendants, the Court criticized a dissent's reliance on press statements by senior government officials, rather than the President's formal written determination mandated by the Uniform Code of Military Justice, to provide justification for the government's determination that applying court-martial rules to a terrorism suspect's military commission was impracticable. *Id.* at 624 & n.52. It did not address what facts could be considered in assessing government purpose under the Establishment Clause, where courts have held that facts outside the specific text of the government decision may be considered. *See Edwards*, 482 U.S. at 594-95.

does not wipe them from the "reasonable memory" of a "reasonable observer." *McCreary*, 545 U.S. at 866. Notably, the record in *Glassroth* also included the fact that the state chief justice, before securing election to that position, had made a campaign promise to install the Ten Commandments in the state courthouse, as well as campaign materials issued by members of his campaign committee. *Glassroth*, 335 F.3d at 1285. Because the state chief justice was the ultimate decisionmaker, and his campaign committee's statements were fairly attributable to him, such material is appropriately considered in assessing purpose under the Establishment Clause. *See id.* at 1285; *Glassman*, 628 F.3d at 147. Likewise, all of the public statements at issue here are fairly attributable to President Trump, the government decisionmaker for the Second Executive Order, because they were made by President Trump himself, whether during the campaign or as President, by White House staff, or by a close campaign advisor who was relaying a conversation he had with the President. In contrast, Defendants' cited case law does not involve statements fairly attributable to the government decisionmaker. *See*, *e.g.*, *Glassman*, 628 F.3d at 147 (declining to consider statements made by members of a church that was alleged to have benefited from government action); *Weinbaum v. City of Las Cruces*, 541 F.3d 1017, 1031 (10th Cir. 2008) (declining to consider statements by the artist where the government's display of artwork is challenged); *Modrovich v. Allegheny Cty.*, 385 F.3d 397, 411 (3d Cir. 2004) (declining to consider statements by a judge and county residents about a Ten Commandments display where the county government's purpose was at issue).

Defendants also argue that the Second Executive Order explicitly articulates a national security purpose, and that unlike its predecessor, it includes relevant information about national security concerns. In particular, it asserts that there is a heightened chance that individuals from the Designated Countries will be "terrorist operatives or sympathizers" because each country is "a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones," and those governments are therefore less likely to provide necessary information for the immigrant vetting process. 2d Order § 1(d). The Order also references a history of persons born abroad committing terrorism-related crimes in the United States and identifies three specific cases of such crimes. The Order further states that more than 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations.

Plaintiffs argue that the stated national security rationale is limited and flawed. Among other points, they note that the Second Executive Order does not identify examples of foreign nationals from Iran, Libya, Sudan, Syria, or Yemen who engaged in terrorist activity in the United States. They also note that a report from the Department of Homeland Security, Office of Intelligence and Analysis, concluded that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity" and that "few of the impacted countries have terrorist groups that threaten the West." J.R. 158. Furthermore, they note that the 300 FBI investigations are dwarfed by the over

11,000 counterterrorism investigations at any one time, only a fraction of which lead to actual evidence of illegal activity. Finally, they note that Secretary of Homeland Security Kelly stated that there are additional countries, some of which are not predominantly Muslim, that have vetting problems but are not included among the banned countries. These facts raise legitimate questions whether the travel ban for the Designated Countries is actually warranted.

Generally, however, courts should afford deference to national security and foreign policy judgments of the Executive Branch. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010). The Court thus should not, and will not, second-guess the conclusion that national security interests would be served by the travel ban. The question, however, is not simply whether the Government has identified a secular purpose for the travel ban. If the stated secular purpose is secondary to the religious purpose, the Establishment Clause would be violated. *See McCreary*, 545 U.S. at 864, 866 n.14 (stating that it is appropriate to treat two like acts differently where one has a "history manifesting sectarian purpose that the other lacks"). Making assessments on purpose, and the relative weight of different purposes, is a core judicial function. *See id.* at 861-62.

In this highly unique case, the record provides strong indications that the national security purpose is not the primary purpose for the travel ban. First, the core concept of the travel ban was adopted in the First Executive Order, without the interagency consultation process typically followed on such matters. Notably, the document providing the recommendation of the Attor-

ney General and the Secretary of Homeland Security was issued not before the First Executive Order, but on March 6, 2017, the same day that the Second Executive Order was issued. The fact that the White House took the highly irregular step of first introducing the travel ban without receiving the input and judgment of the relevant national security agencies strongly suggests that the religious purpose was primary, and the national security purpose, even if legitimate, is a secondary *post hoc* rationale.

Second, the fact that the national security rationale was offered only after courts issued injunctions against the First Executive Order suggests that the religious purpose has been, and remains, primary. Courts have been skeptical of statements of purpose "expressly disclaim[ing] any attempt to endorse religion" when made after a judicial finding of impermissible purpose, describing them as a "litigating position." *E.g.*, *Am. Civil Liberties Union of Ky. v. McCreary Cty.*, 607 F.3d 439, 444, 448 (6th Cir. 2010). Indeed, the Second Executive Order itself acknowledges that the changes made since the First Executive Order were to address "judicial concerns." 2d Order § 1(i).

Third, although it is undisputed that there are heightened security risks with the Designated Countries, as reflected in the fact that those who traveled to those countries or were nationals of some of those countries have previously been barred from the Visa Waiver Program, *see* 8 U.S.C. § 1187(a)(12), the travel ban represents an unprecedented response. Significantly, during the time period since the Reagan Administration, which includes the immediate aftermath of

September 11, 2001, there have been no instances in which the President has invoked his authority under § 1182(f) or § 1185 to issue a ban on the entry into the United States of all citizens from more than one country at the same time, much less six nations all at once. Kate M. Manuel, Congo Research Serv., R44743, Executive Authority to Exclude Aliens: In Brief (2017); J.R. 405-406. In the two instances in which nationals from a single country were temporarily stopped, there was an articulable triggering event that warranted such action. Manuel, *supra*, at 10-11 (referencing the suspension of the entry of Cuban nationals under President Reagan after Cuba stopped complying with U.S. immigration requirements and the revocation of visas issued to Iranians under President Carter during the Iran Hostage Crisis). The Second Executive Order does not explain specifically why this extraordinary, unprecedented action is the necessary response to the existing risks. But while the travel ban bears no resemblance to any response to a national security risk in recent history, it bears a clear resemblance to the precise action that President Trump described as effectuating his Muslim ban. Thus, it is more likely that the primary purpose of the travel ban was grounded in religion, and even if the Second Executive Order has a national security purpose, it is likely that its primary purpose remains the effectuation of the proposed Muslim ban. Accordingly, there is a likelihood that the travel ban violates the Establishment Clause.

Finally, Defendants argue that because the Establishment Clause claim implicates Congress's plenary power over immigration as delegated to the President,

the Court need only consider whether the Government has offered a "facially legitimate and bona fide reason" for its action. *See Mandel*, 408 U.S. at 777. This standard is most typically applied when a court is asked to review an executive officer's decision to deny a visa. *See*, *e.g.*, *Din*, 135 S. Ct. at 2140 (Kennedy, J., concurring); or in other matters relating to the immigration rights of individual aliens or citizens, *see Fiallo v. Bell*, 430 U.S. 787, 790 (1977). The *Mandel* test, however, does not apply to the "promulgation of sweeping immigration policy" at the "highest levels of the political branches." *Washington*, 847 F.3d at 1162 (holding that courts possess "the authority to review executive action" on matters of immigration and national security for "compliance with the Constitution"). In such situations, the power of the Executive and Legislative branches to create immigration law remains "subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) (quoting *INS v. Chadha*, 462 U.S. 919, 941-42 (1983)).

Even when exercising their immigration powers, the political branches must choose "constitutionally permissible means of implementing that power." *Chadha*, 462 U.S. at 941. Courts have therefore rejected arguments that they forgo the traditional constitutional analysis when a plaintiff has challenged the Government's exercise of immigration power as violating the Constitution. *See*, *e.g.*, *Zadvydas*, 533 U.S. at 695 (rejecting deference to plenary power in determining that indefinite detention of aliens violated the Due Process Clause); *Chadha*, 462 U.S. at 941-43 (stating that Congress's plenary authority over the regulation

of aliens does not permit it to "offend some other constitutional restriction" and holding that a statute permitting Congress to overturn the Executive Branch's decision to allow a deportable alien to remain in the United States violated constitutional provisions relating to separation of powers); *Washington*, 847 F.3d at 1167-68 (referencing standard Establishment Clause principles as applicable to the claim that the First Executive Order violated the Establishment Clause). Thus, although "[t]he Executive has broad discretion over the admission and exclusion of aliens," that discretion "may not transgress constitutional limitations," and it is "the duty of the courts" to "say where those statutory and constitutional boundaries lie." *Abourezk*, 785 F.2d at 1061.

Mindful of "the fundamental place held by the Establishment Clause in our constitutional scheme and the myriad, subtle ways in which Establishment Clause values can be eroded," *Lynch v. Donnelly*, 465 U.S. 668, 694 (1984), the Court finds that the Plaintiffs have established that they are likely to succeed on the merits of their Establishment Clause claim. Having reached this conclusion, the Court need not address Plaintiffs' likelihood of success on their Equal Protection Clause claim.

IV. Irreparable Harm

Having concluded that Plaintiffs have established a likelihood of success on the merits, the Court turns to whether they have shown a likelihood of irreparable harm. The Supreme Court has held that "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod*

v. Burns, 427 U.S. 347, 373 (1976) (finding irreparable harm upon a violation of the freedom of association). The Fourth Circuit has applied this holding to cases involving the freedom of speech and expression. *E.g.*, *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 190, 191-92 (4th Cir. 2013); *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011). Although the Fourth Circuit has not yet held that a violation of the Establishment Clause likewise necessarily results in irreparable harm, other circuits have. *See*, *e.g.*, *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 303 (D.C. Cir. 2006); *Ingebretsen ex rel. Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996); *Parents' Ass'n of P.S. 16 v. Quinones*, 803 F.2d 1235, 1242 (2d Cir. 1986); *Am. Civil Liberties Union of Ill. v. City of St. Charles*, 794 F.2d 265, 275 (7th Cir. 1986) (finding irreparable harm in an Establishment Clause case and stating that the "harm is irreparable as well as substantial because an erosion of religious liberties cannot be deterred by awarding damages to the victims of such erosion").

Here, as in *Elrod*, "First Amendment interests were either threatened or in fact being impaired at the time relief was sought." *Elrod*, 427 U.S. at 373. "[W]hen an Establishment Clause violation is alleged, infringement occurs the moment the government action takes place." *Chaplaincy of Full Gospel Churches*, 454 F.3d at 303. The Court accordingly finds that Plaintiffs have established a likelihood of irreparable harm when the Second Executive Order takes effect.

V. Balance of the Equities and the Public Interest

While Plaintiffs would likely face irreparable harm in the absence of an injunction, Defendants are not directly harmed by a preliminary injunction preventing them from enforcing an Executive Order likely to be found unconstitutional. *See Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003); *Aziz*, 2017 WL 580855, at *10. Preventing an Establishment Clause violation has significant public benefit beyond the interests of the Plaintiffs. The Supreme Court has recognized the "fundamental place held by the Establishment Clause in our constitutional scheme." *Wallace v. Jajfree*, 472 U.S. 38, 60 (1985). The Founders "brought into being our Nation, our Constitution, and our Bill of Rights with its prohibition against any governmental establishment of religion" because they understood that "governmentally established religions and religious persecution go hand in hand." *Engel v. Vitale*, 370 U.S. 421, 432-33 (1962). When government chooses sides among religions, the "inevitable result" is "hatred, disrespect, and even contempt" from those who adhere to different beliefs. *See id.* at 431. Thus, to avoid sowing seeds of division in our nation, upholding this fundamental constitutional principle at the core of our Nation's identity plainly serves a significant public interest.

At the same time, the Supreme Court has stated that "no governmental interest is more compelling than the security of the Nation." *Haig v. Agee*, 453 U.S. 280, 307 (1981). Defendants, however, have not shown, or even asserted, that national security cannot be maintained without an unprecedented six-country travel

ban, a measure that has not been deemed necessary at any other time in recent history. Thus, the balance of the equities and the public interest favor the issuance of an injunction.

VI. Scope of Relief

Plaintiffs have asked the Court to issue an injunction blocking the Executive Order in its entirety. The Court declines to grant such broad relief. The Plaintiffs' Establishment Clause and INA arguments focused primarily on the travel ban for citizens of the six Designated Countries in Section 2(c) of the Second Executive Order. The Court will enjoin that provision only. Although Plaintiffs have argued that sections relating to the temporary ban on refugees also offend the Establishment Clause, they did not sufficiently develop that argument to warrant an injunction on those sections at this time. As for the remaining portions of the Second Order, Plaintiffs have not provided a sufficient basis to establish their invalidity. Thus, the Court declines to enjoin the Second Order in its entirety.

With respect to Section 2(c), the Court concludes that nationwide relief is warranted. It is "well established" that a federal district court has "wide discretion to fashion appropriate injunctive relief in a particular case." *Richmond Tenants Org., Inc. v. Kemp*, 956 F.2d 1300, 1308 (4th Cir. 1992); *see also Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) (holding that the "Constitution vests the District Court with 'the judicial Power of the United States,'" which "extends across the country" (quoting U.S. Const. art. III § 1)), *aff'd by an equally divided court*, 136 S. Ct. 2271 (2016). Injunctive relief "should be no more burden-

some to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). However, nationwide injunctions are appropriate if necessary to afford relief to the prevailing party. *See id.*; *Richmond Tenants Org., Inc.*, 956 F.3d at 1308-39; *Texas*, 809 F.3d at 188.

The Court has found that Plaintiffs are likely to be able to establish that Section 2(c) of the Second Executive Order violates the Establishment Clause. Both the Individual Plaintiffs and clients of the Organizational Plaintiffs are located in different parts of the United States, indicating that nationwide relief may be appropriate. *Richmond Tenants Org., Inc.*, 956 F.3d at 1309 (holding that a nationwide injunction was "appropriately tailored" because the plaintiffs lived in different parts of the country). Moreover, although the Government has argued that relief should be strictly limited to the specific interests of the Plaintiffs, an Establishment Clause violation has impacts beyond the personal interests of individual parties. *Joyner v. Forsyth Cty.*, 653 F.3d 341, 355 (4th Cir. 2011) ("[T]hese plaintiffs are not so different from other citizens who may feel in some way marginalized on account of their religious beliefs and who decline to risk the further ostracism that may ensue from bringing their case to court or who simply lack the resources to do so."); *City of St. Charles*, 794 F.2d at 275 (stating that a violation of the Establishment Clause causes "harm to society"). Here, nationwide relief is appropriate because this case involves an alleged violation of the Establishment Clause by the federal government manifested in immigration policy with nationwide effect. *See Decker v.*

O'Donnell, 661 F.2d 598, 618 (7th Cir. 1980) (affirming a nationwide injunction in a facial challenge to a federal statute and regulations on Establishment Clause grounds).

Finally, under these facts, a "fragmented" approach "would run afoul of the constitutional and statutory requirement for uniform immigration law and policy." *Washington*, 847 F.3d at 1166-67. "Congress has instructed that the immigration laws of the United States should be enforced vigorously and *uniformly*, and the Supreme Court has described immigration policy as a comprehensive and *unified* system." *Texas*, 80 F.3d at 187-88 (footnotes and quotation marks omitted). In light of the constitutional harms likely to befall Plaintiffs in the absence of relief, and the constitutional mandate of a uniform immigration law and policy, Section 2(c) of the Second Executive Order will be enjoined on a nationwide basis.

CONCLUSION

For the foregoing reasons, the Motion is GRANTED IN PART and DENIED IN PART. The Court will issue an injunction barring enforcement of Section 2(c) of the Second Executive Order. A separate Order shall issue.

Date: Mar. 15, 2017

/s/ THEODORE D. CHUANG
THEODORE D. CHUANG
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. TDC-17-0361

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, A PROJECT OF THE URBAN JUSTICE CENTER, INC., ON BEHALF OF ITSELF AND ITS CLIENTS, HIAS, INC., ON BEHALF OF ITSELF AND ITS CLIENTS, MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., ON BEHALF OF ITSELF AND ITS MEMBERS, MUHAMMED METEAB, PAUL HARRISON, IBRAHIM AHMED MOHOMED, JOHN DOES NOS. 1 & 3, AND JANE DOE NO. 2, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, DEPARTMENT OF HOMELAND SECURITY, DEPARTMENT OF STATE, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY, REX W. TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE, AND MICHAEL DEMPSEY, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF NATIONAL INTELLIGENCE, DEFENDANTS

Filed: Mar. 16, 2017

ORDER

For the reasons stated in the accompanying Memorandum Opinion, the Court finds that the Plaintiffs have standing to maintain this civil action and have established that they are likely to prevail on the merits, that they are likely to suffer irreparable harm in the

absence of injunctive relief, and that the balance of the equities and the public interest favor an injunction.

Accordingly, it is hereby ORDERED that:

1. Plaintiffs' Motion for a Preliminary Injunction and/or Temporary Restraining Order of the Executive Order is construed as a Motion for a Preliminary Injunction.
2. The Motion, ECF No. 95, is GRANTED IN PART and DENIED IN PART.
3. The Motion is GRANTED as to Section 2(c) of Executive Order 13,780 ("Executive Order Protecting the Nation from Foreign Terrorist Entry Into the United States"). **Defendants, and all officers, agents, and employees of the Executive Branch of the United States government, and anyone acting under their authorization or direction, are ENJOINED from enforcing Section 2(c) of Executive Order 13,780.**
4. This Preliminary Injunction is granted on a nationwide basis and prohibits the enforcement of Section 2(c) of Executive Order 13,780 in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas, pending further orders from this court.
5. Plaintiffs are not required to pay a security deposit.
6. The Court declines to stay this ruling or hold it in abeyance should an emergency appeal of this Order be filed.

7. The Motion is DENIED as to all other provisions of Executive Order 13,780.

Date: Mar. 15, 2017

/s/ THEODORE D. CHUANG
THEODORE D. CHUANG
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1351

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, A PROJECT OF THE URBAN JUSTICE CENTER, INC., ON BEHALF OF ITSELF AND ITS CLIENTS; HIAS, INC., ON BEHALF OF ITSELF AND ITS CLIENTS; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., ON BEHALF OF ITSELF AND ITS MEMBERS; MUHAMMED METEAB; PAUL HARRISON; IBRAHIM AHMED MOHOMED; JOHN DOES #1 & 3; JANE DOE #2, PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; REX W. TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; DANIEL R. COATS, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF NATIONAL INTELLIGENCE, DEFENDANTS-APPELLANTS

Argued: May 8, 2017
Decided: May 25, 2017
Amended: May 31, 2017

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Theodore D. Chuang, District Judge. (8:17-cv-00361-TDC)

Affirmed in part, vacated in part by published opinion. Chief Judge Gregory wrote the opinion, in which Judges Motz, King, Wynn, Diaz, Floyd, and Harris joined in full. Judge Traxler wrote an opinion concurring in the judgment. Judge Keenan wrote an opinion concurring in part and concurring in the judgment, in which Judge Thacker joined except as to Part II.A.i. Judge Wynn wrote a concurring opinion. Judge Thacker wrote a concurring opinion. Judge Niemeyer wrote a dissenting opinion, in which Judges Shedd and Agee joined. Judge Shedd wrote a dissenting opinion, in which Judges Niemeyer and Agee joined. Judge Agee wrote a dissenting opinion, in which Judges Niemeyer and Shedd joined.

Before: GREGORY, Chief Judge, and NIEMEYER, MOTZ, TRAXLER, KING, SHEDD, AGEE, KEENAN, WYNN, DIAZ, FLOYD, THACKER, and HARRIS, Circuit Judges.

GREGORY, Chief Judge[1]:

The question for this Court, distilled to its essential form, is whether the Constitution, as the Supreme Court declared in *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 120 (1866), remains "a law for rulers and people, equally in war and in peace." And if so, whether it protects Plaintiffs' right to challenge an Executive Order that in text speaks with vague words of national security, but in context drips with religious intolerance, animus, and discrimination. Surely the Establishment Clause of the First Amendment yet stands as an untir-

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[1] Judges Motz, King, Wynn, Diaz, Floyd, and Harris join this opinion in full, Judge Traxler concurs in the judgment, and Judges Keenan and Thacker concur in substantial part and concur in the judgment.

ing sentinel for the protection of one of our most cherished founding principles—that government shall not establish any religious orthodoxy, or favor or disfavor one religion over another. Congress granted the President broad power to deny entry to aliens, but that power is not absolute. It cannot go unchecked when, as here, the President wields it through an executive edict that stands to cause irreparable harm to individuals across this nation. Therefore, for the reasons that follow, we affirm in substantial part the district court's issuance of a nationwide preliminary injunction as to Section 2(c) of the challenged Executive Order.

I.

A.

In the early evening of January 27, 2017—seven days after taking the oath of office—President Donald J. Trump signed Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States" ("EO-1" or "First Executive Order"), 82 Fed. Reg. 8977 (Jan. 27, 2017). Referencing the past and present failings of the visa-issuance process, the First Executive Order had the stated purpose of "protect[ing] the American people from terrorist attacks by foreign nationals." EO-1, Preamble. To protect Americans, EO-1 explained, the United States must ensure that it does not admit foreign nationals who "bear hostile attitudes" toward our nation and our Constitution, who would "place violent ideologies over American law," or who "engage in acts of bigotry or hatred" (such as "'honor' killings"). *Id.* § 1.

To that end, the President invoked his authority under 8 U.S.C. § 1182(f) and immediately suspended for ninety days the immigrant and nonimmigrant entry of foreign aliens from seven predominantly Muslim countries: Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen.[2] *See* EO-1, § 3(c). During the ninety-day period, the Secretary of Homeland Security, Secretary of State, and Director of National Intelligence were to "immediately conduct a review to determine the information needed from any country" to assess whether individuals seeking entry from those countries posed a national security threat. Those cabinet officers were to deliver a series of reports updating the President as to that review and the implementation of EO-1. *See id.* § 3(a)-(b), (h).

The First Executive Order also placed several constraints on the admission of refugees into the country. It reduced the number of refugees to be admitted in fiscal year 2017 from 110,000 to 50,000 and barred indefinitely the admission of Syrian refugees. *Id.* § 5(c)-(d). It further ordered the Secretary of State to suspend for 120 days the United States Refugee Admissions Program ("USRAP"). *Id.* § 5(a). Upon resumption of USRAP, EO-1 directed the Secretary of State 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." *Id.* § 5(b).

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[2] According to the Pew Research Center, Iraq's population is 99% Muslim, Iran's is 99.5%, Libya's is 96.6%, Sudan's is 90.7%, Somalia's is 99.8%, Syria's is 92.8%, and Yemen's is 99.1%. *See* Pew Res. Ctr., *The Global Religious Landscape* 45-50 (2012).

Individuals, organizations, and states across the nation challenged the First Executive Order in federal court. A judge in the Western District of Washington granted a Temporary Restraining Order ("TRO"), enjoining enforcement nationwide of Sections 3(c), 5(a)-(c), and 5(e). *See Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017). The Ninth Circuit subsequently denied the Government's request to stay the TRO pending appeal and declined to "rewrite" EO-1 by narrowing the TRO's scope, noting that the "political branches are far better equipped" for that task. *Washington v. Trump*, 847 F.3d 1151, 1167 (9th Cir. 2017) (per curiam). At the Ninth Circuit's invitation, and in an effort to avoid further litigation concerning the First Executive Order, the President enacted a second order ("EO-2" or "Second Executive Order") on March 6, 2017. Exec. Order No. 13780, "Protecting the Nation from Foreign Terrorist Entry Into the United States," 82 Fed. Reg. 13209 (Mar. 6, 2017). The Second Executive Order revoked and replaced the First Executive Order. *Id.* § 1(i).

Section 2(c) of EO-2—"Temporary Suspension of Entry for Nationals of Countries of Particular Concern During Review Period"—is at the heart of the dispute in this case. This section reinstated the ninety-day suspension of entry for nationals from six countries, eliminating Iraq from the list, but retaining Iran, Libya, Somalia, Sudan, Syria, and Yemen (the "Designated Countries"). EO-2, § 2(c). The President, again invoking 8 U.S.C. § 1182(f) and also citing 8 U.S.C. § 1185(a), declared that the "unrestricted entry" of nationals from

these countries "would be detrimental to the interests of the United States." *Id.*[3]

The Second Executive Order, unlike its predecessor, states that nationals from the Designated Countries warrant "additional scrutiny" because "the conditions in these countries present heightened threats." *Id.* § 1(d). In justifying the selection of the Designated Countries, EO-2 explains, "Each of these countries is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active

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[3] Section 2(c) reads in full:

> 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.

conflict zones."[4] *Id.* The Second Executive Order states that "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." *Id.* § 1(f).

The Second Executive Order also provides brief descriptions of the conditions in each of the Designated Countries. It notes, for instance, that "Sudan has been designated as a state sponsor of terrorism since 1993 because of its support for international terrorist groups, including Hizballah and Hamas[, and] . . . elements of core al-Qa'ida and ISIS-linked terrorist

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[4] As the Government notes, nationals from these six countries are ineligible for the Visa Waiver Program, which currently allows nationals of thirty-eight countries seeking temporary admission to the United States for tourism or certain business purposes to enter without a visa. *See* 8 U.S.C. § 1187(a). The program excludes nationals of or aliens who have recently visited Iraq or Syria and nationals of or recent visitors to countries designated as state sponsors of terror (Iran, Sudan, and Syria). *See* 8 U.S.C. § 1187(a)(12); *see* U.S. Dep't of State, *U.S. Visa Waiver Program* (Apr. 6, 2016), https://www.dhs.gov/visa-waiver-program (saved as ECF opinion attachment). It also excludes recent visitors to Libya, Somalia, and Yemen. U.S. Dep't of Homeland Security, *DHS Announces Further Travel Restrictions for the Visa Waiver Program* (Feb. 18, 2016), https://www.dhs.gov/news/2016/02/18/dhs-announces-further-travel-restrictions-visa-waiver-program (saved as ECF opinion attachment). Thus, nationals from the six countries identified in Section 2(c), like nationals from the vast majority of countries, must undergo the individualized vetting of the regular visa process.

groups remain active in the country." *Id.* § 1(e)(iv). The Second Executive Order further states that "[s]ince 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States." *Id.* § 1(h). It provides the following examples: two Iraqi refugees who were convicted of terrorism-related offenses in January 2013, and a naturalized citizen who came to this country as a child refugee from Somalia and who was sentenced for terrorism-related offenses in October 2014. *Id.* The Second Executive Order does not include any examples of individuals from Iran, Libya, Sudan, Syria, or Yemen committing terrorism-related offenses in the United States.

The Second Executive Order clarifies that the suspension of entry applies to foreign nationals who (1) are outside the United States on its effective date of March 16, 2017, (2) do not have a valid visa on that date, and (3) did not have a valid visa on the effective date of EO-1—January 27, 2017. *Id.* § 3(a). Section 2(c) does not bar entry of lawful permanent residents, dual citizens traveling under a passport issued by a non-banned country, asylees, or refugees already admitted to the United States. *Id.* § 3(b). The Second Executive Order also includes a provision that permits consular officers, in their discretion, to issue waivers on a case-by-case basis to individuals barred from entering the United States. *Id.* § 3(c).

The Second Executive Order retains some—but not all—of the First Executive Order's refugee provisions. It again suspends USRAP for 120 days and decreases the number of refugee admissions for fiscal year 2017

by more than half, *id.* § 6(a), but it does not include the indefinite ban on Syrian refugees. The Second Executive Order also eliminates the provision contained in EO-1 that mandated preferential treatment of religious minorities seeking refugee status. It explains that this provision "applied to refugees from every nation, including those in which Islam is a minority religion, and it applied to minority sects within a religion." *Id.* § 1(b)(iv). It further explains that EO-1 was "not motivated by animus toward any religion," but rather was designed to protect religious minorities. *Id.*

Shortly before the President signed EO-2, an unclassified, internal report from the Department of Homeland Security ("DHS") Office of Intelligence and Analysis dated March 2017 was released to the public. *See* J.A. 425-31. The report found that most foreign-born, U.S.-based violent extremists became radicalized many years after entering the United States, and concluded that increased screening and vetting was therefore unlikely to significantly reduce terrorism-related activity in the United States. J.A. 426. According to a news article, a separate DHS report indicated that citizenship in any country is likely an unreliable indicator of whether a particular individual poses a terrorist threat. J.A. 424. In a declaration considered by the district court, ten former national security, foreign policy, and intelligence officials who previously served in the White House, State Department, DHS, and Central Intelligence Agency—four of whom were aware of intelligence related to terrorist threats as of January 20, 2017—advised that "[t]here is no national

security purpose for a total ban on entry for aliens from the [Designated Countries]." J.A. 91.

B.

The First and Second Executive Orders were issued against a backdrop of public statements by the President and his advisors and representatives at different points in time, both before and after the election and President Trump's assumption of office. We now recount certain of those statements.

On December 7, 2015, then-candidate Trump published a "Statement on Preventing Muslim Immigration" on his campaign website, which proposed "a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on." J.A. 346.[5] That same day, he

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[5] Trump's "Statement on Preventing Muslim Immigration" reads in full:

> (New York, NY) December 7th, 2015,—Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on. According to Pew Research, among others, there is great hatred towards Americans by large segments of the Muslim population. Most recently, a poll from the Center for Security Policy released data showing "25% of those polled agreed that violence against Americans here in the United States is justified as a part of the global jihad" and 51% of those polled "agreed that Muslims in America should have the choice of being governed according to Shariah." Shariah authorizes such atrocities as murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women.
>
> Mr. Trump stated, "Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension.

highlighted the statement on Twitter, "Just put out a very important policy statement on the extraordinary influx of hatred & danger coming into our country. We must be vigilant!" J.A. 470. And Trump read from the statement at a campaign rally in Mount Pleasant, South Carolina, that evening, where he remarked, "I have friends that are Muslims. They are great people—but they know we have a problem." J.A. 472.

In an interview with CNN on March 9, 2016, Trump professed, "I think Islam hates us," J.A. 516, and "[W]e can't allow people coming into the country who have this hatred," J.A. 517. Katrina Pierson, a Trump spokeswoman, told CNN that "[w]e've allowed this propaganda to spread all through the country that [Islam] is a religion of peace." J.A. 518. In a March 22, 2016 interview with Fox Business television, Trump reiterated his call for a ban on Muslim immigration, claiming that this proposed ban had received "tremendous support" and stating, "we're having problems with

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> Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of the horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect of human life. If I win the election for President, we are going to Make America Great Again.—*Donald J. Trump*

J.A. 346. The district court noted that, as of February 12, 2017, this statement remained on Trump's campaign website. *Int'l Refugee Assistance Project v. Trump*, No. TDC-17-0361, 2017 WL 1018235, at *4 (D. Md. Mar. 16, 2017). The statement was subsequently removed from the campaign website shortly before the May 8, 2017 oral argument in this case.

the Muslims, and we're having problems with Muslims coming into the country." J.A. 522. "You need surveillance," Trump explained, and "you have to deal with the mosques whether you like it or not." J.A. 522.

Candidate Trump later recharacterized his call to ban Muslims as a ban on nationals from certain countries or territories. On July 17, 2016, when asked about a tweet that said, "Calls to ban Muslims from entering the U.S. are offensive and unconstitutional," then-candidate Trump responded, "So you call it territories. OK? We're gonna do territories." J.A. 798. He echoed this statement a week later in an interview with NBC's Meet the Press. When asked whether he had "pulled back" on his "Muslim ban," Trump replied, "We must immediately suspend immigration from any nation that has been compromised by terrorism until such time as proven vetting mechanisms have been put in place." J.A. 480. Trump added, "I actually don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territories. People were so upset when I used the 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." J.A. 481. Trump continued, "Our Constitution is great. . . . Now, we have a religious, you know, everybody wants to be protected. And that's great. And that's the wonderful part of our Constitution. I view it differently." J.A. 481.

On December 19, 2016, following a terrorist attack in Germany, President-Elect Trump lamented the attack on people who were "prepared to celebrate the Christmas holiday" by "ISIS and other Islamic terror-

ists [who] continually slaughter Christians in their communities and places of worship as part of their global jihad." J.A. 506. Two days later, when asked whether recent violence in Europe had affected his plans to bar Muslims from immigrating to the United States, President-Elect Trump commented, "You know my plans. All along, I've been proven to be right. 100% correct. What's happening is disgraceful." J.A. 506.

The President gave an interview to the Christian Broadcasting News on January 27, 2017, the same day he issued the First Executive Order. In that interview, the President explained that EO-1 would give preference to Christian refugees: "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. . . . " J.A. 461. He found that situation "very, very unfair." J.A. 461. Just before signing EO-1, President Trump stated, "This is the 'Protection of the Nation from Foreign Terrorist Entry into the United States.' We all know what that means." J.A. 403. The following day, former New York City Mayor and presidential advisor Rudolph Giuliani appeared on Fox News and was asked, "How did the President decide the seven countries?" J.A. 508. Giuliani answered, "I'll tell you the whole history of it. So when [the President] 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.'" J.A. 508. Giuliani said he assembled a group

of "expert lawyers" that "focused on, instead of religion, danger—the areas of the world that create danger for us. . . . It's based on places where there [is] substantial evidence that people are sending terrorists into our country." J.A. 508-09.

In response to the Ninth Circuit's decision not to stay enforcement of the nationwide injunction, the President stated at a news conference on February 16, 2017, that he intended to issue a new executive order tailored to that court's decision—despite his belief that the First Executive Order was lawful. *See* J.A. 334. In discussing the Ninth Circuit's decision and his "[e]xtreme vetting" proposal, the President stated, "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." J.A. 352. A few days later Stephen Miller, Senior Policy Advisor to the President, explained that the new order would reflect "mostly minor technical differences," emphasizing that it would produce the "same basic policy outcome for the country." J.A. 339. White House Press Secretary Sean Spicer stated, "The principles of the executive order remain the same." J.A. 379. And President Trump, in a speech at a rally in Nashville, Tennessee, described EO-2 as "a watered down version of the first order." Appellees' Br. 7 (citing Katie Reilly, *Read President Trump's Response to the Travel Ban Ruling: It 'Makes Us Look Weak*,' Time (Mar. 16, 2017), http://time.com/4703622/president-trump-speech-transcript-travel-ban-ruling/ (saved as ECF opinion attachment)).

At the March 6, 2017 press conference announcing the Second Executive Order, Secretary of State Rex Tillerson said, "This executive order is a vital measure for strengthening our national security." J.A. 376. That same day, Attorney General Jefferson Sessions and Secretary of Homeland Security John Kelly submitted a letter to the President detailing how weaknesses in our immigration system compromise our nation's security and recommending a temporary pause on entry of nationals from the Designated Countries. Appellants' Br. 8 n.3 (citing Letter from Jefferson B. Sessions III, Attorney Gen., and John Francis Kelly, Sec'y of Homeland Sec., to President Donald J. Trump (Mar. 6, 2017)). In a CNN interview the next day, Secretary Kelly specified that there are probably "13 or 14 countries" that have "questionable vetting procedures," not all of which are Muslim countries or in the Middle East. J.A. 411. He noted that there are "51 overwhelmingly Muslim countries" and rejected the characterization of EO-2 as a "Muslim ban." J.A. 412.

C.

This action was brought by six individuals, all American citizens or lawful permanent residents who have at least one family member seeking entry into the United States from one of the Designated Countries, and three organizations that serve or represent Muslim clients or members.

Four of the individual Plaintiffs—John Doe #1, Jane Doe #2, John Doe #3, and Paul Harrison—allege that EO-2 would impact their immediate family members' ability to obtain visas. J.A. 213-14, 245-52, 305, 308-09, 318-19. Collectively, they claim that Section

2(c) of EO-2, the provision that suspends entry for certain foreign nationals for ninety days, will prolong their separation from their loved ones. *See, e.g.*, J.A. 306. John Doe #1 has applied for a spousal immigration visa so that his wife, an Iranian national, can join him in the United States; the application was approved, and she is currently awaiting her visa interview. J.A. 305. Jane Doe #2, a college student in the United States, has a pending I-130 visa application on behalf of her sister, a Syrian refugee living in Saudi Arabia. J.A. 316, 318-19. Since the filing of the operative Complaint on March 10, 2017, two of Plaintiffs' family members have obtained immigrant visas. The Government informed the district court that Paul Harrison's fiancé secured and collected a visa on March 15, 2017, the day before EO-2 was to take effect. Appellants' Br. 19 n.6 (citing J.A. 711-12, 715). Doe #3's wife secured an immigrant visa on May 1, 2017, and Plaintiffs anticipate that she will arrive in the United States within the next eight weeks. J.A. 819. The remaining two individual Plaintiffs—Muhammed Meteab and Ibrahim Ahmed Mohomed—allege that EO-2 would delay or deny the admission of their family members as refugees. J.A. 214, 249-50, 252, 313-14, 321-22.

Beyond claiming injury to their family relationships, several of the individual Plaintiffs allege that the anti-Muslim message animating EO-2 has caused them feelings of disparagement and exclusion. Doe #1, a scientist who obtained permanent resident status through the National Interest Waiver program for people with extraordinary abilities, references these "anti-Muslim views," worries about his safety in this

country, and contemplates whether he should return to Iran to be with his wife. J.A. 304, 306. Plaintiff Meteab relays that the "anti-Muslim sentiment" motivating EO-2 had led him to feel "isolated and disparaged in [his] community." J.A. 314. He explains that when he is in public with his wife, who wears a hijab, he "sense[s] a lot of hostility from people" and recounts that his nieces, who both wear a hijab, "say that people make mean comments and stare at them for being Muslim." J.A. 314. A classmate "pulled the hijab off" one of his nieces in class. J.A. 314.

Two of the organizational Plaintiffs, the International Refugee Assistance Project and the Hebrew Immigrant Aid Society, primarily assist refugees with the resettlement process. *See* J.A. 210-13, 235-43. These organizations claim that they have already diverted significant resources to dealing with EO-2's fallout, and that they will suffer direct financial injury from the anticipated reduction in refugee cases. J.A. 238, 243, 276-77. They further claim that their clients, who are located in the United States and the Middle East, will be injured by the delayed reunification with their loved ones. J.A. 268, 282-83. The final Plaintiff, the Middle East Studies Association, an umbrella organization dedicated to fostering awareness of the Middle East, asserts that EO-2 will, among other injuries, reduce attendance at its annual conference and cause the organization to lose $18,000 in registration fees. J.A. 243-45, 300-03.

D.

Plaintiffs initiated this suit on February 7, 2017, seeking declaratory and injunctive relief against enforce-

ment of the First Executive Order. Plaintiffs claimed that EO-1 violated the Establishment Clause of the First Amendment; the equal protection component of the Due Process Clause of the Fifth Amendment; the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101-1537 (2012); the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb-4 (2012); the Refugee Act, 8 U.S.C. §§ 1521-24 (2012); and the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (2012). They named as Defendants the President, DHS, the Department of State, the Office of the Director of National Intelligence, the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence.

On March 10, 2017, four days after the President issued EO-2, Plaintiffs filed the operative Complaint, along with a motion for a TRO and/or preliminary injunction. Plaintiffs sought to enjoin implementation of EO-2 in its entirety, prior to its effective date. In quick succession, the Government responded to the motion, Plaintiffs filed a reply, and the parties appeared for a hearing.

The district court construed the motion as a request for a preliminary injunction, and on March 16, 2017, it granted in part and denied in part that motion. *Int'l Refugee Assistance Project*, 2017 WL 1018235, at *1. In its Memorandum Opinion, the district court first found that three individual Plaintiffs (Doe #1, Doe #2, and Doe #3) had standing to bring the claim that Section 2(c) violates the INA's provision prohibiting discrimination on the basis of nationality in the issuance of immigrant visas, 8 U.S.C. § 1152(a)(1)(A). *Id.* at *6.

The court also determined that at least three individual Plaintiffs (Meteab, Doe #1, and Doe #3) had standing to pursue the claim that EO-2 violates the Establishment Clause. *Id.* at *7.

After finding Plaintiffs' claims justiciable, the district court turned to the merits of their claims. The court determined that Plaintiffs are likely to succeed only in part on the merits of their INA claim. *Id.* at *10. It found that Section 2(c) likely violates § 1152(a)(1)(A), but only as to its effective bar on the issuance of *immigrant* visas, because § 1152(a)(1)(A) explicitly applies solely to immigrant visas. To the extent that Section 2(c) prohibits the issuance of non-immigrant visas and bars entry on the basis of nationality, the court found that it was not likely to violate § 1152(a)(1)(A). *Id.* The court did not discuss this claim in addressing the remaining preliminary injunction factors.

The district court next found that Plaintiffs are likely to succeed on the merits of their Establishment Clause claim. *Id.* at *16. It then considered the remaining preliminary injunction requirements, but only as to the Establishment Clause claim: it found that Plaintiffs would suffer irreparable injury if EO-2 were to take effect, that the balance of the equities weighed in Plaintiffs' favor, and that a preliminary injunction was in the public interest. *Id.* at *17. The district court concluded that a preliminary injunction was therefore proper as to Section 2(c) of EO-2 because Plaintiffs' claims centered primarily on that provision's suspension of entry. The court accordingly issued a

nationwide injunction barring enforcement of Section 2(c). *Id.* at *18.

Defendants timely noted this appeal, and we possess jurisdiction pursuant to 28 U.S.C. § 1292(a)(1).

II.

Because the district court enjoined Section 2(c) in its entirety based solely on Plaintiffs' Establishment Clause claim, we need not reach the merits of Plaintiffs' statutory claim under the INA.

In Section 2(c) of EO-2, the President suspended the entry of nationals from the six Designated Countries, pursuant to his power to exclude aliens under Section 212(f) of the INA, codified at 8 U.S.C. § 1182(f), and Section 215(a)(1) of the INA, codified at 8 U.S.C. § 1185(a)(1). The Government contends that Section 2(c)'s suspension of entry falls squarely within the "expansive authority" granted to the President by § 1182(f)[6] and § 1185(a)(1).[7] Appellants' Br. 28. Plain-

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[6] Section 1182(f), entitled "Suspension of entry or imposition of restrictions by President," provides in pertinent part that

> [w]henever 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).

[7] Section 1185(a)(1) provides that "[u]nless otherwise ordered by the President, it shall be unlawful[] for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject

tiffs, on the other hand, argue that Section 2(c) violates a separate provision of the INA, Section 202(a)(1)(A), codified at 8 U.S.C. § 1152(a)(1)(A), prohibiting discrimination on the basis of nationality "in the issuance of immigrant visas."[8]

The district court determined that Plaintiffs are likely to succeed on their claim under § 1152(a)(1)(A) only in limited part. Because Section 2(c) has the practical effect of halting the issuance of immigrant visas on the basis of nationality, the court reasoned, it is inconsistent with § 1152(a)(1)(A). To that extent—and contrary to the Government's position—the court found that Presidential authority under § 1182(f) and § 1185(a)(1) is cabined by the INA's prohibition on nationality-based discrimination in visa issuance. But the district court's ruling was limited in two important respects. First, because § 1152(a)(1)(A) applies only to the issuance of *immigrant* visas, the district court discerned no conflict between that provision and the application of Section 2(c) to persons seeking *non-immigrant* visas. And second, the district court found that because § 1152(a)(1)(A) governs the issuance of visas rather than actual entry into the United States, it poses no obstacle to enforcement of Section 2(c)'s

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to such limitations and exceptions as the President may prescribe. . . . " 8 U.S.C. § 1185(a)(1).

[8] Section 1152(a)(1)(A) provides, with certain exceptions not relevant here, that "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." 8 U.S.C. § 1152(a)(1)(A).

nationality-based entry bar. The district court summarized as follows:

> Plaintiffs have shown a likelihood of success on the merits of their claim that the Second Executive Order violates § 1152(a), but only as to the issuance of immigrant visas. . . . They have not shown a likelihood of success on the merits of the claim that § 1152(a) prevents the President from barring entry to the United States pursuant to § 1182(f), or the issuance of non-immigrant visas, on the basis of nationality.

Int'l Refugee Assistance Project, 2017 WL 1018235, at *10.

This narrow statutory ruling is not the basis for the district court's broad preliminary injunction enjoining Section 2(c) of EO-2 in all of its applications. Rather, Plaintiffs' constitutional claim, the district court determined, was what justified a nationwide preliminary injunction against any enforcement of Section 2(c). If we were to disagree with the district court that § 1152(a)(1)(A) partially restrains the President's authority under § 1182(f) and § 1185(a)(1), then we would be obliged to consider Plaintiffs' alternative Establishment Clause claim. And, importantly, even if we were to *agree* with the district court's statutory analysis, we still would be faced with the question of whether the scope of the preliminary injunction, which goes beyond the issuance of immigrant visas governed by § 1152(a)(1)(A) to enjoin Section 2(c) in its entirety, can be sustained on the basis of Plaintiffs' Establishment Clause claim.

In light of this posture, we need not address the merits of the district court's statutory ruling. We recognize, of course, the doctrine of constitutional avoidance, which counsels against the issuance of "unnecessary constitutional rulings." *Am. Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153, 161 (1989) (per curiam). But as we have explained, the district court's constitutional ruling was necessary to its decision, and review of that ruling is necessary to ours. Accordingly, we decline to reach the merits of Plaintiffs' claim under § 1152(a)(1)(A). The breadth of the preliminary injunction issued by the district court may be justified if and only if Plaintiffs can satisfy the requirements for a preliminary injunction based on their Establishment Clause claim. We therefore turn to consider that claim.

III.

The Government first asks us to reverse the preliminary injunction on the grounds that Plaintiffs' Establishment Clause claim is non-justiciable. In its view, Plaintiffs have not satisfied the foundational Article III requirements of standing and ripeness, and in any event, the doctrine of consular nonreviewability bars judicial review of their claim. We consider these threshold challenges in turn.

A.

The district court found that at least three individual Plaintiffs—Muhammed Meteab, Doe #1, and Doe #3—have standing to assert the claim that EO-2 violates the Establishment Clause. We review this legal deter-

mination de novo. *Peterson v. Nat'l Telecomms. & Info. Admin.*, 478 F.3d 626, 631 n.2 (4th Cir. 2007).

The Constitution's gatekeeping requirement that federal courts may only adjudicate "Cases" or "Controversies," U.S. Const. art. III, § 2, obligates courts to determine whether litigants have standing to bring suit, *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1146 (2013). To demonstrate standing and thus invoke federal jurisdiction, a party must establish that "(1) it has suffered an injury in fact, (2) the injury is fairly traceable to the defendants' actions, and (3) it is likely, and not merely speculative, that the injury will be redressed by a favorable decision." *Long Term Care Partners, LLC v. United States*, 516 F.3d 225, 231 (4th Cir. 2008) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). The parties' core dispute is whether Plaintiffs have suffered a cognizable injury. To establish a cognizable injury, "a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan*, 504 U.S. at 560); *see also Beck v. McDonald*, 848 F.3d 262, 270-71 (4th Cir. 2017).

In evaluating standing, "the court must be careful not to decide the question on the merits for or against the plaintiff, and must therefore assume that on the merits the plaintiffs would be successful in their claims." *Cooksey v. Futrell*, 721 F.3d 226, 239 (4th Cir. 2013) (quoting *City of Waukesha v. EPA*, 320 F.3d 228, 235 (D.C. Cir. 2003)); *see also Parker v. District of Columbia*, 478 F.3d 370, 377 (D.C. Cir. 2007), *aff'd by District*

of Columbia v. Heller, 554 U.S. 570 (2008) ("The Supreme Court has made clear that when considering whether a plaintiff has Article III standing, a federal court must assume *arguendo* the merits of his or her legal claim."). This means, for purposes of standing, we must assume that Section 2(c) violates the First Amendment's prohibition against governmental "establishment of religion."

"Standing in Establishment Clause cases may be shown in various ways," *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 129 (2011), though as oft-repeated, "the concept of injury for standing purposes is particularly elusive" in this context, *Suhre v. Haywood County*, 131 F.3d 1083, 1085 (4th Cir. 1997) (quoting *Murray v. City of Austin*, 947 F.2d 147, 151 (5th Cir. 1991)). Nevertheless, the Supreme Court and this Circuit have developed a set of rules that guide our review.

To establish standing for an Establishment Clause claim, a plaintiff must have "*personal contact* with the *alleged* establishment of religion." *Id.* at 1086 (emphasis added). A "mere abstract objection to unconstitutional conduct is not sufficient to confer standing." *Id.* The Supreme Court has reinforced this principle in recent years: "plaintiffs may demonstrate standing based on the direct harm of what is claimed to be an establishment of religion." *Winn*, 563 U.S. at 129. This "direct harm" can resemble injuries in other contexts. Merchants who suffered economic injury, for instance, had standing to challenge Sunday closing laws as violative of the Establishment Clause. *McGowan v. Maryland*, 366 U.S. 420, 430-31 (1961); *Czyzewski v.*

Jevic Holding Corp., 137 S. Ct. 973, 983 (2017) (noting that, in *McGowan*, appellants who were "fined $5 plus costs had standing"). But because Establishment Clause violations seldom lead to "physical injury or pecuniary loss," the standing inquiry has been adapted to also include "the kind of injuries Establishment Clause plaintiffs" are more "likely to suffer." *Suhre*, 131 F.3d at 1086. As such, "noneconomic or intangible injury may suffice to make an Establishment Clause claim justiciable." *Id.* "Feelings of marginalization and exclusion are cognizable forms of injury," we recently explained, "particularly in the Establishment Clause context, because one of the core objectives of modern Establishment Clause jurisprudence has been to prevent the State from sending a message to non-adherents of a particular religion 'that they are *outsiders*, not full members of the political community.'" *Moss v. Spartanburg Cty. Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. 2012) (quoting *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 860 (2005)).

Doe #1—who is a lawful permanent resident of the United States, Muslim, and originally from Iran—filed a visa application on behalf of his wife, an Iranian national. Her application has been approved, and she is currently awaiting her consular interview. J.A. 305. If it took effect, EO-2 would bar the entry of Doe #1's wife. Doe #1 explains that because EO-2 bars his wife's entry, it "forces [him] to choose between [his] career and being with [his] wife," and he is unsure "whether to keep working here" as a scientist or to return to Iran. J.A. 306. Doe #1 adds that EO-2 has "created significant fear, anxiety, and insecurity" for

him and his wife. He highlights the "statements that have been made about banning Muslims from entering, and the broader context," and states, "I worry that I may not be safe in this country." J.A. 306; *see also* J.A. 314 (Plaintiff Meteab describing how the "anti-Muslim sentiment motivating" EO-2 has led him to feel "isolated and disparaged in [his] community").

Doe #1 has therefore asserted two distinct injuries stemming from his "personal contact" with the alleged establishment of religion—EO-2. *Suhre*, 131 F.3d at 1086. First, EO-2 will bar his wife's entry into the United States and prolong their separation. And second, EO-2 sends a state-sanctioned message condemning his religion and causing him to feel excluded and marginalized in his community.

We begin with Doe #1's allegation that EO-2 will prolong his separation from his wife. This Court has found that standing can be premised on a "threatened rather than actual injury," *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 160 (4th Cir. 2000) (en banc), as long as this "threat of injury [is] both real and immediate," *Beck*, 848 F.3d at 277 (quoting *Lebron v. Rumsfeld*, 670 F.3d 540, 560 (4th Cir. 2012)). The purpose of the longstanding "imminence" requirement, which is admittedly "a somewhat elastic concept," is "to ensure that the alleged injury is not too speculative for Article III purposes —that the injury is '*certainly* impending.'" *Lujan*, 504 U.S. at 564 n.2 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).

The Government does not contest that, in some circumstances, the prolonged separation of family mem-

bers can constitute an injury-in-fact. The Government instead argues that Doe #1's claimed injury is speculative and non-imminent, Appellants' Br. 19, such that it is not "legally and judicially cognizable." *Id.* at 18 (quoting *Raines v. Byrd*, 521 U.S. 811, 819 (1997)). According to the Government, Doe #1 has failed to show that his threatened injury—prolonged separation from his wife—is imminent. It asserts that Doe #1 has offered no reason to believe that Section 2(c)'s "short pause" on entry "will delay the issuance of [his wife's] visa." Appellants' Br. 19.

But this ignores that Section 2(c) appears to operate by design to delay the issuance of visas to foreign nationals. Section 2(c)'s "short pause" on entry effectively halts the issuance of visas for ninety days—as the Government acknowledges, it "would be pointless to issue a visa to an alien who the consular officer already knows is barred from entering the country." Appellants' Br. 32; *see also* Brief for Cato Institute as Amicus Curiae Supporting Appellees 25-28, ECF No. 185 (arguing that Section 2(c) operates as a ban on visa issuance). The Government also cites 8 U.S.C. § 1201(g), which provides in relevant part that "[n]o visa or other documentation shall be issued to an alien if [] it appears to the consular officer . . . that such alien is ineligible to receive a visa or other documentation under section 1182 of this title." *See also* U.S. Dep't of State, 9 *Foreign Affairs Manual* 302.14-3(B) (2016). A ninety-day pause on issuing visas would seem to necessarily inject at least some delay into any pending application's timeline. And in fact, the Government suggests that pending visa applications might not be

delayed, but *denied*. *See* Appellants' Br. 33 (explaining that "when an alien subject to the Order is denied an immigrant visa, . . . he is being denied a visa because he has been validly barred from entering the country"). A denial on such grounds would mean that once the entry suspension period concludes, an alien would have to restart *from the beginning* the lengthy visa application process. What is more, Section 2(c) is designed to "reduce investigative burdens on relevant agencies" to facilitate *worldwide* review of the current procedures for "screening and vetting of foreign nationals." Logically, dedicating time and resources to a global review process will further slow the adjudication of pending applications.

Here, Doe #1 has a pending visa application on behalf of his wife, seeking her admission to the United States from one of the Designated Countries. Prior to EO-2's issuance, Doe #1 and his wife were nearing the end of the lengthy immigrant visa process, as they were waiting for her consular interview to be scheduled. J.A. 305. They had already submitted a petition, received approval of that petition, begun National Visa Center ("NVC") Processing, submitted the visa application form, collected and submitted the requisite financial and supporting documentation to NVC, and paid the appropriate fees. J.A. 305; *see* U.S. Dep't of State, *The Immigrant Visa Process*, https://travel.state.gov/content/visas/en/immigrate/immigrant-process.html (last visited May 14, 2017) (saved as ECF opinion attachment) (diagramming steps of the immigrant-visa application process). If Section 2(c) were in force—restricting the issuance of visas to nationals in the Designated Coun-

tries for ninety days and initiating the worldwide review of existing visa standards—we find a "real and immediate" threat that it would prolong Doe #1's separation from his wife, either by delaying the issuance of her visa or denying her visa and forcing her to restart the application process. *Beck*, 848 F.3d at 277 (quoting *Lebron*, 670 F.3d at 560).

This prolonged family separation is not, as the Government asserts, a remote or speculative possibility. Unlike threatened injuries that rest on hypothetical actions a plaintiff may take "some day," *Lujan*, 504 U.S. at 564, or on a "highly attenuated chain of possibilities," *Clapper*, 133 S. Ct. at 1148, the threatened injury here is imminent, sufficiently "real" and concrete, *Spokeo*, 136 S. Ct. at 1549, and would harm Doe #1 in a personal and "particularized" way, *id.* at 1548. The progression of Doe #3's wife's visa application illustrates this. Doe #3's wife received a visa on May 1, 2017, while Section 2(c) was enjoined. If Section 2(c) had been in effect, she would have been ineligible to receive a visa until after the expiration of the ninety-day period. *See* 8 U.S.C. § 1201(g). Put simply, Section 2(c) would have delayed the issuance of Doe #3's wife's visa. This cuts directly against the Government's assertion that it is uncertain whether or how Section 2(c) would affect visa applicants. Clearly Section 2(c) will delay and disrupt pending visa applications.

Even more, flowing from EO-2 is the alleged state-sanctioned message that foreign-born Muslims, a group to which Doe #1 belongs, are "outsiders, not full members of the political community." *Moss*, 683 F.3d

at 607 (quoting *McCreary*, 545 U.S. at 860).[9] Doe #1 explains how the Second Executive Order has caused him to fear for his personal safety in this country and wonder whether he should give up his career in the United States and return to Iran to be with his wife. J.A. 306. This harm is consistent with the "[f]eelings of marginalization and exclusion" injury we recognized in *Moss*. 683 F.3d at 607.

In light of these two injuries, we find that Doe #1 has had "personal contact with the alleged establishment of religion." *Suhre*, 131 F.3d at 1086. Regardless of whether EO-2 actually violates the Establishment Clause's command not to disfavor a particular religion, a merits inquiry explored in Section IV.A, his injuries are on par with, if not greater than, injuries we previously deemed sufficient in this context. *See Moss*, 683 F.3d at 607 (finding Jewish daughter and

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[9] The Government would have us, in assessing standing, delve into whether EO-2 sends a sufficiently religious message such that it violates the Establishment Clause. But this "put[s] the merits cart before the standing horse." *Cooksey*, 721 F.3d at 239 (quoting *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1093 (10th Cir. 2006)). The question of whether EO-2 "conveys a message of endorsement or disapproval [of religion]" is a merits determination. *Mellen v. Bunting*, 327 F.3d 355, 374 (4th Cir. 2003) (quoting *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985)). And both parties address it as a merits question in their briefs. Appellants' Br. 48 ("The Order, in contrast, conveys no religious message. . . . "); *id.* at 52 ("Here, the Order does not convey a religious message. . . . "); Appellees' Br. 38 ("The Order's purpose to exclude Muslims conveys the exact same message. . . . "). Because we assume the merits of Plaintiffs' claim in assessing standing, we need not reach the Government's argument on this point.

father who received letter describing public school policy of awarding academic credit for private, Christian religious instruction suffered injury in part because they were made to feel like "'outsiders' in their own community").[10]

The Government attempts to undercut these injuries in several ways. It first frames Plaintiffs' injuries as "stress." Appellants' Br. 23. That minimizes the psychological harm that flows from confronting official action preferring or disfavoring a particular religion and, in any event, does not account for the impact on families. The Government next argues that because the Second Executive Order "directly applies only to aliens abroad from the specified countries," it is "not directly targeted at plaintiffs," who are based in the United States, "in the way that local-or state-government messages are." Appellants' Reply Br. 3. An executive order is of course different than a local Sunday closing law or a Ten Commandments display in a state courthouse, but that does not mean its impact is any less direct. Indeed, because it emanates from the highest elected office in the nation, its impact is arguably felt even more directly by the individuals it affects.

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[10] Plaintiffs' injuries are also consistent with the injuries that other courts have recognized in Establishment Clause cases that do not involve religious displays or prayer. *See Awad v. Ziriax*, 670 F.3d 1111, 1122 (10th Cir. 2012) (recognizing injury stemming from amendment that "condemn[ed] [plaintiff's] religious faith and expose[d] him to disfavored treatment"); *Catholic League for Religious & Civil Rights v. City & County of San Francisco*, 624 F.3d 1043, 1052 (9th Cir. 2010) (en banc) (finding "exclusion or denigration on a religious basis within the political community" to be sufficiently concrete injury).

From Doe #1's perspective, the Second Executive Order does not apply to arbitrary or anonymous "aliens abroad." It applies to his wife.

More than abstractly disagreeing with the wisdom or legality of the President's policy decision, Plaintiffs show how EO-2 impacted (and continues to impact) them *personally*. Doe #1 is not simply "roam[ing] the country in search of governmental wrongdoing." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 487 (1982). Rather, he is feeling the direct, painful effects of the Second Executive Order—both its alleged message of religious condemnation *and* the prolonged separation it causes between him and his wife—in his everyday life.[11] This case thus bears little resemblance to *Valley Forge*.

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[11] For similar reasons, this case is not, as the Government claims, comparable to *In re Navy Chaplaincy*, 534 F.3d 756 (D.C. Cir. 2008). In that case, the court found that non-liturgical Protestant chaplains who were part of the Navy's Chaplain Corps lacked standing to bring a claim that the Navy preferred Catholic chaplains in violation of the Establishment Clause. *Id.* at 765. The court stated its holding as follows: "When plaintiffs are not themselves affected by a government *action* except through their abstract offense at the *message* allegedly conveyed by that action, they have not shown an injury-in-fact to bring an Establishment Clause claim." *Id.* at 764-65. The court repeatedly emphasized that plaintiffs were not themselves affected by the challenged action. *See id.* at 758 ("[T]he plaintiffs do not claim that the Navy actually discriminated against any of them."); *id.* at 760 ("But plaintiffs have conceded that they themselves did not suffer employment discrimination. . . . Rather, they suggest that *other* chaplains suffered discrimination."). In fact, plaintiffs' theory of standing was so expansive that their counsel conceded at oral argument that even the "judges on th[e] panel" would have standing to challenge the

We likewise reject the Government's suggestion that Plaintiffs are seeking to vindicate the legal rights of third parties. The prudential standing doctrine includes a "general prohibition on a litigant's raising another person's legal rights." *CGM, LLC v. BellSouth Telecomms., Inc.*, 664 F.3d 46, 52 (4th Cir. 2011) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)). This "general prohibition" is not implicated here, however, as Doe #1 has shown that he himself suffered injuries as a result of the challenged Order.[12]

For all of these reasons, we find that Doe #1 has met his burden to establish an Article III injury. We

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allegedly discriminatory conduct. *Id.* at 764. Here, by contrast, Doe #1 *is* directly affected by the government action—both its message and its impact on his family. Thus, contrary to the Government's assertion, Appellants' Br. 24, all Muslims in the United States do not have standing to bring this suit. Only those persons who suffer direct, cognizable injuries as a result of EO-2 have standing to challenge it.

[12] The district court here correctly recognized that the Supreme Court has on multiple occasions "reviewed the merits of cases brought by U.S. residents with a specific interest in the entry of a foreigner." *Int'l Refugee Assistance Project*, 2017 WL 1018235, at *5 (citing *Kerry v. Din*, 135 S. Ct. 2128, 2131, 2138-42 (2015) (reaching merits where American citizen challenged denial of husband's visa application); *Kleindienst v. Mandel*, 408 U.S. 753, 756, 762-65 (1972) (reaching merits where American scholars challenged denial of temporary nonimmigrant visa to Marxist Belgian journalist)); *see also Mandel*, 408 U.S. at 772 ("Even assuming, arguendo, that those on the outside seeking admission have no standing to complain, those who hope to benefit from the traveler's lectures do." (Douglas, J., dissenting)). The Supreme Court's consideration of the merits in these cases suggests, at least at a general level, that Americans have a cognizable interest in the application of immigration laws to their foreign relatives.

further find that Doe #1 has made the requisite showing that his claimed injuries are causally related to the challenged conduct—the Second Executive Order—as opposed to "the independent action of some third party not before the court." *Cooksey*, 721 F.3d at 238 (quoting *Frank Krasner Enters., Ltd. v. Montgomery County*, 401 F.3d 230, 234 (4th Cir. 2005)). Enjoining enforcement of Section 2(c) therefore will likely redress those injuries. Doe #1 has thus met the constitutional standing requirements with respect to the Establishment Clause claim. And because we find that at least one Plaintiff possesses standing, we need not decide whether the other individual Plaintiffs or the organizational Plaintiffs have standing with respect to this claim. *See Bostic v. Schaefer*, 760 F.3d 352, 370 (4th Cir. 2014).

Lastly, the Government asserts that Plaintiffs' Establishment Clause claim is unripe. It argues that under EO-2, Plaintiffs' relatives can apply for a waiver, and unless and until those waiver requests are denied, Plaintiffs' claims are dependent on future uncertainties. When evaluating ripeness, we consider "(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *Id.* (quoting *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003)). An action is fit for resolution "when the issues are purely legal and when the action in controversy is final and not dependent on future uncertainties." *Miller v. Brown*, 462 F.3d 312, 319 (4th Cir. 2006). The "hardship prong is measured by the immediacy of the threat and the burden imposed on the [plaintiff]." *Lansdowne on the*

Potomac Homeowners Ass'n, Inc. v. OpenBand at Lansdowne, LLC, 713 F.3d 187, 199 (4th Cir. 2013) (quoting *Charter Fed. Sav. Bank v. Office of Thrift Supervision*, 976 F.2d 203, 208-09 (4th Cir. 1992)).

Our ripeness doctrine is clearly not implicated here. Plaintiffs have brought a facial challenge, alleging that EO-2 violates the Establishment Clause regardless of whether their relatives secure waivers. This legal question is squarely presented for our review and is not dependent on the factual uncertainties of the waiver process. What is more, Plaintiffs will suffer undue hardship, as explained above, were we to require their family members to attempt to secure a waiver before permitting Plaintiffs to challenge Section 2(c). We accordingly find the claim ripe for judicial decision.

B.

In one final justiciability challenge, the Government asserts that consular nonreviewability bars *any* review of Plaintiffs' claim. This Court has scarcely discussed the doctrine, so the Government turns to the District of Columbia Circuit, which has stated that "a consular official's decision to issue or withhold a visa is not subject to judicial review, at least unless Congress says otherwise." *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1159 (D.C. Cir. 1999). But in the same opinion, the court explained that judicial review was proper in cases involving "claims by United States citizens rather than by aliens . . . and statutory claims that are accompanied by constitutional ones." *Id.* at 1163 (quoting *Abourezk v. Reagan*, 785 F.2d 1043, 1051 n.6 (D.C. Cir. 1986)). This is precisely such a case. More fundamentally, the doctrine of consular non-

reviewability does not bar judicial review of constitutional claims. *See, e.g.*, *Din*, 135 S. Ct. at 2132 (reviewing visa denial where plaintiff asserted due process claim). The Government's reliance on the doctrine is therefore misplaced.

Behind the casual assertion of consular nonreviewability lies a dangerous idea—that this Court lacks the authority to review high-level government policy of the sort here. Although the Supreme Court has certainly encouraged deference in our review of immigration matters that implicate national security interests, *see infra* Section IV.A, it has not countenanced judicial abdication, especially where constitutional rights, values, and principles are at stake. To the contrary, the Supreme Court has affirmed time and again that "it is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 1 Cranch 137, 177 (1803). This "duty will sometimes involve the 'resolution of litigation challenging the constitutional authority of one of the three branches,' but courts cannot avoid their responsibility." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012) (quoting *INS v. Chadha*, 462 U.S. 919, 943 (1983)). In light of this duty, and having determined that the present case is justiciable, we now proceed to consider whether the district court properly enjoined Section 2(c) of the Second Executive Order.

IV.

A preliminary injunction is an "extraordinary remed[y] involving the exercise of very far-reaching power" and is "to be granted only sparingly and in limited circumstances." *MicroStrategy Inc. v. Motorola*,

Inc., 245 F.3d 335, 339 (4th Cir. 2001) (quoting *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 816 (4th Cir. 1991)). For a district court to grant a preliminary injunction, "a plaintiff 'must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.'" *WV Ass'n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009) (quoting *Winter v. Nat. Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). The district court found that Plaintiffs satisfied all four requirements as to their Establishment Clause claim, and it enjoined Section 2(c) of EO-2. We evaluate the court's findings for abuse of discretion, *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 366 (4th Cir. 2012), reviewing its factual findings for clear error and its legal conclusions de novo, *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011).

A.

The district court determined that Plaintiffs are likely to succeed on the merits of their claim that EO-2 violates the Establishment Clause. *Int'l Refugee Assistance Project*, 2017 WL 1018235, at *16. It found that because EO-2 is "facially neutral in terms of religion," *id.* at *13, the test outlined in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), governs the constitutional inquiry. And applying the *Lemon* test, the court found that EO-2 likely violates the Establishment Clause. The Government argues that the court erroneously applied the *Lemon* test instead of the more deferential test set

forth in *Kleindienst v. Mandel*, 408 U.S. 753 (1972). And under *Mandel*, the Government contends, Plaintiffs' claim fails.

1.

We begin by addressing the Government's argument that the district court applied the wrong test in evaluating Plaintiffs' constitutional claim. The Government contends that *Mandel* sets forth the appropriate test because it recognizes the limited scope of judicial review of executive action in the immigration context. Appellants' Br. 42. We agree that *Mandel* is the starting point for our analysis, but for the reasons that follow, we find that its test contemplates the application of settled Establishment Clause doctrine in this case.

In *Mandel*, American university professors had invited Mandel, a Belgian citizen and revolutionary Marxist and professional journalist, to speak at a number of conferences in the United States. 408 U.S. at 756. But Mandel's application for a nonimmigrant visa was denied under a then-existing INA provision that barred the entry of aliens "who advocate the economic, international, and governmental doctrines of world communism." 8 U.S.C. § 1182(a)(28)(D) (1964). The Attorney General had discretion to waive § 1182(a)(28)(D)'s bar and grant Mandel an individual exception, but declined to do so on the grounds that Mandel had violated the terms of his visas during prior visits to the United States. 408 U.S. at 759. The American professors sued, alleging, among other things, that the denial of Mandel's visa violated their First

Amendment rights to "hear his views and engage him in a free and open academic exchange." *Id.* at 760.

The Supreme Court, citing "Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden,'" *id.* at 766 (quoting *Boutilier v. INS*, 387 U.S. 118, 123 (1967)), found that the long-standing principle of deference to the political branches in the immigration context limited its review of plaintiffs' challenge, *id.* at 767. The Court held that "when the Executive exercises this power [to exclude an alien] on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the [plaintiffs'] First Amendment interests." *Id.* at 770. The Court concluded that the Attorney General's stated reason for denying Mandel's visa—that he had violated the terms of prior visas—satisfied this test.[13] It therefore did not review plaintiffs' First Amendment claim.

Courts have continuously applied *Mandel*'s "facially legitimate and bona fide" test to challenges to individual visa denials. *See Din*, 135 S. Ct. at 2139-40 (Kennedy, J., concurring in the judgment) (applying *Mandel*'s test to challenge to visa denial); *Cardenas v. United States*, 826 F.3d 1164, 1172-73 (9th Cir. 2016) (same); *Am. Acad. of Religion v. Napolitano*, 573 F.3d 115, 125 (2d Cir. 2009) (same). Subsequently, in *Fiallo*

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[13] The Court specifically declined to decide "what First Amendment or other grounds may be available for attacking exercise of discretion for which no justification whatsoever is advanced." *Id.*

v. Bell, 430 U.S. 787 (1977), the Supreme Court applied *Mandel*'s test to a facial challenge to an immigration law, finding "no reason to review the broad congressional policy choice at issue here under a more exacting standard than was applied in *Kleindienst v. Mandel*, a First Amendment case." *Id.* at 795. And in a case where plaintiffs brought a constitutional challenge to an immigration law, this Court has found that "we must apply the same standard as the *Fiallo* court and uphold the statute if a 'facially legitimate and bona fide reason' supports [it]." *Johnson*, 647 F.3d at 127.[14] *Mandel* is therefore the starting point for our review.

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[14] In *Johnson*, this Court considered an equal protection challenge to an immigration law. *Id.* at 126-27. Relying on several of our sister circuits, we equated *Mandel*'s "facially legitimate and bona fide" test with rational basis review. *Id.* at 127 (citing *Barthelemy v. Ashcroft*, 329 F.3d 1062, 1065-66 (9th Cir. 2003), *as amended* (June 9, 2003); *Wedderburn v. INS*, 215 F.3d 795, 800 (7th Cir. 2000)). But the *Johnson* Court's interpretation is incomplete. Rational basis review does build in deference to the government's reasons for acting, like *Mandel*'s "facially legitimate" requirement, but it does not call for an inquiry into an actor's "bad faith" and therefore does not properly account for *Mandel*'s "bona fide" requirement. Even more, *Johnson* and similar cases applying rational basis review did so in the context of equal protection challenges. *See, e.g.*, *Rajah v. Mukasey*, 544 F.3d 427, 438 (2d Cir. 2008); *Breyer v. Meissner*, 214 F.3d 416, 422 n.6 (3d Cir. 2000). But courts do not apply rational basis review to Establishment Clause challenges, because that would mean dispensing with the purpose inquiry that is so central to Establishment Clause review. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) ("In our Establishment Clause cases we have often stated the principle that the First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general."); *see also Colorado Christian Univ. v. Weaver*,

But in another more recent line of cases, the Supreme Court has made clear that despite the political branches' plenary power over immigration, that power is still "subject to important constitutional limitations," *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001), and that it is the judiciary's responsibility to uphold those limitations. *Chadha*, 462 U.S. at 941 (stating that Congress and the Executive must "cho[ose] a constitutionally permissible means of implementing" their authority over immigration). These cases instruct that the political branches' power over immigration is not tantamount to a constitutional blank check, and that vigorous judicial review is required when an immigration action's constitutionality is in question.

We are bound to give effect to both lines of cases, meaning that we must enforce constitutional limitations on immigration actions while also applying *Mandel*'s deferential test to those actions as the Supreme Court has instructed. For the reasons that follow, however, we find that these tasks are not mutually exclusive, and that *Mandel*'s test still contemplates meaningful judicial review of constitutional challenges in certain, narrow circumstances, as we have here.

To begin, *Mandel*'s test undoubtedly imposes a heavy burden on plaintiffs, consistent with the significant deference we afford the political branches in the immigration context. *See Mathews v. Diaz*, 426 U.S. 67,

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534 F.3d 1245, 1255 n.2 (10th Cir. 2008) (suggesting that rational basis review cannot be used to evaluate an Establishment Clause claim) (citing *Heller*, 554 U.S. 570). We therefore decline to apply *Johnson*'s interpretation of *Mandel*'s "facially legitimate and bona fide" test to this case.

82 (1976) (describing the "narrow standard of [judicial] review of decisions made by the Congress or the President in the area of immigration and naturalization"). The government need only show that the challenged action is "facially legitimate and bona fide" to defeat a constitutional challenge. *Mandel*, 408 U.S. at 770. These are separate and quite distinct requirements. To be "facially legitimate," there must be a valid reason for the challenged action stated on the face of the action. *Din*, 135 S. Ct. at 2140-41 (Kennedy, J., concurring in the judgment) (finding visa denial "facially legitimate" where government cited a statutory provision in support of the denial).

And as the name suggests, the "bona fide" requirement concerns whether the government issued the challenged action in good faith. In *Kerry v. Din*, Justice Kennedy, joined by Justice Alito, elaborated on this requirement. *Id.* at 2141.[15] Here, the burden is on the plaintiff. Justice Kennedy explained that where a plaintiff makes "an affirmative showing of bad faith" that is "plausibly alleged with sufficient particularity," courts may "look behind" the challenged action to

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[15] The Ninth Circuit has found that Justice Kennedy's concurrence is the controlling opinion in *Din*. It relied on the Supreme Court's holding in *Marks v. United States*, which stated that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Cardenas*, 826 F.3d at 1171 (quoting *Marks v. United States*, 430 U.S. 188, 193 (1977)). We agree that Justice Kennedy's opinion sets forth the narrowest grounds for the Court's holding in *Din* and likewise recognize it as the controlling opinion.

assess its "facially legitimate" justification. *Id.* (suggesting that if plaintiff had sufficiently alleged that government denied visa in bad faith, court should inquire whether the government's stated statutory basis for denying the visa was the actual reason for the denial). In the typical case, it will be difficult for a plaintiff to make an affirmative showing of bad faith with plausibility and particularity. *See, e.g.*, *Cardenas*, 826 F.3d at 1173 (applying *Din* and finding that plaintiff who alleged that consular officer refused to consider relevant evidence and acted based on racial bias had failed to make an affirmative showing of bad faith). And absent this affirmative showing, courts must defer to the government's "facially legitimate" reason for the action.

Mandel therefore clearly sets a high bar for plaintiffs seeking judicial review of a constitutional challenge to an immigration action. But although *Mandel*'s "facially legitimate and bona fide" test affords significant deference to the political branches' decisions in this area, it does not completely insulate those decisions from *any* meaningful review. Where plaintiffs have seriously called into question whether the stated reason for the challenged action was provided in good faith, we understand *Mandel*, as construed by Justice Kennedy in his controlling concurrence in *Din*, to require that we step away from our deferential posture and look behind the stated reason for the challenged action. In other words, *Mandel*'s requirement that an immigration action be "bona fide" may in some instances compel more searching judicial review. Plaintiffs ask this Court to engage in such searching review

here under the traditional Establishment Clause test, and we therefore turn to consider whether such a test is warranted.

We start with *Mandel*'s requirement that the challenged government action be "facially legitimate." EO-2's stated purpose is "to protect the Nation from terrorist activities by foreign nationals admitted to the United States." EO-2, Preamble. We find that this stated national security interest is, on its face, a valid reason for Section 2(c)'s suspension of entry. EO-2 therefore satisfies *Mandel*'s first requirement. Absent allegations of bad faith, our analysis would end here in favor of the Government. But in this case, Plaintiffs have alleged that EO-2's stated purpose was given in bad faith. We therefore must consider whether they have made the requisite showing of bad faith.

As noted, Plaintiffs must "plausibly allege[] with sufficient particularity" that the reason for the government action was provided in bad faith. *Din*, 135 S. Ct. at 2141 (Kennedy, J., concurring in the judgment). Plaintiffs here claim that EO-2 invokes national security in bad faith, as a pretext for what really is an anti-Muslim religious purpose. Plaintiffs point to ample evidence that national security is not the true reason for EO-2, including, among other things, then-candidate Trump's numerous campaign statements expressing animus towards the Islamic faith; his proposal to ban Muslims from entering the United States; his subsequent explanation that he would effectuate this ban by targeting "territories" instead of Muslims directly; the issuance of EO-1, which targeted certain majority-Muslim nations and included a preference for religious

minorities; an advisor's statement that the President had asked him to find a way to ban Muslims in a legal way; and the issuance of EO-2, which resembles EO-1 and which President Trump and his advisors described as having the same policy goals as EO-1. *See, e.g.*, J.A. 339, 346, 370, 379, 403, 470, 472, 480, 481, 506, 508, 516-18, 522, 798. Plaintiffs also point to the comparably weak evidence that EO-2 is meant to address national security interests, including the exclusion of national security agencies from the decisionmaking process, the post hoc nature of the national security rationale, and evidence from DHS that EO-2 would not operate to diminish the threat of potential terrorist activity.

Based on this evidence, we find that Plaintiffs have more than plausibly alleged that EO-2's stated national security interest was provided in bad faith, as a pretext for its religious purpose. And having concluded that the "facially legitimate" reason proffered by the government is not "bona fide," we no longer defer to that reason and instead may "look behind" EO-2. *Din*, 135 S. Ct. at 2141 (Kennedy, J., concurring in the judgment).

Since Justice Kennedy's concurrence in *Din*, no court has confronted a scenario where, as here, plaintiffs have plausibly alleged with particularity that an immigration action was taken in bad faith. We therefore have minimal guidance on what "look[ing] behind" a challenged immigration action entails. *See id.* In addressing this issue of first impression, the Government does not propose a framework for this inquiry. Rather, the Government summarily asserts that because EO-2 states that it is motivated by national

security interests, it therefore satisfies *Mandel*'s test. But this only responds to *Mandel*'s "facially legitimate" requirement—it reads out *Mandel*'s "bona fide" test altogether. Plaintiffs, for their part, suggest that we review their claim using our normal constitutional tools. And in the Establishment Clause context, our normal constitutional tool for reviewing facially neutral government actions is the test in *Lemon v. Kurtzman*.

We find for several reasons that because Plaintiffs have made an affirmative showing of bad faith, applying the *Lemon* test to analyze EO-2's constitutionality is appropriate. First, as detailed above, the Supreme Court has unequivocally stated that the political branches' immigration actions are still "subject to important constitutional limitations." *Zadvydas*, 533 U.S. at 695; *see also Chadha*, 462 U.S. at 941-42. The constitutional limitation in this case is the Establishment Clause, and this Court's duty to uphold the Constitution even in the context of a presidential immigration action counsels in favor of applying our standard constitutional tool. Second, that Plaintiffs have satisfied *Mandel*'s heavy burden to plausibly show that the reason for the challenged action was proffered in bad faith further supports the application of our established constitutional doctrine. The deferential framework set forth in *Mandel* is based in part on general respect for the political branches' power in the immigration realm. Once plaintiffs credibly call into question the political branches' motives for exercising that power, our reason for deferring is severely undermined. In the rare case where plaintiffs plausibly allege bad faith with particularity, more meaningful review—in the

form of constitutional scrutiny—is proper. And third, in the context of this case, there is an obvious symmetry between *Mandel*'s "bona fide" prong and the constitutional inquiry established in *Lemon*. Both tests ask courts to evaluate the government's purpose for acting.

Because Plaintiffs have made a substantial and affirmative showing that the government's national security purpose was proffered in bad faith, we find it appropriate to apply our longstanding Establishment Clause doctrine. Applying this doctrine harmonizes our duty to engage in the substantial deference required by *Mandel* and its progeny with our responsibility to ensure that the political branches choose constitutionally permissible means of exercising their immigration power. We therefore proceed to "look behind" EO-2 using the framework developed in *Lemon* to determine if EO-2 was motivated by a primarily religious purpose, rather than its stated reason of promoting national security.

2.

To prevail under the *Lemon* test, the Government must show that the challenged action (1) "ha[s] a secular legislative purpose," (2) that "its principal or primary effect [is] one that neither advances nor inhibits religion," and (3) that it does "not foster 'an excessive government entanglement with religion.'" *Lemon*, 403 U.S. at 612-13 (quoting *Walz v. Tax Comm'n of the City of New York*, 397 U.S. 664, 674 (1970)) (citation omitted). The Government must satisfy all three prongs of *Lemon* to defeat an Establishment Clause challenge.

Edwards v. Aguillard, 482 U.S. 578, 583 (1987). The dispute here centers on *Lemon*'s first prong.

In the Establishment Clause context, "purpose matters." *McCreary*, 545 U.S. at 866 n.14. Under the *Lemon* test's first prong, the Government must show that the challenged action "ha[s] a secular legislative purpose." *Lemon*, 403 U.S. at 612. Accordingly, the Government must show that the challenged action has a secular purpose that is "genuine, not a sham, and not merely secondary to a religious objective." *McCreary*, 545 U.S. at 864; *see also Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) ("When a governmental entity professes a secular purpose for an arguably religious policy, the government's characterization is, of course, entitled to some deference. But it is nonetheless the duty of the courts to 'distinguis[h] a sham secular purpose from a sincere one.'" (quoting *Wallace*, 472 U.S. at 75 (O'Connor, J., concurring in the judgment)). The government cannot meet this requirement by identifying *any* secular purpose for the challenged action. *McCreary*, 545 U.S. at 865 n.13 (noting that if any secular purpose sufficed, "it would leave the purpose test with no real bite, given the ease of finding some secular purpose for almost any government action"). Rather, the government must show that the challenged action's *primary* purpose is secular. *Edwards*, 482 U.S. at 594 (finding an Establishment Clause violation where the challenged act's "primary purpose . . . is to endorse a particular religious doctrine," notwithstanding that the act's stated purpose was secular).

When a court considers whether a challenged government action's primary purpose is secular, it attempts to discern the "official objective . . . from readily discoverable fact, without any judicial psychoanalysis of a drafter's heart of hearts." *McCreary*, 545 U.S. at 862. The court acts as a reasonable, "objective observer," taking into account "the traditional external signs that show up in the 'text, legislative history, and implementation of the statute,' or comparable official act." *Id.* (quoting *Santa Fe*, 530 U.S. at 308). It also considers the action's "historical context" and "the specific sequence of events leading to [its] passage." *Edwards*, 482 U.S. at 595. And as a reasonable observer, a court has a "reasonable memor[y]," and it cannot "'turn a blind eye to the context in which [the action] arose.'" *McCreary*, 545 U.S. at 866 (quoting *Santa Fe*, 530 U.S. at 315).

The evidence in the record, viewed from the standpoint of the reasonable observer, creates a compelling case that EO-2's primary purpose is religious. Then-candidate Trump's campaign statements reveal that on numerous occasions, he expressed anti-Muslim sentiment, as well as his intent, if elected, to ban Muslims from the United States. For instance, on December 7, 2015, Trump posted on his campaign website a "Statement on Preventing Muslim Immigration," in which he "call[ed] for a total and complete shutdown of Muslims entering the United States until our representatives can figure out what is going on" and remarked, "[I]t is obvious to anybody that the hatred is beyond comprehension. . . . [O]ur country cannot be the victims of horrendous attacks by people that believe only in

Jihad, and have no sense of reason or respect for human life." J.A. 346. In a March 9, 2016 interview, Trump stated that "Islam hates us," J.A. 516, and that "[w]e can't allow people coming into this country who have this hatred," J.A. 517. Less than two weeks later, in a March 22 interview, Trump again called for excluding Muslims, because "we're having problems with the Muslims, and we're having problems with Muslims coming into the country." J.A. 522. And on December 21, 2016, when asked whether recent attacks in Europe affected his proposed Muslim ban, President-Elect Trump replied, "You know my plans. All along, I've proven to be right. 100% correct." J.A. 506.

As a candidate, Trump also suggested that he would attempt to circumvent scrutiny of the Muslim ban by formulating it in terms of nationality, rather than religion. On July 17, 2016, in response to a tweet stating, "Calls to ban Muslims from entering the U.S. are offensive and unconstitutional," Trump said, "So you call it territories. OK? We're gonna do territories." J.A. 798. One week later, Trump asserted that entry should be "immediately suspended[ed] . . . from any nation that has been compromised by terrorism." J.A. 480. When asked whether this meant he was "roll[ing]back" his call for a Muslim ban, he said his plan was an "expansion" and explained that "[p]eople were so upset when I used the word Muslim," so he was instead "talking territory instead of Muslim." J.A. 481.

Significantly, the First Executive Order appeared to take this exact form, barring citizens of seven predominantly Muslim countries from entering the United States. And just before President Trump signed EO-1

on January 27, 2017, he stated, "This is the 'Protection of the Nation from Foreign Terrorist Entry into the United States.' We all know what that means." J.A. 403. The next day, presidential advisor and former New York City Mayor Giuliani appeared on Fox News and asserted that "when [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.'" J.A. 508.

Shortly after courts enjoined the First Executive Order, President Trump issued EO-2, which the President and members of his team characterized as being substantially similar to EO-1. EO-2 has the same name and basic structure as EO-1, but it does not include a preference for religious-minority refugees and excludes Iraq from its list of Designated Countries. EO-2, § 1(e). It also exempts certain categories of nationals from the Designated Countries and institutes a waiver process for qualifying individuals. EO-2, § 3(b), (c). Senior Policy Advisor Miller described the changes to EO-2 as "mostly minor technical differences," and said that there would be "the same basic policy outcomes for the country." J.A. 339. White House Press Secretary Spicer stated that "[t]he principles of the [second] executive order remain the same." J.A. 379. And President Trump, in a speech at a rally, described EO-2 as "a watered down version of the first order." Appellees' Br. 7 (citing Reilly, *supra*). These statements suggest that like EO-1, EO-2's purpose is to effectuate the promised Muslim ban, and that its changes from EO-1 reflect an effort to help it survive judicial scrutiny, rather than to avoid

targeting Muslims for exclusion from the United States.

These statements, taken together, provide direct, specific evidence of what motivated both EO-1 and EO-2: President Trump's desire to exclude Muslims from the United States. The statements also reveal President Trump's intended means of effectuating the ban: by targeting majority-Muslim nations instead of Muslims explicitly. And after courts enjoined EO-1, the statements show how President Trump attempted to preserve its core mission: by issuing EO-2—a "watered down" version with "the same basic policy outcomes." J.A. 339. These statements are the exact type of "readily discoverable fact[s]" that we use in determining a government action's primary purpose. *McCreary*, 545 U.S. at 862. They are explicit statements of purpose and are attributable either to President Trump directly or to his advisors. We need not probe anyone's heart of hearts to discover the purpose of EO-2, for President Trump and his aides have explained it on numerous occasions and in no uncertain terms. *See Glassroth v. Moore*, 335 F.3d 1282, 1296 (11th Cir. 2003) ("Besides, no psychoanalysis or dissection is required here, where there is abundant evidence, including his own words, of the [government actor's] purpose."). EO-2 cannot be read in isolation from the statements of planning and purpose that accompanied it, particularly in light of the sheer number of statements, their nearly singular source, and the close connection they draw between the proposed Mus-

lim ban and EO-2 itself.[16] *See McCreary*, 545 U.S. at 866 (rejecting notion that court could consider only "the latest news about the last in a series of governmental actions, however close they may all be in time and subject"). The reasonable observer could easily connect these statements to EO-2 and understand that its primary purpose appears to be religious, rather than secular.

The Government argues, without meaningfully addressing Plaintiffs' proffered evidence, that EO-2's primary purpose is in fact secular because it is facially neutral and operates to address the risks of potential terrorism without targeting any particular religious group. Appellants' Br. 42-44. That EO-2's stated objective is religiously neutral is not dispositive; the entire premise of our review under *Lemon* is that even facially neutral government actions can violate the Establishment Clause. *See Lemon*, 403 U.S. at 612 (recognizing that "a law 'respecting' . . . the establishment of religion[] is not always easily identifiable as one," and creating a three-part test for discerning when a facially neutral law violates the Establishment Clause); *see also Santa Fe*, 530 U.S. at 315 ("Our examination [under *Lemon*'s purpose prong] . . . need not stop at an analysis of the text of the policy.").

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[16] We reject the government's contentions that none of these statements "in substance corresponds to [Section 2(c)]," Appellants' Br. 52, and that Section 2(c) "bears no resemblance to a 'Muslim ban,'" *id.* at 53. These statements show that President Trump intended to effectuate his proposed Muslim ban by targeting predominantly Muslim nations, rather than Muslims explicitly. Section 2(c) does precisely that.

We therefore reject the Government's suggestion that EO-2's facial neutrality might somehow fully answer the question of EO-2's primary purpose.[17]

The Government's argument that EO-2's primary purpose is related to national security, Appellants' Br. 43-44, is belied by evidence in the record that President Trump issued the First Executive Order without consulting the relevant national security agencies, J.A. 397, and that those agencies only offered a national

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[17] Plaintiffs suggest that EO-2 is not facially neutral, because by directing the Secretary of Homeland Security to collect data on "honor killings" committed in the United States by foreign nationals, EO-2 incorporates "a stereotype about Muslims that the President had invoked in the months preceding the Order." Appellees' Br. 5, 7; *see* J.A. 598 (reproducing Trump's remarks in a September 2016 speech in Arizona in which he stated that applicants from countries like Iraq and Afghanistan would be "asked their views about honor killings," because "a majority of residents [in those countries] say that the barbaric practice of honor killings against women are often or sometimes justified"). Numerous amici explain that invoking the specter of "honor killings" is a well-worn tactic for stigmatizing and demeaning Islam and painting the religion, and its men, as violent and barbaric. *See, e.g.*, Brief for New York University as Amicus Curiae Supporting Appellees 21, ECF No. 82-1; Brief for Muslim Justice League, et al., as Amici Curiae Supporting Appellees 17-18, ECF No. 152-1; Brief for History Professors and Scholars as Amici Curiae Supporting Appellees 2-3, ECF No. 154-1; Brief for Constitutional Law Scholars as Amici Curiae Supporting Appellees 19 n.3, ECF No. 173-1; Brief for Members of the Clergy, et al., as Amici Curiae Supporting Appellees 13, ECF No. 179-1. The Amici Constitutional Law Scholars go so far as to call the reference to honor killings "anti-Islamic dog-whistling." Brief for Constitutional Law Scholars 19 n.3. We find this text in EO-2 to be yet another marker that its national security purpose is secondary to its religious purpose.

security rationale after EO-1 was enjoined. Furthermore, internal reports from DHS contradict this national security rationale, with one report stating 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." J.A. 426. According to former National Security Officials, Section2(c) serves "no legitimate national security purpose," given that "not a single American has died in a terrorist attack on U.S. soil at the hands of citizens of these six nations in the last forty years" and that there is no evidence of any new security risks emanating from these countries. Corrected Brief for Former National Security Officials as Amici Curiae Supporting Appellees 5-8, ECF No. 126-1.[18] Like the district court, we think this strong evidence that any national security justification for EO-2 was secondary to its primary religious purpose and was offered as more of a "litigating position" than as the actual purpose of EO-2. *See McCreary*, 545 U.S. at 871 (describing the government's "new statements of purpose . . . as a litigating position" where they were offered to explain the third iteration of a previously enjoined religious display). And EO-2's text does little to bolster any national security rationale: the only examples it provides of immigrants born abroad and convicted of terrorism-related crimes in the United States include two Iraqis—Iraq is not a designated country in EO-2—and a Somalian refugee who

[18] A number of amici were current on the relevant intelligence as of January 20, 2017. *Id.* at 9.

entered the United States as a child and was radicalized here as an adult. EO-2, § 1(h). The Government's asserted national security purpose is therefore no more convincing as applied to EO-2 than it was to EO-1.

Relatedly, the Government argues that EO-2's operation "confirms its stated purpose." Appellants' Br. 43. "[I]t applies to six countries based on risk, not religion; and in those six countries, the suspension applies irrespective of any alien's religion." *Id.* In support of its argument that EO-2 does not single out Muslims, the Government notes that these six countries are either places where ISIS has a heavy presence (Syria), state sponsors of terrorism (Iran, Sudan, and Syria), or safe havens for terrorists (Libya, Somalia, and Yemen). Appellants' Br. 5-6. The Government also points out that the six Designated Countries represent only a small proportion of the world's majority-Muslim nations, and EO-2 applies to everyone in those countries, even non-Muslims. *Id.* at 44. This shows, the Government argues, that EO-2's primary purpose is secular. The trouble with this argument is that EO-2's practical operation is not severable from the myriad statements explaining its operation as intended to bar Muslims from the United States. And that EO-2 is underinclusive by targeting only a small percentage of the world's majority-Muslim nations and overinclusive for targeting all citizens, even non-Muslims, in the Designated Countries, is not responsive to the purpose inquiry. This evidence might be relevant to our analysis under *Lemon*'s second prong, which asks whether a government act has the primary

effect of endorsing or disapproving of religion, *see Lynch v. Donnelly*, 465 U.S. 668, 692 (1984) (O'Connor, J., concurring), but it does not answer whether the government acted with a primarily religious purpose to begin with. If we limited our purpose inquiry to review of the operation of a facially neutral order, we would be caught in an analytical loop, where the order would always survive scrutiny. It is for this precise reason that when we attempt to discern purpose, we look to more than just the challenged action itself. And here, when we consider the full context of EO-2, it is evident that it is likely motivated primarily by religion. We do not discount that there may be a national security concern motivating EO-2; we merely find it likely that any such purpose is secondary to EO-2's religious purpose.

The Government separately contends that our purpose inquiry should not extend to "extrinsic evidence" that is beyond EO-2's relevant context. Appellants' Br. 45. The Government first argues that we should not look beyond EO-2's "text and operation." *Id.* at 45-46. But this is clearly incorrect, as the Supreme Court has explicitly stated that we review more than just the face of a challenged action. *See, e.g.*, *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 699 (1994) ("[O]ur [Establishment Clause] analysis does not end with the text of the statute at issue.")

(citing *Church of the Lukumi Babalu Aye*, 508 U.S. at 534).[19]

The Government next argues that even if we do look beyond EO-2 itself, under *McCreary*, we are limited to considering only "the operative terms of governmental action and official pronouncements," Appellants' Br. 46, which we understand to mean only EO-2 itself and a letter signed by the Attorney General and the Secre-

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[19] The Government separately suggests that we should limit our review to EO-2's text and operation based on "the Constitution's structure and its separation of powers," and the "'presumption of regularity' that attaches to all federal officials' actions." Appellants' Br. 45 (quoting *United States v. Chem. Found., Inc.*, 272 U.S. 1, 14 (1926)). In support of this point, the Government relies on pre-*McCreary* cases discussing, variously, judicial deference to an executive official's decision to deport an alien who had violated the terms of his admission to the United States, *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 491 (1999), the President's absolute immunity from damages liability based on his or her official acts, *Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982), and the presumptive privilege we afford a President's conversations and correspondence, *United States v. Nixon*, 418 U.S. 683, 708 (1974). These cases suggest that in certain circumstances, we insulate the President and other executive officials from judicial scrutiny in order to protect and promote the effective functioning of the executive branch. But these cases do not circumscribe our review of Establishment Clause challenges or hold that when a President's official acts violate the Constitution, the acts themselves are immune from judicial review. We find no support in this line of cases for the Government's argument that our review of EO-2's context is so limited. In fact, the Supreme Court has suggested quite the opposite. *See Zadvydas*, 533 U.S. at 695 ("Executive and Legislative Branch decisionmaking . . . power is subject to important constitutional limitations." (citing *Chadha*, 462 U.S. at 941-42)).

tary of State that largely echoes EO-2's text, *id.* at 8 n.3 (citing Letter, *supra*). We find no support for this view in *McCreary*. The *McCreary* Court considered "the traditional external signs that show up in the 'text, legislative history, and implementation of the [challenged action],'" 545 U.S. at 862 (quoting *Santa Fe*, 530 U.S. at 308), but it did not limit other courts' review to those particular terms. *Id.* Nor did it make such an artificial distinction between "official" and "unofficial" context. Rather, it relied on principles of "common sense" and the "reasonable observer[']s . . . reasonable memor[y]" to cull the relevant context surrounding the challenged action. *Id.* at 866. The Government would have us abandon this approach in favor of an unworkable standard that is contrary to the well-established framework for considering the context of a challenged government action.

And finally, the Government argues that even if we could consider unofficial acts and statements, we should not rely on campaign statements. Appellants' Br. 49. Those statements predate President Trump's constitutionally significant "transition from private life to the Nation's highest public office," and as such, they

are less probative than official statements, the Government contends. *Id.* at 51.[20] We recognize that in many cases, campaign statements may not reveal all that much about a government actor's purpose. But we decline to impose a bright-line rule against considering campaign statements, because as with any evidence, we must make an individualized determination as to a statement's relevancy and probative value in light of all the circumstances. The campaign state-

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[20] The government also suggests that we can never rely on private communications to impute an improper purpose to a government actor. *See, e.g.*, *Modrovich v. Allegheny County*, 385 F.3d 397, 411-12 (3d Cir. 2004) (limiting its review to statements made by the elected officials who oversaw the government action). But this is incorrect. These cases merely establish that the motives of people not involved in the decisionmaking process cannot *alone* evince the government's motive. *See Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1330 (11th Cir. 1998) ("[R]emarks by nondecisionmakers or remarks unrelated to the decisionmaking process itself are not *direct* evidence of discrimination." (emphasis added)). But when those statements reveal something about the government's purpose, they are certainly part of the evidence we review for purpose. In *McCreary*, the Court noted that a pastor had delivered a religious message at the ceremony for the challenged religious display. 545 U.S. at 869. Based on this and other evidence of purpose, the Court concluded that "[t]he reasonable observer could only think that the [government] meant to emphasize and celebrate the [display's] religious message." *Id.* In any event, none of these cases contemplate the situation here, where the private speaker and the government actor are one and the same. We need not impute anyone's purpose to anyone else, for the same person has espoused these intentions all along. The distinction between candidate and elected official is thus an artificial one where the inquiry is only whether the reasonable observer would understand the candidate's statements to explain the purpose of his actions once elected.

ments here are probative of purpose because they are closely related in time, attributable to the primary decisionmaker, and specific and easily connected to the challenged action. *See Glassroth*, 335 F.3d at 1297 (reviewing an elected judge's campaign materials that proclaimed him the "Ten Commandment's Judge" as part of its inquiry into the constitutionality of a Ten Commandments display he installed); *see also Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 463 (1982) (considering facially neutral campaign statements related to bussing in an equal protection challenge); *California v. United States*, 438 U.S. 645, 663-64 (1978) (referring to candidates' political platforms when considering the Reclamation Act of 1902); *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977) (explaining that in the equal protection context, "[w]hen there is [] proof that a discriminatory purpose has been a motivating factor in the decision," a court may consider "contemporary statements by members of the decisionmaking body").

Just as the reasonable observer's "world is not made brand new every morning," *McCreary*, 545 U.S. at 866, nor are we able to awake without the vivid memory of these statements. We cannot shut our eyes to such evidence when it stares us in the face, for "there's none so blind as they that won't see." Jonathan Swift, *Polite Conversation* 174 (Chiswick Press ed., 1892). If and when future courts are confronted with campaign or other statements proffered as evidence of governmental purpose, those courts must similarly determine, on a case-by-case basis, whether such statements are

probative evidence of governmental purpose. Our holding today neither limits nor expands their review.[21]

The Government argues that reviewing campaign statements here would encourage scrutiny of all religious statements ever made by elected officials, even remarks from before they assumed office. Appellants' Br. 49-50. But our review creates no such sweeping implications, because as the Supreme Court has counseled, our purpose analysis "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Village of Arlington Heights*, 429 U.S. at 266; *see also Lee v. Weisman*, 505 U.S. 577, 597 (1992) ("Our Establishment Clause jurisprudence remains a delicate and fact-sensitive one. . . . "). Just as a reasonable observer would not understand general statements of religious conviction to inform later government action, nor would we look to such statements as evidence of purpose. A person's particular religious beliefs, her college essay on religious freedom, a speech she gave on the Free Exercise Clause—rarely, if ever, will such evidence reveal anything about that person's actions once in office. For a past statement to be relevant to the government's purpose, there must be a substantial, specific connection between it and the challenged government action. And here, in this highly unique set of circumstances, there is a direct link between the President's numerous

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[21] This finding comports with the *McCreary* Court's observation that "past actions [do not] forever taint" a government action, 545 U.S. at 873-74. Whether a statement continues to taint a government action is a fact-specific inquiry for the court evaluating the statement.

campaign statements promising a Muslim ban that targets territories, the discrete action he took only one week into office executing that exact plan, and EO-2, the "watered down" version of that plan that "get[s] just about everything," and "in some ways, more." J.A. 370.

For similar reasons, we reject the Government's argument that our review of these campaign statements will "inevitably 'chill political debate during campaigns.'" Appellants' Br. 50 (quoting *Phelps v. Hamilton*, 59 F.3d 1058, 1068 (10th Cir. 1995)). Not all—not even most—political debate will have any relevance to a challenged government action. Indeed, this case is unique not because we are considering campaign statements, but because we have such directly relevant and probative statements of government purpose at all. *See Smith v. Town of Clarkton*, 682 F.2d 1055, 1064 (4th Cir. 1982) (observing that government actors "seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate"). To the extent that our review chills campaign promises to condemn and exclude entire religious groups, we think that a welcome restraint.

Lastly, the Government contends that we are ill-equipped to "attempt[] to assess what campaign statements reveal about the motivation for later action." Appellants' Br. 50. The Government argues that to do so would "mire [us] in a swamp of unworkable litigation," *id.* (quoting Amended Order, *Washington v. Trump*, No. 17-35105, slip op. at 13 (9th Cir. Mar. 17, 2017) (Kozinski, J., dissenting from denial of reconsid-

eration en banc)), and "forc[e us] to wrestle with intractable questions," such as "the level of generality at which a statement must be made, by whom, and how long after its utterance the statement remains probative." *Id.* But discerning the motives behind a challenged government action is a well-established part of our purpose inquiry. *McCreary*, 545 U.S. at 861 ("Examination of purpose is a staple of statutory interpretation that makes up the daily fare of every appellate court in the country, and governmental purpose is a key element of a good deal of constitutional doctrine." (citations omitted)). As part of this inquiry, courts regularly evaluate decisionmakers' statements that show their purpose for acting. *See, e.g.*, *Green v. Haskell Cty. Bd. of Comm'rs*, 568 F.3d 784, 801 (10th Cir. 2009) (considering news reports quoting county commissioners who described both their determination to keep challenged religious display at issue and the strength of their religious beliefs); *Glassroth*, 355 F.3d at 1297 (reviewing elected judge's campaign materials for evidence of his purpose in installing religious display); *Brown v. Gilmore*, 258 F.3d 265, 277 (4th Cir. 2001) (reviewing state legislators' statements in discerning purpose of statute challenged under the Establishment Clause); *see also Edwards*, 482 U.S. at 586-87 (looking to statute's text together with its sponsor's public comments to discern its purpose). And the purpose inquiry is not limited to Establishment Clause challenges; we conduct this analysis in a variety of contexts. *See, e.g.*, *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013) (striking down federal statute based in part on "strong evidence" that "the congressional purpose [was] to influence or interfere

with state sovereign choices about who may be married"); *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279-80 (1979) (upholding public hiring preferences based in part on finding that government had not created preferences with purpose of discriminating on the basis of sex); *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 219 (4th Cir. 2016), *cert. denied sub nom. North Carolina v. N.C. State Conference of NAACP*, No. 16-833, 2017 WL 2039439 (U.S. May 15, 2017) (concluding that challenged voting restrictions were unconstitutional because they were motivated by racially discriminatory intent). We therefore see nothing "intractable" about evaluating a statement's probative value based on the identity of the speaker and how specifically the statement relates to the challenged government action, for this is surely a routine part of constitutional analysis. And this analysis is even more straightforward here, because we are not attempting to discern motive from many legislators' statements, as in *Brown*, but rather are looking primarily to one person's statements to discern that person's motive for taking a particular action once in office.

The Government has repeatedly asked this Court to ignore evidence, circumscribe our own review, and blindly defer to executive action, all in the name of the Constitution's separation of powers. We decline to do so, not only because it is the particular province of the judicial branch to say what the law is, but also because we would do a disservice to our constitutional structure were we to let its mere invocation silence the call for meaningful judicial review. The deference we give the coordinate branches is surely powerful, but even it

must yield in certain circumstances, lest we abdicate our own duties to uphold the Constitution.

EO-2 cannot be divorced from the cohesive narrative linking it to the animus that inspired it. In light of this, we find that the reasonable observer would likely conclude that EO-2's primary purpose is to exclude persons from the United States on the basis of their religious beliefs. We therefore find that EO-2 likely fails *Lemon*'s purpose prong in violation of the Establishment Clause.[22] Accordingly, we hold that the district court did not err in concluding that Plaintiffs are likely to succeed on the merits of their Establishment Clause claim.

B.

Because we uphold the district court's conclusion that Plaintiffs are likely to succeed on the merits of their Establishment Clause claim, we next consider

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[22] What is more, we think EO-2 would likely fail any purpose test, for whether religious animus motivates a government action is a fundamental part of our Establishment Clause inquiry no matter the degree of scrutiny that applies. *See, e.g.*, *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1826 (2014) (upholding town's legislative prayer policy in part because "[i]n no instance did town leaders signal disfavor toward nonparticipants or suggest that their stature in the community was in any way diminished"); *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 696 (1989) (finding that the challenged statute satisfied *Lemon*'s purpose prong in part because "there is no allegation that [it] was born of animus"); *Lynch*, 465 U.S. at 673 (stating that the Establishment Clause "forbids hostility toward any [religion]"); *see also* Brief for Constitutional Law Scholars 6-11. There is simply too much evidence that EO-2 was motivated by religious animus for it to survive any measure of constitutional review.

whether Plaintiffs have demonstrated that they are likely to suffer irreparable harm in the absence of a preliminary injunction. *Winter*, 555 U.S. at 22; *Musgrave*, 553 F.3d at 298. As we have previously recognized, "in the context of an alleged violation of First Amendment rights, a plaintiff's claimed irreparable harm is inseparably linked to the likelihood of success on the merits." *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 190 (4th Cir. 2013) (en banc) (quoting *Centro Tepeyac v. Montgomery County*, 779 F. Supp. 2d 456, 471 (D. Md. 2011)). Accordingly, our finding that Plaintiffs are likely to succeed on the merits of their constitutional claim counsels in favor of finding that in the absence of an injunction, they will suffer irreparable harm.

Indeed, the Supreme Court has stated in no uncertain terms that "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *see also Johnson v. Bergland*, 586 F.2d 993, 995 (4th Cir. 1978) ("Violations of first amendment rights constitute per se irreparable injury."). Though the *Elrod* Court was addressing freedom of speech and association, our sister circuits have interpreted it to apply equally to Establishment Clause violations. *See, e.g.*, *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 302 (D.C. Cir. 2006); *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996); *Parents' Ass'n of P.S. 16 v. Quinones*, 803 F.2d 1235, 1242 (2d Cir. 1986); *ACLU of Ill. v. City of St. Charles*, 794 F.2d 265, 274 (7th Cir. 1986). We agree with these courts that because of

"the inchoate, one-way nature of Establishment Clause violations," they create the same type of immediate, irreparable injury as do other types of First Amendment violations. *Chaplaincy of Full Gospel Churches*, 454 F.3d at 303; *see also id.* ("[W]hen an Establishment Clause violation is alleged, infringement occurs the moment the government action takes place. . . . "). We therefore find that Plaintiffs are likely to suffer irreparable harm if Section 2(c) of EO-2 takes effect.

C.

Even if Plaintiffs are likely to suffer irreparable harm in the absence of a preliminary injunction, we still must determine that the balance of the equities tips in their favor, "pay[ing] particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). This is because "courts of equity may go to greater lengths to give 'relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.'" *E. Tenn. Nat. Gas Co. v. Sage*, 361 F.3d 808, 826 (4th Cir. 2004) (quoting *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 552 (1937)). As the district court did, we consider the balance of the equities and the public interest factors together.

The Government first contends that "the injunction causes [it] direct, irreparable injury" that outweighs the irreparable harm to Plaintiffs because "'no governmental interest is more compelling than the security of the Nation.'" Appellants' Br. 54 (quoting *Haig v. Agee*, 453 U.S. 280, 307 (1981)). When it comes to national security, the Government argues, the judicial

branch "should not second-guess" the President's "'[p]redictive judgment[s].'" Appellants' Br. 55 (quoting *Dep't of the Navy v. Egan*, 484 U.S. 518, 529 (1988)). The Government further argues that the injunction causes institutional injury, because according to two single-Justice opinions, "[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). The Government contends that this principle applies here because the President "represents the people of all 50 states." Appellants' Reply Br. 25.

At the outset, we reject the notion that the President, because he or she represents the entire nation, suffers irreparable harm whenever an executive action is enjoined. This Court has held that the Government is "in no way harmed by issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be found unconstitutional." *Centro Tepeyac*, 722 F.3d at 191 (quoting *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002)). "If anything," we said, "the system is improved by such an injunction." *Id.* (quoting *Giovani Carandola*, 303 F.3d at 521). Because Section 2(c) of EO-2 is likely unconstitutional, allowing it to take effect would therefore inflict the greater institutional injury. And we are not persuaded that the general deference we afford the political branches ought to nevertheless tip the equities in the Government's favor, for even the President's

actions are not above judicial scrutiny, and especially not where those actions are likely unconstitutional. *See Zadvydas*, 533 U.S. at 695; *Chadha*, 462 U.S. at 941-42.

We are likewise unmoved by the Government's rote invocation of harm to "national security interests" as the silver bullet that defeats all other asserted injuries. *See United States v. Robel*, 389 U.S. 258, 264 (1967) ("Th[e] concept of 'national defense' cannot be deemed an end in itself, justifying any exercise of legislative power designed to promote such a goal. Implicit in the term 'national defense' is the notion of defending those values and ideals which set this Nation apart. . . . [O]ur country has taken singular pride in the democratic ideals enshrined in its Constitution, and the most cherished of those ideals have found expression in the First Amendment. It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties . . . which makes the defense of the Nation worthwhile."). National security may be the most compelling of government interests, but this does not mean it will always tip the balance of the equities in favor of the government. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010) (agreeing with the dissent that the government's "authority and expertise in [national security and foreign relations] matters do not automatically trump the Court's own obligation to secure the protection that the Constitution grants to individuals" (quoting *id.* at 61 (Breyer, J., dissenting))). A claim of harm to national security must still outweigh the competing claim of injury. Here and elsewhere, the Government would

have us end our inquiry without scrutinizing either Section 2(c)'s stated purpose or the Government's asserted interests, but "unconditional deference to a government agent's invocation of 'emergency' . . . has a lamentable place in our history," *Patrolmen's Benevolent Ass'n of New York v. City of New York*, 310 F.3d 43, 53-54 (2d. Cir. 2002) (citing *Korematsu v. United States*, 323 U.S. 214, 223 (1944)), and is incompatible with our duty to evaluate the evidence before us.

As we previously determined, the Government's asserted national security interest in enforcing Section 2(c) appears to be a post hoc, secondary justification for an executive action rooted in religious animus and intended to bar Muslims from this country. We remain unconvinced that Section 2(c) has more to do with national security than it does with effectuating the President's promised Muslim ban. We do not discount that EO-2 may have some national security purpose, nor do we disclaim that the injunction may have some impact on the Government. But our inquiry, whether for determining Section 2(c)'s primary purpose or for weighing the harm to the parties, is one of balance, and on balance, we cannot say that the Government's asserted national security interest outweighs the competing harm to Plaintiffs of the likely Establishment Clause violation.

For similar reasons, we find that the public interest counsels in favor of upholding the preliminary injunction. As this and other courts have recognized, upholding the Constitution undeniably promotes the public interest. *Giovani Carandola*, 303 F.3d at 521 ("[U]pholding constitutional rights surely serves the public interest.");

see also Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights." (quoting *Sammartano v. First Jud. Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002))); *Dayton Area Visually Impaired Pers., Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995) ("[T]he public as a whole has a significant interest in ensuring . . . protection of First Amendment liberties."). These cases recognize that when we protect the constitutional rights of the few, it inures to the benefit of all. And even more so here, where the constitutional violation injures Plaintiffs and in the process permeates and ripples across entire religious groups, communities, and society at large.

When the government chooses sides on religious issues, the "inevitable result" is "hatred, disrespect and even contempt" towards those who fall on the wrong side of the line. *Engel v. Vitale*, 370 U.S. 421, 431 (1962). Improper government involvement with religion "tends to destroy government and to degrade religion," *id.*, encourage persecution of religious minorities and nonbelievers, and foster hostility and division in our pluralistic society. The risk of these harms is particularly acute here, where from the highest elected office in the nation has come an Executive Order steeped in animus and directed at a single religious group. "The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief." *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 305 (1963)

(Goldberg, J. concurring). We therefore conclude that enjoining Section 2(c) promotes the public interest of the highest order. And because Plaintiffs have satisfied all the requirements for securing a preliminary injunction, we find that the district court did not abuse its discretion in enjoining Section 2(c) of EO-2.

V.

Lastly, having concluded that Plaintiffs are entitled to a preliminary injunction, we address the scope of that injunction. The Government first argues that the district court erred by enjoining Section 2(c) nationwide, and that any injunctive relief should be limited solely to Plaintiffs.

It is well-established that "district courts have broad discretion when fashioning injunctive relief." *Ostergren v. Cuccinelli*, 615 F.3d 263, 288 (4th Cir. 2010). Nevertheless, "their powers are not boundless." *Id.* The district court's choice of relief "should be carefully addressed to the circumstances of the case," *Va. Soc'y for Human Life, Inc. v. FEC*, 263 F.3d 379, 393 (4th Cir. 2001), *overruled on other grounds by Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544 (4th Cir. 2012), and "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs," *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). Courts may issue nationwide injunctions consistent with these principles. *See Richmond Tenants Org., Inc. v. Kemp*, 956 F.2d 1300, 1308-09 (4th Cir. 1992).

The district court here found that a number of factors weighed in favor of a nationwide injunction, and we

see no error. First, Plaintiffs are dispersed throughout the United States. *See* J.A. 263, 273; *see also Richmond Tenants Org.*, 956 F.2d at 1308-09 (upholding nationwide injunction where challenged conduct caused irreparable harm in myriad jurisdictions across the country). Second, nationwide injunctions are especially appropriate in the immigration context, as Congress has made clear that "the immigration laws of the United States should be enforced vigorously and *uniformly*." *Texas v. United States*, 809 F.3d 134, 187-88 (5th Cir. 2015), *aff'd by an equally divided court*, 136 S. Ct. 2271 (2016) (quoting Immigration Reform and Control Act of 1996, Pub. L. No. 99-603, § 115(1), 100 Stat. 3359, 3384); *see also Arizona v. United States*, 132 S. Ct. 2492, 2502 (2015) (describing the "comprehensive and unified system" of "track[ing] aliens within the Nation's borders"). And third, because Section 2(c) likely violates the Establishment Clause, enjoining it only as to Plaintiffs would not cure the constitutional deficiency, which would endure in all Section 2(c)'s applications. Its continued enforcement against similarly situated individuals would only serve to reinforce the "message" that Plaintiffs "are outsiders, not full members of the political community." *Santa Fe*, 530 U.S. at 309 (quoting *Lynch*, 465 U.S. at 688 (O'Connor, J., concurring)). For these reasons, we find that the district court did not abuse its discretion in concluding that a nationwide injunction was "necessary to provide complete relief." *Madsen*, 512 U.S. at 778.

Finally, the Government argues that the district court erred by issuing the injunction against the President himself. Appellants' Br. 55 (citing *Mississippi v.*

Johnson, 71 U.S. (4 Wall.) 475, 501 (1866) (finding that a court could not enjoin the President from carrying out an act of Congress)). We recognize that "in general, 'this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties,'" *Franklin v. Massachusetts*, 505 U.S. 788, 802-03 (1992) (opinion of O'Connor, J.) (quoting *Johnson*, 71 U.S. at 501), and that a "grant of injunctive relief against the President himself is extraordinary, and should . . . raise[] judicial eyebrows," *id.* at 802. In light of the Supreme Court's clear warning that such relief should be ordered only in the rarest of circumstances we find that the district court erred in issuing an injunction against the President himself. We therefore lift the injunction as to the President only. The court's preliminary injunction shall otherwise remain fully intact.

To be clear, our conclusion does not "in any way suggest[] that Presidential action is *unreviewable*. Review of the legality of Presidential action can ordinarily be obtained in a suit seeking to enjoin the officers who attempt to enforce the President's directive." *Franklin*, 505 U.S. at 828 (Scalia, J., concurring in part and concurring in the judgment). Even though the President is not "directly bound" by the injunction, we "assume it is substantially likely that the President . . . would abide by an authoritative interpretation" of Section 2(c) of the Second Executive Order. *Id.* at 803 (opinion of O'Connor, J.).

VI.

For all of these reasons, we affirm in part and vacate in part the preliminary injunction awarded by the district court. We also deny as moot Defendants' motion for a stay pending appeal.

AFFIRMED IN PART, VACATED IN PART

TRAXLER, Circuit Judge, concurring in the judgment:

I concur in the judgment of the majority insofar as it affirms the district court's issuance of a nationwide preliminary injunction as to Section 2(c) of the Executive Order against the officers, agents, and employees of the Executive Branch of the United States, and anyone acting under their authorization or direction, who would attempt to enforce it, because it likely violates the Establishment Clause of the United States Constitution. I also concur in the judgment of the majority to lift the injunction as to President Trump himself.

BARBARA MILANO KEENAN, Circuit Judge, with whom JUDGE THACKER joins except as to Part II.A.i., concurring in part and concurring in the judgment:

I concur in the majority opinion's analysis with respect to its conclusions: (1) that the stated "national security purpose" of the Second Executive Order [1] likely fails *Mandel*'s "bona fide" test and violates the Establishment Clause, *see Kleindienst v. Mandel*, 408 U.S. 753 (1972); and (2) that the record before us supports the award of a nationwide injunction.[2] I write separately to express my view that although the plaintiffs are unlikely to succeed on the merits of their claim under Section 1152(a)(1)(A), their request for injunctive relief under the INA nevertheless is supported by

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[1] Exec. Order No. 13,780, *Protecting the Nation from Foreign Terrorist Entry Into the United States*, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

[2] Based on my view that the Second Executive Order does not satisfy the threshold requirement of 8 U.S.C. § 1182(f) for exercise of a president's authority under that statute, I would conclude that the Second Executive Order is not "facially legitimate" within the meaning of *Mandel*, 408 U.S. at 770. Nevertheless, I join in the majority opinion's holding that the plaintiffs are likely to succeed on the merits of their Establishment Clause claim, based on my further conclusion that the Second Executive Order likely fails *Mandel*'s "bona fide" test. In reaching this conclusion, I additionally note that I do not read the majority opinion as holding that a plausible allegation of bad faith alone would justify a court's decision to look behind the government's proffered justification for its action. Rather, in accordance with Justice Kennedy's concurrence in *Din*, a plaintiff must make an affirmative showing of bad faith to satisfy the "bona fide" requirement of *Mandel*. *See Kerry v. Din*, 135 S. Ct. 2128, 2140-41 (2015) (Kennedy, J., concurring in the judgment).

the failure of Section 2(c) to satisfy the threshold requirement of Section 1182(f) for the President's lawful exercise of authority.[3]

I.

As an initial matter, I conclude that John Doe #1 has standing to raise a claim that the Second Executive Order violates the INA.[4] To establish standing under Article III, a plaintiff must show that he has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). A plaintiff seeking "to enjoin a future action must demonstrate that he is immediately in danger of sustaining some direct injury as the result" of the challenged conduct, which threat of injury is "both real and immediate." *Beck v. McDonald*, 848 F.3d 262, 277 (4th Cir. 2017) (internal quotation marks omitted) (quoting *Lebron v. Rumsfeld*, 670 F.3d 540, 560 (4th Cir. 2012)).

Prolonged separation from one's family members constitutes a cognizable injury-in-fact. *See Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State*, 45 F.3d 469, 471 (D.C. Cir. 1995), *vacated on other*

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[3] We may consider this facial deficiency not raised by the plaintiffs because this defect is apparent from the record. *See Drager v. PLIVA USA, Inc.*, 741 F.3d 470, 474 (4th Cir. 2014) (explaining that the Court may affirm on any grounds apparent from the record).

[4] Because only one plaintiff must have standing for the Court to consider a particular claim, I do not address whether the other plaintiffs also have standing to challenge the Second Executive Order under the INA. *See Bostic v. Schaefer*, 760 F.3d 352, 370-71 (4th Cir. 2014).

grounds, 519 U.S. 1 (1996) (per curiam). As the government concedes, by barring entry of nationals from the six identified countries, Section 2(c) of the Second Executive Order operates to delay, or ultimately to prevent, the issuance of visas to nationals from those countries.

Before the President issued the Second Executive Order, John Doe #1 filed a visa application on behalf of his Iranian national wife, and took substantial steps toward the completion of the visa issuance process. However, his wife's request for a visa is still pending. It is self-evident from the language and operation of the Order that the 90-day "pause" on entry, which the government may extend, is likely to delay the issuance of a visa to John Doe #1's wife and her entry into the United States, a likelihood that is not remote or speculative.[5] Accordingly, I conclude that John Doe #1 has established the existence of an injury-in-fact that is fairly traceable to the Second Executive Order, and which is likely to be redressed by a favorable decision in this case.

II.

I turn to consider whether the plaintiffs are entitled to a preliminary injunction based on the likelihood that

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[5] For the same reasons, I reject the government's contention that the plaintiffs' claims are not ripe for review. The harm to the plaintiffs caused by separation from their family members is imminent and concrete, and is not ameliorated by the hypothetical possibility that the plaintiffs might receive a discretionary waiver under Section 3(c) of the Second Executive Order at some point in the future.

the Second Executive Order violates the INA. This Court evaluates a district court's decision to grant a preliminary injunction based on an abuse-of-discretion standard. *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 366 (4th Cir. 2012). Under this standard, we review the district court's factual findings for clear error and review its legal conclusions de novo. *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011).

A preliminary injunction is an "extraordinary remedy," which may be awarded only upon a "clear showing" that a plaintiff is entitled to such relief. *The Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 345-46 (4th Cir. 2009) (citing *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008)), *vacated on other grounds*, 559 U.S. 1089 (2010). Preliminary relief affords a party before trial the type of relief ordinarily available only after trial. *Id.* at 345. A preliminary injunction must be supported by four elements: (1) a likelihood of success on the merits; (2) that the plaintiff likely will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities weighs in the plaintiff's favor; and (4) that a preliminary injunction is in the public interest. *Id.* at 346.

A.

I begin by considering whether the plaintiffs are likely to succeed on the merits of a claim that the Second Executive Order fails to comply with the requirements of the INA. In interpreting a statute, courts first must consider the plain meaning of the statutory language. *United States v. Ide*, 624 F.3d 666, 668 (4th Cir. 2010). A statute's plain meaning derives from consideration of all the words employed, rather than

from reliance on isolated statutory phrases. *Id.* (citing *United States v. Mitchell*, 518 F.3d 230, 233-34 (4th Cir. 2008)).

i.

Initially, I would reject the plaintiffs' contention that 8 U.S.C. § 1152(a)(1)(A), which prohibits discrimination on the basis of nationality in the issuance of immigrant visas, operates as a limitation on the President's authority under 8 U.S.C. § 1182(f) to "suspend the entry of all aliens or any class of aliens" if he finds that the entry of such aliens "would be detrimental to the interests of the United States." Section 1152(a)(1)(A) provides that:

> [N]o person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

Thus, the plain language of Section 1152(a)(1)(A) addresses an alien's ability to obtain an immigrant visa. Section 1182(f), on the other hand, explicitly addresses an alien's ability to *enter* the United States, and makes no reference to the issuance of visas. *See* 8 U.S.C. § 1182(f). I am unpersuaded by the plaintiffs' attempt to read into Section 1152(a)(1)(A) terms that do not appear in the statute's plain language.

Sections 1152(a)(1)(A) and 1182(f) address two distinct actions in the context of immigration, namely, the issuance of a visa and the denial of an alien's ability to enter the United States. Indeed, the fact that an alien possesses a visa does not guarantee that person's ability to enter the United States. For example, an alien

who possesses a visa may nonetheless be denied admission into the United States for a variety of reasons set forth elsewhere in the INA. *See* 8 U.S.C. § 1201(h) ("Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted [sic] the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this chapter, or any other provision of law."). For these reasons, I would reject the plaintiffs' assertion that Section 1152(a)(1)(A) provides a basis for affirming the preliminary injunction issued by the district court.

ii.

Nevertheless, I would conclude that the plaintiffs' request for injunctive relief is supported by the President's failure to comply with Section 1182(f). In issuing his proclamation under Section 2(c), the President relied exclusively on two provisions of the INA. The President stated in material part:

> 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.

82 Fed. Reg. at 13,213.

Section 1185(a), however, does not confer any authority on a president. Instead, that statute imposes certain requirements on persons traveling to and from the United States, and renders unlawful their failure to comply with the requirements of the statute.

In contrast, Section 1182(f) addresses a president's authority to impose restrictions on the entry of aliens into the United States. Section 1182(f) states, in relevant part: "Whenever the [p]resident 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," the president may "suspend the entry [into the United States] of all aliens or any class of aliens." Although this language provides broad discretion to a president to suspend the entry of certain aliens and classes of aliens, that discretion is not unlimited.

The plain language of Section 1182(f) permits a president to act only if he "finds" that entry of the aliens in question "*would be* detrimental to the interests of the United States" (emphasis added). In my view, an unsupported conclusion will not satisfy this "finding" requirement. Otherwise, a president could act in total disregard of other material provisions of the INA, thereby effectively nullifying that complex body of law enacted by Congress.

Here, the President's "finding" in Section 2(c) is, in essence, a non sequitur because the "finding" does not follow from the four corners of the Order's text. In particular, the text fails to articulate a basis for the President's conclusion that entry by any of the approx-

imately 180 million[6] individuals subject to the ban "would be detrimental to the interests of the United States."

I reach this conclusion by examining the Order's relevant text. In Section 1(a) of the Order, the President declares that the policy of the United States is "to protect its citizens from terrorist attacks, including those committed by foreign nationals," and "to improve the screening and vetting protocols and procedures" involved in issuing visas and in the administration of the United States Refugee Admissions Program. 82 Fed. Reg. at 13,209. The Order explains that such screening and vetting procedures are instrumental "in detecting foreign nationals who may commit, aid, or support acts of terrorism and in preventing those individuals from entering the United States." *Id.*

The Order further states that the governments of Iran, Libya, Somalia, Sudan, Syria, and Yemen are unlikely to be willing or able "to share or validate important information about individuals seeking to travel to the United States," because these countries: (1) have porous borders facilitating "the illicit flow of

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[6] *See* Cent. Intelligence Agency, *The World Factbook*, *Country Comparison: Population*, https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html (last visited May 19, 2017) (saved as ECF opinion attachment) (listing populations of the six identified countries, in the total amount of more than 180 million). Notably, the class of banned "nationals" potentially includes citizens of one of the six identified countries whether or not those citizens have ever been physically present in one of these countries. *See* Cent. Intelligence Agency, *The World Factbook*, *Field Listing: Citizenship*, https://www.cia.gov/library/publications/the-world-factbook/fields/2263.html (last visited May 19, 2017) (saved as ECF opinion attachment).

weapons, migrants, and foreign terrorist fighters"; (2) have been compromised by terrorist organizations; (3) contain "active conflict zones"; or (4) are state sponsors of terrorism. *Id.* at 13,210-11. In light of these conditions, the Second Executive Order proclaims that "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." *Id.* at 13,211.

Significantly, however, the Second Executive Order does not state that any *nationals* of the six identified countries, *by virtue of their nationality*, intend to commit terrorist acts in the United States or otherwise pose a detriment to the interests of the United States. Nor does the Order articulate a relationship between the unstable conditions in these countries and any supposed propensity of the nationals of those countries to commit terrorist acts or otherwise to endanger the national security of the United States. For example, although the Order states that several of the six countries permit foreigners to establish terrorist safe havens within the countries' borders, the Order does not assert that any *nationals* of the six countries are likely to have joined terrorist organizations operating within those countries, or that members of terrorist organizations are likely to pose as *nationals* of these six countries in order to enter the United States to "commit, aid, or support acts of terrorism." *See id.* at 13,210-12 (noting, among other things, that the Syrian government "has allowed or encouraged extremists to pass through its territory to enter Iraq," and that "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 text of the Second Executive Order therefore does not identify a basis for concluding that entry of any member of the particular class of aliens, namely, the more than 180 million nationals of the six identified countries, would be detrimental to the interests of the United States. In the absence of any such rationale articulating the risks posed by this class of foreign nationals, the President's proclamation under Section 2(c) does not comply with the "finding" requirement of the very statute he primarily invokes to issue the ban imposed by Section 2(c).

The government asserted at oral argument in this case that the Second Executive Order nevertheless can stand on the rationale that the President is "not sure" whether any of the 180 million nationals from the six identified countries present a risk to the United States. Oral Arg. 38:04-40:11. I disagree that this rationale is sufficient to comply with the specific terms of Section 1182(f). Although this statute does not require the President to find that the entry of any alien or class of aliens would present a danger to the United States, the statutory text plainly requires more than vague uncertainty regarding whether their entry might be detrimental to our nation's interests. Indeed, given the scope of Section 2(c), the President was required under Section 1182(f) to find that entry of any members of the identified class *would be* detrimental to the interests of the United States.

Instead of articulating a basis why entry of these foreign nationals "would be detrimental" to our national interests, the Order merely proposes a process under which the executive branch will study the question. *See* 82 Fed. Reg. at 13,212-13. This "study" proposal is an implicit acknowledgement that, presently, there is no affirmative basis for concluding that entry of nationals from these six countries "*would be* detrimental to the interests of the United States." 8 U.S.C. § 1182(f) (emphasis added).

The government likewise fails in its attempt to justify the Second Executive Order by relying on the prior exclusion of individuals from the Visa Waiver Program who had certain connections to the six countries identified in the Order. *See* 82 Fed. Reg. at 13,209. Generally, the Visa Waiver Program allows nationals of specific countries to travel to the United States without a visa for purposes of tourism or business for up to 90 days. *See generally* 8 U.S.C. § 1187. Based on modifications to the Program made by Congress in 2015 and by the Secretary of Homeland Security in 2016, people with certain connections to the six named countries no longer were permitted to participate in the Program.[7] As a result, those newly ineligible aliens became subject to the *standard* procedures

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[7] *See* Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, Pub. L. No. 114-113, § 203, 129 Stat. 2242, 2989-91; Department of Homeland Security, U.S. Customs and Border Protection-009 Electronic System for Travel Authorization System of Records, 81 Fed. Reg. 39,680, 39,682 (June 17, 2016).

required for the issuance of visas.[8] Thus, exclusion from the Visa Waiver Program merely reimposed for such aliens the customary requirements for obtaining a visa, and did not impose any additional conditions reflecting a concern that their entry "would be detrimental to the interests of the United States." Further, the above-described limitations of the Visa Waiver Program underscore the fact that, currently, the relevant class of aliens does not enjoy "*unrestricted* entry" into the United States as incorrectly stated in Section 2(c) of the Second Executive Order. *See* 82 Fed. Reg. at 13,213 (emphasis added).

Accordingly, I would hold that the text of Section 2(c) fails to meet the statutory precondition for the lawful exercise of a president's authority under Section 1182(f). I thus conclude that the plaintiffs likely would succeed on the merits of this particular statutory issue. *See Winter*, 555 U.S. at 20.

B.

I also would conclude with respect to Section 1182(f) that the plaintiffs would satisfy the remaining *Winter* factors, because they are "likely to suffer irreparable harm in the absence of preliminary relief," the balance of the equities would resolve in their favor, and an injunction would be in the public interest. *Id.* First, at

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[8] *See* U.S. Customs & Border Prot., *Visa Waiver Program Improvement and Terrorist Travel Prevention Act Frequently Asked Questions*, https://www.cbp.gov/travel/international-visitors/visa-waiver-program/visa-waiver-program-improvement-and-terrorist-travel-prevention-act-faq (last visited May 19, 2017) (saved as ECF opinion attachment).

a minimum, plaintiff John Doe #1 has shown that absent an injunction, he likely will be subject to imminent and irreparable harm based on the prolonged separation from his wife that will result from enforcement of the Second Executive Order. *See Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en banc). And, based on my conclusion that Section 2(c) is invalid on its face, I would hold that an injunction should be issued on a nationwide basis.

Next, the balance of harms weighs in favor of granting a preliminary injunction. *See Winter*, 555 U.S. at 24. The government's interest in enforcing laws related to national security as a general matter would be a strong factor in its favor. *See Haig v. Agee*, 453 U.S. 280, 307 (1981). However, because the Second Executive Order does not comply with the threshold requirement for a president's lawful exercise of authority under Section 1182(f), the government's interest cannot outweigh the real harms to the affected parties. *See Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) (reviewing the First Executive Order, dismissing the government's claim of irreparable injury, and noting that "the Government has done little more than reiterate" its general interest in combating terrorism).

Finally, the public interest also strongly favors a preliminary injunction, because the public has an interest "in free flow of travel" and "in avoiding separation of families." *Id.* at 1169. And, most importantly, the public interest is served by ensuring that any actions taken by the President under Section 1182(f) are lawful and do not violate the only restraint on his authority contained in that statute.

III.

Accordingly, in addition to affirming the district court's judgment with respect to the plaintiffs' Establishment Clause claim and the issuance of a nationwide injunction, I would affirm the court's judgment and award of injunctive relief on the separate basis that the Second Executive Order is invalid on its face because it fails to comply with the "finding" requirement of Section 1182(f).

WYNN, Circuit Judge, concurring:

Invidious discrimination that is shrouded in layers of legality is no less an insult to our Constitution than naked invidious discrimination. We have matured from the lessons learned by past experiences documented, for example, in *Dred Scott* and *Korematsu*. But we again encounter the affront of invidious discrimination—this time layered under the guise of a President's claim of unfettered congressionally delegated authority to control immigration and his proclamation that national security requires his exercise of that authority to deny entry to a class of aliens defined solely by their nation of origin. Laid bare, this Executive Order is no more than what the President promised before and after his election: naked invidious discrimination against Muslims. Such discrimination contravenes the authority Congress delegated to the President in the Immigration and Nationality Act (the "Immigration Act"), 8 U.S.C. § 1101 *et seq.*, and it is unconstitutional under the Establishment Clause.

To that end, I concur fully in the majority opinion, including its analysis and conclusion that Section 2(c) of the Executive Order, which suspends entry of nationals from six predominantly Muslim countries, likely violates the Establishment Clause. In particular, I agree that even when the President invokes national security as a justification for a policy that encroaches on fundamental rights, our courts must not turn a blind eye to statements by the President and his advisors bearing on the policy's purpose and constitutionality. Those statements characterized Section 2(c) as the realization of the President's repeated promise, made before and

after he took office, to ban Muslims.[1] And I agree that "the Government's asserted national security interest in enforcing Section 2(c) appears to be a post hoc, secondary justification for an executive action rooted in religious animus and intended to bar Muslims from this country."[2] *Ante* at 75.

I write separately because I believe Plaintiffs' claim that Section 2(c) exceeds the President's authority under the Immigration Act also is likely to succeed on the merits. That statute authorizes the President to suspend the "entry of any aliens or of any class

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[1] The answer to the rhetorical question of whether the President will be able to "free himself from the stigma" of his own self-inflicted statements, *post* at 189, lies in determining whether the Executive Order complies with the rule of law. That requires us to consider, in each instance, how the character, temporality, and nature of the President's repeated, public embrace of an invidiously discriminatory policy offensive to the Constitution bear on a challenged policy.

[2] It strains credulity to state that "the security of our nation is indisputably *lessened* as a result of the injunction." *Post* at 188 (emphasis added). Rather, the district court's order only enjoined implementation of Section 2(c) of the Executive Order—a provision that the President maintained would *increase* national security. Indeed, two reports released by the Department of Homeland Security in February 2017 and March 2017 found that citizenship is an "unlikely indicator" of whether an individual poses a terrorist threat to the United States and that most of the individuals who have become U.S.-based violent extremists have been radicalized after living in the United States for a period of years. J.A. 233. The Government has not provided any information suggesting, much less establishing, that the security risks facing our country are any different today than they were when the President first sought to impose this temporary ban only seven days into his presidency.

of aliens" that he finds "would be detrimental to the interests of the United States." 8 U.S.C. § 1182(f). Because the Executive Order here relies on national origin as a proxy for discrimination based on religious animus, the Government's argument that Section 2(c)'s suspension on entry "falls squarely within the President's broad authority" under Section 1182(f) essentially contends that Congress delegated to the President virtually unfettered discretion to deny entry to any class of aliens, including to deny entry solely on the basis of nationality and religion. Appellants' Br. at 28. Not so.

To the contrary, the Immigration Act provides no indication that Congress intended the "broad generalized" delegation of authority in Section 1182(f) to allow the President "to trench . . . heavily on [fundamental] rights."[3] And even if the plain language of Section 1182(f) suggested Congress had given the President such unfettered discretion to invidiously discriminate based on nationality and religion—which it does not—a statute delegating to the President the authority to engage in such invidious discrimination would raise grave constitutional concerns. Indeed, imposing burdens on individuals solely on the basis of their race, national origin, or religion—"a classification of persons undertaken for its own sake . . . inexplicable by anything but animus towards the class it affects"[4]—is "odious to a free people whose institutions are founded

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[3] *Kent v. Dulles*, 357 U.S. 116, 129-30 (1958).

[4] *Romer v. Evans*, 517 U.S. 620, 636, 632 (1996).

upon the doctrine of equality."[5] That is why—even when faced with a congressional delegation of seemingly unbridled power to the President or his appointees —the Supreme Court repeatedly "ha[s] read significant limitations into . . . immigration statutes in order to avoid their constitutional invalidation" when the delegation provides no explicit statement that Congress intended for the executive to use the delegated authority in a manner in conflict with constitutional protections.[6]

Accordingly, I conclude that Section 2(c)'s suspension on entry likely exceeds the President's authority under the Immigration Act to deny entry to classes of aliens.

I.

The majority opinion does not reach the merits of Plaintiffs' claim that Section 2(c)'s suspension on entry violates the Immigration Act, and Section 1182(f), in particular. *Ante* at 28-31. The district court, however, concluded that the Executive Order likely violates the Immigration Act insofar as Section 2(c) effectively prohibits the issuance of immigrant visas to aliens from the six countries based on their nationalities. *Int'l Refugee Assistance Project v. Trump*, -- F. Supp. 3d --, 2017 WL 1018235, at *10 (D. Md. Mar. 16, 2017). And the Government has argued, both on appeal and before the district court, that the suspension on entry falls within the President's delegated power under

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[5] *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943).

[6] *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

Section 1182(f). Appellants' Br. at 28-30. Accordingly, the question of whether Section 2(c) complies with Section 1182(f) is squarely before this Court.[7]

Section 1182(f) provides, in relevant part, that "[w]henever 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,

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[7] The Government also asserts that Section 2(c)'s suspension on entry is authorized by Section 1185(a) of the Immigration Act, which "authorizes the President to prescribe 'reasonable rules, regulations, and orders,' as well as 'limitations and exceptions,' governing the entry of aliens." Appellants' Brief at 29 (quoting 8 U.S.C. § 1185(a)). The Government does not argue that Sections 1182(f) and 1185(a) confer meaningfully different powers on the President. Because Section 1182(f) is specifically tailored to the suspension on entry, and because there is no reason to believe that the analysis would be different under Section 1185(a), my analysis will proceed under Section 1182(f).

Additionally, because the Executive Order cites the Immigration Act as the sole statutory basis for the President's authority to proclaim Section 2(c)'s suspension on entry, I need not, and thus do not, take any position on the scope of the President's delegated power to deny entry to classes of aliens under other statutes. Likewise, because the claim at issue relates only to Section 2(c)'s compliance with the Immigration Act, I do not address whether, and in what circumstances, the President may deny entry to classes of aliens under his inherent powers as commander-in-chief, even absent express congressional authorization. *See The Prize Cases*, 67 U.S. 635 (1862).

Finally, I agree with Judge Keenan's analysis and conclusion that, at a minimum, John Doe #1 has standing to pursue Plaintiffs' Immigration Act claim. *Ante* at 82-83.

or impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. § 1182(f). Like the district court, the majority opinion finds, and I agree, that Plaintiffs are likely to establish—based on statements by the President and his advisors—that in promulgating Section 2(c), the President relied on one suspect classification (national origin) as a proxy to purposely discriminate against members of another suspect class (adherents to a particular religion) solely on the basis of their membership in that class. *Ante* at 58. Thus, in considering Plaintiffs' statutory claim, we confront the following question: Did Congress, in enacting Section 1182(f), authorize the President to deny entry to a class of aliens on the basis of invidious discrimination?

A.

Two related canons of statutory construction bear directly on this question. First, under the "constitutional avoidance canon," "when an Act of Congress raises 'a serious doubt' as to its constitutionality, '[courts must] first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.'" *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)). "[I]f an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is 'fairly possible' [courts] are obligated to construe the statute to avoid such problems." *I.N.S. v. St. Cyr*, 533 U.S. 289, 299-300 (2001) (citation omitted) (quoting *Crowell*, 285 U.S. at 62). This canon "rest[s] on the reasonable presumption that Congress did not intend

[an interpretation] which raises serious constitutional doubts." *Clark v. Martinez*, 543 U.S. 371, 381 (2005). Put differently, "[t]he courts will . . . not lightly assume that Congress intended to infringe constitutionally protected liberties or usurp power constitutionally forbidden it." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988).

The Supreme Court has applied the constitutional avoidance canon on several occasions to narrow facially broad statutes relating to immigration and national security. For example, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court assessed whether Section 1231(a)(6) of the Immigration Act—which provides that certain categories of aliens who have been ordered removed "may be detained beyond the removal period" —authorized the detention of such categories of aliens indefinitely. 533 U.S. at 689. Notwithstanding that Section 1231(a)(6) placed no express limitation on the duration of such detentions, the Supreme Court "read an implicit limitation into the statute . . . limit[ing] an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." *Id.* Explaining that "permitting indefinite detention of an alien would raise a serious constitutional problem" and noting the absence of "any clear indication of congressional intent to grant the Attorney General the power to hold indefinitely in confinement an alien ordered removed," the Supreme Court concluded that the constitutional avoidance canon required adoption of the "implicit limitation." *Id.* at 690, 697.

The Supreme Court also relied on the constitutional avoidance canon in *I.N.S. v. St. Cyr*, 533 U.S. 289 (2001). In that case, the Supreme Court rejected the Government's arguments that two statutes amending the Immigration Act (1) deprived the judiciary of jurisdiction to review habeas petitions filed by certain aliens subject to removal orders and (2) retroactively deprived certain aliens who had pled guilty to criminal offenses —which convictions rendered such aliens removable— the opportunity to pursue a discretionary waiver of removal, notwithstanding that such aliens had been entitled to pursue such a waiver at the time of their plea. *Id.* at 292-93, 297. In reaching these conclusions, the Supreme Court acknowledged that Congress, at least in certain circumstances, has the constitutional authority to repeal habeas jurisdiction and to make legislation retroactive. *Id.* at 298-99, 315-16. Nonetheless, because (1) the Government's proposed constructions would require the Supreme Court to hold that Congress intended to exercise "the outer limits of [its] power" under the Constitution and (2) the legislation included no "clear, unambiguous, and express statement of congressional intent" indicating that Congress intended to exercise the "outer limits" of its power, the Supreme Court rejected the Government's positions. *Id.* at 299, 313-26.

The second applicable canon of construction—which is a corollary to the constitutional avoidance canon— requires an even clearer indication of congressional intent regarding the infringement on constitutional rights due to the absence of direct action by Congress. That canon forbids courts from construing a "broad

generalized" delegation of authority by Congress to the executive as allowing the executive to exercise that delegated authority in a matter that "trench[es]" upon fundamental rights, *Kent v. Dulles*, 357 U.S. 116, 129 (1958), absent an "explicit" statutory statement providing the executive with such authority, *Greene v. McElroy*, 360 U.S. 474, 507 (1959). Under this canon, which I will refer to as the "delegation of authority canon," courts must "construe narrowly all delegated powers that curtail or dilute" fundamental rights. *Kent*, 357 U.S. at 129; *see also United States v. Robel*, 389 U.S. 258, 275 (1967) (Brennan, J., concurring) ("The area of permissible indefiniteness [in a delegation] narrows, however, when the regulation . . . potentially affects fundamental rights. . . . This is because the numerous deficiencies connected with vague legislative directives . . . are far more serious when liberty and the exercise of fundamental rights are at stake."). The Supreme Court requires that delegations that potentially authorize the executive to encroach on fundamental rights "be made explicitly not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized, but also because explicit action, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting *and* implementing our laws." *Greene*, 360 U.S. at 507 (emphasis added) (citation omitted).

As with the constitutional avoidance canon, the Supreme Court has applied the delegation of authority canon to statutes involving immigration and national security. For example, in *United States v. Witkovich*,

353 U.S. 194 (1957), the Supreme Court interpreted Section 242(d)(3) of the Immigration and Nationality Act of 1952, which provided that the Attorney General could require any alien subject to a final order of deportation that had been outstanding for more than six months "to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper." 353 U.S. at 195 (quoting 8 U.S.C. § 1252(d)(3) (1952)). The Government asserted that the plain language of the provision afforded the Attorney General near unfettered discretion to demand information from such aliens. *Id.* at 198. Although the Supreme Court acknowledged that "[t]he language of [Section] 242(d)(3), if read in isolation and literally, appears to confer upon the Attorney General unbounded authority to require whatever information he deems desirable of [such] aliens," the Supreme Court limited the Attorney General's authority under Section 242(d)(3) to "questions reasonably calculated to keep the Attorney General advised regarding the continued availability for departure of aliens whose deportation is overdue." *Id.* at 199, 202. In rendering this narrowing construction, the Supreme Court emphasized, first, that the broad reading proposed by the Government would call into question the statute's constitutional validity and, second, that the context and legislative history did not provide unambiguous evidence that Congress intended to give the Attorney General the unbridled authority the Government claimed. *Id.* at 199-200.

The Supreme Court also applied the delegation of authority canon in *Kent v. Dulles*, 357 U.S. 116 (1958). There, the Supreme Court was asked to construe a statute providing that "[t]he Secretary of State may grant and issue passports . . . under such rules as the President shall designate and prescribe for and on behalf of the United States." 357 U.S. at 123 (internal quotation marks omitted) (quoting 22 U.S.C. § 211a (1952)). Pursuant to that authority, the executive branch promulgated a regulation authorizing the Secretary of State to demand an affidavit from any passport applicant averring whether the applicant had ever been a Communist and barring issuance of passports to Communists. *Id.* at 118 & n.2. Under that regulation, the Department of State denied a passport to an applicant on grounds he refused to submit such an affidavit. *Id.* at 118-19. Thereafter, the applicant sought a declaratory judgment that the regulation was unconstitutional. *Id.* at 119. Despite the breadth of the plain language of the delegating statute, the Supreme Court "hesitate[d] to impute to Congress . . . a purpose to give [the Secretary of State] unbridled discretion to grant or withhold a passport from a citizen for any substantive reason he may choose." *Id.* at 128. Emphasizing (1) that the authority to deny a passport necessarily involved the power to infringe on the fundamental right to travel and (2) that the statutory delegation provision's "broad generalized" terms were devoid of any "explicit" indication Congress had intended to "give[] the Secretary authority to withhold passports to citizens because of their beliefs or associations," the Supreme Court refused "to find in this

broad generalized power an authority to trench so heavily on the rights of the citizen." *Id.* at 129-30.

Taken together, the two canons reflect the basic principle that "when a particular interpretation of a statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result." *St. Cyr*, 533 U.S. at 299; *see also United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 548 (1950) (Frankfurter, J., dissenting) (explaining that legislation potentially encroaching on fundamental rights "should not be read in such a decimating spirit unless the letter of Congress is inexorable"). Although closely related, the two canons are analytically distinct. In particular, the constitutional avoidance canon involves *direct actions* by Congress that potentially encroach upon fundamental rights. By contrast, the delegation of authority canon governs *delegations* by Congress that potentially allow a delegatee to exercise congressional power to encroach on fundamental rights. Because Congress does not itself decide when or how its delegated authority will be exercised, any encroachment on individual rights by Congress's delegatee must be supported by an "explicit" statement that Congress intended to permit such encroachment, *Greene*, 360 U.S. at 507—a more stringent requirement than the "clear indication" necessary when Congress acts directly, *Zadvydas*, 533 U.S. 696-97.

B.

The constitutional avoidance canon and the delegation of authority canon bear directly on the scope of authority conferred on the President by Congress under Section 1182(f) because, if construed broadly, Section 1182(f)

could authorize the President to infringe on fundamental constitutional rights. In particular, the Supreme Court has "consistently repudiated '(d)istinctions between citizens solely because of their ancestry' [or race] as being 'odious to a free people whose institutions are founded upon the doctrine of equality.'" *Loving v. Virginia*, 388 U.S. 1, 11 (1967) (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)). "[T]he imposition of special disabilities" upon a group of individuals based on "immutable characteristic[s] determined solely by the accident of birth," like race and national origin, runs contrary to fundamental constitutional values enshrined in the Fifth and Fourteenth Amendments because it "violate[s] 'the basic concept of our system that legal burdens should bear some relationship to individual responsibility.'" *See Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality opinion) (quoting *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972)). Accordingly, the Constitution forbids "[p]referring members of any one group for no reason other than race or ethnic origin." *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (1978) (Powell, J., concurring in judgment). Or, more simply, the Constitution prohibits "discrimination for its own sake." *Id.*

Although religion, unlike race and national origin, is not an immutable characteristic, the Constitution treats classifications drawn on religious grounds as equally offensive. The First Amendment "mandates governmental neutrality between religion and religion, and between religion and nonreligion." *McCreary County v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S.

97, 104 (1968)). To that end, the Constitution forbids both discriminating against "those who embrace[] one religious faith rather than another" and "preferring some religions over others—an invidious discrimination that would run afoul of the [Constitution]." *United States v. Seeger*, 380 U.S. 163, 188 (1965) (Douglas, J., concurring).

If, as the Government's argument implies, Congress delegated to the President the authority to deny entry to an alien or group of aliens based on invidious discrimination against a race, nationality, or religion, then Section 1182(f) would encroach on the core constitutional values set forth in the First, Fifth, and Fourteenth Amendments: The President could deny entry to aliens of a particular race solely based on the color of their skin. The President could deny entry to citizens of a particular nation solely on the basis of their place of birth. The President could deny entry to adherents of a particular religion solely because of their subscription to that faith. Or, as this Court concludes the President likely did here, the President could rely on one form of invidious discrimination—discrimination based on national origin—to serve as pretext for implementing another form of invidious discrimination—discrimination based on religion.

The President justified his use of this layered invidious discrimination on grounds that citizens of the six predominantly Muslim countries subject to the suspension on entry pose a special risk to United States security. Revised Order § 1(e). In particular, the Executive Order generally points to "the significant presence in each of these countries of terrorist organi-

zations, their members, and others exposed to those organizations." *Id.* § 1(d). The order also cites, as the sole example of an act of terrorism by a native of one of the six countries, a native of Somalia who was brought to the United States as a refugee at the age of two and was convicted, as an adult, of "attempting to use a weapon of mass destruction as part of a plot to detonate a bomb at a crowded Christmas-tree-lighting ceremony in Portland, Oregon." *Id.* § 1(h).

Accordingly, the President relies on the acts of *specific* individuals and groups of individuals (*i.e.*, "terrorist organizations" and "their members") within the six countries to establish that *all* citizens of those countries pose a danger to the United States. Dissenting from the Supreme Court's sanctioning of the forced internment of Japanese Americans during World War II, Justice Murphy explained the danger such rationales pose to the core constitutional value of equality:

> [T]o infer that examples of individual [misconduct] prove group [misconduct] and justify discriminatory action against the entire group is to deny that under our system of law individual guilt is the sole basis for deprivation of rights. Moreover, this inference . . . has been used in support of the abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy. To give constitutional sanction to that inference . . . is to adopt one of the cruelest of the rationales used by our enemies to destroy the dignity of the individual and to encourage and open the door to discriminatory actions against other minority groups in the passions of tomorrow.

Korematsu v. United States, 323 U.S. 214, 240 (1944) (Murphy, J., dissenting).

To be sure, the Supreme Court has recognized that, particularly in times of war,[8] Congress has broad authority to control immigration, including the power to authorize the President to establish policies restricting the entry of aliens. *See Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (stating that "the power to admit or exclude aliens is a sovereign prerogative" entrusted almost exclusively to Congress). And "in the exercise of its broad power over immigration and naturalization, 'Congress regularly makes rules that would be unac-

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[8] Congress's constitutional power to control immigration—and authority to delegate that control—fundamentally differs in a time of war. *Korematsu v. United States*, 323 U.S. 214, 224 (1944) (Frankfurter, J., concurring) ("[T]he validity of action under the war power must be judged wholly in the context of war. That action is not to be stigmatized as lawless because like action in times of peace would be lawless."). The Supreme Court's broadest statements regarding the scope of the President's delegated powers over immigration—which are relied upon by the Government—are in cases in which Congress expressly declared war and authorized the President to deny entry to aliens as part of his prosecution of the conflict. *See, e.g.*, *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 & n.7 (1953) ("Congress expressly authorized the President to impose additional restrictions on aliens entering or leaving the United States during periods of international tension and strife [including] *the present emergency* [the Korean War]." (emphasis added)); *Knauff*, 338 U.S. at 543 ("[B]ecause the power of exclusion of aliens is also inherent in the executive department of the sovereign, Congress may in broad terms authorize the executive to exercise the power, e.g., as was done here, for the best interests of the country *during a time of national emergency* [World War II]." (emphasis added)).

ceptable if applied to citizens.'" *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (quoting *Mathews v. Diaz*, 426 U.S. 67, 80 (1976)).

But the Supreme Court also has long, and repeatedly, held that Congress's power to create immigration laws remains "subject to important constitutional limitations." *Zadvydas*, 533 U.S. at 695; *see also, e.g.*, *I.N.S. v. Chadha*, 462 U.S. 919, 940-41 (1983) ("The plenary authority of Congress over aliens under Art. I, § 8, cl. 4 is not open to question, but what is challenged here is whether Congress has chosen a constitutionally permissible means of implementing that power."); *Chae Chan Ping v. United States*, 130 U.S. 581, 604 (1889) (holding that Congress's constitutionally devised powers to control immigration, among other powers, are "restricted in their exercise only by the constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations"). That is particularly true when the discriminatory burdens of an immigration policy fall not just on aliens who have no claim to constitutional rights, but also on citizens and other individuals entitled to constitutional protections. *Cf. Zadvydas*, 533 U.S. at 693-94 (surveying the Supreme Court's immigration jurisprudence and finding that whether a plaintiff alien could lay claim to constitutional protections "made all the difference").

Here, aliens who are denied entry by virtue of the President's exercise of his authority under Section 1182(f) can claim few, if any, rights under the Constitution. But when the President exercises that authority based solely on animus against a particular race,

nationality, or religion, there is a grave risk—indeed, likelihood—that the constitutional harm will redound to *citizens*. For example, we hold today that the denial of entry to a class of aliens solely based on their adherence to a particular religion likely violates the Establishment Clause by sending "a state-sanctioned message that foreign-born Muslims . . . are 'outsiders, not full members of the political community.'" *Ante* at 38 (quoting *Moss v. Spartanburg Cty. Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. 2012)). Likewise, were the President to deny entry to a class of aliens solely based on their race, *citizens* of that race would be subjected to a constitutionally cognizable "feeling of inferiority as to their status in the community." *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 494 (1954). And denying entry to classes of aliens based on invidious discrimination has the potential to burden the fundamental right of *citizens* to marry the partner of their choice based on nothing more than the partner's race, nationality, or religion.[9] *Loving*, 388 U.S. at 12 ("There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause."). Put simply, when the Government engages in invidious discrimination—be it against aliens

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[9] *See Kerry v. Din*, 135 S. Ct. 2128, 2142 (2015) (Breyer, J., dissenting) (stating that a United States citizen and resident has a procedural due process interest in knowing the Government's grounds for denying a visa application by her husband, an Afghan citizen with no claim to rights under the Constitution); *id.* at 2139 (Kennedy, J., concurring in judgment) (recognizing that a United States citizen may have "a protected liberty interest in the visa application of her alien spouse").

or citizens—individuals whose rights the Constitution protects face substantial harm.

Because construing Section 1182(f) as authorizing the President to engage in invidious discrimination is plainly inconsistent with basic constitutional values and because the violation of those values implicates the rights of citizens and lawful permanent residents, not just aliens, the Government's proposed construction "raise[s] serious constitutional problems." *St. Cyr*, 533 U.S. at 299-300.

C.

Having concluded that the Government's broad reading of Section 1182(f) raises serious constitutional concerns, we must reject that construction absent a "clear indication of congressional intent" to allow the President to deny the entry of classes of aliens on invidiously discriminatory bases. *Zadvydas*, 533 U.S. at 696-97. And because Section1182(f) involves a delegation of congressional authority, not a direct action by Congress, the indication of congressional intent to authorize the President, as delegatee, to encroach on fundamental rights must be "explicit." *Greene*, 360 U.S. at 507.

To ascertain congressional intent, we look to the "plain meaning" of Section 1182(f). *Ross v. R.A. North Dev., Inc. (In re Total Realty Mgmt.)*, 706 F.3d 245, 251 (4th Cir. 2013). "To determine a statute's plain meaning, we not only look to the language itself but also the specific context in which that language is used, and the broader context of the statute as a whole." *Id.* (internal quotation marks omitted); *see also U.S. Nat'l*

Bank of Or. v. Indep. Ins. Agents of Am., Inc., 508 U.S. 439, 455 (1993) (holding that in ascertaining congressional intent, courts "must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy" (internal quotation marks omitted)). Here, neither the language of Section 1182(f), nor the context in which the language is used, nor the "object and policy" underlying the Immigration Act "explicitly" state, much less "clear[ly] indicat[e]," that Congress intended to authorize the President to deny entry to aliens based on invidious discrimination.

1.

Beginning with the plain language, Section 1182(f) permits the President to suspend the entry of "any aliens or of any class of aliens" *only* when he "finds that the entry of [such aliens] would be detrimental to the interests of the United States." Accordingly, the plain language of Section 1182(f) does not explicitly authorize the President to deny entry to a class of aliens solely defined by religion or by race, national origin, or other immutable characteristic.

Nonetheless, in arguing that Section 1182(f) authorizes the Executive Order's suspension on entry, the Government focuses on that statute's use of the (concededly broad) term "any class of aliens." Appellants' Br. at 28-29. But the Government's argument omits the crucial limitation Congress imposed by requiring that the President may bar entry *only* upon a finding that entry of a class of aliens "would be detrimental to the interests of the United States." 8 U.S.C. § 1182(f). That restriction requires a substantive connection between

an alien's membership in a particular class and the likelihood that her entry would be detrimental to the interests of the United States.

Detrimental is defined as "harmful" or "damaging." Webster's Third New International Dictionary (2002). Accordingly, Section 1182(f) authorizes the President to deny entry to an alien if the President has reason to believe that, by virtue of the alien being a member of a particular class, her entry is more likely to damage or harm the interests of the United States. But the Constitution forbids imposing legal burdens on a class of individuals solely based on race or national origin precisely because those immutable characteristics bear no "relationship to individual responsibility." *Weber*, 406 U.S. at 175. Because an alien's race or national origin bears no "relationship to individual responsibility," those characteristics, by themselves, cannot render it more likely that the alien's entry will damage or harm the interests of the United States. *Cf. Romer*, 517 U.S. at 632, 636 (holding that "a classification of persons undertaken for its own sake" is "inexplicable by anything but animus towards the class it affects[, has no] relationship to legitimate state interests," and therefore violates the Fourteenth Amendment). Likewise, the Constitution's prohibition on discriminating against "those who embrace[] one religious faith rather than another," *Seeger*, 380 U.S. at 188 (Douglas, J., concurring), means that an alien's adherence to a particular religion alone also provides no constitutionally cognizable basis for concluding that her entry is disproportionately likely to harm or damage the interests of the United States.

Because race, national origin, and religion bear no factual or constitutionally cognizable relationship to individual responsibility, courts have long interpreted delegation provisions in the Immigration Act as barring executive officials from engaging in invidious discrimination. For example, in *United States ex rel. Kaloudis v. Shaughnessy*, 180 F.2d 489 (2d Cir. 1950) (Hand, J.), the Second Circuit recognized "implied limitations" on Congress's facially broad delegation of authority to the Attorney General to suspend the deportation of any alien unlawfully present in the country. 180 F.2d at 490. Writing for the court, Judge Hand suggested that denying suspension of deportation based on "irrelevant" reasons having no bearing on whether the "alien's continued residence [was] prejudicial to the public weal"—such as "becom[ing] too addicted to attending baseball games, or ha[ving] bad table manners"—would exceed the Attorney General's congressionally delegated authority. *Id.* Factors like these, Judge Hand explained, are "considerations that Congress *could not have intended to make relevant*" to a determination of whether an alien could permissibly remain in the United States.[10] *Id.* at 491 (emphasis added). Under the dictates of equality established by the Constitution, an alien's race, nationality, or religion is as irrelevant to the potential for his entry to harm

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[10] Notably, *Kaloudis* found a basis for this clear outer limit on congressional delegations of discretionary authority to the executive branch in the Immigration Act well before Congress made explicit, in comprehensively amending the Immigration Act, that discrimination on the basis of race, sex, ethnicity, and nationality has no place in controlling immigration. *See infra* Part I.C.3.

the interests of the United States as is the alien's addiction to baseball or his poor table manners.

Judge Friendly made this point clear in *Wong Wing Hang v. I.N.S.*, 360 F.2d 715 (2d Cir. 1966) (Friendly, J.). There, the Second Circuit again confronted a question regarding the scope of the Attorney General's authority —delegated by Congress—to suspend an alien's deportation. 360 F.2d at 716-17. Judge Friendly concluded that "the denial of suspension to an eligible alien would be an abuse of discretion if it were made without a rational explanation, inexplicably departed from established policies, or *rested on an impermissible basis such as an invidious discrimination against a particular race or group*." *Id.* at 719 (emphasis added). Like addiction to baseball and poor table manners, invidious discrimination is a "consideration[] that Congress could not have intended to make relevant" to decisions regarding whether to allow an alien residence in the United States, Judge Friendly held. *Id.* (internal quotation marks omitted) (quoting *Kaloudis*, 180 F.2d at 491).

Just as Congress "could not have intended to make" considerations like "invidious discrimination against a particular race or group" relevant to the Attorney General's discretionary decision to suspend an alien's deportation from the United States, *id.*, Congress "could not have intended to make" invidious discrimination relevant to the President's discretionary determination regarding whether the entry of a particular alien or class of aliens is "detrimental to the interests of the United States," 8 U.S.C. § 1182(f). That is because invidious discrimination has no connection to whether an alien's residence in the United States would

be harmful or damaging to the nation or its interests. Accordingly, not only does the plain language of Section 1182(f) fail to "explicitly" authorize the President to use invidious discrimination in determining whether to deny entry to a class of aliens, *see Greene*, 360 U.S. at 507, it does not even provide a "clear indication" that Congress intended to delegate to the President the power to invidiously discriminate, *see Zadvydas*, 533 U.S. at 696-97.

2.

Nor does the broader context of the Immigration Act, and Section 1182(f)'s place within it, suggest that Congress intended Section 1182(f) to allow the President to suspend the entry of a class of aliens based on invidious discrimination. In Section 1182(a), Congress enumerates numerous specific classes of aliens who are ineligible for visas or admission. These categories encompass, for example, classes of individuals who pose a variety of health, safety, and security risks, or are likely to become public charges. *See generally* 8 U.S.C. § 1182(a). Many of the categories are quite specific, providing particularized reasons why individual aliens may be deemed inadmissible. For example, aliens who have been convicted of certain crimes, served as foreign government officials and committed "particularly severe violations of religious freedom," or participated in the commission of torture are inadmissible. 8 U.S.C. § 1182(a)(2)(A), (G); *id.* § 1182(a)(3)(E)(iii). Likewise, Section 1182(a) deems inadmissible aliens who have been members of a totalitarian or Communist party, abused their status as student visa holders, or

"engaged in the recruitment or use of child soldiers." *Id.* § 1182(a)(3)(D); *id.* § 1182(a)(6)(G); *id.* § 1182(a)(3)(G).

Importantly, most of the categories of inadmissible classes of aliens Congress sets forth in Section 1182(a) relate to past *conduct* by an alien that renders the alien particularly dangerous to the interests of the United States. *E.g.*, § 1182(a)(2); § 1182(a)(3); § 1182(a)(6)(E); § 1182(a)(8)(B); § 1182(a)(9)(A). And, in accordance with Congress's decision to define categories of inadmissible aliens largely based on individual conduct and responsibility rather than considerations over which aliens have no control, none of the Section 1182(a) categories render a class of aliens inadmissible solely on the basis of religion or of race, national origin, or other immutable characteristic.

Notwithstanding Congress's enumeration of the many general and specific categories and classes of aliens that the executive branch may or must deem inadmissible—and its failure to include any category defined by race, national origin, or religion alone—the Government argues that, in enacting Section 1182(f), Congress delegated to the President the authority to deny entry to any class of aliens for any reason whatsoever, necessarily including for invidiously discriminatory reasons. Appellants' Br. at 28-29. But in construing a statutory provision, we must, if at all possible, avoid a construction "that would render another provision [in the same statute] superfluous." *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010). And reading Section 1182(f) as conferring on the President the unbridled authority to deny entry to any class of aliens would impermissibly render superfluous the numerous

specific classes of inadmissible aliens that Congress has enumerated in Section 1182(a).

The District of Columbia Circuit reached an identical conclusion in *Abourezk v. Reagan*, 785 F.2d 1043 (D.C. Cir. 1986) (Ginsburg, J.). There, the court considered 8 U.S.C. § 1182(a)(27) ("Subsection (27)"), which required the Attorney General to exclude an alien if the Attorney General had reason to believe that the alien sought "to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest or endanger the welfare, safety, or security of the United States." 785 F.2d at 1047 (internal quotation marks omitted) (quoting 8 U.S.C. § 1182(a)(27) (1982)). The question at issue was whether Subsection (27) allowed the Attorney General to "exclude aliens whose entry might threaten [United States'] foreign policy objectives simply because of their membership in Communist organizations," *id.* at 1057, when an adjacent provision in the statute, 8 U.S.C. § 1182(a)(28) ("Subsection (28)"), specifically dealt with exclusion of aliens who were or previously had been members of any Communist party, *Abourezk*, 785 F.2d at 1048. Then-Judge (now Justice) Ginsburg concluded that reading the Attorney General's vague and generalized delegated authority under Subsection (27) to allow exclusion on such a basis would impermissibly render Subsection (28) "superfluous." *Id.* at 1057.

"To preserve the significance of both sections, and the congressional intent that guided their adoption," the court held that the Attorney General could not rely on Subsection (27) to exclude aliens who were or had been members of a Communist party unless "the rea-

son for the threat to the 'public interest[,] . . . welfare, safety, or security'" that the Attorney General put forward as a basis for barring entry under Subsection (27) was "*independent of* the fact of membership in or affiliation with the proscribed organization." *Id.* at 1058 (alterations in original) (quoting 8 U.S.C. § 1182(a)(27)). Put differently, the court prohibited the executive branch from using the general exclusionary authority conferred by Congress in Subsection (27) to circumvent the more specific provision in Subsection (28) dealing with exclusion of aliens affiliated with the Communist party. *Id.* at 1057-58.

For the same reason, the President's reliance on Section 1182(f) as a basis for Section 2(c)'s suspension on entry also is inconsistent with Section 1182(a)(3)(B), which includes "specific criteria for determining terrorism-related inadmissibility." *See Kerry v. Din*, 135 S. Ct. 2128, 2140 (2015) (Kennedy, J., concurring). Recall that the Executive Order justified the President's suspension on entry, in part, on grounds that certain nationals of the six countries were members of terrorist organizations or previously had engaged in acts of terrorism and, therefore, that admitting aliens from those countries would be detrimental to the interests of the United States. *See supra* Part I.B.

Section 1182(a)(3)(B) renders inadmissible aliens who have been, are, or may in the future be connected to or engaged in terrorist activity, including aliens who have "engaged in a terrorist activity"; those whom government officials know or have reasonable cause to believe are "likely to engage after entry in any terrorist activity"; those who have "incited terrorist activity";

and those who "endorse[] or espouse[] terrorist activity or persuade[] others to" do so or who "support a terrorist organization." 8 U.S.C. § 1182(a)(3)(B)(i). That subsection also provides detailed definitions of "terrorist activity," "terrorist organization," the act of "engag[ing] in terrorist activity," and "representative" of a terrorist organization. *Id.* § 1182(a)(3)(B)(iii)-(vi).

Congress established these "specific criteria for determining terrorism-related inadmissibility," *Din*, 135 S. Ct. at 2140, against the backdrop of the executive branch's exclusion of aliens based on "mere membership in an organization, some members of which have engaged in terrorist activity" even when there was no indication that *the alien seeking admission* was himself engaged in such activity. H.R. Rep. No. 100-882, at 19 (1988). By enacting specific provisions regarding the inadmissibility of aliens who are or have been engaged in terrorist activity, Congress sought to make clear that "the definitions of 'terrorist activity' and 'engages in terrorist activity' must be applied on a case by case basis" and that "simple membership in any organization . . . is not *per se* an absolute bar to admission to the United States"—whether under the President's general authority to bar entry or otherwise. *Id.* at 30.

If Congress has deemed it unlawful for the President to absolutely bar the entry of aliens who *are members of an organization* that includes some members who engage in terrorism, it defies logic that Congress delegated to the President in Section 1182(f) the far broader power to absolutely bar the entry of aliens who *happen to have been born in a particular country*, within the borders of which some individuals have

engaged in terrorism. Indeed, this is precisely why courts apply the canon of statutory construction "that the specific governs the general." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) (internal quotation marks omitted). When, as here, a statute includes "a general authorization [Section 1182(f)] and a more limited, specific authorization [Section 1182(a)(3)(B)] . . . side-by-side" that canon requires that "[t]he terms of the specific authorization must be complied with" in order to avoid "the superfluity of a specific provision that is swallowed by the general one." *Id.* Accordingly, Section 1182(a)(3)(B), not Section 1182(f), is the congressionally authorized mechanism for the President to deny entry to aliens whom he concludes are detrimental to the United States because they pose a threat of engaging in terrorist activities. *See Abourezk*, 785 F.2d at 1049 n.2 ("The President's sweeping proclamation power [under Section 1182(f)] thus provides a safeguard against the danger posed by any particular case or class of cases *that is not covered by one of the categories in section 1182(a)*." (emphasis added)).

Interpreting Section 1182(f) to allow the President to suspend the entry of aliens based solely on their race, nationality, or other immutable characteristics also would conflict with 8 U.S.C. § 1152(a), which provides that "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." Congress passed Section 1152(a) in 1965, more than a decade after it enacted Section 1182(f), as part of a

comprehensive revision to the Immigration Act intended to eliminate nationality-based discrimination in the immigration system. *See infra* Part I.C.3.

Section 1152(a) deals with issuance of *immigrant visas*, rather than entry, which is governed by Section 1182. Nonetheless, reading Section 1182(f) as authorizing the President to deny entry based on invidious discrimination would place Section 1182(f) in conflict with Section 1152(a), which prohibits invidious discrimination in the issuance of visas. In particular, the Immigration Act authorizes the executive branch to refuse to issue a visa to any alien who "is ineligible to receive a visa or such other documentation under section 1182." 8 U.S.C. § 1201(g). As the Government concedes, the President's exercise of his authority under Section 1182(f) to deny entry to aliens from the six predominantly Muslim countries, were it lawful, also would bar, by virtue of Section 1201(g), such aliens from obtaining visas, including *immigrant* visas. This would be the very result Congress sought to avoid in ending nationality-based discrimination in the issuance of immigrant visas through its passage of Section 1152(a).

Accordingly, Section 1182(f)'s function within the Immigration Act does not clearly indicate that Congress intended to delegate to the President the authority to suspend the entry of aliens based on invidious discrimination. On the contrary, construing Section 1182(f) as broadly authorizing the President to engage in invidious discrimination in denying entry would render superfluous the numerous categories of inadmissible aliens Congress took pains to identify in Sec-

tion 1182(a), including the provisions directly addressing aliens who pose a risk of engaging in terrorist activities, and conflict with Section 1152(a)'s prohibition on discrimination based on race, nationality, and other immutable characteristics.

3.

Reading Section 1182(f) as allowing the President to deny entry to classes of aliens based on invidious discrimination also would contradict the "object and policy" underlying the Immigration Act. *See U.S. Nat'l Bank of Or.*, 508 U.S. at 455. Although the specific language of Section 1182(f) dates to 1952, Congress "comprehensive[ly] revis[ed]" the Immigration Act in 1965 (the "1965 Revisions"). *S. 1932 & Other Legislation Relating to the Immigration Quota System Before the S. Subcomm. on Immigration & Naturalization Vol. 2*, 88th Cong. 78 (1964) (statement of Sen. Fong). Those revisions were drafted concurrently with the Civil Rights Act of 1964 and the Voting Rights Act of 1965 and enacted at the height of the civil rights movement with the express purpose of "eliminat[ing] the national origins system as the basis for the selection of immigrants to the United States." H.R. Rep. No. 89-745, at 8 (1965); *see also S. 1932 & Other Legislation Relating to the Immigration Quota System Before the S. Subcomm. on Immigration & Naturalization Vol. 3*, 88th Cong. 107 (1964) (statement of Sen. Hart) ("A law that says that one man is somewhat less than another simply because of accident of his place of birth is not tolerable in the year 1964. A formula based on equality and fair play must be enacted. Selection

should be based primarily on questions of our own national interest.").

Prior to the 1965 Revisions, the Immigration Act employed nationality-based quotas, limiting the number of immigrants admissible to the nation each year based on nation of birth. President Kennedy called on Congress to repeal the nationality-based quota system, condemning it as a system "without basis in either logic or reason" that "neither satisfie[d] a national need nor accomplishe[d] an international purpose" but instead "discriminate[d] among applicants for admission into the United States on the basis of accident of birth." Letter to the President of the Senate and to the Speaker of the House on Revision of the Immigration Laws, 1963 PUB. PAPERS 594, 595 (July 23, 1963). After President Kennedy's assassination, President Johnson renewed Kennedy's request for "the elimination of the national origins quota system," which he described as "incompatible with our basic American tradition" and "our fundamental belief that a man is to be judged—and judged exclusively—on his worth as a human being." Special Message to the Congress on Immigration, 1965 PUB. PAPERS 37, 37, 39 (Jan. 13, 1965).

The 1965 Revisions answered President Kennedy's and President Johnson's calls. Congress explained that the 1965 Revisions abolished nationality-based discrimination in the immigration system in order to "firmly express in our immigration policy the dedication which our nation has to the principles of equality, of human dignity, and of the individual worth of each man and woman." *S. 1932 & Other Legislation Relating to the*

Immigration Quota System Before the S. Subcomm. on Immigration & Naturalization Vol. 1, 88th Cong. 4 (1964) (statement of Sen. Kennedy). Time and again Congress connected the need to eliminate the nationality-based quota system to American "tenets of equality irrespective of race, creed, or color" and emphasized that abolishing nationality-based quotas "demonstrat[ed] to the whole world that we practice what we preach, and that all men are equal under law." *S. 1932 & Other Legislation Relating to the Immigration Quota System Before the S. Subcomm. on Immigration & Naturalization Vol. 2*, 88th Cong. 100-01 (1964) (statement of Sen. Fong); *see also id. Vol. 1*, at 9 (statement of Sen. Hart) (explaining that the 1965 Revisions abolished the "irrational . . . national origins concept, which said in clear and echoing words that the people of some nations [we]re more welcome to America than others" based on "[a]rbitrary ethnic and racial barriers").

Upon signing the bill into law at Liberty Island, New York, President Johnson lauded the end of the nationality-based discrimination that previously defined the American system of immigration, describing the 1965 Revisions as abolishing "the harsh injustice of the national origins quota system," which "violated the basic principle of American democracy—the principle that values and rewards each man on the basis of his merit as a man." 1965 PUB. PAPERS 1037, 1038-39 (Oct. 3, 1965). As a result of the 1965 Revisions, immigrants would be permitted to come to America "because of what they are, and *not because of the land from which they sprung*." *Id.* at 1039 (emphasis added).

To effect its purpose of eliminating discrimination in the immigration system, Congress stripped the Immigration Act of all provisions expressly authorizing national origin-based invidious discrimination and added Section 1152(a)(1)'s prohibition on discrimination in the issuance of visas based on nationality and other immutable characteristics, such as race. As evidenced by Section 1152(a)(1), disregarding national origin in selecting which immigrants to admit to the United States remains a core principle of United States immigration policy. Far from evidencing "any clear indication" that Congress intended the President to have the authority to exercise his Section 1182(f) powers based on invidious discrimination, the "object and policy" of the Immigration Act suggest that Congress *did not* intend to grant the President unbridled authority to engage in invidious discrimination when deciding whether and to what extent to suspend alien entry.[11]

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[11] The Government points to a number of orders promulgated by Presidents pursuant to their authority under Section 1182(f) as evidence that that statutory provision authorizes the President to engage in national origin-based discrimination. But the previous orders the Government cites materially differ from Section 2(c), in that they did not suspend the entry of classes of aliens based on national origin alone, let alone use national origin as a proxy to suspend the entry of a class of aliens based on another invidiously discriminatory basis, such as religion. *See* Proclamation 8693 (July 24, 2011) (suspending the entry of aliens subject to travel bans issued by the United Nations Security Council's resolution barring member nations from permitting the entry of individuals who threaten peace in various nations); Proclamation 8342 (Jan. 22, 2009) (suspending the entry of senior government officials "who have impeded their governments' antitrafficking efforts, have failed to implement their governments' antitrafficking laws and policies,

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In sum, the language of Section 1182(f), related provisions in the Immigration Act, and the "object and

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or who otherwise bear responsibility for their governments' failures to take steps recognized internationally as appropriate to combat trafficking in persons"); Proclamation 6958 (Nov. 22, 1996) (suspending the entry of "members of the Government of Sudan, officials of that Government, and members of the Sudanese armed forces" based on the Sudanese government's harboring of individuals who attempted to assassinate the Egyptian President in Ethiopia, in violation of Ethiopian sovereignty); Executive Order No. 12,807 (May 24, 1992) (suspending the entry of "undocumented aliens [entering the United States] by sea" during the mass exodus of Haitian nationals fleeing a military coup, often in dangerous and overcrowded sea vessels); Proclamation 5887 (Oct. 22, 1988) (suspending the entry of "officers and employees" of the Nicaraguan government as nonimmigrants to the United States based on the Nicaraguan government's "unjustified expulsion" of American diplomats and "long-standing . . . suppression of free expression and press and support of subversive activities throughout Central America"); Proclamation 5829 (June 10, 1988) (suspending the entry of "Panamanian nationals . . . who formulate or implement the policies of Manuel Antonio Noriega and Manuel Solis Palma" due to those officials' act of "preventing the legitimate government . . . from restoring order and democracy" to Panama).

Of the executive orders cited by the government, President Reagan's suspension on the entry of Cuban nationals *as immigrants* comes closest to a nationality-based suspension on alien entry. Proclamation 5517 (Aug. 22, 1986). But that executive action was not challenged as a violation of either Section 1182(f) or Section 1152(a)(1), and therefore the judiciary never had the opportunity to address whether the order complied with those provisions or the Constitution. Nor does a single, unchallenged executive action "demonstrate the kind of consistent administrative interpretation necessary to give rise to a presumption of congressional acquiescence." *Abourezk*, 785 F.2d at 1056.

policy" of the statute do not "explicitly" state, much less provide a "clear indication," that Congress intended to delegate to the President wholly unconstrained authority to deny entry to any class of aliens, including based on invidiously discriminatory reasons. *See Zadvydas*, 533 U.S. at 697. Accordingly, Section 2(c)—which this Court finds was likely borne of the President's animus against Muslims and his intent to rely on national origin as a proxy to give effect to that animus—exceeds the authority Congress conferred on the President in Section 1182(f). As Judge Friendly put it, "Congress could not have intended to make relevant" to the President's exercise of his delegated authority to suspend the entry of aliens "invidious discrimination against a particular race or group." *Wong Wing Hang*, 360 F.2d at 719 (internal quotation marks omitted).

II.

Invidious "discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States." *Korematsu*, 323 U.S. at 242 (Murphy, J., dissenting). Yet the Government asks this Court to hold that, in enacting Section 1182(f), Congress intended to delegate to the President the power to deny entry to a class of aliens based on nothing more than such aliens' race, national origin, or religion.

One might argue, as President Trump seemed to suggest during the campaign, *ante* at 18-21, that *as a matter of statistical fact*, Muslims, and therefore nationals of the six predominantly Muslim countries

covered by the Executive Order, disproportionately engage in acts of terrorism, giving rise to a *factual* inference that admitting such individuals would be detrimental to the interests of the United States. Indeed, viewing the Executive Order in its most favorable light, that is the precisely the rationale underlying Section 2(c). Setting aside the question of whether that *factual finding* is true, or even reasonable—which is, at best, highly debatable given the 180 million people in the countries subject to the suspension on entry and the 1.6 million Muslims worldwide—that is precisely the inference that the Framers of the Constitution and the Reconstruction Amendments concluded was impermissible as a matter of *constitutional law*.[12] *Korematsu*, 323 U.S. at 240 (Murphy, J., dissenting). In particular, classifying individuals based solely on their race, nationality, or religion—and then relying on those classifications to discriminate against certain races, nationalities, or religions—necessarily results in placing special burdens on individuals who lack any moral responsibility, a result the Framers deemed

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[12] Our country adheres to the rule of law in preserving core constitutional protections. Thus, when the President can identify no change in circumstances justifying an invidious encroachment on constitutional rights, a simple claim of potential harm to national security does not provide the President with unfettered authority to override core constitutional protections. *See New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (holding that a claim of potential harm to national security does not provide the executive branch with unconstrained authority to override the freedom of the press). Indeed, even the invocation of Congressional war powers to protect national defense do "not remove constitutional limitations safeguarding essential liberties." *Robel*, 389 U.S. at 264-67 (internal quotation marks omitted).

antithetical to core democratic principles and destabilizing to our Republic. *Id.*

Even though the Constitution affords greater latitude to the political branches to draw otherwise impermissible distinctions among classes of aliens, the harm to core constitutional values associated with governmental sanctioning of invidious discrimination—and the harm to citizens stemming from the abridgement of those values—demands evidence of "careful and purposeful consideration by those responsible for *enacting* ***and*** *implementing* our laws" before such discrimination should be sanctioned by the judiciary. *Greene*, 360 U.S. at 507 (emphasis added). Because Congress did not provide any indication—let alone the requisite "explicit" statement—that it intended to delegate to the President the authority to violate fundamental constitutional values of equality in exercising his authority to deny entry to classes of aliens, I reject the Government's proposed construction of Section 1182(f).

In emphasizing the larger constitutional problems raised by construing Section 1182(f) as a delegation of authority to engage in invidious discrimination, we must not forget that the Constitution embraces equality in order to forestall highly personal harms. Plaintiff John Doe #1, a lawful permanent resident, seeks to be reunited with his wife, an Iranian national, whom Section 2(c) bars from entering the United States. As Justice Jackson explained when confronted with another broad delegation of congressional authority over immigration, "Congress will have to use more explicit language than any yet cited before I will agree that it has authorized [the President] to break up the family of [a

lawful permanent resident] or force him to keep his wife by becoming an exile." *Knauff*, 338 U.S. at 551-52 (Jackson, J., dissenting).

THACKER, Circuit Judge, concurring:

I concur in the majority's opinion but write separately for three reasons: (1) I would not consider remarks made by candidate Trump before he took his presidential oath of office; (2) I would nonetheless find that Appellees have demonstrated a likelihood of success on the merits of their argument that Section 2(c) of the Second Executive Order ("EO-2") violates the Establishment Clause, based solely on remarks made or sentiments expressed after January 20, 2017; and (3) I would conclude Appellees have demonstrated a likelihood of success on the merits of their argument that Section 2(c), as it applies to immigrant visas, violates 8 U.S.C. § 1152(a)(1)(A) of the Immigration and Nationality Act ("INA").

I.

I agree with the majority's conclusion that Appellees have standing to challenge the constitutionality of § 2(c) of EO-2 and that EO-2 likely violates the Establishment Clause. However, in my view, we need not—and should not—reach this conclusion by relying on statements made by the President and his associates before inauguration.

While on the campaign trail, a non-incumbent presidential candidate has not yet taken the oath to "preserve, protect and defend the Constitution," U.S. Const. art. II, § 1, and may speak to a host of promises merely to curry favor with the electorate. Once a candidate becomes President, however, the Constitution vests that individual with the awesome power of the executive office while simultaneously imposing constraints on

that power. Thus, in undertaking the Establishment Clause analysis, I believe we should focus our attention on conduct occurring on President Trump's inauguration date, January 20, 2017, and thereafter. Indeed, for the reasons below, looking to pre-inauguration conduct is neither advisable nor necessary.

A.

In confining my analysis to post-inauguration statements and actions, I do not draw on a blank slate. To begin, "the Establishment Clause protects religious expression from *governmental interference*." *Mellen v. Bunting*, 327 F.3d 355, 376 (4th Cir. 2003) (emphasis supplied). To this end, Establishment Clause jurisprudence has focused on government action rather than "a[] judicial psychoanalysis" of individuals. *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 862 (2005). We have neither the right nor the ability to peer inside an official's "heart of hearts"; indeed, we will "not look to the veiled psyche of government officers"—much less that of *candidates* for public office—to divine the purpose of a law. *Id.* at 862-63.

The Government relies on the doctrines of executive privilege and presidential immunity to contend that EO-2 is essentially unreviewable, arguing that courts "should not second-guess the President's stated purpose by looking beyond the policy's text and operation," and that we should instead apply a "presumption of regularity" to his actions. Appellants' Br. 45 (quoting *United States v. Chem. Found., Inc.*, 272 U.S. 1, 14-15 (1926)). While I do not agree with this proposition for the reasons ably set forth by Chief Judge

Gregory, I do believe the Supreme Court's decisions in the executive privilege and immunity context support confining our review to statements by the President and his administration made after the inauguration, once the President began operating pursuant to Article II. Those decisions explain that the judiciary's ability to probe official, presidential conduct is related to his discharge of *official* power. *See Clinton v. Jones*, 520 U.S. 681, 703 (1997) ("[W]e have long held that when the President takes *official action*, the Court has the authority to determine whether he has acted within the law." (emphasis supplied)); *cf. Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 381 (2004) ("It is well established that 'a President's communications and activities encompass a vastly wider range of sensitive material than would be true of any *ordinary individual*.'" (quoting *United States v. Nixon*, 418 U.S. 683, 715 (1974)) (emphasis supplied)). Indeed, the executive privilege—and, by that token, the separation of powers—applies where the President operates within the executive's core constitutional powers. *See Nixon*, 418 U.S. at 708-09. It follows that a president's conduct after he takes office, but not before, carries the imprimatur of official "government" action, and can only then be considered "government interference" under the Establishment Clause. *Mellen*, 327 F.3d at 376.

B.

For more practical reasons, we should also hesitate to attach constitutional significance to words a candidate utters on the campaign trail. Campaign speeches are inevitably scattered with bold promises, but once the dust settles after an election—when faced with the

reality of the office and with benefit of wise counsel—a newly inducted public official may act with a different philosophy. Presidents throughout history have dialed back or even reversed campaign promises.[1] To be sure, the President's statements regarding Islam before assuming office reveal religious animus that is deeply troubling. *See, e.g.*, J.A. 346 ("Donald J. Trump Statement on Preventing Muslim Immigration," dated December 7, 2015).[2] Nonetheless, I do not adhere to the view that we should magnify our analytical lens simply because doing so would support our conclusion, particularly when we need not do so.

II.

Even without focusing on any campaign rhetoric, the record in this case amply demonstrates the primary purpose of EO-2 was to ban Muslims from entering the

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[1] Indeed, many might argue that this President has repeatedly and regularly dialed back or reversed course on his campaign promises. *See, e.g.*, Priya Krishnakumar et al., *Tracking President Trump's Campaign Promises*, L.A. Times (Apr. 26, 2017), http://www.latimes.com/projects/la-na-pol-trump-100-days-promises/ (reporting President Trump has "scaled back" or "abandoned" 9 out of 31 campaign promises) (saved as ECF opinion attachment).

[2] Given that they were made on the campaign trail, I do not consider as part of my analysis the President's campaign website's archived statements about the plan to ban all Muslims from entering the United States. However, I must note it is peculiar that those statements were removed shortly before we began hearing arguments in this case. *See* Dan Merica, *Trump campaign removes controversial Muslim ban language from website*, CNN (May 8, 2017, 3:37 PM), http://www.cnn.com/2017/05/08/politics/trump-muslim-ban-campaign-website/ (saved as ECF opinion attachment).

United States in violation of the Establishment Clause. I would thus base our Establishment Clause analysis on the morphing of the First Executive Order ("EO-1") into EO-2, the statements of presidential representatives and advisors, the lack of evidence supporting a purported national security purpose, and the text of and logical inconsistencies within EO-2.

The Government argues that we should simply defer to the executive and presume that the President's actions are lawful so long as he utters the magic words "national security." But our system of checks and balances established by the Framers makes clear that such unquestioning deference is not the way our democracy is to operate. Although the executive branch may have authority over national security affairs, *see Munaf v. Geren*, 553 U.S. 674, 689 (2008) (citing *Dep't of Navy v. Egan*, 484 U.S. 518, 530 (1988)), it may only exercise that authority within the confines of the law, *see Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 645-46, 654-55 (1952) (Jackson, J., concurring); and, of equal importance, it has always been the duty of the judiciary to declare "what the law is," *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

A.

The President issued EO-1 on January 27, 2017. *See* Exec. Order 13,769, Protecting the Nation From Foreign Terrorist Entry Into the United States, 82 Fed. Reg. 8977 (Jan. 27, 2017). EO-1 banned citizens of seven majority Muslim nations—Libya, Iran, Iraq, Somalia, Syria, Sudan, and Yemen—from entering the United States. The ban applied to over 180 million Muslims, or just over 10% of the world Muslim popula-

tion, and was executed without input from relevant cabinet officials. Indeed, the President actively shielded certain officials from learning the contents of EO-1: per then-acting Attorney General Sally Yates, the administration advised "the Office of Legal Counsel . . . not to tell the attorney general about [EO-1] until after it was over." *Full Transcript: Sally Yates and James Clapper testify on Russian election interference*, Wash. Post (May 8, 2017), https://www.washingtonpost.com/news/post-politics/wp/2017/05/08/full-transcript-sally-yates-and-james-clapper-testify-on-russian-election-interference (saved as ECF opinion attachment).

As Rudy Giuliani, an advisor to the President, explained on January 28, 2017, EO-1 did all this with the *purpose* of discriminating against Muslims. Giuliani was quite clear that the President wanted to enact a "Muslim ban" and had assembled a commission to study how to create a "Muslim ban" legally. J.A. 508. Per Giuliani, EO-1 was the President's attempt at a legal "Muslim ban." *Id.*[3]

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[3] Giuliani is purportedly a member, and claims to be chairman, of an expert legal commission assembled to study how to create a lawful way to ban Muslims from entering the country and an acknowledged advisor to the President. *See* J.A. 508-09. Courts routinely analyze statements and reports from presidential commissions such as the one of which Giuliani is a member. *See, e.g.*, *Bartnicki v. Vopper*, 532 U.S. 514, 533 (2001) (citing and quoting President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 202 (1967) to demonstrate importance of privacy in communications); *Osborne v. Ohio*, 495 U.S. 103, 111 (1990) (citing Attorney General's Commission on Pornography to establish state's interest in punishing child pornography possession).

To further this goal, EO-1 suspended the entry of refugees for 120 days but directed the Secretary of State "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." EO-1, § 5(b). The President explained that this exception was designed to give Christians priority in entering the United States as refugees. He said that in Syria,

> 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. So we are going to help *them*.

J.A. 462 (emphases supplied).[4] The statements of the President, his advisor, and the text of EO-1 made crystal clear a primary purpose of disfavoring Islam and promoting Christianity.

After the Ninth Circuit upheld the stay of EO-1, the President set about to issue a new executive order. But significantly, in revising the order, the executive branch did not attempt to walk away from its previous

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[4] Presidential statements necessarily shed light on executive policy. *See, e.g.*, *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2081 (2015) (using presidential statement to show United States' position on status of Jerusalem); *Clinton v. City of New York*, 524 U.S. 417, 495-96 (1998) (Breyer, J., dissenting) (relying on presidential statements to demonstrate effect of Line Item Veto Act).

discriminatory order. Instead, it simply attempted to effectuate the same discrimination through a slightly different vehicle—the proverbial wolf in sheep's clothing. Indeed, Press Secretary Sean Spicer confirmed that "[t]he principles of the executive order remain the same," J.A. 379,[5] and the President's Senior Policy Advisor, Stephen Miller, described the changes in the new order as "mostly minor technical differences," *id.* at 339.

B.

The President issued EO-2 on March 6, 2017. *See* Exec. Order 13,780, Protecting the Nation From Foreign Terrorist Entry Into the United States, 82 Fed. Reg. 13209 (Mar. 6, 2017). Like its predecessor, EO-2 lacks evidentiary support, is logically inconstant, and evinces an intent to discriminate against Muslims.

1.

First, the Government offers very little evidence in an attempt to support the President's ban of approximately 180 million people. EO-2 claims, "hundreds of persons born abroad have been convicted of terrorism-

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[5] When relevant, the press secretary and other White House Official's statements can represent official government position. *See, e.g.*, *Reynolds v. United States*, 123 S. Ct. 975, 984 (2012) (citing to the Office of the Press Secretary to show President's position on registration of sex offenders who committed offenses before enactment of the Adam Walsh Child Protection and Safety Act of 2006); *Hamdi v. Rumsfeld*, 542 U.S. 507, 549 (2004) (Souter, J., concurring in part, dissenting in part, and concurring in the judgment) (relying on Office of the White House Press Secretary's statement to identify official executive policy).

related crimes in the United States" but cites only two such examples, each of which is weakly related, if at all, to the purported purpose of EO-2. EO-2, § 1(h). One example is from Iraq, but, as Iraq is not part of EO-2, it does not support *this* ban at all. The other example involves a child brought to the United States as a two-year-old. As this two-year-old was ultimately radicalized in the United States and not abroad, this case is unrelated to better screening and vetting—the purported purpose of EO-2. *See* Br. for Cato Institute as Amicus Curiae Supporting Appellees at 12-13, *Int'l Refugee Assistance Project v. Trump*, No. 17-1351 (4th Cir. argued May 8, 2017; filed Apr. 19, 2017), ECF No. 185; EO-2, § 1(a), (h).

In sharp contrast to the dearth of evidence to support the purported purpose of EO-2, 42 bipartisan former national security officials concluded EO-2 "bear[s] no rational relation to the President's stated aim of protecting the nation from foreign terrorism." Corrected Br. for Former National Security Officials as Amici Curiae Supporting Appellees at 4, *Int'l Refugee Assistance Project v. Trump*, No. 17-1351 (4th Cir. argued May 8, 2017; filed Apr. 13, 2017), ECF No. 126. In addition, since the issuance of EO-1, a report by the Department of Homeland Security has found that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity," likewise undermining any purported security justification for the Order. J.A. 419.

2.

The Government's untenable position is made even worse by the fact that the Government's purported

justification for EO-2 does not logically support the ban it created. EO-2 reasoned that people coming from the six banned countries posed an increased risk of committing terrorist acts because, according to the Department of State's Country Reports on Terrorism 2015 (the "Country Reports"), "each of these countries is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones," and were unwilling or unable "to share or validate important information about individuals seeking to travel to the United States." EO-2, § 1(d); *see* § 1(e) (citing Country Reports). However, given these conditions as the reason for the ban, and based on the Country Reports, two other majority Christian countries—Venezuela and the Philippines—should have logically been included. *See* U.S. Dep't of State, Bureau of Counterterrorism and Countering Violent Extremism, Country Reports on Terrorism 2015 78-85, 297-98, 308-09, 314-15, 352, 380 (June 2016), https://www.state.gov/documents/organization/258249.pdf (excerpts saved as ECF opinion attachment). Neither country is willing and able to help the Government verify information about people attempting to travel to the United States, and both countries have terrorist organizations operating within their boundaries. Therefore, applying the Government's logic, the potential of a terrorist act from a national of Venezuela or the Philippines would also justify a blanket ban on all nationals from these countries. Interestingly, however, the CIA World Factbook reports that Venezuelan population is, at most, 2% Muslim, and the Philippine population is 5% Muslim. *See* Cent. Intelligence Agency, *Field Listings: Religions*, World Factbook, https://www.cia.gov/library/

publications/the-world-factbook/fields/2122.html (last visited May 23, 2017) (saved as ECF opinion attachment). Thus, the Government has not consistently applied the criteria it claims it used, and the reason seems obvious—and inappropriate.

Moreover, if the conditions in the six countries subject to EO-2 truly motivated the Government's travel ban, the Government would have based its ban on *contact* with the listed countries, not *nationality*. Under EO-2, a person who is a citizen of Syria would not be allowed to enter the United States even if they had never set foot in Syria. However, a person who lived his or her whole life in Syria but never obtained Syrian citizenship, and had even recently lived near terrorist-controlled regions of Syria, would be unaffected and freely allowed to enter the United States.[6] As a result, EO-2 is at once both overinclusive and underinclusive and bears no logical relationship to its stated objective.

Last, but by no means least, EO-2 identifies and discriminates against Muslims on its face. It identifies only Muslim majority nations, thus banning approximately 10% of the world's Muslim population from entering the United States. It discusses only Islamic terrorism. And, it seeks information on honor killings

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[6] Syrian citizenship is not based on country of birth. *See* Legislative Decree 276-Nationality Law [Syrian Arab Republic], Legislative Decree 276, 24 November 1969. Therefore, a person can have Syrian citizenship without ever setting foot in the country and a person who lives in Syria for their entire lifetime may not have Syrian citizenship.

—a stereotype affiliated with Muslims[7]—even though honor killings have no connection whatsoever to the stated purpose of the Order.[8]

C.

All of this evidence—arising after January 20, 2017—leads to only one conclusion: the principal motivation for the travel ban was a desire to keep Muslims from entering this country. EO-2 does not pass constitutional muster. Our constitutional system creates a strong presumption of legitimacy for presidential action; however, this deference does not require us to cover our eyes and ears and stand mute simply because a president incants the words "national security." The Constitution and our system of democracy requires that we ensure that any and every action of the President complies with the protections it enshrines.

III.

Finally, I would conclude Appellees have demonstrated a likelihood of success on the merits of their argument that Section 2(c) of EO-2, as it applies to

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[7] Honor killings, in which family members kill one of their own (usually a woman) under the belief that the murder is necessary to vindicate the family's honor, occur within societies of many faiths and, notably, in countries that were not subject to either Executive Order. *See* Kimberly Winston, *Activists: Trump Call for Honor Killings Report Targets Muslims*, USA Today (March 7, 2017, 3:06 PM), https://www.usatoday.com/story/news/2017/03/07/activists-trump-call-honor-killings-report-targets-muslims/98861230/ (saved as ECF opinion attachment).

[8] EO-1 also sought information on honor killings. *See* EO-1 § 10(a)(iii).

immigrant visas, violates 8 U.S.C. § 1152(a)(1)(A) of the INA.[9]

Section 1182(f) of Title 8 states that the President may "suspend the entry of all aliens or any class of aliens" "for such period as he shall deem necessary" when the President finds that such entry "would be detrimental to the interests of the United States." However, § 1152(a)(1)(A), which was promulgated after § 1182(f), states that no person seeking an immigrant visa[10] "shall . . . be discriminated against" on the basis of "nationality." To be sure, EO-2 discriminates on the basis of nationality, suspending entry of "nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen" (the "Designated Countries"). EO-2, § 2(c). The crux of the Government's argument, however, is that § 1152(a)(1)(A) does not prevent the President, acting pursuant to his § 1182(f) authority, from suspending *entry* based on nationality, even if that suspension necessarily mandates the denial of immigrant visas based on nationality. This is nonsensical. I find this argument to contravene longstanding canons of statutory construction as well as the text and effect of EO-2 itself.

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[9] I join in Part I of Judge Keenan's opinion, concluding that the plaintiffs possess standing to bring a claim under the INA.

[10] Immigrant visas are issued to persons seeking admission to the United States with the goal of obtaining lawful permanent residence status. *See* 8 U.S.C. §§ 1101(a)(15), (20), 1201(a)(1)(A). Those seeking admission for other purposes, such as business, study, or tourism, typically receive nonimmigrant visas. *See id.* §§ 1101(a)(15), 1201(a)(1)(B). I would decline Appellees' invitation to extend § 1152(a)(1)(A) to nonimmigrant visas.

A.

Our jurisprudence gives ample guidance for a situation in which two statutes conflict with one another. But the Government believes § 1182(f) and § 1152(a)(1)(A) do not conflict at all. Instead, the Government posits that the two statutes "address different activities handled by different government officials." Appellants' Br. 31 (internal quotation marks omitted). The Government thus believes the specific visa denial warranted by EO-2 falls squarely within the broad ambit of § 1182(f).

I will first address whether we are faced with any real conflict between these provisions. "When two acts touch upon the same subject, both should be given effect if possible." *United States v. Mitchell*, 39 F.3d 465, 472 (4th Cir. 1994) (citation omitted). And "[i]t is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (internal quotation marks omitted). We must "fit, if possible, all parts into an harmonious whole." *Id.* (quoting *FTC v. Mandel Bros., Inc.*, 359 U.S. 385, 389 (1959)). In this vein, 8 U.S.C. § 1201(g) provides, "No visa . . . shall be issued to an alien . . . ineligible to receive a visa . . . under section 1182. . . . " Thus, when a President suspends entry to a national from a Designated Country and renders him inadmissible under § 1182(f), there is a strong argument that the alien *must be* denied a visa. *See generally* 8 U.S.C. § 1182 (titled "Inadmissible aliens"). To conclude that the

two statutes operate independently and deal with totally separate executive functions would be to ignore this link.

Furthermore, although the Government contends the provisions at issue do not touch upon the same subject—asserting that the visa issuance process is a "different activity" than suspension of entry—its own arguments and the text and operation of EO-2 belie this notion.

EO-2 directs that the entry of nationals of the Designated Countries be suspended, but the Government admits the Department of State will "implement th[e] suspension [of entry] by *declining to issue visas* to aliens who are covered by the Order and who are not found eligible for a waiver." Appellants' Br. 34 n.12 (emphasis supplied); *see also* J.A. 729 (Government counsel admitting immigrant visa applicants "will be denied a visa if they are a national from the listed country"). EO-2 also delineates who is entitled to or restricted from entry *based on* one's visa status. *See* EO-2, § 3(a) (defining the scope of entry suspension to those outside the United States on the effective date of the order who "did not have a valid visa" on the date of the now-revoked first executive order; and "do not have a valid visa" as of the effective date of EO-2). Further, the Government offers the precarious justification that "when an alien subject to [EO-2] is denied an immigrant visa, he is not suffering discrimination on the basis of nationality of the sort prohibited by Section 1152(a)(1)(A); instead, he is being denied a visa because he has been validly barred from entering the country." Appellants' Br. 33. Following this circular logic, an

alien is barred from entry because he does not have and cannot attain a visa, but he is denied a visa because he is barred from entry. It is clear that in EO-2, the visa issuance and entry concepts are intertwined to the point of indistinguishability.[11]

The Government also contends it would be a "fruitless exercise" and would "make no sense" to enable issuances of immigrant visas pursuant to § 1152(a)(1)(A), when those aliens receiving the visas would nonetheless be barred from entering the United States once they reach our borders. Appellants' Br. 31, 35. I fail to see how permitting a national of one of the Designated Countries to continue with her immigrant visa process would be fruitless, unless, of course, the Government intends to use the ban as a gateway to a much more permanent ban, ultimately sweeping in those nationals whose processes were halted by the order. *See* Section 1(a) (stating that a "Policy and Purpose" of the EO-2 is to improve the protocols and procedures "associated with the visa-issuance process"). Moreover, being a visa holder, even if one maybe temporarily inadmissible, carries with it a certain status with regard to EO-2. *See, e.g.*, EO-2, § 3(c) (suggesting that one receiving a visa from U.S. Customs and Border Protection during the protocol review period could gain entry to the United States).

I likewise fail to see how allowing one to continue with her incipient visa process would "make no sense,"

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[11] Indeed, Section 3 of EO-1, the predecessor to EO-2's Section 2, was entitled "Suspension of *Issuance of Visas* and Other Immigration Benefits to Nationals of Countries of Particular Concern."

when that national could be one step closer to ultimately reuniting with her loved ones. For example, in the case of John Doe #1, his wife could conceivably proceed with her visa application interview, obtain her visa, and once the protocol review period has ended, join her husband in the United States as soon as possible thereafter, quickly redressing John Doe #1's constitutionally cognizable injury of being separated from an immediate family member.

For all of these reasons, I would reject the Government's argument that § 1152(a)(1)(A) and § 1182(f) operate in separate statutory spheres. I believe § 1152(a)(1)(A)'s prohibition limits the President's § 1182(f) authority in the issuance of EO-2. As the Government itself mentioned in its opening brief, "courts judge the legitimacy of a law by what it says and does." Appellants' Br. 2. Here, the ultimate effect of what EO-2 actually *does* is require executive agencies to deny visas based on nationality.

Therefore, I next turn to the traditional canons of statutory construction to determine how to resolve this tension between § 1182(f) and § 1152(a)(1)(A). I approach this analysis mindful that the executive branch's authority over immigration affairs is conferred and cabined by Congress. *See Abourezk v. Reagan*, 785 F.2d 1043, 1061 (D.C. Cir. 1986) (The Executive's "broad discretion over the admission and exclusion of aliens . . . extends only as far as the statutory authority conferred by Congress.").

B.

When faced with provisions that apparently conflict, we must give effect to each provision, with a later enacted, more specific statute trumping an earlier, more general one. *See Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976); *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) ("[A] specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment."); *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 633 (1973) ("[A]ll parts of a statute, if at all possible, are to be given effect.").

First, § 1152(a)(1)(A) must be given effect. Reading § 1182(f) as bestowing upon the President blanket authority to carry out a suspension of entry, which involves rejecting a particular country's immigrant visa applications as a matter of course, would effectively nullify the protections in § 1152(a)(1)(A) and create an end-run around its prohibitions against discrimination. It would collapse the statutory distinction between entry and visa issuance, *see* 8 U.S.C. § 1201(h) ("Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted [to] the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this chapter, or any other provision of law."), and ultimately allow the chief executive to override any of Congress's carefully crafted visa criterion or grounds for inadmissibility.

Second, § 1182(f) was enacted in 1952, but § 1152(a)(1) was enacted in 1965 as part of a sweeping amendment of the INA. We assume that "when Congress enacts

statutes, it is aware of relevant judicial precedent." *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 648 (2010). Thus, we must accept that Congress knew about the President's broad authority in § 1182(f) when it enacted § 1152(a)(1)(A), and the latter lists several exceptions, none of which include the former. *See* § 1152(a)(1)(A) (exempting §§ 1101(a)(27), 1151(b)(2)(A)(i), and 1153). Section 1152(a)(1)(A) is also more specific, applying to demarcated types of discrimination and a certain type of visa. *See Radzanower*, 426 U.S. at 153 (preference should be given to statute involving a "narrow [and] precise . . . subject").

Finally, the Government's suggestions of potential statutory discord are unconvincing. For example, the Government relies on 8 U.S.C. § 1185(a)(1), which makes it unlawful for any alien to enter the United States "except under such reasonable rules, regulations, and orders, and subject to such limitations" prescribed by the President. But this provision merely acts as an implementation provision flowing from § 1182(f), which, as stated above, is limited by § 1152(a)(1)(A). In addition, § 1152(a)(1)(B) is of no concern to this analysis given that it applies to the Secretary of State, and § 2(c) of EO-2 bars visa issuance to nationals of the Designated Countries, rather than regulating visa processing locations.

C.

For these reasons, I find Appellees' statutory argument that EO-2 violates § 1152(a)(1)(A) because it requires the denial of immigrant visas on the basis of nationality the more compelling argument. Therefore, I would conclude that Appellees have shown a likeli-

hood of success on the merits on this point. I otherwise join Judge Keenan's opinion, with the exception of Part II.A.i.

IV.

In conclusion, I believe the district court's injunction should be affirmed based on the majority's Establishment Clause conclusion, although I would do so based only on consideration of post-inauguration conduct. I also believe that the plaintiffs will likely succeed on the merits of their argument that EO-2 violates the INA for the reasons stated by Judge Keenan and set forth in Part III of this opinion.

NIEMEYER, CIRCUIT JUDGE, with whom JUDGE SHEDD and JUDGE AGEE join, dissenting:

The district court issued a nationwide preliminary injunction against Executive Order No. 13,780 issued by President Donald Trump on March 6, 2017, to suspend temporarily, while vetting procedures could be reviewed, the entry of aliens from six countries, reciting terrorism-related concerns. While the court acknowledged the President's authority under 8 U.S.C. §§ 1182(f) and 1185(a) to enter the Order and also acknowledged that the national security reasons given on the face of the Order were legitimate, the court refused to apply *Kleindienst v. Mandel*, 408 U.S. 753 (1972), which held that courts are precluded from "look[ing] behind" "facially legitimate and bona fide" exercises of executive discretion in the immigration context to discern other possible purposes, *id.* at 770. Relying on statements made by candidate Trump during the presidential campaign, the district court construed the Executive Order to be directed against Muslims because of their religion and held therefore that it likely violated the Establishment Clause of the First Amendment.

I conclude that the district court seriously erred (1) by refusing to apply the Supreme Court's decision in *Mandel*; (2) by fabricating a new proposition of law —indeed, a new rule—that provides for the consideration of campaign statements to recast a later-issued executive order; and (3) by radically extending Supreme Court Establishment Clause precedents. The district court's approach is not only unprecedented, it is totally unworkable and inappropriate under any standard of analysis.

The majority reworks the district court's analysis by applying *Mandel*, albeit contrary to its holding, to defer only to the facial *legitimacy* of the Order but not to its facial *bona fides*, despite the *Mandel* Court's holding that "when the Executive exercises this power negatively on the basis of a *facially legitimate and bona fide reason*, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests" of the plaintiffs. *Mandel*, 408 U.S. at 770 (emphasis added). In addition, the majority, after violating *Mandel*, then adopts the same new rule of law adopted by the district court to consider candidate Trump's campaign statements to find the Executive Order's stated reasons "pretext[ual]," *ante* at 51, and then to rewrite the Order to find it in violation of the Establishment Clause. This too is unprecedented and unworkable.

Accordingly, I respectfully dissent. I would vacate the district court's injunction.

I

A

The Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.*, requires that an alien, to obtain admission into the United States, must normally both possess a visa and be admissible upon his or her arrival at a port of entry, *id.* §§ 1181, 1182(a)(7), 1201(h).

Exceptions exist which allow for entry without a visa. For instance, Congress has established a Visa Waiver Program, which allows nationals of certain countries to seek temporary admission into the United States for

90 days or less. 8 U.S.C. § 1187. In December 2015, however, Congress excluded aliens from admission under this program who are dual nationals of or have recently visited Iraq, Syria, any country designated by the Secretary of State to be a state sponsor of international terrorism, or any country that the Secretary of Homeland Security has deemed to be a country or area of concern. Pub. L. No. 114-113, div. O, tit. II, § 203, 129 Stat. 2988, 2989-91 (2015) (codified at 8 U.S.C. § 1187(a)(12)). At all times relevant to this litigation, the countries designated by the Secretary of State to be state sponsors of international terrorism have been Iran, Sudan, and Syria. U.S. Dep't of State, *Country Reports on Terrorism 2015*, at 4, 299-302 (June 2016), https://perma.cc/KJ4B-E4QZ. Also, in February 2016, the Department of Homeland Security ("DHS") excluded recent visitors to and nationals of Libya, Somalia, and Yemen from the Program. DHS, *DHS Announces Further Travel Restrictions for the Visa Waiver Program* (Feb. 18, 2016), https://perma.cc/87CZ-L4FU.

Even when an alien possesses a visa, the alien must also be *admissible* to the United States when arriving at a port of entry. Congress has accorded the President broad discretion over the admission of aliens, providing in 8 U.S.C. § 1182(f):

> 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.

In addition, Congress has specified that the entry of aliens is governed by "such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe." *Id.* § 1185(a)(1).

B

On January 27, 2017, the President issued Executive Order 13,769, 89 Fed. Reg. 8977, which was challenged in several courts. A district court in Washington enjoined nationally the enforcement of several provisions of that order, *see Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), and the Ninth Circuit declined to stay the district court's injunction pending appeal, *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (per curiam).

Rather than challenge that decision further, the President issued a revised order—Executive Order 13,780—on March 6, 2017, entitled, "Protecting the Nation From Foreign Terrorist Entry Into the United States," 82 Fed. Reg. 13,209, which is the Order before us. This Order revoked the earlier order and rendered moot the challenge to the earlier order.

The first Section of the revised Executive Order announces the policy goals of "protect[ing] the Nation from terrorist activities by foreign nationals" by "improv[ing] the screening and vetting protocols and procedures associated with the visa-issuance process and the [United States Refugee Admissions Program]" that "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." Order Preamble, § 1(a).

The Order then recites the previous Administration's response to terrorist activities in the countries covered by the current Order:

> Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen . . . had [during the prior Administration] already been identified as presenting heightened concerns about terrorism and travel to the United States. . . . [And] [i]n 2016, the Secretary of Homeland Security designated Libya, Somalia, and Yemen as additional countries of concern for travel purposes, based on consideration of . . . statutory factors related to terrorism and national security. . . . Additionally, Members of Congress have expressed concerns about screening and vetting procedures following recent terrorist attacks in this country and in Europe.

Order § 1(b)(i). Describing further the threats posed generally by these nations, the Order states:

> Nationals from the countries previously identified . . . 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 signifi-

> cant 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.

Order § 1(d). Finally, the Order describes as follows "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," relying on the Department of State's *Country Reports of Terrorism 2015*:

> (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 . . . al Qa'ida. . . . Iran does not cooperate with the United States in counterterrorism efforts.
>
> (ii) Libya. Libya is an active combat zone. . . . 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 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. Soma-

> lia has porous borders, and most countries do not recognize Somali identity documents. . . .
>
> (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 . . . [and it] provided safe havens for al-Qa'ida and other terrorist groups to meet and train. . . . [E]lements 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. [Although] [t]he Syrian government is engaged in an ongoing military conflict against ISIS[,] . . . 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. . . . Both ISIS and a second group, al-Qa'ida in the Arabian Peninsula (AQAP), have exploited [internal] 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. . . .

Order § 1(e). Based on this collection of information, the Order concludes that, "[i]n light of the conditions in

these six countries, until [an] assessment of current screening and vetting procedures . . . 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." Order § 1(f).

The operative provisions, as relevant here, are stated in Section 2 of the Order, which directs the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, to "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." Order § 2(a). The Secretary of Homeland Security is then directed to present a report with his findings to the President. Order § 2(b). And finally, pending the review, the Order prohibits the entry of certain nationals from the six countries, as follows:

> 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.

Order § 2(c).

The referenced limitations in Section 3 specify that the suspension does not apply to nationals of the designated countries who are inside the United States on the effective date of the Order (March 16, 2017) or who had a valid visa at 5:00 p.m. on January 27, 2017 or on the effective date of the Order. Order § 3(a). The Section goes on to create exceptions that allow the entry of lawful permanent residents of the United States, foreign nationals with valid travel documents that are not visas, dual nationals traveling on passports issued by a non-designated country, foreign nationals traveling on diplomatic visas, foreign nationals granted asylum, refugees already admitted to the United States, and any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture. Order § 3(b). Finally, Section 3 allows consular officers or the Commissioner of U.S. Customs and Border Protection to "decide on a case-by-case basis to authorize the issuance of a visa to, or to permit the entry of, a foreign national for whom entry is otherwise suspended if the foreign national has demonstrated to the officer's satisfaction that denying

entry during the suspension period would cause undue hardship, and that his or her entry would not pose a threat to national security and would be in the national interest." Order § 3(c).

In sum, nationals of the designated countries who lack visas were, prior to the Order, unable to enter the United States under the Visa Waiver Program, 8 U.S.C. § 1187. Nationals who possess visas are exempted from the Order, as are most other nationals who have the ability to enter the United States through another travel document. *See* Order §§ 2, 3. The Order thus affects nationals of the designated countries who, lacking visas, were already unable to enter the United States but who had hoped to obtain a visa and to enter the United States within the 90 day period of the Order.[1]

C

The plaintiffs are three organizations and six individuals. Two of the organizations, the International Refugee Assistance Project ("IRAP") and HIAS, Inc., provide legal assistance and aid to refugees, while the third organization, the Middle East Studies Association ("MESA"), is an organization of students and scholars of Middle Eastern studies. The six individual plaintiffs are U.S. citizens or lawful permanent residents who alleged that the Order would prevent or delay foreign-national family members from entering the United States.

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[1] Other portions of the Order, not at issue here, suspend adjudication of applications under the Refugee Program for 120 days, subject to case-by-case waivers, and limit to 50,000 the number of refugees admitted in fiscal year 2017. Order § 6(a)-(c).

On March 10, 2017, after Executive Order 13,780 was issued but before it went into effect, the plaintiffs filed their operative complaint, as well as a motion for a preliminary injunction to enjoin enforcement of the Order. They alleged, as relevant here, that the Order violates the Establishment Clause of the First Amendment and 8 U.S.C. § 1152(a), which prohibits discrimination based on nationality in issuing immigrant visas. After expedited briefing and argument, the district court entered a nationwide preliminary injunction that barred enforcement of Section 2(c) of the Order.

The district court began its analysis by concluding that at least three of the individual plaintiffs had standing.

On the merits, the court concluded that the plaintiffs were likely to succeed on their claim that the Order violated the Establishment Clause. Although the court acknowledged that "the Second Executive Order is facially neutral in terms of religion" and that "national security interests would be served by the travel ban," it nonetheless looked behind the Order to statements made during the presidential campaign by candidate Trump and concluded, based on these statements, that the Order was likely motivated by anti-Muslim animus. In looking behind the Order, the court refused to apply *Mandel*, stating as its reason that *Mandel* applied to the review of decisions by immigration officers denying visas and "does not apply to the promulgation of a sweeping immigration policy at the highest levels of the political branches."

The district court also found that the plaintiffs were likely to succeed on a small portion of their statutory

claim, concluding that the Order conflicted with federal law insofar as it had "the specific effect of halting the issuance of [immigrant] visas to nationals of the Designated Countries." Otherwise, it found that "an executive order barring entry to the United States based on nationality pursuant to the President's authority under § 1182(f) [did] not appear to run afoul of the provision in § 1152(a) barring discrimination in the issuance of immigrant visas." (Internal quotation marks omitted).

From the entry of the preliminary injunction, the government filed this appeal.

II

In affirming the district court's ruling based on the Establishment Clause, the majority looks past the face of the Order's statements on national security and immigration, which it concedes are neutral in terms of religion, and considers campaign statements made by candidate Trump to conclude that the Order denigrates Islam, in violation of the Establishment Clause. This approach (1) plainly violates the Supreme Court's directive in *Mandel*; (2) adopts a *new rule of law* that uses campaign statements to recast the plain, unambiguous, and religiously neutral text of an executive order; and (3) radically extends the Supreme Court's Establishment Clause holdings. I address these legal errors in turn.

A

I begin with the majority's failure faithfully to apply *Mandel*.

In *Mandel*, Ernest Mandel, a Belgian citizen, was denied a nonimmigrant visa to enter the United States to participate in conferences and to give speeches. In denying his admission to the United States, the Attorney General relied on 8 U.S.C. §§ 1182(a)(28)(D), (G)(v) and 1182(d)(3)(A), which provided that aliens who advocate or publish "the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship" shall be excluded from admission to the United States unless granted a waiver by the Attorney General. Mandel admitted that he was a Marxist who advocated the economic, governmental, and international doctrines of world communism, and the Attorney General refused to grant him a waiver. *Mandel*, 408 U.S. at 756, 759. University professors in the United States, who had invited Mandel to the United States to speak, as well as Mandel himself, filed an action challenging the constitutionality of the relevant statutory provisions and the Attorney General's exercise of his authority under those provisions. *Id.* at 759-60. They alleged that the relevant statutory provisions and the Attorney General's denial of a waiver were unconstitutional because they deprived the American plaintiffs of their First Amendment rights to hear and meet with Mandel. *Id.* at 760.

Despite its conclusion that the professors' First Amendment rights were well-established, the Supreme Court held that Mandel's exclusion was lawful. At the

outset, the Court explicitly accepted that Mandel's exclusion implicated the First Amendment. It found, however, that its "[r]ecognition that First Amendment rights are implicated . . . [was] not dispositive of [its] inquiry." *Mandel*, 408 U.S. at 765. The Court stated that, based on "ancient principles of the international law of nation-states," Congress could categorically bar those who advocated Communism from entry, explaining that "the power to exclude aliens is inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers—a power to be exercised exclusively by the political branches of government." *Id.* The Court repeated Justice Harlan's holding that the government's power "to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention, is settled by our previous adjudications." *Id.* at 766 (quoting *Lem Moon Sing v. United States*, 158 U.S. 538, 547 (1895)).

The Court then rejected the argument that the Attorney General's denial of a waiver violated the First Amendment. The Court forbade judges from interfering with the executive's "facially legitimate and bona fide" exercise of its immigration authority or balancing that exercise against constitutional rights. *Mandel*, 408 U.S. at 770. Specifically, it recognized that "Congress has delegated conditional exercise of this power [of exclusion] to the Executive" and declined to apply

more scrutiny to executive exercise of that power than it would to Congress's own actions. *Id.* It concluded:

> We hold that when the Executive exercises this power negatively on the basis of a facially legitimate and bona fide reason, *the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests* of those who seek personal communication with the applicant.

Id. (emphasis added).

The holding of *Mandel* ineluctably requires that we vacate the district court's preliminary injunction. The similarities between *Mandel* and this case are numerous and significant. In both cases, Congress delegated power to the executive to prohibit the entry of a certain class of foreign nationals. 8 U.S.C. § 1182(a)(28)(D), (d)(3)(A) (1970); 8 U.S.C. § 1182(f) (2016). The plaintiffs in each case challenged the executive's exercise of that statutory discretion as violative of their individual First Amendment rights. The court in *Mandel* rejected this challenge because, even assuming a constitutional violation lurked beneath the surface of the executive's implementation of his statutory authority, the reasons the executive had provided were "facially legitimate and bona fide." We must thus reject this similar challenge today.

The Court has consistently reaffirmed and applied *Mandel*'s holding. In *Fiallo v. Bell*, 430 U.S. 787 (1977), the Court declined to scrutinize a statute that gave different immigration status to a child born out of wedlock depending on whether it was the child's mother

or father who was a citizen or lawful permanent resident. Although that statute involved two suspect classifications—gender and legitimacy—the Court, citing *Mandel*, nonetheless concluded that "it is not the judicial role in cases of this sort to probe and test the justifications" of immigration policies. *Id.* at 799. Accordingly, in response to the plaintiffs' arguments that the distinction was based "on an overbroad and outdated stereotype," the Court indicated that "this argument should be addressed to the Congress rather than the courts." *Id.* at 799 n.9.

And both *Mandel* and *Fiallo* were reaffirmed more recently in Justice Kennedy's opinion in *Kerry v. Din*, 135 S. Ct. 2128, 2139 (2015) (Kennedy, J., concurring in the judgment). In *Din*, the Court considered a suit by a United States citizen who alleged that the government deprived her of a liberty interest protected under the Due Process Clause by denying her husband's visa application without adequate explanation, providing only a citation to the provision under which the visa was denied. Justice Kennedy, writing for himself and Justice Alito to provide the fourth and fifth votes in favor of the government, stated that "[t]he reasoning and the holding in *Mandel* control here" and that the reasoning of *Mandel* "has particular force in the area of national security." *Id.* at 2140. He concluded that "respect for the political branches' broad power over the creation and administration of the immigration system" meant that, because the government had provided Din with a facially legitimate and bona fide reason for its action, Din had no viable constitutional claim. *Id.* at 2141.

The plaintiffs can provide no coherent basis for their assertion that this case is not controlled by *Mandel* and its progeny. They do argue that the holding of *Mandel* does not apply to claims under the Establishment Clause, but they are unable to point to any case in which the Supreme Court has ever suggested the existence of such a limitation, or, indeed, any case in which it has suggested that some areas of law are not governed by the rule laid out in *Mandel*. Absent such a case, we are not now at liberty to craft—out of whole cloth—exceptions to controlling Supreme Court precedents.

To reach its conclusion, the majority does not adopt the plaintiffs' broad argument that *Mandel* does not even apply. Instead, in its attempt to escape *Mandel*'s clear holding, it asserts that "[w]here plaintiffs have seriously called into question whether the stated reason for the challenged action was provided in good faith," the court may "step away from our deferential posture and look behind the stated reason for the challenged action" to attempt to discern the action's purpose. *Ante* at 50. This approach, which totally undermines *Mandel*, is the foundation of its new rule that campaign statements may be considered to recast an unambiguous, later-adopted executive order on immigration. The majority states that even though the Order is on its face legitimate and provides reasons rooted in national security, because the plaintiffs "have more than plausibly alleged" bad faith, "we no longer defer" to the Order's stated purpose "and instead may 'look behind' [the Order]" in an attempt to discern whether the national security reason was *in fact* pro-

vided as a pretext for its religious purpose. *Ante* at 52. This approach casually dismisses *Mandel*, *Fiallo*, and *Din*.

If the majority's understanding had been shared by the Supreme Court, it would have compelled different results in each of *Mandel*, *Fiallo*, and *Din*, as in each of those cases the plaintiffs alleged bad faith with at least as much particularity as do the plaintiffs here. In *Mandel*, the allegations were such that Justice Marshall, writing in dissent, observed that "[e]ven the briefest peek behind the Attorney General's reason for refusing a waiver in this case would reveal that it is a sham." *Id.* at 778 (Marshall, J., dissenting). In *Fiallo*, Justice Marshall, again writing in dissent, pointed to the fact that the statute in question relied on "invidious classifications." *Fiallo*, 430 U.S. at 810 (Marshall, J., dissenting). And in *Din*, the plaintiffs argued that the consular decision should be reviewed because it fell within the "limited circumstances where the government provides no reason, or where the reason on its face is illegitimate." Brief for Respondent at 31, *Din*, 135 S. Ct. 2128 (No. 13-1402), 2015 WL 179409. But, as those cases hold, a lack of good faith must appear on the face of the government's action, not from looking behind it.

As support for its dramatic departure from Supreme Court precedent, the majority relies on a scattershot string of quotations drawn out of context from one sentence in *Din*. The carelessness of the majority's presentation is demonstrated simply by a comparison of its characterization of *Din* and the actual language

of *Din* taken in context. Here is how the majority characterizes *Din*:

> Justice Kennedy explained that where a plaintiff makes "**an affirmative showing of bad faith**" that is "**plausibly alleged with sufficient particularity**," courts may "**look behind**" the challenged action to assess its "facially legitimate" justification.

Ante at 50. And here is what Justice Kennedy in *Din* actually said, with the language quoted by the majority in bold:

> Absent **an affirmative showing of bad faith** on the part of the consular officer who denied Berashk a visa—which Din has not **plausibly alleged with sufficient particularity**—*Mandel* instructs us not to "**look behind**" the Government's exclusion of Berashk for additional factual details beyond what its express reliance on § 1182(a)(3)(B) encompassed.

Din, 135 S. Ct. at 2141 (emphasis added).

More problematic is the majority's misunderstanding of *Din*'s actual holding, which the majority tries to reshape for its own ends. In *Din*, when the plaintiff refused to accept the curt explanation of why her husband was denied a visa, she claimed that due process required that the government disclose the factual basis for its determination. Faced with Din's request for these underlying facts, the Supreme Court declined, instead applying *Mandel*'s requirement that the plaintiff must show that the government's reasons were not *facially* legitimate and not *facially* bona fide. As Justice Kennedy explained:

> Din claims due process requires she be provided with the facts underlying this determination, arguing *Mandel* required a similar factual basis.
>
> * * *
>
> Din perhaps more easily could mount a challenge to her husband's visa denial if she knew the specific subsection on which the consular office relied.
>
> * * *
>
> [But] the notice given was constitutionally adequate, particularly in light of the national security concerns the terrorism bar addresses. [Citing *Fiallo*, 430 U.S. at 795-96]. And even if Din is correct that sensitive facts could be reviewed by courts *in camera*, the dangers and difficulties of handling such delicate security material further counsel against requiring disclosure in a case such as this.
>
> * * *
>
> For these reasons, my conclusion is that the Government satisfied any obligation it might have had to provide Din with a *facially legitimate and bona fide reason* for its action when it provided notice that her husband was denied admission to the country under § 1182(a)(3)(B). *By requiring the Government to provide more, the Court of Appeals erred* in adjudicating Din's constitutional claims.

Din, 135 S. Ct. at 2140-41 (Kennedy, J., concurring in judgment) (emphasis added) (citations omitted). Nowhere did the *Din* Court authorize going behind the government's notice for the purpose of showing bad faith. The plaintiff had to show *facially* that the notice was in

bad faith, *i.e.*, not bona fide. The majority's selective quotations from *Din*, which conceal *Din*'s faithful application of *Mandel*, are simply misleading. Indeed, the impetus for the majority's approach is revealed when it states, "If we limited our purpose inquiry to review of the operation of a *facially neutral* order, we would be caught in an analytical loop, where the order would always survive scrutiny." *Ante* at 62 (emphasis added). That consequence—that facially neutral executive orders survive review—is precisely what *Mandel* requires.

In looking behind the face of the government's action for facts to show the alleged bad faith, rather than looking for bad faith on the face of the executive action itself, the majority grants itself the power to conduct an extratextual search for evidence suggesting bad faith, which is exactly what three Supreme Court opinions have prohibited. *Mandel*, *Fiallo*, and *Din* have for decades been entirely clear that courts are not free to look behind these sorts of exercises of executive discretion in search of circumstantial evidence of alleged bad faith. The majority, now for the first time, rejects these holdings in favor of its politically desired outcome.

B

Considering the Order on its face, as we are required to do by *Mandel*, *Fiallo*, and *Din*, it is entirely without constitutional fault. The Order was a valid exercise of the President's authority under 8 U.S.C. §§ 1182(f) and 1185(a) to suspend the entry of "any aliens" or "any class of aliens" and to prescribe "reasonable rules, regulations, and orders" regarding entry, so long as the President finds that the aliens' admission

would be "detrimental to the interests of the United States." And Executive Order No. 13,780 was not the first to be issued under this authority. Such orders were entered by Presidents Reagan, George H.W. Bush, Clinton, George W. Bush, and Obama.[2] Moreover, the particular reasons given for the issuance of the Executive Order respond directly to the described risk of terrorism from six countries, justifying the imposition of a 90-day pause in the admission of nationals from those countries while the Administration determines whether existing screening and vetting procedures are adequate.

The Executive Order begins by noting that the previous Administration, in conjunction with Congress, identified seven countries—Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen—"as presenting heightened concerns about terrorism and travel to the United States," specifically noting that the previous Administration's Secretary of Homeland Security designated Libya, Somalia, and Yemen as countries of concern for travel purposes based on terrorism and national security. Order § 1(b)(i). And finally it notes that Members of Congress had expressed concerns about "screening

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[2] *See, e.g.*, Exec. Order 12,324, 46 Fed. Reg. 48,109 (Sept. 29, 1981) (Reagan); Proclamation 5,517, 51 Fed. Reg. 30,470 (Aug. 22, 1986) (Reagan); Exec. Order 12,807, 57 Fed. Reg. 23,133 (May 24, 1992) (George H.W. Bush); Proclamation 6,958, 61 Fed. Reg. 60,007 (Nov. 22, 1996) (Clinton); Proclamation 7,359, 65 Fed. Reg. 60,831 (Oct. 10, 2000) (Clinton); Executive Order 13,276, 67 Fed. Reg. 69,985 (Nov. 15, 2002) (George W. Bush); Exec. Order 13,692, 80 Fed. Reg. 12,747 (Mar. 8, 2015) (Obama); Exec. Order 13,726, 81 Fed. Reg. 23,559 (Apr. 19, 2016) (Obama).

and vetting procedures" following terrorist attacks in 2016 in Europe, as well as in this country. *Id.*

Adding to the historical assessment of those risks, the Executive Order continues with its conclusions, based on additional data, that the conditions in the countries previously identified had worsened, at least with respect to six of the seven countries (excepting Iraq), noting that some of those countries were state sponsors of terrorism or were significantly compromised by terrorist organizations. Several of the countries were unwilling or unable to share or validate information about nationals seeking to travel to the United States, and in some, the conditions increasingly enabled "terrorist operatives or sympathizers to travel to the United States." Order § 1(d).

Finally, the Order addresses the particular circumstances of each of the six countries covered by the Order, noting for example, that Iran, Sudan, and Syria were state sponsors of terrorism; that the governments in Libya, Somalia, and Syria were rendered partially or entirely unable to resist terrorist organizations because of the organizations' activities; and that Iran, Libya, Syria, and Yemen either were not cooperating with the United States in its counterterrorism efforts or were unable to do so.

None of the facts or conditions recited as reasons for the issuance of the Executive Order have been challenged as untrue or illegitimate. Indeed, the plaintiffs conceded during oral argument that if another candidate had won the presidential election in November 2016 and thereafter entered this same Executive Order, they would have had no problem with the Order.

As counsel for the plaintiffs stated, "I think in that case [the Order] could be constitutional." Similarly, the district court found the face of the Order to be neutral in terms of religion. And the majority too so concludes. *Ante* at 52, 59.

Moreover, these reasons amply support the modest action taken by the Executive Order, which imposes only a temporary pause of 90 days to assess whether the screening and vetting procedures that are applied to nationals from these high-risk countries are adequate to identify and exclude terrorists. Even this pause is accompanied by an authorization to issue waivers designed to limit any harmful impact without compromising national security.

While the legitimate justifications for the Order are thoroughly established, its supposed ills are nowhere present on its face. Far from containing the sort of religious advocacy or disparagement that can violate the Establishment Clause, the Order contains no reference to religion whatsoever. Nor is there any trace of discriminatory animus. In short, under *Mandel* and its progeny, Executive Order 13,780 comfortably survives our review.[3]

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[3] The opinions in support of affirmance betray an object beyond a disciplined analysis. Judge Gregory states, for example, that the Executive Order "drips with religious intolerance, animus, and discrimination," *ante* at 12, and Judge Wynn states similarly, "this Executive Order is no more than . . . naked invidious discrimination against Muslims," *ante* at 94. These statements flatly mischaracterize an order that undisputedly contains no facial reference to religion.

C

The majority's new rule, which considers statements made by candidate Trump during the presidential campaign to conclude that the Executive Order does not mean what it says, is fraught with danger and impracticability. Apart from violating all established rules for construing unambiguous texts—whether statutes, regulations, executive orders, or, indeed, contracts—reliance on campaign statements to impose a new meaning on an unambiguous Executive Order is completely strange to judicial analysis.

The Supreme Court has repeatedly warned against "judicial psychoanalysis of a drafter's heart of hearts." *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 862 (2005). And consistent with that warning, the Court has never, "in evaluating the legality of executive action, deferred to comments made by such officials to the media." *Hamdan v. Rumsfeld*, 548 U.S. 557, 623-24 n.52 (2006). The Court's reluctance to consider statements made in the course of campaigning derives from good sense and a recognition of the pitfalls that would accompany such an inquiry.

Because of their nature, campaign statements are unbounded resources by which to find intent of various kinds. They are often short-hand for larger ideas; they are explained, modified, retracted, and amplified as they are repeated and as new circumstances and arguments arise. And they are often ambiguous. A court applying the majority's new rule could thus have free reign to select whichever expression of a candidate's developing ideas best supports its desired conclusion.

Moreover, opening the door to the use of campaign statements to inform the text of later executive orders has no rational limit. If a court, dredging through the myriad remarks of a campaign, fails to find material to produce the desired outcome, what stops it from probing deeper to find statements from a previous campaign, or from a previous business conference, or from college?

And how would use of such statements take into account intervening acts, events, and influences? When a candidate wins the election to the presidency, he takes an oath of office to abide by the Constitution and the laws of the Nation; he appoints officers of the government and retains advisors, usually specialized in their field. Is there not the possibility that a candidate might have different intentions than a President in office? And after taking office, a President faces new external events that may prompt new approaches altogether. How would a court assess the effect of these intervening events on presidential intent without conducting judicial psychoanalysis?

The foibles of such a rule are unbounded and its adoption would have serious implications for the democratic process. As Judge Kozinski said well when he wrote about the Ninth Circuit's use of the same campaign statements:

> Even if a politician's past statements were utterly clear and consistent, using them to yield a specific constitutional violation would suggest an absurd result —namely, that the policies of an elected official can be forever held hostage by the unguarded declarations of a candidate. If a court were to find that

> campaign skeletons prevented an official from pursuing otherwise constitutional policies, what could he do to cure the defect? Could he stand up and recant it all ("just kidding!") and try again? Or would we also need a court to police the sincerity of that mea culpa—piercing into the public official's "heart of hearts" to divine whether he really changed his mind, just as the Supreme Court has warned us not to? *See McCreary*, 545 U.S. at 862.

Washington v. Trump, No. 17-35105 (9th Cir. March 17, 2017) (Kozinski, J., dissenting from the denial of reconsideration en banc).

The danger of the majority's new rule is that it will enable any court to justify its decision to strike down any executive action with which it disagrees. It need only find one statement that contradicts the stated reasons for a subsequent executive action and thereby pronounce that reasons for the executive action are a pretext. This, I submit, is precisely what the majority opinion does.

Moreover, the unbounded nature of the majority's new rule will leave the President and his Administration in a clearly untenable position for future action. It is undeniable that President Trump will need to engage in foreign policy regarding majority-Muslim nations, including those designated by the Order. And yet the majority now suggests that at least some of those future actions might also be subject to the same challenges upheld today. Presumably, the majority does not intend entirely to stop the President from creating policies that address these nations, but it gives

the President no guidelines for "cleansing" himself of the "taint" they have purportedly identified.

Finally, the new rule would by itself chill political speech directed at voters seeking to make their election decision. It is hard to imagine a greater or more direct chill on campaign speech than the knowledge that any statement made may be used later to support the inference of some nefarious intent when official actions are inevitably subjected to legal challenges. Indeed, the majority does not even deny that it employs an approach that will limit communication to voters. Instead, it simply opines remarkably that such chilling is "a welcome restraint." *Ante* at 68.

The Supreme Court surely will shudder at the majority's adoption of this new rule that has no limits or bounds—one that transforms the majority's criticisms of a candidate's various campaign statements into a constitutional violation.

D

Finally, it is readily apparent that the plaintiffs' attempt to use campaign statements to transform a facially neutral executive action into an Establishment Clause violation would, in any event, be unlikely to succeed on the merits.

The thrust of the plaintiffs' argument, which the majority adopts, is that the Order violates the Establishment Clause's requirement of religious neutrality because it was enacted "primarily for the purpose of targeting Muslims." To be sure, courts must ensure that government action is indeed motivated by a secular, rather than religious, purpose. *See Lemon v. Kurtz-*

man, 403 U.S. 602, 612 (1971). And while the government's "stated reasons" for an action "will generally get deference," it is true that "the secular purpose required has to be genuine, not a sham, and not merely secondary to a religious objective." *McCreary*, 545 U.S. at 864. "The eyes that look to purpose belong to an 'objective observer,' one who takes account of the traditional external signs that show up in the 'text, legislative history, and implementation of the statute,' or comparable official act." *Id.* at 862 (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000)).

But these generic standards are all of the doctrinal support that the plaintiffs and the majority can muster. For one, the Supreme Court has never applied the Establishment Clause to matters of national security and foreign affairs. And of the few government actions that the Supreme Court has invalidated based on a religious purpose, *McCreary*, 545 U.S. at 859 (remarking that the Court had "found government action motivated by an illegitimate purpose only four times since *Lemon*"), each is manifestly distinguishable from the Order here.

First, for all of the weight that the majority places on *McCreary*, it ignores that the Court there confronted a *facially religious* government action—the display of the Ten Commandments in two county courthouses. The Court in *McCreary* thus began with a *presumption* that the display was intended to promote religion. *See* 545 U.S. at 867-69. When it examined the legislative history surrounding the displays, it did so only to reject the government's attempt to overcome that presumption with a secular, pedagogical purpose—a purpose

that the Court declined to accept because it was adopted "only as a litigating position," *id.* at 871, "without a new resolution or repeal of the old [and expressly religious] one," *id.* at 870; *see also Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 223-24 (1963) (holding that schools' policy of required Bible study and recitation of the Lord's Prayer violated Establishment Clause). In stark contrast, the district court here concluded, and the majority agrees, that nothing on the face of the Executive Order speaks to religion. *Ante* at 59-60. Under *McCreary*, we should therefore begin with the presumption that the Order is neutral toward religion.

To be sure, the Supreme Court in "unusual cases" will find a religious purpose even where the government action contains no facial reference to religion. *McCreary*, 545 U.S. at 865. The majority, quoting selectively from these cases, invokes them to justify its searching inquiry into whether the Order's secular justifications were subordinate to a religious purpose that it has gleaned only from extrinsic statements. The majority's approach, however, in no way accords with what the Court actually *did* in those cases. In each case, the Court found the government action inexplicable *but for* a religious purpose, and it looked to extrinsic evidence only to confirm its suspicion, prompted by the face of the action, that it had religious origins. *See Santa Fe*, 530 U.S. at 315-16 (invalidating school policy of allowing student-led "invocation" before football games because the policy's language and context showed that religious prayer was the "preferred message"); *Edwards v. Aguillard*, 482 U.S. 578, 585-86

(1987) (invalidating state law that required creationism to be taught with evolution because the law did nothing to accomplish its stated secular purpose of "protect[ing] academic freedom"); *Wallace v. Jaffree*, 472 U.S. 38, 56-61 (1985) (invalidating state law that provided for one minute of "meditation or voluntary prayer" at the start of each school day because bill's sponsor stated that sole purpose was to encourage school prayer and prior statute already provided for student meditation).

The Executive Order in this case fits nowhere within this line. It is framed and enforced without reference to religion, and the government's proffered national security justifications, which are consistent with the stated purposes of the Order, withstand scrutiny. Conflicting extrinsic statements made prior to the Order's enactment surely cannot supplant its facially legitimate national security purpose. *See McCreary*, 545 U.S. at 865 ("[T]he Court often . . . accept[s] governmental statements of purpose, in keeping with the respect owed in the first instance to such official claims"); *Mueller v. Allen*, 463 U.S. 388, 394-95 (1983) (referring to the Court's "reluctance to attribute unconstitutional motives to the states, particularly when a plausible secular purpose for the state's program may be discerned from the face of the statute"). Indeed, to hold otherwise would fly in the face of the Court's decisions upholding government actions with connections to religion far more obvious than those here. *See Lynch v. Donnelly*, 465 U.S. 668, 681 (1984) (city's inclusion of crèche in Christmas display justified by "legitimate secular purposes," namely "to celebrate the Holiday and to depict the origins of that Holiday"); *McGowan v.*

Maryland, 366 U.S. 420, 444-46 (1961) (upholding state's requirement that businesses be closed on Sundays because, while Sunday laws had obvious religious origins, their religious purpose had dissipated in favor of a secular one).

The decision in *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994), on which the majority also relies, is similarly inapposite. The state law at issue in that case "carved out" a new school district that included only "a religious enclave of Satmar Hasidism, practitioners of a strict form of Judaism." *Id.* at 690. In *Kiryas Joel*, however, the government did not dispute that the lines were drawn with religion in mind. *Id.* at 699. Rather than searching for extrinsic statements as evidence of a religious purpose, the Court took the government at its word and treated as corroborative of its religious purpose the fact that "the district's creation ran uniquely counter to state practice." *Id.* at 702; *see also id.* at 729 (Kennedy, J., concurring in the judgment) ("There is no serious question that the legislature configured the school district, with purpose and precision, along a religious line. This *explicit* religious gerrymandering violates the First Amendment Establishment Clause" (emphasis added)).

The government here, by contrast, provides ample nonreligious justification for the Order and actively contests that it has any religious purpose. Far from running "counter" to typical national security practice, each of the Order's six affected countries was previously designated as "a state sponsor of terrorism, has been significantly compromised by terrorist organiza-

tions, or contains active conflict zones." Order § 1(d). And an Order that affects all nationals of six countries, irrespective of their religion, is not so precisely hewn to religious lines that we can infer, based on its operation alone, a predominantly religious purpose.

Undeterred, the majority, pursuing its objective despite the costs, opens *Lemon*'s already controversial purpose inquiry even wider.[4] It engages in its own review of the national security justifications supporting the Order and concludes that protecting national security could not be the President's "primary purpose." As evidence, the majority points to the President's level of consultation with national security agencies before issuing the Order; the content of internal Department of Homeland Security reports; the comments of former national security officials made in an *amicus* brief; and its own assessment of the national security threats described in the Order. *Ante* at 60-62.

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[4] While there is no question that it binds us, *Lemon*'s test, and particularly its inquiry into government purpose, has repeatedly been criticized as open-ended and manipulable. *See McCreary*, 545 U.S. at 902 (Scalia, J., dissenting) ("By shifting the focus of *Lemon*'s purpose prong from the search for a genuine, secular motivation to the hunt for a predominantly religious purpose, the Court converts what has in the past been a fairly limited inquiry into a rigorous review of the full record"); *see also*, *e.g.*, *Santa Fe*, 530 U.S. at 319-20 (Rehnquist, C.J., dissenting); *Kiryas Joel*, 512 U.S. at 720 (O'Connor, J., concurring in part and concurring in the judgment); *Cty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 655-57 (1989) (Kennedy, J., concurring in the judgment in part and dissenting in part). Should the majority not be wary of jumping when on thin ice?

This intense factual scrutiny of a facially legitimate purpose, of course, flies in the face of *Mandel*, *Fiallo*, and *Din*. But even within traditional Establishment Clause doctrine, it is an unprecedented overreach. It goes far beyond the Court's inquiry in *McCreary*, where the government offered a secular "litigating position" for a *facially religious* action, 545 U.S. at 871, or in *Wallace*, where the government's proffered secular purpose for a statute that provided for "meditation or voluntary prayer" was belied by the fact that a previous law already provided for a minute of meditation, 472 U.S. at 59-61 (finding that the bill's "sole purpose" was religious). In those cases, the Court concluded that the government's secular purpose did not hold up even on its own terms—that is, even accepting the *soundness* of the secular purpose, undisputed historical facts made clear that the secular purpose was not primary. The Court emphatically did not, however, question the *factual bases* underlying the government's proffered secular purpose.

The majority's intense factual inquiry is particularly inappropriate where the government's secular purpose is related to national security—a subject, as the majority recognizes, on which we owe the executive significant deference. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010) (explaining that, where the executive had concluded that material support to terrorist organizations "will ultimately inure to the benefit of their criminal, terrorist functions," "[t]hat evaluation of the facts by the Executive . . . is entitled to deference" because it "implicates sensitive and weighty interests of national security and foreign affairs").

Unless corrected by the Supreme Court, the majority's new approach, which is unsupported by any Supreme Court case, will become a sword for plaintiffs to challenge facially neutral government actions, particularly those affecting regions dominated by a single religion. Government officials will avoid speaking about religion, even privately, lest a court discover statements that could be used to ascribe a religious motivation to their future actions. And, in the more immediate future, our courts will be faced with the unworkable task of determining when this President's supposed religious motive has sufficiently dissipated so as to allow executive action toward these or other majority-Muslim countries. The Establishment Clause demands none of these unfortunate and unprecedented results.

* * *

For all of the foregoing reasons, I would reject the plaintiffs' and the district court's Establishment Clause arguments and vacate the district court's injunction.

SHEDD, Circuit Judge, with whom Judge NIEMEYER and Judge AGEE join, dissenting[1]:

National security is a complex business with potentially grave consequences for our country. Recognizing this fact, the Supreme Court has observed that "it is obvious and unarguable that no governmental interest is more compelling than the security of the Nation." *Haig v. Agee*, 453 U.S. 280, 307 (1981).[2] This observation is especially true in today's world, where we face threats from radical terrorists who seek to cross our borders for the purpose of harming us and destroying our way of life. Although we often are quick to forget the fact, "the real risks, the real threats, of terrorist attacks are constant and not likely soon to abate," *Boumediene v. Bush*, 553 U.S. 723, 793 (2008); therefore, "the Government's interest in combating terrorism is an urgent objective of the highest order," *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010). Given the multitude of critical factors involved in protecting national security, including the delicacy of foreign relations and the worldwide intelligence information that is constantly generated, combined with the ever-changing threatening circumstances, "questions of national security . . . do not admit of easy answers,

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[1] Though I fully join Judge Niemeyer's and Judge Agee's well-reasoned dissenting opinions, I offer the following additional comments to explain why I believe the district court further abused its discretion in entering the preliminary injunction. Judge Niemeyer and Judge Agee have authorized me to state that they join in this dissenting opinion.

[2] I have omitted internal quotation marks, alterations, and citations here and throughout this opinion, unless otherwise noted.

especially not as products of the necessarily limited analysis undertaken in a single case," *Lebron v. Rumsfeld*, 670 F.3d 540, 549 (4th Cir. 2012), and "they are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil," *Chicago & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948).

Every President has the "constitutional responsibility for the security of the Nation as the Chief Executive and as Commander in Chief of our Armed forces." *El-Masri v. United States*, 479 F.3d 296, 304 (4th Cir. 2007). In this role, a President and his national security advisors (unlike federal judges at all levels, lawyers, and commentators) have constant access to information "that may describe new and serious threats to our Nation and its people." *Boumediene*, 553 U.S. at 797. For these reasons and more, "courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs." *Dept. of Navy v. Egan*, 484 U.S. 518, 530 (1988).

This case involves the President's attempt to impose a *temporary pause* on the entry of nationals from six countries that indisputably present national security concerns. "It is pertinent to observe that any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy*, 342 U.S. 580, 589 (1952). Along this line, the Supreme Court

has noted that "the Government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border," *United States v. Flores-Montano*, 541 U.S. 149, 152 (2004), and has explained that the President is not obligated to disclose his reasons "for deeming nationals of a particular country a special threat . . . and even if [he] did disclose them a court would be ill equipped to determine their authenticity and utterly unable to assess their adequacy," *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 491 (1999).

One thing is certain: to whatever extent it is permissible to examine the President's national security decision in this case, where the President has acted "pursuant to an express or implied authorization from Congress," the President's decision is entitled to "the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it." *Dames & Moore v. Regan*, 453 U.S. 654, 668 (1981). This is especially true when, as here, plaintiffs seek preliminary injunctive relief to stop the President from executing a national security policy, for in even the most routine cases, which this certainly is not, a preliminary injunction "is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010).

The obvious rationale underlying these important principles has been discussed many times by the Supreme Court, this Court, and others, but the district court totally failed to respect them. Rather than giv-

ing any deference to the President (or his national security advisors) regarding his national security assessment, or imposing a heavy burden on the plaintiffs to overcome the President's decision, or showing any sense of restraint in wielding the extraordinary remedy of injunctive relief, the district court simply cast aside the President's decision as nothing more than a sham based on its own ideas concerning the wisdom of the Executive Order. In doing so, the district court made the extraordinary finding—based on a *preliminary* evidentiary record—that the President exercised his otherwise lawful authority to effect the temporary pause primarily because he bears animus towards Muslims and wants to impose a "Muslim ban." Remarkably, the district court made this finding while also acknowledging that the Executive Order is facially neutral, that there are heightened security risks with the countries listed in the Executive Order, and that national security interests would be served by the travel pause.

The shortcomings inherent in the district court's fact-finding are obvious. It is primarily based on the district court's selectively negative interpretation of political campaign statements made before the President swore his oath of office,[3] its acceptance of the

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[3] Ironically, courts are sensitive in defending their own integrity and often use the judicial oath of office as a shield against claims of bias. *See generally Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 891 (2009) (Roberts, C.J., dissenting) ("There is a presumption of honesty and integrity in those serving as adjudicators. All judges take an oath to uphold the Constitution and apply the law impartially, and we trust that they will live up to this promise."). Certainly, the President, who takes a similar oath of office, should

national security assessment of *former* government officials (many of whom openly oppose this President), its failure to account for the national security assessment of the *current* Attorney General and Secretary of Homeland Security, its misplaced conclusion regarding the President's decision not to submit the Executive Order to the Executive bureaucracy for "inter-agency review," and the purported novelty of the temporary travel pause. Moreover, despite its express recognition of the dangers posed by the designated countries and the national security interests served by the temporary travel pause, the district court—with no access to intelligence information[4]—criticized the President for failing to identify any instances of individuals who came from the designated countries having engaged in terrorist activity in the United States, faulted the President for not explaining why the temporary travel pause is the necessary response to the existing risks, and ultimately found that the President failed to prove

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be accorded the same trust. *See, e.g.*, *N.L.R.B. v. Enterprise Leas. Co. SE, LLC*, 722 F.3d 609, 671 (4th Cir. 2013) (Diaz, J., concurring in part and dissenting in part) ("The majority also gives short shrift to the fact that the President too swears an oath to uphold the Constitution, and that when he acts under its express authority, his actions should be accorded a presumption of constitutionality.").

[4] In *Waterman S.S. Corp.*, 333 U.S. at 111, the Court made the following apt observation: "The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports neither are nor ought to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret."

that national security cannot be maintained without the temporary travel pause. As if all of this is not enough, the President's supposed goal of "banning Muslims" from the United States is not remotely served by the temporary travel pause, a fact that makes the district court's factual finding even more dubious.[5]

The district court's questionable fact-finding is sufficient (among other reasons) to vacate the injunction, but there is ultimately a more obvious fatal flaw in the injunction order: the court's complete failure to actually account for the public interest. In addition to the general restraint courts must show when considering injunctive relief, courts "should be particularly cautious when contemplating relief that implicates public interests." *Salazar v. Buono*, 559 U.S. 700, 714 (2010).[6] Although the public interest generally favors the protection of constitutional rights, that interest must sometimes yield to the public interest in national security, *see, e.g.*, *Defense Distrib. v. U.S. Dept. of State*, 838 F.3d 451, 458-60 (5th Cir. 2016), because "unless a

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[5] The limited temporal and geographical scope of the Executive Order, coupled with the designated categorical exclusions and case-by-case waiver process, strongly supports the President's stated national security rationale rather than the district court's bias finding. Even without those exclusions and waivers, the temporary travel pause would only potentially affect approximately 10% of Muslims worldwide.

[6] To obtain a preliminary injunction, a plaintiff must establish: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Counc., Inc.*, 555 U.S. 7, 20 (2008).

society has the capability and will to defend itself from the aggressions of others, constitutional protections of any sort have little meaning," *Wayte v. United States*, 470 U.S. 598, 612 (1985). This is such a case.

The circumstances of this case are similar in material respects to those presented in *Winter*, and a straightforward application of that case warrants reversal here. The *Winter* plaintiffs complained that the United States Navy's sonar-training program harmed marine mammals and that the Navy should have prepared an environmental impact statement before conducting certain training exercises. The district court agreed and preliminarily enjoined the Navy from using sonar in certain circumstances during training exercises. The Ninth Circuit affirmed the injunction, but the Court reversed. Applying the standard four-part preliminary injunction test, the Court acknowledged the importance of plaintiff's ecological, scientific, and recreational interests in marine mammals and accepted for purposes of discussion that they had shown irreparable injury from the Navy's training exercises. However, the Court concluded that these factors were "outweighed by the public interest and the Navy's interest in effective, realistic training of its sailors." *Id.* at 23. In the Court's view: "A proper consideration of these factors alone require[d] denial of the requested injunctive relief." *Id.*

The Court explained that the lower courts "significantly understated the burden the preliminary injunction would impose on the Navy's ability to conduct realistic training exercises, and the injunction's consequent adverse impact on the public interest in national

defense." *Id.* at 24. In reaching this conclusion, the Court noted that the case involved complex professional military decisions regarding training and control of a military force, to which "great deference" is ordinarily given, *id.*, and it observed that the record contained declarations from senior Navy officials that underscored the threat posed by enemy submarines and the need for extensive sonar training to counter the threat, as well as a declaration from the President that training with sonar was essential to national security. The Court emphasized that the lower courts "failed properly to defer" to senior Navy officers' judgment about the effect that a preliminary injunction would have on the effectiveness of the training. *Id.* at 27. Additionally, the Court pointed out that "despite the importance of assessing the balance of equities and the public interest in determining whether to grant a preliminary injunction, the District Court addressed these considerations in only a cursory fashion." *Id.* at 26. Ultimately, while acknowledging that "military interests do not always trump other considerations," the Court determined that "the proper determination of where the public interest lies does not strike us as a close question." *Id.*

As in *Winter*, the district court's public interest analysis misses the mark. Here, the facially neutral Executive Order explains in detail the President's underlying reasoning for the temporary travel pause. Additionally, the record contains a joint letter from the Attorney General and Secretary of Homeland Security in which they detail their concerns "about weaknesses in our immigration system that pose a risk to our

Nation's security," and in which they assert that "*it is imperative that we have a temporary pause on the entry of nationals from certain countries to allow this review to take place—a temporary pause that will immediately diminish the risk we face from application of our current vetting and screening programs for individuals seeking entry to the United States from these countries.*" To be sure, the district court found that the *President's* alleged bias is the primary reason for the temporary travel pause, but it found no such bias on the part of his Cabinet officials.[7] Moreover, the district court acknowledged that national security is in fact a secondary reason for the temporary travel pause, and it found that the countries designated in the Executive Order present heightened security risks and that national security interests would be served by the temporary travel pause.

Despite this record, the district court—with no meaningful analysis—simply dismissed the public's interest in national security with the specious conclusion that "Defendants . . . have not shown, or even asserted, that national security cannot be maintained without an unprecedented six-country travel ban, a measure that has not been deemed necessary at any other time in recent history." *I.R.A.P. v. Trump*, 2017 Westlaw

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[7] Similarly, plaintiffs' counsel admitted during oral argument that he has no basis to challenge the integrity of the Attorney General and Secretary of Homeland Security. The apparent good-faith of these officials, which is an inconvenient fact for the plaintiffs, leads inexorably to the unanswered question of why the district court essentially ignored or rejected their detailed national security advice to the President.

1018235, *17 (D. Md. 2017). As noted, national security is the most compelling of public interests, and the question of how best to protect public safety in this area does not, as the district court implies, boil down to a least-restrictive means test, *Padilla v. Hanft*, 423 F.3d 386, 395 (4th Cir. 2005) ("We believe that the district court ultimately accorded insufficient deference to that determination, effectively imposing upon the President the equivalent of a least-restrictive-means test. To subject to such exacting scrutiny the President's determination that criminal prosecution would not adequately protect the Nation's security at a very minimum fails to accord the President the deference that is his when he acts pursuant to a broad delegation of authority from Congress."), or require a danger that satisfies the court's "independent foreign policy analysis," *Regan v. Wald*, 468 U.S. 222, 242 (1984). Therefore, the relevant point is not whether the temporary travel pause is the *only* way, or even the best way, to protect national security. The simple fact of the matter is that regardless of any ulterior motive one might ascribe to the President, the record still conclusively establishes that the temporary travel pause will in fact promote an important national security objective.

Undoubtedly, protection of constitutional rights is important, but there are often times in the federal system when constitutional rights must yield for the public interest. As we have explained, for example, in applying the state secrets doctrine, a plaintiff with a plausibly viable constitutional claim can be barred from pursuing it "not through any fault of his own, but because his personal interest in pursuing his civil claim is sub-

ordinated to the collective interest in national security." *El-Masri*, 479 F.3d at 313. In my view, the very serious national security interest served by the temporary travel pause (as determined by those who are duly empowered to make the decision and who have access to current intelligence information) greatly outweighs the alleged temporary and relatively minor harm that will befall these few plaintiffs. The district court abused its discretion by failing to strike this balance. *See, e.g.*, *Sarsour v. Trump*, 2017 Westlaw 1113305, *15 (E.D.Va. 2017) ("Based on the record now before the Court, the parties' respective interests described above, the subject matter of EO-2, and the protections to the public that EO-2 is intended to provide, Plaintiffs have not established that the public interest favors issuance of immediate relief in this action.").

Today's decision may be celebrated by some as a victory for individual civil rights and justice, and by others as a political defeat for this President. Yet, it is shortsighted to ignore the larger ramifications of this decision. Regrettably, at the end of the day, the real losers in this case are the millions of individual Americans whose security is threatened on a daily basis by those who seek to do us harm. Even if the district court's instinct is correct and no tangible harm directly results from its order enjoining the President from attempting to protect American citizens, the injunction prohibits the government from addressing a serious risk identified by the Attorney General and Homeland Security Secretary; therefore, the security of our nation is indisputably lessened as a result of the injunction. Moreover, the President and his national security advi-

sors (and perhaps future Presidents) will be seriously hampered in their ability to exercise their constitutional duty to protect this country.[8]

[8] At oral argument, several judges (including myself) questioned when, if ever, the President could free himself from the stigma of bias that the district court has enshrined by its *preliminary* "fact-finding." Notably, no one has provided a satisfactory response.

AGEE, Circuit Judge, with whom Judge NIEMEYER and Judge SHEDD join, dissenting:

In their haste to reach the merits of the plaintiffs' Establishment Clause claim, my colleagues in the majority neglect to follow the longstanding and well-defined requirements of Article III of the United States Constitution. They err, as did the district court, in holding that the plaintiffs had standing to bring an Establishment Clause claim. For that reason, I respectfully dissent from the majority's decision to uphold the district court's preliminary injunction. The plaintiffs do not have standing to bring the current action.[1]

I.

A.

Article III limits the federal judiciary's authority to adjudicate only "cases" and "controversies." U.S. Const. art. III, § 2. "[S]tanding is an integral component of the case or controversy requirement." *CGM, LLC v. BellSouth Telecomms., Inc.*, 664 F.3d 46, 52 (4th Cir. 2011); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) ("[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III.").[2] A plaintiff must satisfy three elements to establish standing: (1) "the plaintiff must have suffered an injury in fact

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[1] I join the well-written dissents of Judge Niemeyer and Judge Shedd in full. But, for the reasons stated herein, I would find it unnecessary to reach the merits of the plaintiffs' Establishment Clause claim.

[2] I have omitted internal alterations, citations, and quotation marks here and throughout this dissent, unless otherwise noted.

—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical"; (2) "there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court"; and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Defenders of Wildlife*, 504 U.S. at 560-61. "The party invoking federal jurisdiction bears the burden of establishing these elements." *Id.* at 561.

Due to the difficulty of determining injury in Establishment Clause cases, "rules of standing recognize that noneconomic or intangible injury may suffice to make an Establishment Clause claim justiciable." *Suhre v. Haywood Cty.*, 131 F.3d 1083, 1086 (4th Cir. 1997); *see also Moss v. Spartanburg Cty. Sch. Dist. Seven*, 683 F.3d 599, 605 (4th Cir. 2012) ("Many of the harms that Establishment Clause plaintiffs suffer are spiritual and value-laden, rather than tangible and economic."). However, "a mere abstract objection to unconstitutional conduct is not sufficient to confer standing." *Suhre*, 131 F.3d at 1086; *see also Moss*, 683 F.3d at 605 ("Nonetheless, we must guard against efforts to use this principle to derive standing from the bare fact of disagreement with a government policy, even passionate disagreement premised on Establishment Clause principles. Such disagreement, taken alone, is not sufficient to prove spiritual injury."). For example, "a citizen of Omaha, Nebraska who finds a

religious symbol in the Haywood County Courthouse [in North Carolina] to be offensive in the abstract would not have standing to challenge it. The injury to our hypothetical Omaha plaintiff partakes of a generalized grievance, based on nothing more than each citizen's shared individuated right to a government that shall make no law respecting the establishment of religion." *Suhre*, 131 F.3d at 1086; *accord Defenders of Wildlife*, 504 U.S. at 575 ("[T]o entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public."). Conversely, "direct contact with an unwelcome religious exercise or display works a personal injury distinct from and in addition to each citizen's general grievance against unconstitutional government conduct." *Suhre*, 131 F.3d at 1086.

B.

The district court determined that three of the individual plaintiffs (Meteab, John Doe #1, and John Doe #3) had sufficiently pleaded that they had suffered stigmatization due to the Executive Order. *See* J.A. 780 (finding that the plaintiffs claimed "the anti-Muslim animus underlying the Second Executive Order inflicts *stigmatizing injuries* on them all" (emphasis added)). Because Section 2(c) also allegedly prevents the family members of these plaintiffs from entering the country, the district court held that they had asserted injuries

sufficient to confer standing to pursue their Establishment Clause claim.

Doe #1 is a lawful permanent resident and "non-practicing Muslim[]." J.A. 213, 305. His wife, also a non-practicing Muslim and Iranian national, has applied for an immigrant visa. She is currently awaiting an embassy interview, a condition precedent to the determination of whether to grant a visa. *See* 22 C.F.R. § 42.62(b) ("Every alien executing an immigrant visa application must be interviewed by a consular officer who shall determine on the basis of the applicant's representations and the visa application and other relevant documentation—(1) The proper immigrant classification, if any, of the visa applicant, and (2) The applicant's eligibility to receive a visa."). Doe #1 alleges that the Executive Order has caused him and his wife to experience "significant fear, anxiety and insecurity . . . regarding their future." J.A. 246. He argues that because he is afraid that he will not be allowed to reenter the United States if he travels to Iran, Section 2(c) "forces [him] to choose between [his] career and being with [his] wife." J.A. 306. Doe #1 maintains that "the anti-Muslim views that are driving the Executive Order, as well as the Order itself, have caused [him] significant stress and anxiety." J.A. 306. He is allegedly concerned for his safety.

Like Doe #1, Doe #3 is a lawful permanent resident, although nothing in the record indicates his religious

preference.[3] In any event, Doe #3 applied for an immigrant visa on behalf of his wife, an Iranian national. In May 2016, the United States Embassy "informed [her] that her documentation was complete and she needed to wait for administrative processing, but that she should be able to join her husband in two to three months." J.A. 246. With his wife in Iran, Doe #3 maintains that "[t]heir continued separation has placed extraordinary stress on John Doe #3 and his wife, and their relationship." J.A. 247. He "feel[s] as though they've been unable to start their lives together because of the delays and uncertainty caused by the Executive Order." J.A. 247. Doe #3 asserts that he and his wife "are being torn apart by this situation and the uncertainty and delay." J.A. 310. He believes that the anti-Muslim message of the Executive Order has caused him stress and anxiety and to feel like an outsider.

Meteab is also a lawful permanent resident and Muslim. His wife and children are here in the United States. However, Meteab has three brothers who wish to resettle in North America as refugees. Two of the three have received approval for resettlement in the United States but have not yet obtained travel documents. The remaining brother has been approved for resettlement in Canada. Meteab contends that, as a result of the Executive Order, he "and his wife have

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[3] The pleadings make only one religious reference with respect to Doe #3: "The anti-Muslim attitudes that are driving this Executive Order have caused me stress and anxiety and made me question whether I even belong in this country despite everything I have sacrificed and invested in making a life here." J.A. 310.

experienced anti-Muslim sentiment and felt very uncomfortable and insecure in their community, causing them acute mental stress." J.A. 250. The couple "ha[s] experienced hostility in public, with people staring at Mr. Meteab's wife, who wears a hijab, and refusing to stop for them at crosswalks." J.A. 250.

C.

The district court held that, "where the [allegedly anti-Muslim] Executive Order was issued by the federal government, and the three Individual Plaintiffs have family members who are directly and adversely affected in that they are barred from entry to the United States as a result of the terms of the Executive Orders, these Individual Plaintiffs have alleged a personal injury as a consequence of the alleged Establishment Clause violation." J.A. 787. However, as the record reflects, the district court clearly erred in finding that Meteab had standing to challenge Section 2(c) of the Executive Order. Meteab's brothers are refugees, and Section 2(c) does not apply to refugees. The district court recognized in its opinion that "[t]he Plaintiffs' Establishment Clause . . . arguments focused primarily on the travel ban for citizens of the six Designated Countries in Section 2(c) of the Second Executive Order." J.A. 809. The court elaborated that the plaintiffs had "not sufficiently develop[ed] . . . argument[s relating to refugees] to warrant an injunction on those sections at this time." J.A. 810. Therefore, Meteab cannot base standing to challenge Section 2(c) on any "prolonged separation" from his refugee brothers, who are covered by a different section of the Executive Order. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352

(2006) ("[A] plaintiff must demonstrate standing for each claim he seeks to press."); *Allen v. Wright*, 468 U.S. 737, 752 (1984) ("Typically, however, the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted."), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. ___, 134 S. Ct. 1377 (2014). Thus, Meteab can show Establishment Clause standing only if his alleged stigmatization is a cognizable injury for standing purposes.

As for Doe #3, his wife was granted a visa during the pendency of this appeal, so he, too, is left with only stigma to make his Establishment Clause claim of standing. For the reasons stated below, such a stigma claim alone is insufficient to confer standing under the record in this case.

Perhaps recognizing these deficits, the majority bases its affirmation of the district court's standing determination only on Doe #1. But Doe #1 does not have standing either because the stigma that he alleges to have suffered and the potential denial of a visa to his wife are two distinct harms, neither of which meet basic standing requirements. Setting aside Doe #1's allegation that he experienced stigmatization himself, the imagined future denial of a visa to his wife is simply too vague and speculative to meet the constitutional standard of a concrete and "actual or imminent, not conjectural or hypothetical" injury. *Defenders of Wildlife*, 504 U.S. at 560. The majority's conception of "injury-in-fact" by Doe #1 is conjectural and hypothetical; he

had no reasonable expectation that his wife would join him in the United States at any particular time either prior to the drafting of the Executive Order or at any time during the suspension period.

1.

The plaintiffs' pleadings show that their alleged injuries consist solely of their personal perception of stigmatization. In the complaint, they allege, "The March 6 Order also contains language that associates Muslims with violence, terrorism, bigotry, and hatred, inflicting *stigmatic and dignitary harms*." J.A. 207 (emphasis added). Despite the majority's holding, the stigma that plaintiffs claim to have suffered is not a cognizable injury because it is simply a subjective disagreement with a government action. To allow these plaintiffs to pursue their claims based on an idiosyncratic projection of stigmatization is to grant every would-be Establishment Clause plaintiff who develops negative feelings in response to some action by the Government a court proceeding in which to vent his subjective reactions as a legal claim. *See Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 489 (1982) ("Were we to accept respondents' claim of standing in this case, there would be no principled basis for confining our exception to litigants relying on the Establishment Clause."). Indeed, to find standing here is to find standing for not only all Muslims in America, but *any* American who may find the Executive Order (or any other Government action) personally disagreeable, which is "beyond all reason." *See Defenders of Wildlife*, 504 U.S. at 566.

The Supreme Court "ha[s] consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." *Id.* at 573-74; *accord Valley Forge*, 454 U.S. at 482-83 (stating that the Supreme Court "repeatedly has rejected claims of standing predicated on the right, possessed by every citizen, to require that the Government be administered according to law"). The Court has rejected a generalized finding of standing based on "the need for an available plaintiff, without whom the Establishment Clause would be rendered virtually unenforceable by the judiciary." *Valley Forge*, 454 U.S. at 470. The plaintiffs here "fail to identify any personal injury suffered by them as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees." *Id.* at 485. The majority does not provide any principled instruction on how its sweeping standing ruling is cabined to this particular case, and thus its holding far oversteps the bounds of traditional judicial authority. *See id.* at 471 (stating that Article III is a limitation on "judicial power"); *see also Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004) ("The command to guard jealously and exercise rarely our power to make constitutional pronouncements requires strictest adherence when matters of great national significance are at stake."), *abrogated on other grounds by Lexmark*, 134 S. Ct. 1377; *Defenders of Wildlife*, 504 U.S. at 576

("Vindicating the public interest (including the public interest in Government observance of the Constitution and laws) is the function of Congress and the Chief Executive.").

The majority relies heavily on two Fourth Circuit cases, *Suhre* and *Moss*, but these cases are inapposite.[4] In *Suhre*, local officials displayed the Ten Commandments in the county courthouse where the plaintiff, a resident of the county, often visited. 131 F.3d at 1084-85. Suhre, an avowed atheist and serial litigant, took offense to the display and "aver[red] that contact with the display cause[d] him distress." *Id.* at 1085. We ultimately found that Suhre had alleged a "cognizable injury caused by personal contact with a public religious display." *Id.* at 1090.

In *Moss*, a school district "adopted a policy allowing public school students to receive two academic credits for off-campus religious instruction offered by private educators." 683 F.3d at 601. The plaintiffs, including two students and their parents, urged the Court to "adopt a per se rule that students and parents always have standing to bring suit against policies at their school when they allege a violation of the Establishment Clause, regardless of whether they allege or can prove personal injury." *Id.* at 605. We rejected that argument and held that, although injuries in such cases are often intangible, plaintiffs must have been "spiritu-

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[4] *Suhre* is a religious display case, a type of Establishment Clause claim that arguably belongs in its own category. *See* 131 F.3d at 1086 ("Religious display cases are an even more particularized subclass of Establishment Clause standing jurisprudence.").

ally affronted as a result of direct and unwelcome contact with an alleged religious establishment within their community." *Id.* Because one student had no "personal exposure" to the policy other than mere awareness of its existence, we held that the student lacked standing, despite that student "feel[ing] like an outsider" in the school environment. *Id.* at 606. However, we found that the other student had standing to bring a claim because she actually received a solicitation letter from a religious institution that participated in the school's program and "changed [her] conduct in adverse ways as a result of [her] perceived outsider status." *Id.* at 607.

In both of these cases, local governments took direct actions in relation to their constituents in an immediate and concrete way. All residents who entered the courthouse in *Suhre* were personally exposed to the display of the Ten Commandments, while the academic policy in *Moss* was actually sent to the student. As a consequence, the plaintiffs in those cases did come into direct contact with the alleged Establishment Clause violations.[5]

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[5] The out-of-circuit cases on which the majority also relies are likewise inapposite for the same reasons that distinguish *Suhre* and *Moss*. *See Awad v. Ziriax*, 670 F.3d 1111, 1116, 1122 (10th Cir. 2012) (analyzing a "proposed constitutional amendment that would prevent Oklahoma state courts from considering or using Sharia law"); *Catholic League for Religious and Civil Rights v. City and Cty. of San Francisco*, 624 F.3d 1043, 1048-53 (9th Cir. 2010) (reviewing standing in a case challenging a city resolution that ordered Catholics in San Francisco to cease discriminating against same-sex couples).

In contrast, the Executive Order here applies only to prospective immigrants. The order's focus faces outward towards the alien residents of the subject countries, not inward towards persons in the United States like the plaintiffs. That circumstance is in direct distinction to the religious display in *Suhre* or the academic policy in *Moss*. Section 2(c) of the facially-neutral Executive Order applies only to "nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen." Section 3(b)(i) explicitly exempts "any lawful permanent resident of the United States," like the plaintiffs, from the travel suspension, thus not applying to Does #1 and #3 and Meteab. The majority posits that, because the policy at issue came from the President himself that somehow metamorphosizes into the "direct contact" *Suhre* requires. Majority Op. 39. This distorts the standing inquiry as the source of the directive is irrelevant. What matters is whether the plaintiff came into direct contact with the religious establishment. And that is not the case here simply because the President is the party signing an order.

Despite the majority's giving short shrift to *In re Navy Chaplaincy*, 534 F.3d 756 (D.C. Cir. 2008), the case is directly on point. There, "[a] group of Protestant Navy chaplains sued the Navy, alleging that the Navy's operation of its retirement system discriminates in favor of Catholic chaplains in violation of the Establishment Clause." *Id.* at 758.[6] The plaintiffs "conceded that the Navy did not deny them any bene-

[6] It is irrelevant that *In re Navy Chaplaincy* is a favoritism case as opposed to a condemnation case as alleged here, as they are two sides of the same Establishment Clause coin.

fits or opportunities on account of their religion." *Id.* at 760. Rather, they maintained "that *other* chaplains suffered such discrimination." *Id.* The plaintiffs contended that they had standing because "they ha[d] been subjected to the Navy's message of religious preference as a result of the Navy's running a retirement system that favors Catholic chaplains." *Id.* The D.C. Circuit rejected this argument and found that they did not "have standing based on their exposure to the Navy's alleged message of religious preference." *Id.* at 761. Like the Protestant Navy chaplains, the plaintiffs here claim offense to a message directed at others, who happen to be nationals of other countries. The plaintiffs' claims of stress or stigmatization are subjective reactions, not direct contact with the Executive Order, and amount to disagreements with a government policy. *See Moss*, 683 F.3d at 604-05. As a result, the plaintiffs' claim of injury by way of stigma is a general grievance, insufficient to confer standing. *Suhre*, 131 F.3d at 1086.[7]

2.

Perhaps recognizing the problems posed by basing standing only on the subjective feelings of the plaintiffs, the majority also holds that the alleged stigma

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[7] Some of the plaintiffs, including Doe #1, have expressed fear that they will be denied reentry into the country if they travel to the subject countries to visit their family while the Executive Order is in effect. This fear is unfounded and contradicted by the plain terms of the Executive Order. Does #1 and 3 and Meteab are all lawful permanent residents. Section 3(b)(i) of the Executive Order exempts "any lawful permanent resident of the United States" from the temporary suspension of entry.

suffered by Doe #1, combined with prolonged separation from his wife, is enough to support standing, thereby creating a kind of "stigma plus" standard.[8] However, the majority's construct erroneously conflates Doe #1's Establishment Clause standing claim with his claim under the Immigration and Nationality Act ("INA"), which the Supreme Court has prohibited. *See DaimlerChrysler Corp.*, 547 U.S. at 352 ("[O]ur standing cases confirm that a plaintiff must demonstrate standing for each claim he seeks to press."). Plaintiffs are required to "demonstrate standing *separately* for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000) (emphasis added). The majority haphazardly merges alleged injuries unique to two different claims, and personal to different people, to manufacture standing.[9]

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[8] In its attempt to distinguish *In re Navy Chaplaincy*, the majority implicitly holds that stigma alone is not enough to support standing. The majority states that, "contrary to the Government's assertion, all Muslims in the United States do not have standing to bring this suit. Only those persons who suffer direct, cognizable injuries as a result of EO-2 have standing to challenge it." Majority Op. 40 n.11. The majority avers that Doe #1 "is feeling the direct, painful effects of the Second Executive Order—both its alleged message of religious condemnation *and* the prolonged separation it causes between him and his wife—in his everyday life." *Id.* at 40. The majority is right in that regard—stigma is not enough.

[9] Although not the focus of this dissent, I also would find that Doe #1 does not have standing to bring an INA claim; he lacks a concrete injury. It is pure speculation whether Doe #1's wife will receive a visa. Doe #1 has presented no evidence showing that his wife is likely to receive a visa, much less when, but for the operation of the executive order. Or that the executive order would

The majority reasons that Doe #1 has third-party standing to bring an Establishment Clause claim. Not so. Plaintiffs do not have standing to allege violations of the Establishment Clause on behalf of their immigrant relatives. *See Whitmore v. Arkansas*, 495 U.S. 149, 161 n.2 (1990) (restating the general rule "that a litigant must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties"); *cf. Defenders of Wildlife*, 504 U.S. at 562 ("[W]hen the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily substantially more difficult to establish."). The rela-

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tangibly affect the processing of her application in any way. *See* Opening Br. 19-20 ("Likewise, Doe #1's wife did not have her visa interview scheduled before the Revoked Order took effect, and had already been waiting roughly six weeks, making it similarly speculative whether the 90-day pause will affect her."); *see also The Immigrant Visa Process: Interview*, U.S. Dep't of State, https://travel.state.gov/content/visas/en/immigrate/immigrant-process/interview.html (last visited May 23, 2017) (saved as ECF opinion attachment) (stating that, although "[m]ost appointments are set within 60 days of [the National Visa Center's] receipt of all requested documentation[,] . . . we *cannot predict when an interview appointment will be available*," and warning that "[t]here may be a wait of *several months* for an interview date to become available" (emphasis added)). Nor has the Government denied the visa application of Doe #1's spouse.

Any injury caused by the Executive Order is not redressable because an injunction will not establish that Doe #1's wife will receive a visa, as exemplified by her current status. *See The Immigrant Visa Process: Interview*, *supra* ("Based on U.S. law, not everyone who applies for a visa will be found eligible to come to the United States."). Doe #1 does not have standing under the INA.

tives, in turn, do not have rights of entry or any Establishment Clause rights. *Kerry v. Din*, 576 U.S. __, 135 S. Ct. 2128, 2131 (2015) ("But because Berashk is an unadmitted and nonresident alien, he has no right of entry into the United States, and no cause of action to press in furtherance of his claim for admission."); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) (suggesting that "the people protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community"). Doe #1 is "seeking to vindicate, not [his] own rights, but the rights of others." *Moss*, 683 F.3d at 606.

Doe #1 has no right to, or even a reasonable expectation of, a time certain meeting with his wife in America. His alleged injury is based on a mere conjecture that his wife will have her embassy interview and obtain a discretionary visa within the ninety-day suspension period of the Executive Order when the State Department has cautioned, well before the Executive Order, that it may take an indefinite period to schedule interviews much less adjudicate visa applications. *See The Immigrant Visa Process: Interview*, *supra* note 9 (stating that, although "[m]ost appointments are set within 60 days of [the National Visa Center's] receipt of all requested documentation[,] . . . we *cannot predict when an interview appointment will be available*," and warning that "[t]here may be a wait of *several months* for an interview date to become available"

(emphasis added)). Any effect of the Executive Order on that speculative possibility is simply not determinable and thus fails to meet the constitutional standard of an injury "actual or imminent, not conjectural or hypothetical." *Defenders of Wildlife*, 504 U.S. at 560.

The majority underscores the fragility of its standing hypotheses when it avers, without any citation to precedent or evidence, that the Executive Order creates harm to the plaintiffs because "dedicating time and resources to a global review process[, for which Section 2(c) was designed to facilitate,] will further slow the adjudication of pending [visa] applications." Majority Op. 36. Nothing in the record supports this assertion or ties any nexus to Doe #1 or his spouse. Doe #1 simply fails to carry his burden as to standing under the standard required by the Supreme Court. No constitutionally cognizable "harm" which is "certainly impending" to Doe #1 or to him via his spouse has been proffered. *Defenders of Wildlife*, 504 U.S. at 564 n.2.[10]

For all these reasons, Doe #1 has no "legally protected interest," *Defenders of Wildlife*, 504 U.S. at 560,

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[10] Similarly, there is no feasible way to determine, except by pure speculation, how or whether the Executive Order's visa waiver process might affect a particular visa application. Nothing in the record supports the majority's conclusion that pursuing a waiver would affect any plaintiff. Rather, the majority has arbitrarily substituted its conjecture for evidence. The visa waiver process could just as likely allow Doe #1's wife to obtain her visa as not during the temporary suspension period.

and no standing to pursue his Establishment Clause claim.[11]

II.

As the plaintiffs lack standing to pursue their cause of action, I respectfully dissent and would vacate the grant of a preliminary injunction by the district court.

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[11] The district court did not determine whether other individual plaintiffs or the organizational plaintiffs have standing to bring the Establishment Clause claim. That would be a matter to be considered by the district court in the first instance in any further proceedings.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No.: 8:17-CV-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL., DEFENDANTS

SECOND DECLARATION OF REBECCA HELLER, DIRECTOR OF IRAP, IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

SECOND DECLARATION OF REBECCA HELLER

I, Rebecca Heller, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. §1746 and declare as follows:

1. I am the Director and co-founder of the International Refugee Assistance Project ("IRAP"), a project of the Urban Justice Center, Inc., a Plaintiff in the above-captioned case. I have been with IRAP since August 2008.

2. As IRAP's Director, I oversee all of IRAP's operations and activities, including programming and development. I am in constant, regular communication with my staff who provide legal representation to vulnerable individuals and consult with pro bono attorneys and law students working on IRAP cases. I also

represent a number of refugee and visa cases myself, consult with numerous attorneys working on related cases, monitor field conditions on the ground in the Middle East/North Africa Region, liaise with the U.S. government and the United Nations around refugee and visa processing issues, and coordinate partnerships with numerous NGOs working with and advocating for refugees and immigrants in the U.S. and abroad. Throughout my eight and a half years working on Middle East refugee issues, I have overseen, consulted on and/or represented thousands of cases.

3. I also teach a seminar on refugee law and practice at Yale Law School.

4. Founded in 2008, IRAP's mission is to provide and facilitate free legal services for vulnerable populations around the world, including refugees, who seek to escape persecution and find safety in the United States and other Western countries. IRAP has a staff of over 25 individuals based in offices in New York, Lebanon, and Jordan. IRAP works with 29 law school chapters and over 75 firms to provide pro bono assistance to persecuted individauls around the world. IRAP relies on the volunteer and pro bono assistance to meet the needs of its client base.

5. IRAP lawyers provide legal assistance to refugees and other immigrants to the United States throughout the resettlement process. IRAP also assists many individuals (including refugees, asylees, Lawful Permanent Residents and U.S. Citizens) inside the United States who need assistance filing family reunification petitions for family members overseas. IRAP has

provided legal counseling and assistance to nearly 20,000 individuals.

6. Since its inception, IRAP has helped to resettle over 3,200 individuals from 55 countries of origin, with the majority resettled to the United States.

7. IRAP's client base includes refugees from Iraq, Afghanistan, Egypt, Eritrea, Ethiopia, Iran, Jordan, Kuwait, Libya, Pakistan, Palestine, Somalia, Sudan, Syria, Turkey, and Yemen. Of IRAP's current 599 open cases, 402 families are from one of the six countries targeted in the new Executive Order or are refugees from other countries and therefore potentially affected by the Executive Order. The overwhelming majority of IRAP's clients, including clients abroad and those within the United States, identify as Muslim.

8. Implementation of the Executive Order has frustrated and will continue to frustrate IRAP's mission and imposes a significant burden on its work. By drastically reducing the number of resettlement slots available for this fiscal year and freezing the resettlement process for at least 120 days, the Executive Order will force IRAP to invest significant time and energy exploring alternative routes to safety for its clients (many of whom are in imminent and life-threatening danger) and educating its network of over 2,000 pro bono attorneys and law students about those alternate routes. IRAP attorneys must also counsel their own clients about the changes in law as well as pursue other resettlement options for them, even though many were already being processed in the U.S. Refugee Admissions Program ("USRAP"). The first Executive Order has already wasted significant resources (typically hun-

dreds of hours of legal representation over the course of many years navigating USRAP), forcing IRAP and our clients to make the Hobson's choice between starting the process over with another country, attempting to shelter in place in spite of life-threatening circumstances, or undertaking dangerous journeys to reach safety across other borders. Because the new Executive Order mirrors the first in terms of its effect on IRAP's refugee and immigrant clients, it too places IRAP and its clients at imminent risk of irreparable harm.[1]

9. Following the signing of the first Executive Order, on January 27, 2017 at 4:42 P.M. EST, two IRAP clients, Mr. Hameed Khalid Darweesh and Mr. Haider Sameer Abdulkhaleq Alshawi, were detained at John F. Kennedy Airport ("JFK") despite having valid entry documents. As a result, IRAP attorneys were present at JFK from 2 am to 6:30 pm on January 28, 2017 attempting to secure their lawful release. Furthermore, together with cocounsel, IRAP filed a habeas petition on behalf of those two clients, together with a motion for class certification (*Darweesh et al. v. Trump et al.*, No. 1:17-cv-480 (E.D.N.Y. filed Jan. 28, 2017)). That litigation is ongoing. These actions are not in the scope of normal IRAP legal assistance, as previous IRAP

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[1] Since I do not anticipate any material difference in the effect of the new Executive Order Section 6(b)'s reduction by more than half of the refugee resettlement allotment for fiscal year 2017, which follows verbatim the first Executive Order's Section 5(d), I incorporate by reference my declaration submitted in support of Plaintiffs' Motion for a Preliminary Injunction Against Section 5(d). *See* Declaration of Rebecca Heller, Dkt. No. 64-1 (J.R. 26-35).

clients were allowed to enter at U.S. Ports of Entry after receiving final approval to travel.

10. Both the first and the new Executive Order have also diverted IRAP resources as IRAP has become the focal point organization for volunteer attorneys all across the country who have gone to airports to attempt to secure the release of individuals detained pursuant to the first Executive Order. In addition to being the first organization to put out a call to volunteer attorneys, IRAP created and maintains a unique hotline email address (airport@refugeerights.org) to advise attorneys and affected individuals. Since the creation of this email address on January 28, 2017, IRAP has received and responded to nearly 800 email messages. IRAP has also developed templates and informational materials for attorneys, affected family members in the United States, and individuals overseas who have been denied travel pursuant to the Order. These actions are not in the normal scope of IRAP's work. I anticipate that this work will continue for IRAP under the new Executive Order as the need will continue to exist.

11. As a result of this Executive Order, our attorneys anticipate that their current caseload will take much longer to be resolved which has resulted in their limited capacity to take on the full representation of new clients. Thus, they now are providing limited representation in certain new cases, which prior to the Executive Order would have received full representation, given the likely exorbitant delays in USRAP processing. This both diverts resources and frustrates our core mission.

12. Furthermore, because of the drastic decrease in refugee admissions and freeze in refugee processing, IRAP has significantly limited ability to open new law school chapters or begin new relationships with law firms to place cases for direct representation. We also are unable to place new cases with existing chapters or law firms because there is no movement on any refugee cases. We risk losing hundreds of volunteers, and relationships with numerous law firms, because we are unable to provide them with a way to partner with us on cases.

13. Our law firm partners also provide financial support with us. If we no longer have cases to place at law firms, and thus have to decrease our number of law firm partners, it will significantly cut into the corporate funding we receive.

14. In 2016, IRAP had been designated as a Priority 1 non-governmental organization (NGO) with the ability to make referrals of vulnerable refugees to USRAP. This authorization will now not be of any benfit to our clients if the USRAP is frozen or individuals from particular countries are ineligible.

15. As less than 1% of refugees are referred to countries for resettlement by the United Nations High Commissioner for Refugees (UNHCR), IRAP has significantly limited ability to draft referrals for our clients currently in USRAP to be sent to other safe countries because of the limited resettlement slots worldwide.

16. As a result of the Executive Order, IRAP's Resettlement Deployment Scheme with UNHCR, which allows IRAP resettlement experts since early 2016 to

be deployed to UNHCR for assisting with their resettlement operations, may be terminated due to the drastic decrease in resettlement slots available in the US and worldwide. This would lead to the termination of three IRAP staff as well as a revenue loss of approximately $260,000.

17. IRAP provides safe housing for clients whose lives are in immediate danger while they await the outcomes of USRAP. Clients in urgent situations who face additional four-month delays on their applications (at a minimum) will require significant funding expenditures to ensure continued safe housing.

18. The new Executive Order will continue the significant backlog in the USRAP that resulted from the first Executive Order, delaying the processing of many of IRAP's clients' cases. This delay will force IRAP to exhaust more of its resources, as the average lifespan of a case now grows significantly. IRAP has a legal department composed of staff attorneys who advise and provide consultation to its network of pro bono legal volunteers on their casework. Because of delays in processing, IRAP's attorneys must spend significantly more time on each case, providing guidance about alternative routes to safety and possible exemptions. In addition to IRAP's staff attorneys' existing and ongoing responsibilities, they must now also draft and review additional submissions to State and to the Department of Homeland Security ("DHS"), such as waiver requests for admission to the United States for their clients, which will be reviewed by a case-by-case basis under the new Executive Order. Further, IRAP's field staff must largely give up their work on refugee

case processing and focus primarily on ensuring the local safety of refugees who thought their lives would be saved for resettlement, and who are now caught in life-threatening limbo.

19. The Executive Order puts IRAP's refugee and immigrant clients in grave danger, because the longer it takes for their cases to be decided, the longer they are in life-threatening environments. All of IRAP's clients are in limbo and irreparably harmed because their cases have been indefinitely stalled. Many are at imminent risk of persecution and death where they currently reside, and many others now face indefinite separation from family members already in the United States.

20. Many of IRAP's clients have been referred to the US for resettlement by the UN refugee agency, the United Nations High Commissioner for Refugees ("UNHCR"). UNHCR only refers the most vulnerable refugees for resettlement, such as unaccompanied minors, women-at-risk, and individuals with urgent medical or protection concerns. Less than 1% of refugees worldwide are referred for resettlement by UNHCR. If UNHCR refers an individual to USRAP, they are likely extremely vulnerable and have strong, prevetted refugee claims. Further, once UNHCR refers a refugee to USRAP, it precludes them from referring the refugee to another country until the USRAP process is completed.

21. IRAP works with some of the most vulnerable individuals in the world, including U.S.-affiliated refugees, LGBTI refugees, women who have survived trafficking, sexual and gender-based violence, and children

with emergency medical needs. We estimate that approximately 700 IRAP clients are now trapped in the limbo of a halted U.S. Refugee Admissions Program as a result of the first Executive Order. The cases will continue in their freezed state under the new Executive Order and their prospects of coming to the U.S. any time soon have evaporated.

22. Furthermore, while the revised Executive Order takes off Iraq from the list of barred countries, Iraqis are still part of the suspension of USRAP processing. Over 50,000 U.S.-affiliated Iraqis are negatively impacted by this new Executive Order, including interpreters for the U.S. Army and for U.S. media organizations, NGO workers, fixers, engineers, and physicians. These are Iraqis who supported the U.S. mission in Iraq and are now being targeted by militias and terrorist groups as a result.

23. Although the revised Executive Order allows for waivers in certain cases, these waivers will not be available to the vast majority of our clients. DHS interviews are currently only taking place in Vienna and Nauru. Based on my understanding of the refugee process and the language of the Executive Order, waivers will not be available for refugees who have not had DHS interviews. Therefore, hundreds of our clients (and thousands of refugees in the USRAP pipeline) throughout the Middle East and North Africa region (not to mention anyone who is not in Vienna or Naru) will be ineligible for a waiver regardless of circumstances.

24. While we have been told by some government officials that a waiver process will exist, we have yet to

receive any details about how to refer cases, how long waivers will take, or how many waivers are available. We have been told that waivers will only be considered on an individual basis and the Executive Order requires the designation of new personnel to review the waivers.

25. It is also my understanding based on my knowledge of refugee processing that at the end of the 120-day period, even if the refugee program reopens, under the terms of the Executive Order there will be a new security process that most of our clients must go through. In the past, security clearances typically take anywhere from one to five years. Thus, even *if* the refugee process goes back online following the Executive Order, under the terms of the order our clients are likely to be delayed for several additional years (even those already post-approval).

26. Both the first Executive Order and the new Executive Order that will replace it marginalize IRAP's Muslim clients and subject them to suspicion, scrutiny, and social isolation on account of their religious beliefs and national origin. Clients who are already inside the U.S. are afraid and fear they are not welcome. Some have been subjected to harassment by law enforcement agencies allegedly conducting "new" security checks. Others have been detained at airports, or rejected from flights multiple times even though they are presenting valid visas. Our clients in USRAP and our Special Immigrant Visa programs are seeking resettlement ot the U.S. as a safe haven but now feel threatened by the only safe option available to them.

27. Many of IRAP's clients, including those living in the United States are fearful of asserting their legal

rights through participation in lawsuits or otherwise. In addition to fears around possible retaliation from the government or private parties given the current anti-refugee and anti-Muslim climate in the United States, they face multiple barriers to doing so, including language barriers and unfamiliarity with American law and customs, including many customs we take for granted. For example, many of our clients have difficulty completing forms that seem basic and simple to Americans; a form that has a line for "address line two," for example, confuses our clients, who do not understand why the form is asking for a second address. Moreover, a significant number of our clients have suffered extreme trauma, often at the hands of government officials; this trauma has predictable and understandable consequences, often including a desire to avoid calling attention to themselves, particularly from government officials, both in the United States and in their home countries. Many also feel shame or stigma associated with what has happened to them in their home countries, and avoid situations where they may have to talk about it, such as through participation in a lawsuit.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at in Los Angeles, California, on March 10, 2017.

/s/ REBECCA HELLER
REBECCA HELLER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No.: 8:17-CV-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL., DEFENDANTS

DECLARATION OF MARK HETFIELD, PRESIDENT AND CEO OF HIAS, INC., IN SUPPORT OF PLAINTIFFS' MOTION FOR TERMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION OF THE SECOND EXECUTIVE ORDER

DECLARATION OF MARK HETFIELD, PRESIDENT AND CEO OF HIAS, INC.

I, Mark Hetfield, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the President and Chief Executive Officer of HIAS, Inc., a Plaintiff in the above-captioned case.

2. HIAS was founded in 1881 as the Hebrew Immigrant Aid Society to assist Jews fleeing pogroms in Russia and Eastern Europe. It is the world's oldest —and only Jewish—refugee resettlement agency. Today, HIAS serves refugees and persecuted people of all faiths and nationalities around the globe. Since HIAS's founding, the organization has helped more

than 4.5 million refugees start new lives. In 2016 alone, HIAS provided services to more than 350,000 refugees and asylum seekers globally.

3. HIAS has offices in twelve countries worldwide, including its headquarters in Silver Spring, Maryland, its principal place of business, and additional domestic offices in New York City and Washington, D.C.

4. HIAS's refugee resettlement work is grounded in, and an expression of, the organization's sincere Jewish beliefs. The Torah, Judaism's central and most holy text, commands followers to welcome, love, and protect the stranger. The Jewish obligation to the stranger is repeated in various ways throughout the Torah, more than any other teaching or commandment. HIAS believes that this religious commandment demands concern for and protection of persecuted people of all faiths. The Torah also teaches that the Jewish people are to welcome, protect, and love the stranger because "we were strangers in the land of Egypt" (Leviticus 19:34). Throughout their history, violence and persecution have made the Jewish people a refugee people. Thus, both our history and our values lead HIAS to welcome all refugees in need of protection. A refusal to aid persecuted people of any one faith, because of stigma attached to that faith, violates HIAS's deeply held religious convictions.

5. HIAS's client base includes refugees and their families abroad and those located in the United States. Hundreds of these clients hail from the six countries singled out in Section 2(c) of the March 6 Executive Order, including Syria, Iran, Sudan, Somalia, and Yemen. Other clients, who will also be affected by the

120-day ban on refugees in Section 6(a) of the Order, hail from countries that include Iraq, Ukraine, Bhutan, the Democratic Republic of the Congo, Afghanistan, Eritrea, Tanzania, Ethiopia, Central African Republic, Burundi, South Sudan, Uganda, Russia, Belarus, Burma, and El Salvador. Its overseas clients are seeking refugee status, and do so precisely because they face a real risk of persecution at home. They remain in precarious situations often in third countries. HIAS also provides services to individuals entering the United States under the Special Immigrant Visa ("SIV") program available to persons who worked with the U.S. Armed Forces as a translator or interpreter in Iraq or Afghanistan.

6. HIAS is one of nine non-profit organizations, called "Resettlement Agencies," designated by the federal government to undertake this humanitarian work through cooperative agreements with the U.S. Department of State and the U.S. Department of Health and Human Services. To serve these refugees, HIAS currently holds sub-agreements with 18 local organizations ("affiliates") who operate and oversee 21 resettlement sites across the country. A resettlement site is an office of one of the Resettlement Agencies; it could be either an affiliate or a sub-office of an affiliate. There may be more than one resettlement site in a single city, depending on how many national agencies have offices there. HIAS itself also directly operates a resettlement site in New York City, and, before the Executive Order was signed, was on the verge of expanding to an additional resettlement site in West-

chester County, New York, which had been approved by the Department of State.

7. HIAS is assigned clients via the Department of State's allocation process, which determines which refugee clients will be resettled by HIAS. Other clients —already residing in the United States—connect with HIAS when they come to one of HIAS's local affiliates to file paperwork to initiate requests for refugee status for their relatives abroad.

8. HIAS's work with the federal government occurs pursuant to several different cooperative agreements, including a cooperative agreement with the Department of State that provides funding for the Reception and Placement program. In Federal Fiscal Year ("FFY") 2017, HIAS's approved budget through this agreement was $11.4 million, including funding for headquarters, affiliates, and direct assistance to refugees. Through headquarters staff, HIAS interfaces with the Department of State's contractor for refugee processing, places cases with local affiliates, monitors the refugees' travel to the United States and their final destination in the United States, monitors affiliates for ongoing compliance, and works with the affiliates to ensure effective and timely service delivery to the new arrivals. The total budget under the cooperative agreement is approved at the beginning of the fiscal year, although the Department of State allocates the funds in portions throughout the year, depending on the amount of funding approved by Congress.

9. The largest source of funding for refugee resettlement by HIAS and its affiliates is the funding for Reception and Placement services for new refugee

arrivals. These funds are provided by the government on a per capita basis, currently at the rate of $2,075 per refugee. That amount includes $1,125 of direct assistance per refugee and $950 for affiliate staff support per refugee. The funding provided by the Department of State through the Reception and Placement program is intended to cover expenses for the refugees' initial period of resettlement, up to three months after arrival. With this funding, HIAS and its affiliates must find housing for the refugees, provide them with money for rent and utilities for up to three months, and supply them with initial food and medical care before government-funded benefits begin. In addition, with this funding, the affiliates pay for case management services for the refugees, which include meeting the refugees at the airport and bringing them to their new homes, providing initial safety orientation followed by weeks of extensive cultural orientation to adjust them to life in America, and assisting them in enrolling in ESL classes, school, employment services, and benefits programs (including Medicare, food stamps and Supplemental Security Income for the elderly and disabled).

10. In FFY 2016, HIAS's cooperative agreement with the Department of State provided that HIAS and its affiliates would resettle 3,768 refugees and SIVs in the United States. However, as the number of refugees and SIV's approved for admission increased, HIAS eventually resettled 4,191 individuals that year. The Department of State, aware that it would significantly increase capacity for refugees in FFY 2017, then requested that HIAS apply for higher numbers of

arrivals as the refugee program expanded. As a result, in its cooperative agreement for FFY 2017, HIAS was engaged to resettle 4,794 refugees and SIVs.

11. The Presidential Determination on Refugee Admissions for Fiscal Year 2017, signed in September 2016, authorized the admission of up to 110,000 refugees. Under the March 6 Executive Order, however, that number will be drastically reduced by the 90-day and 120-day bans in Sections 2(c) and 6(a), respectively, and Section 6(b)'s extreme reduction in refugee admissions overall to 50,000. As a result, HIAS and its affiliates will not be able to resettle a significant portion of planned-for arrivals. Indeed, in February, the Department of State notified HIAS that, because of the reduction in refugee admission levels in Section 5(d) of the January 27 Executive Order, HIAS's resettlement obligation for FFY 2017 would be reduced by 39 percent to 2,912 refugees and SIVs. Attached hereto as Exhibits 1 and 2 are true and correct copies of two email communications sent to HIAS staff by the Department of State, dated February 16, 2017, and February 17, 2017, respectively, outlining the changes mandated as a result of Section 5(d) of the January 27 Executive Order. That reduction in the level of refugee admissions remains in Section 6(b) the Revised Executive Order, and thus HIAS will still experience a 39 percent reduction in planned refugee resettlement, and a reduction in funding for its program.

12. Because HIAS had already resettled 1,941 refugees and SIVs for this fiscal year by the end of February, it will be permitted to resettle only 971 additional refugees and SIVs for the remainder of the year.

The financial losses to HIAS and its affiliate network —up to $2.2 million—will be crippling, especially for many of HIAS's affiliates, which are heavily dependent on funding that flows through HIAS. And, those losses will be hastened by the 120-day ban on refugee admissions. On March 6, 2017, the Department of State informed HIAS that only refugees who are already booked for travel to the United States arriving at their port of entry through the end of March 15, 2017, i.e., before the March 6 Order's effective date of March 16, 2017 at 12:01 am, will be permitted to enter the United States. Defendant Department of State has indicated that no further bookings may be made. Attached hereto as Exhibit 3 is a true and correct copy of the pertinent email communication sent to HIAS staff by the Department of State, dated March 6, 2017. The email also informed HIAS that all DHS screening interviews will continue to be suspended until further notice, unless exceptions are arranged on an individual basis and that no new Interagency Checks (IAC) and Security Advisory Opinion (SAC) security checks may be requested.

13. The risk that the Executive Order poses to the viability of HIAS, its affiliates, and the vital services they provide to refugees is very real. World Relief, one of the other nine resettlement agencies that partners with the government, has already announced that it will be forced to lay off 140 staff members and close five of its offices due to the Executive Order. The Executive Order will likewise significantly impede HIAS's work for the government and the services provided to refugees, causing irreparable harm to

HIAS, its affiliates, and its clients. HIAS itself has already been precluded from refilling key positions. HIAS has been compelled by President Trump's two immigration executive orders to dedicate substantial resources to finding other sources of support for its work, and will likely find itself in the same position as World Relief vis-à-vis layoffs if the Executive Order is allowed to be implemented. These staff losses negatively impact the services that HIAS is able to provide to refugees.

14. Affiliates, who hold sub-agreements under HIAS, operate and oversee a number of resettlement sites and are an integral part of the resettlement process; indeed, without them, it would be nearly impossible to ensure that refugees are properly resettled and integrated into communities. However, as a result of the financial losses stemming from the 90-day and 120-day bans and the reduction in admission of refugees to 50,000, some of HIAS's affiliates may be forced to shut down permanently or significantly pare back their resettlement programs and sites. Affiliates have already laid off staff in response to the Executive Order. For example, HIAS's affiliate in Ohio—US Together—has already laid off more than six employees at just one resettlement site. Many of the staff who have lost their jobs or are likely to be laid off are staff who work directly with refugee clients, and are often former refugees themselves. HIAS also operates a direct resettlement site out of its New York office. If the Executive Order remains in place, it is likely that reductions in funding will require HIAS to lay off employees at its New York site.

15. When sites are shuttered or their capacity significantly decreased through staff layoffs and cut resources, the local expertise and relationships—developed by affiliate staff, often over years and years—is lost entirely or substantially diminished. Building a new resettlement site can take months or years of relationship-building, including cooperation with local government and elected officials, businesses who would be potential employers, landlords, and the refugee communities themselves.

16. In particular, in establishing and operating these sites, affiliates depend heavily on volunteer networks and support within interfaith religious communities to assist in carrying out resettlement; once sites close or are reduced in size, these volunteer networks will become disengaged and eventually dissipate. In Wilmington, Delaware, for example, a site that opened in FFY 2017, the Jewish Family Services office has developed a coalition of 28 organizations and faith communities. The coalition consists of large numbers of local churches, including Presbyterian, Mormon, and Methodist churches, as well as mosques and synagogues—all eager to support refugees. They have, in fact, already prepared to welcome newcomers to their communities. Building these relationships, which are key to a site's operation, took months of staff time and resources before the site even opened. Thus, once a resettlement program or site is shut down or reduced in capacity, reopening or re-expanding it could take months or years, if it is able to be done at all. And, if an influx of refugees were later allowed in, HIAS and

its affiliates would be left with a diminished ability to serve that influx of refugees all at once.

17. Moreover, the existence of fewer sites within HIAS's resettlement affiliate network limits the type of assistance refugees can receive because it results in less variety in terms of specialization by site and ability within the network to welcome different kinds of refugees with different vulnerabilities. For example, one of the affiliate sites with which HIAS currently works has been specially set up to address the unique challenges faced by LGBTI refugees. The Jewish Family and Community Services East Bay in Walnut Creek, California, has developed a specialization in serving this population by connecting them to appropriate, available community resources. As another example, the Jewish Family Services of Buffalo and Erie County operates a program to serve deaf refugees, offering services otherwise unavailable from other HIAS affiliates. And the US Together site in Toledo is managed by a Resettlement Director who is from the Syrian community, and the site has staff with language and cultural competency to specifically serve this population. If some of these sites are forced to close due to funding and arrival cuts, the quality and range of specialized services that HIAS can provide to refugees facing special challenges will be diminished.

18. For these reasons, and in reliance on the Department of State's representation that it needed HIAS to take on increased numbers of refugees, HIAS began developing a formal plan to add new resettlement sites to its network and to expand existing sites. HIAS secured private funding and allocated funding

from HIAS's private fundraising to support affiliate program expansion. For example, prior to securing any public funding for new sites, HIAS gave some affiliates grant funding of between $50,000 and $100,000 to build their capacity. These were typically matched by local fundraising, all through private fundraising dollars.

19. In addition, in reliance on the Department of State's representation that it needed HIAS to take on increased numbers of refugees, two staff members were hired to develop new partnerships and conduct a thorough review to identify and develop strong new resettlement sites. This process included developing an index to measure a locality for its strength as a potential resettlement site, including analyses of affordable housing, job growth, and involvement in welcoming community efforts. HIAS's staff then developed relationships with various local organizations to gauge interest in site development over a period of several months. The process culminated in the selection of six new sites in Wilmington, Delaware; Pittsfield, Massachusetts; Niagara Falls, New York; Tacoma, Washington; Westchester, New York; and Madison, Wisconsin—all of which were approved by the Department of State to host 50 refugees each. While timelines may vary, a typical site may require an initial investment of approximately 9-12 months of effort and then additional years to strengthen the site and cultivate additional resources and relationships, allowing the site to scale to accept greater numbers of refugee arrivals. In addition, HIAS's staff invests considerable time into training and coaching employees

and volunteers at new sites, which is necessary because the refugee program is complex, involving extensive, detailed requirements.

20. Because of the Executive Orders' directives to drastically cut refugee admissions, several of these sites, which took months or even years to develop, already have suspended operations and may be forced to close. The resources expended to identify and establish these new sites, as well to expand several other existing sites, are not recoverable. For example, the new site in Wilmington invested in new staff, built community and volunteer relationships, and established the infrastructure for the new program. The program had expected to receive 50 refugees but has received only nine refugees so far, and anticipates just fourteen more. These numbers are insufficient to justify a continuing staff, and the agency faces a loss of initial funding.

21. Because of the devastating toll that the Executive Order will take on HIAS, its affiliates, and the services they provide, the injury and harm that HIAS will suffer is irreparable, HIAS cannot be made whole by a payment of damages at the end of this litigation.

22. HIAS's clients will also suffer irreparable injury as a result of the Executive Order. Clients already in the United States and clients who are allowed to enter will received diminished and more limited services than would otherwise be available through HIAS and its affiliates. Meanwhile, if the Executive Order remains in place, many clients will be denied entry entirely or their entry will be substantially delayed, leaving them in precarious situations.

23. At the time that the new Executive Order was signed on March 6, 2017, there were 61,467 approved refugees in the U.S. pipeline. This included 13,302 Somalis, 9,886 Iraqis, 7,879 Syrians, 1,666 Sudanese, 597 Iranians, and 28 Yemenis. These refugees were spread across the nine Resettlement Agencies, including HIAS.

24. Specifically, HIAS has identified 1,395 clients worldwide who were allocated through the Department of State process, have been vetted, and have been approved for refugee status. These refugees have already been allocated and assured to one of HIAS's resettlement sites. Of these, 512 are nationals of one of the six banned countries. Thus, these individuals—the overwhelming majority of whom are Muslim—will likely be ineligible for the case-by-case exception to the 120-day ban on refugee applicants set forth in Section 6(c) of the March 6 Executive Order.

25. Of the 1,395 HIAS clients worldwide who have been vetted, approved for refugee status, and allocated and assured to a HIAS site, only 58 (including 3 refugees from the six banned countries) have been scheduled for travel. This also includes 99 individuals who were intended to be booked for travel, and 338 individuals who were cleared for departure but are not yet scheduled to travel. These individuals will be prevented from travel as a direct result of the Executive Order, leaving them in precarious situations.

26. Even after the 120-day suspension on refugee admissions expires, most of these individuals will still be prevented or delayed from entering the United States, despite the fact that they have been vetted and

determined to be refugees. Under the Executive Order, the earliest that refugee resettlement could resume would be early July 2017. This would leave Resettlement Agencies, at most, with only two-and-a-half months before the end of the fiscal year to resettle hundreds or thousands of refugees who were supposed to be resettled over a much longer period of time. Refugee processing would be impacted by the 120-day ban since security checks and processing would be suspended during that time. Because security and medical clearances have expiration dates, it is likely that some refugees would lose their readiness for travel during the suspension period and lengthy checks would need to be repeated. In addition, because of the recent notice that HIAS's resettlement commitment will be cut by 39 percent, some of these refugees will simply not be able to enter the country in FFY 2017. Every day that these individuals' entry is delayed, they remain in precarious situations.

27. Many of HIAS's clients abroad whose refugee status has been approved but have yet to be scheduled for travel, including clients from the six banned countries, have family members in the United States, also HIAS clients, who will suffer as a result of the delay in reuniting with their family members. Some of these U.S. ties are, in fact, individuals who petitioned, applied, or sponsored their family members for refugee status (often through HIAS). For example, some HIAS clients have been granted refugee status through the Central American Minors program, which permits U.S. relatives of persecuted children in Central America to petition for these children to immigrate here.

These children remain in vulnerable and dangerous situations in their home countries, despite having been approved for refugee status, and their U.S. family members are forced to endure continued separation from and concern for these children.

28. More than 1,300 refugee applications initiated through HIAS by family members residing in the United States remain pending for HIAS clients abroad. Many include individuals living in the six Muslim-majority countries subject to the order's 90-day ban. The adjudication of these applications has been or will be substantially delayed because of the Executive Orders. In fact, since the orders were signed, consideration of most refugee applicant cases in need of security checks have been suspended. This means that, for many refugees in the pipeline, security checks that typically lasted 18-24 months will now be paused and restarted, potentially adding years to their wait for stable resettlement. The delay in processing of these applications will subject these clients to further risk of persecution and abuse in their current situations, and their family members who petitioned for them to come to the United States will remain in limbo as to whether they will ever be reunited.

29. The refugees that HIAS assists in entering the country are well-vetted by the U.S. government. These are individuals and families who are granted refugee status because they have fled their own countries due to persecution. These refugees are selected for third-country resettlement precisely because they have vulnerabilities that make continued residence in first countries of asylum or repatriation to their home

countries unsafe. They are people who simply want to live a life in safety and freedom, and, to my knowledge, none who have been assisted by HIAS has ever been implicated in any terrorist act. I've set forth in the paragraphs below just a few examples of HIAS clients who have been affected by the Executive Order and will likely be harmed by the drastic cut in the number of refugees that will be allowed to enter the United States this year.

30. Fawzia[1] is a Muslim Somali refugee who fled her country in 2011 because of the ongoing persecution. Her sister was raped and her brother was shot by armed groups in Somalia. Her family originally fled Somalia to India where she met and married her husband, another refugee of the civil war in Somalia. Fawzia, however, was resettled to the United States without her husband and has not seen him for two years. She talks to him every day and finds it extremely hard to live without him. Her husband is not yet scheduled to enter the United States.

31. Yessenia is a Salvadoran woman who has been living in the United States since 1999. She left her daughter behind in El Salvador and has created a new life for herself in this country. Yessenia, who has lawful status here, expects to soon marry her U.S. citizen fiancé. Her daughter Maria, however, has faced increased risk from the gangs in El Salvador. They have targeted her because she has family in the

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[1] All refugee and family names in this affidavit have been changed to protect client identities. Declarations are on file in HIAS' headquarters in Silver Spring, Maryland.

United States and have been extorting her. The gangs are threatening to kill Maria, her older brother, her grandmother (Yessenia's mother), and the rest of the family living in El Salvador. Children like Maria are victims of gang violence every day in El Salvador. Maria has been approved as a refugee through the Central American Minors program but is not yet scheduled to travel to the United States.

32. Magan is an elderly refugee from Somalia who has been in the United States for more than a year. He is waiting for his daughter and her children, his grandchildren, to join him in the United States through the refugee program. He reports that he has not been able to sleep since learning of the January 27 Executive Order for fear that they will be blocked from finally finding safety in the United States. Magan's family was scheduled to travel to the United States in February but their flight was cancelled after the first Executive Order was signed. Magan worries that he will die without seeing his daughter again, and as a Muslim, he reads the Quran and makes extra prayers for his family's health and safety. Magan feels that he has already suffered enough as he lost his first wife in the conflict in Somalia. He is waiting in the hope that he will be reunited with his family.

33. Elias, his sister, and his sister's children are Muslim refugees in the United States who fled the conflict in Syria. Elias and his sister arrived here without their mother and father, who fled Syria to Jordan four years ago when their lives were endangered. It is illegal for Elias's parents to work in Jordan so they are struggling financially, and heartbroken

over being separated from their children and grandchildren. They are only able to pay rent for an apartment because Elias sends them money. Elias knows his parents have already been interviewed three times by the UNHCR and the U.S. government but is waiting for further information.

34. Sunam is a lawful permanent resident, originally from Nepal, whose brother remains in a refugee camp in Eastern Nepal. Sunam's brother has been in the camp his entire life. Sunam knows how difficult life is in the camp, which she left in 2014 after being resettled in the United States. Sunam and her brother talk on the phone nearly every week. Sunam understands that the basic rations being delivered to the refugee camp have been cut off. Sunam does not know when they will come in again. Sunam's brother was fully approved to enter the United States as a refugee and was supposed to travel in June of 2016, but his travel was delayed for medical reasons and has not been rescheduled. Sunam hopes that her brother is able to join her soon.

35. Eden is a lawful permanent resident who came to the United States from Eritrea in 2010. She taught herself English, attends nursing school and has just applied for citizenship. Eden recently had her first child, a joyful occasion that was tinged with sadness because her mother could not be with her. Eden's mother remains in a precarious situation in Ethiopia, where she has been waiting to come to the United States as a refugee. She had to flee from Eritrea after being harassed for her religion as a Pentecostal Christian. Eden's mother has been fully vetted and

approved as a refugee, but her travel was cancelled around the time of the Executive Order and has not been rescheduled. Eden has not seen her mother for seven years. She worries about her getting older, with worsening health, and is desperate for her son to meet his grandmother.

36. Maung is a legal permanent resident who came to the United States three years ago as a refugee from Burma. He now owns and operates his own sushi business. Maung is waiting for his wife to join him in the United States. He does not remember the last time he saw her. Maung is very worried that his wife's refugee status will be rejected and her departure from Malaysia will be delayed. Maung's wife's refugee status has been approved, and she was assigned to HIAS for resettlement in the United States; however she is still waiting for travel to be scheduled.

37. Like Fawzia, Magan, and Elias, many of HIAS's clients here in the U.S. and abroad are Muslim. The Executive Order has taken a particular toll on them because of its anti-Muslim motivation and message. HIAS's Muslim clients have been marginalized in their communities as a result of the Executive Order. Clients report feeling that everyone wants to fight with them, and describe rumors of various attacks on mosques and other Muslims. Fawzia. for example, reports that her niece and sister, who are both in middle school, were attacked at school. Other students harassed the girls, called them names, told them to go back where they came from, and even pulled off their headscarves. HIAS clients report feeling isolated and anxious about

their situation and the future for their refugee relatives.

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

/s/ MARK HETFIELD
MARK HETFIELD

Executed this 10th day Mar. 2017

EXHIBIT 1
to Hetfield Declaration

[redacted]

From: O'Connor, Margaret R <OconnorMR@state.gov>
Sent: Thursday, February 16, 2017 5:27 PM
To: [redacted] Mark Hetfield,
Cc: PRM-Admissions-Domestic; Day, Barbara J; Santos, Carol T
Subject: FY 2017 RA Revised Budget Request
Attachments: RP Budget Summary and Detail Template - FY 2017 revisions.xls; RP Consolidated Placement Plan_FY2017 Revisions.xlsx

Dear colleagues,

With the adoption of Executive Order (EO) 13769, Protecting the Nation from Terrorist Activities by Foreign Nationals, PRM is implementing the revised target of 50,000 refugee arrivals and an estimated 15,000 SIVs for FY 2017.

Each agency's overall capacity will remain at the proportion of arrivals approved at the beginning of FY 2017 (for instance, if your agency was approved to resettle 10% of 107,000, you will now receive 10% of 65,000 arrivals). In order to issue funding for the remainder of FY 2017, PRM requires the submission of updated program and budget documents to reflect the revised ceiling of the U.S. Refugee Admissions Program. Your Program Officer will notify you of your revised approved network capacity for FY 2017.

We expect the updated Headquarters Management budget to reflect a careful assessment of the funding necessary to fulfill the revised workload expectations in a cost-efficient manner. It should be based on requirements to manage arrivals for the balance of FY 2017. Please consider if any

currently planned program activities should be canceled or postponed. Proposals should include an outline of the specific actions being taken to adjust staffing, organizational structure and management, and other activities to appropriate levels. We understand that significant changes to affiliate networks, headquarters staffing, and other program requirements may have associated costs, however, we expect that revised full-year budgets will reflect savings from the significant reductions in estimated arrivals.

Please include the following documents by **Friday, March 3, 2017**:

- FY 2017 budget showing funds awarded to date (October 2016-March 2017), Q3 and Q4 projected needs, and full-year funding requirements
    - Please use the attached template and submit as an excel spreadsheet

- Revised budget narrative (with changes tracked) detailing any new or updated activities to right-size the network (e.g. travel costs associated with restructuring or closing a site)

- Updated consolidated placement plan (attached) reflecting your revised capacity
    - Include a narrative detailing the strategy used un determining the revised plan

- Executive Summary outlining all changes from the originally-approved proposal, including staffing and operational changes and their associated impact on the budget

- Signed completed SF-424 and SF-424A

- Most recent Negotiated Indirect Cost Rate Agreement (NICRA)

- Signed and dated cover letter

PRM plans to issue additional per capita awards in early March given the robust arrivals through February. We will provide additional details in the coming weeks. Quarter 3 Headquarters Management awards will be issued after the proposed program adjustments have been finalized.

Please contact your Program Officer with any questions. Send your revised proposals to me and your Program Officer by **March 3, 2017**.

Sincerely,
Margaret

Margaret O'Connor
Budget Analyst, Refugee Admissions · Bureau of Population, Refugees, and Migration · U.S. Department of State
2025 E Street NW, Washington, DC 20520 | phone: 202.453.9262| fax: 202.453.9393| email: oconnormr@state.gov
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EXHIBIT 2
to Hetfield Declaration

[redacted]

From: Jones, J Irving <JonesJI2@state.gov>
Sent: Friday, February 17, 2017 10:37 AM
To: [redacted]
Subject: HIAS Revised FY 2017 Capacity

Hi [redacted]

Your revised capacity for FY 2017 is below. This includes SIVs

CAPACITY & ARRIVALS	ESTABLISHED AGENCY CAPACITY	% by agency	REVISED CAPACITY - 65,000
HIAS	4,794	4.5%	2,912

Let me know if you have any questions

Regards,
Irving

Irving Jones
Program Officer for Domestic Resettlement, Refugee Admissions · Bureau of Population, Refugees, and Migration U.S. Department of State
2025 E Street NW, Washington, DC 20520 | phone: 202.453.9248| fax: 202.453.9393| email: JonesJI2@state.gov

EXHIBIT 3
to Hetfield Declaration

From: Gauger, Kelly A [GaugerKA@state.gov]
Received: Monday, 06 Mar 2017, 1:56PM
To: [redacted]; Havana - Refugee [Havana-Refugee@state.gov]; [redacted]
CC: Ruken, Stephen I (Istanbul) [RukenSI@state.gov]; Ward, Robert C [WardRC@state.gov]; Sen, Anjalina M [SenAM@state.gov]; Johnson, Courtney E [JohnsonCE3@state.gov]; Lane, Nathan P [LaneNP@state.gov]; Dowl, Aimee M (Kampala) [DowlAM@state.gov]; Stalis, Emil R [StalisER@state.gov]; Anderson, Todd D (Havana) [AndersonTD@state.gov]; Kassem, Gina B (Amman) [KassemGB@state.gov]; Pilch, Jacquelyn J [PilchJJ@state.gov]; Bongiovanni, Kristin (Baghdad) [BongiovanniK2@state.gov]; Aguilo, Patricia M (Erbil) [AguiloPM@state.gov]; Munson, Jessica N [MunsonJN@state.gov]; Shaw, Gregory (Bangkok) [SHAWGJ@state.gov]; Garmize, Kristina X (Amman) [GarmizeKX@state.gov]; Wingate, Patrick R [WingatePR@state.gov]; Tikvart, Daniel J (Kabul) [TikvartDJ@state.gov]; [redacted]; Van Brandt, Danna J [VanBrandtdj@state.gov]; Pickering, Margaret S [PickeringMS@state.gov]; PRM-Admissions Office [PRM-AdmissionsOfficeDL@state.gov]
Subject: Message #8: Update on Refugee Admissions and Operations

Dear colleagues,

A new Executive Order was signed today calling for, among other things, a suspension of the USRAP program for 120 days, to take effect on March 16 at 12:01 am Eastern Daylight Time. All passengers (including refugees and visa 93 holders of all nationalities) already on ABN for arrival at their port of entry through the end of March 15 are permitted to travel as planned. No further bookings may be made.

Iraqi and Afghan SIVs are exempt from the Executive Order and may travel as usual.

In addition, RSCs should adhere to the following processing guidance.

-UNHCR has halted referrals, with several exceptions already agreed between PRM and individual RSCs. During the 120-day pause, RSCs are authorized to continue to pre-screen referrals that are already in the pipeline. RSCs may also accept urgent protection/ medical referral requests from UNHCR during the 120-day period, with the approval of their PRM Program Officer. These cases should mainly be those with U.S. ties.

-Direct application programs may continue accepting new applications during the 120-day pause. Employment verification and pre-screening activities may continue.

-DHS interviews continue to be suspended until further notice, unless exceptions are arranged with individual RSCs. When requesting DHS interviews for urgent protection/medical cases, please consult your PRM Program Officer first.

-No new IAC or SAO security checks may be requested, except for urgent protection/medical cases or other cases approved by PRM/A to travel on an exceptional basis during the 120-day period. IAC and SAO re-requests as a result of new/additional information (biodiffs) should not be requested unless cases are approved by PRM/A for travel. All CLASS checks (new or re-requests) can continue to be requested.

-RSCs should request new assurances only for cases that have been approved for travel during the 120-day period. No other new assurances should be requested at this time. Assurance requests already in process will continue.

-Until further guidance is provided, RSCs may continue the following processing activities:

-Employment verification

-Pre-screening

-Class requests

-Medicals, as required for cases that have been approved by PRM for travel (either before and after the EO implementation date)

-Cultural orientation, as required for cases that have been approved by PRM for travel (either before and after the EO implementation date)

-Communications/responses to case inquiries

-The freeze on all hiring and expansion activities remains in effect until further notice.

-Cleared messaging for all RSCs to use with refugees and USRAP partners regarding the suspension is below. Please continue to clear ALL media/press requests with PRM/Admissions and PRM/Press in Washington.

Message to all RSCs for posting on websites or in public areas:

- **As stated in the Executive Order signed by the President, the United States government has suspended all refugee admissions for 120 days, effective March 16 at 12:01 a.m., eastern daylight time. Certain limited exceptions when in the national interest and when admission of the applicant would not pose**

a risk to U.S. security or welfare will be considered on a case-by-case basis.

- **The suspension does not impact the cases of refugees already approved for refugee status who have been extensively screened, approved for admission to the United States, and scheduled for departure through March 15. Those individuals will continue to enter the United States through end of March 15.**

- **The Resettlement Support Center (RSC) is currently maintaining all case information and biodata on file for all refugees who have been referred for resettlement to the United States.**

- **For questions from refugees in XXX assisted by XXX, you may write to XXX@XX if you wish to provide information on emergency situations or update your contact information.**

- **As we receive additional guidance, we will update this website xxxxx.com.**

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No.: 8:17-CV-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL., DEFENDANTS

DECLARATION OF BETH BARON, PRESIDENT OF MIDDLE EAST STUDIES ASSOCIATION, IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF BETH BARON, PRESIDENT OF MIDDLE EAST STUDIES ASSOCIATION

I, Beth Baron, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the President of the Middle East Studies Association ("MESA"), a Plaintiff in the above-captioned case. In this capacity, I chair the Board of Directors, act as chief executive officer of the association, and respond to the interests and concerns of MESA members.

2. I am also a Professor of History at the City College and Graduate Center of the City University of New York. I was the editor of the *International Journal of Middle East Studies* from 2009 to 2014 and

am the author of numerous books and articles in Middle Eastern history. I regularly supervise graduate students and am familiar with the normal research practices of MESA members and the importance of international travel for both students and professors.

3. MESA is a non-profit learned society that brings together scholars, educators, and those interested in the study of the Middle East from all over the world. From its inception in 1966 with 51 founding members, MESA has increased its membership to more than 2,400 and now serves as an umbrella organization for fifty-five institutional members. MESA's membership includes both graduate students and faculty working in the field of Middle East studies.

4. MESA and its members will be seriously harmed by the Executive Order issued on March 6, 2017 ("the Executive Order").

5. MESA has members who are from the six countries designated in the Executive Order and who are outside the United States. I understand that individuals in those circumstances who lack visas will not be able to obtain visas to travel to the United States under the terms of the Executive Order. This inability to come to the United States impacts MESA members' ability to attend academic conferences, including an annual meeting sponsored by MESA discussed below. For example, I am aware of an Iranian MESA member who is a doctoral student in Germany, who will not be able to travel to the United States for conferences, including the MESA conference which she firmly planned to attend, because the Executive Order will prevent her from obtaining a visa. Participation in

academic conferences is crucial to the professional success of both graduate students and professors, and to their ability to fully engage with the ideas and scholarship of the broader Middle East studies community. Many important conferences, including the MESA annual meeting, take place in the United States.

6. Graduate students who are MESA members or are studying under MESA members in the United States often leave the country to complete field work or library and archival research for advanced degrees. I am aware that many such students from the six designated countries fear exclusion from the United States because of the Executive Order if they leave the country. Students who do not leave the United States, because they lack an assurance they will be permitted to reenter, will miss out on opportunities to engage in research and participate in academic conferences. This is a serious hindrance to their academic careers, as research in this field is often best conducted abroad —and sometimes can only realistically be conducted abroad. Likewise, as noted above, participation in international conferences is a crucial part of the development of an academic career, and many major conferences in this field take place abroad.

7. Students in these circumstances will also lose their ability to visit family and friends abroad with an assurance they will be permitted to reenter. For example, I have learned of Iranian students affiliated with MESA who have cancelled plans to return home for Persian New Year, an important holiday that will occur on March 21, because of the Executive Order. Missing out on the chance to return home for Persian

New Year is for many Iranian students comparable to Americans missing the chance to return home for the Thanksgiving holiday.

8. MESA members who are U.S.-based faculty will be impacted by the Executive Order because potential students from the designated countries will be unable to obtain visas to study with them in the United States. Similarly, for the reasons explained above, their current U.S.-based students from the designated countries will not be able to travel abroad for field work with an assurance they will be permitted to reenter. Students' decisions to forego international travel will impact faculty members' ability to facilitate quality research and educational opportunities, which is both critically important to faculty members' pedagogical and academic mission and will impact their ability to attract students, obtain grants, and produce scholarship.

9. Likewise, U.S.-based MESA faculty members will forego opportunities to travel abroad for research and academic conferences for fear that they will not be readmitted, or will be subjected to harassment or discrimination upon application for reentry to the United States. MESA has already been in communication with a number of faculty members who plan to forego international travel for these reasons.

10. MESA members will also be precluded from traveling to the designated countries for research or academic conferences when those countries institute reciprocal actions in response to the Executive Order. Iran restricted the issuance of certain visas to U.S. citizens in response to the prior, January 27 version of the Executive Order. A meeting of a MESA affiliated

organization, the Association for the Study of Persianate Societies, planned for this month in Shiraz, Iran, was cancelled because of Iran's response to the prior version of the Executive Order. I am aware of at least one MESA member who was scheduled to present an academic paper at that conference but has now lost the opportunity to do so.

11. A large number of MESA members are Muslim or are institutional members whose officers, employees, or members are Muslim. I have heard from many Muslim members—colleagues, students, and friends—that they understand the message of the prior and current versions of the Order to be an attack on Islam. They have expressed the concern that the Orders marginalize them and they fear that they will be singled out for suspicion, interrogation, search, and discrimination because of the anti-Muslim message of these Orders.

12. MESA itself will also be harmed by the Executive Order. As part of its goal to advance learning, facilitate communication, and promote cooperation, MESA sponsors an annual meeting that is a leading international forum for scholarship, intellectual exchange, and pedagogical innovation. Approximately thirty percent of MESA members are based outside of the United States and must travel to the United States to attend MESA's annual meeting. At least 46 citizens of the six designated countries traveled to the United States to attend the last annual meeting. MESA expects that a substantial number of scholars will be unable to attend this year's meeting because of the restrictions imposed by the Executive Order.

13. MESA expects that, in part because of the stigmatic message of the Executive Order, many members based in Europe and the Middle East are likely to heed international calls to boycott academic conferences in the United States in protest of the Executive Order, including the MESA annual meeting. Academic conferences, and the MESA annual meeting in particular, are most successful when a variety of backgrounds and viewpoints are represented.

14. The absence of these scholars from the designated countries and from other countries will have a substantial negative effect on the meeting. These and other effects of the Executive Order will negatively impact MESA's mission of fostering the study and public understanding of the Middle East.

15. In addition, the Executive Order will cause serious financial harms to MESA. A large portion of MESA's annual budget is funded through annual membership dues and registration fees to attend the annual meeting. In 2016, annual meeting revenue was 47% of our overall revenue. This revenue represented the largest single source of income for MESA.

16. For each individual who cannot or will not attend the annual meeting, MESA will lose $90 to $250 in registration fees. We do not yet know how many individuals will forego registration and attendance at the meeting because of the travel ban. However, we anticipate significantly reduced registration and attendance, in part based on the reduction in the number of academic papers submitted for the meeting.

17. MESA's meetings held in Washington, DC, have had higher attendance and paper submission rates than our meetings held in other cities. MESA has consistently maintained and typically exceeded submission numbers in each successive DC meeting. In 2017, for the first time in 24 years, MESA has had a substantial decline in submissions from one DC meeting (2014) to another (2017). 133 fewer people submitted papers as part of pre-organized sessions in 2017 than in 2014. Applications for the 2017 meeting were due by February 15, 2017, shortly after the original Executive Order was signed.

18. Assuming based on this decline that, at a minimum, 133 people would have registered and attended the meeting but for the Executive Order, the loss of meeting registration would be approximately $18,000. However, MESA anticipates greater financial loss as people other than those who would have submitted papers but did not do so decide not to attend the meeting and thus do not pay the registration fee because of the Executive Order.

19. Likewise, I am aware that some individuals who cannot or will not attend the meeting will allow their MESA membership to lapse as a result. For each such lapsed membership, MESA will lose $25-300 in membership dues.

20. There are additional potential financial impacts if registration for the DC meeting is lower than it has been in previous years. MESA has a performance clause in its contract with the Marriott Wardman Park Hotel, the location of the 2017 meeting. MESA guarantees that it will fill a minimum number of room

nights and any shortfall must be paid by MESA. The penalty is equal to the single room rate for each night MESA falls short. MESA may be subject to this penalty because of the Executive Order.

21. MESA has already experienced a negative financial impact from the Executive Order, which is reflected in the lower submission numbers and loss of revenue. MESA anticipates that the decline in revenue it has already experienced because of the Executive Order will continue for the rest of the year if the Executive Order is in effect.

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

/s/ BETH BARON
BETH BARON

Executed this 10th day Mar., 2017

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No.: 8:17-CV-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL, DEFENDANTS

DECLARATION OF JOHN DOE # 1 IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF JOHN DOE #1

I, John Doe #1, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746, and declare as follows:

1. I am a Lawful Permanent Resident of Iranian origin, and I live in Silver Spring, Maryland.

2. I came to the United States in 2014 on a J1 visa. I am a scientist who studies atmospheric and natural hazards. In 2016, I obtained my lawful permanent resident (LPR) status through the National Interest Waiver program for people with extraordinary abilities.

3. In August 2016, while my application to become a lawful permanent resident was pending, I

married an Iranian national. My wife lives in Tehran. She has been alone in Tehran since her mother's unexpected death in 2013.

4. My wife and I are non-practicing Muslims, but under Iranian law, a child born to a Muslim father is automatically considered to be Muslim. Conversion from Islam is deemed apostasy and is punishable by death.

5. My wife and I applied for a spousal immigration visa so that she could join me in the United States. Her application was approved on November 3, 2016. As of January 9, 2017, we had submitted all requisite documentation, paid the processing fees, and were waiting for notification that an embassy interview was scheduled.

6. Based on the information published by the National Visa Center, I expected my wife's interview to be scheduled in no more than six weeks. At the time the first Executive Order went into effect, we were near this six-week mark. However, after the Executive Orders went into effect, I have been told by the National Visa Center that the processing time has been extended to eight weeks.

7. When the new Executive Order was announced, I called the National Visa Center again, in the hopes that my wife's interview can be scheduled before the new Order goes into effect. With each day that passes, that window closes. And, even if she does manage to get an interview, the new Executive Order will still halt any further processing, putting us back where we started.

8. I would like to visit my wife in Iran, but I am afraid to make any travel plans because I do not want to risk not being able to return to the United States, even as a legal permanent resident. The confusion surrounding the first Executive Order, the constantly changing landscape, and the fact that the revised Executive Order is so similar to the first makes me worry that leaving the country is too risky. I could be denied entry or detained and questioned.

9. This also affects my job. Sometimes my work requires me to travel internationally, for example to attend conferences, but I feel I cannot do that at this time because I may not be permitted to re-enter the United States.

10. The Executive Order's travel ban on Iranian nationals has created significant fear, anxiety, and insecurity for my wife and I regarding our future. We simply cannot know what will happen, and if the delays will go for months and months only to result in a denial. The government calls it temporary but the language of the ban, the statements that have been made about banning Muslims from entering, and the broader context suggests otherwise. The waiver for hardship provides us with no reassurance. What is a hardship? What is that process? And there is so much confusion. I read a news report from the BBC about the embassy in Afghanistan delaying processing even before the new Executive Order goes into effect.

11. The ban forces me to choose between my career and being with my wife, who remains in Tehran. Moreover, even though we are married, her day-to-day life is difficult because she is, in many practical

respects, living as a single woman. I can't be there for her to help her. Based on all the information that was out there about the process, we believed we would be together by this spring—or sooner. The more time passes, the harder and harder it is for us and the more pressure there is for me to give up my career here. But I do not know how to proceed because of the uncertainty—whether to keep working here, and keep hoping, while time passes, or whether to return, despite everything I would give up in doing so.

12. In addition, the anti-Muslim views that are driving the Executive Order, as well as the Order itself, have caused significant stress and anxiety for me. I worry that I may not be safe in this country, despite being invited to the U.S. by a university in order to contribute to the academic community in my initial visa.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Silver Spring, Maryland, on March 10, 2017.

/s/ **[REDACTED]**
JOHN DOE #1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No.: 8:17-CV-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL, DEFENDANTS

DECLARATION OF JOHN DOE # 3 IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF JOHN DOE #3

I, John Doe #3, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a Lawful Permanent Resident of Iranian origin, and I live in Linthicum, Maryland.

2. I came to the United States in 2011 through the greencard lottery. I worked as a teacher in Iran and currently work in the engineering field.

3. I recently applied to become a naturalized citizen, and the petition remains pending with U.S. Citizenship and Immigration Services.

4. My wife, who is also an Iranian national, lives in Iran. She and I married in the summer of 2014. In

October 2014, I applied for an immigration visa on her behalf.

5. In May 2016, my wife had her interview at the U.S. Embassy. At the time, she was informed that her documentation was complete and she needed to wait for administrative processing, but that she should be able to join me in two or three months. She therefore resigned from her job and began preparing to join me in the United States.

6. The Executive Order puts our future in peril, as it has delayed, and could prevent, my wife from obtaining her visa and joining me in the United States.

7. Moreover, the Executive Orders and the delays and uncertainty they have caused have placed extraordinary stress upon our relationship and my relationship with my in-laws. At this point, we have been forced to live apart from each other, without each other's companionship for more than two and a half years. We live in different time zones, eight hours apart, and thus even communicating by phone requires planning. The only way for us to see each other is for me to travel to Iran, at great expense. Moreover, I only have 15 days of leave per year at my job.

8. The effect of the Executive Order has been to convince my wife and her family that it will be impossible for us to live together in the United States because the process will just keep being delayed or denied. We are starting to feel desperate. We are young and our lives are passing. We are delayed in starting our lives together and building our family. My wife has been particularly devastated by the Executive Order,

feeling like her life is in total limbo and each day makes it worse.

9. In fact, we have gotten to the point where my father-in-law asked me to leave the United States and go back to Iran because the Executive Order means that there will be even more delay and may mean that my wife can never come to the U.S.. It has been difficult for me to be placed in a position of feeling like I may be forced to choose between staying in the U.S. and the life I have started building here, and my wife, who I love dearly and want here with me. My wife and I have never had a significant disagreement in our relationship until the Executive Orders. It has been exhausting for us. We are being torn apart by this situation and the uncertainty and delay.

10. Since moving to the United States, I have returned to Iran on several occasions to visit my wife. I had planned to visit her in February 2017, but I canceled these plans because of the Executive Order. I fear that if I leave the United States to see my wife, I will not be permitted to reenter the country or could be detained by immigration officials upon my return. I have no faith that the Executive Order won't be applied to me, or that a new Executive Order won't be issued, or that I won't be detained and interrogated upon my return, based on news reports of what has been happening to others and the total chaos of the first Executive Order.

11. Because of this fear, if I do end up needing to visit Iran for a family matter or to see my wife, I need to plan for what will happen to my apartment, my car, my savings, and the various pieces of my life here, if I

am detained or refused entry. But I am also afraid that anything I do will be regarded with suspicion.

12. The anti-Muslim attitudes that are driving this Executive Order have caused me stress and anxiety and made me question whether I even belong in this country despite everything I have sacrificed and invested in making a life here.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Linthicum, Maryland, on March 10, 2017.

/s/ **[REDACTED]**
JOHN DOE #3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No.: 8:17-CV-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL, DEFENDANTS

DECLARATION OF MOHAMMED METEAB

I, Mohammed Meteab, upon my personal knowledge, hereby submit this declaration pursuant 28 U.S.C. § 1746 and declare as follows:

1. I am a lawful permanent resident of Iraqi origin, and I live in Springfield, Massachusetts.

2. I came to the United States in 2015 as a refugee, along with my wife and two children. All of us are now lawful permanent residents. My third child, who was born in the United States, is a U.S. citizen.

3. I am one of five brothers. We lived together with our families in Iraq. During and after the 2003 invasion of Iraq, my brothers and I all cooperated with the U.S. military, helping to establish the transitional government in the wake of the conflict in Najaf, Iraq.

4. Because of our cooperation with the U.S. government, we received threats and were shot at by armed militia groups in Iraq. In 2013, my brother

Abdullateef found a note for us from the League of the Righteous milita saying we had to leave Najaf or be killed.

5. I am a Sunni Muslim, as are my brothers. We lived in a Shi'a neighborhood in Najaf, Iraq.

6. In 2013, my family received death threats because we were Sunni. We were warned by neighbors and members of the community that we would be killed if we stayed. A few days after receiving death threats, my nephew was shot in the leg. On December 25, 2013, my older brother Shareef, his children, and two of our nephews (Abdullateef's sons, Walid and Mosad, who was shot, and their wives), fled to Jordan.

7. Eleven days later, on January 5, 2014, I fled to Jordan with my wife and our two children. My three other brothers, Ahmed, Abdullateef, and Ali, joined us in Jordan in 2014. Like my wife, children and I, my brothers applied for refugee status soon after arriving in Jordan.

8. My wife, two children, and I were approved as refugees in March 2014.

9. On August 20, 2015, my wife, children, and I came to the United States as refugees. My nephew Walid and his wife were also approved and came to the U.S. as a refugee in July 2015. My older brother Shareef and his children also came to the United States as refugees in August 2015. Shareef's daughter and her husband, Mosad (who had been shot in Iraq) came to the United States in December 2015.

10. My remaining three brothers, Ahmed, Abdullateef, and Ali, had also applied for refugee status in 2014. Ahmed and Ali were approved for resettlement in the United States in 2016. In April 2015, Abdullateef was approved for resettlement in Canada. He is still in Jordan, awaiting final clearance to go to Canada.

11. In November 2016, Ahmed and Ali, who were still in Jordan, were informed by the International Organization for Migration that while their refugee applications had been approved, my brothers and their families still did not have travel documents to come to the United States. Jewish Family Services gave me this update at the same time.

12. I expected that my brothers and their families would arrive in the United States in early 2017. However, when I learned from the news about the Executive Order in January, I realized my brothers would not be able to join us in the United States.

13. My brothers are living as refugees in Jordan. Like me, they fled threats to their lives in Iraq and were looking forward to starting a new life and sending their children to school here in the United States. Because of the January and now the updated Executive Order, they continue to live in insecurity as refugees awaiting resettlement.

14. Because of the Executive Order and official anti-Muslim sentiment motivating it, I have felt isolated and disparaged in my community. It is causing me and my wife a lot of mental stress. Particularly when my wife, who wears a hijab, and I are in public, I sense a lot of hostility from people around me. For example,

at crosswalks, people refuse to stop their cars for us, and I see people staring at us. My wife doesn't not want to go outside the house except for doctors' appointments. My nieces, who wear hijab to school, say that people make mean comments and stare at them for being Muslim. One day, a student pulled the hijab off of my niece's head in class. On another occasion, as my niece was getting off the school bus, an older woman came up to her and pushed her to the ground.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Springfield, Massachusetts, on March 10, 2017

/s/ MOHAMMED METEAB
MOHAMMED METEAB

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No.: 8:17-CV-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL., DEFENDANTS

DECLARATION OF JANE DOE #2

DECLARATION OF JANE DOE #2

I, Jane Doe #2, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a United States Citizen of Syrian origin, and I live in Mecklenburg County, North Carolina.

2. I am currently enrolled in college and studying to become a healthcare technician.

3. My sister was born in Damascus, Syria, where she grew up and spent most of her life. She is married and has two young boys, aged 7 and 2. In 2012, government planes bombed her neighborhood in Damascus and destroyed her house. She and her family fled to the home of her parents-in-law with nothing but their passports and the clothes on their backs. After remaining with her in-laws for several weeks, my sister and

her family eventually moved to a home about two hours outside of Damascus, but shelling eventually reached that town, too.

4. While internally displaced within Syria, my sister and her husband heard rumors that the Syrian government's selective service would eventually be expanded to include men over the age of 30. After my sister's husband saw some of his friends taken for the selective service, she told him to flee to Yemen, because only Yemen and Sudan accept Syrian refugees without visas. She stayed behind in Syria with their first child, pregnant with their second, because as a teacher, she was a government employee and was required to apply for government approval to stop working and leave the country. She remained in Syria, enduring constant shelling of their town, until she received permission from the government to leave work, at which point she fled to Yemen with her child to join her husband.

5. In Yemen, my sister's family registered with the United Nations High Commissioner for Refugees and received a temporary protection certificate explaining that they should be protected from forcible return to Syria. They remained in Yemen for approximately a year and a half, but war broke out in the country six or seven months after they arrived and the capitol, where they were staying, was soon besieged. They had no electricity, fuel, clean water, or food. Her husband had to risk his life to leave the city every day to find food and clean water for them because no trucks could enter the city to deliver supplies.

6. War engulfed the capitol and at one point, the house where my sister's family was staying was taken over by insurgents as a site for launching shells. She and her children, including her newborn baby, were locked into a room for three to four days while insurgent militiamen used their house to fire rockets. In the meantime, her husband, who had left to find food, was prevented from entering. After the insurgents finally left, my sister and her husband fled that same day for the Saudi Arabian border.

7. My sister's family is now in a refugee hotel on the Saudi Arabia-Yemen border and living in terrible, life-threatening conditions. They endure regular shelling from the Yemeni side of the border; where they live is shelled so often that the local school is open only one or two days a week, if at all. The building in which they live is infested with bugs; human refuse from the bathroom of the unit above them leaks into their room. They are constantly sick and their children are throwing up all the time. The Saudi Arabian government often turns off the power to the building in an attempt to make the living conditions there so intolerable that the refugees will leave.

8. Discrimination against Syrian refugees in Saudi Arabia is severe. My sister's husband searches for work every day, but is often cheated out of his wages and kicked out of jobs without payment because he is Syrian. Because her husband is gone during the day, my sister must remain inside with her children; if she went out in public by herself, it is unquestionable that she would be abducted because she is a woman and a Syrian. The only time she and her children are able to

leave the room where they are staying is at night, when her husband returns home and can accompany them outside. For this reason, their children did not believe that the sun rose and set in Saudi Arabia for the first year they were in the country because they room where they were staying had no windows. Her children never have the opportunity to play outside, but instead remain in their room for most of the day. During the rare times that they are able to emerge from the building at night, my sister's younger son cries and tries to run away whenever they have to return to the hotel.

9. My sister's older son always asks her, "When am I going to have friends?" He has not been able to make any friends because he is rarely able to go to school or to interact with other children and his entire life has been a continual experience of displacement.

10. I am very worried that my participation in this lawsuit against federal government officials could jeopardize my sister's visa application. My I-130 petition for her is currently pending. Once approved for an I-130 visa, she will be able to access the U.S. Refugee Admissions Program (USRAP) through the Priority-2 Direct Access Program for Iraqi and Syrian Beneficiaries of Form I-130 Petition for Alien Relatives. I do not want my participation in this lawsuit to adversely impact either her visa or refugee applications and delay or prevent her from joining me in the United States.

11. I fear that whether or not my sister's visa and refugee application are denied, my participation in this case could result in harassment of me and my sister. Persecution of Syrian refugees in Saudi Arabia is rampant, and the Saudi Arabian government tries to

make conditions difficult for Syrian refugees in the country. I fear that if my identity is made public, it would be easy to identify her as well, making her susceptible to harassment or further persecution.

12. While participating in this lawsuit is important to me, I am also fearful that my participation may lead to me and my family being targeted for harassment if my identity were made public.

13. Even as a United States citizen, I am fearful of leaving the United States because I am afraid the Executive Order may result in difficulty or harassment upon my return to the United States.

14. I am aware of the reports indicating that harassment and violence targeting Muslims has been on the rise recently. In fact several of my friends have experienced such harassment on account of their perceived or actual religious affiliation. I am aware of the shooting at the mosque in Quebec and the bombings of mosques here in the United States.

15. For these reasons, I feel that my personal security and that of my family necessitates that I be allowed to proceed under a pseudonym.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Mecklenburg County, North Carolina, on March 10, 2017.

/s/ **[REDACTED]**
JANE DOE #2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No.: 8:17-CV-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL, DEFENDANTS

DECLARATION OF IBRAHIM ADMED MOHOMED

I, Ibrahim Ahmed Mohomed, upon my personal knowledge, hereby submit this declaration pursuant 28 U.S.C. § 1746 and declare as follows:

1. I am a citizen of the United States, and I live in Columbus, Ohio. I came to the United States as a refugee in 2009. I am Muslim.

2. I applied for refugee protection because I am a member of a minority claim in Somalia. When I lived in Mogadishu, where I worked as a street vendor, I was targeted and threatened by majority clans who knew I did not have protection.

3. In 2011, I petitioned for my wife and nine children to join me in the United States. In 2013, they were all approved to come to the United States as refugees. They are currently in Ethiopia waiting for authorization to travel to the United States.

4. After the January 27 Executive Order was signed, my family and I learned on the news that they would not be able to come to the United States as they are awaiting refugee resettlement and Somali nationals.

5. I was preparing to welcome my wife and children to the United States. I am worried that my children are not receiving adequate medical care or education in Ethiopia. Because they speak a different language in Ethiopia, my children are unable to go to school in Ethiopia.

6. My wife and children rely on me for financial support. I have not been able to see them since 2015. Because of this order, my family will not be able to join me, we continue to be separated, and my family's lives are in limbo.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Columbus, Ohio on March 10, 2017

/s/ IBRAHIM 03-10-17
IBRAHIM AHMED MOHOMED

Nos. 16-1436 and 16-1540

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

STATE OF HAWAII, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

JOINT APPENDIX
(VOLUME 2)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Civil Action No.: 8:17-CV-00361-TDC

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL, DEFENDANTS

DECLARATION OF DAVID HAUSMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTARAINING ORDER AND PRELIMINARY INJUNCTION

I, David Hausman, upon my personal knowledge and in accordance with 28 U.S.C. § 1746, hereby declare as follows:

1. I am a Skadden Fellow with the American Civil Liberties Union Immigrants' Rights Project. As a witness, I could and would testify competently as to the matters set forth below.

2. A true and correct copy of the February 16, 2017 CNN article by Laura Jarrett, Allie Malloy and Dan Merica entitled "Trump promises new immigration order as DOJ holds off appeals court," is attached hereto as Exhibit A. The article can also be found at http://www.cnn.com/

2017/02/16/politics/donald-trump-travel-ban-executive-order/.

3. A true and correct copy of the February 21, 2017 Politico article by Matthew Nussbaum, Josh Gerstein, and Cristiano Lima entitled "White House creates confusion about future of Trump's travel ban," is attached hereto as Exhibit B. The article can also be found at http://www.politico.com/story/2017/02/trump-travel-ban-confusion-235241.

4. A true and correct copy of the December 7, 2015 Washington Post article by Jenna Johnson entitled *"Trump calls for 'total and complete shutdown of Muslims entering the United States,"* is attached hereto as Exhibit D. The article can also be found at https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm_term=.b6d478b253a6.

5. A true and correct copy of the December 7, 2015 statement posted to Donald J. Trump's official campaign website entitled *"Donald J. Trump Statement On Preventing Muslim Immigration,"* is attached hereto as Exhibit E. The statement can also be found at https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration.

6. A true and correct copy of the February 17, 2017 CNN article entitled *"Full Transcript: President Donald Trump's News Conference,"*

is attached hereto as Exhibit G. The article can also be found at http://www.cnn.com/2017/02/16/politics/donald-trump-news-conference-transcript/.

7. A true and correct copy of the March 6, 2017 VOA News article by William Gallo and Victoria Macchi entitled *"Trump Signs New Travel Ban Order,"* is attached hereto as Exhibit H. The article can also be found at http://www.voanews.com/a/trump-signs-new-travel-ban-order/3751526.html.

8. A true and correct copy of the January 30, 2017 CNN article by Evan Perez, Pamela Brown and Kevin Liptak entitled *"Inside the confusion of the Trump Executive Order and travel ban,"* is attached hereto as Exhibit I. The article can also be found at http://www.cnn.com/2017/01/28/politics/donald-trump-travel-ban/index.html.

9. A true and correct copy of the January 28, 2017 New York Times article by Michael D. Shear, Nicholas Kulish, and Alan Feuer entitled *"Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide,"* is attached hereto as Exhibit J. The article can also be found at https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html.

10. A true and correct copy of the January 28, 2017 Law Fare article by Benjamin Wittes entitled *"Malevolence Tempered by Incompetence: Trump's Horrifying Executive Order on Refu-*

gees and Visas," is attached hereto as Exhibit K. The article can also be found at https://lawfareblog.com/malevolence-tempered-incompetence-trumps-horrifying-executive-order-refugees-and-visas.

11. A true and correct copy of the March 7, 2017 CNN article by Daniella Diaz entitled *"Kelly: There are "13 or 14" more countries with questionable vetting procedures,"* is attached hereto as Exhibit L. The article can also be found at http://www.cnn.com/2017/03/06/politics/john-kelly-travel-ban-muslim-countries/ index.html.

12. A true and correct copy of the March 26, 2011 New York Times article by Charlie Savage entitled *"F.B.I. Casts Wide Net Under Relaxed Rules for Terror Inquiries, Data Show,"* is attached hereto as Exhibit M. The article can also be found at http://www.nytimes.com/2011/03/27/us/27fbi.html.

13. A true and correct copy of the February 25, 2017 N.Y. Times article by Ron Nixon entitled *"People From 7 Travel-Ban Nations Pose No Increased Terror Risk, Report Says,"* is attached hereto as Exhibit N. The article can also be found at https://www.nytimes.com/2017/02/25/us/politics/travel-ban-nations-terror-risk.html.

14. A true and correct copy of the March 2, 2017 MSNBC article by The Maddow Blog, entitled *"TRMS Exclusive: DHS document undermines Trump case for travel ban,"* is attached hereto as Exhibit O. The article can also be

found at http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban.

15. A true and correct copy of the February 3, 2017 Washington Post article by Justin Jouvenal, Rachel Weiner, and Ann E. Marimow entitled *"Justice Dept. Lawyer Says 100,000 Visas Revoked Under Travel ban; State Dept. says About 60,000,"* is attached hereto as Exhibit P. The article can also be found at https://www.washingtonpost.com/local/public-safety/government-reveals-over-100000-visas-revoked-due-to-travel-ban/2017/02/03/7d529eec-ea2c-11e6-b82f-687d6e6a3e7c_story.html?utm_term=e5ded8f0c284.

16. A true and correct copy of a draft Executive Order entitled *"Protecting the Nation from Terrorist Attacks by Foreign Nationals,"* is attached hereto as Exhibit Q. The draft can also be found at https://apps.washingtonpost.com/g/documents/world/read-the-draft-of-the-executive-order-on-immigration-and-refugees/2289/.

17. A true and correct copy of the Central Intelligence Agency's World Listing Factbook website providing countries' population percentage by religious affiliation is attached hereto as Exhibit R. This demographic information can also be found at https://www.cia.gov/library/publications/the-world-factbook/fields/2122.html#sy.

18. A true and correct copy of the January 27, 2017 CBN News article by The Brody File entitled

"Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority As Refugees," is attached hereto as Exhibit S. The article can also be found at http://wwwl.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees.

19. A true and correct copy of the January 31, 2017 Washington Post article by Sarah Pulliam Bailey entitled *"Trump signs order limiting refugee entry, says he will prioritize Christian refugees,"* is attached hereto as Exhibit T. The article can also be found at https://www.washingtonpost.com/news/acts-of-faith/wp/2017/01/27/we-dont-want-them-there-trump-signs-order-limiting-refugee-entry/?utm_term=.1238bc7f1081.

20. A true and correct copy of the December 7, 2015 statement posted to Donald J. Trump's official campaign website entitled *"Donald J. Trump Statement on Preventing Muslim Immigration,"* is attached hereto as Exhibit U. The speech can also be found at https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration.

21. A true and correct copy of the 1:47pm December 7, 2015 tweet by Donald J. Trump @realDonaldTrump is attached hereto as Exhibit V. The tweet can also be found at https://twitter.com/realdonaldtrump/status/673982228163072000?lang=en.

22. A true and accurate copy of the December 7, 2015 Washington Post article by Jenna Johnson entitled *"Trump calls for 'total and complete shutdown of Muslims entering the United States'"* is attached hereto as Exhibit W. The article can also be found at https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm_term=.b6d478b253a6.

23. A true and correct copy of the transcript of the July 24, 2016 NBC interview of Donald Trump by Chuck Todd on *"Meet the Press"* is attached hereto as Exhibit X. The transcript can also be found at http://www.nbcnews.com/meet-the-press/meet-press-july-24-2016-n615706.

24. A true and correct copy of the December 21, 2016 Time article by Katie Reilly entitled *"Donald Trump on Proposed Muslim Ban: 'You Know My Plans,'"* is attached hereto as Exhibit Y. The article can also be found at http://time.com/4611229/donaldtrumpberlinattack/.

25. A true and correct copy of the January 29, 2017 Washington Post article by Amy B. Wang entitled *"Trump asked for a 'Muslim ban,' Guiliani says-and ordered a commission to do it 'legally,'"* is attached hereto as Exhibit Z. The article can also be found at https://www.washingtonpost.com/news/the-fix/wp/2017/01/29/trump-asked-for-a-muslim-ban-giuliani-says-and-ordered-a-commission-to-do-it-legally/?utm_term=.2f88f830c54c.

26. A true and correct copy of the December 8, 2015 Washington Post article by Jenna Johnson entitled *"Donald Trump says he is not bothered by comparisons to Hitler"* is attached hereto as Exhibit AA. The article can also be found at https://www.washingtonpost.com/news/post-politics/wp/2015/12/08/donald-trump-says-he-is-not-bothered-by-comparisons-to-hitler/?utm_term=.97e412919c27.

27. A true and correct copy of the March 10, 2016 CNN article by Theodore Schliefer, entitled *"Donald Trump: 'I think Islam hates us,'"* is attached hereto as Exhibit BB. The article can also be found at http://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/.

28. A true and correct copy of the March 22, 2016 Mediate article by Alex Griswold entitled *"Trump Responds to Brussels Attacks: 'We're Having Problems With the Muslims'"* is attached hereto as Exhibit CC. The article can also be found at http://www.mediaite.com/tv/trump-responds-to-brussels-attack-were-having-problems-with-the-muslims/.

29. A true and correct copy of the February 6, 2017 Declaration of Reema Khaled Dahman, *Ali v. Trump,* No. 17-0135 (W.D. Wash.) is attached hereto as Exhibit DD. The Declaration can also be found at *Ali v. Trump,* No. 17-0135 (W.D. Wash.), Dkt. No. 14.

30. A true and correct copy of the January 29, 2017 New York Times article by Benjamin Mueller

and Matthew Rosenberg entitled *"Disorder at Airports as Travelers Are Detained Without Lawyers,"* is attached hereto as Exhibit EE. The article can also be found at https://nyti.ms/2jHM3ba.

31. A true and correct copy of the March 1, 2017 CNN article by Laura Jarrett, Ariane de Vogue, and Jeremy Diamond entitled *"Trump delays new travel ban after well-reviewed speech,"* is attached hereto as Exhibit FF. The article can also be found at http://www.cnn.com/2017/02/28/politics/trump-travel-ban-visa-holders.

32. A true and correct copy of the February 24, 2017 New York Times article by Mark Landler and Eric Schmitt entitled *"H.R. McMaster Breaks with Administration on Views of Islam,"* is attached hereto as Exhibit GG. The article can also be found at https://www.nytimes.com/2017/02/24/us/politics/hr-mcmaster-trump-islam.html?.

33. A true and correct copy of the November 15, 2015 Buzzfeed article by Nicolas Medina Mora and Mike Hayes entitled *"The Big (Imaginary) Black Friday Bombing,"* is attached hereto as Exhibit HH. The article can also be found at https://www.buzzfeed.com/nicolasmedinamora/did-the-fbi-transform-this-teenager-into-a-terrorist?utm_term=.yfEDJ2zy#qkLW8Gg1.

34. A true and correct copy of the February 22, 2017 Washington Post article by Matt Zapo-

tosky entitled, *"A new travel ban with 'mostly minor technical differences'? That probably won't cut it analysts, say,"* is attached hereto as Exhibit II. The article can also be found at https://www.washingtonpost.com/world/national-security/a-new-travel-ban-with-mostly-minor-technical-differences-that-probably-wont-cut-it-analysts-say/2017/02/22/8ae9d7e6-f918-11e6-bf01-d47f8cf9b643_story.html?utm_term=.c318a2ad6c8b.

35. A true and correct copy of the September 1, 2016 New York Times article entitled *"Transcript of Donald Trump's Immigration Speech,"* is attached hereto as Exhibit JJ. The article can also be found at https://www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html?_r=0.

36. A true and correct copy of the January 30, 2017 Pew Research Center article by Jens Manuel Krogstand and Jynnah Radford entitled *"Key facts about refugees to the U.S.,"* is attached hereto as Exhibit KK. The article can also be found at http://www.pewresearch.org/fact-tank/2017/01/30/key-facts-about-refugees-to-the-u-s/.

37. A true and correct copy of the February 16, 2017 Amicus Brief of Former National Security Officials, *Darweesh v. Trump,* No 17-00480 (E.D.N.Y.) is attached hereto as Exhibit LL. The brief can also be found at *Darweesh v. Trump,* No. 17-00480 (E.D.N.Y.), Dkt. No. 137.

38. A true and correct copy of the February 5, 2017 Joint Declaration of Madeleine K. Albright, et al., *Darweesh v. Trump,* No 17-00480 (E.D.N.Y.) is attached hereto as Exhibit MM. The declaration can also be found at *Darweesh v. Trump,* No. 17-00480 (E.D.N.Y.), Dkt. No. 28.

39. A true and correct copy of the March 6, 2017 Breitbart News article by Katie McHugh entitled "Trump's Executive Order Mandates Government Reports on Honor Killings Committed by Migrants," is attached hereto as Exhibit NN. The article can also be found at http://www.breitbart.com/big-government/2017/03/06/trumps-executive-order-mandates-government-reports-on-honor-killings-committed-by-migrants/.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, based on my personal knowledge. Executed at New York, NY on March 10, 2017.

/s/ DAVID HAUSMAN

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Exhibit A

Trump promises new immigration order as DOJ holds off appeals court

By Laura Jarrett, Allie Malloy and Dan Merica, CNN
Updated 11:38 PM ET, Thu February 16, 2017

New travel ban will be based on court decision 02:24

Story highlights

Trump said Thursday that his administration will issue "a new and very comprehensive order to protect our people" next week

The original three-judge panel retains control of the case and the travel ban remains on hold

Trump press conference

- Amazing moment in history
- Most memorable lines
- To Jewish reporter: 'Sit down'

- To black reporter: 'Set up a meeting'
- Treatment of first lady 'unfair'
- OPINION: Performance fuels worry
- OPINION: Trump voters applaud presser
- Full transcript

Washington (CNN)—President Donald Trump vowed Thursday to roll out a new immigration executive order next week that will be tailored to the federal court decision that paused his travel ban.

"The new order is going to be very much tailored to what I consider to be a very bad decision," said Trump during a news conference, referring to a decision by the Ninth Circuit Court of Appeals that blocked his travel ban earlier this month.

Meanwhile, the Justice Department told the Ninth Circuit Court of Appeals that it did not need a larger panel of judges to rehear its failed emergency challenge to a lower court's temporary suspension of Trump's executive order on immigration at this time, because a new order is on the way. The Ninth Circuit agreed Thursday evening to put any rehearing of the matter on hold for now.

The Justice Department wrote at length in a 47-page about the "seriously flawed" Ninth Circuit ruling from last week, but neverthless said: "(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 to

> eliminate what the panel erroneously thought were constitutional concerns."
>
> "In so doing, the President will clear the way for immediately protecting the country rather than pursuing further, potentially time-consuming litigation," it added.
>
> Questions have swirled over what the Trump administration would do this week after a three-judge panel on the Ninth Circuit refused to lift a federal judge's temporary restraining order on Trump's executive order barring foreign nationals from Iran, Sudan, Libya, Somalia, Syria, Iraq and Yemen from entering the country for 90 days, all refugees for 120 days and all refugees from Syria indefinitely.
>
> Last Friday, an unidentified judge on the Ninth Circuit requested that the full court vote on whether to rehear the decision reached by the three-judge panel. Such requests are not uncommon, but the call for a vote came at time when the Justice Department's position on pursuing the appeal was uncertain.
>
> The states that brought the lawsuit—Washington and Minnesota—said in their court filing on Thursday that there is no basis for rehearing the case, as the opinion from the three-judge panel is "firmly grounded in precedent."

And while the nation waits on a new or modified executive order on immigration from the Trump administration, at least one federal court is barreling ahead on litigation over the original one.

US District Court Judge James Robart in Seattle—the judge who originally halted the key provisions of the travel ban—denied a request from the Trump administration earlier this week to postpone any further proceedings in his court, which means the parties will now proceed to the discovery phase of the case.

Trump vs. Obama: A rocky relationship

Schwarzenegger's theory on Donald Trump

4 reasons why Republicans did Obamacare repeal before tax reform

AARP comes out against House GOP health care bill

Exhibit B

POLITICO

White House press secretary Sean Spicer said Tuesday that President Donald Trump will not rescind the original order. | Getty

White House creates confusion about future of Trump's travel ban

By **MATTHEW NUSSBAUM, JOSH GERSTEIN** and **CRISTIANO LIMA** | 02/21/17 05:06 PM EST | Updated 02/21/17 08:15 PM EST

The White House is sending mixed signals as to whether or not it will rescind President Donald Trump's controversial travel ban even as officials seek to craft a new order that will be less vulnerable to legal challenge.

The Justice Department told the 9th Circuit Court of Appeals last week that Trump will "rescind . . . and replace" the original order, which remains largely on hold after an appeals court panel upheld a lower court's broad injunction.

But White House press secretary Sean Spicer said at the conclusion of his daily briefing Tuesday that Trump will not rescind the original order. Instead, the first order is being updated, Spicer insisted.

The contradictory statements sowed further confusion about the fate of Trump's original order, which bars immigrants from seven Muslim-majority countries and halts the entry of refugees.

"The new order is going to be very much tailored to what I consider to be a very bad decision," Trump said last week.

White House creates confusion about future of Trump's travel ban

An excerpt of Sean Spicer's remarks on Tuesday.

02/21/17 05:30 PM EST

Spicer said the administration remains confident in the legality of its original order, but is also working with Cabinet agencies to prepare a new one.

His statements seemed to leave open the possibility that there could be two orders in effect at once—a situation that could complicate efforts to defend the new order in court.

The White House said Tuesday afternoon it intended to issue a clarification about the conflicting statements.

But a statement from the administration—released on Tuesday evening—did little to clear up any confusion.

"The administration continues to defend the President's national security Executive Order in court, and though we believe it to be fully lawful, we are simultaneously finalizing a revised policy tailored to the Ninth Circuit's ruling," White House spokesman Michael Short said in a written statement.

During an appearance on Fox News Tuesday, White House aide Stephen Miller similarly left the door open for the initial order to remain in place, adding only that the new policy would be "responsive" to recent court rulings.

"These are mostly minor technical differences, fundamentally," he said of the forthcoming revised order. "You are still going to have the same basic policy outcome for the country but you are going to have a lot of technical issues brought up by the court."

Miller added that the administration would be rolling out the details of the revised order "in the next few days."

He also stood by the original executive order's constitutionality, despite the flurry of legal challenges to it.

"The president's actions were clearly legal and constitutional and consistent with the longstanding traditions of presidents in the past to exercise the authority in the Immigration and Nationality Act to suspend immigration when it poses a threat to our security," he said.

Exhibit D

The Washington Post

Post Politics

Trump calls for 'total and complete shutdown of Muslims entering the United States'

By Jenna Johnson December 7, 2015

Updated at 7:43 p.m.

Donald Trump called Monday for a "total and complete shutdown" of the entry of Muslims to the United States "until our country's representatives can figure out what is going on."

In a statement released by his campaign Monday afternoon, Trump included recent poll findings that he says show that a sizable segment of the Muslim population has "great hatred towards Americans."

"Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension," Trump is quoted as saying in the statement. "Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life."

At a rally in Mount Pleasant, South Carolina on Monday evening, Trump pointed to the statement he released earlier in the day.

"Should I read you the statement?" he asked.

The crowd enthusiastically agreed that he should.

"Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what the hell is going on," he said, adding the word "hell" for emphasis this time.

Supporters erupted in applause.

"We have no choice. We have no choice," Trump said. "We have no choice."

Earlier in the rally, which was interrupted by protests, Trump said, "I have friends that are Muslims. They are great people—but they know we have a problem."

Trump campaign manager Corey Lewandowski told the Associated Press that the ban would apply to "everybody," including both immigrants and tourists. Soon after the statement was released, Trump tweeted that he had "just put out a very important policy statement on the extraordinary influx of hatred and danger coming into our country." He added in the tweet: "We must be vigilant!"

In an interview on Fox News Channel shortly ahead of his campaign rally, Trump was asked whether his policy would apply to Muslim military personnel stationed overseas who want to come home.

"They will come home. We have to be vigilant," he responded. "We have to take care of the Muslims that are living here. But we have to be vigilant."

He later added: "Anybody here stays, but we have to be very vigilant . . . This does not apply to people living in the country except that we have to be vigilant."

In the past month, particularly following the recent mass shooting in Southern California that is believed to have been inspired by the Islamic State terrorist group, Trump has called for greater scrutiny of Muslims—including Muslim Americans who are legal residents of the country. He has said he would support heavy surveillance of mosques, bar Syrian refugees of all religions from entering the country and would consider establishing a database to track all Muslims in the country. But Trump's statement on Monday was his most controversial proposal yet.

Trump typically announces major positions like this in media interviews or at rallies, rarely issuing formal statements. The statement immediately sparked rounds of questions about how such a policy would work, along with strong criticism.

"Oh, my goodness," said Ibrahim Hooper, national communications director at the Council on American-

Islamic Relations. "One has to wonder what Donald Trump will say next as he ramps up his anti-Muslim bigotry. Where is there left for him to go? Are we talking internment camps? Are we talking the final solution to the Muslim question? I feel like I'm back in the 1930s."

What worried Hooper, he said, was the premeditated nature of Trump's statement.

"He feels perfectly okay saying this," said Hooper. "It's not an open mic moment, where he has to walk something back. This was a statement from his campaign. They had to believe that this would be well received by his supporters. We've always had anti-Muslim bigots, but they've always been at the fringes of society. Now they want to lead it. In saner times, his campaign would be over. In insane times, his campaign can gain support. And that's why he put it out."

David Weigel and Sean Sullivan contributed to this report.

Jenna Johnson is a political reporter who covers the White House. She spent more than than a year writing about Donald Trump's presidential campaign, traveling to 35 states to attend more than 170 political rallies and interview hundreds of Trump supporters. Follow @wpjenna

Analysis

Stephen Miller's Fox News interview is coming back to haunt President Trump

Hawaii is challenging the revised travel ban in court, and it thinks Miller's remarks on TV are a liability for the White House.

Analysis

This Palm Beach Post story is peak Trump-Russia media frenzy

News outlets big and small are competing for scooplets that might or might not advance the biggest story in politics.

U.S. awash in 'terrible' human rights abuses, Chinese government report claims

"Concrete facts show that the United States saw continued deterioration in some key aspects of its existent human rights issues last year," the Chinese report says.

Exhibit E (Omitted)

Exhibit G

Full transcript: President Donald Trump's news conference

Updated 4:12 AM ET, Fri February 17, 2017

Source: CNN

President Trump's full press conference 01:16:56

PRESIDENT DONALD TRUMP HOLDS A NEWS CONFERENCE TO ANNOUNCE HIS NEW NOMINEE FOR SECRETARY OF LABOR FEBRUARY 16, 2017

SPEAKER: PRESIDENT DONALD TRUMP

[*]

TRUMP: Thank you very much.

I just wanted to begin by mentioning that the nominee for secretary of the Department of Labor will be Mr. Alex Acosta. He has a law degree from Harvard Law School, was a great student; former clerk for Justice Samuel Alito. And he has had a tremendous career.

He's a member and has been a member of the National Labor Relations Board, and has been through Senate confirmation three times, confirmed; did very, very well.

And so Alex, I've wished him the best. We just spoke. And he's going to be—I think he'll be a tremendous secretary of labor.

And also as you probably heard just a little while ago, Mick Mulvaney, former congressman, has just been approved weeks late, I have to say that, weeks, weeks late, Office of Management and Budget. And he will be I think a fantastic addition.

Paul Singer just left. As you know, Paul was very much involved with the anti-Trump or as they say, "never Trump." And Paul just left and he's given us his total support. And it's all about unification. We're unifying the party and hopefully we're going to be able to unify the country. It's very important to me. I've been talking about that for a long time. It's very, very important to me.

So I want to thank Paul Singer for being here and for coming up to the office. He was a very strong opponent, and now he's a very strong ally. And I appreciate that.

I think I'll say a few words, and then we'll take some questions. And I had this time. We've been negotiating a lot of different transactions to save money on contracts that were terrible, including airplane contracts that were out of control and late and terrible; just absolutely catastrophic in terms of what was hap-

pening. And we've done some really good work. We're very proud of that.

And then right after that, you prepare yourselves, we'll do some questions, unless you have enough questions. That's always a possibility.

I'm here today to update the American people on the incredible progress that has been made in the last four weeks since my inauguration. We have made incredible progress. I don't think there's ever been a president elected who in this short period of time has done what we've done.

Trump press conference

- Amazing moment in history
- Most memorable lines
- To Jewish reporter: 'Sit down'
- To black reporter: 'Set up a meeting'
- Treatment of first lady 'unfair'
- OPINION: Performance fuels worry
- OPINION: Trump voters applaud presser
- Full transcript

A new Rasmussen poll, in fact—because the people get it—much of the media doesn't get it. They actually get it, but they don't write it. Let's put it that way. But a new Rasmussen poll just came out just a very short while ago, and it has our approval rating at 55 percent and going up. The stock market has hit record numbers, as you know. And there has been a

tremendous surge of optimism in the business world, which is—to me means something much different than it used to. It used to mean, "Oh, that's good." Now it means, "That's good for jobs." Very different.

Plants and factories are already starting to move back into the United States, and big league—Ford, General Motors, so many of them. I'm making this presentation directly to the American people, with the media present, which is an honor to have you. This morning, because many of our nation's reporters and folks will not tell you the truth, and will not treat the wonderful people of our country with the respect that they deserve. And I hope going forward we can be a little bit—a little bit different, and maybe get along a little bit better, if that's possible. Maybe it's not, and that's OK, too.

TRUMP: Unfortunately, much of the media in Washington, D.C., along with New York, Los Angeles in particular, speaks not for the people, but for the special interests and for those profiting off a very, very obviously broken system. The press has become so dishonest that if we don't talk about, we are doing a tremendous disservice to the American people. Tremendous disservice. We have to talk to find out what's going on, because the press honestly is out of control. The level of dishonesty is out of control.

I ran for president to present the citizens of our country. I am here to change the broken system so it serves their families and their communities well. I am talking—and really talking on this very entrenched power structure, and what we're doing is we're talking about the power structure; we're talking about its

entrenchment. As a result, the media is going through what they have to go through too often times distort—not all the time—and some of the media is fantastic, I have to say—they're honest and fantastic.

But much of it is not a—the distortion—and we'll talk about it, you'll be able to ask me questions about it. But we're not going to let it happen, because I'm here again, to take my message straight to the people. As you know, our administration inherited many problems across government and across the economy. To be honest, I inherited a mess. It's a mess. At home and abroad, a mess. Jobs are pouring out of the country; you see what's going on with all of the companies leaving our country, going to Mexico and other places, low pay, low wages, mass instability overseas, no matter where you look. The middle east is a disaster. North Korea—we'll take care of it folks; we're going to take care of it all. I just want to let you know, I inherited a mess.

Beginning on day one, our administration went to work to tackle these challenges. On foreign affairs, we've already begun enormously productive talks with many foreign leaders, much of it you've covered, to move forward towards stability, security and peace in the most troubled regions of the world, which there are many. We have had great conversations with the United Kingdom, and meetings. Israel, Mexico, Japan, China and Canada, really, really productive conversations. I would say far more productive than you would understand.

We've even developed a new council with Canada to promote women's business leaders and entrepreneurs.

It's very important to me, very important to my daughter Ivanka. I have directed our defense community headed by our great general, now Secretary Mattis. He's over there now working very hard to submit a plan for the defeat of ISIS, a group that celebrates the murder and torture of innocent people in large sections of the world. It used to be a small group, now it's in large sections of the world.

They've spread like cancer. ISIS has spread like cancer—another mess I inherited. And we have imposed new sanctions on the nation of Iran, whose totally taken advantage of our previous administration, and they're the world's top sponsor of terrorism, and we're not going to stop until that problem is properly solved. And it's not properly solved now, it's one of the worst agreements I've ever seen drawn by anybody. I've ordered plan to begin building for the massive rebuilding of the United States military. Had great support from the Senate, I've had great from Congress, generally.

We've pursued this rebuilding in the hopes that we will never have to use this military, and I will tell you that is my—I would be so happy if we never had to use it. But our country will never have had a military like the military we're about to build and rebuild. We have the greatest people on earth in our military, but they don't have the right equipment and their equipment is old. I used it; I talked about it at every stop. Depleted, it's depleted—it won't be depleted for long. And I think one of the reason I'm standing here instead of other people is that frankly, I talked about we have to have a strong military.

We have to have a strong law enforcement also. So we do not go abroad in the search of war, we really are searching for peace, but its peace through strength. At home, we have begun the monumental task of returning the government back to the people on a scale not seen in many, many years. In each of these actions, I'm keeping my promises to the American people. These are campaign promises. Some people are so surprised that we're having strong borders.

Well, that's what I've been talking about for a year and a half, strong borders. They're so surprised, oh, he having strong borders, well that's what I've been talking about to the press and to everybody else. One promise after another after years of politicians lying to you to get elected. They lied to the American people in order to get elected. Some of the things I'm doing probably aren't popular but they're necessary for security and for other reasons.

And then coming to Washington and pursuing their own interests which is more important to many politicians. I'm here following through on what I pledged to do. That's all I'm doing. I put it out before the American people, got 306 electoral college votes. I wasn't supposed to get 222. They said there's no way to get 222, 230's impossible.

270 which you need, that was laughable. We got 306 because people came out and voted like they've never seen before so that's the way it goes. I guess it was the biggest electoral college win since Ronald Reagan. In other words, the media's trying to attack our administration because they know we are following through

on pledges that we made and they're not happy about it for whatever reason.

And—but a lot of people are happy about it. In fact, I'll be in Melbourne, Florida five o'clock on Saturday and I heard—just heard that the crowds are massive that want to be there. I turn on the T.V., open the newspapers and I see stories of chaos. Chaos. Yet it is the exact opposite. This administration is running like a fine- tuned machine, despite the fact that I can't get my cabinet approved.

And they're outstanding people like Senator Dan Coats who's there, one of the most respected men of the Senate. He can't get approved. How do you not approve him? He's been a colleague—highly respected. Brilliant guy, great guy, everybody knows it. We're waiting for approval. So we have a wonderful group of people that's working very hard, that's being very much misrepresented about and we can't let that happen.

So, if the Democrats who have—all you have to do is look at where they are right now. The only thing they can do is delay because they screwed things up royally, believe me. Let me list to you some of the things that we've done in just a short period of time. I just got here. And I got here with no cabinet. Again, each of these actions is a promise I made to the American people.

I'll go over just some of them and we have a lot happening next week and in the weeks—in the weeks coming. We've withdrawn from the job-killing disaster known as Trans Pacific Partnership. We're going

to make trade deals but we're going to have one on one deals, bilateral. We're going to have one on one deals.

We've directed the elimination of regulations that undermine manufacturing and call for expedited approval of the permits needed for America and American infrastructure and that means plant, equipment, roads, bridges, factories. People take 10, 15, 20 years to get disapproved for a factory. They go in for a permit, it's many, many years. And then at the end of the process —they spend 10s of millions of dollars on nonsense and at the end of the process, they get rejected.

Now, they may be rejected with me but it's going to be a quick rejection. Not going to take years. But mostly it's going to be an acceptance. We want plants built and we want factories built and we want the jobs. We don't want the jobs going to other countries. We've imposed a hiring freeze on nonessential federal workers. We've imposed a temporary moratorium on new federal regulations.

We've issued a game-changing new rule that says for each one new regulation, two old regulations must be eliminated. Makes sense. Nobody's ever seen regulations like we have. You go to other countries and you look at indexes (ph) they have and you say "let me see your regulations" and they're fraction, just a tiny fraction of what we have. And I want regulations because I want safety, I want environmental—all environmental situations to be taken properly care of. It's very important to me. But you don't need four or five or six regulations to take care of the same thing.

We've stood up for the men and women of law enforcement, directing federal agencies to ensure they are protected from crimes of violence. We've directed the creation of a task force for reducing violent crime in America, including the horrendous situation—take a look at Chicago and others, taking place right now in our inner cities. Horrible.

We've ordered the Department of Homeland Security and Justice to coordinate on a plan to destroy criminal cartels coming into the United States with drugs. We're becoming a drug infested nation. Drugs are becoming cheaper than candy bars. We are not going to let it happen any longer.

We've undertaken the most substantial border security measures in a generation to keep our nation and our tax dollars safe. And are now in the process of beginning to build a promised wall on the southern border, met with general—now Secretary Kelly yesterday and we're starting that process. And the wall is going to be a great wall and it's going to be a wall negotiated by me. The price is going to come down just like it has on everything else I've negotiated for the government. And we are going to have a wall that works, not gonna have a wall like they have now which is either nonexistent or a joke.

We've ordered a crackdown on sanctuary cities that refuse to comply with federal law and that harbor criminal aliens, and we have ordered an end to the policy of catch and release on the border. No more release. No matter who you are, release. We have begun a nationwide effort to remove criminal aliens, gang members, drug dealers and others who pose a

threat to public safety. We are saving American lives every single day.

The court system has not made it easy for us. And are even creating a new office in Homeland Security dedicated to the forgotten American victims of illegal immigrant violence, which there are many. 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. Our administration is working night and day to keep you safe, including reporters safe. And is vigorously defending this lawful order.

I will not back down from defending our country. 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.

In fact, we had to go quicker than we thought because of the bad decision we received from a circuit that has been overturned at a record number. I have heard 80 percent, I find that hard to believe, that is just a number I heard, that they are overturned 80 percent of the time. I think that circuit is—that circuit is in chaos and that circuit is frankly in turmoil. But we are appealing that, and we are going further.

We're issuing a new executive action next week that will comprehensively protect our country. So we'll be going along the one path and hopefully winning that, at the same time we will be issuing a new and very com-

prehensive order to protect our people. That will be done sometime next week, toward the beginning or middle at the latest part. We have also taken steps to begin construction of the Keystone Pipeline and Dakota Access Pipelines. Thousands and thousands of jobs, and put new buy American measures in place to require American steel for American pipelines. In other words, they build a pipeline in this country, and we use the powers of government to make that pipeline happen, we want them to use American steel. And they are willing to do that, but nobody ever asked before I came along. Even this order was drawn and they didn't say that.

TRUMP: And I'm reading the order, I'm saying, why aren't we using American steel? And they said, that's a good idea, we put it in. To drain the swamp of corruption in Washington, D.C., I've started by imposing a five-year lobbying ban on White House officials and a lifetime ban on lobbying for a foreign government.

We've begun preparing to repeal and replace Obamacare. Obamacare is a disaster, folks. It is's disaster. I know you can say, oh, Obamacare. I mean, they fill up our alleys with people that you wonder how they get there, but they are not the Republican people our that representatives are representing.

So we've begun preparing to repeal and replace Obamacare, and are deep in the midst of negotiations on a very historic tax reform to bring our jobs back, to bring our jobs back to this country. Big league. It's already happening. But big league.

I've also worked to install a cabinet over the delays and obstruction of Senate Democrats. You've seen what they've done over the last long number of years. That will be one of the great cabinets ever assembled in American history.

You look at Rex Tillerson. He's out there negotiating right now. General Mattis I mentioned before, General Kelly. We have great, great people. Mick is with us now. We have great people.

Among their responsibilities will be ending the bleeding of jobs from our country and negotiating fair trade deals for our citizens.

Now look, fair trade. Not free, fair. If a country is taking advantage of us, not going to let that happen anymore. Every country takes advantage of us almost. I may be able to find a couple that don't. But for the most part, that would be a very tough job for me to do.

Jobs have already started to surge. Since my election, Ford announced it will abandon its plans to build a new factory in Mexico, and will instead invest $700 million in Michigan, creating many, many jobs.

Fiat Chrysler announced it will invest $1 billion in Ohio and Michigan, creating 2,000 new American jobs. They were with me a week ago. You know you were here.

General Motors likewise committed to invest billions of dollars in its American manufacturing operation, keeping many jobs here that were going to leave. And if I didn't get elected, believe me, they would have left. And these jobs and these things that I'm announcing would never have come here.

Intel just announced that it will move ahead with a new plant in Arizona that probably was never going to move ahead with. And that will result in at least 10,000 American jobs.

Walmart announced it will create 10,000 jobs in the United States just this year because of our various plans and initiatives. There will be many, many more, many more, these are a few that we're naming.

Other countries have been taking advantage of us for decades—decades, and decades, and decades, folks. And we're not going to let that happen anymore. Not going to let it happen.

And one more thing, I have kept my promise to the American people by nominating a justice of the United States Supreme Court, Judge Neil Gorsuch, who is from my list of 20, and who will be a true defender of our laws and our Constitution, highly respected, should get the votes from the Democrats. You may not see that. But he'll get there one way or the other. But he should get there the oldfashioned way, and he should get those votes.

This last month has represented an unprecedented degree of action on behalf of the great citizens of our country. Again, I say it. There has never been a presidency that's done so much in such a short period of time. And we have not even started the big work yet. That starts early next week.

Some very big things are going to be announced next week. So we are just getting started. We will be giving a speech, as I said, in Melbourne, Florida, at 5:00 p.m. I hope to see you there.

And with that, I just say, God bless America, and let's take some questions.

Mara (ph), Mara (ph), go ahead. You were cut off pretty violently at our last news conference.

QUESTION: (OFF-MIKE)

TRUMP: Mike Flynn is a fine person, and I asked for his resignation. He respectfully gave it. He is a man who there was a certain amount of information given to Vice President Pence, who is with us today. And I was not happy with the way that information was given.

He didn't have to do that, because what he did wasn't wrong—what he did in terms of the information he saw. What was wrong was the way that other people, including yourselves in this room, were given that information, because that was classified information that was given illegally. That's the real problem.

And, you know, you can talk all you want about Russia, which was all a, you know, fake news, fabricated deal, to try and make up for the loss of the Democrats and the press plays right into it. In fact, I saw a couple of the people that were supposedly involved with all of this—that they know nothing about it; they weren't in Russia; they never made a phone call to Russia; they never received a phone call.

It's all fake news. It's all fake news. The nice thing is, I see it starting to turn, where people are now looking at the illegal—I think it's very important—the illegal, giving out classified information. It was—and let me just tell you, it was given out like so much.

I'll give you an example. I called, as you know, Mexico. It was a very, very confidential, classified call. But I called Mexico. And in calling Mexico, I figured, oh, well that's—I spoke to the president of Mexico; I had a good call. All of a sudden, it's out there for the world to see. It's supposed to be secret. It's supposed to be either confidential or classified, in that case.

Same thing with Australia. All of a sudden, people are finding out exactly what took place. The same thing happened with respect to General Flynn. Everybody saw this. And I'm saying—the first thing I thought of when I heard about it is: How does the press get this information that's classified? How do they do it?

You know why? Because it's an illegal process and the press should be ashamed of themselves. But more importantly, the people that gave out the information to the press should be ashamed of themselves, really ashamed.

Yes, go ahead.

QUESTION: (OFF-MIKE)

TRUMP: Because when I looked at the information, I said, "I don't think he did anything wrong; if anything, he did something right." He was coming into office. He looked at the information. He said, "Huh, that's fine." That's what they're supposed to do. They're supposed to—he didn't just call Russia. He called and spoke to both ways, I think there were 30-some-odd countries. He's doing the job.

You know, he was doing his job. The thing is, he didn't tell our vice president properly, and then he said

he didn't remember. So either way, it wasn't very satisfactory to me. And I have somebody that I think will be outstanding for the position. And that also helps, I think, in the making of my decision.

But he didn't tell the vice president of the United States the facts. And then he didn't remember. And that just wasn't acceptable to me.

Yes?

QUESTION: (inaudible) clarification here. During your campaign, did anyone from your team (inaudible) Russian government or Russian intelligence? And if so, what was the nature of those conversations (inaudible)? TRUMP: The failing New York Times wrote a big, long front-page story yesterday. And it was very much discredited, as you know. It was—it's a joke. And the people mentioned in the story, I notice they were on television today saying they never even spoke to Russia. They weren't even a part, really—I mean, they were such a minor part. They—I hadn't spoken to them.

I think the one person—I don't think I've ever spoken to him. I don't think I've ever met him. And he actually said he was a very low-level member of I think a committee for a short period of time. I don't think I ever met him. Now, it's possible that I walked into a room and he was sitting there, but I don't think I ever met him. I didn't talk to him ever. And he thought it was a joke.

The other person said he never spoke to Russia; never received a call. Look at his phone records, et cetera, et cetera. And the other person, people knew that he

represented various countries, but I don't think he represented Russia, but knew that he represented various countries. That's what he does. I mean, people know that.

That's Mr. Manafort, who's—by the way, who's by the way a respected man. He's a respected man. But I think he represented the Ukraine or Ukraine government or somebody, but everybody—people knew that. Everybody knew that.

So, these people—and he said that he has absolutely nothing to do and never has with Russia. And he said that very forcefully. I saw his statement. He said it very forcefully. Most of the papers don't print it because that's not good for their stories.

TRUMP: So the three people that they talked about all totally deny it. And I can tell you, speaking for myself, I own nothing in Russia. I have no loans in Russia. I don't have any deals in Russia. President Putin called me up very nicely to congratulate me on the win of the election.

He then, called me up extremely nicely to congratulate me on the inauguration, which was terrific. But so did many other leaders, almost all other leaders from almost all of the country. So that's the extent.

Russia is fake news. Russia—this is fake news put out by the media. The real news is the fact that people, probably from the Obama administration because they're there, because we have our new people going in place, right now.

As you know, Mike Pompeo has—has now taken control of the CIA, James Comey at FBI, Dan Coats is waiting to be approved, I mean he is a senator and a highly respected one and he's still waiting to be approved. But our new people are going in.

And just while you're at it, because you mentioned this, Wall Street Journal did a story today that was almost as disgraceful as the failing New York Time's story, yesterday. And it talked about—these are (ph) front page.

So director of national intelligence just put out, acting a statement, any suggestion that the United States intelligence community, this was just given to us, is withholding information and not providing the best possible intelligence to the president and his national security team is not true.

So they took this front page story out of The Wall Street Journal top and they just wrote the story that its not true. And I'll tell you something, I'll be honest, because I sort of enjoy this back and forth that I guess I have all my life but I've never seen more dishonest media than frankly, the political media. I thought the financial media was much better, much more honest.

But I will say that, I never get phone calls from the media. How did they write a story like that in The Wall Street Journal without asking me or how did they write a story in The New York Times, put it on front page?

That was like the story they wrote about the women and me, front page, big massive story. And it was nasty and then they called, they said we never said

that, we like Mr. Trump. They called up my office, we like Mr. Trump, we never said that.

And it was totally—they totally misrepresented those very wonderful women, I have to tell you, totally misrepresented. I said give us the retraction. They never gave us a retraction and frankly, I then went on to other things.

OK, go ahead.

QUESTION: (OFF-MIKE) said today that you have big intellectual margins (inaudible) 300 or more (ph), or 350 (ph) electoral (ph) votes. President Obama about 365 (OFF-MIKE).

(CROSSTALK)

TRUMP: Yeah.

QUESTION: Obama (OFF-MIKE) 426 on (OFF-MIKE). So why should Americans . . .

(CROSSTALK)

TRUMP: . . . I'm skipping that information, I don't know, I was just given (ph) we had a very, very big margin.

QUESTION: (OFF-MIKE) why should Americans trust you (OFF-MIKE) the information (OFF-MIKE)?

TRUMP: Well, I don't know, I was given that information. I was given—I actually, I've seen that information around. But it was a very substantial victory, do you agree with that? OK thank you, that's. . .

(CROSSTALK)

TRUMP: Go ahead Sir, yes?

QUESTION: Can you tell us in determining that Lieutenant General Flynn did—whether there was no wrongdoing in your mind, what evidence was weighed? Did you ask for transcripts of these telephone intercepts with Russian officials, particularly the Ambassador Sergey Kislyak, who he was communicating with?

What—what evidence did you weigh to determine that there was no wrongdoing? Further to that, Sir, you said on a couple of locations this morning, you are going to aggressively pursue the source of these leaks.

TRUMP: We are.

QUESTION: Can we ask what you're going to do and also, we've heard about a—a review of the intelligence community headed up by Steven Feinberg, what can you tell us about that?

TRUMP: Well, first of all about that, we now have Dan Coats, hopefully soon, Mike Pompeo and James Comey and they're in position so I hope that we'll be able to straighten that out without using anybody else.

The gentleman you mentioned is a very talented man, very successful man and he's offered his services and you know, it's something we may take advantage of. But I don't think we're need that at all because of the fact that you know, I think that we are gonna be able to straighten it out very easily on its own.

As far as the general's concerned, when I first heard about it, I said huh, that doesn't sound wrong. My counsel came, Don McGahn, White House Counsel, and he told me and I asked him, he can speak very well for

himself. He said he doesn't think anything is wrong, you know, really didn't think.

It was really, what happened after that but he didn't think anything was done wrong. I didn't either because I waited a period of time and I started to think about it, I said "well I don't see"—to me, he was doing the job.

The information was provided by—who I don't know, Sally Yates. And I was a little surprised because I said "doesn't sound like he did anything wrong there." But he did something wrong with respect to the vice president and I thought that was not acceptable. As far as—as far as the actual making the call, fact I've watched various programs and I've read various articles where he was just doing his job.

That was very normal. You know, first everybody got excited because they thought he did something wrong. After they thought about it, it turned out he was just doing his job. So—and I do. And by the way, with all of that being said, I do think he's a fine man.

QUESTION: Sir, if I could, on the leaks—on the leaks, sir . . .

TRUMP: . . .Go ahead. Finish off then I'll get you.

QUESTION: I'm sorry. What will you do on the leaks? You've said twice today . . .

TRUMP: . . .Yes, we're looking at them very—very, very serious. I've gone to all of the folks in charge of the various agencies and we're—I've actually called the Justice Department to look into the leaks. Those are criminal leaks. They're put out by people either in

agencies—I think you'll see it stopping because now we have our people in. You know, again, we don't have our people in because we can't get them approved by the Senate.

We just had Jeff Sessions approved. Injustice, as an example (ph). So, we are looking into that very seriously. It's a criminal act. You know what I say, when I—when I was called out on Mexico, I was shocked because all this equipment, all this incredible phone equipment—when I was called out on Mexico, I was—honestly, I was really, really surprised.

But I said "you know, it doesn't make sense. That won't happen" but that wasn't that important a call, it was fine, I could show it to the world and he could show it to the world, the president who's a very fine man, by the way. Same thing with Australia. I said "that's terrible that it was leaked" but it wasn't that important. But then I said to myself "what happens when I'm dealing with the problem of North Korea?"

What happens when I'm dealing with the problems in the Middle East? Are you folks going to be reporting all of that very, very confidential information, very important, very—you know, I mean at the highest level? Are you going to be reporting about that too? So, I don't want classified information getting out to the public and in a way that was almost a test.

So I'm dealing with Mexico, I'm dealing with Argentina, we were dealing on this case with Mike Flynn. All this information gets put into the "Washington Post" and gets put into the "New York Times" and I'm saying "what's going to happen when I'm dealing on the Mid-

dle East? What's going to happen when I'm dealing with really, really important subjects like North Korea?

We got to stop it. That's why it's a criminal penalty.

QUESTION: I just want to get you to clarify this very important point. Can you say definitively that nobody on your campaign had any contacts with the Russians during the campaign? And on the leaks, is it fake news or are these real leaks?

TRUMP: Well the leaks are real. You're the one that wrote about them and reported them, I mean the leaks are real. You know what they said, you saw it and the leaks are absolutely real. The news is fake because so much of the news is fake. So one thing that I felt it was very important to do—and I hope we can correct it. Because there's nobody I have more respect for—well, maybe a little bit but the reporters, good reporters.

It's very important to me and especially in this position. It's very important. I don't mind bad stories. I can handle a bad story better than anybody as long as it's true and, you know, over a course of time, I'll make mistakes and you'll write badly and I'm OK with that. But I'm not OK when it is fake. I mean, I watch CNN, it's so much anger and hatred and just the hatred.

I don't watch it any more because it's very good—he's saying no. It's OK, Jim (ph). It's OK, Jim (ph), you'll have your chance. But I watch others too. You're not the only one so don't feel badly. But I think it should be straight. I think it should be—I think it would be frankly more interesting. I know

how good everybody's ratings are right now but I think that actually—I think that'd actually be better.

People—I mean, you have a lower approval rate than Congress. I think that's right. I don't know, Peter (ph), is that one right? Because you know I think they have lower—I heard lower than Congress. But honestly, the public would appreciate it, I'd appreciate it—again, I don't mind bad stories when it's true but we have an administration where the Democrats are making it very difficult.

TRUMP: I think we're setting a record or close to a record in the time of approval of a cabinet. I mean, the numbers are crazy. When I'm looking, some of them had them approved immediately.

I'm going forever and I still have a lot of people that we're waiting for. And that's all they're doing, is delaying. And you look at Schumer and the mess that he's got over there and they have nothing going. The only thing they can do is delay. And, you know, I think that they'd be better served by, you know, approving and making sure that they're happy and everybody's good.

And sometimes—I mean, I know President Obama lost three or four, and you lose them on the way, and that's OK. That's fine. But I think it would—I think they would be much better served, John, if they just went through the process quickly. This is pure delay tactics.

And they say it, and everybody understands it. Yeah, go ahead, Jimmy.

QUESTION: (OFF-MIKE)

TRUMP: Well, I had nothing to do with it. I have nothing to do with Russia. I told you, I have no deals there, I have no anything. Now, when WikiLeaks, which I had nothing to do with, comes out and happens to give, they're not giving classified information. They're giving stuff—what was said at an office about Hillary cheating on the debates.

Which, by the way, nobody mentions. Nobody mentions that Hillary received the questions to the debates. Can you imagine—seriously—can you imagine if I received the questions? It would be the electric chair. OK, he should be put in the electric—you would even call for the reinstitution of the death penalty, OK. Maybe not you John. Yes? We'll do you next Jim, I do you next(ph).

QUESTION: (OFF-MIKE) clarify—

TRUMP: Yes, yes, sure

QUESTION: Did you direct Mike Flynn to discuss sanctions with the Russian ambassador—

TRUMP: No, I didn't.

QUESTION: —prior to your—TRUMP: No, I didn't.

QUESTION: —inauguration.

TRUMP: No, I didn't.

QUESTION: And then fired him—

TRUMP: Excuse me.

QUESTION: (OFF-MIKE)

TRUMP: No, I fired him because of what he said to Mike Pence. Very simple. Mike was doing his job. He was calling countries and his counterparts. So, it certainly would have been OK with me if he did it. I would have directed him to do it if I thought he wasn't doing it.

I didn't direct him, but I would have directed him because that's his job. And it came out that way—and in all fairness, I watched Dr. Charles Krauthammer the other night say he was doing his job and I agreed with him. And since then, I've watched many other people say that.

No, I didn't direct him, but I would have directed him if he didn't do it. OK? Jim?

QUESTION: Thank you very much, and just for the record, we don't hate you. I don't hate you.

TRUMP: OK.

QUESTION: So, pass that along—

TRUMP: Ask—ask Jeff Zucker how he got his job. OK?

QUESTION: If I may follow up on some of the questions that have taken place so far here, sir—

TRUMP: Well, that's—well, you know, we do have other people. You do have other people and your ratings aren't as good as some of the other people that are waiting.

QUESTION: It's pretty good right now, actually.

TRUMP: OK, go ahead, John.

QUESTION: If I may ask, sir, you said earlier that WikiLeaks was revealing information about the Hillary Clinton campaign during the election cycle. You welcomed that. At one time—

TRUMP: I was OK with it.

QUESTION: —you said—you said that you loved WikiLeaks. At another campaign press conference you called on the Russians to find the missing 30,000 e-mails. I'm wondering, sir, if you—TRUMP: Well, she was actually missing 33 and then that got extended with a pile after that.

QUESTION: Then(ph), your(ph) numbers(ph) were off too.

TRUMP: No—no, but I did say 30. But it was actually higher than that.

QUESTION: If—if I may ask you, sir, it—it sounds as though you do not have much credibility here when it comes to leaking if that is something that you encouraged during(ph) the campaign—

TRUMP: OK, fair question. Ready?

QUESTION: Well, if I may ask you that—

TRUMP: No—no, but let me do one at a time.

QUESTION: If I may as a follow up?

TRUMP: Do you mind?

QUESTION: Yes, sir.

TRUMP: All right. So, in one case, you're talking about highly classified information. In the other case, you're talking about John Podesta saying bad things

about the boss. I will say this, if John Podesta said that about me and he was working for me, I would have fired him so fast your head would have spun.

He said terrible things about her. But it wasn't classified information. But in one case, you're talking about classified—regardless, if you look at the RNC, we had a very strong—at my suggestion—and I give Reince great credit for this—at my suggestion, because I know something about this world, I said I want a very strong defensive mechanism.

I don't want to be hacked. And we did that. And you have seen that they tried to hack us and they failed. The DNC did not do that. And if they did it, they could not have been hacked. But they were hacked and terrible things came in. And, you know, the only thing that I do think is unfair is some of the things were so—they were—when I heard some of those things I picked up the papers the next morning and said, oh, this is going to be front page, it wasn't even in the papers.

Again, if I had that happen to me, it would be the biggest story in the history of publishing or the head of newspapers. I would have been headline in every newspaper. I mean, think of it. They gave her the questions to a debate and she—and she should have reported herself.

Why did Hillary Clinton announce that, "I'm sorry, but I have been given the questions to a debate or a town hall, and I feel that it's inappropriate, and I want to turn in CNN for not doing a good job."

QUESTION: And if I may follow up on that, just something that Jonathan Karl (ph) was asking you about. You said that the leaks are real, but the news is fake. I guess I don't understand. It seems that there's a disconnect there. If the information coming from those leaks is real, then how can the stories be fake?

TRUMP: The reporting is fake. Look, look. . .

(CROSSTALK)

TRUMP: You know what it is? Here's the thing. The public isn't—you know, they read newspapers, they see television, they watch. They don't know if it's true or false because they're not involved. I'm involved. I've been involved with this stuff all my life. But I'm involved. So I know when you're telling the truth or when you're not. I just see many, many untruthful things.

And I'll tell you what else I see. I see tone. You know the word "tone." The tone is such hatred. I'm really not a bad person, by the way. No, but the tone is such—I do get good ratings, you have to admit that —the tone is such hatred.

I watched this morning a couple of the networks. And I have to say, Fox & Friends in the morning, they're very honorable people. They're very—not because they're good, because they hit me also when I do something wrong. But they have the most honest morning show. That's all I can say. It's the most honest.

But the tone, Jim. If you look—the hatred. The, I mean, sometimes—sometimes somebody gets. . .

(CROSSTALK)

TRUMP: Well, you look at your show that goes on at 10 o'clock in the evening. You just take a look at that show. That is a constant hit. The panel is almost always exclusive anti-Trump. The good news is he doesn't have good ratings. But the panel is almost exclusive anti-Trump. And the hatred and venom coming from his mouth; the hatred coming from other people on your network.

Now, I will say this. I watch it. I see it. I'm amazed by it. And I just think you'd be a lot better off, I honestly do. The public gets it, you know. Look, when I go to rallies, they turn around, they start screaming at CNN. They want to throw their placards at CNN. You know.

I—I think you would do much better by being different. But you just take a look. Take a look at some of your shows in the morning and the evening. If a guest comes out and says something positive about me, it's—it's brutal.

Now, they'll take this news conference—I'm actually having a very good time, OK? But they'll take this news conference—don't forget, that's the way I won. Remember, I used to give you a news conference every time I made a speech, which was like every day. OK?

(CROSSTALK)

TRUMP: No, that's how I won. I won with news conferences and probably speeches. I certainly didn't

win by people listening to you people. That's for sure. But I'm having a good time.

Tomorrow, they will say, "Donald Trump rants and raves at the press." I'm not ranting and raving. I'm just telling you. You know, you're dishonest people. But—but I'm not ranting and raving. I love this. I'm having a good time doing it.

But tomorrow, the headlines are going to be, "Donald Trump rants and raves." I'm not ranting and raving.

Go ahead.

QUESTION: If I may, just one more followup. . .

TRUMP: Should I let him have a little bit more? What do you think, Peter? Peter, should I have—let him have a little bit more?

Sit down. Sit down. We'll. . .

(CROSSTALK)

QUESTION: Just because of the attack of fake news and attacking our network, I just want to ask you, sir. . .

TRUMP: I'm changing it from fake news, though.

QUESTION: Doesn't that under. . .

TRUMP: Very fake news.

QUESTION: . . . I know, but aren't you. . .

(LAUGHTER)

TRUMP: Go ahead.

QUESTION: Real news, Mr. President, real news.

TRUMP: And you're not related to our new. . .

QUESTION: I am not related, sir. No. I do like the sound of Secretary Acosta, I must say.

TRUMP: I looked—you know, I looked at that name. I said, wait a minute, is there any relation there? Alex Acosta.

QUESTION: I'm sure you checked that out, sir.

TRUMP: OK. Now I checked it—I said—they said, "No, sir." I said, "Do me a favor, go back and check the family tree."

QUESTION: But aren't you—aren't you concerned, sir, that you are undermining the people's faith in the First Amendment, freedom of the press, the press in this country, when you call stories you don't like "fake news"? Why not just say it's a story I don't like.

TRUMP: I do that.

QUESTION: When you call it "fake news," you're undermining confidence in our news media (inaudible) important.

TRUMP: No, no. I do that. Here's the thing. OK. I understand what you're—and you're right about that, except this. See, I know when I should get good and when I should get bad. And sometimes I'll say, "Wow, that's going to be a great story." And I'll get killed.

I know what's good and bad. I'd be a pretty good reporter, not as good as you. But I know what's good. I know what's bad. And when they change it and make it really bad, something that should be positive—sometimes something that should be very positive, they'll make OK. They'll even make it negative.

So I understand it. So, because I'm there. I know what was said. I know who's saying it. I'm there. So it's very important to me.

Look, I want to see an honest press. When I started off today by saying that it's so important to the public to get an honest press. The press—the public doesn't believe you people anymore. Now, maybe I had something to do with that. I don't know. But they don't believe you. If you were straight and really told it like it is, as Howard Cosell used to say, right?

Of course, he had some questions also. But if you were straight, I would be your biggest booster. I would be your biggest fan in the world, including bad stories about me. But if you go—as an example, you're CNN, I mean it's story after story after story is bad. I won. I won. And the other thing, chaos because zero chaos. We are running—this is a fine-tuned machine and Reince happens to be doing a good job but half of his job is putting out lies by the press (ph).

You know, I said to him yesterday this whole Russia scam that you guys are building so that you don't talk about the real subject which is illegal leaks, but I watched him yesterday working so hard to try and get that story proper. And I'm saying "here's my chief of staff," a really good guy, did a phenomenal job at RNC. I mean, he won the election, right?

We won the presidency. We got some senators, we got some—all over the country, you take a look, he's done a great job. And I said to myself, you know—and I said to somebody that was in the room, I

said "you take a look at Reince, he's working so hard just putting out fires that are fake fires." I mean, they're fake. They're not true. And isn't that a shame because he'd rather be working on healthcare, he'd rather be working on tax reform, Jim (ph).

I mean that. I would be your biggest fan in the world if you treated me right. I sort of understand there's a certain bias maybe by Jeff (ph) or somebody, you know —you know, whatever reason. But—and I understand that. But you've got to be at least a little bit fair and that's why the public sees it. They see it. They see it's not fair. You take a look at some of your shows and you see the bias and the hatred.

And the public is smart, they understand it. Go ahead.

QUESTION: (inaudible) . . .for those who believe that there is something to it, is there anything that you have learned over the last few weeks that you might be able to reveal that might ease their concerns that this isn't fake news? And second. . .

TRUMP: . . .I think they don't believe it. I don't think the public—that's why the Rasmussen poll just has me through the roof. I don't think they believe it. Well, I guess one of the reasons I'm here today is to tell you the whole Russian thing, that's a ruse. That's a ruse. And by the way, it would be great if we could get along with Russia, just so you understand that.

Now tomorrow, you'll say "Donald Trump wants to get along with Russia, this is terrible." It's not terrible. It's good. We had Hillary Clinton try and do a reset. We had Hillary Clinton give Russia 20 percent of the

uranium in our country. You know what uranium is, right? This thing called nuclear weapons like lots of things are done with uranium including some bad things.

Nobody talks about that. I didn't do anything for Russia. I've done nothing for Russia. Hillary Clinton gave them 20 percent of our uranium. Hillary Clinton did a reset, remember? With the stupid plastic button that made us all look like a bunch of jerks. Here, take a look. He looked at her like, what the hell is she doing with that cheap plastic button?

Hillary Clinton—that was the reset, remember it said reset? Now if I do that, oh, I'm a bad guy. If we could get along with Russia, that's a positive thing. We have a very talented man, Rex Tillerson, who's going to be meeting with them shortly and I told him. I said "I know politically it's probably not good for me." The greatest thing I could do is shoot that ship that's 30 miles off shore right out of the water.

Everyone in this country's going to say "oh, it's so great." That's not great. That's not great. I would love to be able to get along with Russia. Now, you've had a lot of presidents that haven't taken that tack. Look where we are now. Look where we are now. So, if I can—now, I love to negotiate things, I do it really well, and all that stuff. But—but it's possible I won't be able to get along with Putin.

Maybe it is. But I want to just tell you, the false reporting by the media, by you people, the false, horrible, fake reporting makes it much harder to make a deal with Russia. And probably Putin said "you

know." He's sitting behind his desk and he's saying "you know, I see what's going on in the United States, I follow it closely. It's going to be impossible for President Trump to ever get along with Russia because of all the pressure he's got with this fake story." OK?

And that's a shame because if we could get along with Russia—and by the way, China and Japan and everyone. If we could get along, it would be a positive thing, not a negative thing.

QUESTION: Is tax reform on the line (ph)?

QUESTION: Mr. President? Mr. President? Mr. President, since you. . .

TRUMP: Tax reform is going to happen fairly quickly. We're doing Obamacare. We're in final stages. We should be submitting the initial plan in March, early March, I would say. And we have to, as you know, statutorily and for reasons of budget, we have to go first. It's not like, frankly, the tax would be easier, in my opinion, but for statutory reasons and for budgetary reasons, we have to submit the healthcare sooner.

So we'll be submitting healthcare sometime in early March, mid-March. And after that, we're going to come up, and we're doing very well on tax reform.

Yes?

QUESTION: Mr. President, you mentioned Russia. Let's talk about some serious issues that have come up in the last week that you have had to deal with as president of the United States.

TRUMP: OK.

QUESTION: You mentioned the vessel—the spy vessel off the coast of the United States.

TRUMP: Not good.

QUESTION: There was a ballistic missile test that many interpret as a violation of an agreement between the two countries; and a Russian plane buzzed a U.S. destroyer.

TRUMP: Not good.

QUESTION: I listened to you during the campaign . . .

TRUMP: Excuse me, excuse me. When did it happen? It happened when, if you were Putin right now, you would say, "Hey, we're back to the old games with the United States; there's no way Trump can ever do a deal with us." Because the—you have to understand. If I was just brutal on Russia right now, just brutal, people would say, you would say, "Oh, isn't that wonderful." But I know you well enough.

Then you would say, "Oh, he was too tough; he shouldn't have done that." Look, all of the...

(CROSSTALK)

QUESTION: I'm just trying to find out your orientation to those. . .

(CROSSTALK)

TRUMP: Wait a minute. Wait, wait. Excuse me just one second.

(CROSSTALK)

TRUMP: All of those things that you mentioned are very recent, because probably Putin assumes that he's not going to be able to make a deal with me because it's politically not popular for me to make a deal. So Hillary Clinton tries a re-set. It failed. They all tried. But I'm different than those people.

Go ahead.

QUESTION: How are you interpreting those moves? And what do you intend to do about them? Have you given Rex Tillerson any advice or counsel on how to deal?

TRUMP: I have. I have. And I'm so beautifully represented. I'm so honored that the Senate approved him. He's going to be fantastic.

Yes, I think that I've already. . .

QUESTION: Is Putin testing you, do you believe, sir?

TRUMP: No, I don't think so. I think Putin probably assumes that he can't make a deal with me anymore because politically it would be unpopular for a politician to make a deal. I can't believe I'm saying I'm a politician, but I guess that's what I am now.

Because, look, it would be much easier for me to be tough on Russia, but then we're not going to make a deal.

Now, I don't know that we're going to make a deal. I don't know. We might. We might not. But it would be much easier for me to be so tough—the tougher I am on Russia, the better. But you know what? I

want to do the right thing for the American people. And to be honest, secondarily, I want to do the right thing for the world.

If Russia and the United States actually got together and got along—and don't forget, we're a very powerful nuclear country and so are they. There's no up-side. We're a very powerful nuclear country and so are they. I have been briefed. And I can tell you one thing about a briefing that we're allowed to say because anybody that ever read the most basic book can say it, nuclear holocaust would be like no other.

They're a very powerful nuclear country and so are we. If we have a good relationship with Russia, believe me, that's a good thing, not a bad thing.

QUESTION: So when you say they're not good, do you mean that they are. . .

TRUMP: Who did I say is not good?

QUESTION: No, I read off the three things that have recently happened. Each one of them you said they're not good.

(CROSSTALK)

TRUMP: No, it's not good, but they happened.

QUESTION: But do they damage the relationship? Do they undermine. . .

TRUMP: They all happened recently.

No. . .

(CROSSTALK)

QUESTION: . . . this country's ability to work with Russia?

TRUMP: They all happened recently. And I understand what they're doing because they're doing the same thing.

Now, again, maybe I'm not going to be able to do a deal with Russia, but at least I will have tried. And if I don't, does anybody really think that Hillary Clinton would be tougher on Russia than Donald Trump? Does anybody in this room really believe that? OK?

But I tell you one thing, she tried to make a deal. She had the re-set. She gave all that valuable uranium away. She did other things. You know, they say I'm close to Russia. Hillary Clinton gave away 20 percent of the uranium in the United States. She's close to Russia.

QUESTION: Can we. . .

TRUMP: I gave—you know what I gave to Russia? You know what I gave? Nothing.

QUESTION: Can we conclude there will be no response to these particular provocations?

TRUMP: I'm not going to tell you anything about what response I do. I don't talk about military response.

I don't say I'm going into Mosul in four months. "We are going to attack Mosul in four months." Then three months later, "We are going to attack Mosul in one month." "Next week, we are going to attack Mosul."

In the meantime, Mosul is very, very difficult. Do you know why? Because I don't talk about military, and I don't talk about certain other things, you're going to be surprised to hear that. And by the way, my whole campaign, I'd say that. So I don't have to tell you. I don't want to be one of these guys that say, "Yes, here's what we're going to do." I don't have to do that. I don't have to tell you what I'm going to do in North Korea.

(CROSSTALK)

TRUMP: Wait a minute. I don't have to tell you what I'm going to do in North Korea. And I don't have to tell you what I'm going to do with Iran. You know why? Because they shouldn't know. And eventually, you guys are going to get tired of asking that question.

TRUMP: So when you ask me what am I going to do with a ship, the Russian ship as an example, I'm not going to tell you. But hopefully, I won't have to do anything, but I'm not going to tell you.

OK.

QUESTION: Could I just ask you—thank you very much, Mr. President. The trouble. . .

TRUMP: Where are you from?

QUESTION: BBC.

TRUMP: Here's another beauty.

QUESTION: That's a good line. Impartial, free and fair.

TRUMP: Yeah. Sure.

QUESTION: Mr. President. . .

TRUMP: Just like CNN right?

QUESTION: On the travel ban—we could banter back and forth. On the travel ban would you accept that that was a good example of the smooth running of government. . .

TRUMP: Yeah, I do. I do. Let me tell you about this government. . .

QUESTION: Were there any mistakes. . .

TRUMP: Wait. Wait. I know who you are. Just wait.

Let me tell you about the travel ban. We had a very smooth rollout of the travel ban. But we had a bad court. Got a bad decision. We had a court that's been overturned. Again, may be wrong. But I think it's 80 percent of the time, a lot.

We had a bad decision. We're going to keep going with that decision. We're going to put in a new executive order next week some time. But we had a bad decision.

That's the other thing that was wrong with the travel ban. You had Delta with a massive problem with their computer system at the airports. You had some people that were put out there, brought by very nice busses, and they were put out at various locations.

Despite that the only problem that we had is we had a bad court. We had a court that gave us what I consider to be, with great respect, a very bad decision.

Very bad for the safety and security of our country. The rollout was perfect.

Now, what I wanted to do was do the exact same executive order, but said one thing. I said this to my people. Give them a one-month period of time. But Gen. Kelly, now Sec. Kelly, said if you do that, all these people will come in and (inaudible) the bad ones.

You do agree there are bad people out there, right? That not everybody that's like you. You have some bad people out there.

Kelly said you can't do that. And he was right. As soon as he said it I said wow, never thought of it. I said how about one week? He said no good. You got to do it immediately because if you do it immediately they don't have time to come in.

Now nobody ever reports that. But that's why we did it quickly.

Now, if I would've done it a month, everything would've been perfect. The problem is we would've wasted a lot of time, and maybe a lot of lives because a lot of bad people would've come into our country.

Now in the meantime, we're vetting very, very strongly. Very, very strongly. But we need help. And we need help by getting that executive order passed.

QUESTION: Just a brief follow-up. But if it's so urgent, why not introduce. . .

TRUMP: Yes? Go ahead.

QUESTION: Thank you. I was just hoping that we could get a yes or no answer on one of these questions

involving Russia. Can you say whether you are aware that anyone who advised your campaign had contacts with Russia during the course of the election?

TRUMP: Well I told you, Gen. Flynn obviously was dealing. So that's one person. But he was dealing, as he should have been.

QUESTION: During the election?

TRUMP: No. Nobody that I know of. Nobody. . .

QUESTION: So you're not aware of any contact during the course. .

TRUMP: Look, look, look. . .

QUESTION: . . . of the election?

TRUMP: How many times do I have to answer this question?

QUESTION: Can you just say yes or no? TRUMP: Russia is a ruse.

I know you have to get up and ask a question. It's so important.

Russia is a ruse. I have nothing to do with Russia. Haven't made a phone call to Russia in years. Don't speak to people from Russia. Not that I wouldn't. I just have nobody to speak to.

I spoke to Putin twice. He called me on the election. I told you this. And he called me on the inauguration, a few days ago.

We had a very good talk, especially the second one, lasted for a pretty long period of time. I'm sure you probably get it because it was classified. So I'm sure

everybody in this room perhaps has it. But we had a very, very good talk.

I have nothing to do with Russia. To the best of my knowledge no person that I deal with does.

Now, Manafort has totally denied it. He denied it. Now people knew that he was a consultant over in that part of the world for a while, but not for Russia. I think he represented Ukraine or people having to do with Ukraine, or people that—whoever. But people knew that. Everybody knew that.

QUESTION: But in his capacity as your campaign manager, was he in touch with Russian officials during the election?

TRUMP: You know what? He said no. I could only tell you what he—now he was replaced long before the election. You know that, right?

He was replaced long before the election. When all of this stuff started coming out, it came out during the election. But Paul Manafort, who's a good man also by the way, Paul Manfort was replaced long before the election took place. He was only there for a short period of time.

QUESTION: Mr. President. . .

TRUMP: How much longer should we stay here, folks?

QUESTION: Mr. President. . .

TRUMP: Five more minutes. Is that OK? Five?

QUESTION: Mr. President, on national. . .

TRUMP: Wait. Let's see. Who's—I want to find a friendly reporter.

QUESTION: Mr. . . .

TRUMP: Are you a friendly reporter? Watch how friendly he is. Wait. Wait. Watch how friendly he is. Go ahead.

QUESTION: (OFF-MIKE). . .

TRUMP: Go ahead.

QUESTION: So first of all, my name is (Inaudible) from (Inaudible) Magazine. I (inaudible). I haven't seen anybody in my community, including yourself or any of the—anyone on your staff of being (OFF-MIKE).

Because (OFF-MIKE). However, what we've already heard about and what we (OFF-MIKE) is (OFF-MIKE) so you're general forecast (ph) like 48 (OFF-MIKE). There are people who are everything (ph) happens through their packs (ph) is one of the (OFF-MIKE). . .

(CROSSTALK)

TRUMP:. . .he said he was gonna ask a very simple, easy question. And it's not, its not, not—not a simple question, not a fair question. OK sit down, I understand the rest of your question.

So here's the story, folks. Number one, I am the least anti-Semitic person that you've ever seen in your entire life. Number two, racism, the least racist person. In fact, we did very well relative to other people running as a Republican—quiet, quiet, quiet.

See, he lied about—he was gonna get up and ask a very straight, simple question, so you know, welcome to the world of the media. But let me just tell you something, that I hate the charge, I find it repulsive.

I hate even the question because people that know me and you heard the prime minister, you heard Ben Netanyahu (ph) yesterday, did you hear him, Bibi? He said, I've known Donald Trump for a long time and then he said, forget it.

So you should take that instead of having to get up and ask a very insulting question like that.

(CROSSTALK)

TRUMP: Yeah, go ahead. Go ahead.

QUESTION: Thank you, I'm Lisa (ph) from the. . .

(CROSSTALK)

TRUMP: See, it just shows you about the press, but that's the way the press is.

QUESTION: Thank you, Mr. President. Lisa Dejardown (ph) from the PBS News Hour. On national security and immigration, can you give us more details on the executive order you plan for next week? Even its broad outlines?

TRUMP: Yeah.

QUESTION: Will it be focused on specific. . .

TRUMP: It's a very fair question.

QUESTION: . . .countries? And in addition, on the DACA program for immigration.

TRUMP: Right.

QUESTION: What is your plan, do you plan to continue that program or to end it?

TRUMP: We're gonna show great heart, DACA is a very, very difficult subject for me, I will tell you. To me, it's one of the most difficult subjects I have because you have these incredible kids.

In many cases, not in all cases. And some of the cases, having DACA and they're gang members and they're drug dealers, too. But you have some absolutely, incredible kids, I would say mostly. They were brought here in such a way—it's a very—it's a very, very tough subject.

We're gonna deal with DACA with heart. I have to deal with a lot of politicians, don't forget and I have to convince them that what I'm saying is—is right. And I appreciate your understanding on that.

But the DACA situation is a very, very—it's a very difficult thing for me because you know, I love these kids, I love kids, I have kids and grandkids. And I find it very, very hard doing what the law says exactly to do and you know, the law is rough.

I'm not talking about new laws, I'm talking the existing law, is very rough, it's very, very rough. As far as the new order, the new order is going to be very much tailored to the what I consider to be a very bad decision.

But we can tailor the order to that decision and get just about everything, in some ways, more. But we're

tailoring it now to the decision, we have some of the best lawyers in the country working on it.

And the new executive order, is being tailored to the decision we got down from the court. OK?

QUESTION: Mr. President. . .

(CROSSTALK) QUESTION: . . .reopening of the White House Visitors Office?

TRUMP: Yes.

QUESTION: And she does a lot of great work for the country as well (ph). Can you talk a little bit about what's first for (ph) Melania Trump does for the country and (inaudible) so opening White House Visitors Office, what does that mean. . .

TRUMP: Now, that's what I call a nice question. That is very—who are you with?

QUESTION: (OFF-MIKE)

TRUMP: Good, I'm gonna start watching, all right? Thank you very much. Melania's terrific, she was here last night, we had dinner with Senator Rubio and his wife who is by the way, lovely.

And we had a really good discussion about Cuba because we have very similar views on Cuba. And Cuba was very good to me in the Florida election, as you know the Cuban Americans. And I think that Melania's gonna be outstanding, that's right, she just opened up the visitors center, in other words, touring of the White House.

She, like others that she's working with, feel very, very strongly about women's issue, women's difficulties.

Very, very strongly, she's a very, very strong advocate. I think she's a great representative for this country.

And a funny thing happens, because she gets—she gets so unfairly—Melania, the things they say. I've known her for a long time, she was a very successful person, she was a very successful model. She did really well.

She would go home at night and didn't even want to go out with people. She was a very private person. She was always the highest quality that you'll ever find. And the things they say—I've known her for a long time—the things they say are so unfair. And actually, she's been apologized to, as you know, by various media because they said things that were lies.

I'll just tell you this. I think she's going to be a fantastic first lady. She's going to be a tremendous representative of women and of the people. And helping her and working her will be Ivanka, who is a fabulous person and a fabulous, fabulous woman. And they're not doing this for money.

They're not doing this for pay, they're doing this because they feel it; both of them. And Melania goes back and forth and after Barron finishes school—because it's hard to take a child out of school with a few months left—she and Barron will be moving over to the White House. OK, thank you, that's a very nice question.

(CROSSTALK)

TRUMP: Go ahead. QUESTION: Mr. Trump?

TRUMP: Yes, oh, this is going to be a bad question, but that's OK.

QUESTION: It doesn't(ph) have(ph) to be a bad question.

TRUMP: Good, because I enjoy watching you on television. Go ahead.

QUESTION: Well, thank you so much. Mr. President, I need to find out from you, you said something as it relates to inner cities. That was one of your platforms during your campaign. Now you're—

TRUMP: Fix the inner cities.

QUESTION: —president. Fixing the inner cities.

TRUMP: Yep.

QUESTION: What will be that fix and your urban agenda as well as your HBCU Executive Order that's coming out this afternoon? See, it wasn't bad, was it?

TRUMP: That was very professional and very good.

QUESTION: I'm very professional.

TRUMP: We'll be announcing the order in a little while and I'd rather let the order speak for itself. But it could be something that I think that will be very good for everybody concerned. But we'll talk to you about that after we do the announcement. As far as the inner cities, as you know, I was very strong on the inner cities during the campaign.

I think it's probably what got me a much higher percentage of the African American vote than a lot of people thought I was going to get. We did, you know, much higher than people thought I was going to get. And I was honored by that, including the Hispanic vote, which was also much higher.

And by the way, if I might add, including the women's vote, which was much higher than people thought I was going to get. So, we are going to be working very hard on the inner cities, having to do with education, having to do with crime. We're going to try and fix as quickly as possible—you know, it takes a long time.

It's taken more a hundred years and more for some of these places to evolve and they evolved, many of them, very badly. But we're going to be working very hard on health and healthcare, very, very hard on education, and also we're going to be working in a stringent way, in a very good way, on crime.

You go to some of these inner city places and it's so sad when you look at the crime. You have people—and I've seen this, and I've sort of witnessed it—in fact, in two cases I have actually witnessed it. They lock themselves into apartments, petrified to even leave, in the middle of the day.

They're living in hell. We can't let that happen. So, we're going to be very, very strong. That's a great question and—and it's a—it's a very difficult situation because it's been many, many years. It's been festering for many, many years. But we have places in this country that we have to fix.

We have to help African American people that, for the most part, are stuck there. Hispanic American people. We have Hispanic American people that are in the inner cities and their living in hell. I mean, you look at the numbers in Chicago. There are two Chicagos, as you know.

There's one Chicago that's incredible, luxurious and all —and safe. There's another Chicago that's worse than almost any of the places in the Middle East that we talk, and that you talk about, every night on the newscasts. So, we're going to do a lot of work on the inner cities.

I have great people lined up to help with the inner cities. OK?

QUESTION: Well, when you say the inner cities, are you going—are you going to include the CBC, Mr. President, in your conversations with your—your urban agenda, your inner city agenda, as well as—

TRUMP: Am I going to include who?

QUESTION: Are you going to include the Congressional Black Caucus and the Congressional—

TRUMP: Well, I would. I tell you what, do you want to set up the meeting?

QUESTION: —Hispanic Caucus—

TRUMP: Do you want to set up the meeting?

QUESTION: No—no—no. I'm not—

TRUMP: Are they friends of yours?

QUESTION: I'm just a reporter.

TRUMP: Well, then(ph) set up the meeting.

QUESTION: I know some of them, but I'm sure they're watching right now.

TRUMP: Let's go set up a meeting. I would love to meet with the Black Caucus. I think it's great, the

Congressional Black Caucus. I think it's great. I actually thought I had a meeting with Congressman Cummings and he was all excited. And then he said, well, I can't move, it might be bad for me politically. I can't have that meeting.

I was all set to have the meeting. You know, we called him and called him. And he was all set. I spoke to him on the phone, very nice guy.

QUESTION: I hear he wanted that meeting with you as well.

TRUMP: He wanted it, but we called, called, called and can't make a meeting with him. Every day I walk and say I would like to meet with him because I do want to solve the problem. But he probably was told by Schumer or somebody like that, some other lightweight. He was probably told—he was probably told "don't meet with Trump. It's bad politics."

And that's part of the problem in this country. OK, one more.

QUESTION: (inaudible)

TRUMP: No, no, one question. Two we can't handle. This room can't handle two. Go ahead, give me the better of your two.

QUESTION: (inaudible) . . .not about your personality or your beliefs, talking about (inaudible), some of it by supporters in your name. What do you. . .

TRUMP: . . .And some of it—can I be honest with you? And this has to do with racism and horrible things that are put up. Some of it written by our

opponents. You do know that. Do you understand that? You don't think anybody would do a thing like that. Some of the signs you'll see are not put up by the people that love or like Donald Trump, they're put up by the other side and you think it's like playing it straight?

No. But you have some of those signs and some of that anger is caused by the other side. They'll do signs and they'll do drawings that are inappropriate. It won't be my people. It will be the people on the other side to anger people like you. OK.

(CROSSTALK)

TRUMP: Go ahead, go ahead.

QUESTION: You're the president now. What are you going to do about it?

TRUMP: Who is that? Where is that?

QUESTION: What are you going to do about—what are you going to do about (inaudible).

TRUMP: Oh, I'm working on it. I'm working on it very—no, no, look. Hey, just so you understand, we had a totally divided country for eight years and long before that. In all fairness to President Obama, long before President Obama we have had a very divided—I didn't come along and divide this country. This country was seriously divided before I got here.

We're going to work on it very hard. One of the questions I was asked, I thought it was a very good question was about the inner cities. I mean, that's part of it. But we're going to work on education, we're going to

work on—you know, we're going to stop—we're going to try and stop the crime. We have great law enforcement officials, we're going to try and stop crime.

We're not going to try and stop, we're going to stop crime. But it's very important to me—but this isn't Donald Trump that divided a nation. We went eight years with President Obama and we went many years before President Obama. We lived in a divided nation. And I am going to try—I will do everything within my power to fix that. I want to thank everybody very much.

It's a great honor to be with you. Thank you. Thank you very much, thanks.

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Exhibit H

USA

Trump Signs New Travel Ban Order

Last Updated: March 06, 2017 11:35 PM William Gallo Victoria Macchi

WASHINGTON—U.S. President Donald Trump signed a new executive order Monday, barring travelers from six countries to the United States for three months, and all refugees for four months, after federal appeals judges blocked a similar order last month.

The new ban includes a grace period and will take effect on March 16. It will not affect legal permanent residents—those with green cards—or travelers who already had valid visas as of Jan. 27, 2017.

"This executive order is a vital measure for strengthening our national security," Secretary of State Rex Tillerson said at press conference announcing the new ban. "It is the president's solemn duty to protect the American people."

The rollout of the new security measures amounts to an acknowledgement by the Trump administration that its original travel ban, issued January 27, was flawed.

But critics immediately assailed the new order as merely making "cosmetic changes" to the original ban and argued that it still creates a religious test for entering the United States and will therefore not stand up to judicial scrutiny.

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In an attempt to ensure a smoother rollout of the travel ban and protect it from legal scrutiny, the new executive order differs from the old version in several key aspects.

Among the most notable changes is the exclusion of Iraqis from the list of suspended travelers. The new order bans nationals and citizens from Iran, Libya, Somalia, Sudan, Syria, and Yemen.

Monday's order also removes a provision indefinitely barring Syrian refugees from the U.S. Also removed is language giving preference to "religious minorities," a provision that had been widely seen as an attempt to follow through on Trump's promise to prioritize Christian refugees.

Iraq promises more cooperation

Iraq was removed from the list after officials there promised increased cooperation with U.S. officials regarding the vetting process, according to a senior official with the Department of Homeland Security (DHS), who spoke to reporters on a conference call.

Baghdad, a key ally in the U.S. fight against Islamic State militants, had complained when Iraq was included in the original travel ban.

"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," said a Q&A sheet distributed by the Trump administration. ISIS is an acronym for Islamic State.

WATCH: Tillerson on removal of Iraq

Critics of the original order questioned whether the seven countries affected—all majority-Muslim—were targeted for religious reasons. The DHS official on Monday again denied those accusations, saying: "This is not a Muslim ban in any way, shape or form."

White House officials also stressed the temporary nature of the order, but suggested that the travel ban may be expanded after the 90 days expire and that other countries could be added to the list.

Reaction

Even with the changes, the bill is still likely to face legal challenges by groups that view the order as a partial fulfillment of Trump's campaign call for a "total and complete shutdown of Muslims entering the United States."

"Nothing substantive has changed," said Lavinia Limon, who heads the U.S. Committee for Refugees and Immigrants (USCRI). "It's around the edges, right? If this had come out a month ago, we would be outraged."

The American Civil Liberties Union, or ACLU, which filed successful legal challenges against the original order, also said the revised ban "has the same fatal flaws" as the original.

"These are again, simply cosmetic changes," said Ed Yohnka, the ACLU's Director of Communications and Public Policy. "This is still unconstitutional, this remains a religious test to enter the United States of America. This is something fundamentally that our

nation has never permitted. And we will not permit it again."

"The only way to actually fix the Muslim ban is not to have a Muslim ban. Instead, President Trump has recommitted himself to religious discrimination, and he can expect continued disapproval from both the courts and the people," said Omar Jadwat, director of the ACLU's Immigrant Rights Project. "What's more, the changes the Trump administration has made, and everything we've learned since the original ban rolled out, completely undermine the bogus national security justifications the president has tried to hide behind and only strengthen the case against his unconstitutional executive orders."

White House: Ban needed to mitigate refugee risk

Administration officials, meanwhile, were walking a fine line between insisting the new order was different enough from the old measure to withstand legal challenges but similar enough so that it would still be effective.

"The principles of the executive order remain the same," said White House press secretary Sean Spicer, adding, "We continue to maintain the [original travel ban] order was fully lawful."

The Trump administration leans heavily on the rationale that refugees, as well as immigrants and travelers from certain countries, are a security risk to the United States; however, it has proffered little evidence of that risk.

White House officials on Monday released a memorandum saying that the FBI is carrying out "terrorism-related investigations" into approximately 300 individuals across the U.S. who were admitted as refugees. It is not clear whether those being investigated came from the list of banned countries, or how many have been charged with a crime.

When pushed for details, the senior DHS official declined further comment, saying only that the 300 people were being investigated for "potential terrorism-related activities" and that it was "truly an alarming number from all our perspectives."

Filippo Grandi, who heads the U.N.'s refugee agency, said the U.S. has long been a partner in finding solutions for refugees, but expressed concern about how the order will affect those fleeing violence and persecution.

"The imperative remains to provide protection from people fleeing deadly violence, and we are concerned that this decision, though temporary, may compound the anguish for those it affects," Grandi said.

*** Differences in executive orders restricting travel (click here to see)**

Smoother rollout?

Administration officials are promising a smoother rollout this time, insisting the White House has cooperated with DHS, the State Department, and the Justice Department on drafting and implementing the new executive order.

"We're going to have a very smooth implementation period," the senior DHS officials told reporters in a press call, adding that there will not be any "chaos, or alleged chaos" at airports.

WATCH: Kelly on vetting of refugees seeking to enter US

The original order was announced early on the evening of Jan. 27—a Friday right when most federal employees were finishing their first full week of work under the new administration—creating confusion at international airports across the country.

Travelers from the seven countries—including legal permanent residents of the United States—were detained by U.S. Customs and Border Protection agents. Law enforcement didn't know what to do with the refugees mid-flight when the order came down that banned them, as well.

Still others were turned away at airports abroad, denied by airline officials who questioned the validity of their already-issued visas.

DHS Secretary John Kelly, who was confirmed by the Senate a week before the original executive order was issued, shouldered the blame for the bungled implementation of the original order.

"The thinking was to get it out quick so that potentially people that might be coming here to harm us would not take advantage of some period of time they could jump on an airplane and get here," he testified at a hearing of the House Homeland Security Committee on Feb. 7.

More than a dozen lawsuits were filed across the country challenging the January order. Federal appeals

court judges ruled in February to suspend the order in support of the "free flow of travel," as well as "in avoiding separation of families, and in freedom from discrimination."

Trump's travel restrictions have not received broad public support. A poll released in late February by Pew Research Center showed that 59 percent of those surveyed opposed the ban, while 38 percent approved.

A CNN poll released Monday suggested that 55 percent of Americans disapprove of the way Trump has handled immigration issues, compared to 44 percent who approve. On national security issues, Americans were split, the poll found, with 50 percent approving and 49 percent disapproving.

WATCH: History of US Immigration Restrictions

Exhibit I

Inside the confusion of the Trump executive order and travel ban

By Evan Perez, Pamela Brown and Kevin Liptak, CNN

Updated 11:29 AM ET, Mon January 30, 2017

Story highlights

Trump's unilateral moves reflect the President's desire to quickly make good on his campaign promises

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But they also encapsulate the pitfalls of an administration largely operated by officials with scant federal experience

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The White House overruled DHS regarding allowing green card holders to enter the country

Trump's immigration order: Which countries are affected?

- Iran
- Iraq
- Syria
- Sudan
- Libya
- Yemen
- Somalia

Washington (CNN)—When President Donald Trump declared at the Pentagon Friday he was enacting strict new measures to prevent domestic terror attacks, there were few within his government who knew exactly what he meant.

Administration officials weren't immediately sure which countries' citizens would be barred from entering the United States. The Department of Homeland Security was left making a legal analysis on the order after Trump signed it. A Border Patrol agent, confronted with arriving refugees, referred questions only to the President himself, according to court filings.

Saturday night, a federal judge granted an emergency stay for citizens of the affected countries who had already arrived in the US and those who are in transit and hold valid visas, ruling they can legally enter the US.

Trump's unilateral moves, which have drawn the ire of human rights groups and prompted protests at US airports, reflect the President's desire to quickly make good on his campaign promises. But they also encapsulate the pitfalls of an administration largely operated by officials with scant federal experience.

It wasn't until Friday—the day Trump signed the order banning travel from seven Muslim-majority countries for 90 days and suspending all refugee admission for 120 days—that career homeland security staff were allowed to see the final details of the order, a person familiar with the matter said.

The result was widespread confusion across the country on Saturday as airports struggled to adjust

to the new directives. In New York, two Iraqi nationals sued the federal government after they were detained at John F. Kennedy International Airport, and 10 others were detained as well.

In Philadelphia, a Syrian family of six who had a visa through a family connection in the US was placed on a return flight to Doha, Qatar, and Department of Homeland Security officials said others who were in the air would be detained upon arrival and put back on a plane to their home country.

Asked during a photo opportunity in the Oval Office Saturday afternoon about the rollout, Trump said his government was "totally prepared."

"It's working out very nicely," Trump told reporters. "You see it at the airports. You see it all over. It's working out very nicely and we're going to have a very, very strict ban, and we're going to have extreme vetting, which we should have had in this country for many years."

The policy team at the White House developed the executive order on refugees and visas, and largely avoided the traditional interagency process that would have allowed the Justice Department and homeland security agencies to provide operational guidance, according to numerous officials who spoke to CNN on Saturday.

Homeland Security Secretary John Kelly and Department of Homeland Security leadership saw the final details shortly before the order was finalized, government officials said.

Friday night, DHS arrived at the legal interpretation that the executive order restrictions applying to seven countries—Iran, Iraq, Libya, Somalia, Syria, Sudan and Yemen—did not apply to people with lawful permanent residence, generally referred to as green card holders.

The White House overruled that guidance overnight, according to officials familiar with the rollout. That order came from the President's inner circle, led by Stephen Miller and Steve Bannon.

Related Article: More protests against Trump's immigration policies

The ban and its impact

- What we know so far
- What it's like in the 7 impacted countries
- How the countries were chosen
- What the ban says: The full text
- What to know about the restrictions

- Is the ban legal?
- These are the people directly impacted
- The ban's Christian focus
- A family's plight just got more complicated
- Bergen: Trump's big mistake
- All of Trump's executive orders, memos and proclamations
- Comparing Trump to previous presidents

Related Article: Trump's immigration ban sends shockwaves

Related Video: Travel ban affects citizens of 7 Muslim-majority nations 02:26

Related Video: Iran says it will ban US citizens 02:16

Their decision held that, on a case by case basis, DHS could allow green card holders to enter the US.

There had been some debate whether green card holders should be even allowed to board international flights. It was decided by the Department of Homeland Security they could fly to the US and would be considered on a case-bycase basis after passing a secondary screening.

But the guidance sent to airlines on Friday night, obtained by CNN, said clearly, "lawful permanent residents are not included and may continue to travel to the USA."

As of Saturday afternoon, Customs and Border Protection continued to issue the same guidance to airlines as it did Friday, telling airlines that fly to the US that green card holders can board planes to the US but they may get extra scrutiny on arrival, according to an airline official.

Before the President issued the order, the White House did not seek the legal guidance of the Office of Legal Counsel, the Justice Department office that interprets the law for the executive branch, according to a source familiar with the process.

White House officials disputed that Sunday morning, saying that OLC signed off and agency review was performed.

A source said the creation of the executive order did not follow the standard agency review process that's typically overseen by the National Security Council.

Related Video: Trump: Travel ban working out very nicely 01:07

Executive orders: Read more

- All of Trump's executive orders, memos and proclamations
- Will the orders and actions stick?
- How Trump's actions stack up against previous presidents
- What Trump can and cannot do
- What's the difference between and order and action?

Separately, a person familiar with the matter said career officials in charge of enforcing the executive order were not fully briefed on the specifics until Friday. The officials were caught off guard by some of the specifics and raised questions about how to handle the new banned passengers on US-bound planes.

Regarding the green card holders and some of the confusion about whether they were impacted, the person familiar with the matter said if career officials had known more about the executive order earlier, some of the confusion could have been avoided and a better plan could be in place.

Administration officials also defended the process Saturday. They said the people who needed to be briefed ahead of time on the plane were briefed and that people at the State Department and DHS who were involved in the process were able to make decisions about who to talk and inform about this.

Bannon and Miller were running point on this order and giving directives regarding green cards, according to a Republican close to the White House.

But even after the Friday afternoon announcement, administration officials at the White House took several hours to produce text of the action until several hours after it was signed. Adviser Kellyanne Conway even said at one point it was not going to be released before eventually it did get sent out.

Administration officials also seemed unsure at first who was covered in the action, and a list of impacted countries was only produced later on Friday night, hours after the President signed the document at the Pentagon.

This story has been updated to include the White House's response on the issue of Justice Department review.

CNN's Rene Marsh and Athena Jones contributed to this report.

Trump vs. Obama: A rocky relationship

Conyers-Rangel find common ground on need for drug pricing reforms

It took FOIA for Park Service to release photos of Obama, Trump...

Exhibit J

The New York Times | https://nyti.ms/2ke1qJe

U.S.

Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide

By MICHAEL D. SHEAR, NICHOLAS KULISH and ALAN FEUER JAN. 28, 2017

WASHINGTON—A federal judge in Brooklyn came to the aid of scores of refugees and others who were trapped at airports across the United States on Saturday after an executive order signed by President Trump, which sought to keep many foreigners from entering the country, led to chaotic scenes across the globe.

The judge's ruling blocked part of the president's actions, preventing the government from deporting some arrivals who found themselves ensnared by the presidential order. But it stopped short of letting them into the country or issuing a broader ruling on the constitutionality of Mr. Trump's actions.

The high-stakes legal case played out on Saturday amid global turmoil, as the executive order signed by the president slammed shut the borders of the United States for an Iranian scientist headed to a lab in Massachusetts, a Syrian refugee family headed to a new life in Ohio and countless others across the world.

The president's order, enacted with the stroke of a pen at 4:42 p.m. Friday, suspended entry of all refugees to the United States for 120 days, barred Syrian refugees indefinitely, and blocked entry into the United

States for 90 days for citizens of seven predominantly Muslim countries: Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen.

The Department of Homeland Security said that the order also barred green card holders from those countries from re-entering the United States. In a briefing for reporters, White House officials said that green card holders from the seven affected countries who are outside the United States would need a case-by-case waiver to return.

Mr. Trump—in office just a week—found himself accused of constitutional and legal overreach by two Iraqi immigrants, defended by the American Civil Liberties Union. Meanwhile, large crowds of protesters turned out at airports around the country to denounce Mr. Trump's ban on the entry of refugees and people from seven predominantly Muslim countries.

Lawyers who sued the government to block the White House order said the judge's decision could affect an estimated 100 to 200 people who were detained upon arrival at American airports.

Judge Ann M. Donnelly of Federal District Court in Brooklyn, who was nominated by former President Barack Obama, ruled just before 9 p.m. that implementing Mr. Trump's order by sending the travelers home could cause them "irreparable harm." She said the government was "enjoined and restrained from, in any manner and by any means, removing individuals" who had arrived in the United States with valid visas or refugee status.

The ruling does not appear to force the administration to let in people otherwise blocked by Mr. Trump's order who have not yet traveled to the United States.

The judge's one-page ruling came swiftly after lawyers for the A.C.L.U. testified in her courtroom that one of the people detained at an airport was being put on a plane to be deported back to Syria at that very moment. A government lawyer, Gisela A. Westwater, who spoke to the court by phone from Washington, said she simply did not know.

Hundreds of people waited outside of the courthouse chanting, "Set them free!" as lawyers made their case. When the crowd learned that Judge Donnelly had ruled in favor of the plaintiffs, a rousing cheer went up in the crowd.

Minutes after the judge's ruling in New York City, another judge, Leonie M. Brinkema of Federal District Court in Virginia, issued a temporary restraining order for a week to block the removal of any green card holders being detained at Dulles International Airport.

In a statement released early Sunday morning, the Department of Homeland Security said it would continue to enforce all of the president's executive orders, even while complying with judicial decisions. "Prohibited travel will remain prohibited," the department said in a statement, adding that the directive was "a first step towards re-establishing control over America's borders and national security."

Around the nation, security personnel at major international airports had new rules to follow, though the application of the order appeared chaotic and une-

ven. Humanitarian organizations delivered the bad news to overseas families that had overcome the bureaucratic hurdles previously in place and were set to travel. And refugees already on flights when the order was signed on Friday found themselves detained upon arrival.

"We've gotten reports of people being detained all over the country," said Becca Heller, the director of the International Refugee Assistance Project. "They're literally pouring in by the minute."

Earlier in the day, at the White House, Mr. Trump shrugged off the sense of anxiety and disarray, suggesting that there had been an orderly rollout. "It's not a Muslim ban, but we were totally prepared," he said. "It's working out very nicely. You see it at the airports, you see it all over."

But to many, the government hardly seemed prepared for the upheaval that Mr. Trump's actions put into motion.

There were numerous reports of students attending American universities who were blocked from returning to the United States from visits abroad. One student said in a Twitter post that he would be unable to study at Yale. Another who attends the Massachusetts Institute of Technology was refused permission to board a plane. A Sudanese graduate student at Stanford University was blocked for hours from entering the country.

Human rights groups reported that legal permanent residents of the United States who hold green cards were being stopped in foreign airports as they sought

to return from funerals, vacations or study abroad. There was widespread condemnation of the order, from religious leaders, business executives, academics, political leaders and others. Mr. Trump's supporters offered praise, calling it a necessary step on behalf of the nation's security.

Homeland Security officials said on Saturday night that 109 people who were already in transit to the United States when the order was signed were denied access; 173 were stopped before boarding planes heading to America. Eighty-one people who were stopped were eventually given waivers to enter the United States, officials said.

Legal residents who have a green card and are currently in the United States should meet with a consular officer before leaving the country, a White House official, who spoke on the condition of anonymity, told reporters. Officials did not clarify the criteria that would qualify someone for a waiver, other than that it would be granted "in the national interest."

But the week-old administration appeared to be implementing the order chaotically, with agencies and officials around the globe interpreting it in different ways.

The Stanford student, Nisrin Omer, a legal permanent resident, said she was held at Kennedy International Airport in New York for about five hours but was eventually allowed to leave the airport. Others who were detained appeared to be still in custody or sent back to their home countries.

White House aides claimed on Saturday that there had been consultations with State Department and homeland security officials about carrying out the order. "Everyone who needed to know was informed," one aide said.

But that assertion was denied by multiple officials with knowledge of the interactions, including two officials at the State Department. Leaders of Customs and Border Protection and of Citizenship and Immigration Services—the two agencies most directly affected by the order—were on a telephone briefing on the new policy even as Mr. Trump signed it on Friday, two officials said.

The A.C.L.U.'s legal case began with two Iraqis detained at Kennedy Airport, the named plaintiffs in the case. One was en route to reunite with his wife and son in Texas. The other had served alongside Americans in Iraq for a decade.

Shortly after noon on Saturday, Hameed Khalid Darweesh, an interpreter who worked for more than a decade on behalf of the United States government in Iraq, was released. After nearly 19 hours of detention, Mr. Darweesh began to cry as he spoke to reporters, putting his hands behind his back and miming handcuffs.

"What I do for this country? They put the cuffs on," Mr. Darweesh said. "You know how many soldiers I touch by this hand?"

The other man the lawyers are representing, Haider Sameer Abdulkhaleq Alshawi, who was en route to Houston, was released Saturday night.

Before the two men were released, one of the lawyers, Mark Doss, a supervising attorney at the International Refugee Assistance Project, asked an official, "Who is the person we need to talk to?"

"Call Mr. Trump," said the official, who declined to identify himself.

While the judge's ruling means that none of the detainees will be sent back immediately, lawyers for the plaintiffs in the case expressed concern that all those at the airports would now be put in detention, pending a resolution of the case.

The White House said the restrictions would protect "the United States from foreign nationals entering from countries compromised by terrorism" and allow the administration time to put in place "a more rigorous vetting process." But critics condemned Mr. Trump over the collateral damage on people who had no sinister intentions in trying to come to the United States.

Peaceful protests began forming Saturday afternoon at Kennedy Airport, where nine travelers had been detained upon arrival at Terminal 7 and two others at Terminal 4, an airport official said. Similar scenes were playing out at other airports across the nation.

An official message to all American diplomatic posts around the world provided instructions about how to treat people from the countries affected: "Effective immediately, halt interviewing and cease issuance and printing" of visas to the United States.

Internationally, confusion turned to panic as travelers found themselves unable to board flights bound for the United States. In Dubai and Istanbul, airport and immigration officials turned passengers away at boarding gates and, in at least one case, ejected a family from a flight it had boarded.

Seyed Soheil Saeedi Saravi, a promising young Iranian scientist, had been scheduled to travel in the coming days to Boston, where he had been awarded a fellowship to study cardiovascular medicine at Harvard, according to Thomas Michel, the professor who was to supervise the research fellowship.

But Professor Michel said the visas for the student and his wife had been indefinitely suspended.

"This outstanding young scientist has enormous potential to make contributions that will improve our understanding of heart disease, and he has already been thoroughly vetted," Professor Michel wrote to The New York Times.

A Syrian family of six who have been living in a Turkish refugee camp since fleeing their home in 2014 had been scheduled to arrive on Tuesday in Cleveland. Instead, the family's trip has been called off.

"Everyone is just so heartbroken, so angry, so sad," said Danielle Drake, the community manager for US Together, an agency that resettles refugees.

A Christian family of six from Syria said in an email to Representative Charlie Dent, Republican of Pennsylvania, that they were being detained on Saturday morning at Philadelphia International Airport despite

having legal paperwork, green cards and visas that had been approved.

In the case of the two Iraqis held at Kennedy Airport, the legal filings by his lawyers say that Mr. Darweesh was granted a special immigrant visa on Jan. 20, the same day Mr. Trump was sworn in as president.

A husband and father of three, Mr. Darweesh arrived at Kennedy Airport with his family. Mr. Darweesh's wife and children made it through passport control and customs, but agents of Customs and Border Protection detained him.

In Istanbul, during a stopover on Saturday, passengers reported that security officers had entered a plane after everyone had boarded and ordered a young Iranian woman and her family to leave the aircraft.

Iranian green card holders who live in the United States were blindsided by the decree while on vacation in Iran, finding themselves in a legal limbo and unsure whether they would be able to return to America.

"How do I get back home now?" said Daria Zeynalia, a green card holder who was visiting family in Iran. He had rented a house and leased a car, and would be eligible for citizenship in November. "What about my job? If I can't go back soon, I'll lose everything."

Michael D. Shear reported from Washington, and Nicholas Kulish and Alan Feuer from New York. Reporting was contributed by Mark Mazzetti, Matthew Rosenberg, Ron Nixon and Adam Liptak from Washington; Thomas Erdbrink from Tehran; Manny Fernandez from Houston; Julie Bosman from Chicago; and

Liam Stack, Russell Goldman, Joe Goldstein, Liz Robbins, Stephanie Saul and Sean Piccoli from New York.

A version of this article appears in print on January 29, 2017, on Page A1 of the New York edition with the headline: Judge Blocks Trump Order On Refugees.

Exhibit K

REFUGEES

Malevolence Tempered by Incompetence: Trump's Horrifying Executive Order on Refugees and Visas

By Benjamin Wittes Saturday, January 28, 2017, 10:58 PM

Omphalos: Middle East Conflict in Perspective

The malevolence of President Trump's Executive Order on visas and refugees is mitigated chiefly—and perhaps only—by the astonishing incompetence of its drafting and construction.

NBC is reporting that the document was not reviewed by DHS, the Justice Department, the State Department, or the Department of Defense, and that National Security Council lawyers were prevented from evaluating it. Moreover, the New York Times writes that Customs and Border Protection and U.S. Citizen and Immigration Services, the agencies tasked with carrying out the policy, were only given a briefing call while Trump was actually signing the order itself. Yesterday, the Department of Justice gave a "no comment" when asked whether the Office of Legal Counsel had reviewed Trump's executive orders—including the order at hand. (OLC normally reviews every executive order.)

This order reads to me, frankly, as though it was not reviewed by competent counsel at all.

CNN offers extraordinary details:

> Administration officials weren't immediately sure which countries' citizens would be barred from entering the United States. The Department of Homeland Security was left making a legal analysis on the order after Trump signed it. A Border Patrol agent, confronted with arriving refugees, referred questions only to the President himself, according to court filings.
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> It wasn't until Friday—the day Trump signed the order banning travel from seven Muslim-majority countries for 90 days and suspending all refugee admission for 120 days—that career homeland security staff were allowed to see the final details of the order, a person with the familiar the matter said.
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> . . .
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> The policy team at the White House developed the executive order on refugees and visas, and largely avoided the traditional interagency process that would have allowed the Justice Department and homeland security agencies to provide operational guidance, according to numerous officials who spoke to CNN on Saturday.
>
> Homeland Security Secretary John Kelly and Department of Homeland Security leadership saw the final details shortly before the order was finalized, government officials said.
>
> Friday night, DHS arrived at the legal interpretation that the executive order restrictions applying to

> seven countries—Iran, Iraq, Libya, Somalia, Syria, Sudan and Yemen—did not apply to people who with lawful permanent residence, generally referred to as green card holders.
>
> The White House overruled that guidance overnight, according to officials familiar with the rollout. That order came from the President's inner circle, led by Stephen Miller and Steve Bannon. Their decision held that, on a case by case basis, DHS could allow green card holders to enter the US.

As I shall explain, in the short term, the incompetence is actually good news for people who believe in visa and refugee policies based on criteria other than—let's not be coy about this—bigotry and religious discrimination. The President has created a target-rich environment for litigation that will make his policies, I suspect, less effective than they would have been had he subjected his order to vetting one percent as extreme as the vetting to which he proposes to subject refugees from Bashar al-Assad and the bombing raids of Vladimir Putin.

Indeed, even as I write these words, the ACLU has already succeeded in petitioning a federal court for a class-wide stay of deportations of immigrants and refugees trapped in airports by Trump's order. And a federal judge in Virginia has issued a temporary restraining order preventing the removal of green card holders detained in Dulles International Airport and requiring that these legal residents of the United States have access to counsel.

In the broader sense, however, it is most emphatically not good news to have a White House that just makes decisions with no serious thought or interagency input into what those decisions might mean. In fact, it's really dangerous.

Let's start with the malevolence of the document, which Amira Mikhail summarized and Adham Sahloul analyzed earlier today. I don't use the word "malevolence" here lightly. As readers of my work know, I believe in strong counterterrorism powers. I defend non-criminal detention. I've got no problem with drone strikes. I'm positively enthusiastic about American surveillance policies. I was much less offended than others were by the CIA's interrogations in the years after September 11. I have defended military commissions.

Some of these policies were effective; some were not. Some worked out better than others. And I don't mean to relitigate any of those questions here. My sole point is that all of these policies were conceptualized and designed and implemented by people who were earnestly trying to protect the country from very real threats. And the policies were, to a one, proximately related to important goals in the effort. While some of these policies proved tragically misguided and caused great harm to innocent people, *none of them was designed or intended to be cruel to vulnerable, concededly innocent people*. Even the CIA's interrogation program, after all, was deployed against people the agency believed (mostly correctly) to be senior terrorists of the most dangerous sort and to garner information from them that would prevent attacks.

I actually cannot say that about Trump's new executive order—and neither can anyone else.

Here's how the order describes its purpose:

> 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.

Color me skeptical that this is the real purpose. After all, if this is the real purpose, then the document is both wildly over-inclusive and wildly under-inclusive. On the over-inclusive side, it will keep tens of thousands of innocent refugees who have been subject to unspeakable violence outside of the protection of the United States on the vanishingly small chance that these people might be terrorists—indeed, to make it impossible for them *even to apply* for refugee admission if they are Syrian. It will prevent untold numbers of people about whom there is no whiff of suspicion from coming here as students, as professionals, as tourists. It overtly treats members of a particular religion differently from other people.

On the underinclusive side, the order wouldn't have blocked the entry of many of the people responsible for the worst recent terrorist attacks. There is, in fact, simply no rational relationship between cutting off visits from the particular countries that Trump targets

(Muslim countries that don't happen to be close U.S. allies) and any expected counterterrorism goods. The 9/11 hijackers, after all, didn't come from Somalia or Syria or Iran; they came from Saudi Arabia and Egypt and a few other countries not affected by the order. Of the San Bernardino attackers (both of Pakistani origin, one a U.S. citizen and the other a lawful permanent resident), the Orlando shooter (a U.S. citizen whose parents were born in Afghanistan), and the Boston marathon bombers (one a naturalized U.S. citizen, one a green card holder who arrived in Massachusetts from Kyrgyzstan), none came from countries listed in the order. One might argue, I suppose, that the document is tied to current threats. But come now, how could Pakistan *not* be on a list guided by current threat perception?

What's more, the document also takes steps that strike me as utterly orthogonal to any relevant security interest. If the purpose of the order is the one it describes, for example, I can think of no good reason to burden the lives of students individually suspected of nothing who are here lawfully and just happen to be temporarily overseas, or to detain tourists and refugees who were mid-flight when the order came down. I have trouble imagining any reason to raise questions about whether green card holders who have lived here for years can leave the country and then return. Yes, it's temporary, and that may lessen the costs (or it may not, depending on the outcome of the policy review the order mandates), but temporarily irrational is still irrational.

Put simply, I don't believe that the stated purpose is the real purpose. This is the first policy the United States has adopted in the post-9/11 era about which I have ever said this. It's a grave charge, I know, and I'm not making it lightly. But in the rational pursuit of security objectives, you don't marginalize your expert security agencies and fail to vet your ideas through a normal interagency process. You don't target the wrong people in nutty ways when you're rationally pursuing real security objectives.

When do you do these things? You do these things when you're elevating the symbolic politics of bashing Islam over any actual security interest. You do them when you've made a deliberate decision to burden human lives to make a public point. In other words, this is not a document that will cause hardship and misery because of regrettable incidental impacts on people injured in the pursuit of a public good. It will cause hardship and misery for tens or hundreds of thousands of people *because that is precisely what it is intended to do*.

To be sure, the executive order does not say anything as crass as: "Sec. 14. Burdening Muslim Lives to Make Political Point." It doesn't need to. There's simply no reason in reading it to ignore everything Trump said during the campaign, during which he repeatedly called for a ban on Muslims entering the United States.

Even while he was preparing to sign the order itself, he declared, "This is the 'Protection of the Nation from Foreign Terrorist Entry into the United States.' We all know what that means." Indeed, we do. This doc-

ument is the implementation of a campaign promise to keep out Muslims moderated only by the fact that certain allied Muslim countries are left out because the diplomatic repercussions of including them would be too detrimental.

Many years ago, the great constitutional law scholar Charles Black Jr., contemplating the separate but equal doctrine, asked:

> does segregation offend against equality? Equality, like all general concepts, has marginal areas where philosophic difficulties are encountered. But if a whole race of people finds itself confined within a system which is set up and continued for the very purpose of keeping it in an inferior station, and if the question is then solemnly propounded whether such a race is being treated "equally," I think we ought to exercise one of the sovereign prerogatives of philosophers—that of laughter.

I think we can, without drawing any kind of equivalence between this order and Jim Crow, make a similar point here: Is this document a reasonable security measure? There are many areas in which security policy affects innocent lives but within which we do not presumptively say that the fact that some group of people faces disproportionate burdens renders that policy illegitimate. But if an entire religious grouping finds itself irrationally excluded from the country for no discernible security benefit following a lengthy campaign that overtly promised precisely such discrimination and exactly this sort of exclusion, if the relevant security agencies are excluded from the policy process, and if the question is then solemnly propounded

whether the reasonable pursuit of security is the purpose, I think we ought to exercise one of the sovereign prerogatives of philosophers—that of laughter.

So yes, the order is malevolent. But here's the thing: Many of these malevolent objectives were certainly achievable within the president's lawful authority. The president's power over refugee admissions is vast. His power to restrict visa issuances and entry of aliens to the United States is almost as wide. If the National Security Council had run a process of minimal competence, it could certainly have done a lot of stuff that folks like me, who care about refugees, would have gnashed our teeth over but which would have been solidly within the President's authority. It could have all been implemented in a fashion that didn't create endless litigation opportunities and didn't cause enormous diplomatic friction.

How incompetent is this order? An immigration lawyer who works for the federal government wrote me today describing the quality of the work as "look[ing] like what an intern came up with over a lunch hour. . . . My take is that it is so poorly written that it's hard to tell the impact." One of the reasons there's so much chaos going on right now, in fact, is that nobody really knows what the order means on important points.

Some examples:

- Sec. 3(c) bans "entry"—which to the best of my knowledge has had no meaning in the Immigration and Nationality Act (INA) since the passage of the Illegal Immigration Reform and Immi-

grant Responsibility Act (IIRIRA) in 1996. Pre-IIRIRA law did use the term "entry," but that is no longer the case.

- Section 3(g) talks of waivers on a case-by-case basis for people who are otherwise denied visas or other benefits under the immigration laws pursuant to the order. If a person needs a waiver to obtain "other benefits," does that mean that nationals of the seven countries are denied *any* benefit under the INA without a waiver, benefits such as naturalization, adjustment of status, or temporary protected status, even if they are already in the US?
- On its face, the order bars entry of both immigrants and non-immigrants. Again, as entry is not defined, and no one was given any time to draft implementing guidance or to clarify any points, it's no surprise that Customs and Border Protection doesn't seem to know how to apply it to lawful permanent residents (LPRs). The INA, at section 101(a)(13)(C), says that green card holders will not be deemed as seeking admission absent the factors enumerated therein —factors that do not include an executive order banning entry. Yet Reuters and *The Guardian* are both reporting quotations from a DHS public relations official, stating that the order *does* apply to LPRs. If that interpretation lasts, look for DHS to get its ass handed to it on a platter in federal court—a defeat it will richly deserve.
- Another big mystery is how the order will apply to asylees. Will people even be allowed to apply?

> On the one hand, the right to seek asylum is right there in the INA. But to apply for asylum, you have to be interviewed by a U.S. Citizen and Immigration Services officer to determine if you have a credible fear of persecution. Is that interview a benefit under the act? And if so, is it barred? From what I hear, right now anyway, Customs and Border Protection is not allowing anyone to claim asylum and have a credible fear interview.

I could go on, but you get the point. This order is a giant birthday present to the ACLU and other immigration litigators. And godspeed to them in going after it—which, as I noted above, they are already succeeding in doing.

But the incompetence actually does not stop at running a process that causes legal chaos and probable manhandling by the federal courts.

Consider, for example, the likely diplomatic fallout. In his first week in office, Trump has managed to create a major rift with Mexico, our peaceable neighbor to the south with whom we have no earthly reason to be spatting and haven't had bilateral problem this serious since Pancho Villa. Trump's new order seems certain to raise tensions with other countries too—and not just the countries whose nationals it targets (Iran, for example, which today restricted travel by U.S. nationals in retaliation; a great many U.S. citizens have family in Iran and now can't visit them).

Because the order applies to dual nationals, where a person is a citizen of one restricted country and one

non-restricted country, it appears to bar entry to hundreds of thousands of citizens of the U.K. and Canada —including a British Member of Parliament and a Canadian-Iranian consultant who lives in the United States but now can no longer safely travel to her business's headquarters in Toronto without being blocked from reentry. British Prime Minister Theresa May wasn't showing a lot of spine today over the matter, but what happens when she starts getting political blowback at home for the not standing up to the U.S. over its treatment of her nationals?

And Canadian Prime Minister Justin Trudeau is already making noise. He tweeted today:

In some ways, the most stunning incompetence in the document appears in one of the least discussed sections: The section at the end that mandates reporting on the nefarious terrorist activities of foreigners in the United States. This section requires regular reports from DHS on terrorism-related offenses by foreign nationals, and gender-based violence and honor killings by foreign nationals (because remember, Mexico sends

us their rapists and Muslims all kill their daughters when they date Americans).

The White House appears to have included this section because the Trumpists think it will show that large numbers of foreigners are coming to the United States and committing acts of terrorism here. But that is delusional, and the data will not show that—as I suspect someone at DHS would have pointed out had they had the chance. Here's *Politifact* summarizing the extant data on the citizenship status of the authors of terrorist attacks in the United States:

> The New America Foundation, a Washington think tank that promotes datadriven research for social and economic policy, did an analysis of "homegrown extremism" since 2000. The foundation compiled data on 499 extremists, who either adhered to jihadist ideology inspired by al-Qaida or were motivated by right- or left-wing political beliefs. This database includes attacks as well as those accused of terrorism-related offenses, such as plotting attacks or fundraising.
>
> New America found that about 64 percent of the extremists were U.S.-born citizens and 80 percent were either American-born or naturalized citizens. The database shows eight out of 499 extremists were illegal residents; all eight were jihadists.
>
> A *New York Times* analysis cited by many experts we interviewed found that half of the jihadist attacks since 2001 were committed by men born in the United States. Many others were naturalized citizens. Some were noncitizens but were traveling

> legally, such as Richard Reid, the attempted shoe bomber in Miami in 2001, who didn't need a visa because he was from Britain.
>
> Overall, databases of terrorist acts in the United States show that many were committed by Americans or naturalized citizens, though some high-profile incidents have involved legal immigrants.
>
> "Empirically, domestic terrorism is carried out by citizens—not immigrants—with right-wing terrorism, racial hate crimes, and the sovereign-citizen movement making up a majority of domestic terrorist incidents," said Joel Day, assistant professor of security and global studies at the University of Massachusetts Lowell. "Other domestic incidents have indeed been carried out by those who came here through legal channels."

In other words, the executive order sets up a reporting mechanism that will almost certainly falsify its own premise.

I would wax triumphant about the mitigating effect of incompetence on this document, but alas, I can't do it. The president's powers in this area are vast, as I say, and while the incompetence is likely to buy the administration a world of hurt in court and in diplomacy in the short term, this order is still going take more than a few pounds of flesh out of a lot of innocent people.

Moreover, it's a very dangerous thing to have a White House that can't with the remotest pretense of competence and governance put together a major policy document on a crucial set of national security issues without inducing an avalanche of litigation and wide

diplomatic fallout. If the incompetence mitigates the malevolence in this case, that'll be a blessing. But given the nature of the federal immigration powers, the mitigation may be small and the blessing short-lived; the implications of having an executive this inept are not small and won't be shortlived.

Topics: **Donald Trump**, **Omphalos**, **Refugees**

Benjamin Wittes is editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books and is co-chair of the Hoover Institution's Working Group on National Security, Technology, and Law.

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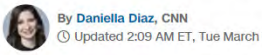
Exhibit L

Kelly: There are '13 or 14' more countries with questionable vetting procedures



By Daniella Diaz, CNN
Updated 2:09 AM ET, Tue March 7, 2017

Source: CNN

Kelly says more countries have vetting issues 01:08

Story highlights

Trump signed a new executive order that bans immigration from six Muslim-majority countries

Kelly says the ban is not a Muslim ban

Revised US travel ban

- Trump signs new travel ban
- How this ban is different

- Muslims in Congress blast new order
- Will this impact the court cases?
- Travel ban: Read the full executive order
- Instant backlash to new travel ban
- This time around, ban offers wiggle room

Washington (CNN)—Secretary of Homeland Security John Kelly said that apart from the six countries listed on Monday's travel ban, there are "13 or 14" other countries that also have questionable vetting procedures.

Kelly didn't name any of the additional countries the administration is concerned about and acknowledged he doesn't expect the list of countries subject to the travel ban will grow.

"There will probably be other countries we will look at," he told CNN's Wolf Blitzer on "The Situation Room." "I don't believe the list will be expanded, but there are countries out there that we will ask, like Iraq has done . . . to cooperate with us better, to get us the information we need to safeguard the country."

> He continued: "There's a number of them out there, I don't want to speculate. There's probably 13 or 14 countries, not all of them Muslim countries, not all of them in the Middle East, that have questionable vetting procedures we can rely on. And if we overlay additional vetting procedures, the chances are these countries will be minimum citizens from those countries that visit our country."

President Donald Trump on Monday signed a new executive order that bans immigration from six Muslim-majority countries, dropping Iraq from January's previous order and reinstates a temporary blanket ban on all refugees. Iraq was removed from a revised version of an executive order banning travel from certain Muslim-majority countries after intensive lobbying from the Iraqi government at the highest levels, a senior US official told CNN Monday.

President Donald Trump signs new travel ban, exempts Iraq

The new measures will block citizens of Syria, Iran, Libya, Somalia, Sudan and Yemen from obtaining visas for at least 90 days.

The new ban, which will be implemented March 16, comes six weeks after Trump's original executive order caused chaos at airports nationwide before it was blocked by federal courts.

The ban removes language in the original order that indefinitely banned Syrian refugees and called for prioritizing the admission of refugees who are religious minorities in their home countries.

Kelly told Blitzer that the ban is not a "Muslim ban," which is what it's being called by critics of the executive order.

"Three of the six (countries in the travel ban) now are designated as terrorism supporters," Kelly said. "We can't rely on those governments . . . It's not a Muslim ban . . . there are 51 overwhelmingly Muslim countries."

Related Video: Trump signs revised travel ban, Iraq is exempt 03:12

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Working for Trump is an embarrassment

Exhibit M

The New York Times |

U.S.

F.B.I. Casts Wide Net Under Relaxed Rules for Terror Inquiries, Data Show

By CHARLIE SAVAGE MARCH 26, 2011

WASHINGTON—Within months after the Bush administration relaxed limits on domestic-intelligence gathering in late 2008, the F.B.I. assessed thousands of people and groups in search of evidence that they might be criminals or terrorists, a newly disclosed Justice Department document shows.

In a vast majority of those cases, F.B.I. agents did not find suspicious information that could justify more intensive investigations. The New York Times obtained the data, which the F.B.I. had tried to keep secret, after filing a lawsuit under the Freedom of Information Act.

The document, which covers the four months from December 2008 to March 2009, says the F.B.I. initiated 11,667 "assessments" of people and groups. Of those, 8,605 were completed. And based on the information developed in those low-level inquiries, agents opened 427 more intensive investigations, it says.

The statistics shed new light on the F.B.I.'s activities in the post-Sept. 11 era, as the bureau's focus has shifted from investigating crimes to trying to detect and disrupt potential criminal and terrorist activity.

It is not clear, though, whether any charges resulted from the inquiries. And because the F.B.I. provided no comparable figures for a period before the rules change, it is impossible to determine whether the numbers represent an increase in investigations.

Still, privacy advocates contend that the large number of assessments that turned up no sign of wrongdoing show that the rules adopted by the Bush administration have created too low a threshold for starting an inquiry. Attorney General Eric H. Holder Jr. has left those rules in place.

Michael German, a former F.B.I. agent who is now a policy counsel for the American Civil Liberties Union, argued that the volume of fruitless assessments showed that the Obama administration should tighten the rules.

"These are investigations against completely innocent people that are now bound up within the F.B.I.'s intelligence system forever," Mr. German said. "Is that the best way for the F.B.I. to use its resources?"

But Valerie E. Caproni, the bureau's general counsel, said the numbers showed that agents were running down any hint of a potential problem—including vigilantly checking out potential leads that might have been ignored before the Sept. 11 attacks.

"Recognize that the F.B.I.'s policy—that I think the American people would support—is that any terrorism lead has to be followed up," Ms. Caproni said. "That means, on a practical level, that things that 10 years ago might just have been ignored now have to be followed up."

F.B.I. investigations are controlled by guidelines first put in place by Attorney General Edward H. Levi during the Ford administration, after the disclosure that the bureau had engaged in illegal domestic spying for decades. After the Sept. 11 attacks, those rules were loosened by Attorney General John Ashcroft and then again by Attorney General Michael B. Mukasey.

Some Democrats and civil liberties groups protested the Mukasey guidelines, contending that the new rules could open the door to racial or religious profiling and to fishing expeditions against Americans.

In 2006, The New York Times reported that the National Security Agency had each month been flooding the bureau with thousands of names, phone numbers and e-mail addresses that its surveillance and data-mining programs had deemed suspicious. But frustrated agents found that virtually all of the tips led to dead ends or innocent Americans.

When the Mukasey guidelines went into effect in December 2008, they allowed the F.B.I. to use a new category of investigation called an "assessment." It permits an agent, "proactively or based on investigative leads," to scrutinize a person or a group for signs of a criminal or national security threat, according to the F.B.I. manual.

The manual also says agents need "no particular factual predication" about a target to open an assessment, although the basis "cannot be arbitrary or groundless speculation." And in selecting subjects for such scrutiny, agents are allowed to use ethnicity,

religion or speech protected by the First Amendment as a factor—as long as it is not the only one.

An assessment is less intensive than a more traditional "preliminary" inquiry or a "full" investigation, which requires greater reason to suspect wrongdoing but also allows agents to use more intrusive information-gathering techniques, like wiretapping.

Still, in conducting an assessment, agents are allowed to use other techniques—searching databases, interviewing the subjects or people who know them, sending confidential informers to infiltrate an organization, attending a public meeting like a political rally or a religious service, and following and photographing people in public places.

In March 2009, Russ Feingold, then a Democratic senator from Wisconsin, asked the F.B.I. how many assessments it had initiated under the new guidelines and how many regular investigations had been opened based on information developed by those assessments.

In November 2010, the Justice Department sent a classified letter to the Senate Judiciary Committee answering Mr. Feingold's question. This month, it provided an uncensored copy of the same answer to The Times as a result of its Freedom of Information Act lawsuit.

F.B.I. officials said in an interview that the statistics represented a snapshot as of late March 2009, so the 11,667 assessment files were generated over a roughly four-month period. But they said they believed that agents had continued to open assessments at roughly the same pace since then.

Some aspects of the statistics are hazy, officials cautioned.

For example, even before the December 2008 changes, the bureau routinely followed up on low-grade tips and leads under different rules. But that activity was not formally tracked as an "assessment" that could be easily counted and compared.

F.B.I. officials also said about 30 percent of the 11,667 assessments were just vague tips—like a report of a suspicious car that included no license plate number. Such tips are entered into its computer system even if there is no way to follow up on them.

Finally, they said, it is impossible to know precisely how many assessments turned up suspicious facts. A single assessment may have spun off more than one higher investigation, and some agents may have neglected to record when such an investigation started as an assessment.

Ms. Caproni also said that even though the F.B.I. manual says agents can open assessments "proactively," they still must always have a valid reason—like a tip that is not solid enough to justify a more intensive level of investigation but should still be checked out.

But Mr. German, of the A.C.L.U., said that allowing agents to initiate investigations without a factual basis "seems ripe for abuse." He added, "What they should be doing is working within stricter guidelines that help them focus on real threats rather than spending time chasing shadows."

A version of this article appears in print on March 27, 2011, on Page A19 of the New York edition with the headline: F.B.I. Casts Wide Net Under Relaxed Rules for Terror Inquiries, Data Show.

Exhibit N

The New York Times https://nyti.ms/2mpqNX1

POLITICS

People From 7 Travel-Ban Nations Pose No Increased Terror Risk, Report Says

By RON NIXON FEB. 25, 2017

When President Trump signed an executive order last month temporarily barring visitors from seven mostly Muslim countries, he said he was moving to protect the United States from terrorist attacks. The Homeland Security secretary, John F. Kelly, echoed the president, saying the travel ban was necessary because vetting procedures "in those seven countries are suspect."

But an internal report written by intelligence analysts at Mr. Kelly's department appears to undercut the assessment that people from the seven countries—Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen—pose a heightened threat of terrorism. The three-page report found that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity."

The report adds to the difficulties the Trump administration has faced in carrying out the travel ban. Federal judges have suspended the order, and the administration has said it will redo it to withstand legal scrutiny, but has not given a timetable.

The Department of Homeland Security assessment, first reported by The Associated Press, found that only a small number of people from the seven countries had been involved in terrorism-related activities in the

United States since the Syrian civil war began in 2011. In addition, the report noted, while terrorist groups in Iraq, Syria and Yemen pose a threat to the United States, militant groups in the other four countries have a more regional focus.

The report also found that in the past six years, the terrorism threat reached much more widely than the seven countries listed—individuals from 26 countries had been "inspired" to carry out attacks in the United States.

Furthermore, few individuals from the seven countries affected by the ban have access to the United States, the report said, noting the small numbers of visas granted by the State Department to citizens of those nations.

The White House and the Department of Homeland Security sought to play down the significance of the report. The White House said that it was politically motivated and disregarded information that would have provided support for the travel ban. The Department of Homeland Security said the report was just a draft and "not a final comprehensive review of the government's intelligence."

Stephen Miller, a senior aide to Mr. Trump, told Fox News on Tuesday that the redrawn executive order would "have the same basic policy outcome."

The Trump administration on Friday also took the first steps toward following through on the president's plan to build a wall along the border with Mexico.

Customs and Border Protection, an agency within the Department of Homeland Security, announced that it would begin accepting design proposals for a wall. The agency said it would need the proposals by March 10. After it chooses a list of potential vendors, full proposals would be required a few weeks later.

The agency said it could make a final decision by the middle of April.

A version of this article appears in print on February 26, 2017, on Page A20 of the New York edition with the headline: Homeland Security Report Undercuts Travel-Ban Logic.

Exhibit O

TRMS Exclusive: DHS document undermines Trump case for travel ban

03/02/17 09:15 PM—UPDATED 03/03/17 12:14 AM

The Rachel Maddow Show has obtained, exclusively, a Department of Homeland Security intelligence assessment document. The document, from the Office of Intelligence and Analysis, makes the case that most foreign-born, U.S.-based violent extremists are likely not radicalized when they come to the U.S., but rather become radicalized after living in the U.S. for a number of years.

The document follows another piece of research (pdf) from Homeland Security that undercut President Trump's rationale for a travel ban as a means of keep-

ing violent extremists out. On Friday, the Associated Press published an analysis from Homeland Security that said citizenship in any given country—including the seven countries listed in the executive order—is likely an unreliable indicator of whether someone poses a terrorist threat.

The new assessment, obtained by the Rachel Maddow Show and dated March 1, tracks 88 violent, foreign-born extremists in the United States. More than half of them had been in the U.S. more than 10 years before they were indicted or killed.

Homeland Security tonight has confirmed the authenticity of the document. The department says production of it began in August 2016, and that it likely would have reached the White House. We have asked the White House for comment tonight. They have not responded.

Read the document below:

(Scribd pdf link here)

(*Intelligence Assessment* Omitted. See J.A. 1057)

Exhibit P

NewsRoom

2/3/17 WashingtonPost.com (Pg. Unavail. Online)

2017 WLNR 3564726

WashingtonPost.com

February 3, 2017

Section: /local/public-safety

Justice Dept. lawyer says 100,000 visas revoked under travel ban; State Dept. says about 60,000

The revelation, disputed by another agency, came in a court case involving Yemeni brothers turned away from Dulles Airport in Virginia.

Justin Jouvenal;Rachel Weiner; Ann E. Marimow

More than 100,000 visas have been revoked as a result of President Trump's ban on travel from seven predominantly Muslim countries, an attorney for the government asserted Friday in federal court in Alexandria, Va.

The number came out during a hearing in a lawsuit by two Yemeni brothers who arrived at Dulles International Airport last Saturday and were quickly put on a return flight to Ethiopia because of the new restrictions. While the government is working to resolve that case and return the brothers to the United States, lawyers at the hearing addressed the broader impact of the ban.

The 100,000 figure was immediately disputed by the State Department, which said the number of visas revoked was roughly 60,000. A spokeswoman said the revocations have no impact on the legal status of people already in the United States. If those people leave the United States, though, their visas will no longer be valid.

Immigrant advocates, attorneys and the media have been pushing the Trump administration to offer an accounting of how many people were affected by the controversial executive order.

In response to a question from a judge, Erez Reuveni, of the Justice Department's Office of Immigration Litigation, told the U.S. District Court that there were tens of thousands abroad holding visas when Trump signed his order a week ago.

"Over 100,000 visas were revoked on Friday at 6:30 p.m.," Reuveni told the court, speaking of Jan. 27.

Reuveni offered no other details about the group of people. He said that he did not know how many people had been detained at the nation's airports because of the order but that it could be 100 to 200. It was not immediately clear how the Justice Department and State Department arrived at such different tallies for the broader number of people affected.

"The number 100,000 sucked the air out of my lungs," said Simon Sandoval-Moshenberg of the Legal Aid Justice Center, who represents the Yemeni brothers.

During the hearing, U.S. District Court Judge Leonie M. Brinkema said she was heartened to see that the

government was working to return the brothers, Tareq and Ammar Aqel Mohammed Aziz, to the United States and reinstate their visas in exchange for dropping their case. The government appears to be attempting similar case-by-case reprieves across the nation.

But Brinkema offered a stern rebuke to the Trump administration in its overall handling of the travel ban. Brinkema said the case had drawn an even larger public outpouring than another high profile one she handled: the trial of 9/11 conspirator Zacarias Moussaoui.

"This order was issued quite quickly. It's quite clear that not all the thought went into it that should have gone into it," Brinkema said. "It was chaos."

She said people had relied on their visas as valid and families had expected to be reunited with loved ones. Brinkema said there was no evidence that the travel restrictions were necessary.

She urged the government to work "globally" to resolve all the cases of those affected by the travel ban. Lawsuits have been playing out over individual cases in at least 10 courts across the country.

The Trump administration has argued that the travel ban is necessary to keep Americans safe from terrorism as it institutes more restrictive vetting of visitors and refugees, but it has drawn protests at airport's nationwide and condemnation from Democrats, many of whom call the executive action a "Muslim ban."

Brinkema on Friday extended a temporary restraining order she had issued blocking the removal of any green-card holders being detained at Dulles and requir-

ing that people held there because of the ban have access to lawyers.

The judge also allowed the state of Virginia to join the lawsuit. State officials argued in court that more than 350 students from a handful of state universities had been affected by the travel ban, along with professors and other workers.

The officials said they include a Libyan woman from George Mason University who was stuck in Turkey and an Iranian doctoral student who is unable to travel to the United States to defend his dissertation. In addition, Brinkema ordered the government to turn over a list of the state's lawful permanent residents and visa holders who were affected by the ban.

Outside the courthouse, Virginia Attorney General Mark R. Herring (D) said he was "really pleased the judge recognized real harm is happening in Virginia."

Herring's office had also been seeking to hold government officials in contempt for the way they handled travelers from the seven countries over the weekend, but Brinkema declined, saying she did not know enough Friday to make that determination.

Virginia officials had cited news reports and affidavits from lawmakers saying that, contrary to the order Brinkema issued last weekend, Customs and Border Patrol officers had denied immigrants access to lawyers.

"There were so many lawyers there willing to help, and not a single one got access," Virginia Solicitor General Stuart A. Raphael said during the hearing.

Reuveni said that security at Dulles bars lawyers from anything but telephone access to people who are in screening. Separately, affiliates of the American Civil Liberties Union in all 50 states have filed freedom-of-information requests to gain a greater understanding of how customs officials are implementing Trump's order.

Brinkema also allowed a Sudanese woman to join the lawsuit. Sahar Kamal Ahmed Fadul was traveling on the same flight as the Aziz brothers and was sent on a return flight to Ethiopia by customs officials. She had plans to meet her fiance in Colorado and get married.

"Too suddenly, at the stroke of a pen, that dream was dashed," said her attorney, Timothy Heaphy. "It's tremendously traumatic.

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—— Index References ——

News Subject: (Government Litigation (1GO18); Immigration & Naturalization (1IM88); Judicial Cases & Rulings (1JU36); Legal (1LE33); Social Issues (1SO05))

Industry: (Air Transportation (1AI53); Airports (1AI61); Transportation (1TR48))

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Other Indexing: (Virginia Attorney General Mark R.) (Virginia Solicitor; Tareq Aqel Mohammed Aziz; Trump; Stuart Raphael; Simon Sandoval-Moshenberg; Ammar Aqel Mohammed Aziz; Leonie Brinkema; Timothy Heaphy; Sahar Kamal Ahmed Fadul; Erez Reuveni; Zacarias Moussaoui)

Word Count: 954

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Exhibit Q

Executive Order—Protecting the Nation from Terrorist Attacks by Foreign Nationals

EXECUTIVE ORDER

- - - - - -

PROTECTING THE NATION FROM TERRORIST ATTACKS BY FOREIGN NATIONALS

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 (8 U.S.C. 1001 et seq.) (INA), 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 with 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.

Hundreds of 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 claiming asylum; after receiving visitor, student, or employment visas; or through the U.S. 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 our country. 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, we must ensure that those admitted to this country do not bear hostile attitudes toward our country and its founding principles. We cannot, and should not, admit into our country those who do not support the U.S. Constitution, or those who would place violent religious edicts over American law. In addition, the United States should not admit those who engage in acts of bigotry and hatred (including "honor" killings, other forms of violence against women, or the persecution of those who practice other religions) or those who would oppress members of one race, one gender, or sexual orientation.

Sec. 2. *Policy.* It is the policy of the United States to: (a) protect our citizens from foreign nationals who intend to commit terrorist attacks in the United States; and (b) 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 for adjudication of any visa, admission, or other benefit under the INA (adjudications) adequate 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), 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 (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, and C-2 visas for travel to the United Nations). The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State and Director of National Intelligence.

(c) To temporarily reduce investigative burdens to 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 the terrorist or criminal infiltration of foreign nationals, pursuant to section 212(f) of the INA I hereby find that the immigrant and nonimmigrant entry into the United States of aliens from countries designated pursuant to Division O, Title II, Section 203 of the 2016 consolidated

Appropriations Act (H.R. 2029, P.L. 114-113), 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 30 days from the date of this order.

(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, and C-2 visas for travel to the United Nations) from countries that do not provide the information requested pursuant to subsection (d) of this order 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 during 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 uniform screening standards and procedures, such as in-person interviews; the creation of 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 positive 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, 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, shall review the USRAP application and adjudication process to determine what additional procedures can 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 this order, the Secretary of State shall resume USRAP admissions only for nationals of countries for whom the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence have jointly determined that suf-

ficient safeguards are in place 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 to assist with such prioritization.

(c) The Secretaries of State and Homeland Security, as appropriate, shall cease refugee processing of and the admittance of nationals of Syria as refugees until such time as I have determined that sufficient changes have been made to the USRAP to ensure its alignment with the national interest.

(d) Notwithstanding any previous Presidential determination regarding the number of refugee admissions for Fiscal Year 2017, the Secretaries of State and Homeland Security may only process and admit a total of 50,000 refugees during Fiscal Year 2017. During the 120-day suspension provided by section 5(a), the Secretary of State and the Secretary of Homeland Security shall initiate appropriate consultations in connection with this determination, including with respect to the allocation among refugees of special humanitarian concern to the United States.

(f) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may admit individuals to the United States as refugees on a case-by-case basis when in the national interest. Further, during the temporary suspension period described in subsection (a), the Secretaries of State and Homeland Security may continue to process as refugees those 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.

(g) 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.

Sec. 6. *Establishment of Safe Zones to Protect Vulnerable Syrian Populations.* Pursuant to the cessation of refugee processing for Syrian nationals, the Secretary of State, in conjunction with the Secretary of Defense, is directed within 90 days of the date of this order to produce a plan to provide safe areas in Syria and in the surrounding region in which Syrian nationals displaced from their homeland can await firm settlement, such as repatriation or potential third-country resettlement.

Sec. 7. *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 relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda. .

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 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. 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, 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 Pro-

gram, 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. 10. *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 urged by sections 221(c) and 281 of the INA, and other treatment. If a country does not treat U.S. 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 U.S. nationals by the foreign country, to the extent practicable.

Sec. 11. *Transparency and Data Collection.* To be more transparent with the American people, and in order to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security shall, consistent with applicable law, collect and make publicly available within 180 days, and every 180 days thereafter:

(a) information regarding the number of foreign-born individuals in the United States who have been charged with terrorism-related offenses; convicted of terrorism-related offenses; 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;

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

(c) information regarding the number and types of acts of gender-based violence against women or honor killings by foreign-born individuals in the United States.

Sec. 12. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

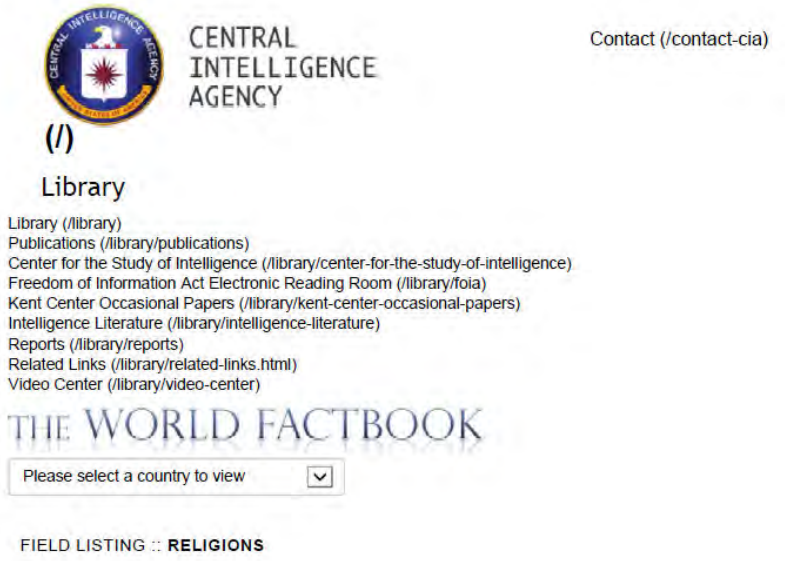
(i) the authority granted by law to an executive department, agency, or the head thereof; or

(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.

Exhibit R



FIELD LISTING :: **RELIGIONS**

Country	**Religions (%)**
Afghanistan (../geos/af.html)	Muslim 99.7% (Sunni 84.7-89.7%, Shia 10-15%), other 0.3% (2009 est.)
Albania (../geos/al.html)	Muslim 56.7%, Roman Catholic 10%, Orthodox 6.8%, atheist 2.5%, Bektashi (a Sufi order) 2.1%, other 5.7%, unspecified 16.2% **note:** all mosques and churches were closed in 1967 and religious observances prohibited; in November 1990, Albania began allowing private religious practice (2011 est.)
Algeria (../geos/ag.html)	Muslim (official; predominantly Sunni) 99%, other (includes Christian and Jewish) <1% (2012 est.)

American Samoa (../geos/aq.html)	Christian 98.3%, other 1%, unaffiliated 0.7% (2010 est.)
Andorra (../geos/an.html)	Roman Catholic (predominant)
Angola (../geos/ao.html)	Roman Catholic 41.1%, Protestant 38.1%, other 8.6%, none 12.3% (2014 est.)
Anguilla (../geos/av.html)	Protestant 73.2% (includes Anglican 22.7%, Methodist 19.4%, Pentecostal 10.5%, Seventh Day Adventist 8.3%, Baptist 7.1%, Church of God 4.9%, Presbytarian 0.2%, Brethren 0.1%), Roman Catholic 6.8%, Jehovah's Witness 1.1%, other Christian 10.9%, other 3.2%, unspecified 0.3%, none 4.5% (2011 est.)
Antigua and Barbuda (../geos/ac.html)	Protestant 68.3% (Anglican 17.6%, Seventh Day Adventist 12.4%, Pentecostal 12.2%, Moravian 8.3%, Methodist 5.6%, Wesleyan Holiness 4.5%, Church of God 4.1%, Baptist 3.6%), Roman Catholic 8.2%, other 12.2%, unspecified 5.5%, none 5.9% (2011 est.)
Argentina (../geos/ar.html)	nominally Roman Catholic 92% (less than 20% practicing), Protestant 2%, Jewish 2%, other 4%
Armenia (../geos/am.html)	Armenian Apostolic 92.6%, Evangelical 1%, other 2.4%, none 1.1%, unspecified 2.9% (2011 est.)
Aruba	Roman Catholic 75.3%, Protestant

(../geos/aa.html)	4.9% (includes Methodist 0.9%, Adventist 0.9%, Anglican 0.4%, other Protestant 2.7%), Jehovah's Witness 1.7%, other 12%, none 5.5%, unspecified 0.5% (2010 est.)
Australia (../geos/as.html)	Protestant 30.1% (Anglican 17.1%, Uniting Church 5.0%, Presbyterian and Reformed 2.8%, Baptist, 1.6%, Lutheran 1.2%, Pentecostal 1.1%, other Protestant 1.3%), Catholic 25.3% (Roman Catholic 25.1%, other Catholic 0.2%), other Christian 2.9%, Orthodox 2.8%, Buddhist 2.5%, Muslim 2.2%, Hindu 1.3%, other 1.3%, none 22.3%, unspecified 9.3% (2011 est.)
Austria (../geos/au.html)	Catholic 73.8% (includes Roman Catholic 73.6%, other Catholic 0.2%), Protestant 4.9%, Muslim 4.2%, Orthodox 2.2%, other 0.8% (includes other Christian), none 12%, unspecified 2% (2001 est.)
Azerbaijan (../geos/aj.html)	Muslim 96.9% (predominantly Shia), Christian 3%, other <0.1, unaffiliated <0.1 (2010 est.) **note:** religious affiliation is still nominal in Azerbaijan; percentages for actual practicing adherents are much lower
Bahamas, The (../geos/bf.html)	Protestant 69.9% (includes Baptist 34.9%, Anglican 13.7%, Pentecostal

	8.9% Seventh Day Adventist 4.4%, Methodist 3.6%, Church of God 1.9%, Brethren 1.6%), Roman Catholic 12%, other Christian 13% (includes Jehovah's Witness 1.1%), other 0.6%, none 1.9%, unspecified 2.6% (2010 est.)
Bahrain (../geos/ba.html)	Muslim 70.3%, Christian 14.5%, Hindu 9.8%, Buddhist 2.5%, Jewish 0.6%, folk religion <.1, unaffiliated 1.9%, other 0.2% (2010 est.)
Bangladesh (../geos/bg.html)	Muslim 89.1%, Hindu 10%, other 0.9% (includes Buddhist, Christian) (2013 est.)
Barbados (../geos/bb.html)	Protestant 66.4% (includes Anglican 23.9%, other Pentecostal 19.5%, Adventist 5.9%, Methodist 4.2%, Wesleyan 3.4%, Nazarene 3.2%, Church of God 2.4%, Baptist 1.8%, Moravian 1.2%, other Protestant 0.9%), Roman Catholic 3.8%, other Christian 5.4% (includes Jehovah's Witness 2.0%, other 3.4%), Rastafarian 1%, other 1.5%, none 20.6%, unspecified 1.2% (2010 est.)
Belarus (../geos/bo.html)	Orthodox 48.3%, Catholic 7.1%, other 3.5%, non-believers 41.1% (2011 est.)
Belgium (../geos/be.html)	Roman Catholic 75%, other (includes Protestant) 25%
Belize	Roman Catholic 40.1%, Protestant

(../geos/bh.html)	31.5% (includes Pentecostal 8.4%, Seventh Day Adventist 5.4%, Anglican 4.7%, Mennonite 3.7%, Baptist 3.6%, Methodist 2.9%, Nazarene 2.8%), Jehovah's Witness 1.7%, other 10.5% (includes Baha'i, Buddhist, Hindu, Morman, Muslim, Rastafarian), unknown 0.6%, none 15.5% (2010 est.)
Benin (../geos/bn.html)	Muslim 27.7%, Catholic 25.5%, Protestant 13.5% (Celestial 6.7%, Methodist 3.4%, other Protestant 3.4%), Vodoun 11.6%, other Christian 9.5%, other traditional religions 2.6%, other 2.6%, none 5.8% (2013 est.)
Bermuda (../geos/bd.html)	Protestant 46.2% (includes Anglican 15.8%, African Methodist Episcopal 8.6%, Seventh Day Adventist 6.7, Pentecostal 3.5%, Methodist 2.7%, Presbyterian 2.0 %, Church of God 1.6%, Baptist 1.2%, Salvation Army 1.1%, Brethren 1.0%, other Protestant 2.0%), Roman Catholic 14.5%, Jehovah's Witness 1.3%, other Christian 9.1%, Muslim 1%, other 3.9%, none 17.8%, unspecified 6.2% (2010 est.)
Bhutan (../geos/bt.html)	Lamaistic Buddhist 75.3%, Indian- and Nepalese-influenced Hinduism 22.1%, other 2.6% (2005 est.)

Bolivia (../geos/bl.html)	Roman Catholic 76.8%, Evangelical and Pentecostal 8.1%, Protestant 7.9%, other 1.7%, none 5.5% (2012 est.)
Bosnia and Herzegovina (../geos/bk.html)	Muslim 50.7%, Orthodox 30.7%, Roman Catholic 15.2%, atheist 0.8%, agnostic 0.3%, other 1.2%, undeclared/no answer 1.1% (2013 est.)
Botswana (../geos/bc.html)	Christian 79.1%, Badimo 4.1%, other 1.4% (includes Baha'i, Hindu, Muslim, Rastafarian), none 15.2%, unspecified 0.3% (2011 est.)
Brazil (../geos/br.html)	Roman Catholic 64.6%, other Catholic 0.4%, Protestant 22.2% (includes Adventist 6.5%, Assembly of God 2.0%, Christian Congregation of Brazil 1.2%, Universal Kingdom of God 1.0%, other Protestant 11.5%), other Christian 0.7%, Spiritist 2.2%, other 1.4%, none 8%, unspecified 0.4% (2010 est.)
British Virgin Islands (../geos/vi.html)	Protestant 70.2% (Methodist 17.6%, Church of God 10.4%, Anglican 9.5%, Seventh Day Adventist 9.0%, Pentecostal 8.2%, Baptist 7.4%, New Testament Church of God 6.9%, other Protestant 1.2%), Roman Catholic 8.9%, Jehovah's Witness 2.5%, Hindu 1.9%, other 6.2%, none 7.9%, unspecified 2.4% (2010 est.)

Brunei (../geos/bx.html)	Muslim (official) 78.8%, Christian 8.7%, Buddhist 7.8%, other (includes indigenous beliefs) 4.7% (2011 est.)
Bulgaria (../geos/bu.html)	Eastern Orthodox 59.4%, Muslim 7.8%, other (including Catholic, Protestant, Armenian Apostolic Orthodox, and Jewish) 1.7%, none 3.7%, unspecified 27.4% (2011 est.)
Burkina Faso (../geos/uv.html)	Muslim 61.6%, Catholic 23.2%, traditional/animist 7.3%, Protestant 6.7%, other/no answer 0.2%, none 0.9% (2010 est.)
Burma (../geos/bm.html)	Buddhist 87.9%, Christian 6.2%, Muslim 4.3%, Animist 0.8%, Hindu 0.5%, other 0.2%, none 0.1% **note:** religion estimate is based on the 2014 national census, including an estimate for the non-enumerated population of Rakhine State, which is assumed to mainly affiliate with the Islamic faith (2014 est.)
Burundi (../geos/by.html)	Catholic 62.1%, Protestant 23.9% (includes Adventist 2.3% and other Protestant 21.6%), Muslim 2.5%, other 3.6%, unspecified 7.9% (2008 est.)
Cabo Verde (../geos/cv.html)	Roman Catholic 77.3%, Protestant 4.6% (includes Church of the Nazarene 1.7%, Adventist 1.5%, Assembly of God 0.9%, Universal Kingdom of God 0.4%, and God and Love

	0.1%), other Christian 3.4% (includes Christian Rationalism 1.9%, Jehovah's Witness 1%, and New Apostolic 0.5%), Muslim 1.8%, other 1.3%, none 10.8%, unspecified 0.7% (2010 est.)
Cambodia (../geos/cb.html)	Buddhist (official) 96.9%, Muslim 1.9%, Christian 0.4%, other 0.8% (2008 est.)
Cameroon (../geos/cm.html)	Catholic 38.4%, Protestant 26.3%, other Christian 4.5%, Muslim 20.9%, animist 5.6%, other 1%, non-believer 3.2% (2005 est.)
Canada (../geos/ca.html)	Catholic 39% (includes Roman Catholic 38.8%, other Catholic .2%), Protestant 20.3% (includes United Church 6.1%, Anglican 5%, Baptist 1.9%, Lutheran 1.5%, Pentecostal 1.5%, Presbyterian 1.4%, other Protestant 2.9%), Orthodox 1.6%, other Christian 6.3%, Muslim 3.2%, Hindu 1.5%, Sikh 1.4%, Buddhist 1.1%, Jewish 1%, other 0.6%, none 23.9% (2011 est.)
Cayman Islands (../geos/cj.html)	Protestant 67.8% (includes Church of God 22.6%, Seventh Day Adventist 9.4%, Presbyterian/United Church 8.6%, Baptist 8.3%, Pentecostal 7.1%, nondenominational 5.3%, Anglican 4.1%, Wesleyan Holiness 2.4%), Roman Catholic 14.1%, Jehovah's

	Witness 1.1%, other 7%, none 9.3%, unspecified 0.7% (2010 est.)
Central African Republic (../geos/ct.html)	indigenous beliefs 35%, Protestant 25%, Roman Catholic 25%, Muslim 15% **note:** animistic beliefs and practices strongly influence the Christian majority
Chad (../geos/cd.html)	Muslim 58.4%, Catholic 18.5%, Protestant 16.1%, animist 4%, other 0.5%, none 2.4% (2009 est.)
Chile (../geos/ci.html)	Roman Catholic 66.7%, Evangelical or Protestant 16.4%, Jehovah's Witnesses 1%, other 3.4%, none 11.5%, unspecified 1.1% (2012 est.)
China (../geos/ch.html)	Buddhist 18.2%, Christian 5.1%, Muslim 1.8%, folk religion 21.9%, Hindu < 0.1%, Jewish < 0.1%, other 0.7% (includes Daoist (Taoist)), unaffiliated 52.2% **note:** officially atheist (2010 est.)
Christmas Island (../geos/kt.html)	Buddhist 16.9%, Christian 16.4%, Muslim 14.8%, other 1.3%, none 9.2%, unspecified 41.5% (2011 est.)
Cocos (Keeling) Islands (../geos/ck.html)	Sunni Muslim 80%, other 20% (2002 est.)
Colombia (../geos/co.html)	Roman Catholic 90%, other 10%
Comoros (../geos/cn.html)	Sunni Muslim 98%, Roman Catholic

	2% **note:** Islam is the state religion
Congo, Democratic Republic of the (../geos/cg.html)	Roman Catholic 50%, Protestant 20%, Kimbanguist 10%, Muslim 10%, other (includes syncretic sects and indigenous beliefs) 10%
Congo, Republic of the (../geos/cf.html)	Roman Catholic 33.1%, Awakening Churches/Christian Revival 22.3%, Protestant 19.9%, Salutiste 2.2%, Muslim 1.6%, Kimbanguiste 1.5%, other 8.1%, none 11.3% (2010 est.)
Cook Islands (../geos/cw.html)	Protestant 62.8% (Cook Islands Christian Church 49.1%, Seventh Day Adventist 7.9%, Assemblies of God 3.7%, Apostolic Church 2.1%), Roman Catholic 17%, Mormon 4.4%, other 8%, none 5.6%, no response 2.2% (2011 est.)
Costa Rica (../geos/cs.html)	Roman Catholic 76.3%, Evangelical 13.7%, Jehovah's Witness 1.3%, other Protestant 0.7%, other 4.8%, none 3.2%
Cote d'Ivoire (../geos/iv.html)	Muslim 40.2%, Catholic 19.4%, Evangelical 19.3%, Methodist 2.5%, other Christian 4.5%, animist or no religion 12.8%, other religion/ unspecified 1.4% (2011-12 est.) **note:** the majority of foreign migrant workers are Muslim (72%) and Christian (18%) (2014 est.)
Croatia	Roman Catholic 86.3%, Orthodox

(../geos/hr.html)	4.4%, Muslim 1.5%, other 1.5%, unspecified 2.5%, not religious or atheist 3.8% (2011 est.)
Cuba (../geos/cu.html)	nominally Roman Catholic 85%, Protestant, Jehovah's Witnesses, Jewish, Santeria **note:** prior to CASTRO assuming power
Curacao (../geos/cc.html)	Roman Catholic 72.8%, Pentecostal 6.6%, Protestant 3.2%, Adventist 3%, Jehovah's Witness 2%, Evangelical 1.9%, other 3.8%, none 6%, unspecified 0.6% (2011 est.)
Cyprus (../geos/cy.html)	Orthodox Christian 89.1%, Roman Catholic 2.9%, Protestant/Anglican 2%, Muslim 1.8%, Buddhist 1%, other (includes Maronite, Armenian Church, Hindu) 1.4%, unknown 1.1%, none/atheist 0.6% **note:** data represent only the government-controlled area of Cyprus (2011 est.)
Czechia (../geos/ez.html)	Roman Catholic 10.4%, Protestant (includes Czech Brethren and Hussite) 1.1%, other and unspecified 54%, none 34.5% (2011 est.)
Denmark (../geos/da.html)	Evangelical Lutheran (official) 80%, Muslim 4%, other (denominations of less than 1% each, includes Roman Catholic, Jehovah's Witness, Serbian Orthodox Christian, Jewish, Baptist,

	and Buddhist) 16% (2012 est.)
Djibouti (../geos/dj.html)	Muslim 94%, Christian 6%
Dominica (../geos/do.html)	Roman Catholic 61.4%, Protestant 28.6% (includes Evangelical 6.7%, Seventh Day Adventist 6.1%, Pentecostal 5.6%, Baptist 4.1%, Methodist 3.7%, Church of God 1.2%, other 1.2%), Rastafarian 1.3%, Jehovah's Witness 1.2%, other 0.3%, none 6.1%, unspecified 1.1% (2001 est.)
Dominican Republic (../geos/dr.html)	Roman Catholic 95%, other 5%
Ecuador (../geos/ec.html)	Roman Catholic 74%, Evangelical 10.4%, Jehovah's Witness 1.2%, other 6.4% (includes Mormon Buddhist, Jewish, Spiritualist, Muslim, Hindu, indigenous religions, African American religions, Pentecostal), atheist 7.9%, agnostic 0.1% **note:** data represents persons at least 16 years of age from five Ecuadoran cities (2012 est.)
Egypt (../geos/eg.html)	Muslim (predominantly Sunni) 90%, Christian (majority Coptic Orthodox, other Christians include Armenian Apostolic, Catholic, Maronite, Orthodox, and Anglican) 10% (2012 est.)

El Salvador (../geos/es.html)	Roman Catholic 57.1%, Protestant 21.2%, Jehovah's Witnesses 1.9%, Mormon 0.7%, other religions 2.3%, none 16.8% (2003 est.)
Equatorial Guinea (../geos/ek.html)	nominally Christian and predominantly Roman Catholic, pagan practices
Eritrea (../geos/er.html)	Muslim, Coptic Christian, Roman Catholic, Protestant
Estonia (../geos/en.html)	Lutheran 9.9%, Orthodox 16.2%, other Christian (including Methodist, Seventh- Day Adventist, Roman Catholic, Pentecostal) 2.2%, other 0.9%, none 54.1%, unspecified 16.7% (2011 est.)
Ethiopia (../geos/et.html)	Ethiopian Orthodox 43.5%, Muslim 33.9%, Protestant 18.5%, traditional 2.7%, Catholic 0.7%, other 0.6% (2007 est.)
European Union (../geos/ee.html)	Roman Catholic 48%, Protestant 12%, Orthodox 8%, other Christian 4%, Muslim 2%, other 1% (includes Jewish, Sikh, Buddhist, Hindu), atheist 7%, nonbeliever/agnostic 16%, unspecified 2% (2012 est.)
Falkland Islands (Islas Malvinas) (../geos/fk.html)	Christian 66%, none 32%, other 2% (2012 est.)
Faroe Islands (../geos/fo.html)	Christian 89.3% (predominantly Evangelical Lutheran), other 0.7%, more than one religion 0.2%, none

	3.8%, unspecified 6% (2011 est.)
Fiji (../geos/fj.html)	Protestant 45% (Methodist 34.6%, Assembly of God 5.7%, Seventh Day Adventist 3.9%, and Anglican 0.8%), Hindu 27.9%, other Christian 10.4%, Roman Catholic 9.1%, Muslim 6.3%, Sikh 0.3%, other 0.3%, none 0.8% (2007 est.)
Finland (../geos/fi.html)	Lutheran 73.8%, Orthodox 1.1%, other or none 25.1% (2014 est.)
France (../geos/fr.html)	Christian (overwhelmingly Roman Catholic) 63-66%, Muslim 7-9%, Buddhist 0.5-0.75%, Jewish 0.5-0.75%, other 0.5-1.0%, none 23-28% **note:** France maintains a tradition of secularism and has not officially collected data on religious affiliation since the 1872 national census, which complicates assessments of France's religious composition; an 1872 law prohibiting state authorities from collecting data on individuals' ethnicity or religious beliefs was reaffirmed by a 1978 law emphasizing the prohibition of the collection or exploitation of personal data revealing an individual's race, ethnicity, or political, philosophical, or religious opinions; a 1905 law codified France's separation of church and state (2015 est.)

French Polynesia (../geos/fp.html)	Protestant 54%, Roman Catholic 30%, other 10%, no religion 6%
Gabon (../geos/gb.html)	Catholic 41.9%, Protestant 13.7%, other Christian 32.4%, Muslim 6.4%, animist 0.3%, other 0.3%, none/no answer 5% (2012 est.)
Gambia, The (../geos/ga.html)	Muslim 95.7%, Christian 4.2%, none 0.1%, no answer 0.1% (2013 est.)
Gaza Strip (../geos/gz.html)	Muslim 98.0-99.0% (predominantly Sunni), Christian <1.0%, other, unaffiliated, unspecified <1.0% **note:** dismantlement of Israeli settlements was completed in September 2005; Gaza has had no Jewish population since then (2012 est.)
Georgia (../geos/gg.html)	Orthodox (official) 83.4%, Muslim 10.7%, Armenian Apostolic 2.9%, other 1.2% (includes Catholic, Jehovah's Witness, Yazidi, Protestant, Jewish), none 0.5%, unspecified/no answer 1.2% (2014 est.)
Germany (../geos/gm.html)	Protestant 34%, Roman Catholic 34%, Muslim 3.7%, unaffiliated or other 28.3%
Ghana (../geos/gh.html)	Christian 71.2% (Pentecostal/ Charismatic 28.3%, Protestant 18.4%, Catholic 13.1%, other 11.4%), Muslim 17.6%, traditional 5.2%, other 0.8%, none 5.2% (2010 est.)

Gibraltar (../geos/gi.html)	Roman Catholic 78.1%, Church of England 7%, Muslim 4%, other Christian 3.2%, Jewish 2.1%, Hindu 1.8%, other 0.9%, none 2.9% (2001 est.)
Greece (../geos/gr.html)	Greek Orthodox (official) 98%, Muslim 1.3%, other 0.7%
Greenland (../geos/gl.html)	Evangelical Lutheran, traditional Inuit spiritual beliefs
Grenada (../geos/gj.html)	Roman Catholic 44.6%, Protestant 43.5% (includes Anglican 11.5%, Pentecostal 11.3%, Seventh Day Adventist 10.5%, Baptist 2.9%, Church of God 2.6%, Methodist 1.8%, Evangelical 1.6%, other 1.3%), Jehovah's Witness 1.1%, Rastafarian 1.1%, other 6.2%, none 3.6%
Guam (../geos/gq.html)	Roman Catholic 85%, other 15% (1999 est.)
Guatemala (../geos/gt.html)	Roman Catholic, Protestant, indigenous Mayan beliefs
Guernsey (../geos/gk.html)	Protestant (Anglican, Presbyterian, Baptist, Congregational, Methodist), Roman Catholic
Guinea-Bissau (../geos/pu.html)	Muslim 45.1%, Christian 22.1%, animist 14.9%, none 2%, unspecified 15.9% (2008 est.)
Guinea (../geos/gv.html)	Muslim 86.7%, Christian 8.9%, animist/other/none 4.4% (2012 est.)
Guyana	Protestant 30.5% (Pentecostal 16.9%,

(../geos/gy.html)	Anglican 6.9%, Seventh Day Adventist 5%, Methodist 1.7%), Hindu 28.4%, Roman Catholic 8.1%, Muslim 7.2%, Jehovah's Witness 1.1%, other Christian 17.7%, other 1.9%, none 4.3%, unspecified 0.9% (2002 est.)
Haiti (../geos/ha.html)	Roman Catholic (official) 54.7%, Protestant 28.5% (Baptist 15.4%, Pentecostal 7.9%, Adventist 3%, Methodist 1.5%, other 0.7%), voodoo (official) 2.1%, other 4.6%, none 10.2% **note:** many Haitians practice elements of voodoo in addition to another religion, most often Roman Catholicism; voodoo was recognized as an official religion in 2003
Holy See (Vatican City) (../geos/vt.html)	Roman Catholic
Honduras (../geos/ho.html)	Roman Catholic 97%, Protestant 3%
Hong Kong (../geos/hk.html)	eclectic mixture of local religions 90%, Christian 10%
Hungary (../geos/hu.html)	Roman Catholic 37.2%, Calvinist 11.6%, Lutheran 2.2%, Greek Catholic 1.8%, other 1.9%, none 18.2%, unspecified 27.2% (2011 est.)
Iceland (../geos/ic.html)	Evangelical Lutheran Church of Iceland (official) 73.8%, Roman

	Catholic 3.6%, Reykjavik Free Church 2.9%, Hafnarfjorour Free Church 2%, The Independent Congregation 1%, other religions 3.9% (includes Pentecostal and Asatru Association), none 5.6%, other or unspecified 7.2% (2015 est.)
India (../geos/in.html)	Hindu 79.8%, Muslim 14.2%, Christian 2.3%, Sikh 1.7%, other and unspecified 2% (2011 est.)
Indonesia (../geos/id.html)	Muslim 87.2%, Christian 7%, Roman Catholic 2.9%, Hindu 1.7%, other 0.9% (includes Buddhist and Confucian), unspecified 0.4% (2010 est.)
Iran (../geos/ir.html)	Muslim (official) 99.4% (Shia 90-95%, Sunni 5-10%), other (includes Zoroastrian, Jewish, and Christian) 0.3%, unspecified 0.4% (2011 est.)
Iraq (../geos/iz.html)	Muslim (official) 99% (Shia 60%-65%, Sunni 32%-37%), Christian 0.8%, Hindu <0.1, Buddhist <0.1, Jewish <0.1, folk religion <0.1, unafilliated 0.1, other <0.1 **note:** while there has been voluntary relocation of many Christian families to northern Iraq, recent reporting indicates that the overall Christian population may have dropped by as much as 50 percent since the fall of the SADDAM

	Husayn regime in 2003, with many fleeing to Syria, Jordan, and Lebanon (2010 est.)
Ireland (../geos/ei.html)	Roman Catholic 84.7%, Church of Ireland 2.7%, other Christian 2.7%, Muslim 1.1%, other 1.7%, unspecified 1.5%, none 5.7% (2011 est.)
Isle of Man (../geos/im.html)	Protestant (Anglican, Methodist, Baptist, Presbyterian, Society of Friends), Roman Catholic
Israel (../geos/is.html)	Jewish 74.8%, Muslim 17.6%, Christian 2%, Druze 1.6%, other 4% (2015 est.)
Italy (../geos/it.html)	Christian 80% (overwhelmingly Roman Catholic with very small groups of Jehovah's Witnesses and Protestants), Muslim (about 800,000 to 1 million), atheist and agnostic 20%
Jamaica (../geos/jm.html)	Protestant 64.8% (includes Seventh Day Adventist 12.0%, Pentecostal 11.0%, Other Church of God 9.2%, New Testament Church of God 7.2%, Baptist 6.7%, Church of God in Jamaica 4.8%, Church of God of Prophecy 4.5%, Anglican 2.8%, United Church 2.1%, Methodist 1.6%, Revived 1.4%, Brethren 0.9%, and Moravian 0.7%), Roman Catholic 2.2%, Jehovah's Witness 1.9%, Rastafarian 1.1%, other 6.5%, none

	21.3%, unspecified 2.3% (2011 est.)
Japan (../geos/ja.html)	Shintoism 79.2%, Buddhism 66.8%, Christianity 1.5%, other 7.1% **note:** total adherents exceeds 100% because many people practice both Shintoism and Buddhism (2012 est.)
Jersey (../geos/je.html)	Protestant (Anglican, Baptist, Congregational New Church, Methodist, Presbyterian), Roman Catholic
Jordan (../geos/jo.html)	Muslim 97.2% (official; predominantly Sunni), Christian 2.2% (majority Greek Orthodox, but some Greek and Roman Catholics, Syrian Orthodox, Coptic Orthodox, Armenian Orthodox, and Protestant denominations), Buddhist 0.4%, Hindu 0.1%, Jewish <0.1, folk religionist <0.1, unaffiliated <0.1, other <0.1 (2010 est.)
Kazakhstan (../geos/kz.html)	Muslim 70.2%, Christian 26.2% (mainly Russian Orthodox), other 0.2%, atheist 2.8%, unspecified 0.5% (2009 est.)
Kenya (../geos/ke.html)	Christian 83% (Protestant 47.7%, Catholic 23.4%, other Christian 11.9%), Muslim 11.2%, Traditionalists 1.7%, other 1.6%, none 2.4%, unspecified 0.2% (2009 est.)
Kiribati (../geos/kr.html)	Roman Catholic 55.8%, Kempsville Presbyterian Church 33.5%, Mormon 4.7%, Baha'i 2.3%, Seventh Day

	Adventist 2%, other 1.5%, none 0.2%, unspecified 0.05% (2010 est.)
Korea, North (../geos/kn.html)	traditionally Buddhist and Confucianist, some Christian and syncretic Chondogyo (Religion of the Heavenly Way) **note:** autonomous religious activities now almost nonexistent; governmentsponsored religious groups exist to provide illusion of religious freedom
Korea, South (../geos/ks.html)	Christian 31.6% (Protestant 24.0%, Catholic 7.6%), Buddhist 24.2%, other or unknown 0.9%, none 43.3% (2010 est.)
Kosovo (../geos/kv.html)	Muslim 95.6%, Roman Catholic 2.2%, Orthodox 1.5%, other 0.07%, none 0.07%, unspecified 0.6% (2011 est.)
Kuwait (../geos/ku.html)	Muslim (official) 76.7%, Christian 17.3%, other and unspecified 5.9% **note:** represents the total population; about 69% of the population consists of immigrants (2013 est.)
Kyrgyzstan (../geos/kg.html)	Muslim 75%, Russian Orthodox 20%, other 5%
Laos (../geos/la.html)	Buddhist 66.8%, Christian 1.5%, other 31%, unspecified 0.7% (2005 est.)
Latvia (../geos/lg.html)	Lutheran 19.6%, Orthodox 15.3%, other Christian 1%, other 0.4%,

	unspecified 63.7% (2006)
Lebanon (../geos/le.html)	Muslim 54% (27% Sunni, 27% Shia), Christian 40.5% (includes 21% Maronite Catholic, 8% Greek Orthodox, 5% Greek Catholic, 6.5% other Christian), Druze 5.6%, very small numbers of Jews, Baha'is, Buddhists, Hindus, and Mormons **note:** 18 religious sects recognized (2012 est.)
Lesotho (../geos/lt.html)	Christian 80%, indigenous beliefs 20%
Liberia (../geos/li.html)	Christian 85.6%, Muslim 12.2%, Traditional 0.6%, other 0.2%, none 1.4% (2008 Census)
Libya (../geos/ly.html)	Muslim (official; virtually all Sunni) 96.6%, Christian 2.7%, Buddhist 0.3%, Hindu <0.1, Jewish <0.1, folk religion <0.1, unafilliated 0.2%, other <0.1 **note:** non-Sunni Muslims include native Ibadhi Muslims (<1% of the population) and foreign Muslims (2010 est.)
Liechtenstein (../geos/ls.html)	Roman Catholic (official) 75.9%, Protestant Reformed 6.5%, Muslim 5.4%, Lutheran 1.3%, other 2.9%, none 5.4%, unspecified 2.6% (2010 est.)
Lithuania	Roman Catholic 77.2%, Russian

(../geos/lh.html)	Orthodox 4.1%, Old Believer 0.8%, Evangelical Lutheran 0.6%, Evangelical Reformist 0.2%, other (including Sunni Muslim, Jewish, Greek Catholic, and Karaite) 0.8%, none 6.1%, unspecified 10.1% (2011 est.)
Luxembourg (../geos/lu.html)	Roman Catholic 87%, other (includes Protestant, Jewish, and Muslim) 13% (2000)
Macau (../geos/mc.html)	Buddhist 50%, Roman Catholic 15%, none or other 35% (1997 est.)
Macedonia (../geos/mk.html)	Macedonian Orthodox 64.8%, Muslim 33.3%, other Christian 0.4%, other and unspecified 1.5% (2002 est.)
Madagascar (../geos/ma.html)	Christian, indigenous believer, Muslim **note:** population largely practices Christianity or an indigenous religion; small share of population is Muslim
Malawi (../geos/mi.html)	Christian 82.6%, Muslim 13%, other 1.9%, none 2.5% (2008 est.)
Malaysia (../geos/my.html)	Muslim (official) 61.3%, Buddhist 19.8%, Christian 9.2%, Hindu 6.3%, Confucianism, Taoism, other traditional Chinese religions 1.3%, other 0.4%, none 0.8%, unspecified 1% (2010 est.)

Maldives (../geos/mv.html)	Sunni Muslim (official)
Mali (../geos/ml.html)	Muslim 94.8%, Christian 2.4%, Animist 2%, none 0.5%, unspecified 0.3% (2009 est.)
Malta (../geos/mt.html)	Roman Catholic (official) more than 90% (2011 est.)
Marshall Islands (../geos/rm.html)	Protestant 54.8%, Assembly of God 25.8%, Roman Catholic 8.4%, Bukot nan Jesus 2.8%, Mormon 2.1%, other Christian 3.6%, other 1%, none 1.5% (1999 census)
Mauritania (../geos/mr.html)	Muslim (official) 100%
Mauritius (../geos/mp.html)	Hindu 48.5%, Roman Catholic 26.3%, Muslim 17.3%, other Christian 6.4%, other 0.6%, none 0.7%, unspecified 0.1% (2011 est.)
Mexico (../geos/mx.html)	Roman Catholic 82.7%, Pentecostal 1.6%, Jehovah's Witness 1.4%, other Evangelical Churches 5%, other 1.9%, none 4.7%, unspecified 2.7% (2010 est.)
Micronesia, Federated States of (../geos/fm.html)	Roman Catholic 54.7%, Protestant 41.1% (includes Congregational 38.5%, Baptist 1.1%, Seventh Day Adventist 0.8%, Assembly of God 0.7%), Mormon 1.5%, other 1.9%, none 0.7%, unspecified 0.1% (2010 est.)
Moldova	Orthodox 93.3%, Baptist 1%, other

(../geos/md.html)	Christian 1.2%, other 0.9%, atheist 0.4%, none 1%, unspecified 2.2% (2004 est.)
Monaco (../geos/mn.html)	Roman Catholic 90% (official), other 10%
Mongolia (../geos/mg.html)	Buddhist 53%, Muslim 3%, Christian 2.2%, Shamanist 2.9%, other 0.4%, none 38.6% (2010 est.)
Montenegro (../geos/mj.html)	Orthodox 72.1%, Muslim 19.1%, Catholic 3.4%, atheist 1.2%, other 1.5%, unspecified 2.6% (2011 est.)
Montserrat (../geos/mh.html)	Protestant 67.1% (includes Anglican 21.8%, Methodist 17%, Pentecostal 14.1%, Seventh Day Adventist 10.5%, and Church of God 3.7%), Roman Catholic 11.6%, Rastafarian 1.4%, other 6.5%, none 2.6%, unspecified 10.8% (2001 est.)
Morocco (../geos/mo.html)	Muslim 99% (official; virtually all Sunni, <0.1% Shia), other 1% (includes Christian, Jewish, and Baha'i); note—Jewish about 6,000 (2010 est.)
Mozambique (../geos/mz.html)	Roman Catholic 28.4%, Muslim 17.9%, Zionist Christian 15.5%, Protestant 12.2% (includes Pentecostal 10.9% and Anglican 1.3%), other 6.7%, none 18.7%, unspecified 0.7% (2007 est.)
Namibia (../geos/wa.html)	Christian 80% to 90% (at least 50% Lutheran), indigenous beliefs 10% to

	20%
Nauru (../geos/nr.html)	Protestant 60.4% (includes Nauru Congregational 35.7%, Assembly of God 13%, Nauru Independent Church 9.5%, Baptist 1.5%, and Seventh Day Adventist 0.7%), Roman Catholic 33%, other 3.7%, none 1.8%, unspecified 1.1% (2011 est.)
Nepal (../geos/np.html)	Hindu 81.3%, Buddhist 9%, Muslim 4.4%, Kirant 3.1%, Christian 1.4%, other 0.5%, unspecifed 0.2% (2011 est.)
Netherlands (../geos/nl.html)	Roman Catholic 28%, Protestant 19% (includes Dutch Reformed 9%, Protestant Church of The Netherlands, 7%, Calvinist 3%), other 11% (includes about 5% Muslim and fewer numbers of Hindu, Buddhist, Jehovah's Witness, and Orthodox), none 42% (2009 est.)
New Caledonia (../geos/nc.html)	Roman Catholic 60%, Protestant 30%, other 10%
New Zealand (../geos/nz.html)	Christian 44.3% (Catholic 11.6%, Anglican 10.8%, Presbyterian and Congregational 7.8%, Methodist, 2.4%, Pentecostal 1.8%, other 9.9%), Hindu 2.1%, Buddhist 1.4%, Maori Christian 1.3%, Islam 1.1%, other religion 1.4% (includes Judaism, Spiritualism and New Age religions, Baha'i, Asian religions other than

	Buddhism), no religion 38.5%, not stated or unidentified 8.2%,objected to answering 4.1% **note:** based on the 2013 census of the usually resident population; percentages add up to more than 100% because people were able to identify more than one religion (2013 est.)
Nicaragua (../geos/nu.html)	Roman Catholic 58.5%, Protestant 23.2% (Evangelical 21.6%, Moravian 1.6%), Jehovah's Witnesses 0.9%, other 1.6%, none 15.7% (2005 est.)
Nigeria (../geos/ni.html)	Muslim 50%, Christian 40%, indigenous beliefs 10%
Niger (../geos/ng.html)	Muslim 80%, other (includes indigenous beliefs and Christian) 20%
Niue (../geos/ne.html)	Ekalesia Niue (Congregational Christian Church of Niue—a Protestant church founded by missionaries from the London Missionary Society) 67%, other Protestant 3% (includes Seventh Day Adventist 1%, Presbyterian 1%, and Methodist 1%), Mormon 10%, Roman Catholic 10%, Jehovah's Witnesses 2%, other 6%, none 2% (2011 est.)
Norfolk Island (../geos/nf.html)	Protestant 49.6% (Anglican 31.8%, Uniting Church in Australia 10.6%, Seventh Day Adventist 3.2%), Roman Catholic 11.7%, other 8.6%, none 23.5%, unspecified 6.6% (2011

	est.)
Northern Mariana Islands (../geos/cq.html)	Christian (Roman Catholic majority, although traditional beliefs and taboos may still be found)
Norway (../geos/no.html)	Church of Norway (Evangelical Lutheran—official) 82.1%, other Christian 3.9%, Muslim 2.3%, Roman Catholic 1.8%, other 2.4%, unspecified 7.5% (2011 est.)
Oman (../geos/mu.html)	Muslim (official; majority are Ibadhi, lesser numbers of Sunni and Shia) 85.9%, Christian 6.5%, Hindu 5.5%, Buddhist 0.8%, Jewish <0.1%, other 1%, unaffiliated 0.2% (2010 est.) **note:** approximately 75% of Omani citizens, who compose almost 70% of the country's total population, are Ibadhi Muslims; the Omani government does not keep statistics on religious affiliation (2013)
Pakistan (../geos/pk.html)	Muslim (official) 96.4% (Sunni 85-90%, Shia 10-15%), other (includes Christian and Hindu) 3.6% (2010 est.)
Palau (../geos/ps.html)	Roman Catholic 49.4%, Protestant 30.9% (includes Protestant (general) 23.1%, Seventh Day Adventist 5.3%, and other Protestant 2.5%), Modekngei 8.7% (indigenous to Palau), Jehovah's Witnesses 1.1%, other

	8.8%, none or unspecified 1.1% (2005 est.)
Panama (../geos/pm.html)	Roman Catholic 85%, Protestant 15%
Papua New Guinea (../geos/pp.html)	Roman Catholic 27%, Protestant 69.4% (Evangelical Lutheran 19.5%, United Church 11.5%, Seventh-Day Adventist 10%, Pentecostal 8.6%, Evangelical Alliance 5.2%, Anglican 3.2%, Baptist 2.5%, other Protestant 8.9%), Baha'i 0.3%, indigenous beliefs and other 3.3% (2000 census)
Paraguay (../geos/pa.html)	Roman Catholic 89.6%, Protestant 6.2%, other Christian 1.1%, other or unspecified 1.9%, none 1.1% (2002 census)
Peru (../geos/pe.html)	Roman Catholic 81.3%, Evangelical 12.5%, other 3.3%, none 2.9% (2007 est.)
Philippines (../geos/rp.html)	Catholic 82.9% (Roman Catholic 80.9%, Aglipayan 2%), Muslim 5%, Evangelical 2.8%, Iglesia ni Kristo 2.3%, other Christian 4.5%, other 1.8%, unspecified 0.6%, none 0.1% (2000 census)
Pitcairn Islands (../geos/pc.html)	Seventh-Day Adventist 100%
Poland (../geos/pl.html)	Catholic 87.2% (includes Roman Catholic 86.9% and Greek Catholic, Armenian Catholic, and Byzantine-Slavic Catholic .3%), Orthodox 1.3%

	(almost all are Polish Autocephalous Orthodox), Protestant 0.4% (mainly Augsburg Evangelical and Pentacostal), other 0.4% (includes Jehovah's Witness, Buddhist, Hare Krishna, Gaudiya Vaishnavism, Muslim, Jewish, Mormon), unspecified 10.8% (2012 est.)
Portugal (../geos/po.html)	Roman Catholic 81%, other Christian 3.3%, other (includes Jewish, Muslim, other) 0.6%, none 6.8%, unspecified 8.3% **note:** represents population 15 years of age and older (2011 est.)
Puerto Rico (../geos/rq.html)	Roman Catholic 85%, Protestant and other 15%
Qatar (../geos/qa.html)	Muslim 77.5%, Christian 8.5%, other (includes mainly Hindu and other Indian religions) 14% (2004 est.)
Romania (../geos/ro.html)	Eastern Orthodox (including all subdenominations) 81.9%, Protestant (various denominations including Reformed and Pentecostal) 6.4%, Roman Catholic 4.3%, other (includes Muslim) 0.9%, none or atheist 0.2%, unspecified 6.3% (2011 est.)
Russia (../geos/rs.html)	Russian Orthodox 15-20%, Muslim 10-15%, other Christian 2% (2006 est.) **note:** estimates are of practicing

	worshipers; Russia has large populations of non-practicing believers and non-believers, a legacy of over seven decades of Soviet rule; Russia officially recognizes Orthodox Christianity, Islam, Judaism, and Buddhism as traditional religions
Rwanda (../geos/rw.html)	Roman Catholic 49.5%, Protestant 39.4% (includes Adventist 12.2% and other Protestant 27.2%), other Christian 4.5%, Muslim 1.8%, animist 0.1%, other 0.6%, none 3.6% (2001), unspecified 0.5% (2002 est.)
Saint Barthelemy (../geos/tb.html)	Roman Catholic, Protestant, Jehovah's Witnesses
Saint Helena, Ascension, and Tristan da Cunha (../geos/sh.html)	Protestant 75.9% (includes Anglican 68.9, Baptist 2.1%, Seventh Day Adventist 1.8%, Salvation Army 1.7%, New Apostolic 1.4%), Jehovah's Witness 4.1%, Roman Catholic 1.2%, other 2.5% (includes Baha'i), unspecified 0.8%, none 6.1%, no response 9.4% **note:** data represent Saint Helena only (2016 est.)
Saint Kitts and Nevis (../geos/sc.html)	Anglican, other Protestant, Roman Catholic
Saint Lucia (../geos/st.html)	Roman Catholic 61.5%, Protestant 25.5% (includes Seventh Day Adventist 10.4%, Pentecostal 8.9%,

	Baptist 2.2%, Anglican 1.6%, Church of God 1.5%, other Protestant 0.9%), other Christian 3.4% (includes Evangelical 2.3% and Jehovah's Witness 1.1%), Rastafarian 1.9%, other 0.4%, none 5.9%, unspecified 1.4% (2010 est.)
Saint Martin (../geos/rn.html)	Roman Catholic, Jehovah's Witnesses, Protestant, Hindu
Saint Pierre and Miquelon (../geos/sb.html)	Roman Catholic 99%, other 1%
Saint Vincent and the Grenadines (../geos/vc.html)	Protestant 75% (Anglican 47%, Methodist 28%), Roman Catholic 13%, other (includes Hindu, Seventh-Day Adventist, other Protestant) 12%
Samoa (../geos/ws.html)	Protestant 57.4% (Congregationalist 31.8%, Methodist 13.7%, Assembly of God 8%, Seventh-Day Adventist 3.9%), Roman Catholic 19.4%, Mormon 15.2%, Worship Centre 1.7%, other Christian 5.5%, other 0.7%, none 0.1%, unspecified 0.1 % (2011 est.)
San Marino (../geos/sm.html)	Roman Catholic
Sao Tome and Principe (../geos/tp.html)	Catholic 55.7%, Adventist 4.1%, Assembly of God 3.4%, New Apostolic 2.9%, Mana 2.3%, Universal Kingdom of God 2%, Jehovah's

	Witness 1.2%, other 6.2%, none 21.2%, unspecified 1% (2012 est.)
Saudi Arabia (../geos/sa.html)	Muslim (official; citizens are 85-90% Sunni and 10-15% Shia), other (includes Eastern Orthodox, Protestant, Roman Catholic, Jewish, Hindu, Buddhist, and Sikh) (2012 est.) **note:** despite having a large expatriate community of various faiths (more than 30% of the population), most forms of public religious expression inconsistent with the government-sanctioned interpretation of Sunni Islam are restricted; non-Muslims are not allowed to have Saudi citizenship and non-Muslim places of worship are not permitted (2013)
Senegal (../geos/sg.html)	Muslim 95.4% (most adhere to one of the four main Sufi brotherhoods), Christian 4.2% (mostly Roman Catholic), animist 0.4% (2010-11 est.)
Serbia (../geos/ri.html)	Serbian Orthodox 84.6%, Catholic 5%, Muslim 3.1%, Protestant 1%, atheist 1.1%, other 0.8%, undeclared or unknown 4.5% (2011 est.)
Seychelles (../geos/se.html)	Roman Catholic 76.2%, Protestant 10.6% (Anglican 6.1%, Pentecoastal Assembly 1.5%, Seventh-Day Adventist 1.2%, other Protestant

	1.6), other Christian 2.4%, Hindu 2.4%, Muslim 1.6%, other non-Christian 1.1%, unspecified 4.8%, none 0.9% (2010 est.)
Sierra Leone (../geos/sl.html)	Muslim 60%, Christian 10%, indigenous beliefs 30%
Singapore (../geos/sn.html)	Buddhist 33.9%, Muslim 14.3%, Taoist 11.3%, Catholic 7.1%, Hindu 5.2%, other Christian 11%, other 0.7%, none 16.4% (2010 est.)
Sint Maarten (../geos/sk.html)	Protestant 41.9% (Pentecostal 14.7%, Methodist 10.0%, Seventh Day Adventist 6.6%, Baptist 4.7%, Anglican 3.1%, other Protestant 2.8%), Roman Catholic 33.1%, Hindu 5.2%, Christian 4.1%, Jehovah's Witness 1.7%, Evangelical 1.4%, Muslim/Jewish 1.1%, other 1.3% (includes Buddhist, Sikh, Rastafarian), none 7.9%, no response 2.4% (2011 est.)
Slovakia (../geos/lo.html)	Roman Catholic 62%, Protestant 8.2%, Greek Catholic 3.8%, other or unspecified 12.5%, none 13.4% (2011 est.)
Slovenia (../geos/si.html)	Catholic 57.8%, Muslim 2.4%, Orthodox 2.3%, other Christian 0.9%, unaffiliated 3.5%, other or unspecified 23%, none 10.1% (2002 census)
Solomon Islands (../geos/bp.html)	Protestant 73.4% (Church of Melanesia 31.9%, South Sea Evangelical

	17.1%, Seventh Day Adventist 11.7%, United Church 10.1%, Christian Fellowship Church 2.5%), Roman Catholic 19.6%, other Christian 2.9%, other 4%, none 0.03%, unspecified 0.1% (2009 est.)
Somalia (../geos/so.html)	Sunni Muslim (Islam) (official, according to the Transitional Federal Charter)
South Africa (../geos/sf.html)	Protestant 36.6% (Zionist Christian 11.1%, Pentecostal/ Charismatic 8.2%, Methodist 6.8%, Dutch Reformed 6.7%, Anglican 3.8%), Catholic 7.1%, Muslim 1.5%, other Christian 36%, other 2.3%, unspecified 1.4%, none 15.1% (2001 census)
South Sudan (../geos/od.html)	animist, Christian
Spain (../geos/sp.html)	Roman Catholic 94%, other 6%
Sri Lanka (../geos/ce.html)	Buddhist (official) 70.2%, Hindu 12.6%, Muslim 9.7%, Roman Catholic 6.1%, other Christian 1.3%, other 0.05% (2012 est.)
Sudan (../geos/su.html)	Sunni Muslim, small Christian minority
Suriname (../geos/ns.html)	Hindu 27.4%, Protestant 25.2% (predominantly Moravian), Roman Catholic 22.8%, Muslim 19.6%, indigenous beliefs 5%
Swaziland	Zionist 40% (a blend of Christianity

(../geos/wz.html)	and indigenous ancestral worship), Roman Catholic 20%, Muslim 10%, other 30% (includes Anglican, Baha'i, Methodist, Mormon, Jewish)
Sweden (../geos/sw.html)	Lutheran 87%, other (includes Roman Catholic, Orthodox, Baptist, Muslim, Jewish, and Buddhist) 13%
Switzerland (../geos/sz.html)	Roman Catholic 38.2%, Protestant 26.9%, other Christian 5.6%, Muslim 5%, other 1.6%, none 21.4%, unspecified 1.3% (2013 est.)
Syria (../geos/sy.html)	Muslim 87% (official; includes Sunni 74% and Alawi, Ismaili, and Shia 13%), Christian 10% (includes Orthodox, Uniate, and Nestorian), Druze 3%, Jewish (few remaining in Damascus and Aleppo)
Taiwan (../geos/tw.html)	mixture of Buddhist and Taoist 93%, Christian 4.5%, other 2.5%
Tajikistan (../geos/ti.html)	Sunni Muslim 85%, Shia Muslim 5%, other 10% (2003 est.)
Tanzania (../geos/tz.html)	Christian 61.4%, Muslim 35.2%, folk religion 1.8%, other 0.2%, unaffiliated 1.4% **note:** Zanzibar is almost entirely Muslim (2010 est.)
Thailand (../geos/th.html)	Buddhist (official) 93.6%, Muslim 4.9%, Christian 1.2%, other 0.2%, none 0.1% (2010 est.)
Timor-Leste	Roman Catholic 96.9%, Protestant/

(../geos/tt.html)	Evangelical 2.2%, Muslim 0.3%, other 0.6% (2005)
Togo (../geos/to.html)	Christian 29%, Muslim 20%, indigenous beliefs 51%
Tokelau (../geos/tl.html)	Congregational Christian Church 58.2%, Roman Catholic 36.6%, Presbyterian 1.8%, other Christian 2.8%, Spiritualism and New Age 0.1%, unspecified 0.5% (2011 est.)
Tonga (../geos/tn.html)	Protestant 64.9% (includes Free Wesleyan Church 37.3%, Free Church of Tonga 11.4%, Church of Tonga 7.2%, Tokaikolo Christian Church 2.6%, Assembly of God 2.3%, Seventh Day Adventist 2.2%, Constitutional Church of Tonga 0.9%, Anglican 0.8% and Full Gospel Church 0.2%), Mormon 16.8%, Roman Catholic 15.6%, other 1.1%, none 0.03%, unspecified 1.7% (2006 est.)
Trinidad and Tobago (../geos/td.html)	Protestant 32.1% (Pentecostal/ Evangelical/Full Gospel 12%, Baptist 6.9%, Anglican 5.7%, Seventh-Day Adventist 4.1%, Presbyterian/ Congretational 2.5%, other Protestant 0.9%), Roman Catholic 21.6%, Hindu 18.2%, Muslim 5%, Jehovah's Witness 1.5%, other 8.4%, none 2.2%, unspecified 11.1% (2011 est.)
Tunisia	Muslim (official; Sunni) 99.1%, other

(../geos/ts.html)	(includes Christian, Jewish, Shia Muslim, and Baha'i) 1%
Turkey (../geos/tu.html)	Muslim 99.8% (mostly Sunni), other 0.2% (mostly Christians and Jews)
Turkmenistan (../geos/tx.html)	Muslim 89%, Eastern Orthodox 9%, unknown 2%
Turks and Caicos Islands (../geos/tk.html)	Protestant 72.8% (Baptist 35.8%, Church of God 11.7%, Anglican 10%, Methodist 9.3%, Seventh-Day Adventist 6%), Roman Catholic 11.4%, Jehovah's Witnesses 1.8%, other 14%
Tuvalu (../geos/tv.html)	Protestant 98.4% (Church of Tuvalu (Congregationalist) 97%, Seventh-Day Adventist 1.4%), Baha'i 1%, other 0.6%
Uganda (../geos/ug.html)	Protestant 45.1% (Anglican 32.0%, Pentecostal/Born Again/Evangelical 11.1%, Seventh Day Adventist 1.7%, Baptist .3%), Roman Catholic 39.3%, Muslim 13.7%, other 1.6%, none 0.2% (2014 est.)
Ukraine (../geos/up.html)	Orthodox (includes Ukrainian Autocephalous Orthodox (UAOC), Ukrainian Orthodox—Kyiv Patriarchate (UOC-KP), Ukrainian Orthodox—Moscow Patriarchate (UOC-MP), Ukrainian Greek Catholic, Roman Catholic, Protestant, Muslim, Jewish **note:** Ukraine's population is overwhelmingly Christian; the vast

	majority—up to two-—identify themselves as Orthodox, but many do not specify a particular branch; the UOC-KP and the UOC-MP each represent less than a quarter of the country's population, the Ukrainian Greek Catholic Church accounts for 8-10%, and the UAOC accounts for 1-2%; Muslim and Jewish adherents each compose less than 1% of the total population (2013 est.)
United Arab Emirates (../geos/ae.html)	Muslim (official) 76%, Christian 9%, other (primarily Hindu and Buddhist, less than 5% of the population consists of Parsi, Baha'i, Druze, Sikh, Ahmadi, Ismaili, Dawoodi Bohra Muslim, and Jewish) 15% **note:** represents the total population; about 85% of the population consists of noncitizens (2005 est.)
United Kingdom (../geos/uk.html)	Christian (includes Anglican, Roman Catholic, Presbyterian, Methodist) 59.5%, Muslim 4.4%, Hindu 1.3%, other 2%, unspecified 7.2%, none 25.7% (2011 est.)
United States (../geos/us.html)	Protestant 46.5%, Roman Catholic 20.8%, Mormon 1.6%, Jehovah's Witness 0.8%, other Christian 0.9%, Jewish 1.9%, Muslim 0.9%, Buddhist 0.7%, Hindu 0.7%, other 1.8%, unaffiliated 22.8%, don't know/refused

	0.6% (2014 est.)
Uruguay (../geos/uy.html)	Roman Catholic 47.1%, non-Catholic Christians 11.1%, nondenominational 23.2%, Jewish 0.3%, atheist or agnostic 17.2%, other 1.1% (2006)
Uzbekistan (../geos/uz.html)	Muslim 88% (mostly Sunni), Eastern Orthodox 9%, other 3%
Vanuatu (../geos/nh.html)	Protestant 70% (includes Presbyterian 27.9%, Anglican 15.1%, Seventh Day Adventist 12.5%, Assemblies of God 4.7%, Church of Christ 4.5%, Neil Thomas Ministry 3.1%, and Apostolic 2.2%), Roman Catholic 12.4%, customary beliefs 3.7% (including Jon Frum cargo cult), other 12.6%, none 1.1%, unspecified 0.2% (2009 est.)
Venezuela (../geos/ve.html)	nominally Roman Catholic 96%, Protestant 2%, other 2%
Vietnam (../geos/vm.html)	Buddhist 7.9%, Catholic 6.6%, Hoa Hao 1.7%, Cao Dai 0.9%, Protestant 0.9%, Muslim 0.1%, none 81.8% (2009 est.)
Virgin Islands (../geos/vq.html)	Protestant 59% (Baptist 42%, Episcopalian 17%), Roman Catholic 34%, other 7%
Wallis and Futuna (../geos/wf.html)	Roman Catholic 99%, other 1%
West Bank (../geos/we.html)	Muslim 80-85% (predominantly Sunni), Jewish 12-14%, Christian 1-2.5% (mainly Greek Orthodox),

	other, unaffiliated, unspecified <1% **note:** the proportion of Christians continues to fall mainly as a result of the growth of the Muslim population but also because of migration and the declining birth rate of the Christian population (2012 est.)
Western Sahara (../geos/wi.html)	Muslim
World (../geos/xx.html)	Christian 31.4%, Muslim 23.2%, Hindu 15%, Buddhist 7.1%, folk religions 5.9%, Jewish 0.2%, other 0.8%, unaffiliated 16.4% (2010 est.)
Yemen (../geos/ym.html)	Muslim 99.1% (official; virtually all are citizens, an estimated 65% are Sunni and 35% are Shia), other 0.9% (includes Jewish, Baha'i, Hindu, and Christian; many are refugees or temporary foreign residents) (2010 est.)
Zambia (../geos/za.html)	Protestant 75.3%, Roman Catholic 20.2%, other 2.7% (includes Muslim Buddhist, Hindu, and Baha'i), none 1.8% (2010 est.)
Zimbabwe (../geos/zi.html)	Protestant 75.9% (includes Apostolic 38%, Pentecostal 21.1%, other 16.8%), Roman Catholic 8.4%, other Christian 8.4%, other 1.2% (includes traditional, Muslim), none 6.1% (2011 est.)

Exhibit S

CBN NEWS
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Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority As Refugees

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thebrodyfile

Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority As Refugees

01-27-2017
David Brody

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In an exclusive interview with The Brody File, President Donald Trump says persecuted Christians will be given priority when it comes to applying for refugee status in the United States. "We are going to help them," President Trump tells CBN News. "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."

The Brody File conducted the interview Friday morning in the Blue Room at The White House. More newsworthy clips are coming soon. The entire interview can be seen this Sunday at 11pm on Freeform (cable TV, formerly ABC Family Channel) during our special CBN News show. This is just the third interview President Trump has done from The White House and it will be the only interview that will air in its' entirety this weekend.

MANDATORY VIDEO AND COURTESY: CBN NEWS/ THE BRODY FILE

DAVID BRODY: *"Persecuted Christians, we've talked about this, the refugees overseas. The refugee program, or the refugee changes you're looking to make. As it relates to persecuted Christians, do you see them as kind of a priority here?"*

PRESIDENT TRUMP: *"Yes."*

DAVID BRODY: *"You do?"*

PRESIDENT TRUMP: *"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. So we are going to help them."*

While you are here. . .

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partner so we know we can count on the resources we need to bring you the best news possible?

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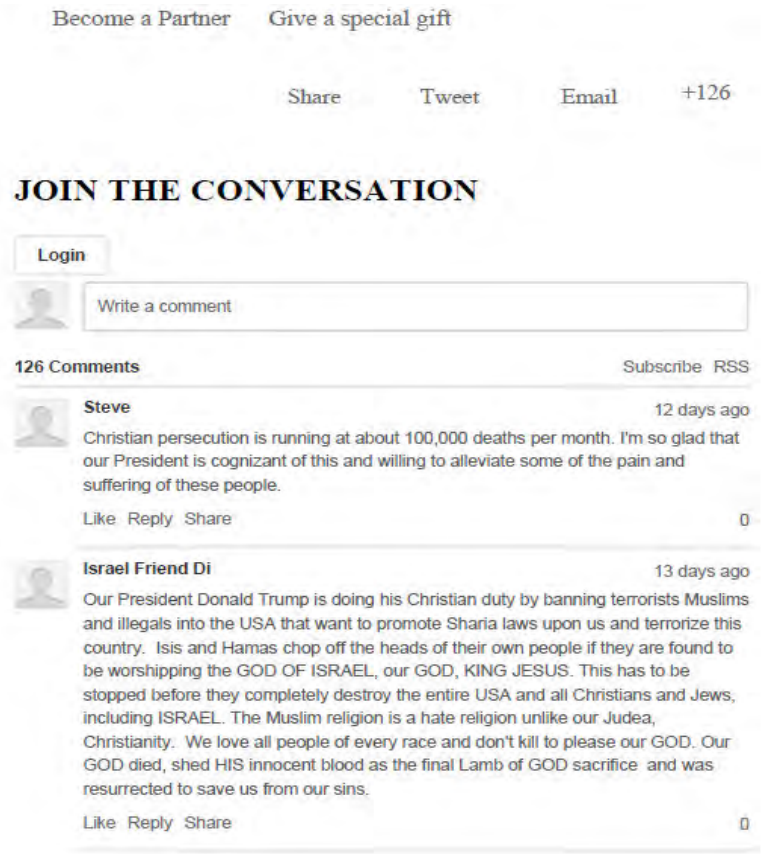

Exhibit T

The Washington Post

Acts of Faith

Trumps signs order limiting refugee entry, says he will prioritize Christian refugees

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By Sarah Pulliam Bailey January 27

President Trump signed an executive order Friday instituting "extreme vetting" of refugees, aimed at keeping out "radical Islamic terrorists."

"I'm establishing a new vetting measure to keep radical Islamic terrorists out of the United States of America," Trump said during his signing of the order. "We don't want them here. We want to make sure we are not admitting into our country the very threats our soldiers are fighting overseas."

According to drafts of the executive action, the order bars people from the Muslim-majority countries of Iraq, Syria, Iran, Sudan, Libya, Somalia or Yemen from entering the United States for 30 days and suspends the U.S. Refugee Admissions Program for 120 days. The program will be reinstated "only for nationals of countries for whom" members are vetted by Trump's administration.

In an interview Friday with the Christian Broadcast Network, Trump said he plans to help persecuted Christians.

"Do you know if you were a Christian in Syria it was impossible, at least very tough, to get into the United States?" Trump said. "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."

In a statement, the American Civil Liberties Union declared Trump's action "just a euphemism for discrimination against Muslims."

From both legal and historical perspectives, the plan to ban refugees from specific countries is within the powers granted to the president under current law and historical precedent, according to Charles Haynes, vice president of the Newseum Institute's Religious Freedom Center. However, whether the president can limit the ban to one religious group is another question.

Many Muslims, especially Shiites, are among the religious minorities under attack, Haynes said. This "raises moral and humanitarian concerns about excluding them from entrance to the U.S. while permitting people of other faiths," he said. "Whether this policy rises to the level of a constitutional violation is uncertain and will be debated by constitutional scholars in the coming weeks."

Issues related to the Constitution and religion are usually associated with matters of sex, such as contraceptives and LGBT discrimination, but some observers said they expect Trump's actions on immigration to raise new challenges for religious freedom, according to Chelsea Langston Bombino of the Institutional Religious Freedom Alliance at the Center for Public Justice. Several organizations, she noted, are speaking

out against orders that "will hurt the very people that their organizations were established, out of a religious calling, to serve," she said.

Trump's actions have been decried by several religious groups this week. "The expected cutbacks to U.S. refugee programs and funding will compromise our ability to do this work and the infrastructure needed to serve refugees in the years to come," evangelical ministry World Relief said in a statement.

And in a strongly worded statement, Rabbi Jack Moline, the Interfaith Alliance president, noted that this decision was announced on International Holocaust Remembrance Day.

"For decades, the United States has prided itself as a safe bastion for refugees around the globe escaping war and persecution," he said. "President Trump is poised to trample upon that great legacy with a de facto Muslim ban."

The Council on American-Islamic Relations will on Monday announce a federal lawsuit on behalf of more than 20 people challenging the constitutionality of the executive order.

"There is no evidence that refugees—the most thoroughly vetted of all people entering our nation—are a threat to national security," said CAIR national litiga-

tion director Lena F. Masri. "This is an order that is based on bigotry, not reality."

This post has been updated

Sarah Pulliam Bailey is a religion reporter, covering how faith intersects with politics, culture and...everything. Follow @spulliam

Exhibit U (Omitted)

Exhibit V


Donald J. Trump
@realDonaldTrump
Follow
Just put out a very important policy statement on the extraordinary influx of hatred & danger coming into our country. We must be vigilant!
RETWEETS
2,460
LIKES
5,679
https://twitter.com/realDonaldTrump
1:47 PM - 7 Dec 2015
2.0K
2.5K
5.7K

Exhibit W

12/7/15 WashingtonPost.com (Pg. Unavail. Online)
2015 WLNR 36216212

WashingtonPost.com

December 7, 2015

Section: post-politics

Trump calls for 'total and complete shutdown of Muslims entering the United States'

"We have no choice. We have no choice," Trump said Monday. "We have no choice."

Jenna Johnson

Updated at 7:43 p.m.

Donald Trump called Monday for a "total and complete shutdown" of the entry of Muslims to the United States "until our country's representatives can figure out what is going on."

In a statement released by his campaign Monday afternoon, Trump included recent poll findings that he says show that a sizable segment of the Muslim population has "great hatred towards Americans."

"Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension," Trump is quoted as saying in the statement. "Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by

people that believe only in Jihad, and have no sense of reason or respect for human life."

At a rally in Mount Pleasant, South Carolina on Monday evening, Trump pointed to the statement he released earlier in the day.

"Should I read you the statement?" he asked.

The crowd enthusiastically agreed that he should.

"Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what the hell is going on," he said, adding the word "hell" for emphasis this time.

Supporters erupted in applause.

"We have no choice. We have no choice," Trump said. "We have no choice."

Earlier in the rally, which was interrupted by protests, Trump said, "I have friends that are Muslims. They are great people—but they know we have a problem."

Trump campaign manager Corey Lewandowski told the Associated Press that the ban would apply to "everybody," including both immigrants and tourists. Soon after the statement was released, Trump tweeted that he had "just put out a very important policy statement on the extraordinary influx of hatred and danger coming into our country." He added in the tweet: "We must be vigilant!"

In an interview on Fox News Channel shortly ahead of his campaign rally, Trump was asked whether his pol-

icy would apply to Muslim military personnel stationed overseas who want to come home.

"They will come home. We have to be vigilant," he responded. "We have to take care of the Muslims that are living here. But we have to be vigilant."

He later added: "Anybody here stays, but we have to be very vigilant. . . This does not apply to people living in the country except that we have to be vigilant."

In the past month, particularly following the recent mass shooting in Southern California that is believed to have been inspired by the Islamic State terrorist group, Trump has called for greater scrutiny of Muslims—including Muslim Americans who are legal residents of the country. He has said he would support heavy surveillance of mosques, bar Syrian refugees of all religions from entering the country and would consider establishing a database to track all Muslims in the country. But Trump's statement on Monday was his most controversial proposal yet.

Trump typically announces major positions like this in media interviews or at rallies, rarely issuing formal statements. The statement immediately sparked rounds of questions about how such a policy would work, along with strong criticism.

"Oh, my goodness," said Ibrahim Hooper, national communications director at the Council on American-Islamic Relations. "One has to wonder what Donald Trump will say next as he ramps up his anti-Muslim bigotry. Where is there left for him to go? Are we talking internment camps? Are we talking the final

solution to the Muslim question? I feel like I'm back in the 1930s."

What worried Hooper, he said, was the premeditated nature of Trump's statement.

"He feels perfectly okay saying this," said Hooper. "It's not an open mic moment, where he has to walk something back. This was a statement from his campaign. They had to believe that this would be well received by his supporters. We've always had anti-Muslim bigots, but they've always been at the fringes of society. Now they want to lead it. In saner times, his campaign would be over. In insane times, his campaign can gain support. And that's why he put it out."

David Weigel and Sean Sullivan contributed to this report.

—— Index References ——

News Subject: (Civil Rights Law (1CI34); Intellectual Freedoms & Civil Liberties (1IN08); International Terrorism (1IN37); Legal (1LE33); Minority & Ethnic Groups (1MI43); Race Relations (1RA49); Social Issues (1SO05); Top World News (1WO62))

Industry: (Celebrities (1CE65); Entertainment (1EN08))

Region: (Americas (1AM92); North America (1NO39))

Language: EN

Other Indexing: (Donald Trump; Ibrahim Hooper; David Weigel; Sean Sullivan; Donald Trump; Corey Lewandowski)

Word Count: 719

End of Document

Exhibit X

MEET THE PRESS JUL 24 2016, 11:47 AM ET

Meet the Press—July 24, 2016

Meet the Press—July 24, 2016

CHUCK TODD:

This Sunday, the Democratic National Convention gets underway here in Philadelphia, after a raucous and unpredictable Republican convention. That ended with the nomination of Donald Trump.

DONALD TRUMP:

I am with you, I will fight for you, and I will win for you.

CHUCK TODD:

This morning, my sit-down with Donald Trump on his convention speech.

DONALD TRUMP:

The only negative reviews were a little dark.

CHUCK TODD:

On whether he's backing off on his Muslim band.

DONALD TRUMP:

I actually don't think it's a pull-back. In fact, you could say it's an expansion.

CHUCK TODD:

And on Hillary Clinton's choice of Tim Kaine.

DONALD TRUMP:

Tim Kaine was a slap in the face to Bernie Sanders.

CHUCK TODD:

Plus Hillary Clinton and Tim Kaine hit the road in Florida.

HILLARY CLINTON:

Tim Kaine is everything Donald Trump and Mike Pence are not.

CHUCK TODD:

But some Bernie Sanders supporters are criticizing the Kaine pick as a sellout to moderates. I'll talk to Sanders and get his reaction to that and to the DNC Wikileaks e-mail release. Joining me for insight and analysis are MSNBC's Rachel Maddow, former chairman of the RNC, Michael Steele, NBC News Chief Foreign Affairs Correspondent, Andrea Mitchell, and host of Hardball and Philadelphia hometown boy, Chris Matthews. Trump, Sanders and reactions to the new Democratic ticket. Welcome to Sunday, in a special edition of Meet the Press at the Democratic National Convention.

CHUCK TODD:

Good Sunday morning. We are at the Wells Fargo Center here in South Philadelphia, home of the NBA 76ers and the NHL Broad Street Bullies, the Fliers. Democrats have begun to arrive, along with a pretty bad heat wave. And beginning tomorrow, they will gather to officially nominate Hillary Clinton as their presidential candidate.

Yesterday in Miami, Clinton was joined by her new running mate, Senator Tim Kaine of Virginia, in an upbeat event that was notable simply by the contrast to the disorganized rollout of Donald Trump's running mate a week earlier, Mike Pence.

(BEGIN TAPE)

SEN. TIM KAINE:

Hillary Clinton, she doesn't insult people, she listens to them. What a novel concept, right? She doesn't trash our allies, she respects them. And she'll always have our backs, that is something I am rock solid sure of.

(END TAPE)

CHUCK TODD:

We will get to reaction to the new Democratic ticket later in the show, including my interview with Senator Bernie Sanders of Vermont in a moment. But first, we're going to talk also about Sanders, about those Wikileaks emails and what they may say about DNC favoritism towards Hillary Clinton. But we begin with the man who has now taken control of the Republican Party. It's nominee Donald Trump.

I traveled to Trump National Golf Club in Bedminster, New Jersey, sort of his weekend getaway, last night for a face-to-face interview since dropping the word "presumptive," it's his first one, from the nominee title. We touched on so much: Tim Kaine, Trump's tax returns, his proposed restrictions on Muslim immigration and why he says he alone can fix the country's problems. But I began by asking him how it feels to

be the Republican nominee for president of the United States.

(BEGIN TAPE)

DONALD TRUMP:

Well, it really feels great. And we really have a very unified party, other than a very small group of people that, frankly, lost. And we have a very unified party. You saw that the other night with the love in the room, and the enthusiasm in the room. The enthusiasm, there are people that say they have never seen anything like what was going on in that room, especially Thursday night.

CHUCK TODD:

Let me tell you, you bring up Thursday night, I've got to ask you about your entrance. Before we get serious here. That Monday night entrance was something else. I know you've gotten a lot of feedback on it. How'd you come up with it?

DONALD TRUMP:

I think I'm a little bit lucky, and a couple of people had that idea and I went along with the idea. And everything just worked right. And it was so good that they wanted to do it on Thursday night. I said, "Never in a million years, because you'll never get it that way again."

CHUCK TODD:

I don't think I've seen that even on WWE.

DONALD TRUMP:

Yeah, I know. Well, Vince is a good friend of mine. He called me, he said, "That was a very, very good entrance." But I didn't want to do it a second time, because, you know, it never works out the second time.

CHUCK TODD:

All right, let's go into the speech. I want to put some meat on the bones. But first, let's talk about, you've seen some of the positive reviews, some of the negative reviews. Some of the negative has been that it was a little dark—

DONALD TRUMP:

That's the only thing that—

CHUCK TODD:

—that there wasn't enough optimism in it. What would you say? It's not Morning in America.

DONALD TRUMP:

Yeah.

CHUCK TODD:

What would you say to that?

DONALD TRUMP:

Well, I think the only negativity, and, you know, the hate, I call them the haters, and that's fine. But the only negative reviews were, "A little dark." And the following day, they had another attack, and then today you see what happened in Afghanistan with many, many people killed.

They have no idea how many, so many killed. Yesterday it was Munich. And you know, I know they're saying, "Maybe it wasn't terrorism. Maybe it was just a crazy guy." But in the meantime he's screaming, "Allahu Akbar," as he's shooting people, so, you know, we'll see how that turns out. And all of a sudden people are saying, "Maybe it wasn't dark at all." But the only thing that some people said, "It was a little dark. It was a little bit tough."

CHUCK TODD:

Do you think it was a little dark?

DONALD TRUMP:

No, oh, I thought it was very optimistic. To me, it was an optimistic speech, because—

CHUCK TODD:

What makes it optimistic in your view?

DONALD TRUMP:

Because we're going to stop the problems. We're going to stop the problems. In other words, sure, I talk about the problems, but we're going to solve the problems.

CHUCK TODD:

One of the phrases you used, "I alone can fix it." And to some people, that sounded almost too strong-mannish for them. Do you understand that criticism and what do you make of it?

DONALD TRUMP:

I'll tell you, part of it was I'm comparing myself to Hillary. And we know Hillary, and we look at her record. Her record has been a disaster. And I am running against Hillary. It's not like I'm running against the rest of the world. I know people that are very, very capable that could do a very good job, but they could never get elected.

I can tell you right now. I can give you ten names of people that would do an extraordinary job, but there's no way they could ever get elected. They wouldn't know where to begin. It wouldn't be for them. But for governing, they would be good. I'm running and, you know, against one person.

CHUCK TODD:

You said there would be consequences for any company that tried to move a factory out. What—

DONALD TRUMP:

Absolutely, so simple—

CHUCK TODD:

—what is the consequence? Let's start with, you bring up Carrier a lot.

DONALD TRUMP:

It's so simple—

(OVERTALK)

CHUCK TODD:

Right, I understand that. But explain the consequences—

DONALD TRUMP:

Okay, here's the consequence—

CHUCK TODD:

What would it be?

DONALD TRUMP:

So Carrier comes in, they announce they're moving to Mexico, they fire all their people in Indiana, and they say, "Hi, well, here we are in Mexico, you know, enjoy your plant, enjoy the rest of your life," and you hire people from Mexico, okay? Now they make their product and they put it into the United States.

Well, we will have a very strong border, by the way, but they put it into the United States and we don't charge them tax. There will be a tax to be paid. If they're going to fire all their people, move their plant to Mexico, build air conditioners, and think they're going to sell those air conditioners to the United States, there's going to be a tax.

CHUCK TODD:

What kind of tax are you thinking?

DONALD TRUMP:

It could be 25 percent. It could be 35 percent. It could be 15 percent. I haven't determined. And it could be different for different companies. We have been working on trying to stop this government, because we don't know what we're doing. And not only Obama, they've been trying to stop this from before Obama. But they don't know. You know, they've

done, they've tried lower interest loans, they've tried zero interest loans, these guys—

CHUCK TODD:

Well, some of these things aren't going to get through the World Trade Organization. There's—

DONALD TRUMP:

It doesn't matter. Then we're going to renegotiate or we're going to pull out. These trade deals are a disaster, Chuck. World Trade Organization is a disaster.

CHUCK TODD:

You know the concern on some of this—

DONALD TRUMP:

NAFTA is a disaster—

CHUCK TODD:

—is that it would rattle the world economy. Look what Brexit did to the world economy. Investors got rattled.

DONALD TRUMP:

What did it do? What did it do?

CHUCK TODD:

Now you—

DONALD TRUMP:

The stock market's higher now than it was when it happened. And by the way, I'm the only one of all of these people at the higher level of the wonderful world of politics, I'm the only one that said, "Brexit's going to

happen." Remember, I was asked the question. I said, "Yeah, I think they're going to approve it. I think they want independence. I don't think they want people pouring into their country." And

I was—

CHUCK TODD:

You're not worried about, you think a fractured Europe is good for America?

DONALD TRUMP:

No, no. But we're spending a lot of money on Europe. Don't forget, Europe got together, why, primarily did they get together? So that they could beat the United States when it comes to making money, in other words, foreign trade—

CHUCK TODD:

Economic—

DONALD TRUMP:

Okay? And now we talk about Europe like it's so wonderful. Hey, I love Europe, I have property in Europe. I'm just saying, the reason that it got together was like a consortium so that it could compete with the United States—

CHUCK TODD:

So what you're saying is all this stuff is good for America, even if it's not good for Europe?

DONALD TRUMP:

Look, you take a look at Airbus. They make more planes now than Boeing, okay? They got together, all of these countries got together so that they could beat the United States. Okay, so we're in competition. So you know, we're in competition in one way, we're helping them in another way. It is so messed up.

CHUCK TODD:

The Muslim ban. I think you've pulled back from it, but you tell me.

(BEGIN TAPE)

DONALD TRUMP:

We must immediately suspend immigration from any nation that has been compromised by terrorism until such time as proven vetting mechanisms have been put in place.

(END TAPE)

CHUCK TODD:

This feels like a slight rollback—

DONALD TRUMP:

I don't think that's—

CHUCK TODD:

Should it be interpreted—

DONALD TRUMP:

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

the 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.

But just remember this: Our Constitution is great. But it doesn't necessarily give us the right to commit suicide, okay? Now, we have a religious, you know, everybody wants to be protected. And that's great. And that's the wonderful part of our Constitution. I view it differently.

Why are we committing suicide? Why are we doing that? But you know what? I live with our Constitution. I love our Constitution. I cherish our Constitution. We're making it territorial. We have nations and we'll come out, I'm going to be coming out over the next few weeks with a number of the places. And it's very complex—

CHUCK TODD:

Well I was just going to say—

DONALD TRUMP:

—we have problems in Germany and we have problems with France—

CHUCK TODD:

I was just going to ask that. Will this limit—

DONALD TRUMP:

You know, so it's not just the countries with—

CHUCK TODD:

—would this limit immigration from France?

DONALD TRUMP:

What we're going to have is a thing called—

CHUCK TODD:

They've been compromised by terrorism.

DONALD TRUMP:

They have totally been. And you know why? It's their own fault. Because they allowed people to come into their territory—

CHUCK TODD:

So you would toughen up. You're basically saying, "Hey, if the French want to come over here, you've got to go through an extra check."

DONALD TRUMP:

It's their own fault, because they've allowed people over years to come into their territory. And that's why Brexit happened, okay? Because the U.K. is saying, "We're tired of this stuff, what's going on, we're tired of." But listen to this—

CHUCK TODD:

You could get to the point where you're not allowing a lot of people to come into this country from a lot of places.

DONALD TRUMP:

Maybe we get to that point. Chuck, look what's happening. Look at what just took place in Afghanistan, where they blow up a whole shopping center with people, they have no idea how many people were even

killed. Happened today. So we have to be smart and we have to be vigilant and we have to be strong. We can't be the stupid people—

CHUCK TODD:

So France, Germany, Spain—

DONALD TRUMP:

Here's my plan—

CHUCK TODD:

—places that have been compromised?

DONALD TRUMP:

—here is what I want: Extreme vetting. Tough word. Extreme vetting.

CHUCK TODD:

What does that look like?

DONALD TRUMP:

Tough. We're going to have tough standards. And if a person can't prove—

CHUCK TODD:

Give me one.

DONALD TRUMP:

—that they're from an area, and if a person can't prove what they have to be able to prove, they're not coming into this country. And I would stop the Syrian migration and the Syrian from coming into this country in two seconds. Hillary Clinton wants to take 550 percent more people coming in from that area than Barack

Obama. I think she's crazy. I think she's crazy. We have no idea who these people are for the most part, and you know, because I've seen them on different shows—

CHUCK TODD:

All right.

DONALD TRUMP:

—but more importantly, I've read about it. I study it. There is no way that you can vet some of these people. There is no way. Law enforcement officials, I've had them in my office. I've talked to them.

CHUCK TODD:

You realize some of these folks have nowhere to go? They're truly victims of this civil war, what do you do with them?

DONALD TRUMP:

We will help them and we will build safe havens over in Syria, and we will get Gulf States—

CHUCK TODD:

We, the United States are going to build these safe havens?

DONALD TRUMP:

We, the United States, we'll get Gulf States to pay for it, because we right now, we're going to have $21 trillion very soon, trillion, in debt. We will do safe havens and safe zones in Syria and we will get nations that are so wealthy that are not doing anything. They're not doing much. They have nothing but money. And you

know who I'm talking about, the Gulf States. And we will get them to pay for it. We would lead it. I don't want to pay because our country is going down the tubes. We owe too much money.

CHUCK TODD:

All right. Let me move to something with NATO. Mitch McConnell said this about your NATO remarks in the New York Times. He said it was a rookie mistake, and that once you, let me finish the comment here. "It's a rookie mistake, and it proves that Trump needs people like us around to help steer him in the right direction on some basic things."

DONALD TRUMP:

He's 100 percent wrong. Okay? He's 100 percent wrong if he said that. I didn't hear he said that—

CHUCK TODD:

He did say it.

DONALD TRUMP:

Okay, fine, fine—

CHUCK TODD:

New York Times—

DONALD TRUMP:

If he said that, he's 100 percent wrong. And frankly it's sad. We have NATO, and we have many countries that aren't paying for what they're supposed to be paying, which is already too little, but they're not paying anyway. And we're giving them a free ride or giving them a ride where they owe us tremendous

amounts of money. And they have the money. But they're not paying it. You know why?

Because they think we're stupid—

CHUCK TODD:

So Estonia is paying, and if they get invaded by Russia, you're there?

DONALD TRUMP:

I feel differently. I feel very differently—

CHUCK TODD:

But if a country's not doing—Britain hasn't done the two percent.

DONALD TRUMP:

We have countries that aren't paying. Now, this goes beyond NATO, because we take care of—we take care of Japan, we take care of Germany, we take care of South Korea, we take care of Saudi Arabia, and we lose on everything. We lose on everything. If Mitch McConnell says that, then he's wrong.

So all I'm saying is they have to pay. Now, a country gets invaded, they haven't paid, everyone says, "Oh, but we have a treaty." Well, they have a treaty too. They're supposed to be paying. We have countries within NATO that are taking advantage of us. With me, I believe they're going to pay. And when they pay, I'm a big believer in NATO.

But if they don't pay, we don't have, you know, Chuck, this isn't 40 years ago. This isn't 50 years ago. It's not 30 years ago. We're a different country today.

We're much weaker, our military is depleted, we owe tremendous amounts of money. We have to be reimbursed. We can no longer be the stupid country.

(END TAPE)

CHUCK TODD:

When we come back, what Donald Trump says about David Duke, Bernie Sanders, and whether he really plans to spend millions for the sole purpose of defeating Ted Cruz and John Kasich. Sanders about Trump and about his reaction to Tim Kaine becoming Hillary Clinton's running mate. We're in Philadelphia, site of the Democratic National Convention. Stay with us.

COMMERCIAL BREAK

CHUCK TODD:

Such a beautiful city here. Welcome back. More now of my interview with Donald Trump at The Trump National Golf Club in Bedminster, New Jersey. And since we had a limited amount of time, I ended up speeding things up by asking Trump for some quick reaction to simply some very prominent names in the news.

(BEGIN TAPE)

CHUCK TODD:

I'm just going to literally throw out a name and you'll know the question I'm asking. Bernie Sanders.

DONALD TRUMP:

Great respect for what he's done. He is being taken advantage of, and frankly, the system was rigged, and

I'm the first one to say it was rigged against him. And by the way—

CHUCK TODD:

You took after him. You took after him. You said for supporting Hillary Clinton, you think he needs to—

DONALD TRUMP:

Well, I'm not a fan of Bernie Sanders. But I am a fan of one thing that he talks about: Trade. He is the only one on that side that understands trade. Now, he can't do anything about it because that's not his thing. But he has been gamed. He has been, it's a rigged system against him. And what happened with the choice of Tim Kaine was a slap in the face to Bernie Sanders and everybody. I was shocked. I love it from my standpoint, I love—

CHUCK TODD:

Why do you love the Kaine pick?

DONALD TRUMP:

Well, first of all, he took over $160,000 of gifts. And they said, "Well, they weren't really gifts, they were suits and trips and lots of different things," all for 160—

CHUCK TODD:

Legal, legal in the state of Virginia.

DONALD TRUMP:

Bob McDonnell—I believe it was Bob McDonnell, in the meantime, he had to go to the United States Supreme Court to get out of going to jail—

CHUCK TODD:

Well, they proved to quid pro quo—

DONALD TRUMP:

—for taking a fraction of what—

CHUCK TODD:

They proved quid pro quo on that one.

DONALD TRUMP:

Excuse me, Bob McDonnell took a fraction of what Kaine took. And I think, to me, it's a big problem. Now, how do you take all these gifts? Hundreds of thousands of dollars. The other thing about him, he's bought and owned by the banks. And the third thing, he's in favor of TPP and every other trade deal that he's ever looked at. And that means he wants people not to work.

Now, he's going to change his tune. And I understand he's now going to say, "I'm against TPP." Hillary Clinton was totally in favor of TPP, which is the job killer, right? So was he. When she watched me on your show and other shows, all of a sudden she changed, because she knows she can't win that in a debate.

CHUCK TODD:

All right. Ted Cruz, I'm going to amend it, are you really going to fund a super PAC to help defeat him—

DONALD TRUMP:

Well, it's not the number one thing on my mind. Look, what's on my mind is beating Hillary Clinton. What's

on my mind is winning for the Republican Party. With that being said, yeah, I'll probably do a super PAC, you know, when they run against Kasich, for $10 million to $20 million, against Ted Cruz. And maybe one other person that I'm thinking about—

CHUCK TODD:

Who's that other one person?

DONALD TRUMP:

—but I won't tell you that. I mean, he's actually such a small person, I hate to give him the publicity. But yes, I will probably do that at the appropriate at time. But I'm not going to do that until—

CHUCK TODD:

Oh, give me the small person here.

DONALD TRUMP:

No, no, don't worry about it. We'll give it to you another time.

CHUCK TODD:

All right, let me ask you about this one. David Duke announced his Senate candidacy claiming your agenda for his own, or essentially saying, "Glad that you spoke out."

DONALD TRUMP:

Are you ready, before you ask the question?

CHUCK TODD:

Newt Gingrich said, "Every Republican should repudiate this guy no matter what it takes"—

DONALD TRUMP:

I did. And I do. Are you ready? I want—

CHUCK TODD:

Would you support a Democrat over David Duke if that was what was necessary to defeat him?

DONALD TRUMP:

I guess, depending on who the Democrat, but the answer would be yes. Look, the answer is, as quick as you can say it. In fact, I went to answer you before you—

DONALD TRUMP:

Because last time with another person in your position, I did it very quickly. And they said, "He didn't do it fast enough." Rebuked. Is that okay? Rebuked, done—

CHUCK TODD:

Rebuked, done. Okay. Tax returns. A lot of conspiracy theories are being out there about why—what's in your tax returns. You would get rid of all these conspiracy theories tomorrow—

DONALD TRUMP:

Let me tell you—

CHUCK TODD:

Probably make people look silly—

DONALD TRUMP:

Let me tell you. Let me give you a little lesson on tax returns. First of all, you don't learn very much from a

tax return. I put in to the federal elections group 100 and some-odd pages of my financials. It showed, as you know, that I'm much wealthier than anybody even understood, okay? Tremendous cash, tremendous assets, tremendous all that stuff. Okay, that's it. I'm going through a routine audit. Just a routine audit, and I've had it for I think 14 years, 13 years—

CHUCK TODD:

Why?

DONALD TRUMP:

Every year they audit me. It's routine government. I would never give my tax returns until the audit's finished. But remember this: Mitt Romney, four years ago, was under tremendous pressure to give his tax returns. And he held it and held it and held it, and he fought it, and he, you know, he didn't do too well, okay? But he didn't do anything wrong on his taxes. When he gave his tax returns, people forget, not now. He gave them in September, before the election—

CHUCK TODD:

So you still might release them—

DONALD TRUMP:

No, wait a minute, wait a minute. When he did, and his tax returns are a tiny peanut compared to mine, they went through his tax returns. And they found one little sentence, another little—there was nothing wrong. And they made him look bad. In fact I think he lost his election because of that.

CHUCK TODD:

Because of the tax returns?

DONALD TRUMP:

I think he lost. And I'll tell you why: He didn't do anything wrong. Mitt Romney did nothing wrong. But they would take out of, his weren't too big. Have you ever seen mine with the picture, they're like this high?

CHUCK TODD:

I have seen that picture, yes.

DONALD TRUMP:

Okay, so they took his tax return and they found a couple of little things. Nothing wrong, just standard. And they made him look very bad, very unfair. But with all that said, I'd love to give them, but I'm under audit. When the audit's finished I'll give them.

CHUCK TODD:

Finally, Roger Ailes. Is he helping you? Is he advising you?

DONALD TRUMP:

Well, I don't want to comment. But he's been a friend of mine for a long time, and I can tell you that some of the women that are complaining, I know how much he's helped them. And even recently, and when they write books that are fairly recently released, and they say wonderful things about him.

And now all of a sudden they're saying these horrible things about him. It's very sad. Because he's a very

good person. I've always found him to be just a very, very good person. And by the way, a very, very talented person. Look what he's done. So I feel very badly. But a lot of people are thinking he's going to run my campaign.

CHUCK TODD:

Yeah, well—

DONALD TRUMP:

My campaign's doing pretty well.

CHUCK TODD:

Mr. Trump, until we meet again.

DONALD TRUMP:

Thank you very much—

CHUCK TODD:

Thank you for your time, sir, appreciate it.

(END TAPE)

CHUCK TODD:

Up next, the man who had hoped to be the candidate being nominated by Democrats right here in Philadelphia this week, Senator Bernie Sanders of Vermont. What does he think of those leaked DNC e-mails? We'll get his first comments since it happened. We're going to be right back in just a minute.

COMMERCIAL BREAK

(BEGIN TAPE)

CHUCK TODD:

Tremendous shots there of a beautiful city. Welcome back. It's not the kind of thing you want happening days before your convention. This weekend, Wikileaks released nearly 20,000 emails sent and received by members of the Democratic National Committee, some of which seem to confirm what a lot of people had suspected, that the DNC was playing favorites with Hillary Clinton over Bernie Sanders.

It appears Wikileaks either stole these emails or got them from a source. Remember, the DNC was hacked a few months ago. Among the emails was one from the DNC's Chief Financial Officer Brad Marshall that was looking ahead to the contests in Kentucky and West Virginia in early May. While not mentioning Sanders specifically by name, the email appeared to question Sanders' faith.

He wrote this, quote: "Does he believe in a god? I think I read he is an atheist. This could make several points difference with my peeps. My Southern Baptist peeps would draw a big difference between a Jew and an atheist." Well, Sanders has long believed that DNC Chair Debbie Wasserman Schultz was in Clinton's corner the whole campaign. Well, he joins me now. Senator Sanders, welcome back to Meet the Press.

And I should note that you talked about your belief in God last fall in an interview, I think, with your hometown paper there, so want to get that out of the way. So let me start with this question questioning your faith. Brad Marshall apologized on Facebook. Has

anyone apologized to you personally? And what is your response to this entire discussion?

BERNIE SANDERS:

Well, no, nobody has apologized to me. And as you just mentioned, this really does not come as a shock to me or my supporters. There is no question but the DNC was on Secretary Clinton's side from day one. We all know that. And I think, as I have said a long time ago, that the time is now for Debbie Wasserman Schultz to step aside, not only for these issues.

We need a Democratic Party that is open, that's going to bring young people and working people into it, that is going to stand up and take on the big money interests and fight for working families. I don't think Debbie has been that type of leader. So I would hope, and I said this many months ago, that she would—

CHUCK TODD:

Right.

BERNIE SANDERS:

—step aside, we would have new leadership.

CHUCK TODD:

And do you think it needs to happen now, today, before the start of the convention?

BERNIE SANDERS:

Well—

CHUCK TODD:

Would that help calm some of your supporters down?

BERNIE SANDERS:

Well, I think what is already happening is that it's clear she is not going to be speaking to the convention. That is the right thing. I think right now what we have got to focus on as Democrats is defeating perhaps the worst Republican candidate that I have seen in my lifetime. Donald Trump would be a disaster for this country. He must be defeated.

We've got to elect Secretary Clinton on every single issue: fighting for the middle class on health care, on climate change, is a far, far superior candidate to Trump. That's where I think the focus has got to be.

CHUCK TODD:

Do you believe that the DNC's apparent favoritism cost you this race?

BERNIE SANDERS:

Well, I think you—there are a lot of reasons why one loses. We started off 50 points behind Secretary Clinton. We had the opposition of virtually the entire Democratic leadership in every state in this country. And by the way, in terms of media, we did not get the kind of media attention that somebody like a Donald Trump got, because media is not necessarily interested in the issues facing the middle class, more interested in attacks in personality. So I think there were a lot of reasons.

But I will tell you this, Chuck, from the bottom of my heart, I am extraordinarily proud of the campaign that we ran. The issues that we raised, the fact that we got 13 million Americans to vote for a political revolution.

People who know the economy is rigged in favor of big money, people who know that our middle class continues to decline and we have to go outside of establishment politics and economics, people who know that we need to reform a broken criminal justice system and we need comprehensive immigration reform.

The people—what we did in our campaign is bring people together to say, "You know what? This country, our government, belongs to all of us and not just a few." So I am very proud of the campaign we ran and the supporters that came on board.

CHUCK TODD:

So just to sum up here, these leaks, these emails, it hasn't given you any pause about your support for Hillary Clinton?

BERNIE SANDERS:

No, no, no. We are going to do everything that we can to protect working families in this country. And again, Chuck, I know media is not necessarily focused on these things. But what a campaign is about is not Hillary Clinton, it's not Donald Trump. It is the people of this country, people who are working longer hours for lower wages, people who do not have health care or are underinsured.

Hillary Clinton and I have worked together on a higher education proposal which will guarantee free tuition in public colleges and universities for every family in this country making $125,000 a year or less. We're going to fight for paid family and medical leave. Those are the issues that the American people want to hear dis-

cussed, and I'm going to go around the country discussing them and making sure that Hillary Clinton is elected president.

CHUCK TODD:

You know, The Green Party presumptive nominee, Jill Stein, put out a release yesterday about the emails. And she said this: "Democratic Party elites have been caught red-handed, sabotaging a grassroots campaign that tried to bring huge numbers of young people, independents and non-voters into their party. Instead, they have shown exactly why America needs a new major party, a truly democratic party for the people." Are you going to urge your supporters not to support Jill Stein and try to thwart her efforts to recruit your supporters?

BERNIE SANDERS:

Well, you know, let me just say this. As the longest serving Independent in the history of the United States Congress, as somebody who came into office by defeating an incumbent Democratic mayor in Burlington, Vermont, I know something about third party politics. And I respect Jill.

But right now, the focus, to my mind, is to make sure that Donald Trump does not become president of the United States. I think by temperament he is unqualified to be president. I think his views—you have a guy who's running for president who rejects science, doesn't even believe climate change is real, let alone wants to do something about it, wants to give hundreds of billions of dollars in tax breaks to the top two-tenths of one percent.

CHUCK TODD:

Let me ask you—

BERNIE SANDERS:

So my job right now is to see that Donald Trump is defeated, Hillary Clinton is elected.

CHUCK TODD:

You know, he makes a big deal out of the fact that you and he agree on one big issue, and that is trade deals, that these trade deals have been bad for the country. And he basically says that Clinton and Kaine, as a ticket, aren't—that their opposition, for instance, the TPP as sort of Johnny-come-lately, that it can't be trusted, and that Sanders supporters should support Trump if they care about trade.

What do you say to that?

BERNIE SANDERS:

Well, I think in terms of who can be trusted, I think the evidence is clear that there has been no candidate that I have ever seen who lies more often than does Donald Trump. I mean and that's just not me saying it, that's what any independent media analysis has shown. So in terms of trust, you really can't trust a word, I think, that Mr. Trump has to say.

In terms of the TPP, it is no secret. I think our trade policies, for many, many years, have been a disaster. They have benefited corporate America at the expense of working people. Secretary Clinton has come out in opposition to the TPP, does not want to see it—

CHUCK TODD:

Right.

BERNIE SANDERS:

—appear in the lame duck Congress. That's my view, as well.

CHUCK TODD:

You know, some of your supporters are disappointed in the pick of Tim Kaine, that he's not progressive enough. I know Tim Kaine called you after he was picked. Do you consider Tim Kaine a progressive? And are you happy with this pick?

BERNIE SANDERS:

Look, you know, the pick is Secretary Clinton's. I've known Tim Kaine for a number of years. We've served in the Senate together, obviously. Tim is a very, very smart guy. He's a very nice guy. His political views are not my political views. He is more conservative than I am. Would I have preferred to see somebody like an Elizabeth Warren selected by Secretary Clinton? Yes, I would have.

CHUCK TODD:

And then finally, do you feel as if, that you, when you got Glass-Steagall, I wanted to ask about this, because it looks like the one thing that both parties may agree on in their platforms is putting—is being in favor of reinstating Glass-Steagall. Does this mean we will see that happen in the next Congress?

BERNIE SANDERS:

Well, I'm going to do everything that I can to make it happen. You know, when we talk about our campaign, one of the things that we have been able to do, Chuck, is create the most progressive Democratic platform in the history of the Democratic Party, and that includes breaking up the large Wall Street banks and reestablishing Glass-Steagall.

I think the American people understand that we cannot continue to have a handful of reckless, irresponsible banks often acting illegally, that something has to happen. They have to be broken up.

CHUCK TODD:

All right, Senator Bernie Sanders. The big speech is tomorrow night. We'll be waiting for you here in a very, very hot Philadelphia, over 100 degrees.

BERNIE SANDERS:

Okay.

CHUCK TODD:

Senator Sanders, thanks for coming on. Good to see you, sir.

BERNIE SANDERS:

Thank you very much.

CHUCK TODD:

When we come back, reaction to Hillary Clinton's choice of Tim Kaine as a running mate, who showed why he might have appeal, unique appeal, to a very important voting bloc.

(BEGIN TAPE)

SEN. TIM KAINE:

Aprendilo valores de mi pueblo—faith, familia, y trabajo.

(END TAPE)

CHUCK TODD

And we'll be back in a moment from Philadelphia with this great panel. Rachel Maddow, Michael Steele, Andrea Mitchell, and Chris Matthews. Stay tuned.

(END TAPE)

CHUCK TODD:

And we'll be back in a moment from Philadelphia with this great panel, Rachel Maddow, Michael Steele, Andrea Mitchell, and Chris Matthews. Stay tuned.

COMMERCIAL TAPE

CHUCK TODD:

We are back. So much to talk about already. Our panel is here, Rachel Maddow, host of The Rachel Maddow Show on MSNBC, former chairman of the Republican National Committee, Michael Steele, he's sort of the fish out of water here in Philadelphia. Andrea Mitchell, NBC News, Chief Foreign Affairs Correspondent, host, of course, of Andrea Mitchell Reports on MSNBC. And a Philadelphia native himself, Mr. Brotherly Love Chris Matthews, host of Hardball—

RACHEL MADDOW:

Mr. Brotherly Love?

CHRIS MATTHEWS:

And sisterly affection.

CHUCK TODD:

—Sisterly affection here for the Penn grad.

CHUCK TODD:

And—this morning by the way we have new pictures of Tim Kaine walking into church this morning in Richmond, Virginia. He now realizes, and now his parish is realizing, what it's like to have Secret Service following around a member of the parish there. All right.

RACHEL MADDOW:

Know what his Secret Service name is going to be yet?

CHUCK TODD:

What do we think the code name should be?

ANDREA MITCHELL:

But we're not sure—

RACHEL MADDOW:

Well, the big joke was that if you're boring enough, your Secret Service name is Tim Kaine.

CHUCK TODD:

Ooh.

RACHEL MADDOW:

Right? That—

CHUCK TODD:

Those are old Johnny Carson and Jay Leno, Al Gore jokes—

CHUCK TODD:

All right, you guys are having already too much fun.

RACHEL MADDOW:

Sorry, sorry.

CHUCK TODD:

Let me just throw it out here. We heard what Bernie Sanders said about Tim Kaine. It was, that was tougher than I expected.

RACHEL MADDOW:

"His politics are not my politics."

ANDREA MITCHELL:

That's really—

RACHEL MADDOW:

"He does not share my political views." That's an aggressive take from Bernie. I'm not surprised. Bernie's an aggressive politician. And I think when Senator Sanders speaks at the DNC, I think everybody's going to be on the edge of their seat. I think that he is not going to pull a Ted Cruz because he's already made an endorsement.

CHUCK TODD:

Well, he said, "I'm for Hillary," and he was tough on Trump.

RACHEL MADDOW:

Yeah. And but he doesn't relish going after Trump. He likes going after the Democratic Party to try to move the Democratic Party. That's his target, always has been.

MICHAEL STEELE:

It's still obvious, he's not 'Feeling the Bern' for Hillary. And that was very obvious. And when you asked about the trust question, he didn't say he trusted Hillary Clinton. He said he didn't trust Donald Trump. So the reality of it is there's still some tension there that Bernie is reflecting among his supporters. And it was evident there. I mean—

RACHEL MADDOW:

He's got a mission that's bigger than one election. He always has.

MICHAEL STEELE:

That's true.

ANDREA MITCHELL:

And in fact, he could quiet the march that is planned to go from the center of Center City, and Rittenhouse Square all the way down at Independence Hall. This march is going to disrupt the city today, no matter how peaceful, because this is a city, in 100-degree heat, that is planning for a convention. And it's going to be a very large outpouring. He also said—

CHUCK TODD:

And by the way, the hotter it is, the crankier people will be.

ANDREA MITCHELL:

Yeah. And he also says that Tim Kaine doesn't share his politics, not only that, but that he would have preferred Elizabeth Warren. He made it very clear; Tim Kaine is a nice guy, but he's not endorsing or embracing someone who Hillary Clinton—

CHUCK TODD:

There's a painful look in your face, Chris.

ANDREA MITCHELL:

—called Tim Kaine a progressive.

CHRIS MATTHEWS:

He didn't get to pick. Hillary Clinton did. And I've watched Hillary Clinton. I've watched a lot of politicians over the years. You can tell when they're actually happy, not when they fake the laugh or anything else. She looked delighted during his speech yesterday. And I haven't seen her that delighted in a long time. She had found her guy to be her running mate. I think she loved it.

And I think one thing we're getting all excited about, I understand why the progressives are upset. But one thing historically we all know is the selection of a vice president is a poor predictor of the direction of that administration.

RACHEL MADDOW:

Yeah.

CHRIS MATTHEWS:

FDR picked John Nance Garner—

RACHEL MADDOW:

It's not a policy pick.

CHRIS MATTHEWS:

Kennedy picked another conservative from the south, Lyndon Johnson, relatively conservative. And then we got the New Deal out of that and we got the Great Society we got the New Frontier. It's a poor predictor. Now, if this is about spoils, they've got an argument. They wanted a piece of the action. But there's differences between spoils and direction.

CHUCK TODD:

I want to throw out the one thing that Trump's trying to hit Kaine on, well, two things. But the one big one is the gifts in Virginia.

RACHEL MADDOW:

Yeah.

CHUCK TODD:

I only throw it out there is that I heard Ed Rendell ask to defend it. And he struggled, Andrea. He said, "Well, it's illegal in Pennsylvania."

ANDREA MITCHELL:

Virginia—

CHUCK TODD:

Okay. And it's legal in Virginia. That wasn't exactly a resounding defense.

ANDREA MITCHELL:

Yeah. Virginia has a very strange, let's face it, strange gift law. The difference with Bob McDonnell, who was convicted, and then the Supreme Court overturned it, is there was no quid pro quo. He declared it. That was the main thing. He declared everything, put it down, in fact, computed higher numbers to staying in friends' houses. He put everything down. He was meticulous about it.

So they don't think there's a big ethics thing. Just on his progressivity or lack of it, he has this civil rights background. I mean I was in the room. And what you saw on T.V. yesterday in Miami, in that largely Hispanic campus, that wonderful campus in Miami, it was extraordinary. The enthusiasm for him and the affection. And having watched her all of these years, you're absolutely right, Chris—

CHUCK TODD:

You know—

ANDREA MITCHELL:

—she found her guy. She was a happy camper.

RACHEL MADDOW:

He's not a progressive, but they will tell a very progressive story about his history. The party has moved to the left while he sort of always been a solid liberal.

CHUCK TODD:

Both of them are trying to—

ANDREA MITCHELL:

Yeah.

CHUCK TODD:

I feel like both Clinton and Kaine are trying to catch up to the party's movement.

CHRIS MATTHEWS:

That's so true.

ANDREA MITCHELL:

Well, on guns he was always there. He was heroic in Virginia on gun laws.

CHUCK TODD:

That they're moving—and Michael, let me ask you this. The Trump camping says, "We love the Kaine pick." And here's their reasoning. They love the Kaine pick because it reinforces that they're the political professionals, that here's Tim Kaine, and all he's done in life, is been in office for the last 25 years.

MICHAEL STEELE:

Right.

CHUCK TODD:

And the whole point of Trump is Trump's Mr. "I'm the total outsider." If they want to double down on that, fine, go ahead. What do you say?

RACHEL MADDOW:

Except Mike Pence

MICHAEL STEELE:

Right, right, right.

CHUCK TODD:

They pay no attention to that. I brought that brought to them. I said, "What about Pence?" And they're like, "Well, it's the top of the ticket."

MICHAEL STEELE:

"Ignore that man behind the curtain."

CHUCK TODD:

What do you say to that? Did they have a point or not?

MICHAEL STEELE:

Well, they'll have a—I think the broader point, is an interesting one. Because what he's comparing himself—he's comparing himself, Trump, to Kaine—

CHUCK TODD:

Right.

MICHAEL STEELE:

—and Clinton. So it's me and against them.

CHUCK TODD:

Yeah.

MICHAEL STEELE:

Pence is not a part of that equation, necessarily.

RACHEL MADDOW:

Yeah.

MICHAEL STEELE:

So when he's talking about the maverick, the outsider, he's—he's assuming his ticket is total that.

ANDREA MITCHELL:

Well, Pence wasn't even a part of his own rollout.

MICHAEL STEELE:

Right.

ANDREA MITCHELL:

If you remember. And that was—

RACHEL MADDOW:

He couldn't get a word in edgewise.

ANDREA MITCHELL:

Hillary Clinton spoke about Tim Kaine—

MICHAEL STEELE:

I think their strength, Chuck, is gonna be on the argument—this notion that Tim Kaine is progressive is just not believable. And for a whole host of reasons. I think that's an opening for a lot of folks on Trump's side.

RACHEL MADDOW:

You can, there are element of his record that are not progressive, but on balance, I would argue that he is.

ANDREA MITCHELL:

I would argue that too.

CHRIS MATTHEWS:

But one thing, the guy's two doors from you, if you're president. Look at the structure of the West Wing now. It's not some guy that goes back to Maine like Lincoln's first vice president. He or she is right with you.

MICHAEL STEELE:

Right.

CHRIS MATTHEWS:

You want a good person two doors for you, somebody who has values. And it's not just smart politics. I think what Hillary Clinton's going to love having is a guy who's a true blue good guy. And I think he is a progressive on all the moral issues—

CHUCK TODD:

Let's sneak in a break here. When we come back, I want to get into the DNC e-mail situation. And I also want to get your guys' reaction to some interesting comments from Donald Trump. Yeah, you know that guy that was at the start of the show. We'll be right back.

COMMERCIAL BREAK

CHUCK TODD:

Welcome back, panelists here. Before we jump to Trump, the DNC email leaks, Cleveland, we expected rowdiness, Never Trumpsters, and all that stuff. We

expect order here. But I wonder, Rachel, if—look, I'm hearing from the Bernie bros. I'm in one of the emails just—I'm the complaint department here sometimes at NBC. Somebody was complaining about coverage. And I said, "Okay, let's talk on the phone," or whatever. But we didn't do anything about it, because I get complaints about coverage every hour, every day.

RACHEL MADDOW:

Yeah.

CHUCK TODD:

But I think Bernie supporters may like this place, at least outside. They may be upset, and they may do something about it.

RACHEL MADDOW:

Yeah. I mean and, you know, there will be that big protest that Andrea was talking about today, to start things off. And there will be a lot, there will be hundreds of Bernie delegates insides the room. Now honestly, from the top, down, he said, "We've got to elect Hillary Clinton." He's been unequivocal about that, that's the most important thing.

It'll be interesting to see whether the rules fights and the platform fights end up, in the end, when there's need to get nailed down with those votes, there is some dissent and chaos there. There might be.

CHRIS MATTHEWS:

One thing is—

CHUCK TODD:

Do you think Debbie Wasserman Schultz needs to get out now?

CHRIS MATTHEWS:

Well, look—

CHUCK TODD:

Not even gavel it in?

CHRIS MATTHEWS:

This is not a mystery story. This isn't Colombo.

CHUCK TODD:

Yeah.

CHRIS MATTHEWS:

We knew from the beginning, watching the debate schedule, put together by the DNC—

CHUCK TODD:

Sure.

CHRIS MATTHEWS:

—that they were tilting the scales to Hillary Clinton. Middle of the night debates, Sunday morning—it was an absurd debate schedule. And it just said, "We're for Hillary, we don't want the new guy to get all the attention."

ANDREA MITCHELL:

And what Bernie said to you is that she's not going to be giving a speech. When does the party chair not

give a speech at the convention? And apparently that is the case.

CHUCK TODD:

And then right now, though, they will gavel in.

RACHEL MADDOW:

Thank god we haven't—her quitting right now before—I mean, the DNC's gonna be running a big part of the ground game for the whole—

CHRIS MATTHEWS:

Yeah.

RACHEL MADDOW:

You know, you don't—

CHUCK TODD:

But I tell you, this—

RACHEL MADDOW:

It would be suicide for the chair to jump out now—

CHUCK TODD:

This doesn't help her own fight for reelection, which I still think she's going to be okay.

RACHEL MADDOW:

No, but—

CHUCK TODD:

It's a district that she knows very well. But—

ANDREA MITCHELL:

But Bernie endorsed her opponent.

RACHEL MADDOW:

But her reelection fight is in her district.

CHRIS MATTHEWS:

Right.

RACHEL MADDOW:

It's not to be the chair of the DNC, that's next year.

CHUCK TODD:

All right. Michael Steele, what'd you hear from Donald Trump? Did it make you feel better or worse about his chances?

MICHAEL STEELE:

Well, I think Donald Trump did a couple of things he needed to do. One was, and you could see it in the room that night, people began to say, "Okay, I can get there." The speech that he gave, when you read it, seemed a lot darker and harsher than when he delivered it. He delivered it in a way—

RACHEL MADDOW:

I thought the opposite.

MICHAEL STEELE:

Yeah, yeah.

RACHEL MADDOW:

When reading it, I wasn't freaked out.

MICHAEL STEELE:

Yeah.

RACHEL MADDOW:

And then, when I saw him give it, I pulled the covers up.

MICHAEL STEELE:

No, for me, it was the reverse. Because the reaction. I'm sitting in the room and I'm getting the reaction from the crowd.

RACHEL MADDOW:

Mmm.

MICHAEL STEELE:

And the reaction from the crowd was, "This guy is going to be a fighter." And I think that's a strong message for him coming out of this convention.

CHRIS MATTHEWS:

Rachel, you have never pulled the covers up.

RACHEL MADDOW: Oh no, I meant proverbially

CHUCK TODD: There's a lot of personal information here. Woah, it's Sunday morning, guys.

MICHAEL STEELE:

I thought he did what he needed to do, Chuck. I do.

RACHEL MADDOW:

Standing under those 15-foot-tall letters with Trump, and then his head comes up there. And then he spent 76 minutes screaming, red faced, about terrorism and

death and destruction and "I'm the only one who can fix it"—

CHRIS MATTHEWS:

I think that was technical. I don't think he knew how to read a script like that. I don't think he had the ability to—his daughter knew how to do it. It's tough to read a script in a conversational manner. So you end up doing this sort of scream thing.

RACHEL MADDOW:

But it takes an ego to turn a 30 minute script into a 78 minute rant.

ANDREA MITCHELL:

But he said that he was the person who would fix everything. And they're focusing on that. But, you know, Kaine was focusing on that. You know, it is the "we" not the I. They're comparing him to a dictator.

MICHAEL STEELE:

But the—

ANDREA MITCHELL:

It is the language and the delivery, Michael—

MICHAEL STEELE:

Don't lose sight of the fact that a lot of Americans out there are saying it is the "we" who screwed us up to this point.

CHRIS MATTHEWS:

Yeah.

MICHAEL STEELE:

It is the we who've gotten us into this mess.

ANDREA MITCHELL:

It's a different way of defining democracy, Michael.

MICHAEL STEELE:

So they're looking for the I, someone who's going to step forward as a leader, to get us through this mess. This is the bifurcation of the of the population, the voting population right now. And it's going to be interesting to see which one of these arguments win—

RACHEL MADDOW:

Is this about the hunger for a strong man, is that what you're talking about?

MICHAEL STEELE: Yeah no, there really is Rachel.

RACHEL MADDOW: We've seen this around the world, it's not supposed to be us.

CHRIS MATTHEWS:

I've heard Bernie make your point.

MICHAEL STEELE:

Yes!

CHRIS MATTHEWS:

It's that we have to reach outside the establishment to get the solution to these really bad economic problems affecting the working people of this country.

MICHAEL STEELE:

Right.

CHRIS MATTHEWS:

Same message. Different sides.

MICHAEL STEELE: Same message.

RACHEL MADDOW:

Same message. The question is whether or not one man is supposed to deliver salvation for the country. We're not supposed to be that kind of country.

CHUCK TODD:

I want to throw one more. He seemed, at least in the interview with me, he goes after Mitch McConnell, goes after Ted Cruz, goes after John Kasich.

ANDREA MITCHELL:

He is fearless in that regard.

CHUCK TODD: He really is.

ANDREA MITCHELL:

He is not going to moderate himself.

RACHEL MADDOW:

You didn't even ask about Kasich. And he's bringing it up

CHUCK TODD:

No, exactly. He brought Kasich up himself.

ANDREA MITCHELL:

And another player to be named player, who, you know, remain—could be one of the senators like Jeff Flake. Look, the fact is that he is not playing by anybody's ground rules except Donald Trump's. What he

said about N.A.T.O. was extraordinary because he doubled down on that. And the whole system of collect your security in Europe, if you're in Poland today, you are not reassured—

CHUCK TODD:

What's amazing is the Trump campaign tried to walk it back all last week on the N.A.T.O. stuff. And he's basically saying, "Don't walk it back."

RACHEL MADDOW:

Even beyond N.A.T.O. to talk about Europe as a threat to America is what's good for Europe is bad for America and we have an interest in Europe being weak and divided, they only got together to screw us? Like, hold on a second.

CHRIS MATTHEWS:

Yeah, it'll play in Scranton. It'll play up there in the Eerie, Pennsylvania it'll play.

RACHEL MADDOW:

The European Union—came out of the way to try to not have World War III.

CHRIS MATTHEWS:

Because people think we're being shoved around and exploited and he's saying, "I'm going to shove back."

ANDREA MITCHELL:

They are our markets—markets, allies—

CHUCK TODD:

You guys great. I'm going to try to get another half hour. But let me sneak in this. We'll be back in a moment with our—we'll call it halftime segment. No, it's Endgame Segment. And we'll look at Hillary Clinton's popularity compared to other Democratic nominees on the eve of their conventions.

COMMERCIAL BREAK

CHUCK TODD:

The panel never stops interacting here. Seriously we just went to a commercial break—

RACHEL MADDOW:

—wants more with France!

CHUCK TODD:

It's endgame time. Look, I want to show you here very quickly some numbers, because it will help us judge whether this is a successful convention for Hillary Clinton. These are favorable ratings, personal favorable ratings, whether you're right side up or upside down, from our NBC Wall Street Journal poll, for every Democrat going back to '92. And as you can see, Hillary Clinton in the worst shape of any presumptive nominee going into their convention.

Now, let me show you what everybody else came through after their convention. So successful convention for Bill Clinton, successful one for Al Gore. Flat for John Kerry, successful, Barack Obama. Obviously, we'll find out, for Hillary Clinton, what does she need to—

ANDREA MITCHELL:

Well, what they are going to do is they're going to have gauzy films, the same kind of films you saw in 1992, the same producers—

CHUCK TODD:

And JFK?

ANDREA MITCHELL:

They're going to have all of these films, biography, résumé. They know that her résumé is not resonating with millennials. People know what she did, they don't know—they know the list of what she was. They don't know what she actually did, what she accomplished.

CHRIS MATTHEWS:

Yeah.

ANDREA MITCHELL:

They're going to do all of that. The balance is going to be very different.

RACHEL MADDOW:

—because T.V. networks don't always take the movies anymore—

ANDREA MITCHELL:

Well, they're going to have to validators.

RACHEL MADDOW:

Yeah.

ANDREA MITCHELL:

They're going to have people on that podium behind it who are going to talk about things she has done for them. And it's going to be very much all about her and much less about taking down Trump

CHRIS MATTHEWS:

I think the magic moment in this convention's going to be Thursday night. And a lot of women, and a lot of men, too, are going to see Hillary Clinton as the first party nominee, who's probably going to be like the president. She has the advantage right now. And there are going to be misty eyes all across the country.

And any men at that moment who make a wisecrack are going to be guaranteeing another vote for Hillary Clinton. I think it's a very emotional moment for people. They've haven't quite got to it because of all is mishegas that's gone on this year. I think it's going to be magical. And if Hillary Clinton just stands there with a little emotion, this is an amazing historic moment.

CHUCK TODD:

Michael was the Republican convention too anti-Clinton and not enough pro-Trump?

MICHAEL STEELE:

No. The Republican convention had to go anti-Clinton—

CHUCK TODD:

Had to do that?

MICHAEL STEELE:

—because of the Trump issues.

CHUCK TODD:

What about this one?

MICHAEL STEELE:

This one? I was thinking, as you guys were talking about Barack Obama and talking about Hillary Clinton being likable enough, this is going to be a convention in which they're going to showcase her so you can like her. Because people, those numbers show, don't like her. So it's going to be everything you just said, Chris, plus more. The problem is what happens afterwards. And that's where Hillary Clinton's going to have to contine .

CHUCK TODD:

Here's an out question for all of you. Besides Hillary Clinton's speech, what will be the other buzziest speech or speaker when we walk away from this convention?

RACHEL MADDOW:

We're going to have a huge one on night one. Bernie is a big deal.

MICHAEL STEELE:

Bernie.

RACHEL MADDOW:

The Democratic Party is going through a transformation. Liberals are having their moment. And this convention has to reflect it.

CHRIS MATTHEWS:

Every Democratic convention I can remember, going back to, God, '64, the best speech was never given by the nominee, whether it's Bobby Kennedy or it's Jesse Jackson, or it's Mario Cuomo.

MICHAEL STEELE:

Right.

CHRIS MATTHEWS:

The candidates never have been able to deliver the best speech. So I would bet on Bernie.

RACHEL MADDOW:

It was Trump Jr. last week.

CHRIS MATTHEWS:

Bernie or President Obama.

ANDREA MITCHELL:

Michelle Obama and Barack Obama on day two.

CHUCK TODD:

I think it's Barack Obama on Wednesday night. I think it's going to be to Hillary Clinton what Bill Clinton was to Barack Obama four years ago. All right. That's all for this Sunday morning.

CHRIS MATTHEWS:

We agree.

CHUCK TODD:

I'll be hosting a special edition of Meet the Press Daily tonight at 5:00 Eastern on MSNBC. I know that's

what everybody on this table will be watching. And then, throughout the week, I'll be joined by my colleagues Lester Holt and Savannah Guthrie right here at The Wells Fargo Center for convention coverage on the network beginning at 10:00 Eastern, 7:00 Pacific. If you missed it last week, you should be regretting it. Watch us this week. And of course we'll be back next Sunday. Because if it is Sunday, Meet the Press.

* * *END OF TRANSCRIPT* * *

Exhibit Y

DONALD TRUMP

Donald Trump on Proposed Muslim Ban: 'You Know My Plans'

Katie Reilly
Dec 21, 2016

President-elect Donald Trump on Wednesday called the recent attacks in Germany and Turkey "terrible" and suggested that he does not intend to reevaluate his plans to ban Muslims from immigrating to the United States, boasting that he had been "proven to be right."

"You know my plans. All along, I've been proven to be right. 100% correct. What's happening is disgraceful," Trump told reporters Wednesday when asked whether the recent violence has influenced his proposed Muslim ban.

Trump described the attack at a Berlin Christmas market as an "attack on humanity."

"That's what it is: an attack on humanity," he said. "And it's got to be stopped."

Trump said he had not spoken with President Obama since the attacks.

"Innocent civilians were murdered in the streets as they prepared to celebrate the Christmas holiday," Trump said in an initial statement about the attack on Monday. "ISIS and other Islamist terrorists continually slaughter Christians in their communities and places of worship as part of their global jihad."

Zeke Miller contributed to this report.

Exhibit Z

1/29/17 WashingtonPost.com (Pg. Unavail. Online)
2017 WLNR 2956241

WashingtonPost.com

January 29, 2017

Section: the-fix

Trump asked for a 'Muslim ban,' Giuliani says—and ordered a commission to do it 'legally' Giuliani claims Trump asked him how to create a Muslim ban: "He called me up. He said, 'Put a commission together. Show me the right way to do it l. . .

Amy B Wang

Giuliani claims Trump asked him how to create a Muslim ban: "He called me up. He said, 'Put a commission together. Show me the right way to do it legally.'"

Former New York mayor Rudy W. Giuliani said President Trump wanted a "Muslim ban" and requested he assemble a commission to show him "the right way to do it legally."

Giuliani, an early Trump supporter who once had been rumored for a Cabinet position in the new administration, appeared on Fox News late Saturday night to describe how Trump's executive order temporarily banning refugees came together.

Trump signed orders on Friday not only to suspend admission of all refugees into the United States for 120 days but also to implement "new vetting measures" to

screen out "radical Islamic terrorists." Refugee entry from Syria, however, would be suspended indefinitely, and all travel from Syria and six other nations—Iran, Iraq, Libya, Somalia, Sudan and Yemen—is suspended for 90 days. Trump also said he would give priority to Christian refugees over those of other religions, according to the Christian Broadcasting Network.

Fox News host Jeanine Pirro asked Giuliani whether the ban had anything to do with religion.

"How did the president decide the seven countries?" she asked. "Okay, talk to me."

"I'll tell you the whole history of it," Giuliani responded eagerly. "So when [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.'"

Giuliani said he assembled a "whole group of other very expert lawyers on this," including former U.S. attorney general Michael Mukasey, Rep. Mike McCaul (R-Tex.) and Rep. Peter T. King (R-N.Y.).

"And what we did was, we focused on, instead of religion, danger—the areas of the world that create danger for us," Giuliani told Pirro. "Which is a factual basis, not a religious basis. Perfectly legal, perfectly sensible. And that's what the ban is based on. It's not based on religion. It's based on places where there are substantial evidence that people are sending terrorists into our country."

It was unclear when the phone call Giuliani took place and when the commission began working. An email to

the White House press office was not immediately returned Sunday.

Clips of the exchange between Giuliani and Pirro quickly went viral Saturday night, with some claiming that Giuliani's statement amounted to admitting Trump's intent had been to institute a ban based on religion.

Others, including Trump senior adviser Kellyanne Conway and White House Chief of Staff Reince Priebus, have insisted it is not a ban on Muslims, but rather one based on countries from which travel was already restricted under Barack Obama's administration.

Priebus appeared on CBS's "Face the Nation" Sunday morning to say it was possible Trump would expand the list of countries included in the travel ban.

"You can point to other countries that have similar problems, like Pakistan and others," Priebus told host John Dickerson. "Perhaps we need to take it further."

Priebus also said there had been weeks of work and "plenty of communication" between the White House, the State Department and the Department of Homeland Security regarding the ban.

"We didn't just type this thing up in an office and sign up," he told Dickerson.

Later on the same program, Rep. Keith Ellison (D-Minn.) called out Giuliani's interview with Pirro from the night before.

"They can't deny that this is a Muslim ban," Ellison told Dickerson. "On the campaign trail, [Trump] said he wanted a Muslim ban. . . . Rudolph W. Giuliani who helped him write it said that they started out with the intention of a Muslim ban and then they sort of 'languaged' it up so to try to avoid that label, but it is a religiously based ban."

Senate Democrats vowed to draft legislation to block the travel ban.

"We're demanding the president reverse these executive orders that go against what we are, everything we have always stood for," Senate Minority Leader Charles E. Schumer (D-N.Y.) said in a news conference Sunday morning, noting later that his middle name, Ellis, was originally inspired by Ellis Island.

"It was implemented in a way that created chaos and confusion across the country, and it will only serve to embolden and inspire those around the globe those that will do us harm," Schumer added of the ban. "It must be reversed immediately."

Trump's executive order sparked massive protests at airports around the country Friday and Saturday, as reports surfaced that dozens of travelers from the affected countries, including green-card holders, were being detained.

The American Civil Liberties Union filed a lawsuit Saturday morning challenging Trump's order after two Iraqi men with immigrant visas were barred from entering the United States at New York's John F. Kennedy International Airport.

As Giuliani was speaking, Fox News simultaneously aired an alert that noted federal judge Ann M. Donnelly had issued a stay to stop the deportations nationwide.

Donnelly wrote that there was a strong likelihood the order had violated the petitioners' rights to due process and equal protection by the Constitution.

"There is imminent danger that, absent the stay of removal, there will be substantial and irreparable injury to refugees, visa-holders, and other individuals from nations subject to the January 27, 2017 Executive Order," Donnelly wrote.

The ACLU hailed the victory.

"Clearly the judge understood the possibility for irreparable harm to hundreds of immigrants and lawful visitors to this country," ACLU executive director Anthony D. Romero said in a statement. "Our courts today worked as they should as bulwarks against government abuse or unconstitutional policies and orders. On week one, Donald Trump suffered his first loss in court."

On Sunday, the Department of Homeland Security issued a statement saying it did not plan to back off enforcing Trump's orders.

"President Trump's 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," the statement read. "President Trump's Executive Order affects a minor portion of international travelers, and is

a first step towards reestablishing control over America's borders and national security."

The department said that less than 1 percent of daily international air travelers to the United States had been "inconvenienced" on Saturday.

Matthew Kolken, an immigration attorney based in Buffalo said there has been "a systemic bias against individuals from Muslim countries in the U.S. immigration departments" for years, including under the Obama administration.

"This isn't unprecedented," Kolken told The Washington Post by phone Sunday. "The unfortunate reality is the executive branch does have vast discretionary authority to determine who they are going to [allow in or not]."

Still, Kolken said, he believes "Trump has gone a step further without a doubt" in including even people who are lawful permanent residents and suspending all immigration applications from people from the seven countries on the banned list.

If there was evidence of disparate treatment of individuals from the same country—if there were anecdotal evidence of, for example, a Syrian family of one religious background allowed to enter over that of another religious background—then that is where lawsuits could come into play, he said.

"The question becomes whether they're trying to do an end-around by couching the ban as a country-specific ban based on a security-related issues when in reality it's a religious ban," Kolken said.

Read more:

Fact Checker: What you need to know about terror threat from foreigners and Trump's executive order

'I am heartbroken': Malala criticizes Trump for 'closing the door on children' fleeing violence

A ship full of refugees fleeing the Nazis once begged the U.S. for entry. They were turned back.

Trump's travel ban could make Rex Tillerson's potential job harder, a former defense secretary says

——Index References——

News Subject: (Civil Rights Law (1CI34); Government (1GO80); Immigration & Naturalization (1IM88); Intellectual Freedoms & Civil Liberties (1IN08); Legal (1LE33); Legislation (1LE97); Social Issues (1SO05); U.S. Legislation (1US12))

Industry: (Homeland Security (1HO11); Security (1SE29))

Region: (Africa (1AF90); Americas (1AM92); Arab States (1AR46); Mediterranean (1ME20); Middle East (1MI23); New York (1NE72); North America (1NO39); Syria (1SY20); U.S. Mid-Atlantic Region (1MI18); USA (1US73))

Language: EN

Other Indexing: (Donald Trump; Ann Donnelly had; Jeanine Pirro; Rex Tillerson; Christian refugees; Anthony Romero;

Ann Donnelly; Mike McCaul; Matthew Kolken; Kellyanne Conway; Rudolph Giuliani; Rudy Giuliani; Peter

King; Michael Mukasey; John Dickerson; Reince Priebus; Charles Schumer; Keith Ellison)

Word Count: 1325

End of Document

Exhibit AA

NewsRoom

12/8/15 WashingtonPost.com (Pg. Unavail. Online)
2015 WLNR 36291622

WashingtonPost.com

December 8, 2015

Section: post-politics

Donald Trump says he is not bothered by comparisons to Hitler

Jenna Johnson

The comparison between Donald Trump and Hitler is being made more and more frequently—including on the cover of Tuesday's Philadelphia Daily News—but the Republican front-runner said Tuesday that the comparison doesn't bother him.

"You're increasingly being compared to Hitler," ABC News' George Stephanopoulos said during an interview with Trump on "Good Morning America" Tuesday. "Does that give you any pause at all?"

"No," Trump responded, "because what I am doing is no different than what FDR—FDR's solution for Germans, Italians, Japanese, you know, many years ago."

Stephanopoulos jumped in as Trump kept talking: "So you're for internment camps?"

"This is a president who is highly respected by all," Trump said of Franklin Delano Roosevelt. "He did the same thing—if you look at what he was doing, it was far worse."

[Donald Trump calls for 'total' ban on Muslims entering United States]

Trump's answer was confusing and meandering but he seemed to be making the point that during times of war, more extreme measures must be used.

"We are now at war," Trump said. "We have a president that doesn't want to say that, but we are now at war."

"I've got to press you on that, sir,"Stephanopoulos said. "So you're praising FDR there, I take it you're praising the setting up of internment camps for Japanese during World War II?"

"No, I'm not," Trump responded. "No, I'm not. No, I'm not."

Trump then rattled off the numbers of some of the presidential proclamations Roosevelt issued "having to do with alien Germans, alien Italians, alien Japanese."

"They went through a whole list of things—they couldn't go five miles from their homes, they weren't allowed to use radios, flashlights," Trump said. "Take a look at what FDR did many years ago, and he's one of the most highly respected presidents. . . They named highways after him."

Stephanopoulos responded: "You want to bring back policies like that?"

After a pause, Trump responded: "No, I don't to bring it back, George. At all. I don't like doing it at all. It's a temporary measure until our representa-

tives, many of whom are grossly incompetent, until our representatives can figure out what's going on."

——Index References——

News Subject: (Islam (1IS02); Judaism (1JU93); Minority & Ethnic Groups (1MI43); Race Relations (1RA49); Religion (1RE60); Social Issues (1SO05))

Industry: (Celebrities (1CE65); Entertainment (1EN08))

Language: EN

Other Indexing: (Donald Trump; Franklin Delano Roosevelt; George Stephanopoulos; Hitler)

Word Count: 371

End of Document

Exhibit BB

Donald Trump: 'I think Islam hates us'

By Theodore Schleifer, CNN

Updated 5:56 PM ET, Thu March 10, 2016

Story highlights

"I think Islam hates us," Trump told CNN's Anderson Cooper, deploring the "tremendous hatred" that he said partly defined the religion

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Asked if the hated was "in Islam itself," Trump would only say that was for the media to figure out

Washington (CNN)—Donald Trump said Wednesday that he thinks "Islam hates us," drawing little distinction between the religion and radical Islamic terrorism.

"I think Islam hates us," Trump told CNN's Anderson Cooper, deploring the "tremendous hatred" that he said partly defined the religion. He maintained the war was against radical Islam, but said, "it's very hard to define. It's very hard to separate. Because you don't know who's who."

Donald Trump CNN interview (part 1) 10:15

READ: Donald Trump: 'It's over' if I win Ohio and Florida

Asked if the hate was "in Islam itself," Trump would only say that was for the media to figure out.

"You're gonna have to figure that out, OK?" he told Cooper. "We have to be very vigilant. We have to be very careful. And we can't allow people coming into this country who have this hatred of the United States."

Donald Trump CNN interview (part 2) 10:59

Trump made headlines in December when he called for a temporary ban on Muslims entering the U.S., "until our country's representatives can figure out what is going on." Despite widespread condemnation of the remarks, Trump has stood by the proposal.

Speaking to CNN's Wolf Blitzer on "The Situation Room" Thursday, Trump spokeswoman Katrina Pierson said the real-estate magnate stood by the sentiment that many Muslims worldwide sympathize with ISIS, but said Trump should've used "radical Islam."

"It is radical Islamic extremists that do participate in these types of things," Pierson said, calling for a "broader perspective" of Muslims' ties to terror. "We've allowed this propaganda to spread all through the country that this is a religion of peace."

In speaking with Cooper, Trump added that "there can be no doctrine" when asked to outline how he would project power overseas.

Trump also tried to clarify his position on how far he would go in targeting the families of terrorists. He has said in the past that he is in favor of "expanding the laws" that govern how the U.S. can combat and deter terrorism, and Trump has called to bring back water-boarding, even vowing the U.S. "should go a lot further than waterboarding."

Donald Trump talks about working with Democrats 00:51

READ: Trump: My Muslim friends don't support my immigration ban

But Trump on Wednesday declined to say what specific measures he would support.

"I'll work on it with the generals," he told Cooper. He added, "We have to play the game at a much tougher level than we're playing it now."

Obama photographer shades Trump over secure discussions

Pence's sphere of influence questioned in wake of Flynn fallout

Trump shows his true hand on LGBTQ rights

Feinstein, Grassley seek full briefing, transcripts of Flynn calls

Exhibit CC

NewsRoom

3/22/16 Mediaite (Blog) (Pg. Unavail. Online)
2016 WLNR 8849615

Mediaite (Blog)

March 22, 2016

Trump Responds to Brussels Attacks: 'We're Having Problems With the Muslims'—Trump on Brussels Attacks: 'We're Having Problems With the Muslims'

Alex Griswold

Mar 22, 2016

Republican presidential candidate Donald Trumpreacted to the Brussels terror attack Tuesday morning, saying bluntly on Fox Business that "we're having problems with the Muslims."

"You called after the Paris attacks for a pause to stop Muslims from coming into the United States. That got a lot of criticism, as you know," noted Wall Street Journal editor-in-chief Jerry Baker

"And a lot of support, Jerry. It got tremendous support," Trump pushed back.

Please enable Javascript to watch.

"Frankly, look, we're having problems with the Muslims, and we're having problems with Muslims coming into the country," he said, citing the San Bernardino shooters, one of whom entered the country on a fiance visa.

"You need surveillance, you have to deal with the mosques whether you like it or not," Trump said. "These attacks aren't done by Swedish people, that I can tell you."

Watch above, via Fox Business.

[Image via screengrab] —— >>Follow Alex Griswold (@HashtagGriswold) on Twitter

—— Index References ——

News Subject: (International Terrorism (1IN37); Islam (1IS02); Religion (1RE60); Social Issues (1SO05); Top World News (1WO62))

Region: (Belgium (1BE51); Europe (1EU83); Eurozone Countries (1EU86); Western Europe (1WE41))

Language: EN

Other Indexing: (Jerry Baker; Donald Trumpreacted)

Keywords: (brussels attacks); (iowac); (TV); (Jerry Baker); (Donald Trump); (Election 2016); (Fox Business); (Belgium)

Word Count: 162

End of Document

Exhibit DD

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No.: 2:17-cv-00135-JLR

JUWEIYA ABDIAZIZ ALI; A.F.A., A MINOR; REEMA KHALED DAHMAN; G.E., A MINOR; AHMED MOHAMMED AHMED ALI; E.A., A MINOR; ON BEHALF OF THEMSELVES AS INDIVIDUALS AND ON BEHALF OF OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

DONALD TRUMP, PRESIDENT OF THE UNITED STATES OF AMERICA; U.S. DEPARTMENT OF STATE; TOM SHANNON, ACTING SECRETARY OF STATE; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, SECRETARY OF HOMELAND SECURITY; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; LORI SCIALABA, ACTING DIRECTOR OF USCIS; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; MICHAEL DEMPSEY, ACTING DIRECTOR OF NATIONAL INTELLIGENCE, DEFENDANTS

DECLARATION OF REEMA KHALED DAHMAN IN SUPPORT OF PLAINTIFFS

I, Reema Khaled Dahman, declare under penalty of perjury as follows:

1. I am over the age of eighteen, am competent to testify to the matters below, and make this declaration based on personal knowledge.

2. I am a lawful permanent resident. I live in Seattle, Washington. I work as a caregiver.

3. I came to the United States with an immigrant visa on September 18, 2012. I am from Syria.

4. My son G.E. was born on May 14, 2000 in Daara, Syria. I got separated from G.E.'s biological father when I was two months pregnant with G.E. He was an abusive person. After I got separated from G.E.'s father, I started living with my parents. After G.E. was born, we continued living with them. At the time, I was working as an agricultural engineer and I was able to provide for my family.

5. I got married to my second husband on January 6, 2007 in Daara, Syria. He is a U.S. citizen. We had two sons together while we were living in Syria, one born in October 2007 and the other in October 2008.

6. After the Syrian conflict started in 2011, my husband wanted to come back to the United States. He filed a petition for me and for our two sons, but he did not file one for my son G.E. In our culture, it is not customary for a man to raise another man's son, even in circumstances like ours. Although I did not want to leave G.E., I was sure that I could figure out a way to bring him with me soon enough.

7. In January 2012, while the petitions were pending, my parents and G.E. moved to Damascus, Syria because conflict was getting worse and worse in Daraa. I had to stay in Daara with my husband and our two sons. Between January 2012 until June 2012, my son G.E. would come to visit his paternal grandparents and I would see him, too. On June 2012 I saw my son G.E.

for the last time. I did not know then that I would not see him again. On August 9, 2012, I received my immigrant visa from the U.S. Consulate in Amman, Jordan.

8. After we came to the United States, we lived in very poor conditions at my brother-in-law's house for one year. When we finally rented our apartment in August 2013, I was the only one working and supporting my family. I kept wanting to bring my son G.E. here as well. I remember very well one day my husband said "I feel like you want to bring your son here." When I answered "yes", he said "I didn't bring you here so that you can bring your son." I felt stuck. I did not know the immigration laws of the United States, I did not know that I could petition for my son G.E. as a lawful permanent resident. I thought I had to be a U.S. citizen.

9. In October 2015 , through the help of Refugee Women's Alliance and Northwest Immigrant Rights Project, I found out that as a lawful permanent resident I could petition for my son G.E.. I filed the Form I-130, family petition, on October 19 , 2015 with U.S. Citizenship and Immigration Services ("USCIS").

10. Given the terrible situation in Syria, I also submitted a request for Humanitarian Parole on November 30, 2015 with USCIS asking for a favorable exercise of parole so that my son G.E. could travel to the United States based on urgent humanitarian reasons and we can be reunited after so many years. No child should face the situation my son or any other child has been experiencing in Syria. My son has no future there; he has not been able to attend school for the last three

years. Schools are no longer functioning; so many teachers have fled the country. My heart broke into pieces during one of our rare conversations with him when he told me "Mom, I feel like I am forgetting how to write." That is not the future I dreamt for him.

11. The family petition I-130 was approved by USCIS on June 1, 2016. Towards the end of July 2016, I received immigrant visa and affidavit of support fee bills from the National Visa Center ("NVC") to continue with the consular process. I started gathering the civil and financial documents. Meanwhile, the Humanitarian Parole request I filed was still pending.

12. On September 23, 2016, ten months after I filed for humanitarian parole, I received a Request for Evidence notice from USCIS asking for a detailed explanation of why my son G.E. cannot live with his biological father in Syria while waiting for the adjudication of his immigrant visa. The request for evidence also asked me to provide a DNA test result to establish the claimed biological relationship between my son and me. I prepared a detailed explanation why my son could not live with his biological father and I was ready to do the DNA test. Upon researching for the laboratories accredited by the American Association of Blood Banks ("AABB"), I learned that there is no AABB accredited laboratory where a DNA test could be conducted in Syria. My son had to travel to Jordan or another neighboring country in order to do the DNA test. This was impossible—he is only 16 years old. He cannot travel safely from Syria to Jordan and back on his own, and he had no other family to take him.

Unfortunately, we could not provide the DNA test for these reasons. I explained this to USCIS.

13. Meanwhile, I electronically submitted his online immigrant visa application (Form DS-12 260) on December 2, 2016 to NVC to continue with his immigrant visa process.

14. On December 8, 2016, I received a notice from NVC asking for a Syria Police Clearance 14 Certificate (Judicial Record Extract) for my son G.E. as part of the consular process so that his immigrant visa interview could be scheduled.

15. The day before the Executive Order was announced, on January 26, 2017, I received a denial notice of the Humanitarian Parole I had requested. The denial notice indicated "Use of the Secretary's parole authority is discretionary, justified on a case-by-case basis, and limited by law to include only to those requests that are based upon 'urgent humanitarian reasons,' or 'significant public benefit.'" I thought that being a teenager in a war-torn country was an urgent humanitarian reason. I was crushed that the parole was denied. I had explained to USCIS the danger my son is in. The situation in Syria is so unstable that my son has even been kidnapped once. I am afraid for his safety the longer we wait.

16. The day after the denial notice, on January 27, 2017, when I heard the Executive Order of the President, I was shocked. My heart sank. I felt that all the doors are closing on me. I waited so long to be with my son and now I was left with nothing. I haven't seen my son for almost five years. We were so close

to being reunited. This executive order took my dream away. I know they say it will only cause delay for a few months, but there is no guarantee of that. Besides, a few months is a long time in a country as dangerous as Syria. Do you know how it feels to live everyday not knowing if you will ever see your child again? I do.

17. I want to be reunited with my son like any other mother would want in this situation. The war in Syria is getting worse and worse. My mother is elderly and sick, she cannot take care of G.E. like she used to. My father passed away. My siblings fled Syria. I cannot leave my two sons in the United States and go back to Syria. But I also cannot take my sons to live in the midst of a war that never seems to come to an end. It is an impossible situation.

18. I hope I can see my son soon.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed on this 6th day of Feb., 2017, in Seattle, Washington.

/s/ REEMA KHALED DAHMAN
REEMA KHALED DAHMAN

Exhibit EE

The New York Times | https://nyti.ms/2jLMxKS

N.Y. / REGION

Disorder at Airports as Travelers Are Detained Without Lawyers

By BENJAMIN MUELLER and MATTHEW ROSENBERG JAN. 29, 2017

Drab airport screening areas and waiting rooms were transformed into chaotic scenes on Sunday, with lawyers saying that border agents had put pressure on detainees and created an information blackout that left many struggling to discern how President Trump's immigration order was being applied.

In New York, a lawyer said detainees were being moved from one terminal to another in handcuffs. In Los Angeles, an Iranian graduate student was pushed by border agents to sign documents allowing them to send her out of the country, her lawyers said. And in the Washington area, agents told lawyers that officials had barred detainees from getting legal help, despite a federal judge's order that legal permanent residents be given access to lawyers.

7 who had been detained for many hours were released and reunited with relatives. But well into Sunday, two days after Mr. Trump signed an executive order keeping many foreigners from entering the country, lawyers were still sweeping airport arrival sections in search of waiting relatives, often their only source of information about who was being held.

Some detainees said they had slept on office chairs. In Los Angeles, lawyers said Customs and Border Protection agents had told them there were cots but had declined to say how many there were, or how many people were being held.

Detainees were told their phones would be disruptive and had to be taken. Lawyers and relatives were growing increasingly concerned about older detainees with medical problems.

Among those with ailments were an Iranian couple who had arrived in Los Angeles on visitors' visas. The man, in his late 60s, had been through two open-heart operations, and he and his wife, in her late 50s, were both diabetic. After arriving at the airport on Saturday afternoon, they were allowed to call their daughter in the United States only once, around 1 a.m. on Sunday, said Patricia Corrales, a private lawyer working on detainees' cases there. Relatives and lawyers repeatedly asked whether the couple were receiving proper medical care but learned nothing further from border agents.

Ms. Corrales, who was an Immigration and Customs Enforcement lawyer for 17 years, said, "I think they don't necessarily have the resources, the staff and experience to deal with these large numbers."

In a statement, the Department of Homeland Security said, "We are committed to ensuring that all individuals affected by the executive orders, including those affected by the court orders, are being provided all rights afforded under the law."

Some detainees were reportedly pressured to sign documents they hardly understood and then put on flights out of the country. When two brothers from Yemen, Tareq Aqel Mohammed Aziz, 21, and Ammar, 19, landed on Saturday morning at Dulles International Airport near Washington with immigrant visas, they planned to board a connecting flight to Flint, Mich., to join their father. Instead, they were taken off the plane, put into handcuffs and told they needed to sign a form or face being barred from the country for five years, said their lawyer, Simon Y. Sandoval-Moshenberg, of the Legal Aid Justice Center in Virginia. They signed the form and were quickly put on a plane to Ethiopia.

A 24-year-old Iranian woman who is a graduate student in the United States told relatives of a similar problem at Los Angeles International Airport, where she arrived on Saturday after a trip visiting family members in Europe. Border agents told the woman that her student visa was no longer valid, which lawyers said was not true, and that if she did not sign a document saying she was leaving voluntarily, she would be forcibly deported and barred from entry for five years.

The Iranian student signed. She had not been allowed to consult a lawyer and was permitted only three calls to relatives before her phone was confiscated and searched, said Ms. Corrales and Judy London, the directing attorney of the nonprofit Public Counsel's Immigrants' Rights Project, both of whom spoke with the woman's relatives. On Saturday night, after a federal judge in Brooklyn ruled the government could

not remove travelers who had arrived with valid visas, she was put on a plane back to Europe, her lawyers said. They declined to share her name out of concern for her safety.

On Sunday morning, Ms. Corrales spoke to a supervisor from the customs agency who suggested that the Iranian student was still at the Los Angeles airport. The supervisor told Ms. Corrales that "they were waiting for orders from higher-ups in terms of how to enforce the injunction," Ms. Corrales said, referring to the Brooklyn judge's ruling.

Some detainees dealt with the whiplash of plans changing by the hour. A group of five Iranians detained in New York told family members on Sunday morning that the government planned to put them on a 1:30 p.m. flight back to Turkey, said Melanie Zuch, a staff lawyer at the Urban Justice Center. Several hours later, some of them were told they would be allowed to stay.

Vahideh Rasekhi, a graduate student at Stony Brook University on Long Island who was also detained at Kennedy Airport, said she and other detainees were also told they would be put on flights back out of the country, with agents promising only that if they held out a little longer, they might work out a way to keep them in the United States. Eventually they did, and shortly after 2:30 p.m., Ms. Rasekhi walked into Terminal 4 and was immediately surrounded by loved ones, lawyers and journalists.

"I'm just so exhausted," she said.

She said that detainees had been given meals and water and that agents had even satisfied one person's request for a lemon. Others gave accounts of more difficult conditions; one lawyer, Justin Orr, said some detainees had been given nothing but chocolate to eat.

Mousa Ahmadi, 30, an Iranian graduate student at the New Jersey Institute of Technology, gave a long hug to his sister, Dr. Fahimeh Ahmadi, 40, after she was released from additional screening at Kennedy. The siblings had not seen each other for over three years.

Dr. Ahmadi, a general practitioner in the Australian city of Gold Coast and a dual citizen of Australia and Iran, arrived for a long-planned visit without the siblings' parents, who hold only Iranian passports and canceled their flights on Saturday.

"My Mom said, 'If they don't let me in the country do you think I can see him even for a half hour?'" Dr. Ahmadi recalled. "She said, 'Is there a window where I can see him?'"

Lawyers at J.F.K. said that about half a dozen detainees were still in custody by late Sunday afternoon. The Los Angeles Police Department told lawyers there earlier on Sunday that about 40 people were being held.

A federal judge in Alexandria, Va., on Saturday ordered government officials to give lawyers access to all legal permanent residents being detained at Dulles. But when lawyers showed border agents there the court order and requested access to detainees, a supervisor replied, "That's not going to happen."

Matt Zeller, who runs **No One Left Behind**, a group that helps bring over Iraqis and Afghans who worked for the military, said he was told that there were 40 to 55 people who had been pulled aside by customs officers at Dulles on Sunday evening, and that at least some were Iraqis, although it was not clear if any had worked for the military. Detainees who had been released overnight—many of whom had green cards—spoke of hours of uncertainty as they waited to find out if they would be allowed into a country that they called home but that no longer seemed to want them.

"This is not the America that I have lived in," said one man who had been released, Seifollah Moradi, 34, a student from Columbia, Md., who has a green card. "We used to be treated with respect. This is the land of freedom."

Mr. Moradi had been held for six hours after returning from Tehran, where he was visiting his sick father.

Protesters, who were lined up just past the set of one-way doors that separate the public areas of the Dulles arrival hall from the immigration and baggage claim areas for international flights, cheered loudly as Mr. Moradi came through the doors. They chanted, "Welcome to the U.S.A.," and, "No hate, no fear, refugees are welcome here."

Mr. Moradi, his face drawn, hardly seemed to notice.

Reporting was contributed by Ruth Bashinsky, Sheri Fink, Sean Piccoli and Liz Robbins.

A version of this article appears in print on January 30, 2017, on Page A13 of the New York edition with the

deadline: Confusion and Disorder at Airports as Travelers Are Detained Without Lawyers.

Exhibit FF

Trump delays new travel ban after well-reviewed speech

By Laura Jarrett, Ariane de Vogue and Jeremy Diamond, CNN
Updated 6:01 AM ET, Wed March 1, 2017

Immigration violations: The one thing to know 01:15

Immigration violations: The one thing to know 01:15

Story highlights

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Will Syrian nationals still be barred indefinitely?

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

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

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

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

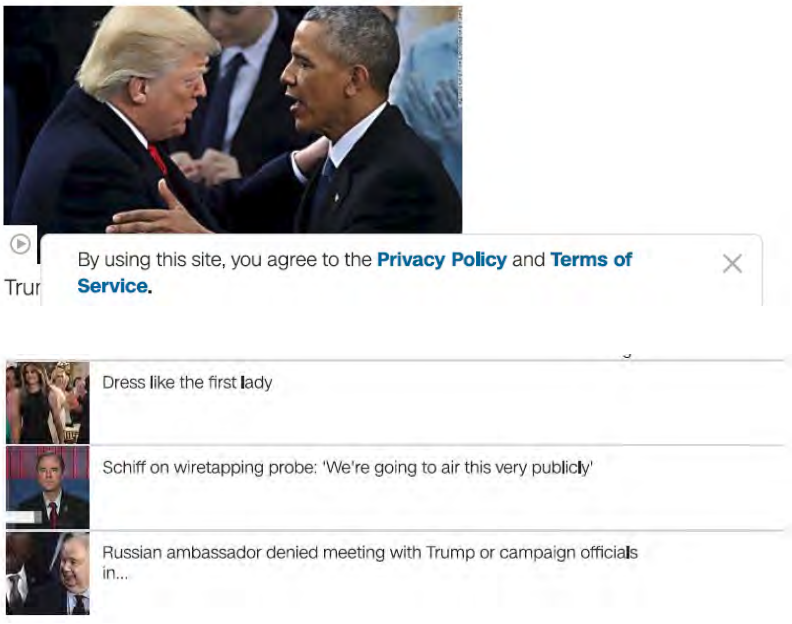

Exhibit GG

The New York Times | https://nyti.ms/2kVhMbe

POLITICS

H.R. McMaster Breaks With Administration on Views of Islam

By MARK LANDLER and ERIC SCHMITT
FEB. 24, 2017

WASHINGTON—President Trump's newly appointed national security adviser has told his staff that Muslims who commit terrorist acts are perverting their religion, rejecting a key ideological view of other senior Trump advisers and signaling a potentially more moderate approach to the Islamic world.

The adviser, Lt. Gen. H. R. McMaster, told the staff of the National Security Council on Thursday, in his first "all hands" staff meeting, that the label "radical Islamic terrorism" was not helpful because terrorists are "un-Islamic," according to people who were in the meeting.

That is a repudiation of the language regularly used by both the president and General McMaster's predecessor, Michael T. Flynn, who resigned last week after admitting that he had misled Vice President Mike Pence and other officials about a phone call with a Russian diplomat.

It is also a sign that General McMaster, a veteran of the Iraq war known for his sense of history and independent streak, might move the council away from the ideologically charged views of Mr. Flynn, who was also a three-star Army general before retiring.

Wearing his Army uniform, General McMaster spoke to a group that has been rattled and deeply demoralized after weeks of upheaval, following a haphazard transition from the Obama administration and amid the questions about links to Russia, which swiftly engulfed Mr. Flynn.

General McMaster, several officials said, has been vocal about his views on dealing with Islamic militancy, including with Mr. Trump, who on Monday described him as "a man of tremendous talent, tremendous experience." General McMaster got the job after Mr. Trump's first choice, Robert S. Harward, a retired Navy vice admiral, turned it down.

Within a day of his appointment on Monday, General McMaster was popping into offices to introduce himself to the council's professional staff members. The staff members, many of them holdovers from the Obama administration, felt viewed with suspicion by Mr. Trump's team and shut out of the policy-making process, according to current and former officials.

In his language, General McMaster is closer to the positions of former Presidents Barack Obama and George W. Bush. Both took pains to separate acts of terrorism from Islamic teaching, in part because they argued that the United States needed the help of Muslim allies to hunt down terrorists.

"This is very much a repudiation of his new boss's lexicon and worldview," said William McCants, a senior fellow at the Brookings Institution and the author of "The ISIS Apocalypse."

"McMaster, like Obama, is someone who was in positions ofleadership and thought the United States

should not play into the jihadist propaganda that this is a religious war," Mr. Mccants said.

"There is a deep hunger for McMaster's view in the interagency," he added, referring to the process by which the State Department, Pentagon and other agencies funnel recommendations through the National Security Council. "The fact that he has made himself the champion of this view makes people realize they have an advocate to express dissenting opinions."

But Mr. McCants and others cautioned that General McMaster's views would not necessarily be the final word in a White House where Mr. Trump and several of his top advisers view Islam in deeply xenophobic terms. Some aides, including the president's chief strategist, Stephen K. Bannon, have warned of a looming existential clash between Islam and the Judeo-Christian world.

Mr. Bannon and Stephen Miller, another senior adviser with anti-Islamic views, have close ties to Mr. Trump and walk-in privileges in the Oval Office. General McMaster, 54, has neither.

Known for challenging his superiors, General McMaster was nearly passed over for the rank of brigadier general in 2007, until Gen. David H. Petraeus, who used his counterinsurgency strategy in Iraq, and Robert M. Gates, then the defense secretary, rallied support for him.

The schisms within the administration could be aired publicly if the Senate Armed Services Committee exercises a right to hold a confirmation hearing for General McMaster. Although the post of national

security adviser does not require Senate confirmation, senators must approve his retention of his three-star rank in a new position.

Senator John McCain, the committee's chairman and a strong supporter of General McMaster, has not said whether he wants to hold a hearing.

To outside observers, the administration's approach to the world appears increasingly schizophrenic. Mr. Pence, Defense Secretary Jim Mattis and other senior cabinet officers have reaffirmed American support for alliances with NATO and in East Asia. Mr. Bannon and other White House officials continue to suggest there will be radical shifts in American policy. These mixed messages extend beyond the Muslim world. This week, Mr. Pence traveled to Brussels to declare —on Mr. Trump's behalf, he said—"the strong commitment of the United States to the continued cooperation and partnership with the European Union."

But on Thursday, the German ambassador to the United States, Peter Wittig, said his government remains concerned that the White House views the European Union as an ailing, inefficient economic club, rather than a political project that has kept Europe at peace.

Before Mr. Pence's trip, according to Reuters, Mr. Wittig met Mr. Bannon, who told him the White House viewed the European Union as a "flawed construct" and preferred to negotiate with Germany and other European countries one-on-one. Mr. Wittig declined to discuss the meeting, while Mr. Bannon did not respond to a request for comment.

But Mr. Wittig said to reporters, "We will certainly fight for a coherent and resilient European Union."

Get politics and Washington news updates via Facebook, Twitter and in the Morning Briefing newsletter.

A version of this article appears in print on February 25, 2017, on Page A15 of the New York edition with the headline: McMaster Breaks With Trump on Islam.

Exhibit HH

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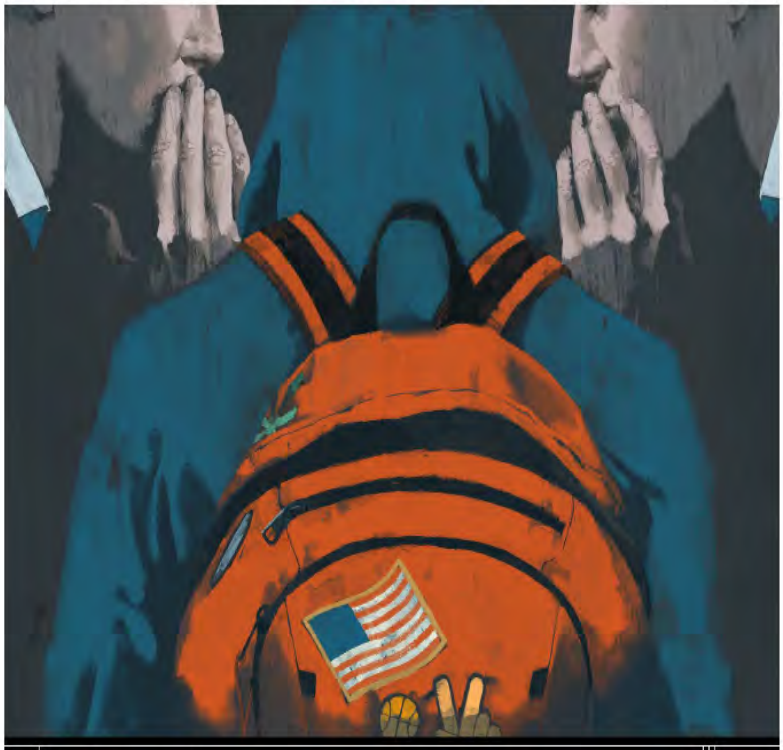


The Big (Imaginary) Black Friday Bombing

TEXT BY:
Nicolás Medina Mora
and Mike Hayes

ILLUSTRATED BY:
Marc Aspinall

How the case of conflicted teenager Mohamed Mohamud — convinced by the FBI he was bombing a Christmas tree lighting ceremony in Portland, Oregon — could determine whether the American government is allowed to spy wholesale on its citizens.

On Nov. 4, 2010, a small cell of al-Qaeda operatives convened at a Starbucks in Corvallis, Oregon, to review the details of their plot to kill 25,000 people in downtown Portland. The cell had three members: Hussein, an explosives expert; Youssef, a businessman turned jihadi recruiter; and Mohamed Osman Mohamud, a 19-year-old Somali-American college student.

The would-be terrorists had met earlier that year, after one of Mohamud's friends from the mosque recommended him to the Council, a secret jihadi organization that scoured the globe for potential operators. Hussein and Youssef flew to Oregon to meet the teen, whom they called "a jewel in the rough." Together, the three conceived a plot to detonate an 1,800-pound bomb during Portland's Christmas tree lighting ceremony, a yearly Black Friday tradition in Pioneer Square, the city's main plaza. Mohamud chose the target. Hussein and Youssef designed and built the bomb.

It was time for a test run. After meeting at the coffee shop, the group drove to a remote spot in the countryside. There, Hussein showed Mohamud a smaller version of the device: a backpack filled with three pounds of explosives. They placed the bomb in a tree and walked away. Hussein handed Mohamud a cell phone and asked him to dial a number. The teenager obeyed—and a small explosion rattled the last yellow leaves on the trees.

Later that day, the cell returned to Mohamud's apartment in Corvallis to record his farewell video. The teenager put on a white robe, a white-and-red headdress, and a camouflage jacket. He began to read his

manifesto to the camera. "For as long as you threaten our security, your people will not remain safe," Mohamud said. "As your soldiers target our civilians, we will not fail to do so. Did you think that you could invade a Muslim land and we would not invade you?"

Two weeks later, on Nov. 26, 2010, Youssef picked up Mohamud from a friend's house in Portland. They met with Hussein and headed to a parking spot near the Comcast building, where the operators showed Mohamud a large white van. Hussein opened the side door, revealing six 55-gallon drums filled with fertilizer. On the front seat was the detonation mechanism: a cell phone, a 9-volt battery, and a switch. The whole van smelled of diesel.

"It's beautiful," Mohamud said.

The three headed to a hotel in downtown Portland, where they prayed and ordered a pizza. They turned on the TV and watched the crowds march into Pioneer Square under light rain.

Around sunset, Hussein and Mohamud drove the bomb to the chosen corner. Mohamud flipped the toggle switch attached to the detonator, arming the bomb. Youssef picked up Mohamud and Hussein in a different car and drove them to Union Station. As the three left the scene, Mohamud said he thought he saw his mother heading toward the ceremony.

After dropping off Youssef at the train station, Hussein and Mohamud parked in a nearby garage. The explosives expert handed the teen a cell phone. The teenager dialed the detonator number. Nothing happened.

"Why don't you get out of the car and try again?" Hussein said.

Mohamud did as he was told. As he pressed the last button, he heard a group of people running at him.

"Don't move!" someone yelled.

Suddenly, Mohamud was on the ground. He could hear Hussein screaming, "Allahu akbar!"—God is great—over and over again. After the third or fourth time, the 17 arresting officers started to laugh.

The bomb Mohamud had tried to detonate was fake. The test explosion was staged. There was no secret council of militant leaders seeking a gifted Somali-American teenager to wage jihad. Youssef and Hussein were undercover FBI agents.

The Black Friday non-bombing of Portland was a federal government sting, the result of a yearlong operation involving dozens of people, a secret court order, and a massive surveillance apparatus.

Mohamud went to trial three years after his arrest. (Unless otherwise stated, the facts in this article come from the voluminous public record for his criminal case, including the 2,700-page trial transcript, as well as firsthand interviews with 11 people with knowledge of the case. The FBI, the Department of Justice, and Mohamud's attorneys declined to answer detailed questions. Mohamud did not respond to letters sent to him in prison.)

In court, Mohamud's lawyers attempted an entrapment defense, arguing that their client never indicated he

wanted to attack Portland before the FBI contacted him. The prosecution said Mohamud's prior correspondence with two individuals suspected of working for al-Qaeda was evidence he was looking for "the right people"—and that, had the FBI not intervened, he might have found them.

The jury convicted Mohamud. A judge sentenced him to 30 years in prison.

The story could have ended there. But, months after the trial, Mohamud's lawyers received an unexpected message from the government: At some point in the investigation, the FBI had used the 2008 amendments to the Foreign Intelligence and Surveillance Act, a law known as the FAA, to access Mohamud's communications without a particular warrant.

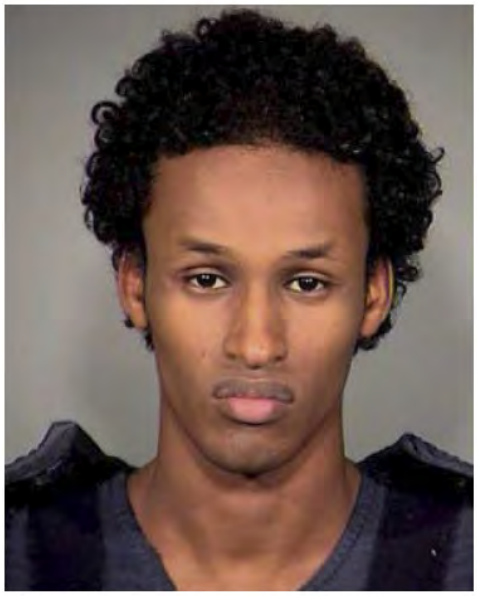
The notification was bewildering. The government is supposed to inform defendants they have been targeted by FAA spying before they go to trial, not after. More broadly, the Fourth Amendment to the Constitution —at least as many legal experts understand it— protects citizens and those living in the U.S. from warrantless surveillance.

Today, Mohamud's lawyers are asking the 9th Circuit of the U.S. Court of Appeals to overturn their client's conviction. Their central argument is that the FBI's use of the FAA against Mohamud violated the Constitution.

Mohamud is the very first criminal defendant to challenge the FAA before a court of appeals, which opens the door for a hearing before the U.S. Supreme Court. The appeal has widespread implications: The contro-

versial law provides the legal framework for the mass surveillance programs that Edward Snowden revealed in 2013.

"It's not an exaggeration," Patrick Toomey, an American Civil Liberties Union attorney, told BuzzFeed News, "to say that the privacy rights of millions of Americans potentially hang in the balance of his case."



Mohamud's mugshot. *Multnomah County Sheriff Office via Getty Images*

Mohamud is the very first defendant to potentially challenge the NSA's mass surveillance programs revealed by Edward Snowden before the U.S. Supreme Court.

Marc Aspinall for BuzzFeed News

The chain of events that led to Mohamud's appeal began in 1978, when Congress passed the Foreign Intelligence and Surveillance Act, or FISA. In its original version, the law forbade the government from spying within U.S. territory, unless it could convince a special court that the investigation's targets were "agents of a foreign power."

The law was far from perfect: The special court met in secret and approved nearly all of the government's requests. (Of the 35,333 applications for FISA warrants filed between 1979 and 2013, only 12 were rejected outright.) Still, the act required the government to name the individuals it was targeting, specify the kind of communications it wanted to intercept, and give a timeline for the investigation—provisions that generally kept it in line with the Fourth Amendment.

Instead of targeting individuals already engaged in criminal conduct, the FBI after Sept. 11, 2001, began focusing on people who it believed could potentially become terrorists.

All of that changed after Sept. 11, 2001. Instead of treating terrorism as a crime to be solved after it happened, the government began to treat it as a disaster to be prevented. In 2002, President Bush signed a secret executive order authorizing the National Security Agency to monitor every email, telephone call, and text message in which at least one party was believed to be outside the U.S.—even if everyone else in the conversation was located within the country. The administration said the NSA didn't need any kind of warrant, from the FISA court or otherwise, because such communications counted as "foreign" rather than "domestic," and were therefore not protected by the Fourth Amendment.

The FBI, however, faced a problem: All that monitoring of communications was turning up a lot of terrorist sympathizers, but not a lot of actual criminal activity. The bureau responded by refining one of its most controversial techniques: the sting operation. Instead of targeting individuals already engaged in criminal conduct, the FBI began focusing on people who it believed could *potentially* become terrorists.

Underlying many of these sting operations was a psychological doctrine—strongly challenged by several studies—known as "radicalization theory," which held that individuals with extreme political opinions tended to look for like-minded people and eventually take violent action.

Many American Muslims believe the government uses sting operations to unfairly target their communities and that radicalization theory contributes to Islamophobia. "When people assume that one of their community members could be an informant for the government, that creates a ripple effect," Kayse Jama, a Somali-American organizer who works in Portland, told BuzzFeed News. "They can't trust the people at their mosque. They can't trust anyone. They feel they can't speak freely." Studies suggest that at least some of Jama's fears are well-founded.

Federal courts convict nearly 90% of those of accused of terrorism, most of them through guilty pleas. This means the facts of most homegrown terrorism cases are rarely entered into the public record, which in turn means the FBI is almost never forced to argue the legality of its techniques. Mohamud's case is one of few exceptions.

Mohamed Osman Mohamud was born on Aug. 11, 1991, in Mogadishu, Somalia. Months earlier, rebels had ousted the country's long-standing dictator, unleashing a civil war that rages to this day. On the way to the hospital, Mohamud's parents had to confront armed thugs. They were lucky to find a doctor who helped with the baby's breech birth.

The family fled to America. Mohamud's father, Osman Mohamud Barre, went first, quitting his engineering professorship at Somali National University. Mohamud stayed behind, spending a year in a Kenyan refugee camp with his mother, Mariam Hassan.

The U.S. granted Barre refugee status. He settled in Hillsboro, Oregon, where he worked 13 hours a day at an Intel assembly line. By 1993, he had saved enough money to bring his family to the U.S. "They were malnourished and suffering, but they were happy," Barre later testified at his son's trial. "We were grateful to America."

Barre climbed the ranks at Intel. He and Mariam had two more children. They moved to Beaverton, a prosperous suburb in southwest Portland. Mohamud devoured the *Harry Potter* series and became an NBA fan. He did well in school and made friends easily. "You would never see him alone," Joshua Alinger, who befriended Mohamud in elementary school, told BuzzFeed News.

Early in high school, Mohamud became interested in religion, even as his parents became less observant. Several of his friends said many Muslim families in Beaverton felt that Mohamud exerted a positive influence. "Whenever we tried to do something that went against our religion, like date a girl, [Mohamud] was like a stopping point," Mohamud's best friend, who is not identified in the public record and who spoke on condition of anonymity, told BuzzFeed News. "He would just give us that look."

Mohamud also joined in the hijinks of American adolescence. By junior year, he began skipping school. His best friend said the two of them would sneak out to a nearby community college to play pool. They made friends with an older student, who bought them alcohol and let them hang at his house. "I think he wanted to be a normal suburban teenager," said James Duncan,

an English teacher at Westville High School who oversaw Mohamud's study hall.

Like many refugee children, Mohamud had to deal with cultural barriers that separated him from his parents, his American friends, and his mostly white classmates. There is little question he felt different. For an issue of the class magazine, for example, Duncan asked his students to draw cartoons of themselves and caption them. Under his portrait, Mohamud wrote, "I'm *the* black one."

Around the same time, Mariam and Barre began to go through a breakup, Mohamud's best friend said. "Home was kind of a hostile environment for him," the friend said. "He tried to spend as much time as possible out of the house."

(Reached at her home in suburban Portland, Mohamud's mother declined to comment, saying her son's attorneys had instructed her not to speak to reporters. "But one day," she said, "I'll be able to speak out about his case, *inshallah*"—God willing. Mohamud's father did not respond to requests for comment.)

Mariam Barre at her son's trial. *Rick Bowmer / AP Photo*

As his parents' relationship deteriorated, Mohamud began spending more and more time at the Masjed As-Saber, a local mosque led by a Somali imam named Mohamed Kariye. The cleric had a complicated history. According to an immigration complaint, he spent part of his youth fighting with the Afghan mujahideen, ajihadi organization that counted Osama bin

Laden among its supporters. (At the time, however, the U.S. supported the group in its fight against the Soviet Union.) In 2003, the FBI's counterterrorism unit arrested him and charged him with Social Security fraud. (The imam pleaded guilty and paid roughly $5,000 in fines.) Today, the government is trying to take away the imam's American citizenship.

Kariye's teaching—ahhabism, a traditionalist Sunni practice—proved too restrictive for some members of Portland's Muslim community. The family of Mohamud's best friend, for example, used to attend Friday prayers at the Masjed As-Saber, but eventually switched to another congregation. Mohamud's parents, too, were "totally against the mosque," his best friend said. For the teenager, frequenting the masjed became a form of rebellion.

At Kariye's mosque, Mohamud met Amro al-Ali, an 18-year-old exchange student from Saudi Arabia. According to Marc Sageman, a former CIA officer who testified on "open source information" at Mohamud's trial, the Saudi was "a wannabe" who liked to talk big about jihad but was, at least at that point, "not a terrorist."

After meeting al-Ali, Mohamud began frequenting extremist websites, where he answered a call for submissions to an English-language webzine called *Jihadi Recollections*. The publication was the brainchild of Samir Khan, a Pakistani-American editor based in North Carolina. Khan commissioned him to write an article on fitness training, marking the beginning of a six-month-long collaboration.

But then, on Aug. 15, 2009, four days after his 18th birthday, Mohamud cut off contact with Khan. He wrote to Khan saying he was "going through a lot of things."

(Shortly after Mohamud's last email, Khan traveled to Yemen, where he became the editor of *Inspire,* the English-language outlet of al-Qaeda in the Arabian Peninsula. The U.S. government killed him in 2011, in the same drone strike that killed Anwar al-Awlaki, a top al-Qaeda figure and a U.S. citizen.)

Mohamud was indeed going through a lot—his parents had finally divorced. "You could see his discontent, sadness, and unhappiness," the teen's grandmother told his defense team. "He wouldn't listen to either one of them because there was no union. He definitely tried to talk them into staying together many, many times."

It was in that context that Mohamud received the email that sealed his fate. On Aug. 31, 2009, al-Ali sent him information about a religious school in Yemen. The thought of escaping to a distant land, away from his parents, appears to have seduced the teen. He stormed out of his mother's house and called his father to say he was moving to the Middle East. Barre tried to convince him to wait, but Mohamud said he already had a ticket and a visa. Barre called Mariam and asked her to look for their son's passport. It was missing.

Barre panicked. He had heard stories about kids from Minnesota's Somali-American community who'd been "brainwashed" into joining the civil war. He remembered one news report of a teen who fled—the

parents later found a photo of him on the internet "shot in the head, dead, in Somalia."

Not knowing who to call, Barre contacted the FBI. "Can you guys help me to stop my son and make him not leave the country?" he asked the agent who picked up the phone. The agent took down Mohamud's full name, date of birth, and address and told Barre to meet one of his colleagues at the parking lot of a local high school.

Meanwhile, Mariam found her son. He was in a playground not far from her house. She took his passport and drove him back home.

Mohamed Mohamud is seen in this undated handout photo. *Obtained by BuzzFeed News*

That afternoon, Barre met with FBI Special Agent Isaac DeLong, of the Joint Terrorism Task Force. "Why terrorism?" Barre asked. "Are you alluding that we are Muslim and my son's name is Mohamed? There's no terrorism here. We're citizens."

Barre explained that he wanted to keep his son from returning to Somalia. DeLong replied that there was nothing the bureau could do, because Mohamud was an adult.

That evening, the father and son had a difficult conversation. "I left my country because of violence," Barre told Mohamud. "I brought you here to give you a life of prosperity." Mohamud told his father had nothing to hide: al-Ali, a friend from the mosque, had recommended a school in Yemen. "You can learn Arabic and Islam once you finish school here and become mature enough to know wrong or right," Barre replied.

Barre forwarded al-Ali's email to the FBI, with a note saying he had spoken to Mohamud and the situation was under control. Unbeknownst to him, DeLong ran Mohamud's email address through what he described at trial as "an FBI database." The search, according to court records, turned out an interesting result: Mohamud had been in touch with the subject of another investigation—Samir Khan.

"I took this information to my superior," DeLong testified. "We decided to open a case."

The Bush administration's warrantless surveillance operations remained secret until December 2005, when the *New York Times* published an expose. The article unleashed outrage that pushed the president to seek retroactive legislative approval for the program. In July 2008, the Senate approved the FISA Amendments Act, or FAA.

The new law overwrote many of FISA's provisions, empowering the attorney general and the director of national intelligence to authorize surveillance of people "reasonably believed to be located outside the United States." Those offices no longer had to get warrants, as the original law mandated. Instead, they simply had to present the FISA court with a set of general procedures meant to "minimize" the "incidental" surveillance of people in the U.S.

On the same day President Bush signed the FAA, the ACLU filed a suit saying the law violated the First and Fourth Amendments. "The act does not require the government to demonstrate that its surveillance tar-

gets are foreign agents," the ACLU wrote in its complaint. "The statute does not require the government to identify its surveillance targets at all."

The suit, *Amnesty v. Clapper*, reached the Supreme Court. In February 2013, however, Justice Samuel Alito delivered an opinion declining to hear the case. He said the only people with standing to challenge the act were criminal defendants who, unlike the ACLU, knew for certain that their communications had been intercepted. (At that time, the government had not informed a single defendant of its use of the FAA.)

Then, in May 2013, Edward Snowden handed a group of journalists a cache of classified documents. The leaks detailed how the NSA invokes the FAA to intercept, store, and in some cases review the telephone and internet communications of hundreds of millions of people—many of them citizens and residents of the U.S.

It's unclear to what extent domestic law enforcement agencies have access to the immense databases of information obtained through warrantless surveillance. In the past, the government has said FBI agents assigned to criminal investigations cannot see the data.

Marc Aspinall for BuzzFeed News

Early in September 2009, Mohamud moved to Corvallis, a small city a few hours south of Portland, to attend classes at Oregon State University. It was too late to enroll officially, so he couldn't live in the dorms. His parents agreed to give him $300 a month for rent. Mohamud's best friend, however, had just started at

OSU, where he shared a large dorm room with two other students. Since they had an extra bed, they invited Mohamud to live with them for free. In exchange, "we called his rent budget our booze budget," the friend said.

The group soon expanded to include two young men, Raed and Mohamed. Two of Mohamud's roommates were dating a pair of best friends, and the dorm became the center of a tight-knit social scene. (The other roommates and the women declined requests for comment.) "Our freshman year was a drunken mess," Mohamud's best friend said. "It was a blast."

FBI documents described Mohamud as a "confused college kid that talks mildly radical jihad out one ear, and drugs, sex, drinking out the other."

Mohamud's friends from that time acknowledged he was easy to influence. "He'd say, 'I don't want to drink anymore,' but he could be persuaded to do it," said Raed. "Like, a friend of mine would be like, 'No, come on, let's just drink for one more week,' and he'd say, 'OK, let's go.'"

The FBI, which trial testimony shows was already reading Mohamud's communications and had agents physically following him, agreed with Raed's assessment. (The bureau refuses to disclose when, exactly, the surveillance began.) In emails sent to other FBI agents in the fall of 2009, Special Agent DeLong wrote that the "manipulable" and "conflicted" teen appeared to have "left behind his radical thinking." Christopher Henderson, the special agent who took over the case when Mohamud moved to Corvallis, described the

teen in internal emails as "a confused college kid that talks mildly radical jihad out one ear, and typical 18-year-old college kid (drugs, sex, drinking) out the other."

Then, on Halloween, Mohamud and his crew headed to a fraternity party. Mohamud "was drinking like a normal person, dancing with girls," and brought a woman home, Raed said. At the dorm, Raed said, they began having sex "in front of everybody, on the top bunk." The friends eventually left the room.

The following morning, two Oregon State Police officers were in the dorm. The cops said that a young woman had filed a crime report accusing Mohamud of drugging and raping her.

Mohamed Mohamud is seen in this undated handout photo. *Obtained by BuzzFeed News*

Mohamud met with Detective Eli Chambers at the campus police office for a polygraph test. He denied having drugged the woman, but admitted that she was very drunk—"more drunk than I thought," Mohamud said, according to Chambers' report.

Chambers closed his investigation without pressing charges against Mohamud. Still, the incident rattled the student. After the polygraph, he wrote a long post in one of the forums he frequented:

> I swear by Allah I have become so lost. And I want so badly to be in a muslim land. I keep telling myself that if I lived in a muslim land I would become

> so pious. [. . .] Being in University and living on campus hasn't helped me too much either. I have fallen into so many things (i.e. alcohol and women). [. . .] All I need is some soft words to help my heart and supporting advice.

Instead of soft words, Mohamud began receiving emails from Bill Smith, a recent convert to Islam who lived in eastern Idaho and wanted to "get more involved in the fight" against enemies of the Prophet. Smith, however, was a fictional character created by FBI Special Agent Jason Dodd of the Portland field office.

(There were a number of oddities in Dodd's decision to begin an operation against Mohamud. At trial, the agent testified that Special Agent DeLong authorized the "Bill Smith" emails, but DeLong could not recall such thing. Special Agent Elvis Chan, who would eventually run the operation that resulted in Mohamud's conviction, testified that he did not know about the "Bill Smith" emails until after the arrest.)

On Nov. 12, 2009, just days after a Muslim U.S. Army major killed 13 people at the military base in Fort Hood, Bill Smith told Mohamud that he had seen news reports of "brothers trying to fight." "I want to, as well," Smith wrote in one of about two dozen emails. "What can I do? Do you know who I can talk to? Can you help?" Mohamud did not engage him, cautioning him instead to be careful about what he said on the internet.

But then, on Dec. 3, 2009, someone familiar reached out to Mohamud. "Salamz bro," the message read. "It's

me, Amro." Al-Ali said he was making a pilgrimage to the holy city of Mecca, in Saudi Arabia. If Mohamud wanted to join, he said, a "bro" would contact him "about the proper paperwork."

The FBI agents traced al-Ali's computer not to Mecca, but to the northwestern border of Pakistan, one of the centers of violent jihad. The agents became convinced that al-Ali was writing in code, trying to recruit Mohamud as a fighter. Two months earlier, Interpol had issued an Arabic-language "red notice"—a sort of international "wanted" poster—saying al-Ali was "known to be connected to a fugitive wanted by Saudi Arabian authorities who is an expert in manufacturing explosives and in facilitating the movement of extremists inside Saudi Arabia," according to a translation included in a defense brief. "He also helped al-Qaeda division in Yemen and other countries by providing them with foreign fighters to carry out terrorist attacks against western and tourist interests."

(Later, the defense and the prosecution had heated arguments about the notice, which was ambiguous in Arabic and became vaguer in translation. Was al-Ali a member of al-Qaeda, or merely associated with a member? The matter was further complicated when the Saudis captured al-Ali, holding him without charges and subjecting him to repeated interrogations. A former intelligence officer told BuzzFeed News that classified reports detailing those interrogations show that al-Ali didn't remember Mohamud.)

Mohamud responded that joining the pilgrimage would be "wonderful." Al-Ali sent him a Gmail username and password, with instructions to log in to the account

and draft, but not send, a message for a brother called Abdul Hadi. The FBI went on high alert, but Mohamud couldn't figure out the system. No messages were exchanged.

Toward the end of spring semester, one of Mohamud's roommates invited him to spend the summer working on a fishing boat in Alaska. Mohamud's parents thought it would help discipline their son. They bought him a plane ticket and, on June 14, 2010, drove him to Portland International Airport.

The family made it only to the security checkpoint, where an airline employee told Mohamud he couldn't board. As the family stood at the concourse, a man in a dark suit introduced himself as Special Agent Bradford Petrie. "I understand Mohamed was not allowed to fly today," Petrie told the family. "We'd like to talk about that if we could."

Marc Aspinall for BuzzFeed News

A week earlier, the FBI had decided to launch a full-scale undercover operation against Mohamud. Miltiadis Trousas, an agent based in the FBI office in |Eugene, Oregon, wrote to Special Agent Chan, a sting specialist based in San Francisco, to suggest targeting the teen "using everything we have on him," including the fact that he was "shy around authority figures." When the agents learned of Mohamud's plans to travel to Alaska, they worried he might try to continue to Pakistan or Yemen. They placed him on the no-fly list.

At the Portland airport, Petrie brought Mohamud and his parents to a conference room. Barre asked whether his call to the FBI a year earlier had anything to do with his son's placement on the no-fly list. Mohamud denied visiting extremist websites. Petrie concluded the interview promising the family he'd try to "help" the teenager. He said nothing about the operation.

A few days after the interview at the airport, Chan contacted an FBI agent in California and asked him to fly to Portland to play an "al-Qaeda spotter" in a sting against a suspected teenage radical. The agent, who had been born and raised in an Arabic country, assumed the name Youssef.

Youssef got in touch with Mohamud nine days after the airport incident. The goal was to set up an in-person meeting, purportedly to assess whether the teen was serious about wanting to join a militant organization. The agent wrote in the voice of the "brother" whom al-Ali had earlier told Mohamud to contact, and whom the teenager never reached out to. "Salamz, bro," the message began. "Go to hushmail.com and set up an account." Mohamud replied with an innocuous greeting from an encrypted account. Two days later, Youssef wrote back: "Are you still able to help the brothers?"

Mohamud wrote back something noncommittal. Youssefs next email suggested that God's plan for Mohamud was in Portland: "Allah I'm sure has good reason for you to stay where you are," the undercover agent wrote. He said he was traveling to Oregon and asked the teen to meet him in person.

Mohamud ignored the message. Worried about losing their target, the agents sent another. A week later, Mohamud responded by inviting Youssef to Friday services at the Masjed AsSaber. The FBI, however, did not want to send an undercover agent to a place of worship. Instead, the agent suggested meeting in downtown Portland. Mohamud grew suspicious. "How did you get my email?" the teen wrote. "And if Amro did give you my email, then how do you know him? And describe him to me if you really do know him."

The FBI did not know what al-Ali looked like. To avoid blowing Youssefs cover, the agents invented a fictional organization, which they called the "Ihata," or Council. They told Mohamud that "a brother from Oregon" told the Council about him, prompting the group to send Youssef to interview him. Flattered, Mohamud agreed to meet on July 30, 2010.

For the first meeting, Youssef wore a suit to match his cover: a business traveler with connections across many countries. He met Mohamud on a street corner and walked with him to the Embassy Suites, a hotel blocks away from Pioneer Square.

The public record of that meeting is incomplete. In what the FBI claimed was an honest mistake, Youssefs tape recorder had dead batteries. Apart from the anonymous agent's testimony, the only source for what Mohamud said that day is a summarized report prepared by Chan. At trial, Chan said he had destroyed his original notes.

(The defense took great issue with this at trial. Entrapment law requires prosecutors to show that a defendant was predisposed to commit the crime before the first contact with government agents. The nuances of Mohamud's behavior and language during the first meeting, the defense argued, were vital.)

In the FBI's account of the meeting, Youssef and Mohamud sat at a table in a corner of the hotel lobby. The agent said the Council wanted to interview seven possible candidates in the U.S. and Canada.

"So, what have you been doing to be a good Muslim?" Youssef asked.

Mohamud said he'd written religious poems and a couple of articles for *Jihadi Recollections.*

"Well, you know, it's pretty obvious that you can't go overseas," Youssef said. "So, what can you do for the cause? What do you want to do for the cause right now?"

Instead of answering with a concrete proposition, Mohamud told him about a dream in which he went to the mountains of Yemen, received training, and led a Muslim army against the infidels in Afghanistan. The undercover agent then repeated his question—what could the teen do for the cause? Mohamud said he could do "anything."

"I gave him five examples of how you could be a good Muslim," Youssef testified at trial. Mohamud, the agent said, could pray five times a day, train as a doctor and go overseas, donate money to the cause, become "operational," or become "a martyr."

Mohamud replied he wanted to become operational. Youssef asked what he meant. According to the FBI agent, the teen said he wanted to "get a car, fill it with explosives, park it near a target location, and detonate the vehicle." Youssef told Mohamud he "had a brother that could help him with explosives" and instructed him "to research possible places within the Portland area as possible targets." The two then parted ways.

The FBI brought a second undercover agent into the operation: a detective from a suburban police department in California assigned to his city's Joint Terrorism Task Force. Like Youssef, the second agent was born and raised in an Arabic-speaking country. For the sake of the operation, he assumed the name Hussein. He prepared to play the role of a mature and deeply religious explosives expert.

Two weeks later, Mohamud met again with Youssef. The script for that meeting, the agent testified, was to "sell" the teen to Hussein, who was supposed to be initially skeptical. Youssef and Mohamud went to a room at the Embassy Suites, where Hussein was waiting —and where the FBI had installed several hidden cameras. They shared a meal to break the Ramadan fast.

"What can I do for you?" Hussein asked, according to his testimony.

Mohamud responded he wanted "a truck or a car and explosives."

"I'd be glad to sell you a truck!" Hussein said.

"No," Mohamud answered, "I want it for something else."

The teen launched into a rant about the need to punish the U.S. for attacks against Muslims.

"You know what's going on right now?" Mohamud said, according to a transcript of the recordings included in the prosecution's trial memorandum. "The U.S. is losing the war. So they have resorted to intentionally killing civilians. And, you know, God, the glorified, the exalted, said in the Quran that if they kill your women and children intentionally, then you are allowed to do the same to them."

The conversation shifted toward more concrete plans. Had Mohamud found a target in the Portland area, like Youssef requested?

"Do you guys know Pioneer Square?" the teen said. "When they have events, everybody comes up there. So, on the 26th of November, they have a Christmas tree lighting and some 25,000 people attend. You know, the streets are packed. I thought, I thought if you could help me, you know, to have, to have a truck . . . You know, explosives, *inshallah.*"

"And this is what's in your heart?" Youssef said. "You know, there's going to be a lot of children there."

"Yeah, I mean, that's what I'm looking for," Mohamud said.

"For kids?" Youssef asked.

"No, just for a huge mass," Mohamud said. "You know, for them to be attacked in their own element, with their families, celebrating the holidays."

Hussein asked Mohamud if he wanted to kill himself with the bomb.

The undercover FBI agent asked Mohamud if he wanted to kill himself with the bomb. "Yeah, I don't mind that;' the teen said.

"Yeah, I don't mind that," the teenager said. He began to stutter. "That, that, that, I mean, if I wasn't in it, then, you know, then, they'll look for me."

"And you are not worried?" Youssef asked.

"If you were going to paradise, you wouldn't have to worry, right?" Mohamud answered. "Yes, I will push the button."

"Allah is looking at you right now," Youssef said.

"You know what I like, what makes me happy? You know what I like to see? When I see the enemy of Allah, and, you know, their bodies are torn everywhere," Mohamud said.

Anticipating an entrapment defense and a jury of liberal Portlanders, the undercover agents made sure to give Mohamud a way out. "We want to make sure that it's, you know, it's in your heart," Youssef told the teen. "If we get all the way there and you're like, uh-oh—even if that happens, we'll be disappointed, but you always have a choice, you understand? With us you always have a choice."

On the drive home, Mohamud burst into tears. After he left the car, with the cameras still rolling, Hussein looked at his partner. "It's almost too good to be true," he said.

Pioneer Courthouse Square, the site of Mohamud's attempted bombing, is seen on Nov. 27, 2010, in Portland, Oregon. *Craig Mitchelldyer / Getty Images*

Over the next few months, Youssef and Hussein met with Mohamud on five more occasions. They began giving him tasks. First, they sent him shopping for a timer, two cell phones, a toggle switch, and a snap connector. They asked him to find a few possible parking spots near Pioneer Square. Later, they told him to rent a storage shed where they could build the bomb.

More than anything else, they praised him: "You got a lot of talent, brother Mohamed." "You're probably smarter than most people." "I think you can be a great poet." "I trust you with my life." "We love you, for the sake of Allah."

As the operation progressed, the two agents grew concerned that Mohamud was becoming suicidal, so they decided to tell the teen that the Council would help him flee to a Muslim country after the attack. They were also worried that Mohamud would tell someone, so they gave him $2,700 to rent an off-campus apartment away from his friends. In a moment of telling naïveté, the teenager asked the two men he thought were al-Qaeda recruiters to sign as his guarantors for the lease.

The change in Mohamud's lifestyle did not go unnoticed by his friends. He wouldn't show up to class or parties. He stopped going to Friday prayers at the Corvallis

mosque. "In the beginning, I didn't really understand why he was drifting away," Mohamed, one of the college friends, told BuzzFeed News. "And then Raed said, like, 'Hey man, we feel like there's something up. Like, he's not the same anymore.'" On the few occasions when they saw him, he seemed anxious and in distress.

"One of my friends and I, we'd be walking to a party," Raed said. "And Mohamed would be extremely drunk, and he would go to one of my friends and say, 'Are you the FBI? Are you the FBI?'"

The night before the bombing, Mohamud had Thanksgiving dinner in Beaverton with a few friends. Afterward, they went shopping at a nearby mall. Several people who were there told BuzzFeed News that Mohamud seemed to be having a really good time. He insisted on buying coffee for everyone. He poured marshmallow liquor into his cup. He made jokes and laughed and acted like his old self, the way he used to be freshman year, before he moved out of the dorms and began spending all of his time alone.

"He told me, 'I'm having the greatest morning of my life,'" Raed, who ran into Mohamud at 4 a.m. outside a J.C. Penney, told BuzzFeed News.

Later that day, Mohamud called his best friend to ask about his plans. The friend said he was going to see the Christmas tree lighting ceremony. Mohamud told him to stay home, but didn't explain. The two have not spoken since.

Marc Aspinall for BuzzFeed News

Shortly after his arrest, Mohamud was appointed three lawyers from the Portland Federal Public Defender's Office: Steve Sady, Steve Wax, and Lisa Hay. According to attorneys from around the country, the three were among the best terrorism lawyers in the U.S. All three declined to comment.

Mohamud's trial began on Jan. 10, 2013, more than two years after the arrest. In her opening statement, Assistant U.S. Attorney Pamala Holsinger called Mohamud a "prolific user" of extremist websites, saying he was "well known" for his work for Samir Khan.

Holsinger said the government had contacted Mohamud because a "known terrorist" was trying to recruit him. She said the government would prove Mohamud's attempt to travel to Alaska was a step toward his ultimate destination: Yemen. The prosecutor concluded by emphasizing the best evidence against Mohamud: "The defendant dialed this phone. And when the phone didn't go off, he dialed it again."

Sady, in his opening statement, accused the FBI of using "flattery" to get a manipulable teenager to do their bidding, invoking God and appealing to his fragile ego to make him do "the little things and big things that ended up bringing evidence into court today." The federal defender told the jury he understood the difficulty of putting aside emotion to acquit a person who thought he was carrying out a heinous act. He implored jurors to evaluate the case based on law rather than hypothetical destruction.

'We all want law enforcement to stop crime;' Mohamud's defense lawyer said. "But the FBI cannot create the very crime they intend to stop:'

"In America, we don't create crime. The entrapment defense is how this fundamental American value is made real in the courts," Sady said. "It's a line the government cannot cross. We all want law enforcement to stop crime. But the FBI cannot create the very crime they intend to stop."

The government's case was a rare look into an FBI undercover investigation—warts and all. Over nine days, 14 agents took the stand. Several were forced to confront off-color comments caught on tape during surveillance. During his cross-examination, Special Agent Mario Galindo—who had just explained to the jury that the reason the first face-to-face meeting was not recorded was because he accidentally left the recorder powered on the night before the operation—was asked to confirm a sexually suggestive comment he made after Mohamud first met the bomb expert, Hussein.

Sady: Did you express a feeling of enthusiasm by using a metaphor for sexual excitement?

Galindo: Which one?

Sady: Did you say, "You've got a lot of people with woodies up here right now?"

Galindo: Yes, I said that.

Both undercover agents testified for days. At one point, Lisa Hay grilled Youssef:

Hay: Did Mohamud say what kind of truck?

Youssef: He did not.

Hay: So the FBI decided what kind of truck, didn't they?

Youssef: Yes.

Hay: The FBI decided the size of the bomb?

Youssef: Yes.

Hay: The FBI designed the bomb?

Youssef: Yes.

Mohamud didn't testify in his own defense, though both his parents did. Barre told the court that he wished he had read his son's text messages to see what was going on with him. Then, during cross-examination by prosecutor Ethan Knight, the distraught father attacked the actions of the FBI:

Knight: You were concerned, and that's why you went to the FBI?

Barre: I went to the FBI to get help to stop him not to leave the country.

Knight: Because you were concerned that he might be brainwashed, isn't that right?

Barre: That is what I was afraid of. But can I tell you, the FBI brainwashed my son.

Several of Mohamud's friends took the stand on his behalf, calling him "goofy" and "funloving." Raed, however, was subpoenaed to testify for the prosecution. He wasn't happy about it and found a small way to rebel.

"The prosecution, they were like, 'Make sure you look at the jury and you talk to them eye to eye,'" Raed told BuzzFeed News. "But I'm like, no. If I were here on the defense side, sure, I can be talking straight to the jury. But I'm here because I'm forced to. So I'm going to answer your questions and go on with my day."

"I did look at Mohamed," Raed went on. "We did make eye contact. He was crying."

The trial closed after 14 days. Knight gave the government's summation. He reminded the jury that Mohamud had believed the bomb was real. The case, Knight argued, was about "a choice, a single and remarkable choice by this defendant to take the lives of thousands of people."

"An individual simply cannot be entrapped to commit an offense such as this," Knight said. "This is the type of offense that one commits only because one wholeheartedly wants to."

Steven T. Wax, left, and Stephen R. Sady, right. *Rick Bowmer / AP Photo*

Sady, the defense lawyer, gave an impassioned closing argument, citing Aleksandr Solzhenitsyn, the Soviet novelist who was forced into exile after publishing *The Gulag Archipelago.* "Solzhenitsyn says, 'There is a line between good and evil that runs through the hearts of all people,'" Sady said. "The government shouldn't be pushing that line."

After seven hours of deliberations, the jury returned a guilty verdict.

Nine months later, Mohamud was sentenced. The government asked that Mohamud be given 40 years in prison, while his defense team pleaded for 10 years. Judge Garr King sentenced Mohamud to 30, citing a case of "imperfect entrapment" carried out by the government.

"Now, the jury found that defendant was not entrapped, but imperfect entrapment is available as a defense," King said from the bench. "And in this case, it weighs slightly in favor of defendant in this case. The court realizes the agents often reminded the defendant he could back out of the plan if he had a change of heart, but that is balanced by the government's inducement through the agent's use of praise and religious references."

Marc Aspinall for BuzzFeed News

Just over a month after Mohamud's conviction, the Supreme Court published its decision not to hear the ACLU lawsuit challenging the constitutionality of the FISA Amendments Act, or FAA. As a criminal defendant who had been charged using evidence obtained through warrantless surveillance, Mohamud was one of the people who the court believed had standing to sue in place of the ACLU. The government, however, did not notify him of the surveillance until nearly a year after his conviction.

Sady and his team furiously litigated the issue. They filed a motion asking the court to force the government to disclose what it had learned about Mohamud using FAA warrantless surveillance. Although the attorneys

were careful not to single out particular pieces of evidence for scrutiny, their motion hinted at many possible questions. Did the FBI database that Special Agent DeLong searched when he found out that Mohamud corresponded with Khan include electronic data swept up by FAA laws? What about other types of FAA surveillance that had become publicly known since the Snowden disclosures? Were those surveillance methods used against Mohamud? Could Mohamud be sure he hadn't been targeted in a myriad of ways, some of them potentially unconstitutional?

For Mohamud, those questions meant the difference between prison and a new trial. Under a legal doctrine known as "the fruit of the poisonous tree," courts must suppress any evidence that has roots in illegal government conduct, even if a warrant is later issued to legally obtain the same evidence. If it turns out that unconstitutional surveillance first led the FBI to Mohamud, the prosecution's entire case could collapse.

Judge King, however, denied Mohamud's request for more information about the FBI's tactics, saying he would review the legality of the surveillance in private meetings with prosecutors.

Mohamud's attorneys resorted to broader legal arguments. Much like the ACLU, they claimed the FAA provided "none of the protections that the First and Fourth Amendments require to limit governmental intrusions on privacy." A vein of frustration ran through the pleadings, with the defense acknowledging at one point that it sought "suppression of unknown evidence [. . .] gathered at unknown times by unknown

means by unknown persons and agencies operating under unknown protocols."

The government responded that the warrantless surveillance in the case did not originally target Mohamud, but rather unspecified foreigners living abroad "who generally are not protected by the Fourth Amendment." The fact that communications belonging to American citizens living within the borders of their own country—such as Khan and Mohamud—might have been "incidentally" acquired under the authority of the FAA did not "render the collection unreasonable."

Again, Judge King sided with the prosecution, denying Mohamud's request for a new trial. (King declined a request for an interview.)

On Sep. 4, 2015, Mohamud's attorneys filed a brief asking the 9th Circuit of the Court of Appeals to overturn King's decision. The government has until December to file its response. Oral arguments could happen as soon as January 2016. Regardless of the outcome, the losing party is likely to appeal the matter before the Supreme Court.

A victory for the defense could end a significant chapter in the history of American law enforcement. It would follow other incremental decisions—including June's passing of the USA Freedom Act, which curbed an NSA program that collected most Americans' phone records—that have begun to roll back the emergency policies enacted in the tense days after Sept. 11. Crucially, it wouldn't just end particular programs, but establish a principle that will guide how courts must balance individual rights against collective security.

By contrast, a victory for the prosecution would not just keep Mohamud in prison, but also continue the preventive approach to law enforcement that has developed since Sept. 11.

"The history of the criminal justice system demonstrates that infringements on rights begin in cases against a particular targeted group that does not have any public support," Joshua Dratel, a defense attorney who has represented many American Muslims accused of terrorism, told BuzzFeed News. "However, over time those methods that get approved in those cases contaminate ordinary cases against ordinary persons, and especially against those who have politically unpopular opinions."

On a recent autumn evening, Raed and Mohamed met at a bar in Corvallis to share memories about their friend, the convicted terrorist. The two hadn't talked about Mohamud for a while, in part because things had been rough around campus after he got arrested.

"I mean, my name is Mohamed," Mohamed told BuzzFeed News. "A lot of racist things have happened to me, many times, even before the incident. Afterwards, when I was on campus and people knew I knew Mohamed or hung out with him, they'd say things like, 'Oh, Mo, you fucking terrorist!'"

"It's sad, you know," Raed said, as he flipped through Facebook photos showing himself and his friends at an anti-jihad rally. "For us to have to show up and be like, 'No, this isn't really us.'"

Would they want to see him again? The friends said nothing for a long time. Eventually, Mohamed broke the silence.

"The only reason I'd want to see him again would be to sit down with him, just like this," he said, making a sweeping gesture over the table. "Because I'm curious. I want to figure out why. I want to say to him, 'Some of your friends were [at Pioneer Square]. Why did you want to do it to them?' Not 'Why did you want to do it to everybody?' Because he, at that time, obviously did not care about everybody. But he had such a close relationship with so many people who were there or could have been there. Why would he specifically want to do that to them?"

Raed then mentioned that Mohamud had written him a few times from prison. "They're, like, normal conversations," he said of the letters. "Like we're talking like friends. He's asking how am I doing, how's my family doing, how're our friends doing."

Raed never wrote back.

Exhibit II

The Washington Post

National Security

A new travel ban with 'mostly minor technical differences'? That probably won't cut it, analysts say.

By Matt Zapotosky February 22

Senior policy adviser Stephen Miller said President Trump's revised travel ban will have "mostly minor technical differences" from the iteration frozen by the courts, and Americans would see "the same basic policy outcome for the country."

That is not what the Justice Department has promised. And legal analysts say it might not go far enough to allay the judiciary's concerns.

A senior White House official said Wednesday that Trump will issue a revised executive order on immigration next week, as the administration is working to make sure the implementation goes smoothly. Trump had said previously that the order would come this week. Neither the president nor his top advisers have detailed exactly what the new order will entail. Miller's comments on Fox News, while vague, seem to suggest the changes might not be substantive. And that could hurt the administration's bid to lift the court-imposed suspension on the ban, analysts said.

"If you're trying to moot out litigation, which is to say, 'Look, this litigation is no longer necessary,' it is very bad to say our intent here is to engage in the prohibited outcome," said Leon Fresco, who worked in the office of immigration litigation in President Barack Obama's Justice Department.

Trump's original travel ban temporarily barred from entering the United States refugees and citizens of seven Muslim-majority countries: Iraq, Iran, Sudan, Somalia, Syria, Yemen and Libya. When it was first implemented, State Department officials unilaterally revoked tens of thousands of visas, and the order seemed to affect even legal permanent residents, though the White House counsel soon clarified that it should not.

A federal district judge in Washington state suspended the ban Feb. 3, and a three-judge panel with the U.S. Court of Appeals for the 9th Circuit later upheld that freeze. While the Justice Department could have appealed to the full appeals court—or even to the Supreme Court—it asked the 9th Circuit judges last week to hold off because a new executive order was in the works.

"Rather 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 to eliminate what the panel erroneously thought were constitutional concerns," Justice Department lawyers wrote.

Officials still plan a new order, but White House press secretary Sean Spicer said Tuesday that they would not

rescind the old one. And speaking to Fox News's Martha Maccallum, Miller seemed to play down how substantial even the revisions would be—which would seem to put him at odds with the Justice Department.

"Well, one of the big differences that you're going to see in the executive order is that it's going to be responsive to the judicial ruling, which didn't exist previously. And so these are mostly minor technical differences," he said. "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."

Legal analysts have said previously that there are obvious ways in which the order could be cleaned up to help it pass legal muster—though anything that maintains outright bans might face a tough court battle.

Trump could craft an order that clearly exempts green-card holders—who have the best case to sue over the order—and he could also potentially exempt any current visa holders. But the 9th Circuit panel said that would not address claims "by citizens who have an interest in specific noncitizens' ability to travel to the United States."

And no matter what it does, the Trump administration must contend with the president's own call on the campaign trail for a "total and complete shutdown of Muslims entering the United States" and campaign surrogate Rudolph W. Giuliani's claim that Trump said

"Muslim ban" and asked him to form a commission to determine "the right way to do it legally."

A federal judge in Virginia referenced those comments in ordering the ban frozen with respect to Virginia residents and institutions, calling it "unrebutted evidence" that Trump's directive might violate the First Amendment. That is important because if judges found even the new order was designed to discriminate against Muslims—and not to protect national security—they might similarly strike it down. The president does possess broad power to set immigration policy, and even his original executive order might ultimately pass legal muster, analysts have said. So far, courts have just weighed temporary injunctions on the ban, not directly and finally deciding whether Trump exceeded his authority.

"To the extent that the new executive order just makes technical changes, then we don't see it solving any of the legal problems," said Lee Gelernt, deputy director of the American Civil liberties Union's national Immigrants' Rights Project, who is involved in a legal challenge to the ban in New York.

At the White House press briefing Wednesday, Spicer said he was confident the administration would ultimately prevail in court, but in the revised order officials had been "very clear about understanding what the court said, and trying to tailor that specifically."

He also said he was not concerned that Trump's prior remarks about targeting Muslims would hinder the administration's case.

"The president was very clear in his executive order that these were countries that we didn't have the proper vetting for when it came to ensuring the safety of Americans," Spicer said. "That's what the executive order said. . . . It was crafted in a way that was very clear about the countries and was not focused on anything else but the vetting requirements."

Revisions, analysts said, could ultimately help Trump prevail—particularly if he applied a ban only to the issuance of new visas, and if he issued robust procedures for those whose visas were revoked to challenge that action. His and Giuliani's comments would be an obstacle, but they would not necessarily block him forever from using his powers on immigration.

"Are you permanently prohibited from ever doing something like this because you at one time said something that was inappropriate?" Fresco said. "The courts will have to decide what they believe here."

Philip Rucker and John Wagner contributed to this report.

Matt Zapotosky covers the Justice Department for the Washington Post's National Security team.
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Exhibit JJ

The New York Times | https://nyti.ms/2cc9a86

Transcript of Donald Trump's Immigration Speech

SEPT. 1, 2016

Following is a transcript of the remarks by u on immigration in Phoenix on Wednesday, as transcribed by the Federal News Service.

TRUMP: Wow. Thank you. That's a lot of people, Phoenix, that's a lot of people.

(APPLAUSE)

Thank you very much.

Thank you, Phoenix. I am so glad to be back in Arizona.

(APPLAUSE)

The state that has a very, very special place in my heart. I love people of Arizona and together we are going to win the White House in November.

(APPLAUSE)

Now, you know this is where it all began for me. Remember that massive crowd also? So, I said let's go and have some fun tonight. We're going to Arizona, O.K.?

This will be a little bit different. This won't be a rally speech, per se. Instead, I'm going to deliver a detailed

policy address on one of the greatest challenges facing our country today, illegal immigration.

(APPLAUSE)

I've just landed having returned from a very important and special meeting with the president of Mexico, a man I like and respect very much. And a man who truly loves his country, Mexico.

And, by the way, just like I am a man who loves my country, the United States.

(APPLAUSE)

We agree on the importance of ending the illegal flow of drugs, cash, guns, and people across our border, and to put the cartels out of business.

(APPLAUSE)

We also discussed the great contributions of Mexican-American citizens to our two countries, my love for the people of Mexico, and the leadership and friendship between Mexico and the United States. It was a thoughtful and substantive conversation and it will go on for awhile. And, in the end we're all going to win. Both countries, we're all going to win.

This is the first of what I expect will be many, many conversations. And in a Trump administration we're going to go about creating a new relationship between our two countries, but it's going to be a fair relationship. We want fairness.

(APPLAUSE)

But to fix our immigration system, we must change our leadership in Washington and we must change it

quickly. Sadly, sadly there is no other way. The truth is our immigration system is worse than anybody ever realized. But the facts aren't known because the media won't report on them. The politicians won't talk about them and the special interests spend a lot of money trying to cover them up because they are making an absolute fortune. That's the way it is.

Today, on a very complicated and very difficult subject, you will get the truth. The fundamental problem with the immigration system in our country is that it serves the needs of wealthy donors, political activists and powerful, powerful politicians. It's all you can do. Thank you. Thank you.

(APPLAUSE)

Let me tell you who it does not serve. It does not serve you the American people. Doesn't serve you. When politicians talk about immigration reform, they usually mean the following: amnesty, open borders, lower wages. Immigration reform should mean something else entirely. It should mean improvements to our laws and policies to make life better for American citizens.

(APPLAUSE)

Thank you. But if we're going to make our immigration system work, then we have to be prepared to talk honestly and without fear about these important and very sensitive issues. For instance, we have to listen to the concerns that working people, our forgotten working people, have over the record pace of immigration and it's impact on their jobs, wages, housing, schools, tax bills and general living conditions.

These are valid concerns expressed by decent and patriotic citizens from all backgrounds, all over. We also have to be honest about the fact that not everyone who seeks to join our country will be able to successfully assimilate. Sometimes it's just not going to work out. It's our right, as a sovereign nation, to chose immigrants that we think are the likeliest to thrive and flourish and love us.

(APPLAUSE)

Then there is the issue of security. Countless innocent American lives have been stolen because our politicians have failed in their duty to secure our borders and enforce our laws like they have to be enforced. I have met with many of the great parents who lost their children to sanctuary cities and open borders. So many people, so many, many people. So sad. They will be joining me on this stage in a little while and I look forward to introducing, these are amazing, amazing people.

Countless Americans who have died in recent years would be alive today if not for the open border policies of this administration and the administration that causes this horrible, horrible thought process, called Hillary Clinton.

(APPLAUSE)

This includes incredible Americans like 21-year-old Sarah Root. The man who killed her arrived at the border, entered federal custody and then was released into the U.S., think of it, into the U.S. community under the policies of the White House Barack Obama and

Hillary Clinton. Weak, weak policies. Weak and foolish policies.

He was released again after the crime, and now he's out there at large. Sarah had graduated from college with a 4.0, top student in her class one day before her death.

Also among the victims of the Obama-Clinton open-border policy was Grant Ronnebeck, a 21-year-old convenience store clerk and a really good guy from Mesa, Arizona. A lot of you have known about Grant.

He was murdered by an illegal immigrant gang member previously convicted of burglary, who had also been released from federal custody, and they knew it was going to happen again.

Another victim is Kate Steinle. Gunned down in the sanctuary city of San Francisco, by an illegal immigrant, deported five previous times. And they knew he was no good.

Then there is the case of 90-year-old Earl Olander, who was brutally beaten and left to bleed to death in his home, 90 years old and defenseless. The perpetrators were illegal immigrants with criminal records a mile long, who did not meet Obama administration standards for removal. And they knew it was going to happen.

In California, a 64-year-old Air Force veteran, a great woman, according to everybody that knew her, Marilyn Pharis, was sexually assaulted and beaten to death with a hammer. Her killer had been arrested on multiple occasions but was never, ever deported, despite the fact that everybody wanted him out.

A 2011 report from the Government Accountability Office found that illegal immigrants and other non-citizens, in our prisons and jails together, had around 25,000 homicide arrests to their names, 25,000.

On top of that, illegal immigration costs our country more than $113 billion a year. And this is what we get. For the money we are going to spend on illegal immigration over the next 10 years, we could provide one million at-risk students with a school voucher, which so many people are wanting.

While there are many illegal immigrants in our country who are good people, many, many, this doesn't change the fact that most illegal immigrants are lower skilled workers with less education, who compete directly against vulnerable American workers, and that these illegal workers draw much more out from the system than they can ever possibly pay back.

And they're hurting a lot of our people that cannot get jobs under any circumstances.

But these facts are never reported. Instead, the media and my opponent discuss one thing and only one thing, the needs of people living here illegally. In many cases, by the way, they're treated better than our vets.

Not going to happen anymore, folks. November 8th. Not going to happen anymore.

(APPLAUSE)

AUDIENCE: Trump! Trump! Trump!

The truth is, the central issue is not the needs of the 11 million illegal immigrants or however many there may be—and honestly we've been hearing that number for years. It's always 11 million. Our government has no idea. It could be three million. It could be 30 million. They have no idea what the number is.

Frankly our government has no idea what they're doing on many, many fronts, folks.

(APPLAUSE)

But whatever the number, that's never really been the central issue. It will never be a central issue. It doesn't matter from that standpoint. Anyone who tells you that the core issue is the needs of those living here illegally has simply spent too much time in Washington.

(APPLAUSE)

Only the out of touch media elites think the biggest problems facing America—you know this, this is what they talk about, facing American society today is that there are 11 million illegal immigrants who don't have legal status. And, they also think the biggest thing, and you know this, it's not nuclear, and it's not ISIS, it's not Russia, it's not China, it's global warming.

To all the politicians, donors, and special interests, hear these words from me and all of you today. There is only one core issue in the immigration debate, and that issue is the well being of the American people.

(APPLAUSE)

Nothing even comes a close second. Hillary Clinton, for instance, talks constantly about her fears that

families will be separated, but she's not talking about the American families who have been permanently separated from their loved ones because of a preventable homicide, because of a preventable death, because of murder.

No, she's only talking about families who come here in violation of the law. We will treat everyone living or residing in our country with great dignity. So important.

We will be fair, just, and compassionate to all, but our greatest compassion must be for our American citizens.

(APPLAUSE)

Thank you.

President Obama and Hillary Clinton have engaged in gross dereliction of duty by surrendering the safety of the American people to open borders, and you know it better than anybody right here in Arizona. You know it.

President Obama and Hillary Clinton support sanctuary cities. They support catch and release on the border. They support visa overstays. They support the release of dangerous, dangerous, dangerous, criminals from detention. And they support unconstitutional executive amnesty.

Hillary Clinton has pledged amnesty in her first 100 days, and her plan will provide Obamacare, Social Security, and Medicare for illegal immigrants, breaking the federal budget.

On top of that she promises uncontrolled, low-skilled immigration that continues to reduce jobs and wages for American workers, and especially for African-American and Hispanic workers within our country. Our citizens.

Most incredibly, because to me this is unbelievable, we have no idea who these people are, where they come from. I always say Trojan horse. Watch what's going to happen, folks. It's not going to be pretty.

This includes her plan to bring in 620,000 new refugees from Syria and that region over a short period of time. And even yesterday, when you were watching the news, you saw thousands and thousands of people coming in from Syria. What is wrong with our politicians, our leaders if we can call them that. What the hell are we doing?

(APPLAUSE)

Hard to believe. Hard to believe. Now that you've heard about Hillary Clinton's plan, about which she has not answered a single question, let me tell you about my plan. And do you notice. . .

(APPLAUSE)

And do you notice all the time for weeks and weeks of debating my plan, debating, talking about it, what about this, what about that. They never even mentioned her plan on immigration because she doesn't want to get into the quagmire. It's a tough one, she doesn't know what she's doing except open borders and let everybody come in and destroy our country by the way.

(APPLAUSE)

While Hillary Clinton meets only with donors and lobbyists, my plan was crafted with the input from Federal Immigration offices, very great people. Among the top immigration experts anywhere in this country, who represent workers, not corporations, very important to us.

I also worked with lawmakers, who've led on this issue on behalf of American citizens for many years. And most importantly I've met with the people directly impacted by these policies. So important.

Number one, are you ready? Are you ready?

(APPLAUSE)

We will build a great wall along the southern border.

(APPLAUSE)

AUDIENCE: Build the wall! Build the wall! Build the wall!

And Mexico will pay for the wall.

(APPLAUSE)

One hundred percent. They don't know it yet, but they're going to pay for it. And they're great people and great leaders but they're going to pay for the wall.

On day one, we will begin working on an impenetrable, physical, tall, power, beautiful southern border wall.

(APPLAUSE)

We will use the best technology, including above and below ground sensors that's the tunnels. Remember that, above and below.

(APPLAUSE)

Above and below ground sensors. Towers, aerial surveillance and manpower to supplement the wall, find and dislocate tunnels and keep out criminal cartels and Mexico you know that, will work with us. I really believe it. Mexico will work with us. I absolutely believe it. And especially after meeting with their wonderful, wonderful president today. I really believe they want to solve this problem along with us, and I'm sure they will.

(APPLAUSE)

Number two, we are going to end catch and release. We catch them, oh go ahead. We catch them, go ahead.

(APPLAUSE)

Under my administration, anyone who illegally crosses the border will be detained until they are removed out of our country and back to the country from which they came.

(APPLAUSE)

And they'll be brought great distances. We're not dropping them right across. They learned that. President Eisenhower. They'd drop them across, right across, and they'd come back. And across.

Then when they flew them to a long distance, all of a sudden that was the end. We will take them great distances. But we will take them to the country where they came from, O.K.?

Number three. Number three, this is the one, I think it's so great. It's hard to believe, people don't

even talk about it. Zero tolerance for criminal aliens. Zero. Zero.

(APPLAUSE)

Zero. They don't come in here. They don't come in here.

According to federal data, there are at least two million, two million, think of it, criminal aliens now inside of our country, two million people criminal aliens. We will begin moving them out day one. As soon as I take office. Day one. In joint operation with local, state, and federal law enforcement.

Now, just so you understand, the police, who we all respect—say hello to the police. Boy, they don't get the credit they deserve. I can tell you. They're great people. But the police and law enforcement, they know who these people are.

They live with these people. They get mocked by these people. They can't do anything about these people, and they want to. They know who these people are. Day one, my first hour in office, those people are gone.

(APPLAUSE)

And you can call it deported if you want. The press doesn't like that term. You can call it whatever the hell you want. They're gone.

Beyond the two million, and there are vast numbers of additional criminal illegal immigrants who have fled, but their days have run out in this country. The crime will stop. They're going to be gone. It will be over.

(APPLAUSE)

They're going out. They're going out fast.

Moving forward. We will issue detainers for illegal immigrants who are arrested for any crime whatsoever, and they will be placed into immediate removal proceedings if we even have to do that.

We will terminate the Obama administration's deadly, and it is deadly, nonenforcement policies that allow thousands of criminal aliens to freely roam our streets, walk around, do whatever they want to do, crime all over the place.

That's over. That's over, folks. That's over.

Since 2013 alone, the Obama administration has allowed 300,000 criminal aliens to return back into United States communities. These are individuals encountered or identified by ICE, but who were not detained or processed for deportation because it wouldn't have been politically correct.

My plan also includes cooperating closely with local jurisdictions to remove criminal aliens immediately. We will restore the highly successful Secure Communities Program. Good program. We will expand and revitalize the popular 287(g) partnerships, which will help to identify hundreds of thousands of deportable aliens in local jails that we don't even know about.

Both of these programs have been recklessly gutted by this administration. And those were programs that worked.

This is yet one more area where we are headed in a totally opposite direction. There's no common sense, there's no brain power in our administration by our leader, or our leaders. None, none, none.

On my first day in office I am also going to ask Congress to pass Kate's Law, named for Kate Steinle . . .

(APPLAUSE)

. . . to ensure that criminal aliens convicted of illegal reentry receive strong mandatory minimum sentences. Strong.

(APPLAUSE)

And then we get them out.

Another reform I'm proposing is the passage of legislation named for Detective Michael Davis and Deputy Sheriff Danny Oliver, two law enforcement officers recently killed by a previously deported illegal immigrant.

The Davis-Oliver bill will enhance cooperation with state and local authorities to ensure that criminal immigrants and terrorists are swiftly, really swiftly, identified and removed. And they will go face, believe me. They're going to go.

We're going to triple the number of ICE deportation officers.

(APPLAUSE)

Within ICE I am going to create a new special deportation task force focused on identifying and quickly removing the most dangerous criminal illegal

immigrants in America who have evaded justice just like Hillary Clinton has evaded justice, O.K.?

(APPLAUSE)

Maybe they'll be able to deport her.

(APPLAUSE)

The local police who know every one of these criminals, and they know each and every one by name, by crime, where they live, they will work so fast. And our local police will be so happy that they don't have to be abused by these thugs anymore.

There's no great mystery to it, they've put up with it for years, and now finally we will turn the tables and law enforcement and our police will be allowed to clear up this dangerous and threatening mess.

We're also going to hire 5,000 more Border Patrol agents.

(APPLAUSE)

Who gave me their endorsement, 16,500 gave me their endorsement.

And put more of them on the border instead of behind desks which is good. We will expand the number of border patrol stations significantly.

I've had a chance to spend time with these incredible law enforcement officers, and I want to take a moment to thank them. What they do is incredible.

(APPLAUSE)

And getting their endorsement means so much to me, More to me really than I can say. Means so much.

First time they've ever endorsed a presidential candidate.

Number four, block funding for sanctuary cities. We block the funding. No more funds.

(APPLAUSE)

We will end the sanctuary cities that have resulted in so many needless deaths. Cities that refuse to cooperate with federal authorities will not receive taxpayer dollars, and we will work with Congress to pass legislation to protect those jurisdictions that do assist federal authorities. Number five, cancel unconstitutional executive orders and enforce all immigration laws.

(APPLAUSE)

We will immediately terminate President Obama's two illegal executive amnesties in which he defied federal law and the Constitution to give amnesty to approximately five million illegal immigrants, five million.

(BOOING)

And how about all the millions that are waiting on line, going through the process legally? So unfair.

Hillary Clinton has pledged to keep both of these illegal amnesty programs, including the 2014 amnesty which has been blocked by the United States Supreme Court. Great.

Clinton has also pledged to add a third executive amnesty. And by the way, folks, she will be a disaster for our country, a disaster in so many other ways.

And don't forget the Supreme Court of the United States. Don't forget that when you go to vote on

November 8. And don't forget your Second Amendment. And don't forget the repeal and replacement of Obamacare.

(APPLAUSE)

And don't forget building up our depleted military. And don't forget taking care of our vets. Don't forget our vets. They have been forgotten.

(APPLAUSE)

Clinton's plan would trigger a constitutional crisis unlike almost anything we have ever seen before. In effect, she would be abolishing the lawmaking powers of Congress in order to write her own laws from the Oval Office. And you see what bad judgment she has. She has seriously bad judgment.

(BOOING)

Can you imagine? In a Trump administration all immigration laws will be enforced, will be enforced. As with any law enforcement activity, we will set priorities. But unlike this administration, no one will be immune or exempt from enforcement. And ICE and Border Patrol officers will be allowed to do their jobs the way their jobs are supposed to be done.

(APPLAUSE)

Anyone who has entered the United States illegally is subject to deportation. That is what it means to have laws and to have a country. Otherwise we don't have a country.

Our enforcement priorities will include removing criminals, gang members, security threats, visa over-

stays, public charges. That is those relying on public welfare or straining the safety net along with millions of recent illegal arrivals and overstays who've come here under this current corrupt administration.

(APPLAUSE)

Number six, we are going to suspend the issuance of visas to any place where adequate screening cannot occur.

(APPLAUSE)

According to data provided by the Senate Subcommittee on Immigration, and the national interest between 9/11 and the end of 2014, at least 380 foreign born individuals were convicted in terror cases inside the United States. And even right now the largest number of people are under investigation for exactly this that we've ever had in the history of our country.

Our country is a mess. We don't even know what to look for anymore, folks. Our country has to straighten out. And we have to straighten out fast.

The number is likely higher. But the administration refuses to provide this information, even to Congress. As soon as I enter office I am going to ask the Department of State, which has been brutalized by Hillary Clinton, brutalized.

(BOOING)

Homeland Security and the Department of Justice to begin a comprehensive review of these cases in order to develop a list of regions and countries from which im-

migration must be suspended until proven and effective vetting mechanisms can be put in place.

I call it extreme vetting right? Extreme vetting. I want extreme. It's going to be so tough, and if somebody comes in that's fine but they're going to be good. It's extreme.

And if people don't like it, we've got have a country folks. Got to have a country. Countries in which immigration will be suspended would include places like Syria and Libya. And we are going to stop the tens of thousands of people coming in from Syria. We have no idea who they are, where they come from. There's no documentation. There's no paperwork. It's going to end badly folks. It's going to end very, very badly.

For the price of resettling one refugee in the United States, 12 could be resettled in a safe zone in their home region. Which I agree with 100 percent. We have to build safe zones and we'll get the money from Gulf states. We don't want to put up the money. We owe almost $20 trillion. Doubled since Obama took office, our national debt.

But we will get the money from Gulf states and others. We'll supervise it. We'll build safe zones which is something that I think all of us want to see.

Another reform involves new screening tests for all applicants that include, and this is so important, especially if you get the right people. And we will get the right people. An ideological certification to make sure that those we are admitting to our country share our values and love our people.

(APPLAUSE)

Thank you. We're very proud of our country. Aren't we? Really? With all it's going through, we're very proud of our country. For instance, in the last five years, we've admitted nearly 100,000 immigrants from Iraq and Afghanistan. And these two countries according to Pew Research, a majority of residents say that the barbaric practice of honor killings against women are often or sometimes justified. That's what they say.

(APPLAUSE)

That's what they say. They're justified. Right? And we're admitting them to our country. Applicants will be asked their views about honor killings, about respect for women and gays and minorities. Attitudes on radical Islam, which our president refuses to say and many other topics as part of this vetting procedure. And if we have the right people doing it, believe me, very, very few will slip through the cracks. Hopefully, none.

(APPLAUSE)

Number seven, we will insure that other countries take their people back when they order them deported.

(APPLAUSE)

There are at least 23 countries that refuse to take their people back after they've been ordered to leave the United States. Including large numbers of violent criminals, they won't take them back. So we say, O.K., we'll keep them. Not going to happen with me, not going to happen with me.

(APPLAUSE)

Due to a Supreme Court decision, if these violent offenders cannot be sent home, our law enforcement officers have to release them into your communities.

(APPLAUSE)

And by the way, the results are horrific, horrific. There are often terrible consequences, such as Casey Chadwick's tragic death in Connecticut just last year. Yet despite the existence of a law that commands the secretary of state to stop issuing visas to these countries.

Secretary Hillary Clinton ignored this law and refused to use this powerful tool to bring nations into compliance. And, they would comply if we would act properly.

In other words, if we had leaders that knew what they were doing, which we don't.

The result of her misconduct was the release of thousands and thousands of dangerous criminal aliens who should have been sent home to their countries. Instead we have them all over the place. Probably a couple in this room as a matter of fact, but I hope not.

According to a report for the Boston Globe from the year 2008 to 2014 nearly 13,000 criminal aliens were released back into U.S. communities because their home countries would not, under any circumstances, take them back. Hard to believe with the power we have. Hard to believe.

We're like the big bully that keeps getting beat up. You ever see that? The big bully that keeps getting beat up.

These 13,000 releases occurred on Hillary Clinton's watch. She had the power and the duty to stop it cold, and she decided she would not do it.

(BOOING)

And Arizona knows better than most exactly what I'm talking about.

(APPLAUSE)

Those released include individuals convicted of killings, sexual assaults, and some of the most heinous crimes imaginable.

The Boston Globe writes that a Globe review of 323 criminals released in New England from 2008 to 2012 found that as many as 30 percent committed new offenses, including rape, attempted murder, and child molestation. We take them, we take them.

(BOOING)

Number eight, we will finally complete the biometric entry-exit visa tracking system which we need desperately.

(APPLAUSE)

For years Congress has required biometric entry-exit visa tracking systems, but it has never been completed. The politicians are all talk, no action, never happens. Never happens.

Hillary Clinton, all talk. Unfortunately when there is action it's always the wrong decision. You ever notice?

In my administration we will ensure that this system is in place. And, I will tell you, it will be on land, it will be on sea, it will be in air. We will have a proper tracking system.

Approximately half of new illegal immigrants came on temporary visas and then never, ever left. Why should they? Nobody's telling them to leave. Stay as long as you want, we'll take care of you.

Beyond violating our laws, visa overstays pose—and they really are a big problem—pose a substantial threat to national security. The 9/11 Commission said that this tracking system should be a high priority and would have assisted law enforcement and intelligence officials in August and September 2001 in conducting a search for two of the 9/11 hijackers that were in the United States on expired visas.

And you know what that would have meant, what that could have meant. Wouldn't that have been wonderful, right? What that could have meant.

Last year alone nearly half a million individuals overstayed their temporary visas. Removing these overstays will be a top priority of my administration.

(APPLAUSE)

If people around the world believe they can just come on a temporary visa and never, ever leave, the Obama-Clinton policy, that's what it is, then we have a

completely open border, and we no longer have a country.

We must send a message that visa expiration dates will be strongly enforced.

Number nine, we will turn off the jobs and benefits magnet.

(APPLAUSE)

We will ensure that E-Verify is used to the fullest extent possible under existing law, and we will work with Congress to strengthen and expand its use across the country.

Immigration law doesn't exist for the purpose of keeping criminals out. It exists to protect all aspects of American life. The work site, the welfare office, the education system, and everything else.

That is why immigration limits are established in the first place. If we only enforced the laws against crime, then we have an open border to the entire world. We will enforce all of our immigration laws.

(APPLAUSE)

And the same goes for government benefits. The Center for Immigration Studies estimates that 62 percent of households headed by illegal immigrants use some form of cash or non-cash welfare programs like food stamps or housing assistance.

Tremendous costs, by the way, to our country. Tremendous costs. This directly violates the federal public charge law designed to protect the United

States Treasury. Those who abuse our welfare system will be priorities for immediate removal.

(APPLAUSE)

Number 10, we will reform legal immigration to serve the best interests of America and its workers, the forgotten people. Workers. We're going to take care of our workers.

And by the way, and by the way, we're going to make great trade deals. We're going to renegotiate trade deals. We're going to bring our jobs back home. We're going to bring our jobs back home.

We have the most incompetently worked trade deals ever negotiated probably in the history of the world, and that starts with Nafta. And now they want to go TPP, one of the great disasters.

We're going to bring our jobs back home. And if companies want to leave Arizona and if they want to leave other states, there's going to be a lot of trouble for them. It's not going to be so easy. There will be consequence. Remember that. There will be consequence. They're not going to be leaving, go to another country, make the product, sell it into the United States, and all we end up with is no taxes and total unemployment. It's not going to happen. There will be consequences.

(APPLAUSE)

We've admitted 59 million immigrants to the United States between 1965 and 2015. Many of these arrivals have greatly enriched our country. So true. But we now have an obligation to them and to their children to

control future immigration as we are following, if you think, previous immigration waves.

We've had some big waves. And tremendously positive things have happened. Incredible things have happened. To ensure assimilation we want to ensure that it works. Assimilation, an important word. Integration and upward mobility.

(APPLAUSE)

Within just a few years immigration as a share of national population is set to break all historical records. The time has come for a new immigration commission to develop a new set of reforms to our legal immigration system in order to achieve the following goals.

To keep immigration levels measured by population share within historical norms. To select immigrants based on their likelihood of success in U.S. society and their ability to be financially self-sufficient.

(APPLAUSE)

We take anybody. Come on in, anybody. Just come on in. Not anymore.

You know, folks, it's called a two-way street. It is a two-way street, right? We need a system that serves our needs, not the needs of others. Remember, under a Trump administration it's called America first. Remember that.

(APPLAUSE)

To choose immigrants based on merit. Merit, skill, and proficiency. Doesn't that sound nice? And to establish new immigration controls to boost wages and

to ensure that open jobs are offered to American workers first. And that in particular African-American and Latino workers who are being shut out in this process so unfairly.

(APPLAUSE)

And Hillary Clinton is going to do nothing for the African-American worker, the Latino worker. She's going to do nothing. Give me your vote, she says, on November 8th. And then she'll say, so long, see you in four years. That's what it is.

She is going to do nothing. And just look at the past. She's done nothing. She's been there for 35 years. She's done nothing. And I say what do you have to lose? Choose me. Watch how good we're going to do together. Watch.

(APPLAUSE)

You watch. We want people to come into our country, but they have to come into our country legally and properly vetted, and in a manner that serves the national interest. We've been living under outdated immigration rules from decades ago. They're decades and decades old.

To avoid this happening in the future, I believe we should sunset our visa laws so that Congress is forced to periodically revise and revisit them to bring them up to date. They're archaic. They're ancient. We wouldn't put our entire federal budget on auto pilot for decades, so why should we do the same for the very, very complex subject of immigration?

So let's now talk about the big picture. These 10 steps, if rigorously followed and enforced, will accomplish more in a matter of months than our politicians have accomplished on this issue in the last 50 years. It's going to happen, folks. Because I am proudly not a politician, because I am not behold to any special interest, I've spent a lot of money on my campaign, I'll tell you. I write those checks. Nobody owns Trump.

I will get this done for you and for your family. We'll do it right. You'll be proud of our country again. We'll do it right. We will accomplish all of the steps outlined above. And, when we do, peace and law and justice and prosperity will prevail. Crime will go down. Border crossings will plummet. Gangs will disappear.

And the gangs are all over the place. And welfare use will decrease. We will have a peace dividend to spend on rebuilding America, beginning with our American inner cities. We're going to rebuild them, for once and for all.

For those here illegally today, who are seeking legal status, they will have one route and one route only. To return home and apply for reentry like everybody else, under the rules of the new legal immigration system that I have outlined above.

Those who have left to seek entry—

Thank you.

Thank you. Thank you. Those who have left to seek entry under this new system—and it will be an efficient system—will not be awarded surplus visas, but will have to apply for entry under the immigration caps

or limits that will be established in the future.TRUMP: We will break the cycle of amnesty and illegal immigration. We will break the cycle. There will be no amnesty.

(APPLAUSE)

Our message to the world will be this. You cannot obtain legal status or become a citizen of the United States by illegally entering our country. Can't do it.

(APPLAUSE)

This declaration alone will help stop the crisis of illegal crossings and illegal overstays, very importantly. People will know that you can't just smuggle in, hunker down and wait to be legalized. It's not going to work that way. Those days are over.

(APPLAUSE)

Importantly, in several years when we have accomplished all of our enforcement and deportation goals and truly ended illegal immigration for good, including the construction of a great wall, which we will have built in record time. And at a reasonable cost, which you never hear from the government.

(APPLAUSE)

And the establishment of our new lawful immigration system then and only then will we be in a position to consider the appropriate disposition of those individuals who remain.

That discussion can take place only in an atmosphere in which illegal immigration is a memory of the past, no longer with us, allowing us to weigh the different

options available based on the new circumstances at the time.

(APPLAUSE)

Right now, however, we're in the middle of a jobs crisis, a border crisis and a terrorism crisis like never before. All energies of the federal government and the legislative process must now be focused on immigration security. That is the only conversation we should be having at this time, immigration security. Cut it off.

Whether it's dangerous materials being smuggled across the border, terrorists entering on visas or Americans losing their jobs to foreign workers, these are the problems we must now focus on fixing. And the media needs to begin demanding to hear Hillary Clinton's answer on how her policies will affect Americans and their security.

(APPLAUSE)

These are matters of life and death for our country and its people, and we deserve answers from Hillary Clinton. And do you notice, she doesn't answer.

She didn't go to Louisiana. She didn't go to Mexico. She was invited.

She doesn't have the strength or the stamina to make America great again. Believe me.

(APPLAUSE)

What we do know, despite the lack of media curiosity, is that Hillary Clinton promises a radical amnesty combined with a radical reduction in immigration

enforcement. Just ask the Border Patrol about Hillary Clinton. You won't like what you're hearing.

The result will be millions more illegal immigrants; thousands of more violent, horrible crimes; and total chaos and lawlessness. That's what's going to happen, as sure as you're standing there.

This election, and I believe this, is our last chance to secure the border, stop illegal immigration and reform our laws to make your life better. I really believe this is it. This is our last time. November 8. November 8. You got to get out and vote on November 8.

(APPLAUSE)

It's our last chance. It's our last chance. And that includes Supreme Court justices and Second Amendment. Remember that. So I want to remind everyone what we're fighting for and who we are fighting for.

I am going to ask—these are really special people that I've gotten to know. I'm going to ask all of the "Angel Moms" to come join me on the stage right now.

These are amazing women.

(APPLAUSE)

These are amazing people.

(APPLAUSE)

AUDIENCE: USA! USA! USA!

I've become friends with so many. But Jamiel Shaw, incredible guy, lost his son so violently. Say just a few words about your child.

(SPEAKER'S VOICE): My son Ronald da Silva (ph) was murdered April 27, 2002 by an illegal alien who had been previously deported. And what so—makes me so outrageous is that we came here legally.

Thank you, Mr. Trump. I totally support you. You have my vote.

TRUMP: Thank you, thank you.

(SPEAKER'S VOICE): God bless you.

(APPLAUSE)

TRUMP: You know what? Name your child and come right by. Go ahead.

(SPEAKER'S VOICE): Laura Wilkerson. And my son was Joshua Wilkerson. He was murdered by an illegal in 2010. And I personally support Mr. Trump for our next president.

(APPLAUSE)

(SPEAKER'S VOICE): My name is Ruth Johnston Martin (ph). My husband was shot by an illegal alien. He fought the good fight but he took his last breath in 2002. And I support this man who's going to change this country for the better. God bless you.

(APPLAUSE)

(SPEAKER'S VOICE): My name Maureen Maloney (ph), and our son Matthew Denise (ph) was 23 years old when he was dragged a quarter of a mile to his death by an illegal alien, while horrified witnesses were banging on the truck trying to stop him.

(APPLAUSE)

(SPEAKER'S VOICE): Our son Matthew Denise, if Donald Trump were president in 2011, our son Matthew Denise and other Americans would be alive today.

(APPLAUSE)

(SPEAKER'S VOICE): Thank you. My name is Kathy Woods (ph). My son Steve (ph), a high school senior, 17 years old, went to the beach after a high school football game. A local gang came along, nine members. The cars were battered to—like war in Beirut. And all I can say is they murdered him and if Mr. Trump had been in office then the border would have been secure and our children would not be dead today.

(APPLAUSE)

(SPEAKER'S VOICE): Hi. My name is Brenda Sparks (ph), and my son is named Eric Zapeda (ph). He was raised by a legal immigrant from Honduras only to be murdered by an illegal in 2011. His murderer never did a second in handcuffs or jail. Got away with killing an American. So I'm voting for trump. And by the way, so is my mother.

(APPLAUSE)

(SPEAKER'S VOICE): My name is Dee Angle (ph). My cousin Rebecca Ann Johnston (ph), known as Becky, was murdered on January the 1st, 1989 in North Little Rock, Arkansas. Thank you. And if you don't vote Trump, we won't have a country. Trump all the way.

(APPLAUSE)

(SPEAKER'S VOICE): I'm Shannon Estes (ph). And my daughter Shaley Estes (ph), 22 years old, was murdered here in Phoenix last July 24 by a Russian who overstayed his visa. And vote Trump.

(APPLAUSE)

(SPEAKER'S VOICE): I'm Mary Ann Mendoza, the mother of Sergeant Brandon Mendoza, who was killed in a violent head-on collision in Mesa.

Thank you.

I want to thank Phoenix for the support you've always given me, and I want to tell you what. I'm supporting the man who will—who is the only man who is going to save our country, and what we our going to be leaving our children.

(APPLAUSE)

(SPEAKER'S VOICE): I'm Steve Ronnebeck, father of Grant Ronnebeck, 21 years old. Killed January 22, 2015 by an illegal immigrant who shot him in the face. I truly believe that Mr. Trump is going to change things. He's going to fight for my family, and he's going to fight for America.

(APPLAUSE)

TRUMP: These are amazing people, and I am not asking for their endorsement, believe me that. I just think I've gotten to know so many of them, and many more, from our group. But they are incredible people and what they're going through is incredible, and there's just no reason for it. Let's give them a really tremendous hand.

(APPLAUSE)

That's tough stuff, I will tell you. That is tough stuff. Incredible people.

So, now is the time for these voices to be heard. Now is the time for the media to begin asking questions on their behalf. Now is the time for all of us as one country, Democrat, Republican, liberal, conservative to band together to deliver justice, and safety, and security for all Americans.

Let's fix this horrible, horrible, problem. It can be fixed quickly. Let's our secure our border.

(APPLAUSE)

Let's stop the drugs and the crime from pouring into our country. Let's protect our social security and Medicare. Let's get unemployed Americans off the welfare and back to work in their own country.

This has been an incredible evening. We're going to remember this evening. November 8, we have to get everybody. This is such an important state. November 8 we have to get everybody to go out and vote.

We're going to bring—thank you, thank you. We're going to take our country back, folks. This is a movement. We're going to take our country back.

Thank you.

(APPLAUSE)

Thank you.

This is an incredible movement. The world is talking about it. The world is talking about it and by the

way, if you haven't been looking to what's been happening at the polls over the last three or four days I think you should start looking. You should start looking.

(APPLAUSE)

Together we can save American lives, American jobs, and American futures. Together we can save America itself. Join me in this mission, we're going to make America great again.

Thank you. I love you. God bless you, everybody. God bless you. God bless you, thank you.

Find out what you need to know about the 2016 presidential race today, and get politics news updates via Facebook, Twitter and the First Draft newsletter.

Exhibit KK

PewResearchCenter

JANUARY 30, 2017

Key facts about refugees to the U.S.

BY JENS MANUEL KROGSTAD (HTTP://WWW.PEWRESEARCH.ORG/AUTHOR/JKROGSTAD/) AND JYNNAH RADFORD (HTTP://WWW.PEWRESEARCH.ORG/AUTHOR/JRADFORD/)

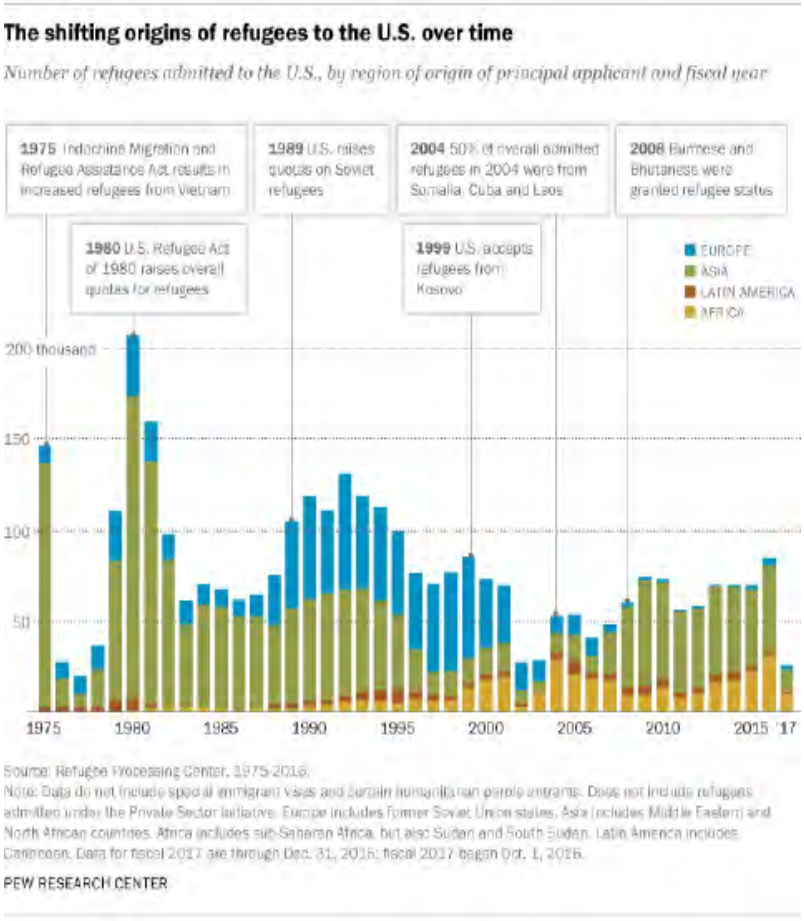
Syrian refugees take notes during their vocational ESL class at the International Rescue Committee center in San Diego on Aug. 31, 2016. (Frederic J. Brown/AFP/Getty Images)

An executive order (https://www.nytimes.com/2017/01/27/us/politics/refugee-muslim-executive-order-trump.html) signed Jan. 27 by President Donald Trump suspends refugee admissions for 120 days while security procedures are reviewed, though the resettlement of persecuted religious minorities may continue during this time on a case-by-case basis. Under the plan, the maximum number of refugees allowed into the U.S. in fiscal 2017 will likely decline from 110,000 to 50,000. Separately, admission of Syrian refugees will be suspended pending a revision of security screening measures. About 3 million refugees have been resettled in the U.S. since Congress passed the Refugee Act of 1980 (https://www.acf.hhs.gov/orr/resource/the-refugee-act), which created the Federal Refugee Resettlement Program and the current national standard for the screening and admission of refugees into the country.

This is not the first time U.S. refugee admissions have been stopped. After the 2001 terrorist attacks, the U.S. largely suspended refugee resettlement for three months while security measures were examined. Today, the refugee admissions process (https://www.state.gov/j/prm/ra/admissions/) can take up to 18 to 24 months, and includes a review of applications by the State Department and other federal agencies, in-person interviews, health screenings and, for many, cultural orientations.

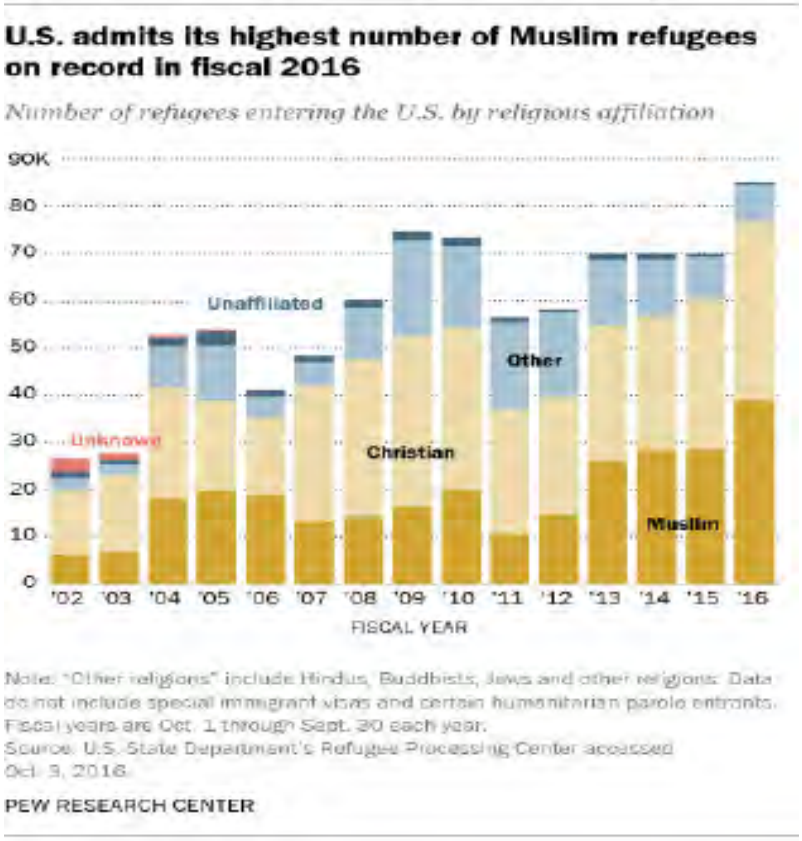
Here are key facts from our research about refugees entering the United States:

Historically, **the total number of refugees coming to the U.S. has fluctuated** (http://www.pewresearch.org/fact-tank/2016/06/17/where-refugees-to-the-u-s-come-from/) **along with global events and U.S. priorities**. From 1990 to 1995, an average of about 112,000 refugees arrived in the U.S. each year, with many coming from the former Soviet Union. However, refugee admissions dropped off to fewer than 27,000 in 2002 following the terrorist attacks in 2001. This number has since trended up.



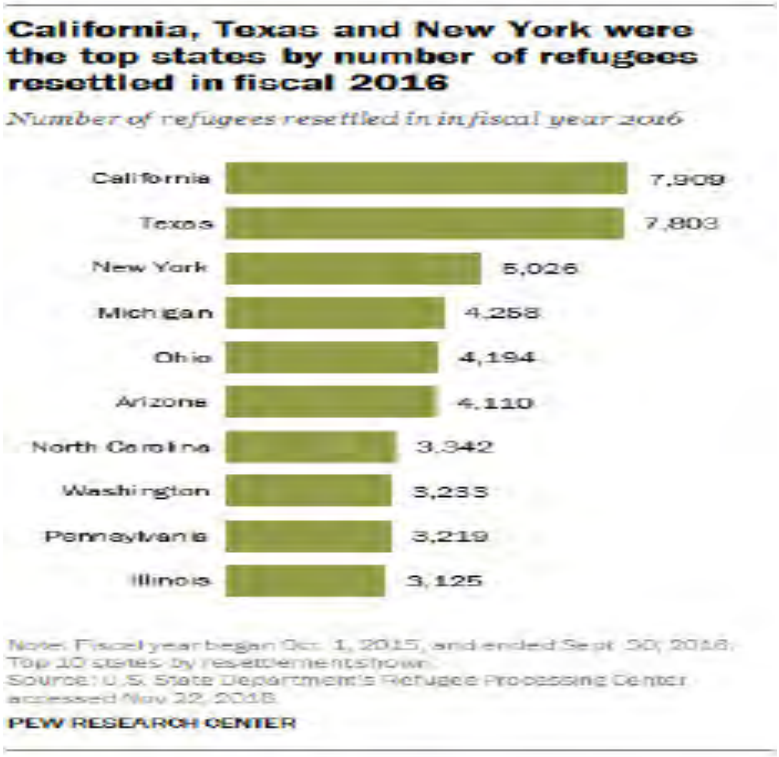
2 **The U.S. admitted 84,995 refugees in the fiscal year ending in September 2016, the most in any year during the Obama administration**. An additional 31,143 refugees have been admitted to the U.S. from Oct. 1 through Jan. 24, including more than 1,136 refugee admissions since Trump became president on Jan. 20. Though refugee admissions would drastically drop under Trump's proposal, the U.S. had been on pace to reach the Obama administration's goal of admitting 110,000 refugees (http://www.pewresearch.org/fact-tank/2017/01/20/u-s-on-track-to-reach-obama-administrations-goal-of-resettling-110000-refugees-this-year/) in fiscal 2017, which would have been the highest number since 1994.

3 In fiscal 2016, **the highest number of refugees from any nation came from the Dominican Republic of Congo**. The Congo accounted for 16,370 refugees followed by Syria (12,587), Burma (aka Myanmar, with 12,347), Iraq (9,880) and Somalia (9,020). Over the past decade, the largest numbers of refugees have come from Burma (159,692) and Iraq (135,643).



4 **Nearly 39,000 Muslim refugees** (http://www.pewresearch.org/fact-tank/2016/10/05/u-s-admits-record-number-of-muslim-refugees-in-2016/) **entered the U.S. in fiscal 2016, the highest number on record,** according to a Pew Research Center analysis of data from the State Department's Refugee Processing Center (http://ireports.wrapsnet.org/Interactive-Reporting/EnumType/Report?ItemPath=/rpt_WebArrivalsReports/

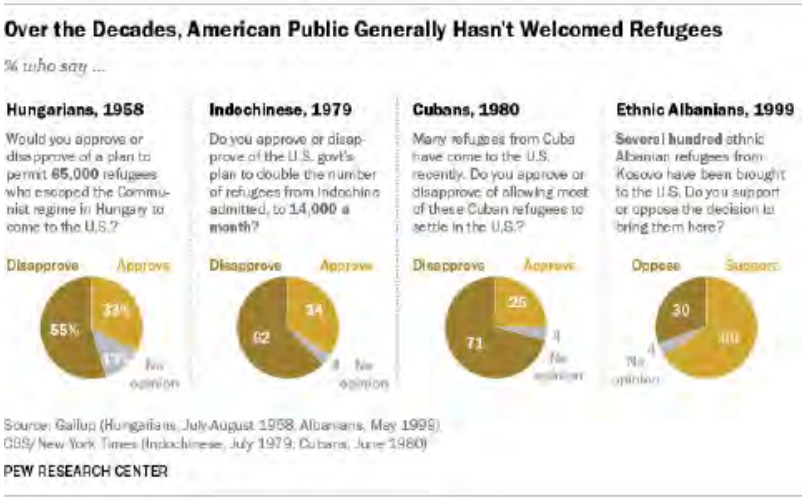
MX%20-%20Arrivals%20by%20Nationality%20and%20Religion). Muslims made up nearly half (46%) of refugee admissions, a higher share than for Christians, who accounted for 44% of refugees admitted. Muslims exceeded Christians on this measure for the first time since 2006, when a large number of Somiali refugees entered the U.S. From fiscal years 2002 to 2016, the U.S. admitted 399,677 Christian refugees and 279,339 Muslim refugees, meaning that 46% of all refugees who have entered the U.S. during this time have been Christian while 32% have been Muslim.



(http://www.pewresearch.org/fact-tank/2016/12/06/just-10-states-resettled-more-than-half-of-recent-refugees-to-u-s/ft_16-12-02_usrefugees_total/) **California, Texas and New York** (http://www.pewresearch.org/fact-tank/2016/12/06/just-10-states-resettled-more-than-half-of-recent-refugees-to-u-s/) **resettled nearly a quarter of all refugees in fiscal year 2016**, together taking 20,738 refugees. Other states that received at least 3,000 refugees included Michigan, Ohio, Arizona, North Carolina, Washington, Pennsylvania and Illinois. By contrast, Arkansas, the District of Columbia and Wyoming each resettled fewer than 10 refugees. Delaware and Hawaii took in no refugees.

5

6 **The U.S. public has seldom approved of accepting large numers of refugees**. In October 2016, 54% of registered voters said the U.S. (http://www.people-press.org/2016/10/27/7-opinions-on-u-s-international-involvement-free-trade-isis-and-syria-russia-and-china/) does not have a responsibility to accept refugees from Syria, while 41% said it does. There was a wide partisan gap on this measure, with 87% of Trump supporters saying the U.S. doesn't have a responsibility to accept Syrians, compared with only 27% of Clinton supporters who said the same. U.S. public opinion polls (http://www.pewresearch.org/fact-tank/2015/11/19/u-s-public-seldom-has-welcomed-refugees-into-country/) from previous decades show Americans have largely opposed admitting large numbers of refugees from countries where people are fleeing war and oppression.



Note: This is an update of a post originally published on Jan. 27, 2017.

Jens Manuel Krogstad (http://www.pewresearch.org/author/jkrogstad/) *is a writer/editor focusing on Hispanics, immigration and demographics at Pew Research Center.*
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Jynnah Radford (http://www.pewresearch.org/author/jradford/) *is a research assistant focusing on global migration at Pew Research Center.*
POSTS | EMAIL

60 Comments

Anonymous • 1 month ago

Believe or not, we know that most of "so-called Congolese Refugees" are actually Rwandese from RWANDA. They will all tell you that they are from Rutshuru or Mulenge, because these are the regions that were infiltrated by them. The Congolese citizenship is inherited from blood and as a rule in the East, you have to proof from which family you come

Exhibit LL (Omitted)

Exhibit MM

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-35105

STATE OF WASHINGTON, ET AL., PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES ET AL., DEFENDANTS-APPELLANTS

JOINT DECLARATION OF MADELEINE K. ALBRIGHT, AVRIL D. HAINES MICHAEL V. HAYDEN JOHN F. KERRY JOHN E. McLAUGHLIN LISA O. MONACO MICHAEL J. MORELL JANET A. NAPOLITANO LEON E. PANETTA SUSAN E. RICE

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

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

a. Madeleine K. Albright served as Secretary of State from 1997 to 2001. A refugee and naturalized American citizen, she served as U.S. Permanent Representative to the United Nations from 1993 to 1997 and has been a member of the Central Intelligence Agency External Advisory Board since 2009

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

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

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

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

e. John E. McLaughlin served as Deputy Director of the Central Intelligence Agency from 2000-2004 and Acting Director of CIA in 2004. His duties included briefing President-elect Bill Clinton and President George W. Bush.

f. Lisa O. Monaco served as Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor from 2013 to January 20, 2017.

g. Michael J. Morell served as Acting Director of the Central Intelligence Agency in 2011 and from 2012 to 2013, Deputy Director from 2010 to 2013, and as a career official of the CIA from 1980. His duties included briefing President George W. Bush on September 11, 2001, and briefing President Barack

Obama regarding the May 2011 raid on Osama bin Laden.

h. Janet A. Napolitano served as Secretary of Homeland Security from 2009 to 2013.

i. Leon E. Panetta served as Director of the Central Intelligence Agency from 2009-11 and as Secretary of Defense from 2011-13.

j. Susan E. Rice served as U.S. Permanent Representative to the United Nations from 2009-13 and as National Security Advisor from 2013 to January 20, 2017.

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

3. We all agree that the United States faces real threats from terrorist networks and must take all prudent and effective steps to combat them, including the appropriate vetting of travelers to the United States. We all are nevertheless unaware of any specific threat that would justify the travel ban established by the Executive Order issued on January 27, 2017. We view the Order as one that ultimately undermines the

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

4. There is no national security purpose for a total bar on entry for aliens from the seven named countries. Since September 11, 2001, not a single terrorist attack in the United States has been perpetrated by aliens from the countries named in the Order. Very few attacks on U.S. soil since September 11, 2001 have been traced to foreign nationals at all. The overwhelming majority of attacks have been committed by U.S. citizens. The Administration has identified no information or basis for believing there is now a heightened

or particularized future threat from the seven named countries. Nor is there any rational basis for exempting from the ban particular religious minorities (e.g., Christians), suggesting that the real target of the ban remains one religious group (Muslims). In short, the Administration offers no reason why it abruptly shifted to group-based bans when we have a tested individualized vetting system developed and implemented by national security professionals across the government to guard the homeland, which is continually re-evaluated to ensure that it is effective.

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

a. The Order will endanger U.S. troops in the field. Every day, American soldiers work and fight alongside allies in some of the named countries who put their lives on the line to protect Americans. For example, allies who would be barred by the Order work alongside our men and women in Iraq fighting against ISIL. To the extent that the Order bans travel by individuals cooperating against ISIL, we risk placing our military efforts at risk by sending an insulting message to those citizens and all Muslims.

b. The Order will disrupt key counterterrorism, foreign policy, and national security partnerships that are critical to our obtaining the necessary information sharing and collaboration in intelligence, law enforcement, military, and diplomatic channels to address the

threat posed by terrorist groups such as ISIL. The international criticism of the Order has been intense, and it has alienated U.S. allies. It will strain our relationships with partner countries in Europe and the Middle East, on whom we rely for vital counterterrorism cooperation, undermining years of effort to bring them closer. By alienating these partners, we could lose access to the intelligence and resources necessary to fight the root causes of terror or disrupt attacks launched from abroad, before an attack occurs within our borders.

c. The Order will endanger intelligence sources in the field. For current information, our intelligence officers may rely on human sources in some of the countries listed. The Order breaches faith with those very sources, who have risked much or all to keep Americans safe—and whom our officers had promised always to protect with the full might of our government and our people.

d. Left in place, the Executive Order will likely feed the recruitment narrative of ISIL and other extremists that portray the United States as at war with Islam. As government officials, we took every step we could to counter violent extremism. Because of the Order's disparate impact against Muslim travelers and immigrants, it feeds ISIL's narrative and sends the wrong message to the Muslim community here at home and all

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

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

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

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

6. As a national security measure, the Order is unnecessary. National security-based immigration restrictions have consistently been tailored to respond to: (1) specific, credible threats based on individualized information, (2) the best available intelligence and (3) thorough interagency legal and policy review. This Order rests not on such tailored grounds, but rather, on (1) general bans (2) not supported by any new intelligence that the Administration has claimed, or of which we are aware, and (3) not vetted through careful interagency legal and policy review. Since the 9/11 attacks, the United States has developed a rigorous system of security vetting, leveraging the full capabilities of the law enforcement and intelligence communities. This vetting is applied to travelers not once, but multiple times. Refugees receive the most thorough vetting of any traveler to the United States, taking on the average more than a year. Successive administrations have continually worked to improve this vetting through robust information-sharing and data integration to identify potential terrorists without resorting to a blanket ban on all aliens and refugees. Because vari-

ous 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]

(SIGNATURE PAGES OMITTED)

Exhibit NN

TRUMP'S EXECUTIVE ORDER MANDATES GOVERNMENT REPORTS ON HONOR KILLINGS COMMITTED BY MIGRANTS

By KATIE MCHUGH 6 Mar 2017 | 4,465

President Donald Trump's excutive order halting the importation of refugees from six terror-exporting countries also includes a section requiring the government to publicly release information on crimes committed by foreign nationals, including honor killings of women.

This lets the government "be more transparent with the American people and to implement more effectively policies and practices that serve the national interest," the order states. Department of Homeland Security Secretary John Kelly and U.S. Attorney General Jeff Sessions must work together to provide the public with a report on foreign nationals charged with and con-

victed of terrorism-related offenses, including those who associate with or provide support to terrorist organizations.

The order also instructs the government to release information on honor-killings. The government will now track cases involving foreign-born individuals who commit "gender-based violence against women," or honor killings. Honor killings are a brutal practice wherein Muslim males will murder or mutilate female family members accused of bringing shame and dishonor to their families and Islam. Like female genital mutilation, it is a practice that would not exist in the U.S. without mass immigration bringing its practitioners into U.S. communities.

"Cases of honor killings and/or violence in the U.S. are often unreported because of the shame it can cause to the victim and the victim's family. Also, because victims are often young women, they may feel that reporting the crime to authorities will draw too much attention to the family committing the crime," former U.S. government analyst Farhana Qazi explained to Fox News in November 2015.

The order requires the government to release its inaugural report by September 2017, close to the sixteenth anniversary of the 9/11 terror attacks committed by Islamic foreign nationals admitted to the U.S. on various visas. Reports shall be issued every six months from then on.

The transparency will likely increase the broad support Trump's immigration policies enjoy. Typically, the government conceals or refuses to collect immigration-

related statistics that reveal troubling consequences of mass immigration policies. A Feb. 8 Morning Consult poll found 55 percent of voters supported Trump's executive order, including 82 percent of Republicans. Another McLaughlin & Associates poll release Feb. 8 found 57 percent support for a halt of refugee settlement to implement better screening procedures. A Rasmussen Reports poll released on Feb. 2 found 52 percent of voters favored a freeze on all refugee resettlement until the government could better screen out terrorists, including 57 percent of young voters.

A 2015 report detailing honor killings can be read here.

READ MORE STORIES ABOUT:
Big Government, Immigration, Donald Trump, Executive Order, Honor Killing, Islam, Muslim immigration, refugee resettlement

Nos. 16-1436 and 16-1540

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

STATE OF HAWAII, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

JOINT APPENDIX
(VOLUME 3)

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PETITIONS FOR WRITS OF CERTIORARI FILED: JUNE 1 AND JUNE 26, 2017
CERTIORARI GRANTED: JUNE 26, 2017

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Docket No. 1:17-cv-00050-DKW-KSC

STATE OF HAWAII, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
2/3/17	1	COMPLAINT *for Declaratory and Injunctive Relief* against Donald J. Trump (Filing fee $ 400 receipt number 0975-1825544.), filed by State of Hawaii. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 JS 44—Civil Cover Sheet, # 13 Tillerson Summons, # 14 State Department Summons, # 15 DHS Summons, # 16 Kelly Summons)(Chin, Douglas) (Entered: 02/03/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
2/3/17	2	MOTION for Temporary Restraining Order Douglas S.G. Chin appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum in Support of TRO, # 2 Certificate with Word Count, # 3 Proposed TRO)(Chin, Douglas) (Entered: 02/03/2017)
		* * * * *
2/3/17	4	Summons Issued as to Rex Tillerson, in his capacity as Secretary of State. (emt,) (Entered: 02/03/2017)
2/3/17	5	Summons Issued as to U.S. Department of State. (emt,) (Entered: 02/03/2017)
2/3/17	6	Summons Issued as to U.S. Department of Homeland Security. (emt,) (Entered: 02/03/2017)
2/3/17	7	Summons Issued as to John F. Kelly, in his capacity as Secretary of the U.S. Department of Homeland Security. (emt,) (Entered: 02/03/2017)
2/3/17	8	Order Setting Rule 16 Scheduling Conference for 09:30AM on 4/3/2017 before Magistrate Judge KENNETH J. MANSFIELD—

DATE	DOCKET NUMBER	PROCEEDINGS
		Signed by CHIEF JUDGE J. MICHAEL SEABRIGHT on 2/3/2017. (Attachments: # 1 Memo from Clerk Re: Corporate Disclosure Statements) (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry.
		ATTACH THE SCHEDULING ORDER TO THE INITIATING DOCUMENT (COMPLAINT/NOTICE OF REMOVAL). **THE SCHEDULING ORDER AND MEMO RE: CORPORATE DISCLOSURES MUST BE SERVED WITH THE DOCUMENT.** (Entered: 02/03/2017)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
2/3/17	10	Declaration re 2 MOTION for Temporary Restraining Order . (Attachments: # 1 Exhibit A—Doe 1, # 2 Exhibit B—Doe 2, # 3 Exhibit C—Doe 3, # 4 Exhibit D—Dickson Declaration, # 5 Exhibit E—Slaveria Declaration, # 6 Exhibit F—Szigeti Declaration, # 7 Exhibit G—Higashi Declaration, # 8 Exhibit H—Elshikh Declaration)(Chin, Douglas) (Entered: 02/03/2017)
2/3/17	11	Summons (Proposed) (Chin, Douglas) (Entered: 02/03/2017)
2/3/17	12	Summons Issued as to Donald J. Trump, in his official capacity as President of the United States. (emt,) (Entered: 02/03/2017)
2/3/17	13	Summons (Proposed) (Chin, Douglas) (Entered: 02/03/2017)
2/3/17	14	Summons Issued as to United States of America. (emt,) (Entered: 02/03/2017)
2/3/17	15	EX PARTE Motion *for In Camera Review of Exhibits A, B, and C to Declaration of Douglas S. Chin in Support of Plaintiff's Motion for Temporary Restraining Order*; Clyde J. Wadsworth appearing for Plaintiff State of Hawaii

DATE	DOCKET NUMBER	PROCEEDINGS
		(Attachments: # 1 Declaration of Clyde J. Wadsworth, # 2 Proposed Order) (Wadsworth, Clyde) (Entered: 02/03/2017)
		* * * * *
2/3/17	18	EO: The Court is in receipt of Plaintiff State of Hawaii's Motion for Temporary Restraining Order ("TRO"). Dkt. No. 2. The Government shall file a response to the Motion for TRO by Tuesday, February 7, 2017 at 12:00 noon (HST). The Court will hold a hearing on the Motion for TRO on Wednesday, February 8, 2017 at 9:30 a.m. (HST). (JUDGE DERRICK K. WATSON) (tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/03/2017)
2/3/17	19	NOTICE of Hearing on Motion 2 MOTION for Temporary Restrain-

DATE	DOCKET NUMBER	PROCEEDINGS
		ing Order. Motion Hearing date has been set for 2/8/2017 at 9:30 AM in Aha Kupono before JUDGE DERRICK K. WATSON. (tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry. (Entered: 02/03/2017)
		* * * * *
2/6/17	23	Emergency MOTION to Stay re 18 Link,,, Michelle R. Bennett appearing for Defendants John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America (Attachments: # 1 Memorandum, # 2 Proposed Order)(Bennett, Michelle) (Entered: 02/06/2017)
2/6/17	24	EO: The Court is in receipt of Defendants' Emergency Motion to Stay All Deadlines Pending Resolution of Appellate Proceedings

DATE	DOCKET NUMBER	PROCEEDINGS
		Regarding Nationwide Injunction ("Motion to Stay"). Dkt. No. 23. Plaintiff State of Hawaii may file a response to the Motion to Stay by no later than Tuesday, February 7, 2017 at 9:00 a.m. (HST). (JUDGE DERRICK K. WATSON)(tl,)
		CERTIFICATE OF SERVICE
		Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/06/2017)
2/6/17	25	MEMORANDUM in Opposition re 23 Emergency MOTION to Stay re 18 Link,,, filed by State of Hawaii. (Chin, Douglas) (Entered: 02/06/2017)
2/6/17	26	Errata re 25 Memorandum in Opposition to Motion *for Emergency Stay*. (Marie-Iha, Deirdre) (Entered: 02/06/2017)
2/7/17	27	EO: Defendants' Emergency Motion to Stay All Deadlines Pending Resolution of Appellate Proceedings

DATE	DOCKET NUMBER	PROCEEDINGS
		Regarding Nationwide Injunction is hereby GRANTED IN PART. Dkt. No. 23 . All pending deadlines and the hearing set for February 8, 2017 are VACATED. The matter is stayed as long as the February 3, 2017 injunction entered in Washington v. Trump, 2:17-cv-141 (W.D. Wash.), remains in place, or until further order of this Court. All further relief requested by the Emergency Motion is DENIED. A written order setting forth the Court's reasoning will follow. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(watson1)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry Modified to create link to motion on 2/7/2017 (ecs,). (Entered: 02/07/2017)

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DATE	DOCKET NUMBER	PROCEEDINGS
2/8/17	29	ORDER GRANTING 15 EX PARTE MOTION FOR IN CAMERA REVIEW OF EXHIBITS A, B, AND C TO DECLARATION OF DOUGLAS S. CHIN IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER. Signed by JUDGE DERRICK K. WATSON on 2/8/2017. (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/08/2017)
2/8/17	30	MOTION to Partially Lift Stay Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Exhibit Proposed First Am. Compl., # 2 Exhibit Decl. of Clyde J. Wadsworth, # 3 Exhibit Proposed Order, # 4 Certificate of Service)(Katyal, Neal) (Entered: 02/08/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
2/9/17	31	EO: The Court is in receipt of Plaintiff State of Hawaii's Motion to Partially Lift Stay. Dkt. No. 30. The Government may file a response to the State's motion by Monday, February 13, 2017. Thereafter, the Court intends to rule on the motion without a hearing pursuant to Local Rule 7.2(d). IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tyk) CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/09/2017)
2/9/17	32	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' EMERGENCY MOTION TO STAY DEADLINES PENDING RESOLUTION OF APPELLATE PROCEEDINGS REGARDING NATIONWIDE INJUNCTION. Signed by JUDGE DERRICK K. WAT-

DATE	DOCKET NUMBER	PROCEEDINGS
		SON on 2/9/2017.—The Emergency Motion to Stay is GRANTED IN PART. This matter is stayed as long as the February 3, 2017 injunction entered in Washington v. Trump remains in full force and effect, or until further order of this Court. All further relief requested by the Emergency Motion to Stay is DENIED. Re: 23 Emergency MOTION to Stay Deadlines, 27 EO on Motion to Stay (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/09/2017)
		* * * * *
2/13/17	35	STATEMENT of No Position re 30 MOTION to Partially Lift Stay filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States

DATE	DOCKET NUMBER	PROCEEDINGS
		of America. (Rosenberg, Brad) (Entered: 02/13/2017)
2/13/17	36	EO: Upon consideration of the State of Hawaii's Motion to Partially Lift Stay ("Motion")(Dkt. No. 30), the Government's Statement of No Position (Dkt. No. 35), and good cause appearing therefor, the State's Motion is hereby GRANTED. The State may file (1) its Proposed First Amended Complaint, and (2) the Declaration of Clyde J. Wadsworth Regarding Exhibit C to Declaration of Douglas S. Chin in Support of Plaintiff's Motion for Temporary Restraining Order, both in the form previously submitted to the Court as exhibits to the Motion (see Dkt. Nos. 30-1 and 30-2). The State may do so no later than Wednesday, February 15, 2017. The Court's February 9, 2017 stay order (Dkt. No. 32) otherwise remains in place. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(tyk)
		CERTIFICATE OF SERVICE
		Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of

DATE	DOCKET NUMBER	PROCEEDINGS
		Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/13/2017)
2/13/17	37	FIRST AMENDED COMPLAINT *for Declaratory and Injunctive Relief* against All Defendants, filed by State of Hawaii. (Attachments: # 1 Certificate of Service) (Katyal, Neal) Modified docket text on 2/14/2017 (ecs,). (Entered: 02/13/2017)
2/14/17	38	Declaration *of Clyde J. Wadsworth Regarding Exhibit C to Declaration of Douglas S. Chin in Support of Plaintiff's Motion for Temporary Restraining Order*. (Attachments: # 1 Certificate of Service) (Wadsworth, Clyde) (Entered: 02/14/2017)
		* * * * *
2/15/17	40	EO: The Court hereby lifts the stay in this matter for the limited purpose of allowing the parties to file Motions to Appear Pro Hac Vice, Notices of Appearance of Counsel, and/or Applications to Practice, consistent with Local Rules 83.1(d) and (e). The Court's February 9,

DATE	DOCKET NUMBER	PROCEEDINGS
		2017 stay order (Dkt. No. 32) otherwise remains in place. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/15/2017)
		* * * * *
3/6/17	56	NOTICE by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America *of Filing of Executive Order* John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Attachments: # 1 Exhibit A: New Executive Order)(Rosenberg, Brad) (Entered: 03/06/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
3/7/17	57	Joint MOTION for Entry of Proposed Briefing Schedule Neal Katyal appearing for Plaintiffs Ismail Elshikh, State of Hawaii (Attachments: # 1 Proposed Order) (Katyal, Neal) (Entered: 03/07/2017)
3/7/17	58	MOTION to Lift Stay and for Leave to File a Second Amended Complaint Neal Katyal appearing for Plaintiffs Ismail Elshikh, State of Hawaii (Attachments: # 1 Exhibit Proposed Second Amended Complaint, # 2 Exhibit Proposed Order, # 3 Certificate of Service)(Katyal, Neal) (Entered: 03/07/2017)
3/8/17	59	ORDER GRANTING PLAINTIFFS' 58 MOTION TO LIFT STAY AND FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT. Signed by JUDGE DERRICK K. WATSON on 3/8/2017. —The Court lifts the litigation stay imposed by the Orders dated February 7, 2017 (Dkt. No. 27) and February 9, 2017 (Dkt. No. []32). Plaintiffs STATE OF HAWAI'I and ISMAIL ELSHIKH may file a Second Amended Complaint in the form submitted to the Court as an exhibit to the Motion (Dkt.

DATE	DOCKET NUMBER	PROCEEDINGS
		No. 58-1). (ecs,)
		CERTIFICATE OF SERVICE
		Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Attachment replaced on 3/8/2017, NEF regenerated: # 1 Main Document—PDF flattened) (ecs,). (Entered: 03/08/2017)
3/8/17	60	BRIEFING SCHEDULE ORDER. Signed by JUDGE DERRICK K. WATSON on 3/8/2017. Related doc: 57 (ecs,)
		CERTIFICATE OF SERVICE
		Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Attachment

DATE	DOCKET NUMBER	PROCEEDINGS
		replaced on 3/8/2017, NEF regenerated: # 1 Main Document—PDF flattened) (ecs,). (Entered: 03/08/2017)
3/8/17	61	NOTICE of Hearing on 65 Plaintiff's Motion For Temporary Restraining Order set for 3/15/2017 @ 09:30 AM before JUDGE DERRICK K. WATSON. Counsel may participate by phone by notifying Judge Watson's Courtroom Manager (808-541-3073) by 3/14/2017 and providing the phone number where counsel may be reached at the time of the hearing. The Court will contact the parties via phone at the time of the hearing.(tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry. Modified on 3/9/2017 (tyk,). (Entered: 03/08/2017)

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DATE	DOCKET NUMBER	PROCEEDINGS
3/8/17	64	AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ***(SECOND)*** against John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America, filed by State of Hawaii, Ismail Elshikh. (Attachments: # 1 Exhibit 1—Copy of Executive Order dated 3/6/2017, # 2 Exhibit 2—Copy of Executive Order dated 1/27/2017, # 3 Exhibit 3—Collection of relevant Data for Hawaii, # 4 Exhibit 4—Tables for fiscal years 2005-2015, # 5 Exhibit 5—Copy of table of contents and executive summary, # 6 Exhibit 6—Copy of press release, # 7 Exhibit 7—Copy of transcript, # 8 Exhibit 8—Copy of Washington Post Article, # 9 Exhibit 9—Copy of this NBC News article, # 10 Exhibit 10—Copy of the draft DHS report, # 11 Exhibit 11—Final version of DHS report, # 12 Exhibit 12—Copy of NBC News article, # 13 Exhibit 13—Copy of Dissent Channel memorandum, # 14 Exhibit 14—Copy of DHS Q&A, # 15 Certificate of

DATE	DOCKET NUMBER	PROCEEDINGS
		Service) (Katyal, Neal) Docket title text added on 3/9/2017 (ecs,). (Entered: 03/08/2017)
3/8/17	65	MOTION for Temporary Restraining Order Neal Katyal appearing for Plaintiffs Ismail Elshikh, State of Hawaii (Attachments: # 1 Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order, # 2 Certificate of Word Count, # 3 Proposed Temporary Restraining Order, # 4 Certificate of Service)(Katyal, Neal) (Entered: 03/08/2017)
3/8/17	66	Declaration re 65 MOTION for Temporary Restraining Order . (Attachments: # 1 Exhibit A—Dec. of Ismail Elshikh, PhD, # 2 Exhibit B-1—Supp. Dec. of George Szigeti, # 3 Exhibit B-2—Orig. Dec. of George Szigeti, # 4 Exhibit C-1—Supp. Dec. of Luis P. Salaveria, # 5 Exhibit C-2—Orig. Dec. of Luis P. Salaveria, # 6 Exhibit D-1—Supp. Dec. of Risa E. Dickson, # 7 Exhibit D-2—Orig. Dec. of Risa E. Dickson, # 8 Exhibit E—Dec. of Hakim Ounsafi, # 9 Certificate of Service) (Katyal, Neal) (Entered: 03/08/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/10/17	94	ORDER OF RECUSAL. Magistrate Judge KENNETH J. MANSFIELD recused. Case reassigned to MAGISTRATE JUDGE KEVIN S.C. CHANG. Please reflect Civil Case No: CV 17-00050 DKW-KSC on all further filings. Signed by Magistrate Judge KENNETH J. MANSFIELD on 3/10/2017. (ecs,) CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/10/2017)
		* * * * *
3/13/17	145	MEMORANDUM in Opposition re 65 MOTION for Temporary Restraining Order filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America.

DATE	DOCKET NUMBER	PROCEEDINGS
		(Attachments: # 1 Exhibit A: March 6, 2017 Letter from DOJ and DHS to White House, # 2 Exhibit B: Department of State Q&As, # 3 Certificate of Service) (Rosenberg, Brad) (Entered: 03/13/2017)
		* * * * *
3/13/17	183	MOTION to Intervene by Defendant Vincent Lucas (Attachments: # 1 [PROPOSED] Intervenor Vincent Lucas's Cross Complaint against the State of Hawaii and Ismail Elshikh, Exh A - B, # 2 Mailing Documentation)(ecs,) [Note: Document received does not have an Original signature and no other copies provided to the court.] Modified on 3/16/2017 (ecs,). (Entered: 03/14/2017)
		* * * * *
3/13/17	189	MOTION to Intervene and to Dismiss and Enjoin Defendants by Intervenor Frederick Banks (Attachments: # 1 Mailing Documentation, # 2 Cover letter) [Note: No CV case number referenced on the Motion, however information as to the case is mentioned in the cover letter] (ecs,) (Entered: 03/14/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/14/17	190	EO: The Court is in receipt of the Motions to Intervene filed by Frederick Banks and Vincent Lucas. Dkt. Nos. 183 and 189. The Motions are DENIED. Neither Motion identifies a statutory right to intervene within the meaning of either Fed.R.Civ.P. 24(a) or 24(b). Moreover, the disposition of this action will not impair or impede either Movant's ability to protect his rights or interests. Finally, neither Movant has a claim or defense that shares with the main action a common question of law or fact sufficient for the Court to exercise its discretion in favor of intervention. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(tyk) CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this

DATE	DOCKET NUMBER	PROCEEDINGS
		docket entry (Entered: 03/14/2017)
3/14/17	191	REPLY to Response to Motion re 65 MOTION for Temporary Restraining Order filed by State of Hawaii. (Attachments: # 1 Certificate of Word Count, # 2 Certificate of Service)(Katyal, Neal) (Entered: 03/14/2017)
		* * * * *
3/15/17	219	ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER 65 . Signed by JUDGE DERRICK K. WATSON on 3/15/2017. (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Main Document 219 replaced on 3/22/2017) (mta,). (Entered: 03/15/2017)
3/15/17	220	EP: Hearing held on 65 Plaintiffs' Motion For Temporary Restrain-

DATE	DOCKET NUMBER	PROCEEDINGS
		ing Order. Oral arguments heard. Motion taken under Advisement. Court to issue a written order. (Court Reporter Gloria Bediamol) (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/15/2017)
		* * * * *
3/17/17	227	MOTION *for Clarification* re 219 Order on Motion for TRO, Brad P. Rosenberg appearing for Defendants John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America (Attachments: # 1 Memorandum of Law in Support of Motion for Clarification, # 2 Certificate of Service)(Rosenberg, Brad) Modified on 3/20/2017 (emt,).

DATE	DOCKET NUMBER	PROCEEDINGS
		(Entered: 03/17/2017)
3/18/17	228	OPPOSITION to 227 MOTION *for Clarification* of TRO re 219 Order on Motion for TRO, filed by State of Hawaii. (Attachments: # 1 Certificate of Service)(Katyal, Neal) Modified on 3/20/2017 (emt,). (Entered: 03/18/2017)
3/19/17	229	EO: The Court is in receipt of the Federal Defendants' Motion for Clarification of TRO. Dkt. No. 227. That Motion essentially asks whether the Court's March 15, 2017 Temporary Restraining Order was intended to apply to Sections 2 and 6 of the Executive Order. The Motion, in other words, asks the Court to make a distinction that the Federal Defendants' previous briefs and arguments never did. As important, there is nothing unclear about the scope of the Court's order. See Dkt. No. 219 (TRO) at 42 ("Defendants . . . are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation."). The Federal Defendants' Motion is DENIED. (JUDGE DERRICK K. WATSON)(watson1)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/19/2017)
3/19/17	230	EO: In light of the Court's TRO directing the parties to submit a certain "stipulated briefing and hearing schedule," the parties' briefs relating to the Federal Defendants' Motion for Clarification of TRO, and the Court's EO regarding the same (Dkt. No. 229), the parties are further directed to advise the Court whether a stipulated path has been reached regarding proceedings before this Court concerning a possible extension of the Court's TRO. If a status conference is necessary, the parties are requested to contact Tammy Kimura, Courtroom Manager, forthwith. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(watson1)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE
		Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/19/2017)
3/19/17	231	Errata re 228 Response *to Mot. to Clarify*. (Attachments: # 1 Certificate of Service COS for Errata) (Marie-Iha, Deirdre) (Entered: 03/19/2017)
		* * * * *
3/20/17	235	Joint MOTION for Briefing Schedule Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Exhibit Proposed Order, # 2 Certificate of Service)(Katyal, Neal) (Entered: 03/20/2017)
3/20/17	236	EO: The Court is in receipt of the parties' Joint Motion For Entry Of Proposed Briefing Schedule Order For Plaintiffs' Forthcoming Motion to Convert Temporary Restraining Order to a Preliminary Injunction. Dkt. No. 235. The Court enters the

DATE	DOCKET NUMBER	PROCEEDINGS
		following briefing schedule: Plaintiffs shall file their Motion to Convert Temporary Restraining Order to a Preliminary Injunction ("Motion") by 9:30 A.M. H.S.T. on Tuesday, March 21, 2017. The Government shall file its Opposition by 9:30 A.M. H.S.T. on Friday, March 24, 2017. Plaintiffs shall file their Reply by 9:30 A.M. H.S.T. on Saturday, March 25, 2017. The Court will hold a hearing on Plaintiffs' forthcoming Motion at 9:30 A.M. H.S.T. on Wednesday, March 29, 2017. Counsel may participate by phone by notifying Judge Watson's Courtroom Manager by Tuesday, March 28, 2017 and providing the phone number where counsel may be reached at the time of the hearing. The Court will contact the parties via phone at the time of the hearing. The Court advises that the hearing date/time may be changed, or vacated, upon review of the briefs. Per the parties' stipulation, the Court's Temporary Restraining Order ("TRO") of March 15, 2017 (Dkt. No. 219) shall remain in place until such time as the Court

DATE	DOCKET NUMBER	PROCEEDINGS
		rules on whether the TRO should be converted to a preliminary injunction or until otherwise ordered by the Court. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (watson1)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/20/2017)
3/20/17	237	MOTION to Intervene ("Tertius Interveniens Notice of Lack of Standing of State of Hawaii to Challenge President's Executive Order (Travel Ban)); (FRCVP Rule 20(a)(2)(B) & 28 USC 1397)"—by Intervenor Eric Richard Eleson. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Certificate of Service, # 8 Mailing Documentation) (emt,) (Entered: 03/21/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
3/21/17	238	MOTION to Convert Temporary Restraining Order to Preliminary Injunction Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum, # 2 Exhibit Proposed Order, # 3 Certificate of Service)(Katyal, Neal) (Entered: 03/21/2017)
3/21/17	239	Declaration re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction *of Neal K. Katyal.* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Certificate of Service)(Katyal, Neal) (Entered: 03/21/2017)
3/21/17	240	EO: The Court is in receipt of a Motion to Intervene entitled, "Tertius Interveniens Notice of Lack of Standing of State of Hawaii to Challenge President's Executive Order (Travel Ban)" filed by Eric Richard Eleson. Dkt. No 237. The Motion is DENIED. The Motion identifies no statutory right to intervene within the meaning of either Fed.R.Civ.P. 24(a) or 24(b). Moreover, the disposition of this action will not impair or impede Eleson's ability to protect his rights or interests. Eleson has no claim or defense that shares with

DATE	DOCKET NUMBER	PROCEEDINGS
		the main action a common question of law or fact sufficient for the Court to exercise its discretion in favor of intervention. Finally, to the extent Eleson seeks permissive joinder pursuant to Fed.R.Civ.P. 20(a)(2)(B), the Motion is likewise without merit. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/21/2017)
3/21/17	241	Mikki the Mime's MOTION to Intervene Pursuant to Fed.R.Civ.P. 24(a) and (b)—by Intervenor Joseph Camp. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Transmittal Letter, # 5 Mailing Documentation) (emt,) (Entered: 03/22/2017)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
3/22/17	243	EO: The Court is in receipt of a Motion to Intervene filed by Mikki the Mime. Dkt. No 241. The Motion is DENIED. The Motion identifies no statutory right to intervene within the meaning of either Fed.R.Civ.P. 24(a) or 24(b). Moreover, the disposition of this action will not impair or impede Movant's ability to protect her rights or interests. Finally, Movant has no claim or defense that shares with the main action a common question of law or fact sufficient for the Court to exercise its discretion in favor of intervention. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/22/2017)

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DATE	DOCKET NUMBER	PROCEEDINGS
3/24/17	251	MEMORANDUM in Opposition re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Attachments: # 1 Sarsour v. Trump Slip Opinion, # 2 Washington v. Trump Order Containing Dissents)(Rosenberg, Brad) (Entered: 03/24/2017)
3/25/17	252	REPLY to Response to Motion re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction filed by Ismail Elshikh, State of Hawaii. (Attachments: # 1 Certificate of Word Count, # 2 Certificate of Service) (Katyal, Neal) (Entered: 03/25/2017)
3/25/17	253	Declaration re 252 Reply to Response to Motion, *Supplemental Declaration of Neal K. Katyal.* (Attachments: # 1 Exhibit D (DHS Fact Sheet), # 2 Exhibit E (DHS Q&A), # 3 Exhibit F (N.Y. Times Article), # 4 Certificate of Service)(Katyal, Neal) (Entered: 03/25/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
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3/28/17	258	NOTICE *of Filing of Declaration of Lawrence E. Bartlett* by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction , 251 Memorandum in Opposition to Motion . (Attachments: # 1 Declaration of Lawrence E. Bartlett, # 2 Certificate of Service) (Rosenberg, Brad) Modified on 3/29/2017 (emt,). (Entered: 03/28/2017)
		* * * * *
3/29/17	270	ORDER GRANTING MOTION TO CONVERT TEMPORARY RESTRAINING ORDER TO A PRELIMINARY INJUNCTION re 238— Signed by JUDGE DERRICK K. WATSON on 3/29/2017. "It is hereby ADJUDGED, ORDERED, and DECREED that: Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in

DATE	DOCKET NUMBER	PROCEEDINGS
		active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court. No security bond is required under Federal Rule of Civil Procedure 65(c). The Court declines to stay this ruling or hold it in abeyance should an appeal of this order be filed." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/29/2017)
3/30/17	271	**NOTICE OF APPEAL** as to 219 Order on Motion for TRO,, 270 Order on Motion for Miscellaneous

DATE	DOCKET NUMBER	PROCEEDINGS
		Relief,,,,, by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Rosenberg, Brad) Modified on 3/30/2017 9CCA NO. 17-15589 (emt,). (Entered: 03/30/2017)
3/30/17	272	USCA Case Number 17-15589 for 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump. (emt,)
		CERTIFICATE OF SERVICE Parties served by Ninth Circuit Court of Appeals. (Entered: 03/30/2017)
		* * * * *
3/31/17	275	TRANSCRIPT of Proceedings Pltf. Mt. for TRO held on March 15, 2017, —before Judge Derrick K. Watson. Court Reporter/Transcriber Gloria T. Bediamol, Telephone number (808) 541-2060. **90-Day Transcript Restriction:** PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Cita-

DATE	DOCKET NUMBER	PROCEEDINGS
		tions to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/18/2017. Redacted Transcript Deadline set for 4/28/2017. Release of Transcript Restriction set for 6/26/2017. pp. 55. (gb@hid.uscourts.gov) (Entered: 03/31/2017)
3/31/17	276	TRANSCRIPT of Proceedings Mt. to convert TRO to PI held on March 29, 2017,—before Judge Derrick K. Watson. Court Reporter/Transcriber Gloria T. Bediamol, Telephone number (808) 541-2060. **90-Day Transcript Restriction:** PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to

DATE	DOCKET NUMBER	PROCEEDINGS
		those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/18/2017. Redacted Transcript Deadline set for 4/28/2017. Release of Transcript Restriction set for 6/26/2017. pp. 45. (gb@hid.uscourts.gov) (Entered: 03/31/2017)
3/31/17	277	Joint MOTION to Stay *District Court Proceedings Pending Resolution of Defendants' Appeal* Brad P. Rosenberg appearing for Defendants John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America (Attachments: # 1 Proposed Order, # 2 Certificate of Service) (Rosenberg, Brad) (Entered: 04/03/2017)
4/3/17	278	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Depart-

DATE	DOCKET NUMBER	PROCEEDINGS
		ment of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "Appellants' unopposed motion to expedite the briefing and consideration of a motion to stay and to expedite the briefing and consideration of the merits of this preliminary injunction appeal (Docket Entry No. 12) is granted. The briefing schedule shall proceed as follows: the opening brief and the motion for a stay pending appeal are due April 7, 2017; the answering brief and the response to the motion for a stay pending appeal are due April 21, 2017; and the optional reply brief and the reply in support of the motion for a stay pending appeal are due April 28, 2017. Any amicus briefs are due April 21, 2017. The parties' request for expedited argument is granted. This case shall be heard on the calendar for May 2017, taking into account the limited dates the parties have advised they are available for argument."

DATE	DOCKET NUMBER	PROCEEDINGS
		(emt,)
		CERTIFICATE OF SERVICE
		Parties served by the Ninth Circuit Court of Appeals. (Entered: 04/03/2017)
4/3/17	279	ORDER re 277—Signed by JUDGE DERRICK K. WATSON on 4/3/2017.
		"All deadlines in this case, including the Defendants' deadline to file a response to the Second Amended Complaint, the parties' deadline to file a Scheduling Conference Statement pursuant to Rule 16.2(b), and the deadline to hold a conference pursuant to Rule 26.1(a), are hereby **STAYED**. The Court also hereby CONTINUES the Rule 16 Scheduling Conference that had been set for April 18, 2017.
		It is further ORDERED that the parties shall submit, within fourteen days of the final disposition of appellate proceedings, a joint status report proposing the schedule for any further proceedings in this matter."
		Motion terminated: 277 Joint MOTION to Stay *District Court Proceedings Pending Resolution of*

DATE	DOCKET NUMBER	PROCEEDINGS
		Defendants' Appeal filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 04/03/2017)
4/3/17	280	EO: Rule 16 Scheduling Conference set for 4/18/2017 before Magistrate Judge Kevin Chang is hereby vacated. Refer to [ECF No. 279] Order issued by Judge Derrick K. Watson. (MAGISTRATE JUDGE KEVIN S.C. CHANG)(lls,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Partici-

DATE	DOCKET NUMBER	PROCEEDINGS
		pants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 04/03/2017)
		* * * * *
4/21/17	285	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: " . . . initial en banc proceedings are concluded, and all remaining issues will be decided by the three-judge panel." "This case is scheduled for oral argument before the three-judge panel at 9:30 a.m. on Monday, May 15, 2017, in Seattle Washington." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 04/21/2017)
5/24/17	286	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of

DATE	DOCKET NUMBER	PROCEEDINGS
		Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "Plaintiffs-Appellees' motion for leave to supplement the record is GRANTED." (emt,)
		CERTIFICATE OF SERVICE Parties served by Ninth Circuit Court of Appeals. (Entered: 05/24/2017)
6/9/17	287	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "The Law Professors' motion for leave to file a brief as amici curiae, see Dkt.208, is granted." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 06/09/2017)
6/12/17	288	OPINION of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of

DATE	DOCKET NUMBER	PROCEEDINGS
		Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "We affirm in part and vacate in part the district court's preliminary injunction order. As to the remaining Defendants, we affirm the injunction as to Section 2(c), suspending entry of nationals from the six designated countries for 90 days; Section 6(a), suspending USRAP for 120 days; and Section 6(b), capping the entry of refugees to 50,000 in the fiscal year 2017. We vacate the portions of the injunction that prevent the Government from conducting internal reviews, as otherwise directed in Sections 2 and 6, and the injunction to the extent that it runs against the President. We remand the case to the district court with instructions to re-issue a preliminary injunction consistent with this opinion. **AFFIRMED in part; VACATED in part; and REMANDED with Instructions.** Each party shall bear its own costs on appeal."

DATE	DOCKET NUMBER	PROCEEDINGS
		(emt,)
		CERTIFICATE OF SERVICE
		Parties served by the Ninth Circuit Court of Appeals. (Entered: 06/13/2017)
6/19/17	289	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589:
		"The Government's consent motion to issue the mandate, Dkt. No. 316, is GRANTED.
		The mandate shall issue immediately."
		(emt,)
		CERTIFICATE OF SERVICE
		Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/19/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
6/19/17	290	MANDATE of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "The judgment of this Court, entered June 12, 201 7, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/19/2017)
6/19/17	291	AMENDED PRELIMINARY INJUNCTION. Signed by JUDGE DERRICK K. WATSON on 06/19/2017.

DATE	DOCKET NUMBER	PROCEEDINGS
		(eps,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/19/2017)
6/27/17	292	Appeal Remark re 271 Notice of Appeal, 9CCA NO. 17-15589 : Letter addressed to the Ninth Circuit Court of Appeals from the Supreme Court of the United States, dated June 26, 2017 Re: "The petition for a writ of certiorari in the above entitled case was filed on June 26, 2017 and placed on the docket June 26, 2017 as No. 16-1540." (emt,)No COS issued for this docket entry (Entered: 06/27/2017)
6/29/17	293	Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction, Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Mem-

DATE	DOCKET NUMBER	PROCEEDINGS
		orandum Memorandum of Law in Support of Emergency Motion to Clarify, # 2 Exhibit Proposed Order, # 3 Certificate of Service)(Katyal, Neal) (Entered: 06/29/2017)
6/29/17	294	Declaration of Neal K. Katyal in Support of 293 Plaintiff's Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction, . (Attachments: # 1 Exhibit Ex. A, # 2 Exhibit Ex. B, # 3 Exhibit Ex. C, # 4 Exhibit Ex. D, # 5 Exhibit Ex. E, # 6 Certificate of Service)(Katyal, Neal) Modified on 6/30/2017 (emt,). (Entered: 06/29/2017)
6/29/17	295	EO: The Court partially lifts the April 3, 2017 stay in this matter for the limited purpose of considering Plaintiffs' Emergency Motion to Clarify Scope of Preliminary Injunction. Dkt. No. 293 . Defendants shall file their opposition, limited to 20 pages, by Monday, July 3, 2017. Plaintiffs shall file any reply, limited to 15 pages, by Thursday, July 6, 2017. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(watson1)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/29/2017)
		* * * * *
7/3/17	301	MEMORANDUM in Opposition re 293 Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction, filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Attachments: # 1 Declaration of Lawrence E. Bartlett & Att. 1-3, # 2 Exhibit A: Department of State FAQs, # 3 Exhibit B: Emails from Rosenberg to Katyal, # 4 Exhibit C: Department of State Fact Sheet re Refugee Program, # 5 Exhibit D: Department of Homeland Security FAQs, # 6 Certificate of Service) (Rosen-

DATE	DOCKET NUMBER	PROCEEDINGS
		berg, Brad) (Entered: 07/03/2017)
		* * * * *
7/5/17	303	REPLY re 293 Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction, filed by State of Hawaii. (Attachments: # 1 Exhibit Proposed Order, # 2 Certificate of Service)(Katyal, Neal) (Entered: 07/05/2017)
7/5/17	304	Declaration re 303 Reply, *Supplemental Declaration of Neal K. Katyal.* (Attachments: # 1 Exhibit F, # 2 Exhibit G, # 3 Exhibit H, # 4 Exhibit I, # 5 Certificate of Service)(Katyal, Neal) (Entered: 07/05/2017)
		* * * * *
7/5/17	315	Errata re 303 Reply, *Proposed Order.* (Attachments: # 1 Errata Proposed Order, # 2 Certificate of Service)(Katyal, Neal) (Entered: 07/05/2017)
		* * * * *
7/6/17	322	ORDER DENYING PLAINTIFFS' EMERGENCY MOTION TO CLARIFY SCOPE OF PRELIMINARY

DATE	DOCKET NUMBER	PROCEEDINGS
		INJUNCTION re 293— Signed by JUDGE DERRICK K. WATSON on 7/6/2017. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/06/2017)
		* * * * *
7/6/17	324	**NOTICE OF APPEAL** as to 322 Order on Motion for Miscellaneous Relief,, by State of Hawaii. Filing fee $ 505, receipt number 0975-1895381. (Attachments: # 1 Exhibit Representation Statement, # 2 Certificate of Service) (Katyal, Neal) Modified on 7/7/2017 9CCA NO. 17-16366 (emt,). (Entered: 07/06/2017)
7/6/17	325	USCA Case Number 17-16366 for 324 Notice of Appeal filed by State

DATE	DOCKET NUMBER	PROCEEDINGS
		of Hawaii. (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/07/2017)
		* * * * *
7/7/17	327	ORDER of USCA as to 324 Notice of Appeal, filed by State of Hawaii, 9CCA NO. 17-16366: This appeal is DISMISSED for lack of jurisdiction. Plaintiffs' "Emergency Motion under FRAP 8 and Circuit Rule 27-3 for Injunction Pending Appeal" is DENIED as moot. (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/07/2017)
7/7/17	328	MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum, # 2 Exhibit Proposed Order on

DATE	DOCKET NUMBER	PROCEEDINGS
		Motion to Enforce Preliminary Injunction, # 3 Exhibit Proposed Order Modifying Preliminary Injunction, # 4 Certificate of Service) (Katyal, Neal) (Entered: 07/07/2017)
7/7/17	329	Declaration re 328 MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, *of Neal K. Katyal.* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Certificate of Service)(Katyal, Neal) (Entered: 07/07/2017)
7/8/17	330	EO: The Court is in receipt of Plaintiffs' Motion to Enforce or, In the Alternative, to Modify Preliminary Injunction. Dkt. No. 328. Defendants shall file their opposition by Tuesday, July 11, 2017. Plaintiffs shall file any reply by Wednesday, July 12, 2017. The parties' opposition and reply briefs are limited to no more than 15 pages each. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (watson1)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/08/2017)
		* * * * *
7/10/17	335	EO: The Court partially lifts the April 3, 2017 stay in this matter for the limited purpose of considering Plaintiffs' Motion to Enforce or, In the Alternative, to Modify Preliminary Injunction. Dkt. No. 328. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/10/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/11/17	338	MEMORANDUM in Opposition re 328 MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Rosenberg, Brad) (Entered: 07/11/2017)
		* * * * *
7/12/17	342	REPLY re 328 MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, filed by State of Hawaii. (Attachments: # 1 Certificate of Service)(Katyal, Neal) (Entered: 07/12/2017)
7/12/17	343	Declaration re 342 Reply *Supplemental Declaration of Neal K. Katyal.* (Attachments: # 1 Exhibit G, # 2 Exhibit H, # 3 Exhibit I, # 4 Certificate of Service)(Katyal, Neal) (Entered: 07/12/2017)
7/13/17	344	Declaration re 342 Reply *Third Declaration of Neal K. Katyal.* (Attach-

DATE	DOCKET NUMBER	PROCEEDINGS
		ments: # 1 Exhibit J, # 2 Exhibit K, # 3 Exhibit L, # 4 Certificate of Service)(Katyal, Neal) (Entered: 07/13/2017)
7/13/17	345	ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO ENFORCE, OR, IN THE ALTERNATIVE, TO MODIFY PRELIMINARY INJUNCTION re 328—Signed by JUDGE DERRICK K. WATSON on 7/13/2017. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/13/2017)
7/14/17	346	**NOTICE OF APPEAL** as to 345 Order on Motion for Miscellaneous Relief,, by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United

DATE	DOCKET NUMBER	PROCEEDINGS
		States of America. 9CCA NO. 17-16426 (Bennett, Michelle) Modified on 7/14/2017 (emt,). (Entered: 07/14/2017)
7/14/17	347	USCA Case Number 17-16426 for 346 Notice of Appeal filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump. (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/14/2017)
		* * * * *
7/19/17	349	Appeal Remark re 271 Notice of Appeal, re 9CCA NO. 17-15589 : ORDER issued by the U.S. Supreme Court (16-1540) ~ "The Government's motion seeking clarification of our order of June 26, 2017, is denied. The District Court order modifying the preliminary injunction with respect to refugees covered by a formal assurance is stayed pending resolution of the Gov-

DATE	DOCKET NUMBER	PROCEEDINGS
		ernment's appeal to the Court of Appeals for the Ninth Circuit." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/19/2017)
7/19/17	350	Appeal Remark re 346 Notice of Appeal, re 9CCA NO. 17-16426 : ORDER issued by the U.S. Supreme Court (16-1540) ~ "The Government 's motion seeking clarification of our order of June 26, 2017, is denied. The District Court order modifying the preliminary injunction with respect to refugees covered by a formal assurance is stayed pending resolution of the Government's appeal to the Court of Appeals for the Ninth Circuit." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive

DATE	DOCKET NUMBER	PROCEEDINGS
		electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/19/2017)
		* * * * *
7/24/17	352	ORDER of USCA as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-16426: "The Government's motion to stay pending appeal, Dkt. No. 3, is denied as moot. The briefing schedule entered at Dkt. No. 2 is vacated. The parties' joint motion to expedite the briefing and consideration of the merits of this appeal, Dkt. No. 6, is granted." emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/24/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/28/17	354	ORDER of USCA CA No. 17-16426 as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump The Court has received an Emergency Motion to Intervene (Dkt. #10). Any response shall be filed on or before 12:00 p.m. PST, Wednesday, August 2, 2017. Proposed-Intervenor may file a reply on or before 12:00 p.m. PST, Thursday, August 3, 2017. (eps,) CERTIFICATE OF SERVICE Participants served by 9CCA (Entered: 07/28/2017)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 17-15589

STATE OF HAWAII, ET AL., PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
3/30/17	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: to be set. Preliminary Injunction Appeal. Circuit Rule 3-3. [10378209] (RT) [Entered: 03/30/2017 04:20 PM]
		* * * * *
3/31/17	12	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS Unopposed Motion to expedite case. Date of service: 03/31/2017. [10379547] [17-15589] (Swingle, Sharon)

DATE	DOCKET NUMBER	PROCEEDINGS
		[Entered: 03/31/2017 02:46 PM]
		* * * * *
4/3/17	14	Filed order (BARRY G. SILVERMAN, M. MARGARET MCKEOWN and ANDREW D. HURWITZ) Appellants' unopposed motion to expedite the briefing and consideration of a motion to stay and to expedite the briefing and consideration of the merits of this preliminary injunction appeal (Docket Entry No. [12]) is granted. The briefing schedule shall proceed as follows: the opening brief and the motion for a stay pending appeal are due April 7, 2017; the answering brief and the response to the motion for a stay pending appeal are due April 21, 2017; and the optional reply brief and the reply in support of the motion for a stay pending appeal are due April 28, 2017. Any amicus briefs are due April 21, 2017. The parties' request for expedited argument is granted. This case shall be heard on the calendar for May 2017, taking into account the limited dates the parties have advised they are available for argument. See 9th Cir. Gen. Order 3.3(g). This case shall

DATE	DOCKET NUMBER	PROCEEDINGS
		be heard by a panel composed of three members of this court. See 9th Cir. Gen. Order 3.3(h). [10381034] (ME) [Entered: 04/03/2017 01:18 PM]
		* * * * *
4/4/17	18	Notice of Oral Argument on Monday, May 15, 2017—09:30 A.M.—SE 7th Flr Courtroom 2—Seattle WA. View the Oral Argument Calendar for your case here. Be sure to review the GUIDELINES for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible). When you have reviewed the calendar, download the ACKNOWLEDGMENT OF HEARING NOTICE form, complete the form, and file it via Appellate ECF or return the completed form to: SEATTLE Office. [10382890] (AW) [Entered: 04/04/2017 01:13 PM]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
4/6/17	20	Filed (ECF) Plaintiffs in Ali v. Trump, 2:17-cv-00135 (W.D.Wash.) Motion to intervene. Date of service: 04/06/2017. [10387252] [17-15589] (Adams, Matt) [Entered: 04/06/2017 04:40 PM]
		* * * * *
4/7/17	22	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS Motion to stay lower court action. Date of service: 04/07/2017. [10388981] [17-15589] (Swingle, Sharon) [Entered: 04/07/2017 05:02 PM]
4/7/17	23	Submitted (ECF) Opening Brief for review. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS. Date of service: 04/07/2017. [10388990] [17-15589]—[COURT UPDATE: Attached corrected brief (statement of related cases added). 04/10/2017 by LA] (Swingle, Sharon) [Entered: 04/07/2017 05:06 PM]
4/7/17	24	Submitted (ECF) excerpts of record. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald

DATE	DOCKET NUMBER	PROCEEDINGS
		J. Trump, U.S. Department of State, USA and USDHS. Date of service: 04/07/2017. [10388991] [17-15589] (Swingle, Sharon) [Entered: 04/07/2017 05:08 PM]
		* * * * *
4/10/17	29	Filed clerk order (Deputy Clerk: AF): Plaintiffs-Intervenors ("Ali Plaintiffs") have filed a motion for leave to intervene in this appeal. Dkt. [20]. Their motion indicates that counsel for the State of Hawaii and Ismail Elshikh take no position on the motion and that counsel for the federal government oppose the motion. Ordinarily, a party filing a response to a motion must do so within 10 days after service of the motion. Fed. R. App. P. 27. Given the expedited briefing and oral argument schedule set in this case, the Court shortens the deadline to respond. The parties may file a response to the Ali Plaintiffs' motion to intervene no later than April 12, 2017. [10389403] (AF) [Entered: 04/10/2017 09:21 AM]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
4/10/17	34	Filed clerk order: The opening brief [23] submitted by appellants is filed. Appellants are ordered to file 7 copies of the brief in paper format for delivery to the Court by 12:00 p.m. Pacific time on Tuesday, April 11, 2017, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [24] submitted by appellants. Appellants are ordered to file 4 copies of the excerpts in paper format, with a white cover, for delivery to the Court by 12:00 p.m. Pacific time on Tuesday, April 11, 2017. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10389531] (LA) [Entered: 04/10/2017 10:05 AM]
		* * * * *
4/11/17	52	Filed (ECF) Appellees State of Hawaii and Ismail Elshikh Motion for miscellaneous relief [Petition for

DATE	DOCKET NUMBER	PROCEEDINGS
		initial hearing en banc.]. Date of service: 04/11/2017. [10392720] [17-15589] (Katyal, Neal) [Entered: 04/11/2017 05:15 PM]
4/12/17	53	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS response opposing motion ([20] Motion (ECF Filing), [20] Motion (ECF Filing) motion to intervene). Date of service: 04/12/2017. [10392989] [17-15589] (Swingle, Sharon) [Entered: 04/12/2017 09:40 AM]
4/12/17	54	Filed clerk order (Deputy Clerk: OC): Plaintiffs-Intervenors (the "Ali Plaintiffs") have filed a motion for leave to intervene in this appeal. Dkt. [20]. The Ali Plaintiffs may file a reply to any party's opposition briefing, but this must be expedited: Any optional reply in support of the motion shall be filed no later than Friday, April 14, 2017.[10393781] (OC) [Entered: 04/12/2017 03:02 PM]
		* * * * *
4/14/17	56	Filed (ECF) Intervenor—Pending Ali Plaintiffs reply to response

DATE	DOCKET NUMBER	PROCEEDINGS
		(motion to intervene,). Date of service: 04/14/2017. [10397544] [17-15589] (Adams, Matt) [Entered: 04/14/2017 06:30 PM]
4/14/17	57	Filed (ECF) Plaintiffs in Doe v. Trump, 2:17-cv-00178 (W.D. Wash.) —Joseph Doe, James Doe, and the Episcopal Diocese of Olympia Motion to intervene. Date of service: 04/14/2017. [10397563] [17-15589] —[COURT UPDATE: Edited docket text to reflect correct party filers per motion. 04/17/2017 by RY] (Sarko, Lynn) [Entered: 04/14/2017 11:11 PM]
		* * * * *
4/17/17	61	Filed clerk order (Deputy Clerk: WL): Plaintiffs-Intervenors (the "Doe Plaintiffs") have filed a motion for leave to intervene in this appeal. Dkt. No. [57]. Their motion indicates that counsel for the State of Hawaii and Ismail Elshikh take no position on the motion and that counsel for the federal government oppose the motion. Ordinarily, a party filing a response to a motion must do so within 10 days after service of the motion, and a party

DATE	DOCKET NUMBER	PROCEEDINGS
		filing a reply must due so within 7 days after service of the response. Fed. R. App. P. 27. Given the expedited briefing and oral argument schedule set in this case, the Court shortens the deadline to respond and reply. The parties may file a response to the Doe Plaintiffs' motion to intervene no later than Wednesday, April 19, 2017. The Doe Plaintiffs may file an optional reply in support of their motion no later than Friday, April 21, 2017. [10399041] (AF) [Entered: 04/17/2017 03:30 PM]
		* * * * *
4/19/17	76	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS response opposing motion ([57] Motion (ECF Filing), [57] Motion (ECF Filing) motion to intervene). Date of service: 04/19/2017. [10402576] [17-15589] (Swingle, Sharon) [Entered: 04/19/2017 01:26 PM]
		* * * * *
4/20/17	115	Filed (ECF) Intervenors—Pending James Doe, Joseph Doe and Epis-

DATE	DOCKET NUMBER	PROCEEDINGS
		copal Diocese of Olympia reply to response (motion to intervene). Date of service: 04/20/2017. [10404566] [17-15589] (Sarko, Lynn) [Entered: 04/20/2017 01:27 PM]
		* * * * *
4/21/17	184	Filed Order for PUBLICATION (SIDNEY R. THOMAS) The full court was advised of the petition for initial hearing en banc. A judge requested a vote on whether to hear the matter en banc before the limited en banc court. Another judge requested a vote on whether to hear the matter en banc before the full court. The matter failed to receive a majority of the votes of the non-recused active judges in favor of initial en banc consideration. Fed. R. App. P 35. Therefore, initial en banc proceedings are concluded, and all remaining issues will be decided by the three-judge panel. The denial of the request for initial hearing en banc does not preclude any party from filing a petition for rehearing en banc pursuant to the applicable rules following issuance of the panel opinion. This case is scheduled for oral argument before

DATE	DOCKET NUMBER	PROCEEDINGS
		the three-judge panel at 9:30 a.m. on Monday, May 15, 2017, in Seattle Washington. [10406467] (RMM) [Entered: 04/21/2017 01:47 PM]
		* * * * *
4/21/17	203	Filed clerk order (Deputy Clerk: OC): The Ali Plaintiffs' motion to intervene, Dkt. No. [20], and the Doe Plaintiffs' motion to intervene, Dkt. No. [57], are denied for the purposes of this expedited appeal only. See Bates v. Jones, 127 F.3d 870, 873 (9th Cir. 1997) ("Intervention at the appellate stage is . . . unusual and should ordinarily be allowed only for imperative reasons." (internal quotation marks omitted)); Fed. R. Civ. P. 24(a)(2) (intervention as of right must be given where "disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest"); Fed. R. Civ. P. 24(b)(3). The interests of the Ali Plaintiffs may be pursued through their case, Ali v. Trump, No. 2:17-cv-00135-JLR (W.D. Wash. filed Jan. 30, 2017), and possibly on appeal to our court. The same goes for the Doe Plaintiffs, who may

DATE	DOCKET NUMBER	PROCEEDINGS
		protect their interests in their case, Doe v. Trump, No. 2:17-cv-00178-JLR (W.D. Wash. filed Feb. 7, 2017). Although "[t]he prospect of stare decisis may, under certain circumstances, supply the requisite practical impairment warranting intervention as of right," United States v. Stringfellow, 783 F.2d 821, 826 (9th Cir. 1986), vacated on other grounds, 480 U.S. 370 (1987), the outcome of this appeal will not "for all practical purposes . . . foreclose" the Ali and Doe Plaintiffs' claims, Blake v. Pallan, 554 F.2d 947, 954 (9th Cir. 1977). See In re Estate of Ferdinand E. Marcos Human Rights Litig., 536 F.3d 980, 986 (9th Cir. 2008) (noting that a non-party's concerns about the precedential effect of an opinion may not warrant intervention). The Ali and Doe Plaintiffs may file briefs as amici curiae no later than Wednesday, April 26, 2017. [10406960] (OC) [Entered: 04/21/2017 04:16 PM]
		* * * * *
4/21/17	216	Filed (ECF) Appellees Isma Elshikh and State of Hawaii response opposing motion ([22] Motion (ECF Fil-

DATE	DOCKET NUMBER	PROCEEDINGS
		ing), [22] Motion (ECF Filing) motion to stay lower court action). Date of service: 04/21/2017. [10407174] [17-15589] (Katyal, Neal) [Entered: 04/21/2017 06:08 PM]
4/21/17	217	Submitted (ECF) Answering Brief for review. Submitted by Appellees State of Hawaii and Ismail Elshikh. Date of service: 04/21/2017. [10407177] [17-15589] —[COURT UPDATE: Attached corrected brief. 4/24/2017 by TYL] (Katyal, Neal) [Entered: 04/21/2017 06:11 PM]
4/21/17	218	Submitted (ECF) supplemental excerpts of record. Submitted by Appellees State of Hawaii and Ismail Elshikh. Date of service: 04/21/2017. [10407178] [17-15589] (Katyal, Neal) [Entered: 04/21/2017 06:13 PM]
		* * * * *
4/24/17	238	Filed clerk order: The answering brief [217] submitted by Ismail Elshikh and State of Hawaii is filed. Appellees are ordered to file 7 copies of the brief in paper format for delivery to the Court by 12:00 p.m. Pacific time on Tuesday, April 25,

DATE	DOCKET NUMBER	PROCEEDINGS
		2017, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the supplemental excerpts of record [218] submitted by Ismail Elshikh and State of Hawaii. Appellees are ordered to file 4 copies of the excerpts in paper format, with a white cover, for delivery to the Court by 12:00 p.m. Pacific time on Tuesday, April 25, 2017 The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10408095] (KT) [Entered: 04/24/2017 11:53 AM]
		* * * * *
4/28/17	281	Submitted (ECF) Reply Brief for review. Submitted by Appellants Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA, USDHS and John F. Kelly. Date of service: 04/28/2017. [10416088] [17-15589] (Murphy, Anne) [Entered:

DATE	DOCKET NUMBER	PROCEEDINGS
		04/28/2017 07:06 PM]
4/28/17	282	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS reply to response (). Date of service: 04/28/2017. [10416089] [17-15589] (Murphy, Anne) [Entered: 04/28/2017 07:12 PM]
		* * * * *
5/1/17	284	Filed clerk order: The reply brief [281] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format for delivery to the Court by 12:00 p.m. Pacific time on Tuesday, May 2, 2017, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10416515] (LA) [Entered: 05/01/2017 10:20 AM]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
5/2/17	288	Filed clerk order (Deputy Clerk: OC): This case is scheduled for oral argument before a three-judge panel at 9:30 a.m. on Monday, May 15, 2017, in Seattle, Washington. Each side is allocated 30 minutes per side. Please note that this is a change in the minutes assigned for oral argument. [10418746] (OC) [Entered: 05/02/2017 11:55 AM]
		* * * * *
5/15/17	304	ARGUED AND SUBMITTED TO MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ. [10434008] (SB) [Entered: 05/15/2017 11:18 AM]
5/15/17	305	Filed Audio recording of oral argument. **Note**: Video recordings of public argument calendars are available on the Court's website, at http://www.ca9.uscourts.gov/media/ [10435657] (SB) [Entered: 05/16/2017 09:42 AM]
5/18/17	306	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS citation of supple-

DATE	DOCKET NUMBER	PROCEEDINGS
		mental authorities. Date of service: 05/18/2017. [10440536] [17-15589] (Swingle, Sharon) [Entered: 05/18/2017 03:20 PM]
5/19/17	307	Filed (ECF) Appellees State of Hawaii and Ismail Elshikh Motion to supplement record on appeal. Date of service: 05/19/2017. [10441693] [17-15589] (Katyal, Neal) [Entered: 05/19/2017 01:33 PM]
5/19/17	308	Filed (ECF) Appellees Ismail Elshikh and State of Hawaii citation of supplemental authorities. Date of service: 05/19/2017. [10441854] [17-15589] (Sinzdak, Colleen) [Entered: 05/19/2017 02:14 PM]
5/24/17	309	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) Plaintiffs-Appellees' motion for leave to supplement the record is GRANTED. Plaintiffs-Appellees have advised that Defendants-Appellants do not oppose the motion but that they intend to file a response to the motion, addressing the relevance of the material to the issues before the Court. Defendants-Appellants may file such a response without further leave of the Court. [10446417] (OC)

DATE	DOCKET NUMBER	PROCEEDINGS
		[Entered: 05/24/2017 09:26 AM]
5/25/17	310	Filed (ECF) Appellants USDHS, John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State and USA response to motion ([307] Motion (ECF Filing), [307] Motion (ECF Filing) motion to supplement record on appeal). Date of service: 05/25/2017. [10448867] [17-15589] (Swingle, Sharon) [Entered: 05/25/2017 02:07 PM]
5/25/17	311	Filed (ECF) Appellees State of Hawaii and Ismail Elshikh citation of supplemental authorities. Date of service: 05/25/2017. [10449368] [17-15589] (Katyal, Neal) [Entered: 05/25/2017 04:15 PM]
6/9/17	312	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) The Law Professors' motion for leave to file a brief as amici curiae, see Dkt. [208], is granted. [10467727] (OC) [Entered: 06/09/2017 04:39 PM]
		* * * * *
6/12/17	314	FILED PER CURIAM OPINION (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICH-

DATE	DOCKET NUMBER	PROCEEDINGS
		ARD A. PAEZ) The Government's motion for a stay pending appeal is DENIED as moot. AFFIRMED in part; VACATED in part; and REMANDED with instructions. Each party shall bear its own costs on appeal. FILED AND ENTERED JUDGMENT. [10468371]—[Edited: attached PDF of WebCites. 06/16/2017 by RY] (RMM) [Entered: 06/12/2017 10:00 AM]
		* * * * *
6/13/17	316	Filed (ECF) Appellants USDHS, USA, U.S. Department of State, Donald J. Trump, Rex W. Tillerson and John F. Kelly Unopposed Motion for miscellaneous relief [Consent Motion To Issue The Mandate]. Date of service: 06/13/2017. [10472085] [17-15589] (Byron, H. Thomas) [Entered: 06/13/2017 05:43 PM]
6/19/17	317	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) The Government's consent motion to issue the mandate, Dkt. No. [316], is GRANTED. The mandate shall

DATE	DOCKET NUMBER	PROCEEDINGS
		issue immediately. [10479792] (OC) [Entered: 06/19/2017 04:27 PM]
6/19/17	318	MANDATE ISSUED.(MDH, RMG and RAP) [10479819] (MT) [Entered: 06/19/2017 04:38 PM]
6/27/17	319	**Supreme Court Case Info** Case number: 16-1540 Filed on: 06/26/2017 Cert Petition Action 1: Pending [10490185] (RR) [Entered: 06/27/2017 04:54 PM]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 17-16366

STATE OF HAWAII, ET AL., PLAINTIFFS-APPELLANTS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS-APPELLEES

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
7/6/17	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. 9th Circuit Rule 3-3 Preliminary Injunction Appeal. [10500168] (HH) [Entered: 07/06/2017 10:29 PM]
7/7/17	2	Filed (ECF) Appellants State of Hawaii and Ismail Elshikh EMERGENCY Motion for injunction pending appeal. Date of service: 07/07/2017. [10500624] [17-16366] (Katyal, Neal) [Entered: 07/07/2017 10:27 AM]
7/7/17	3	Order filed (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) This is

DATE	DOCKET NUMBER	PROCEEDINGS
		an appeal of the district court's July 6, 2017 denial of Plaintiffs' "Emergency Motion to Clarify Scope of Preliminary Injunction." Plaintiffs requested that the district court "clarify the scope of the Court's June 19, 2017 amended preliminary injunction." The district court denied the clarification motion, explaining that, because it was the Supreme Court—not the district court—that issued the June 26, 2017 order staying in part the district court's preliminary injunction, clarification of the June 26 order must be sought from the Supreme Court. Plaintiffs have filed an emergency motion requesting that this court enjoin the Government from violating the Supreme Court's June 26 order or directing the district court to do so. We lack jurisdiction to address Plaintiffs' appeal of the district court's order denying the motion to clarify the scope of the injunction. This court possesses jurisdiction to review only final judgments and a limited set of interlocutory orders. See 28 U.S.C. §§ 1291, 1292(a). The district court's

DATE	DOCKET NUMBER	PROCEEDINGS
		order neither resulted in a final judgment nor engaged in action deemed immediately appealable in 28 U.S.C. § 1292(a). Specifically, the district court's order did not "grant[], continu[e], modify[], refus[e], or dissolv[e]" an injunction, or "refus[e] to dissolve or modify" an injunction. Id. § 1291(a)(1). Nor do any of the various judicially-crafted bases for appellate jurisdiction apply under these circumstances. Because the "practical effect" of Plaintiffs' requested relief is declaratory in nature—not injunctive—we do not construe their clarification motion before the district court as one for injunctive relief. See, e.g., Alsea Valley All. v. Dep't of Commerce, 358 F.3d 1181, 1186 (9th Cir. 2004). And this scenario does not present an order of "practical finality" because—as discussed below—Plaintiffs may seek injunctive relief from the district court. Cf. Nehmer v. U.S. Dep't of Veterans Affairs, 494 F.3d 846, 856 n.5 (9th Cir. 2007); All Alaskan Seafoods, Inc. v. M/V Sea Producer, 882 F.2d 425, 428 n.2 (9th Cir. 1989). Because we lack

DATE	DOCKET NUMBER	PROCEEDINGS
		jurisdiction to review the district court's order, this appeal is DISMISSED and Plaintiffs' "Emergency Motion under FRAP 8 and Circuit Rule 27-3 for Injunction Pending Appeal" is DENIED as moot. 1 Finally, we note that although the district court may not have authority to clarify an order of the Supreme Court, it does possess the ability to interpret and enforce the Supreme Court's order, as well as the authority to enjoin against, for example, a party's violation of the Supreme Court's order placing effective limitations on the scope of the district court's preliminary injunction. Cf. United States v. El-O-Pathic Pharmacy, 192 F.2d 62, 79-80 (9th Cir. 1951). But Plaintiffs' motion before the district court was clear: it sought clarification of the Supreme Court's June 26 order, not injunctive relief. Because the district court was not asked to grant injunctive relief or to modify the injunction, we do not fault it for not doing so. IT IS SO ORDERED. [10501556] (WL) [Entered: 07/07/2017 03:40 PM]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 17-16426

STATE OF HAWAII, ET AL., PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
7/14/17	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: to be set. Preliminary Injunction Appeal. C.R. 3-3. [10509016] (RT) [Entered: 07/14/2017 12:38 PM]
7/14/17	2	Filed clerk order (Deputy Clerk: MCD): The appeal filed on July 14, 2017 is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply. The mediation questionnaire is due three days after the date of this order. If they have not already done so, within 7 calendar days after the filing date

DATE	DOCKET NUMBER	PROCEEDINGS
		of this order, the parties shall make arrangements to obtain from the court reporter an official transcript of proceedings in the district court that will be included in the record on appeal. The briefing schedule shall proceed as follows: the opening brief and excerpts of record are due not later than August 11, 2017; the answering brief is due September 8, 2017 or 28 days after service of the opening brief, whichever is earlier; and the optional reply brief is due within 21 days after service of the answering brief. See 9th Cir. R. 3-3(b). The parties are reminded that streamlined requests for extensions of time are not available in preliminary injunction appeals. See http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000638. Any request for an extension of time must be requested under Ninth Circuit Rule 31-2.2(b). Failure to file timely the opening brief shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. See 9th Cir. R. 42-1. [10509444] (ME) [Entered: 07/14/2017 02:42 PM]

DATE	DOCKET NUMBER	PROCEEDINGS
7/15/17	3	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS Motion for injunction pending appeal. Date of service: 07/15/2017. [10509983] [17-16426] (Swingle, Sharon) [Entered: 07/15/2017 10:52 AM]
7/19/17	4	Received Order from the Supreme Court, dated 07/19/2017: The Government's motion seeking clarification of our order of June 26, 2017, is denied. The District Court order modifying the preliminary injunction with respect to refugees covered by a formal assurance is stayed pending resolution of the Government's appeal to the Court of Appeals for the Ninth Circuit. Justice Thomas, Justice Alito, and Justice Gorsuch would have stayed the District Court order in its entirety. Supreme Court No. 16-1540 (16A1191). [10513992] (HH) [Entered: 07/19/2017 10:17 AM]
		* * * * *
7/21/17	6	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State,

DATE	DOCKET NUMBER	PROCEEDINGS
		USA and USDHS Joint Motion to expedite case. Date of service: 07/21/2017. [10516877] [17-16426] (Swingle, Sharon) [Entered: 07/21/2017 10:39 AM]
7/24/17	7	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ): The Government's motion to stay pending appeal, Dkt. No. [3], is denied as moot. The briefing schedule entered at Dkt. No. [2] is vacated. The parties' joint motion to expedite the briefing and consideration of the merits of this appeal, Dkt. No. [6], is granted. The briefing schedule shall proceed as follows: the opening brief and excerpts of record are due July 27, 2017; the answering brief and supplemental excerpts of record (if any) are due August 3, 2017; and the reply brief is due August 9, 2017. Any amicus briefs are due August 3, 2017. Oral argument is presently not scheduled, but if the panel later concludes that oral argument is necessary, argument will be scheduled by the panel as soon as practicable after briefing concludes. [10518691] (AF)

DATE	DOCKET NUMBER	PROCEEDINGS
		[Entered: 07/24/2017 11:49 AM]
7/27/17	8	Submitted (ECF) Opening Brief for review. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS. Date of service: 07/27/2017. [10524184] [17-16426] (Swingle, Sharon) [Entered: 07/27/2017 02:39 PM]
7/27/17	9	Submitted (ECF) excerpts of record. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS. Date of service: 07/27/2017. [10524263] [17-16426]—[COURT UPDATE: Attached corrected excerpts of record. 7/28/2017 by TYL] (Swingle, Sharon) [Entered: 07/27/2017 03:04 PM]
7/27/17	10	Filed (ECF) U.S. Committee for Refugees and Immigrants Motion to intervene. Date of service: 07/27/2016. [10524434] [17-16426] (Doblick, Donna) [Entered: 07/27/2017 03:55 PM]
		* * * * *
7/28/17	14	Filed clerk order: The opening brief [8] submitted by appellants is filed.

DATE	DOCKET NUMBER	PROCEEDINGS
		Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [9] submitted by appellants. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10525654] (KT) [Entered: 07/28/2017 01:47 PM]
7/28/17	15	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ): The Court has received an Emergency Motion to Intervene (Dkt. # [10]). Any response shall be filed on or before 12:00 p.m. PST, Wednesday, August 2, 2017. Proposed-

DATE	DOCKET NUMBER	PROCEEDINGS
		Intervenor may file a reply on or before 12:00 p.m. PST, Thursday, August 3, 2017. [10525844] (AF) [Entered: 07/28/2017 02:35 PM]
8/2/17	16	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS response opposing motion ([10] Motion (ECF Filing), [10] Motion (ECF Filing) motion to intervene). Date of service: 08/02/2017. [10530017] [17-16426] (Swingle, Sharon) [Entered: 08/02/2017 09:33 AM]
		* * * * *
8/3/17	22	Filed (ECF) Intervenor—Pending U.S. Committee for Refugees and Immigrants reply to response (motion to intervene). Date of service: 08/03/2017. [10531927] [17-16426] (Doblick, Donna) [Entered: 08/03/2017 11:45 AM]
		* * * * *
8/3/17	25	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ): The Emergency Motion to Intervene (Dkt. # [10]) is DENIED. See

DATE	DOCKET NUMBER	PROCEEDINGS
		Bates v. Jones, 127 F.3d 870, 873 (9th Cir. 1997) ("Intervention at the appellate stage is . . . unusual and should ordinarily be allowed only for imperative reasons." (internal quotation marks omitted)); Fed. R. Civ. P. 24(a)(2) (requiring the court to permit intervention unless "existing parties adequately represent [proposed-intervenors'] interest"). The United States Committee for Refugees and Immigrants may file a brief as amicus curiae no later than Wednesday, August 9, 2017. If Appellants wish to respond to any argument raised in that brief, they may do so no later than 12:00 p.m. PST on Friday, August 11, 2017. [10532222] (AF) [Entered: 08/03/2017 01:49 PM]

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

[Mar. 8, 2017]

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The State of Hawai'i (the "State") brings this action to protect its residents, its employers, its educational institutions, and its sovereignty against illegal actions of President Donald J. Trump and the federal government, specifically: President Trump's March 6, 2017 Executive Order, "Protecting the Nation From Foreign Terrorist Entry into the United States" (the

"Executive Order").[1] Plaintiff Ismail Elshikh, PhD, the Imam of the Muslim Association of Hawai'i, joins the State in its challenge because the Executive Order inflicts a grave injury on Muslims in Hawai'i, including Dr. Elshikh, his family, and members of his Mosque.

2. President Trump's original Executive Order dated January 27, 2017 blocked the entry into the United States, including Hawai'i, of any person from seven Muslim-majority countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.[2] His new Executive Order also blocks the entry into the United States, including Hawai'i, of nationals from six of the same countries—all except for Iraq—as long as those individuals do not have a valid U.S. visa as of the effective date of the Executive Order, or did not have one as of 5:00 p.m. EST on January 27, 2017. In other words, the Executive Order means that no prospective visa holder from the six designated countries will be able to enter the United States. This second Executive Order is infected with the same legal problems as the first Order—undermining bedrock constitutional and statutory guarantees.

3. The Executive Order means that thousands of individuals across the United States and in Hawai'i who have immediate family members living in the affected

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[1] As of this filing, President Trump's March 6, 2017 has not yet been published in the Federal Register. A copy of the Executive Order published on the White House website is attached as Exhibit 1, and is available at https://goo.gl/rnecqx.

[2] *See* Executive Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017). A copy of the first Executive Order is attached as Exhibit 2.

countries will now be unable to receive visits from those persons or to be reunited with them in the United States. It means that universities, employers, and other institutions throughout the United States and in Hawai‘i will be unable to recruit or to welcome qualified individuals from the six designated countries. It threatens certain non-citizens within the United States and in Hawai‘i with the possibility that they will be unable to travel abroad and return—for instance, because their visa only permits them one entry, or because their visa will have expired during the time the Executive Order is still in place.

4. President Trump's Executive Order is subjecting a portion of Hawaii's population, including Dr. Elshikh, his family, and members of his Mosque, to discrimination and second-class treatment, in violation of both the Constitution and the Immigration and Nationality Act. The Order denies them their right to associate with family members overseas on the basis of their religion and national origin. And it results in their having to live in a country and in a State where there is the perception that the Government has established a disfavored religion.

5. The Executive Order bars students, tourists, family members, and other visitors from the State on grounds that Congress and the Constitution have expressly prohibited. It is damaging Hawaii's institutions, harming its economy, and eroding Hawaii's sovereign interests in maintaining the separation between church and state as well as in welcoming persons from all nations around the world into the fabric of its society.

6. Plaintiffs accordingly seek an Order invalidating the portions of President Trump's Executive Order challenged here.

JURISDICTION AND VENUE

7. This Court has Federal Question Jurisdiction under 28 U.S.C. § 1331 because this action arises under the U.S. Constitution, the Administrative Procedure Act ("APA"), the Immigration and Nationality Act ("INA"), and other Federal statutes.

8. The Court is authorized to award the requested declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the APA, 5 U.S.C. § 706.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (e)(1). A substantial part of the events giving rise to this claim occurred in this District, and each Defendant is an officer of the United States sued in his official capacity.

PARTIES

10. Plaintiffs are the State of Hawai'i and Ismail Elshikh, PhD.

11. Hawai'i is the nation's most ethnically diverse State, and is home to more than 250,000 foreign-born residents. More than 100,000 of Hawaii's foreign-born residents are non-citizens.[3]

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[3] United States Census Bureau, *2015 American Community Survey 1-Year Estimates*, *available at* https://goo.gl/IGwJyf. A collection of the relevant data for Hawai'i is attached as Exhibit 3.

12. Estimates from the Fiscal Policy Institute show that as of 2010, Hawai'i had the fifth-highest percentage of foreign-born workers of any State (20% of the labor force). And 22.5% of Hawai'i business owners were foreign-born.[4]

13. Thousands of people living in Hawai'i obtain lawful permanent resident status each year, including over 6,500 in 2015.[5] That includes numerous individuals from the seven countries designated in the original Executive Order. According to DHS statistics, over 100 Hawai'i residents from Iran, Iraq, and Syria have obtained lawful permanent resident status since 2004 (DHS has withheld data pertaining to additional residents from the seven designated countries).[6]

14. Hawai'i is also home to 12,000 foreign students.[7] That includes numerous individuals from the seven originally-designated countries. At the University of Hawai'i, there are at least 27 graduate students from

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[4] The Fiscal Policy Institute, *Immigrant Small Business Owners*, at 24 (June 2012), *available at* https://goo.gl/vyNK9W.

[5] U.S. Department of Homeland Security, *Lawful Permanent Residents Supplemental Table 1: Persons Obtaining Lawful Permanent Resident Status by State or Territory of Residence and Region and Country of Birth Fiscal Year 2015*, *available at* https://goo.gl/ELYIkn. Copies of these tables for fiscal years 2005 through 2015 are attached as Exhibit 4.

[6] *See* Exhibit 4.

[7] Hawaii Department of Business, Economic Development & Tourism, *The Economic Impact of International Students in Hawaii—2016 Update*, at 8 (June 2016), *available at* https://goo.gl/mogNMA.

the seven countries studying pursuant to valid visas issued by the U.S. government.

15. In 2016, Hawaii's foreign students contributed over $400 million to Hawaii's economy through the payment of tuition and fees, living expenses, and other activities. These foreign students supported 7,590 jobs and generated more than $43 million in state tax revenues.[8]

16. In 2009, foreign residents (i.e., non-citizens who had not obtained lawful permanent resident status) made up 42.9% of doctorate students, and 27.7% of master's students in science, technology, engineering, and mathematics ("STEM") programs in Hawai'i.[9]

17. Hawaii's educational institutions have diverse faculties. At the University of Hawai'i, there are approximately 477 international faculty members legally present in the United States. There are at least 10 faculty members at the University who are lawful permanent residents from one of the seven designated countries in the original Executive Order, and 30 visiting faculty members with valid visas who are from one of the seven designated countries.

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[8] *The Economic Impact of International Students in Hawaii—2016 Update*, *supra*, at 10-11.

[9] U.S. Chamber of Commerce et al., *Help Wanted: The Role of Foreign Workers in the Innovation Economy*, at 21 (2013), *available at* https://goo.gl/c3BYBu.

18. Tourism is Hawaii's "lead economic driver."[10] In 2015 alone, Hawai'i welcomed 8.7 million visitors accounting for $15 billion in spending.[11]

19. Hawai'i is home to several airports, including Honolulu International Airport and Kona International Airport.

20. David Yutaka Ige is the Governor of Hawai'i, the chief executive officer of the State of Hawai'i. The Governor is responsible for overseeing the operations of the state government, protecting the welfare of Hawaii's citizens, and ensuring that the laws of the State are faithfully executed.

21. Douglas S. Chin is the Attorney General of Hawai'i, the chief legal officer of the State. The Attorney General is charged with representing the State in Federal Court on matters of public concern.

22. The Constitution of the State of Hawai'i provides that "[n]o law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof." Haw. Const. art. I, § 4. And the State has declared that the practice of discrimination "because of race, color, religion, age, sex, including gender identity or expression, sexual orientation, marital status, national origin, ancestry, or disability" is against public

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[10] Hawai'i Tourism Authority, *2016 Annual Report to the Hawai'i State Legislature*, at 20, *available at* https://goo.gl/T8uiWW.

[11] Hawai'i Tourism Authority, *2015 Annual Visitor Research Report*, at 2, *available at* https://goo.gl/u3RQmX. A copy of the table of contents and executive summary of this report is attached as Exhibit 5.

policy. Haw. Rev. Stat. Ann. § 381-1; *accord id.* §§ 489-3 & 515-3.

23. The State has an interest in protecting the health, safety, and welfare of its residents and in safeguarding its ability to enforce state law. The State also has an interest in "assuring that the benefits of the federal system," including the rights and privileges protected by the United States Constitution and Federal statutes, "are not denied to its general population." *Alfred L. Snapp & Sons, Inc. v. Puerto Rico*, 458 U.S. 592, 608 (1982). The State's interests extend to all of the State's residents, including individuals who suffer indirect injuries and members of the general public.

24. Plaintiff Ismail Elshikh, PhD, is an American citizen of Egyptian descent. He has been a resident of Hawai'i for over a decade.

25. Dr. Elshikh is the Imam of the Muslim Association of Hawai'i. He is a leader within Hawaii's Islamic community.

26. Dr. Elshikh's wife is of Syrian descent and is also a resident of Hawai'i.

27. Dr. Elshikh's mother-in-law is a Syrian national, living in Syria. Dr. Elshikh's wife filed an I-130 Petition for Alien Relative on behalf of her mother in September 2015. The I-130 Petition was approved in February 2016. Dr. Elshikh's mother-in-law does not currently hold a visa to enter the United States.

28. Dr. Elshikh and his wife have five children. They are all American citizens and residents of Hawai'i.

29. Defendant Donald J. Trump is the President of the United States. He issued both the original January 27, 2017 Executive Order, as well as the new March 6, 2017 Executive Order that is the subject of this Complaint.

30. Defendant U.S. Department of Homeland Security ("DHS") is a federal cabinet agency responsible for implementing and enforcing the Immigration and Nationality Act ("INA") and the Executive Order that is the subject of this Complaint. DHS is a Department of the Executive Branch of the United States Government, and is an agency within the meaning of 5. U.S.C. § 552(f). United States Customs and Border Protection ("CBP") is an Operational and Support Component agency within DHS, and is responsible for detaining and removing non-citizens from Iran, Syria, Somalia, Sudan, Libya, and Yemen who arrive at air, land, and sea ports across the United States, including Honolulu International Airport and Kona International Airport.

31. Defendant John F. Kelly is the Secretary of Homeland Security. He is responsible for implementing and enforcing the INA and the Executive Order that is the subject of this Complaint, and he oversees CBP. He is sued in his official capacity.

32. Defendant U.S. Department of State is a federal cabinet agency responsible for implementing the U.S. Refugee Admissions Program and the Executive Order that is the subject of this Complaint. The Department of State is a department of the Executive Branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f).

33. Defendant Rex Tillerson is the Secretary of State. He oversees the Department of State's implementation of the U.S. Refugee Admissions Program and the Executive Order that is the subject of this Complaint. The Secretary of State has authority to determine and implement certain visa procedures for non-citizens. Secretary Tillerson is sued in his official capacity.

34. Defendant United States of America includes all government agencies and departments responsible for the implementation of the INA, and for detention and removal of non-citizens from Iran, Syria, Somalia, Sudan, Libya, and Yemen who arrive at air, land, and sea ports across the United States, including Honolulu International Airport and Kona International Airport.

ALLEGATIONS

A. President Trump's Campaign Promises.

35. President Trump repeatedly campaigned on the promise that he would ban Muslim immigrants and refugees from entering the United States, particularly from Syria, and maintained the same rhetoric after he was elected.

36. On July 11, 2015, Mr. Trump claimed (falsely) that Christian refugees from Syria are blocked from entering the United States. In a speech in Las Vegas, Mr. Trump said, "If you're from Syria and you're a Christian, you cannot come into this country, and they're the ones that are being decimated. If you are

Islamic . . . it's hard to believe, you can come in so easily."[12]

37. On September 30, 2015, while speaking in New Hampshire about the 10,000 Syrian refugees the Obama Administration had accepted for 2016, Mr. Trump said "if I win, they're going back!" He said "they could be ISIS," and referred to Syrian refugees as a "200,000-man army."[13]

38. On December 7, 2015, shortly after the terror attacks in Paris, Mr. Trump issued a press release entitled: "Donald J. Trump Statement on Preventing Muslim Immigration."[14] The press release stated: "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States . . . ." The release asserted that "there is great hatred towards Americans by large segments of the Muslim population." The press release remains accessible on www.donaldjtrump.com as of this filing.

39. The next day, when questioned about the proposed "shutdown," Mr. Trump compared his proposal to President Franklin Roosevelt's internment of Japanese

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[12] Louis Jacobson, *Donald Trump says if you're from Syria and a Christian, you can't come to the U.S. as a refugee*, Politifact (July 20, 2015 10:00 AM ET), https://goo.gl/fucYZP.

[13] Ali Vitali, *Donald Trump in New Hampshire: Syrian Refugees Are 'Going Back*, NBC News (Oct. 1, 2015, 7:33 AM ET), https://goo.gl/4XSeGX.

[14] Press Release, Donald J. Trump for President, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015), *available at* https://goo.gl/D3OdJJ. A copy of this press release is attached as Exhibit 6.

Americans during World War II, saying, "[Roosevelt] did the same thing."[15] When asked what the customs process would look like for a Muslim non-citizen attempting to enter the United States, Mr. Trump said, "[T]hey would say, are you Muslim?" The interviewer responded: "And if they said 'yes,' they would not be allowed into the country." Mr. Trump said: "That's correct."[16]

40. During a Republican primary debate in January 2016, Mr. Trump was asked about how his "comments about banning Muslims from entering the country created a firestorm," and whether he wanted to "rethink this position." He said, "No."[17]

41. A few months later, in March 2016, Mr. Trump said, during an interview, "I think Islam hates us." Mr. Trump was asked, "Is there a war between the West and radical Islam, or between the West and Islam itself?" He replied: "It's very hard to separate. Because you don't know who's who."[18]

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[15] Jenna Johnson, *Donald Trump says he is not bothered by comparisons to Hitler*, The Washington Post (Dec. 8, 2015), https://goo.gl/6G0oH7.

[16] Nick Gass, *Trump not bothered by comparisons to Hitler*, Politico (Dec. 8, 2015 7:51 AM ET), https://goo.gl/IkBzPO.

[17] The American Presidency Project, *Presidential Candidates Debates: Republican Candidates Debate in North Charleston, South Carolina* (January 14, 2016), https://goo.gl/se0aCX.

[18] *Anderson Cooper 360 Degrees: Exclusive Interview With Donald Trump* (CNN television broadcast Mar. 9, 2016, 8:00 PM ET), *transcript available at* https://goo.gl/y7s2kQ.

42. Later, as the presumptive Republican nominee, Mr. Trump began using facially neutral language, at times, to describe the Muslim ban. Following the mass shootings at an Orlando nightclub in June 2016, Mr. Trump gave a speech promising to "suspend immigration from areas of the world where there's a proven history of terrorism against the United States, Europe or our allies until we fully understand how to end these threats." But he continued to link that idea to the need to stop "importing radical Islamic terrorism to the West through a failed immigration system." He said that "to protect the quality of life for all Americans—women and children, gay and straight, Jews and Christians and all people then we need to tell the truth about radical Islam." And he criticized Hillary Clinton for, as he described it, "her refusal to say the words 'radical Islam,'" stating: "Here is what she said, exact quote, 'Muslims are peaceful and tolerant people, and have nothing whatsoever to do with terrorism.' That is Hillary Clinton." Mr. Trump further stated that the Obama administration had "put political correctness above common sense," but said that he "refuse[d] to be politically correct."

43. Mr. Trump's June 2016 speech also covered refugees. He said that "[e]ach year the United States permanently admits 100,000 immigrants from the Middle East and many more from Muslim countries outside of the Middle East. Our government has been admitting ever-growing numbers, year after year, without

any effective plan for our own security."[19] He issued a press release stating: "We have to stop the tremendous flow of Syrian refugees into the United States."[20]

44. Later, on July 24, 2016, Mr. Trump was asked: "The Muslim ban. I think you've pulled back from it, but you tell me." Mr. Trump responded: "I don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territories. People were so upset when I used the 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."[21]

45. During an October 9, 2016 Presidential Debate, Mr. Trump was asked: "Your running mate said this week that the Muslim ban is no longer your position. Is that correct? And if it is, was it a mistake to have a religious test?" Mr. Trump replied: "The Muslim ban is something that in some form has morphed into a[n] extreme vetting from certain areas of the world." When asked to clarify whether "the Muslim ban still

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[19] Ryan Teague Beckwith, *Read Donald Trump's Speech on the Orlando Shooting*, Time (June 13, 2016, 4:36 PM ET), https://goo.gl/kgHKrb.

[20] Press Release, Donald J. Trump for President, *Donald J. Trump Addresses Terrorism, Immigration, and National Security* (June 13, 2016), *available at* https://goo.gl/GcrFhw.

[21] *Meet the Press* (NBC television broadcast July 24, 2016), *transcript available at* https://goo.gl/jHc6aU. A copy of this transcript is attached as Exhibit 7.

stands," Mr. Trump said, "It's called extreme vetting."[22]

46. Then, on December 21, 2016, following terror attacks in Berlin, Mr. Trump was asked whether he had decided "to rethink or re-evaluate [his] plans to create a Muslim registry or ban Muslim immigration to the United States." Mr. Trump replied: "You know my plans. All along, I've been proven to be right."[23]

B. President Trump's First Executive Order.

47. Within a week of being sworn in, President Trump acted upon his ominous campaign promises to restrict Muslim immigration, curb refugee admissions, and prioritize non-Muslim refugees.

48. In an interview on January 25, 2017, Mr. Trump discussed his plans to implement "extreme vetting" of people seeking entry into the United States. He remarked: "[N]o, it's not the Muslim ban. But it's countries that have tremendous terror. . . . [I]t's countries that people are going to come in and cause us tremendous problems."[24]

49. Two days later, on January 27, 2017, President Trump signed an Executive Order entitled, "Protecting

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[22] The American Presidency Project, *Presidential Debates: Presidential Debate at Washington University in St. Louis, Missouri* (Oct. 9, 2016), https://goo.gl/iIzf0A.

[23] *President-Elect Trump Remarks in Palm Beach, Florida*, C-SPAN (Dec. 21, 2016), https://goo.gl/JlMCst.

[24] *Transcript: ABC News Anchor David Muir Interviews President Trump*, ABC News (Jan. 25, 2017, 10:25 PM ET), https://goo.gl/NUzSpq.

the Nation From Foreign Terrorist Entry into the United States."

50. The first Executive Order was issued without a notice and comment period and without interagency review. Moreover, the first Executive Order was issued with little explanation of how it could further its stated objective.

51. When signing the first Executive Order, President Trump read the title, looked up, and said: "We all know what that means."[25] President Trump said he was "establishing a new vetting measure to keep radical Islamic terrorists out of the United States of America," and that: "We don't want them here."[26]

52. Section 3 of the first Executive Order was entitled "Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern." Section 3(c) "suspend[ed] entry into the United States, as immigrants and nonimmigrants" of persons from countries referred to in Section 217(a)(12) of the INA [8 U.S.C. § 1187(a)(12)], that is: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. The majority of the population in each of these seven countries is Muslim.

53. According to one report, not a single fatal terrorist attack has been perpetrated in the United States

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[25] *Trump Signs Executive Orders at Pentagon*, ABC News (Jan. 27, 2017), https://goo.gl/7Jzird.

[26] Sarah Pulliam Bailey, *Trump signs order limiting refugee entry, says he will prioritize Christian refugees*, The Washington Post (Jan. 27, 2017), https://goo.gl/WF2hmS.

by a national of one of these seven countries since at least 1975.[27] Other countries whose nationals have perpetrated fatal terrorist attacks in the United States are not part of either the original or the revised immigration ban.[28]

54. Section 3(c) of the first Executive Order meant that Lawful Permanent Residents, foreign students enrolled in U.S. universities (including in Hawai'i), individuals employed in the United States on temporary work visas, and others were to be halted at the border if they arrived in the United States (in Hawai'i or elsewhere) from one of the seven designated countries, including if the individual left the country and tried to return. Section 3(g) of the first Executive Order allowed the Secretaries of State and Homeland Security to make exceptions when they determined that doing so was "in the national interest."

55. The first Executive Order also provided for an expansion of its immigration ban to nationals from additional countries in the future. Section 3(d) directed the Secretary of State to (within about 30 days) "request [that] all foreign governments" provide the United States with information to determine whether a person is a security threat. Section 3(e) directed the Secretaries of Homeland Security and State to "submit to

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[27] Alex Nowrasteh, *Little National Security Benefit to Trump's Executive Order on Immigration*, Cato Institute Blog (Jan. 25, 2017, 3:31 PM ET), https://goo.gl/BCv6rQ.

[28] Scott Schane, *Immigration Ban Is Unlikely to Reduce Terrorist Threat, Experts Say*, N.Y. Times (Jan. 28, 2017), https://goo.gl/MBvOTk.

the President a list of countries recommended for inclusion" in the ban from among any countries that did not provide the information requested. Section 3(f) of the first Executive Order gave the Secretaries of State and Homeland Security further authority to "submit to the President the names of any additional countries recommended for similar treatment" in the future.

56. Section 5 of the first Executive Order was entitled "Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017." Section 5(a) directed the Secretary of State to "suspend the U.S. Refugee Admissions Program (USRAP) for 120 days." Section 5(e) permitted the Secretaries of State and Homeland Security to admit individuals as refugees on a case-by-case basis, but only if they determined that admission of the refugee was in the "national interest," including "when the person is a religious minority in his country of nationality facing religious persecution."

57. Section 5(b) directed the Secretaries of State and Homeland Security, "[u]pon resumption of USRAP admissions," to "prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality." In Section 5(c), President Trump "proclaim[ed] that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend[ed] any such entry" indefinitely.

58. In a January 27, 2017 interview with Christian Broadcasting Network, President Trump said that persecuted Christians would be given priority under the first Executive Order. He said (once again, falsely):

"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. So we are going to help them."[29]

59. The day after signing the first Executive Order, President Trump's advisor, Rudolph Giuliani, explained on television how the Executive Order came to be. He said: "When [Mr. 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.'"[30]

60. The President and his spokespersons defended the rushed nature of their issuance of the first Executive Order on January 27, 2017, by saying that their urgency was imperative to stop the inflow of dangerous persons to the United States. On January 30, 2017, President Trump tweeted: "If the ban were announced with a one week notice, the 'bad' would rush into our country during that week."[31] In a forum on January

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[29] *Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority as Refugees*, Christian Broadcasting Network (Jan. 27, 2017), https://goo.gl/2GLB5q.

[30] 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), https://goo.gl/Xog80h. A copy of this article is attached as Exhibit 8.

[31] *See* Donald J. Trump (@realDonaldTrump), Twitter (Jan. 30, 2017, 5:31 AM ET), https://goo.gl/FAEDTd.

30, 2017 at George Washington University, White House spokesman Sean Spicer said: "At the end of the day, what was the other option? To rush it out quickly, telegraph it five days so that people could rush into this country and undermine the safety of our nation?" [32] On February 9, 2017, President Trump claimed he had sought a one-month delay between signing and implementation, but was told by his advisors that "you can't do that because then people are gonna pour in before the toughness."[33]

61. On February 24, 2017, a draft report published by the Department of Homeland Security—and obtained by the Associated Press—concluded that citizenship was an "unlikely indicator" of terrorism threats against the United States. The draft report also found that very few persons from the seven countries included in President Trump's first Executive Order had carried out or attempted to carry out terrorism activities in the United States since 2011. Specifically, the DHS report determined that 82 people were inspired by a foreign terrorist group to carry out or attempt to carry out an attack in the United States. Half were U.S. citizens born in the United States, and the remaining persons were from 26 countries—with the most individuals

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[32] *See* Videotape: *WATCH: White House Press Secretary Sean Spicer joins forum at George Washington University to discuss the Trump Administration's "war" with the media and the access journalists should have covering the White House*, at 1:00, Fox 5 DC (Jan. 30, 2017), *available at* https://goo.gl/cpNUjT.

[33] Kevin Liptak, *Trump: I wanted month delay before travel ban, was told no*, CNN Politics (Feb. 9, 2017, 6:31 AM ET), https://goo.gl/EOez3k.

originating from Pakistan, followed by Somalia, Bangladesh, Cuba, Ethiopia, Iraq and Uzbekistan. Of the seven countries originally included in the travel ban, only Somalia and Iraq were identified as being among the "top" countries-of-origin for the terrorists analyzed in the report.[34] The draft report related that three offenders (in the time period covered) had been from Somalia, two were from Iraq, one was from Iran, Sudan, and Yemen, and none were from Syria or Libya.[35] The draft report also found that terrorist groups in three of the original seven countries posed a threat to the United States (Iraq, Yemen, and Syria), while groups in the other four named countries in the original Executive Order were regionally focused.[36]

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[34] Vivian Salama & Alicia A. Caldwell, *AP Exclusive: DHS report disputes threat from banned nations*, Associated Press (Feb. 24, 2017), https://goo.gl/91to90. A copy of the Associated Press article is attached as Exhibit 9. A copy of the draft DHS report is available at https://goo.gl/0yfXpZ and attached as Exhibit 10. A final version of the report, entitled *Intelligence Assessment: Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist*, was later obtained by CNN, and is attached as Exhibit 11. *See* Tammy Kupperman, *DHS assessment: Individuals radicalized once in US*, CNN Politics (Mar. 4, 2017, 3:02 PM ET), https://goo.gl/Q6OVTd.

[35] Phil Helsel, *DHS Draft Report Casts Doubt on Extra Threat from 'Travel Ban' Nationals in U.S.*, NBC News (Feb. 24, 2017, 9:26 PM ET), https://goo.gl/gDHq6i. A copy of this NBC News article is attached as Exhibit 12.

[36] *Id.*

C. Implementation and Judicial Enjoinment of the First Executive Order.

62. Upon the issuance of the first Executive Order, Defendants began detaining people at U.S. airports who, but for the first Executive Order, were legally entitled to enter the United States. Some were also removed from the United States. Estimates indicate that over 100 people were detained upon arrival at U.S. airports.[37]

63. Among others, Defendants detained and/or removed:

a. Lawful permanent residents, including dozens at Dulles International Airport in Virginia,[38] and others at Los Angeles International Airport who were pressured to sign Form I-407 to *relinquish* their green cards;[39]

b. People with special immigrant visas, including an Iraqi national at John F. Kennedy Interna-

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[37] Michael D. Shear et al., *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. Times (Jan. 28, 2017), https://goo.gl/OrUJEr.

[38] *See, e.g.*, Petition ¶ 2, *Aziz v. Trump*, No. 1:17-cv-116 (E.D. Va. Jan. 28, 2017).

[39] Leslie Berestein Rojas et al., *LAX immigration agents asks detainees to sign away their legal residency status, attorneys say*, Southern California Public Radio News (Jan. 30, 2017), https://goo.gl/v6JoUC; Brenda Gazzar & Cynthia Washicko, *Thousands protest Trump's immigration order at LAX*, Los Angeles Daily News (Jan. 29, 2017), https://goo.gl/1vA37M.

tional Airport who worked as an interpreter for the U.S. Army in Iraq;[40]

c. A doctor at the Cleveland Clinic with a valid work visa who was trying to return home from vacation;[41]

d. People with valid visas to visit family in the United States, including a Syrian woman sent to Saudi Arabia after being convinced by officials at O'Hare International Airport to sign paperwork cancelling her visa.[42]

64. People overseas were blocked from boarding flights to the United States or told they could no longer come here. The State Department released information verifying that 60,000 visas were revoked between January 27, 2017, when the first Executive Order was signed, and February 3, 2017.[43]

65. Confusion, backlash, and habeas corpus litigation arose in the wake of the first Executive Order, including with regard to whether it applied to lawful permanent residents. Within the first 72 hours that

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[40] *See, e.g.*, Petition 2, *Darweesh v. Trump*, No. 1:17-cv-00480 (E.D.N.Y. Jan. 28, 2017).

[41] Jane Morice, *Two Cleveland Clinic doctors vacationing in Iran detained in New York, then released*, Cleveland.com (Jan. 29, 2017), https://goo.gl/f0EGV3.

[42] John Rogers, *Longtime US residents, aspiring citizens caught up in ban*, StarTribune (Jan. 30, 2017, 1:45 AM ET), https://goo.gl/eEPAuE.

[43] Adam Kelsey et al., *60,000 Visas Revoked Since Immigration Executive Order Signed: State Department*, ABC News (Feb. 3, 2017, 6:32 PM ET), https://goo.gl/JwPDEa.

the first Executive Order was in effect, Defendants reportedly changed their minds three times about whether it did.[44]

66. Hundreds of State Department officials signed a memorandum circulated through the State Department's "Dissent Channel" stating that the Executive Order "runs counter to core American values" including "nondiscrimination," and that "[d]espite the Executive Order's focus on them, a vanishingly small number of terror attacks on U.S. soil have been committed by foreign nationals" here on visas.[45]

67. Likewise, Senators John McCain (R-AZ) and Lindsey Graham (R-SC) stated: "This executive order sends a signal, intended or not, that America does not want Muslims coming into our country."[46]

68. DHS Secretary Kelly issued a press release on Sunday, January 29, 2017, stating that: "In applying the provisions of the president's 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 seri-

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[44] Evan Perez et al., *Inside the confusion of the Trump executive order and travel ban*, CNN Politics (Jan. 30, 2017 11:29 AM ET), https://goo.gl/Z3kYEC.

[45] Jeffrey Gettleman, *State Department Dissent Cable on Trump's Ban Draws 1,000 Signatures*, N.Y. Times (Jan. 31, 2017), https://goo.gl/svRdIw. A copy of the Dissent Channel memorandum is attached as Exhibit 13.

[46] Press Release, Senator John McCain, *Statement By Senators McCain & Graham On Executive Order On Immigration* (Jan. 29, 2017), *available at* https://goo.gl/EvHvmc.

ous threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations."[47]

69. Secretary Kelly's statement thus indicated that the first Executive Order *did* apply to lawful permanent residents from the designated countries, and only the Secretary's determination under Section 3(g) that admission of lawful permanent residents, absent certain information reviewed on a case-by-case basis, is in the national interest, allows them to enter.

70. Then, on February 1, 2017, White House Counsel Donald McGahn issued a Memorandum taking yet another position on green-card holders, now purporting to "clarify" that such persons were never covered by Sections 3 and 5 of the first Executive Order.

71. On February 3, 2017, the District Court for the Western District of Washington entered a temporary restraining order, enjoining President Trump and his Administration from enforcing the first Executive Order. On February 9, 2017, the Court of Appeals for the Ninth Circuit issued a *per curiam* opinion denying the Government's emergency motion for a stay of the District Court's order. On February 16, 2017, the Government filed a brief in the Ninth Circuit advising the court that "the President intends in the near future to rescind the [first Executive] Order and replace it with a new, substantially revised Executive Order"; accord-

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[47] Press Release, U.S. Department of Homeland Security, *Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States* (Jan. 29, 2017), *available at* https://goo.gl/6krafi.

ingly, the Government requested that the court "hold its consideration of the case until the President issues the new Order and then vacate the panel's preliminary decision."[48] On February 24, 2017, the Government filed another motion requesting that the Ninth Circuit hold its proceedings in abeyance. On February 27, 2017, the Ninth Circuit panel denied the motion to hold appellate proceedings in abeyance and set forth a new briefing schedule. Under that schedule, the Government's opening brief is due March 10, 2017.

D. President Trump's New Executive Order.

72. On March 6, 2017—a full month after the District Court for the Western District of Washington enjoined the first Executive Order—President Trump issued the new Executive Order that is the subject of this Complaint. The new Order is entitled "Protecting the Nation from Foreign Terrorist Entry into the United States."

73. Also on March 6, 2017, the Department of Homeland Security published a "Q&A" document with answers to thirty-seven questions about the new Executive Order.[49]

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[48] Appellants' Supplemental Brief On *En Banc* Consideration at 4, *Washington v. Trump*, No. 17-35105 (Feb. 16, 2017), ECF No. 154.

[49] *See* Department of Homeland Security, Q&A: Protecting the Nation from Foreign Terrorist Entry to the United States (March 6, 2017, 11:30 AM ET), https://goo.gl/zFtFg8. A copy of this Q&A document is attached as Exhibit 14.

74. For several weeks before its release, members of the Administration had foreshadowed the arrival of the revised Executive Order.

a. On February 21, Senior Advisor to the President, Stephen Miller, told Fox News that the new travel ban would have the same effect as the old one. He said: "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."[50]

b. The White House originally indicated it would sign the new Executive Order on Wednesday, March 1, 2017, but then postponed the announcement. One Administration official told a news outlet on February 28 that a reason for President Trump's delay in signing an updated Executive Order was "the busy news cycle," and the desire of the President that the new order "get plenty of attention."[51]

c. A senior Administration official told a different news outlet on March 1, 2017, that a related rea-

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[50] *Miller: New order will be responsive to the judicial ruling; Rep. Ron DeSantis: Congress has gotten off to a slow start* (Fox News television broadcast Feb. 21, 2017), *transcript available at* https://goo.gl/wcHvHH.

[51] Shane Goldmacher & Nahal Toosi, *Trump delays signing new travel ban order, officials say*, Politico (Feb. 28, 2017, 11:51 PM ET), https://goo.gl/5UJIFz.

> son for the delay in releasing the updated Executive Order was the "positive reaction" to President Trump's "first address to Congress" on the evening of Tuesday, February 28, 2017. That article reported that "[s]igning the executive order Wednesday, as originally indicated by the White House, would have undercut the favorable coverage," and the senior Administration official "didn't deny the positive reception was part of the [A]dministration's calculus in pushing back the travel ban announcement."[52]

75. Section 1 of the new Executive Order states that its purpose is to "protect [the United States'] citizens from terrorist attacks, including those committed by foreign nationals." Section 1(h) identifies two concrete examples of persons who have committed terrorism-related crimes in the United States, after either entering the country "legally on visas" or entering "as refugees": "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[.]" Iraq is no longer included in the ambit of the travel ban.

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[52] Laura Jarrett et al., *Trump delays new travel ban after well-reviewed speech*, CNN Politics (Mar. 1, 2017, 6:01 AM ET), https://goo.gl/McqMm5.

76. Section 2(c) of the new Executive Order suspends the "entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen"—six of the seven countries that were designated in the first Order, with Iraq now omitted—for a period of "90 days from the effective date of this order."

77. Section 3 provides for various "exceptions" and potential "waivers" to Section 2's travel ban. Under Section 3(a), "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." *See* Executive Order § 3(a)(i)-(iii).

78. Section 3(b) lists categorical "exceptions" from Section 2: lawful permanent residents; foreign nationals who are admitted or paroled into the United States "on or after the effective date of this order"; foreign nationals with "a document other than a visa . . . that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document"; dual nationals traveling on passports issued by a non-designated country; foreign nationals traveling on certain diplomatic visas; and foreign nationals who have been granted asylum as well as refugees who have been admitted to the United States. *Id.* at § 3(b)(i)-(iv).

79. Section 3(c) provides that "a consular officer, or as appropriate, the Commissioner, U.S. Customs and Border Protection (CBP) . . . 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 he or she determines that "denying entry during the suspension period would cause undue hardship . . . [and the individual's] entry would not pose a threat to national security and would be in the national interest." *Id.* § 3(c).

80. Like the first Executive Order, the new Executive Order provides for an expansion of its immigration ban to nationals from additional countries in the future. Section 2(a) directs the Secretary of Homeland Security, in consultation with the Secretary of State as well as the Director of National Intelligence, to "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 . . . to determine that the individual is not a security or public safety threat." *Id.* § 2(a). Those officials are instructed to submit a report on "the results of the worldwide review" to the President, as well as "a list of countries that do not provide adequate information," within 20 days of the effective date of the Executive Order. *Id.* § 2(b). The Secretary of State shall then "request that all foreign governments that do not supply [the necessary] information regarding their nationals begin providing it within 50 days of notification." *Id.* § 2(d). After that 50-day period, 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 the travel ban.

Id. § 2(e). Those officials are also authorized to "submit to the President," at "any point after the submission of the list" of countries recommended for inclusion, "the names of additional countries recommended for similar treatment." *Id.* § 2(f).

81. Section 6 of the Executive Order suspends the "travel" of all refugees to the United States for a period of 120 days, and suspends all "decisions" by the Secretary of Homeland Security on applications for refugee status for 120 days. *Id.* § 6(a). After those 120 days are over, "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 "additional procedures"—identified by those officials as being necessary "to ensure that individuals seeking admission as refugees do not pose a threat" to the United States—have been "implemented" and "are adequate to ensure the security and welfare of the United States." *Id.* § 6(a).

82. Under Section 14, the revised Executive Order takes effect on March 16, 2017.

83. In the Department of Homeland Security's Q&A document about the Executive Order, DHS relates that nationals from one of the six designated countries who are presently in the United States, and "in possession of a valid single entry visa," will have to obtain "a valid visa or other document permitting [them] to travel to and seek admission to the United States" in order to

leave and obtain "subsequent entry to the United States."[53]

84. In the Department of Homeland Security's Q&A document about the Executive Order, DHS also relates that international students, exchange visitors and their dependents from the six designated countries —who are in the United States presently but whose visas "expire[] while the Executive Order is in place"— will have to "obtain a new, valid visa to return to the United States" if they have to "depart the country."[54]

E. Effects of the New Executive Order on Individual Plaintiff Dr. Elshikh.

85. The new Executive Order will prevent Dr. Elshikh's mother-in-law from obtaining a visa to visit or reunite with her family in Hawai'i. That is so even though Dr. Elshikh, his wife, and their children are all American citizens, and even though Dr. Elshikh's wife's I-130 Petition was granted.

86. Dr. Elshikh's mother-in-law last visited the family in 2005, when she stayed for one month. She has not met two of Dr. Elshikh's children, and only Dr. Elshikh's oldest child remembers meeting her grandmother.

87. On January 31, 2017—after the first Executive Order was put in place—Dr. Elshikh was notified by an individual from the National Visa Center that his mother-in-law's application for an immigrant visa had been put on hold. Then, on March 2, 2017—after the

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[53] *See* Exhibit 14, at Q4.

[54] *See id.* at Q25.

first Executive Order was enjoined—Dr. Elshikh and his family were notified by the National Visa Center that his mother-in-law's visa application had progressed to the next stage of the process and that her interview would be scheduled at an embassy overseas. Under the new Executive Order, however, Dr. Elshikh fears that his mother-in-law will, once again, be unable to "enter" the country under Section 2(c) of the Executive Order. The family is devastated.

88. Dr. Elshikh's children, all twelve years of age or younger, are deeply affected by the new Executive Order. It conveys to them a message that their own country would discriminate against individuals who share their ethnicity, including members of their own family, and who hold the same religious beliefs.

89. Members of Dr. Elshikh's Mosque are also affected by the new Executive Order. Muslims in the Hawai'i Islamic community feel that the new Executive Order targets Muslim citizens because of their religious views and national origin. Dr. Elshikh believes that, as a result of the new Executive Order, he and members of the Mosque will not be able to associate as freely with those of other faiths.

90. Dr. Elshikh feels that, as a result of the new Executive Order, there is now a favored and disfavored religion in Hawai'i and the United States, i.e., that a religion has been established.

91. Many members of Dr. Elshikh's Mosque have family and friends living in the countries listed in the new Executive Order. Because of the new Executive

Order, they live in forced separation from those family and friends.

F. Effects of the New Executive Order on Plaintiff State of Hawai‘i.

92. The new Executive Order also has profound effects on the State as a whole. It prevents nationals of the six designated countries from relocating to, or even visiting, Hawai‘i for educational, family, religious, or business reasons.

93. Hawai‘i currently has 27 graduate students, 10 permanent faculty members, and 30 visiting faculty members from the seven countries originally designated in the first Executive Order. This demonstrates the extent to which the University of Hawai‘i draws on talent from around the world, including from Muslim-majority countries, to enrich its student body and educational environment. In the wake of the new Executive Order, Hawai‘i will no longer be able to recruit, accept, enroll, or welcome similar individuals from the six countries designated in the new Executive Order.

94. The University of Hawai‘i and other state learning institutions depend on the collaborative exchange of ideas, including among people of different religions and national backgrounds. For this reason, the University of Hawai‘i has study abroad or exchange programs in over thirty countries, and international agreements for faculty collaboration with over 350 international institutions spanning forty different countries. The new Executive Order threatens such educational collaboration and harms the ability of the University of Hawai‘i to fulfill its educational mission.

95. Hawai‘i is also home to numerous non-citizens from the six designated countries—foreign students, persons on exchange, visitors, and temporary workers —whose lives may be directly affected by the new Executive Order. Some of these non-citizens may be unable to travel abroad to their home countries, for fear that they will be unable to return—for instance, if they have only a single entry visa, or if their visa will expire while the new Executive Order is in place.

96. In addition, the new Executive Order blocks all of Hawaii's residents—including U.S. citizens—from receiving visits from, and/or reunifying with, their family members who live in these six designated countries. In 2016, approximately 8% of Hawaii's visitors (in total) came to visit family and friends, and approximately 12% of Hawaii's visitors from the areas of the globe including the Middle East and Africa came to visit family and friends. Under the new Executive Order, these individuals, to the extent that they live in the six designated countries, will no longer be able to travel to Hawai‘i to visit family and friends.

97. More broadly, the new Executive Order means that Hawai‘i will be unable to honor the commitments to nondiscrimination and diversity embodied in the State's Constitution, laws, and policies. For example, state agencies and universities cannot accept qualified applicants for open positions if they are residents of one of the six designated countries. This contravenes policies at the State's universities and agencies that are

designed to promote diversity and recruit talent from abroad.[55]

98. Given that the new Executive Order began life as a "Muslim ban," its implementation also means that the State will be forced to tolerate a policy that disfavors one religion and violates the Establishment Clauses of both the federal and state constitutions.

99. Beyond these severe intangible harms, the new Executive Order has a detrimental effect on Hawaii's economy as a whole. It is not only governmental entities that are barred from recruiting and/or hiring workers from the six designated countries. Private employers within the State are similarly burdened.

100. Further, both the first Executive Order and the new Executive Order have the effect of depressing international travel to and tourism in Hawai'i. Under the new Executive Order, Hawai'i can no longer welcome tourists from the six designated countries. This directly harms Hawaii's businesses and, in turn, the State's revenue. In 2015 alone, Hawai'i welcomed over 6,800 visitors from the Middle East and over 2,000 visitors from Africa. Data from Hawaii's Tourism Authority suggests that even during the short period of

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[55] *See, e.g.*, State of Hawai'i, Department of Human Resources Development, Policy No. 601.001: Discrimination / Harassment-Free Workplace Policy (revised Nov. 16, 2016), *available at* https://goo.gl/7q6yzJ; University of Hawai'i, Mānoa, Policy M1.100: Non-Discrimination and Affirmative Action Policy, *available at* https://goo.gl/6YqVl8 (last visited Mar. 7, 2017 8:27 PM ET); *see also, e.g.*, *Campus Life: Diversity*, University of Hawai'i, Mānoa, https://goo.gl/3nF5C9 (last visited Mar. 7, 2017 8:27 PM ET).

time that the first Executive Order was in place, the number of visitors to Hawai'i from the Middle East (including Iran, Iraq, Syria and Yemen) fell—namely, Hawai'i had 278 visitors from the Middle East in January 2017, compared to 348 visitors from that same region in January 2016. This depressed effect on travel and tourism from the Middle East and Africa is likely to continue under the new Executive Order.

101. According to reports from travel companies and research firms, travel to the United States more broadly "took a nosedive" following President Trump's issuance of the first Executive Order.[56] For instance, an airfare prediction company found that flight search demand from 122 countries to the United States dropped 17% between January 26 and February 1, after the first Executive Order was signed.[57]

102. Even with respect to countries not currently targeted by the new Executive Order, there is a likely "chilling effect" on tourism to the United States, including Hawai'i. The new Executive Order contemplates an expansion of the immigration ban and in fact authorizes the Secretaries of State and Homeland Security to recommend additional countries for inclusion in the near future. This likely instills fear and a disinclination to travel to the United States among foreigners in other countries that President Trump has been hostile towards—i.e., residents of other Muslims countries, China, and Mexico. The new Executive Order gives

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[56] Shivani Vora, *After Travel Ban, Interest in Trips to U.S. Declines*, N.Y. Times (Feb. 20, 2017), https://goo.gl/Mz9o5T.

[57] *Id.*

rise to a global perception that the United States is an exclusionary country, and it dampens the appetite for international travel here generally.

103. A decrease in national and international tourism would have a severe impact on Hawaii's economy.

104. The new Executive Order also hinders the efforts of the State and its residents to resettle and assist refugees. Refugees from numerous countries have resettled in Hawai'i in recent years.[58] While the State's refugee program is small, it is an important part of the State's culture, and aiding refugees is central to the mission of private Hawai'i organizations like Catholic Charities Hawai'i and the Pacific Gateway Center.[59] In late 2015, as other States objected to the admission of Syrian refugees, Governor Ige issued a statement that "slamming the door in their face would be a betrayal of our values." Governor Ige explained: "Hawai'i and our nation have a long history of welcoming refugees impacted by war and oppression. Hawai'i is the Aloha State, known for its tradition of welcoming all people with tolerance and mutual respect."[60] But as long as the new Executive Order prohibits refugee admissions,

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[58] U.S. Department of Health & Human Servs., Office of Refugee Resettlement, *Overseas Refugee Arrival Data: Fiscal Years 2012-2015*, *available at* https://goo.gl/JcgkDM.

[59] *See About: Our History*, Catholic Charities Hawai'i, https://goo.gl/deVBla (last visited Mar. 7, 2017, 11:35 AM ET); *About: Mission*, Pacific Gateway Center, https://goo.gl/J8bN5k (last visited Mar. 7, 2017, 11:35 AM ET).

[60] Press Release, Governor of the State of Hawai'i, *Governor David Ige's Statement On Syrian Refugees* (Nov. 16, 2015), *available at* https://goo.gl/gJcMIv.

the State and its residents are prevented from helping refugees resettle in Hawai‘i.

105. President Trump's new Executive Order is antithetical to Hawaii's State identity and spirit. For many in Hawai‘i, including State officials, the Executive Order conjures up the memory of the Chinese Exclusion Acts and the imposition of martial law and Japanese internment after the bombing of Pearl Harbor. As Governor Ige observed two days after President Trump issued the first Executive Order, "Hawai‘i has a proud history as a place immigrants of diverse backgrounds can achieve their dreams through hard work. Many of our people also know all too well the consequences of giving in to fear of newcomers. The remains of the internment camp at Honouliuli are a sad testament to that fear. We must remain true to our values and be vigilant where we see the worst part of history about to be repeated."[61]

CAUSES OF ACTION

COUNT I

(First Amendment—Establishment Clause)

106. The foregoing allegations are realleged and incorporated by reference herein.

107. The Establishment Clause of the First Amendment prohibits the Federal Government from officially preferring one religion over another.

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[61] Press Release, Governor of the State of Hawai‘i, *Statement of Governor David Ige On Immigration To The United States* (Jan. 29, 2017), *available at* https://goo.gl/62w1fh.

108. Sections 2 and 6 of President Trump's March 6, 2017 Executive Order, as well as Defendants' statements regarding the Executive Order and their actions to implement it, are intended to disfavor Islam.

109. Sections 2 and 6 of the Executive Order, as well as Defendants' statements regarding the Executive Order and their actions to implement it, have the effect of disfavoring Islam.

110. Through their actions described in this Complaint, Defendants have violated the Establishment Clause. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT II

(Fifth Amendment—Equal Protection)

111. The foregoing allegations are realleged and incorporated by reference herein.

112. The Due Process Clause of the Fifth Amendment prohibits the Federal Government from denying equal protection of the laws, including on the basis of religion and/or national origin, nationality, or alienage.

113. The March 6, 2017 Executive Order was motivated by animus and a desire to discriminate on the basis of religion and/or national origin, nationality, or alienage.

114. The Executive Order differentiates between people based on their religion and/or national origin, nationality, or alienage and is accordingly subject to

strict scrutiny. It fails that test, because it is over- and under-inclusive in restricting immigration for security reasons. The statements of President Trump and his advisors also provide direct evidence of the Executive Order's discriminatory motivations.

115. For the same reasons, the Executive Order is not rationally related to a legitimate government interest.

116. Sections 2 and 6 of the Executive Order, as well as Defendants' statements regarding the Executive Order and their actions to implement it, discriminate against individuals based on their religion and/or national origin, nationality, or alienage without lawful justification.

117. Through their actions described in this Complaint, Defendants have violated the Equal Protection guarantees of the Fifth Amendment. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT III

(Fifth Amendment—Substantive Due Process)

118. The foregoing allegations are realleged and incorporated by reference herein.

119. The right to international travel is protected by the Due Process Clause of the Fifth Amendment. Moreover, citizens may have a constitutionally protected interest in specific non-citizens' ability to travel to the United States.

120. The March 6, 2017 Executive Order curtails those rights for numerous individuals, without any legal justification.

121. Through their actions described in this Complaint, Defendants have violated the Substantive Due Process guarantees of the Fifth Amendment. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT IV

(Fifth Amendment—Procedural Due Process)

122. The foregoing allegations are realleged and incorporated by reference herein.

123. The Due Process Clause of the Fifth Amendment prohibits the Federal Government from depriving individuals of liberty interests without due process of law.

124. Non-citizens, including lawful permanent residents and non-immigrants holding valid visas, have a liberty interest in leaving and entering the country, and in being free from unlawful detention. Moreover, citizens may assert cognizable liberty interests with respect to noncitizen relatives who are deprived of due process.

125. The Due Process Clause establishes a minimum level of procedural protection before those liberty interests can be deprived. A non-citizen must be given an opportunity to present her case effectively, which

includes a hearing and some consideration of individual circumstances.

126. Through their actions described in this Complaint, Defendants have violated the Procedural Due Process guarantees of the Fifth Amendment. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT V

(Immigration and Nationality Act)

127. The foregoing allegations are realleged and incorporated by reference herein.

128. The INA provides that "[e]xcept as specifically provided" in certain subsections, "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." 8 U.S.C. § 1152(a)(1)(A).

129. The INA also establishes specific criteria for determining terrorism-related inadmissibility.

130. Sections 2 and 6 of the March 6, 2017 Executive Order violate the INA by discriminating on the basis of nationality, ignoring and modifying the statutory criteria for determining terrorism-related inadmissibility, and exceeding the President's authority under the INA, including under 8 U.S.C. §§ 1182(f) and 1185(a).

131. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as

well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT VI

(Religious Freedom Restoration Act)

132. The foregoing allegations are realleged and incorporated by reference herein.

133. The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1(a), prohibits the Federal Government from substantially burdening the exercise of religion, even if the burden results from a rule of general applicability.

134. Section 2 of the March 6, 2017 Executive Order and Defendants' actions to implement the Executive Order impose a substantial burden on the exercise of religion.

135. Among other injuries, some non-citizens currently outside the United States cannot enter the United States to reunite with their families or religious communities. Religious communities in the United States cannot welcome visitors, including religious workers, from designated countries. And some non-citizens currently in the United States may be prevented from travelling abroad on religious trips, including pilgrimages or trips to attend religious ceremonies overseas, if they do not have the requisite travel documents or multiple-entry visas.

136. Through their actions described in this Complaint, Defendants have violated the RFRA. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other

Hawai‘i residents and the sovereign interests of the State of Hawai‘i.

COUNT VII

(Substantive Violation of the Administrative Procedure Act through Violations of the Constitution, Immigration and Nationality Act, and Arbitrary and Capricious Action)

137. The foregoing allegations are realleged and incorporated by reference herein.

138. The APA requires courts to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to constitutional right, power, privilege, or immunity"; or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

139. In enacting and implementing Sections 2 and 6 of the March 6, 2017 Executive Order, Defendants have acted contrary to the Establishment Clause and Fifth Amendment of the United States Constitution.

140. In enacting and implementing Sections 2 and 6 of the Executive Order, Defendants have acted contrary to the INA and RFRA. Defendants have exceeded their statutory authority, engaged in nationality- and religion-based discrimination, and failed to vindicate statutory rights guaranteed by the INA.

141. Further, in enacting and implementing Sections 2 and 6 of the Executive Order, Defendants have acted arbitrarily and capriciously. Among other arbitrary actions and omissions, Defendants have not offered

a satisfactory explanation for the countries that are and are not included within the scope of the Executive Order. The Executive Order purports to protect the country from terrorism, but sweeps in millions of people who have absolutely no connection to terrorism. Through their actions described in this Complaint, Defendants have violated the substantive requirements of the APA. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT VIII

(Procedural Violation of the Administrative Procedure Act)

142. The foregoing allegations are realleged and incorporated by reference herein.

143. The APA 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).

144. The Departments of State and Homeland Security are "agencies" under the APA. *See* 5 U.S.C. § 551(1).

145. The APA requires that agencies follow rulemaking procedures before engaging in action that impacts substantive rights. *See* 5 U.S.C. § 553.

146. In implementing Sections 2 and 6 of the March 6, 2017 Executive Order, federal agencies have changed the substantive criteria by which individuals from the six designated countries may enter the United

States. This, among other actions by Defendants, impacts substantive rights.

147. Defendants did not follow the rulemaking procedures required by the APA in enacting and implementing the Executive Order.

148. Through their actions described in this Complaint, Defendants have violated the procedural requirements of the APA. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

PRAYER FOR RELIEF

149. WHEREFORE, Plaintiffs pray that the Court:

a. Declare that Sections 2 and 6 of President Trump's Executive Order of March 6, 2017 are unauthorized by, and contrary to, the Constitution and laws of the United States;

b. Enjoin Defendants from implementing or enforcing Sections 2 and 6 across the nation;

c. Pursuant to Federal Rule of Civil Procedure 65(b)(2), set an expedited hearing within fourteen (14) days to determine whether the Temporary Restraining Order should be extended; and

d. Award such additional relief as the interests of justice may require.

DATED: Honolulu, Hawai‘i, Mar. 8, 2017.

Respectfully submitted,

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- December 07, 2015 -

DONALD J. TRUMP STATEMENT ON PREVENTING MUSLIM IMMIGRATION

(New York, NY) December 7th, 2015,—Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on. According to Pew Research, among others, there is great hatred towards Americans by large segments of the Muslim population. Most recently, a poll from the Center for Security Policy released data showing "25% of those polled agreed that violence against Americans here in the United States is justified as a part of the global jihad" and 51% of those polled, "agreed that Muslims in America should have the choice of being governed according to Shariah." Shariah authorizes such atrocities as murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women.

Mr. Trump stated, "Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension. Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life. If I win the election for President, we are going to Make America Great Again."—*Donald J. Trump*

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 neighbor-

ing 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.[62*] Of the 82 individuals we identified, slightly more than half were native-born United States citizens. Of the foreign-born individuals, they came from 26 different countries, with no one country representing more than 13.5 percent of the foreign-born total.

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

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

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

Limited Access to the United States by Citizens of Impacted Countries

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

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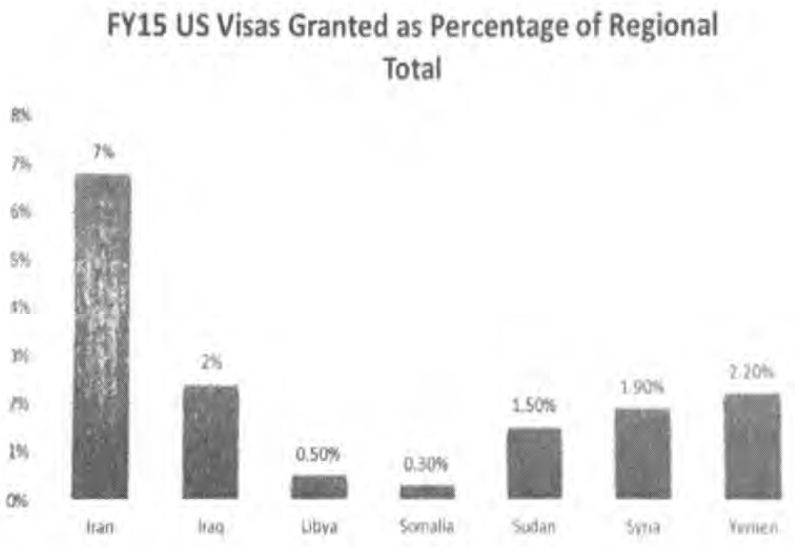
† Fiscal Year 2015 is the most recent year we have visa issuance data for both immigrant and non-immigrant visas. A-1, A-2, A-3, C-2, NATO, G-1, G-2, G-3, and G-3 non-immigrant visas were excluded from these calculations to be consistent with section 3(c) in E.O. 13769.



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

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

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

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

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

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

Somalia—In 2015, al-Shabaab continued to commit deadly attacks in Somalia, seeking to reverse progress

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

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

made by the Federal Government of Somalia and weaken the political will of the African Union Mission in Somalia troop contributing countries, according to the Country Reports on Terrorism 2015.[7]

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

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

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

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

INTELLIGENCE ASSESSMENT

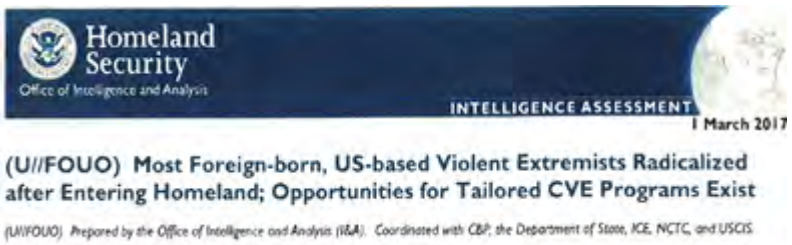
(U//FOUO) Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist

1 March 2017

Homeland Security

Office of Intelligence and Analysis

IA-0091-17



(U) Scope

(U//FOUO) This *Assessment* examines the immigration history and radicalization of 88 foreign-born, US-based persons who participated in a terrorism-related activity inspired by at least one named foreign terrorist organization (FTO).* All examined individuals primarily resided in the United States either at the time of their involvement in a terrorism-related activity or prior to their travel to join an FTO. The list of individuals included in this study was derived from academic and government sources, including a Department of Justice (DOJ) list of unsealed international terrorism and terrorism-related cases. The terrorism-related activities these individuals engaged in were identified in US Government sources or reliable media reporting. These activities include conducting or attempting to conduct an attack in the United States, traveling or

* (U//FOUO) OHS 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 co effect societal or political change.

attempting to travel from the United States to join an FTO overseas, and providing funds, goods, or logistical assistance to support an FTO. All individuals examined in our study were indicted or killed between March 2011—the start of the Syrian conflict—and December 2016. Individuals who were minors at the time of their indictment or death were not included. Our review did not consider classified or non-disseminated investigative information.

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

(U) Key Judgments

(U//FOUO) We assess that most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of

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

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

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

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

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

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

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[*] (U//FOUO) For more information, please see I&A *Intelligence* Assessment "Commonalities in HVE Radicalization to Violence

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

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

» (U//FOUO) A separate DHS examination of the radicalization of the seven foreign-born, US-based violent extremists who attempted or succeeded in

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Provide Prevention Opportunities," published 10 February 2017. Some of the numbers cited in this previous paper slightly differ due to scoping differences.

conducting attacks between January 2015 and December 2016 found that they typically entered the United States 15 years before their arrest or attack, and often only began radicalizing two years before they attempted their attack. This suggests that, on average, 13 years passed between the time these foreign-born, US-based violent extremists entered the United States and subsequently began to radicalize.

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

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

- *(U//FOUO) At least eight of the 13 individuals in our dataset who were born in Somalia were associates of each other and provided material support to ISIS as a group, according to DOJ criminal complaints.*[9,10]

- *(U//FOUO) In 2012, two individuals born in Uzbekistan were arrested for providing material support to the Islamic Jihad Union, according to DOJ criminal complaints.[11,12] Separately, four Uzbekistan-born individuals were arrested in 2015 for providing material support to ISIS, according to a DOJ criminal complaint and superseding indictment.[13,14] These two groups comprised six of the nine individuals in our dataset who were born in Uzbekistan.*
- *(U//FOUO) All seven individuals born in Bosnia were associates of each other. Six were arrested in 2015 for providing material support to ISIS and one died in 2014 after successfully joining ISIS in Syria, according to DOJ criminal complaints and a press report.[15,16]*
- *(U//FOUO) Two of the seven violent extremists in our dataset who were born in Pakistan were brothers who plotted together to provide material support to al-Qa'ida in the Arabian Peninsula (AQAP), according to a DOJ indictment.[17]*

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

arrested or killed, and the lack of arrests of the parents since their entry.

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

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

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

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

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

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

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

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

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

(U//FOUO) We assess that the integration and mentoring services provided by federal, state, and private sector entities to refugees and asylees offer an opportunity to help foreign-born US residents adjust to their new communities and raise their awareness of and

resistance to violent extremist narratives and recruiters, and likely increase their resistance to radicalization. Immigrants not entering the United States as refugees or asylees must prove their ability to provide basic needs for themselves before arriving in the United States, and thus they would not be eligible to receive many of these healthcare, housing, employment, and education services; however, there are many programs available to all immigrants to assist with integration into US society.

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

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

(U//FOUO) The experiences and grievances we assessed as common within these individuals present opportunities for CVE programs focused on integration and mentorship. Such programs could address adolescent immigrants' feelings of isolation, anger, and depression caused by immigration experiences—which could in turn reduce the ability of FTOs to exploit these feel-

ings for recruitment. Program administrators would be positioned to assist adolescents if the administrators are made aware of common radicalization vulnerabilities and behavioral indicators, as well as effective counter-narratives to challenge FTO messaging.

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

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

(U//FOUO) We also judge that open discussions with community and religious centers about overseas conflicts and ways that violent extremists may use religion to justify their actions would likely help dissuade some foreign-born, US-based individuals who are seeking

answers to their questions from relying exclusively on research conducted online, which is often dominated by FTO messaging that offers only a violent extremist perspective.

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

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

Homeland Security
Office of Intelligence and Analysis

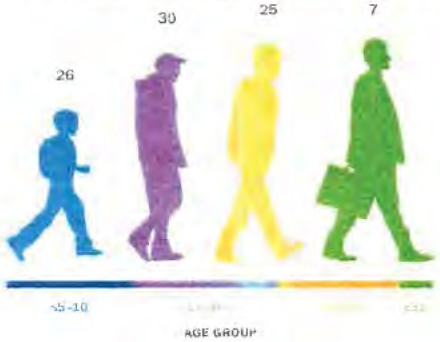
INTELLIGENCE ASSESSMENT
01 March 2017

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

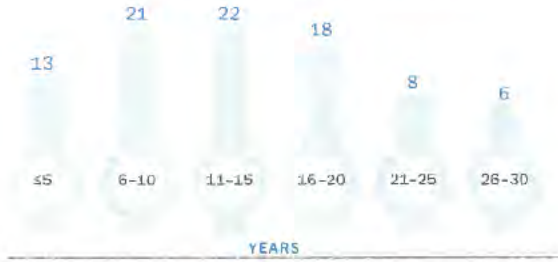
(U//FOUO) I&A examined the immigration history and radicalization activities of 88 foreign-born, US-based violent extremists who were indicted or killed as a result of their participation in a terrorism related activity inspired by at least one foreign terrorist organization between March 2011 and December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

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

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



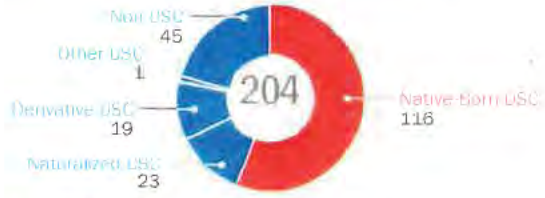
(U) LENGTH OF TIME IN US OF FOREIGN-BORN VIOLENT EXTREMISTS



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

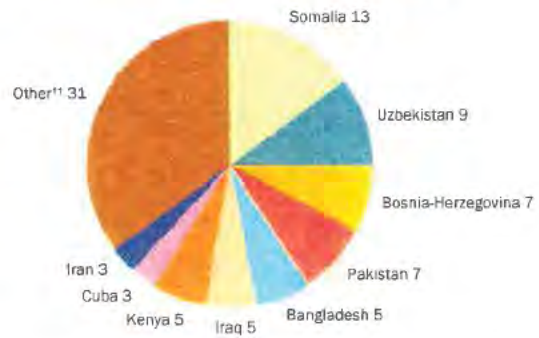
(U//FOUO) These factors alone do not indicate an individual has radicalized to violence.

NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS US CITIZENSHIP (USC) STATUS AT TIME OF INDICTMENT OR DEATH[4]



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

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



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

TERRORISM-RELATED ACTIVITES OF NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS[5]

[5] (U//FOUO) Numbers include individuals who participated or were arrested in more than one activity.
[6] (U//FOUO) Facilitation activities include financial or logistical support and terrorist recruitment.

(U) Source Summary Statement

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

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

old, an age group that is typically younger than the age most violent extremists begin radicalizing.

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

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

(U//FOUO) We have ***moderate confidence*** *that open discussions with community and religious centers about overseas conflicts and ways violent extremists may use religion to justify their actions would likely help dissuade some foreign-born, US-based individu-*

als from relying exclusively on Internet research. Our assessment is based on an analysis of current CVE programs and grievances cited by the individuals in our dataset to determine whether these programs would likely address the radicalization factors of these individuals. The inherent challenges involved in proving that CVE efforts have successfully countered radicalization of violent extremists or possible radicalization of vulnerable individuals limit our confidence in this assessment.

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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 Execu-

tive Order allows for the Secretary of State or the Secretary of Homeland security to admit travelers from these countries on a case-by-case basis, it is unrealistic to think that this will be feasible to implements for the thousands of aliens with urgent and compelling needs to travel.

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

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

We Are Better Than This Ban

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

(SBU) The United States is a nation of immigrants, starting from its very origins. The concept that immigrants 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 mis-

takes 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 per-

spective 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.

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

Release Date: March 6, 2017

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

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

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

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

Those individuals who are traveling on valid visas and arrive at a U.S. port of entry will still be permitted to seek entry into the United States. All foreign nationals traveling with a visa must continue to satisfy all requirements for entry, including demonstrating that they are admissible. Additional information on applying for admission to the United States is available on

CBP.gov. (https://www.cbp.gov/travel/international-visitors/applying-admission-united-states)

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

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

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

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

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

Yes. Individuals within the United States with valid multiple entry visas on the effective date of the order are eligible for travel to and from the United States,

provided the visa remains valid and the traveler is otherwise admissible. All foreign nationals traveling with a visa must satisfy all admissibility requirements for entry. Additional information on applying for admission to the United States is available on CBP.gov. (https://www.cbp.gov/travel/international-visitors/applying-admission-united-states)

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

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

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

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

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

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

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

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

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

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

Q11. Will unaccompanied minors within the scope of the Executive Order be denied boarding and or denied entry into the United States?

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

Q12. Is DHS complying with all court orders?

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

Q13. When will the Executive Order be implemented?

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

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

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

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

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

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

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

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

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

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

Per the Executive Order, the Departments of Homeland Security and State can review individual cases and grant waivers on a case-by-case basis if a foreign national demonstrates that his or her entry into the United States is in the national interest, will not pose a threat to national security, and that denying entry during the suspension period will cause undue hardship.

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

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

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

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

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

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

Q22. Can a dual national who holds nationality with one of the six designated countries traveling with a passport from an unrestricted country travel to the United States?

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

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

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

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

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

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

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

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

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

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

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

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

Q28. Does the Executive Order apply to those currently being adjudicated for naturalization or adjustment of status?

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

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

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

Q30. Has CBP issued clear guidance to CBP officers at ports of entry regarding the Executive Order? CBP has and will continue to issue any needed guidance to the field with respect to this Executive Order.

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

CBP has been and will remain in continuous communication with the airlines through CBP regional carrier liaisons. In addition, CBP will hold executive level calls with airlines in order to provide guidance, answer questions, and address concerns.

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

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

Q33. Why is a temporary suspension warranted?

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

Congress and the Obama Administration designated these six countries as countries of concern due to the national security risks associated with their instability and the prevalence of terrorist fighters in their territories. The conditions in the six designated countries present a recognized threat, warranting additional scrutiny of their nationals seeking to travel to and enter the United States. In order to ensure that the

U.S. Government can conduct a thorough and comprehensive analysis of the national security risks, the Executive Order imposes a 90-day suspension on entry to the United States of nationals of those countries.

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

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

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

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

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

The six countries, Iran, Libya, Somalia, Sudan, Syria, and Yemen, had already been identified as presenting concerns about terrorism and travel to the United States.Specifically, the suspension applies to countries referred to in, or designated under—except Iraq—section 217(a)(12) of the INA, 8 U.S.C. § 1187(a)(12).In that provision Congress restricted use of the Visa Waiver Program by dual nationals of, and aliens recently present in, (A) Syria and Iraq, (B) any country designated by the Secretary of State as a state sponsor of terrorism (currently Iran, Syria, and Sudan), and (C) any other country designated as a country of concern by the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence.In 2016, the former Secretary of Homeland Security designated Libya, Somalia, and Yemen as additional countries of concern regarding aliens recently present in those countries.

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

On the basis of negotiations that have taken place between the Government of Iraq and the U.S. Department of State in the last month, Iraq will increase cooperation with the U.S. Government on the vetting of its citizens applying for a visa to travel to the United

States.As such it was determined that a temporary suspension with respect to nationals of Iraq is not warranted at this time.

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

The close cooperative relationship between the United States and the democratically-elected Iraqi government, the strong U.S. diplomatic presence in Iraq, the significant presence of U.S. forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment.In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have earned special status.In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to provide additional information about its citizens for purposes of our immigration decisions.Accordingly, it is no longer necessary to include Iraq in the temporary suspension applicable to the other six countries, but visa applications and applications for admission to the United States by Iraqi nationals will be subjected to additional scrutiny to determine if they have connections with ISIS or other terrorist organizations.

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

This Executive Order does not presently suspend the entry of nationals of Iraq. However, all travelers must have a valid travel document in order to travel to the United States. Admissibility will be determined

by a CBP officer upon arrival at a Port of Entry. Please contact the Department of State for information related to visa eligibility and application.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CV. No. 17-00050 DKW-KSC

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

[Filed: Mar. 15, 2017]

ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

On January 27, 2017, the President of the United States issued Executive Order No. 13,769 entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States." *See* 82 Fed. Reg. 8977 (Jan. 27, 2017). On March 6, 2017, the President issued another Executive Order, No. 13,780, identically entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States." (the "Executive Order"). *See* 82 Fed. Reg. 13209 (Mar. 6, 2017). The Executive Order revokes Executive Order No. 13,769 upon taking effect.[1] Exec. Order §§ 13, 14. Like its predecessor, the Executive Order restricts the entry of foreign

[1] By its terms, the Executive Order becomes effective as of March 16, 2017 at 12:01 a.m., Eastern Daylight Time—*i.e.*, March 15, 2017 at 6:01 p.m. Hawaii Time. Exec. Order § 14.

nationals from specified countries and suspends entrants from the United States refugee program for specified periods of time.

Plaintiffs State of Hawai'i ("State") and Ismail Elshikh, Ph.D. seek a nationwide temporary restraining order that would prohibit the Federal Defendants[2] from "enforcing or implementing Sections 2 and 6 of the Executive Order" before it takes effect. Pls.' Mot. for TRO 4, Mar. 8, 2017, ECF No. 65.[3] Upon evaluation of the parties' submissions, and following a hearing on March 15, 2017, the Court concludes that, on the record before it, Plaintiffs have met their burden of establishing a strong likelihood of success on the merits of their Establishment Clause claim, that irreparable injury is likely if the requested relief is not issued, and that the balance of the equities and public interest counsel in favor of granting the requested relief. Accordingly, Plaintiffs' Motion for TRO (ECF. No. 65) is granted for the reasons detailed below.

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[2] Defendants in the instant action are: Donald J. Trump, in his official capacity as President of the United States; the U.S. Department of Homeland Security ("DHS"); John F. Kelly, in his official capacity as Secretary of DHS; the U.S. Department of State; Rex Tillerson, in his official capacity as Secretary of State; and the United States of America.

[3] Plaintiffs filed a Second Amended Complaint for Declaratory and Injunctive Relief ("SAC") on March 8, 2017 simultaneous with their Motion for TRO. SAC, ECF. No. 64.

BACKGROUND

I. The President's Executive Orders

A. Executive Order No. 13,769

Executive Order No. 13,769 became effective upon signing on January 27, 2017. *See* 82 Fed. Reg. 8977. It inspired several lawsuits across the nation in the days that followed.[4] Among those lawsuits was this one: On February 3, 2017, the State filed its complaint and an initial motion for TRO, which sought to enjoin, nationwide, Sections 3(c), 5(a)-(c), and 5(e) of Executive Order No. 13,769. Pls.' Mot. for TRO, Feb. 3, 2017, ECF No. 2.

This Court did not rule on the State's initial TRO motion because later that same day, the United States District Court for the Western District of Washington entered a nationwide preliminary injunction enjoining the Government from enforcing the same provisions of Executive Order No. 13,769 targeted by the State here. *See Washington v. Trump*, 2017 WL 462040. As such, the Court stayed this case, effective February 7, 2017, specifying that the stay would continue "as long as the

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[4] *See, e.g., Mohammed v. United States*, No. 2:17-cv-00786-AB-PLA (C.D. Cal. Jan. 31, 2017); *City & Cty. of San Francisco v. Trump*, No. 3:17-cv-00485-WHO (N.D. Cal. Jan. 31, 2017); *Louhghalam v. Trump*, Civil Action No. 17-cv-10154, 2017 WL 386550 (D. Mass. Jan. 29, 2017); *Int'l Refugee Assistance Project v. Trump*, No. 8:17-0361-TDC (D. Md. filed Feb. 7, 2017); *Darweesh v. Trump*, 17 Civ. 480 (AMD), 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017); *Aziz v. Trump*, --- F. Supp. 3d ----, 2017 WL 580855 (E.D. Va. Feb. 13, 2017); *Washington v. Trump*, Case No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), *emergency stay denied*, 847 F.3d 1151 (9th Cir. 2017). This list is not exhaustive.

February 3, 2017 injunction entered in *Washington v. Trump* remain[ed] in full force and effect, or until further order of this Court." ECF Nos. 27 & 32.

On February 4, 2017, the Government filed an emergency motion in the Ninth Circuit Court of Appeals seeking a stay of the *Washington* TRO, pending appeal.[5] *See Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 4, 2017). The Ninth Circuit heard oral argument on February 7, after which it denied the emergency motion via written Order dated February 9, 2017. *See* Case No. 17-35105, ECF Nos. 125 (Tr. of Hr'g), 134 (Filed Order for Publication at 847 F.3d 1151).

On March 8, 2017, the Ninth Circuit granted the Government's unopposed motion to voluntarily dismiss the appeal. *See* Order, No. 17-35105 (9th Cir. Mar. 8, 2017), ECF No. 187. As a result, the same sections of Executive Order No. 13,769 initially challenged by the State in the instant action remain enjoined as of the date of this Order.

B. The New Executive Order

Section 2 of the new Executive Order suspends from "entry into the United States" for a period of 90 days, certain nationals of six countries referred to in Section 217(a)(12) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*.: Iran, Libya, Somalia,

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[5] The Government also requested "an immediate administrative stay pending full consideration of the emergency motion for a stay pending appeal" on February 4, 2017 (Emergency Mot. to Stay, No. 17-35105 (9th Cir.), ECF No. 14), which the Ninth Circuit panel swiftly denied (Order, No. 17-35105 (9th Cir.), ECF No. 15).

Sudan, Syria, and Yemen.[6] 8 U.S.C. § 1187(a)(12); Exec. Order § 2(c). The suspension of entry applies to nationals of these six countries who (1) are outside the United States on the new Executive Order's effective date of March 16, 2017; (2) do not have a valid visa on that date, and (3) did not have a valid visa as of 5:00 p.m. Eastern Standard Time on January 27, 2017 (the date of the prior Executive Order, No. 13,769). Exec. Order § 3(a).

The 90-day suspension does not apply to: (1) lawful permanent residents; (2) any foreign national admitted to or paroled into the United States on or after the Executive Order's effective date (March 16, 2017); (3) any individual who has a document other than a visa, valid on the effective date of the Executive Order or issued anytime thereafter, that permits travel to the United States, such as an advance parole document; (4) any dual national traveling on a passport not issued by one of the six listed countries; (5) any foreign national traveling on a diplomatic-type or other specified visa; and (6) any foreign national who has been granted asylum, any refugee already admitted to the United States, or any individual granted withholding of removal, advance parole, or protection under the Convention Against Torture. *See* Exec. Order § 3(b).

Under Section 3(c)'s waiver provision, foreign nationals of the six countries who are subject to the suspen-

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[6] Because of the "close cooperative relationship" between the United States and the Iraqi government, the Executive Order declares that Iraq no longer merits inclusion in this list of countries, as it was in Executive Order No. 13,769. Iraq "presents a special case." Exec. Order § 1(g).

sion of entry may nonetheless seek entry on a case-by-case basis. The Executive Order includes the following list of circumstances when such waivers "could be appropriate:"

> (i) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other longterm activity, is outside the United States on the effective date of the Order, seeks to reenter the United States to resume that activity, and 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 the 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 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 (IOAI), 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 IOIA;
>
> (viii) the foreign national is a landed Canadian immigrant who applies for admission at a land border port of entry or a preclearance location located in Canada; or
>
> (ix) the foreign national is traveling as a United States Government sponsored exchange visitor.

Exec. Order § 3(c).

Section 6 of the Executive Order suspends the U.S. Refugee Admissions Program for 120 days. The suspension applies both to travel into the United States and to decisions on applications for refugee status for the same period. *See* Exec. Order § 6(a). It excludes refugee applicants who were formally scheduled for transit by the Department of State before the March 16, 2017 effective date. Like the 90-day suspension, the 120-day suspension includes a waiver provision that allows the Secretaries of State and DHS to admit refugee applicants on a case-by-case basis. *See* Exec.

Order § 6(c). The Executive Order identifies examples of circumstances in which waivers may be warranted, including: where the admission of the individual would allow the United States to conform its conduct to a pre-existing international agreement or denying admission would cause undue hardship. Exec. Order § 6(c). Unlike Executive Order No. 13,769, the new Executive Order does not expressly refer to an individual's status as a "religious minority" or refer to any particular religion, and it does not include a Syria-specific ban on refugees.

Section 1 states that the purpose of the Executive Order is to "protect [United States] citizens from terrorist attacks, including those committed by foreign nationals." Section 1(h) identifies two examples of terrorism-related crimes committed in the United States by persons entering the country either "legally on visas" or "as refugees":

> [1] 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. [2] [I]n October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction[.]

Exec. Order § 1(h).

By its terms, the Executive Order also represents a response to the Ninth Circuit's decision in *Washington v. Trump*. *See* 847 F.3d 1151. According to the Government, it "clarifies and narrows the scope of Execu-

tive action regarding immigration, extinguishes the need for emergent consideration, and eliminates the potential constitutional concerns identified by the Ninth Circuit." *See* Notice of Filing of Executive Order 4-5, ECF No. 56.

It is with this backdrop that we turn to consideration of Plaintiffs' restraining order application.

II. Plaintiffs' Motion For TRO

Plaintiffs' Second Amended Complaint (ECF No. 64) and Motion for TRO (ECF No. 65) contend that portions of the new Executive Order suffer from the same infirmities as those provisions of Executive Order No. 13,769 enjoined in *Washington*, 847 F.3d 1151. Once more, the State asserts that the Executive Order inflicts constitutional and statutory injuries upon its residents, employers, and educational institutions, while Dr. Elshikh alleges injuries on behalf of himself, his family, and members of his Mosque. SAC ¶ 1.

Plaintiffs allege that the Executive Order subjects portions of the State's population, including Dr. Elshikh and his family, to discrimination in violation of both the Constitution and the INA, denying them their right, among other things, to associate with family members overseas on the basis of their religion and national origin. The State purports that the Executive Order has injured its institutions, economy, and sovereign interest in maintaining the separation between church and state. SAC ¶¶ 4-5.

According to Plaintiffs, the Executive order also results in "their having to live in a country and in a State where there is the perception that the Government has established a disfavored religion." SAC ¶ 5.

Plaintiffs assert that by singling out nationals from the six predominantly Muslim countries, the Executive Order causes harm by stigmatizing not only immigrants and refugees, but also Muslim citizens of the United States. Plaintiffs point to public statements by the President and his advisors regarding the implementation of a "Muslim ban," which Plaintiffs contend is the tacit and illegitimate motivation underlying the Executive Order. *See* SAC ¶¶ 35-51. For example, Plaintiffs point to the following statements made contemporaneously with the implementation of Executive Order No. 13,769 and in its immediate aftermath:

> 48. In an interview on January 25, 2017, Mr. Trump discussed his plans to implement "extreme vetting" of people seeking entry into the United States. He remarked: "[N]o, it's not the Muslim ban. But it's countries that have tremendous terror. . . . [I]t's countries that people are going to come in and cause us tremendous problems."
>
> 49. Two days later, on January 27, 2017, President Trump signed an Executive Order entitled, "Protecting the Nation From Foreign Terrorist Entry into the United States."
>
> 50. The first Executive Order [No. 13,769] was issued without a notice and comment period and without interagency review. Moreover, the first Executive Order was issued with little explanation of how it could further its stated objective.
>
> 51. When signing the first Executive Order [No. 13,769], President Trump read the title, looked up, and said: "We all know what that means." President Trump said he was "establishing a new

vetting measure to keep radical Islamic terrorists out of the United States of America," and that: "We don't want them here."

. . . .

58. In a January 27, 2017 interview with Christian Broadcasting Network, President Trump said that persecuted Christians would be given priority under the first Executive Order. He said (once again, falsely): "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. So we are going to help them."

59. The day after signing the first Executive Order [No. 13,769], President Trump's advisor, Rudolph Giuliani, explained on television how the Executive Order came to be. He said: "When [Mr. 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.'"

60. The President and his spokespersons defended the rushed nature of their issuance of the first Executive Order [No. 13,769] on January 27, 2017, by saying that their urgency was imperative to stop the inflow of dangerous persons to the United States. On January 30, 2017, President Trump tweeted: "If the ban were announced with a one week notice, the 'bad' would rush into our country during that

> week." In a forum on January 30, 2017 at George Washington University, White House spokesman Sean Spicer said: "At the end of the day, what was the other option? To rush it out quickly, telegraph it five days so that people could rush into this country and undermine the safety of our nation?" On February 9, 2017, President Trump claimed he had sought a one-month delay between signing and implementation, but was told by his advisors that "you can't do that because then people are gonna pour in before the toughness."

SAC ¶¶ 48-51, 58-60 (footnotes and citations omitted).

Plaintiffs also highlight statements by members of the Administration prior to the signing of the new Executive Order, seeking to tie its content to Executive Order No. 13,769 enjoined by the *Washington* TRO. In particular, they note that:

> On February 21, Senior Advisor to the President, Stephen Miller, told Fox News that the new travel ban would have the same effect as the old one. He said: "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."

SAC ¶ 74(a) (citing *Miller: New order will be responsive to the judicial ruling; Rep. Ron DeSantis: Congress has gotten off to a slow start*, *The First 100 Days* (Fox News television broadcast Feb. 21, 2017), transcript *available at* https://goo.gl/wcHvHH (rush tran-

script)). Plaintiffs argue that, in light of these and similar statements "where the President himself has repeatedly and publicly espoused an improper motive for his actions, the President's action must be invalidated." Pls.' Mem. in Supp. of Mot. for TRO 2, ECF No. 65-1.

In addition to these accounts, Plaintiffs describe a draft report from the DHS, which they contend undermines the purported national security rationale for the Executive Order. *See* SAC ¶ 61 (citing SAC, Ex. 10, ECF No. 64-10). The February 24, 2017 draft report states that citizenship is an "unlikely indicator" of terrorism threats against the United States and that very few individuals from the seven countries included in Executive Order No. 13,769 had carried out or attempted to carry out terrorism activities in the United States. SAC ¶ 61 (citing SAC, Ex. 10, ECF No. 64-10). According to Plaintiffs, this and other evidence demonstrates the Administration's pretextual justification for the Executive Order.

Plaintiffs assert the following causes of action: (1) violation of the Establishment Clause of the First Amendment (Count I); (2) violation of the equal protection guarantees of the Fifth Amendment's Due Process Clause on the basis of religion, national origin, nationality, or alienage (Count II); (3) violation of the Due Process Clause of the Fifth Amendment based upon substantive due process rights (Count III); (4) violation of the procedural due process guarantees of the Fifth Amendment (Count IV); (5) violation of the INA due to discrimination on the basis of nationality, and exceeding the President's authority under Sections 1182(f) and 1185(a) (Count V); (6) substantially burdening the

exercise of religion in violation of the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 200bb-1(a) (Count VI); (7) substantive violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706 (2)(A)-(C), through violations of the Constitution, INA, and RFRA (Count VII); and (8) procedural violation of the APA, 5 U.S.C. § 706 (2)(D) (Count VIII).

Plaintiffs contend that these alleged violations of law have caused and continue to cause them irreparable injury. To that end, through their Motion for TRO, Plaintiffs seek to temporarily enjoin Defendants from enforcing and implementing Sections 2 and 6 of the Executive Order. Mot. for TRO 4, ECF No. 65. They argue that "both of these sections are unlawful in all of their applications:" Section 2 discriminates on the basis of nationality, Sections 2 and 6 exceed the President's authority under 8 U.S.C. §§ 1182(f) and 1185(a), and both provisions are motivated by anti-Muslim animus. TRO Mem. 50, Dkt. No. 65-1. Moreover, Plaintiffs assert that both sections infringe "on the 'due process rights' of numerous U.S. citizens and institutions by barring the entry of non-citizens with whom they have close relationships." TRO Mem. 50 (quoting *Washington*, 847 F.3d at 1166).

Defendants oppose the Motion for TRO. The Court held a hearing on the matter on March 15, 2017, before the Executive Order was scheduled to take effect.

DISCUSSION

I. Plaintiffs Have Demonstrated Standing At This Preliminary Phase

A. Article III Standing

Article III, Section 2 of the Constitution permits federal courts to consider only "cases" and "controversies." *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). "Those two words confine 'the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process.'" *Id.* (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

"At bottom, 'the gist of the question of standing' is whether petitioners have 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.'" *Catholic League for Religious & Civil Rights v. City & Cty. of San Francisco*, 624 F.3d 1043, 1048 (9th Cir. 2010) (en banc) (quoting *Massachusetts*, 549 U.S. at 517)).

"At this very preliminary stage of the litigation, the [Plaintiffs] may rely on the allegations in their Complaint and whatever other evidence they submitted in support of their TRO motion to meet their burden." *Washington*, 847 F.3d at 1159 (citing *Lujan*, 504 U.S. at 561). "With these allegations and evidence, the [Plaintiffs] must make a 'clear showing of each element of standing.'" *Id.* (quoting *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 907 (2014)). At this preliminary stage of the proceedings, on the record presented, Plaintiffs meet the threshold Article III standing requirements.

B. The State Has Standing

The State alleges standing based both upon injuries to its proprietary interests and to its quasi-sovereign interests, *i.e.*, in its role as *parens patriae*.[7] Just as the Ninth Circuit panel in *Washington* concluded on a similar record that the alleged harms to the states' proprietary interests as operators of their public universities were sufficient to support standing, the Court concludes likewise here. The Court does not reach the State's alternative standing theory based on the pro-

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[7] The State's *parens patriae* theory focuses on the Executive Order

> subject[ing] citizens of Hawai'i like Dr. Elshikh to discrimination and marginalization while denying all residents of the State the benefits of a pluralistic and inclusive society. Hawai'i has a quasi-sovereign interest in 'securing [its] residents from the harmful effects of discrimination.' *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 609 (1982). The [Executive] Order also harms Hawai'i by debasing its culture and tradition of ethnic diversity and inclusion.

TRO Mem. 48, ECF No. 65-1.

tection of the interests of its citizens as *parens patriae*. *See Washington*, 847 F.3d at 1168 n.5 ("The States have asserted other proprietary interests and also presented an alternative standing theory based on their ability to advance the interests of their citizens as *parens patriae*. Because we conclude that the States' proprietary interests as operators of their public universities are sufficient to support standing, we need not reach those arguments.").

Hawaii primarily asserts two proprietary injuries stemming from the Executive Order. First, the State alleges the impacts that the Executive Order will have on the University of Hawaii system, both financial and intangible. The University is an arm of the State. *See* Haw. Const. art. 10, §§ 5, 6; Haw. Rev. Stat. ("HRS") § 304A-103. The University recruits students, permanent faculty, and visiting faculty from the targeted countries. *See, e.g.*, Suppl. Decl. of Risa E. Dickson ¶¶ 6-8, Mot. for TRO, Ex. D-1, ECF No. 66-6. Students or faculty suspended from entry are deterred from studying or teaching at the University, now and in the future, irrevocably damaging their personal and professional lives and harming the educational institutions themselves. *See id.*

There is also evidence of a financial impact from the Executive Order on the University system. The University recruits from the six affected countries. It currently has twenty-three graduate students, several permanent faculty members, and twenty-nine visiting faculty members from the six countries listed. Suppl. Dickson Decl. ¶ 7. The State contends that any prospective recruits who are without visas as of March 16, 2017 will not be able to travel to Hawaii to attend the

University. As a result, the University will not be able to collect the tuition that those students would have paid. Suppl. Dickson Decl. ¶ 8 ("Individuals who are neither legal permanent residents nor current visa holders will be entirely precluded from considering our institution."). These individuals' spouses, parents, and children likewise would be unable to join them in the United States. The State asserts that the Executive Order also risks "dissuad[ing] some of [the University's] current professors or scholars from continuing their scholarship in the United States and at [the University]." Suppl. Dickson Decl. ¶ 9.

The State argues that the University will also suffer non-monetary losses, including damage to the collaborative exchange of ideas among people of different religions and national backgrounds on which the State's educational institutions depend. Suppl. Dickson Decl. ¶¶ 9-10, ECF no. 66-6; *see also* Original Dickson Decl. ¶ 13, Mot. for TRO, Ex. D-2, ECF, 66-7; SAC ¶ 94. This will impair the University's ability to recruit and accept the most qualified students and faculty, undermine its commitment to being "one of the most diverse institutions of higher education" in the world, Suppl. Dickson Decl. ¶ 11, and grind to a halt certain academic programs, including the University's Persian Language and Culture program, *id.* ¶ 8. *Cf. Washington*, 847 F.3d at 1160 ("[The universities] have a mission of 'global engagement' and rely on such visiting students, scholars, and faculty to advance their educational goals.").

These types of injuries are nearly indistinguishable from those found to support standing in the Ninth Circuit's decision in *Washington*. *See* 847 F.3d at 1161 ("The necessary connection can be drawn in at most

two logical steps: (1) the Executive Order prevents nationals of seven countries from entering Washington and Minnesota; (2) as a result, some of these people will not enter state universities, some will not join those universities as faculty, some will be prevented from performing research, and some will not be permitted to return if they leave. And we have no difficulty concluding that the States' injuries would be redressed if they could obtain the relief they ask for: a declaration that the Executive Order violates the Constitution and an injunction barring its enforcement.").

The second proprietary injury alleged Hawaii alleges is to the State's main economic driver: tourism. The State contends that the Executive Order will "have the effect of depressing international travel to and tourism in Hawai'i," which "directly harms Hawaii's businesses and, in turn, the State's revenue." SAC ¶ 100, ECF No. 64. *See also* Suppl. Decl. of Luis P. Salaveria ¶¶ 6-10, Mot. for TRO, Ex. C-1, ECF No. 66-4 ("I expect, given the uncertainty the new executive order and its predecessor have caused to international travel generally, that these changing policies may depress tourism, business travel, and financial investments in Hawaii."). The State points to preliminary data from the Hawaii Tourism Authority, which suggests that during the interval of time that the first Executive Order was in place, the number of visitors to Hawai'i from the Middle East dropped (data including visitors from Iran, Iraq, Syria and Yemen). *See* Suppl. Decl. of George Szigeti, ¶¶ 5-8, Mot. for TRO, Ex. B-1, ECF No. 66-2; *see also* SAC ¶ 100 (identifying 278 visitors in January 2017, compared to 348 visitors from that same region in

January 2016).[8] Tourism accounted for $15 billion in spending in 2015, and a decline in tourism has a direct effect on the State's revenue. *See* SAC ¶ 18. Because there is preliminary evidence that losses of current and future revenue are traceable to the Executive Order, this injury to the State's proprietary interest also appears sufficient to confer standing. *Cf. Texas v. United States*, 809 F.3d 134, 155-56 (5th Cir. 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016) (holding that the "financial loss[es]" that Texas would bear, due to having to grant drivers licenses, constituted a concrete and immediate injury for standing purposes).

For purposes of the instant Motion for TRO, the State has preliminarily demonstrated that: (1) its universities will suffer monetary damages and intangible harms; (2) the State's economy is likely to suffer a loss of revenue due to a decline in tourism; (3) such harms can be sufficiently linked to the Executive Order; and (4) the State would not suffer the harms to its proprietary interests in the absence of implementation of the Executive Order. Accordingly, at this early stage of the litigation, the State has satisfied the requirements of Article III standing.[9]

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[8] This data relates to the prior Executive Order No. 13,769. At this preliminary stage, the Court looks to the earlier order's effect on tourism in order to gauge the economic impact of the new Executive Order, while understanding that the provisions of the two differ. Because the new Executive Order has yet to take effect, its precise economic impact cannot presently be determined.

[9] To the extent the Government argues that the State does not have standing to bring an Establishment Clause violation on its own behalf, the Court does not reach this argument. *Cf. Wash-*

C. Dr. Elshikh Has Standing

Dr. Elshikh is an American citizen of Egyptian descent and has been a resident of Hawai'i for over a decade. Declaration of Ismail Elshikh ¶ 1, Mot. for TRO, Ex. A, ECF No. 66-1. He is the Imam of the Muslim Association of Hawai'i and a leader within Hawaii's Islamic community. Elshikh Decl. ¶ 2. Dr. Elshikh's wife is of Syrian descent, and their young children are American citizens. Dr. Elshikh and his family are Muslim. Elshikh Decl. ¶¶ 1, 3. His mother-in-law, also Muslim, is a Syrian national without a visa, who last visited the family in Hawaii in 2005. Elshikh Decl. ¶¶ 4-5.

In September 2015, Dr. Elshikh's wife filed an I-130 Petition for Alien Relative on behalf of her mother. On January 31, 2017, Dr. Elshikh called the National Visa Center and learned that his mother-in-law's visa application had been put on hold and would not proceed to the next stage of the process because of the implementation of Executive Order No. 13,769. Elshikh Decl. ¶ 4. Thereafter, on March 2, 2017, during the pendency of the nationwide injunction imposed by *Wash-*

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ington, 847 F.3d at 1160 n.4 ("The Government argues that the States may not bring Establishment Clause claims because they lack Establishment Clause rights. Even if we assume that States lack such rights, an issue we need not decide, that is irrelevant in this case because the States are asserting the rights of their students and professors. Male doctors do not have personal rights in abortion and yet any physician may assert those rights on behalf of his female patients." (citing *Singleton v. Wulff*, 428 U.S. 106, 118 (1976))). Unlike in *Washington* where there was no individual plaintiff, Dr. Elshikh has standing to assert an Establishment Clause violation, as discussed herein.

ington, Dr. Elshikh received an email from the National Visa Center advising that his mother-in-law's visa application had progressed to the next stage and that her interview would be scheduled at an embassy overseas. Although no date was given, the communication stated that most interviews occur within three months. Elshikh Decl. ¶ 4. Dr. Elshikh fears that although she has made progress toward obtaining a visa, his mother-in-law will be unable to enter the country if the new Executive Order is implemented. Elshikh Decl. ¶ 4. According to Plaintiffs, despite her pending visa application, Dr. Elshikh's mother-in-law would be barred in the short-term from entering the United States under the terms of Section 2(c) of the Executive Order, unless she is granted a waiver, because she is not a current visa holder.

Dr. Elshikh has standing to assert his claims, including an Establishment Clause violation. Courts observe that the injury-in-fact prerequisite can be "particularly elusive" in Establishment Clause cases because plaintiffs do not typically allege an invasion of a physical or economic interest. Despite that, a plaintiff may nonetheless show an injury that is sufficiently concrete, particularized, and actual to confer standing. *See Catholic League*, 624 F.3d at 1048-49; *Vasquez v. Los Angeles Cty.*, 487 F.3d 1246, 1250 (9th Cir. 2007) ("The concept of a 'concrete' injury is particularly elusive in the Establishment Clause context."). "The standing question, in plain English, is whether adherents to a religion have standing to challenge an official condemnation by their government of their religious views[.] Their 'personal stake' assures the 'concrete adverseness' required."

Catholic League, 624 F.3d at 1048-49. In Establishment Clause cases—

> [e]ndorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message." Plaintiffs aver that not only does the resolution make them feel like second-class citizens, but that their participation in the political community will be chilled by the [government's] hostility to their church and their religion.

Id. at 1048-49 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). Dr. Elshikh attests that he and his family suffer just such injuries here. He declares that the effects of the Executive Order are "devastating to me, my wife and children." Elshikh Decl. ¶ 6, ECF No. 66-1.

Like his children, Dr. Elshikh is "deeply saddened by the message that [both Executive Orders] convey—that a broad travel-ban is 'needed' to prevent people from certain Muslim countries from entering the United States." Elshikh Decl. ¶ 1 ("Because of my allegiance to America, and my deep belief in the American ideals of democracy and equality, I am deeply saddened by the passage of the Executive Order barring nationals from now-six Muslim majority countries from entering the United States."); *id.* ¶ 3 (["My children] are deeply affected by the knowledge that the United States—their own country—would discriminate against individuals who are of the same ethnicity as them, including members of their own family, and who hold

the same religious beliefs. They do not fully understand why this is happening, but they feel hurt, confused, and sad.").

"Muslims in the Hawai'i Islamic community feel that the new Executive Order targets Muslim citizens because of their religious views and national origin. Dr. Elshikh believes that, as a result of the new Executive Order, he and members of the Mosque will not be able to associate as freely with those of other faiths." SAC ¶ 90. These injuries are sufficiently personal, concrete, particularized, and actual to confer standing in the Establishment Clause context.

The final two aspects of Article III standing—causation and redressability—are also satisfied. Dr. Elshikh's injuries are traceable to the new Executive Order and, if Plaintiffs prevail, a decision enjoining portions of the Executive Order would redress that injury. *See Catholic League*, 624 F.3d at 1053. At this preliminary stage of the litigation, Dr. Elshikh has accordingly carried his burden to establish standing under Article III.

II. Ripeness

"While standing is primarily concerned with who is a proper party to litigate a particular matter, ripeness addresses when litigation may occur." *Lee v. Oregon*, 107 F.3d 1382, 1387 (9th Cir. 1997). "[I]n many cases, ripeness coincides squarely with standing's injury in fact prong." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc). In fact, the ripeness inquiry is often "characterized as standing on a timeline." *Id.* "A claim is not ripe for adjudication if it rests upon 'contingent future events that may

not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985)).

The Government argues that "the only concrete injury Elshikh alleges is that the Order 'will prevent [his] mother-in-law'—a Syrian national who lacks a visa—from visiting Elshikh and his family in Hawaii." These claims are not ripe, according to the Government, because there is a visa waiver process that Elshikh's mother-in-law has yet to even initiate. Govt. Mem. in Opp'n to Mot. for TRO (citing SAC ¶ 85), ECF No. 145.

The Government's premise is not true. Dr. Elshikh alleges direct, concrete injuries to both himself and his immediate family that are independent of his mother-in-law's visa status. *See, e.g.,* SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3.[10] These alleged injuries have already occurred and will continue to occur once the Executive Order is implemented and enforced—the injuries are not contingent ones. *Cf. 281 Care Comm. v. Arneson*, 638 F.3d 621, 631 (8th Cir. 2011) ("Plaintiffs' alleged injury is not based on speculation about a particular future prosecution or the defeat of a particular ballot

[10] There is no dispute that Dr. Elshikh's mother-in-law does not currently possess a valid visa, would be barred from entering as a Syrian national by Section 2(c) of the Executive Order, and has not yet applied for a waiver under Section 3(c) of the Executive Order. Since the Executive Order is not yet effective, it is difficult to see how she could. None of these propositions, however, alter the Court's finding that Dr. Elshikh has sufficiently established, at this preliminary stage, that he has suffered an injury-in-fact separate and apart from his mother-in-law that is sufficiently concrete, particularized, and actual to confer standing.

question. . . . Here, the issue presented requires no further factual development, is largely a legal question, and chills allegedly protected First Amendment expression."); *see also Arizona Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003) ("[W]hen the threatened enforcement effort implicates First Amendment [free speech] rights, the inquiry tilts dramatically toward a finding of standing.").

The Court turns to the merits of Plaintiffs' Motion for TRO.

III. Legal Standard: Preliminary Injunctive Relief

The underlying purpose of a TRO is to preserve the status quo and prevent irreparable harm before a preliminary injunction hearing is held. *Granny Goose Foods*, 415 U.S. 423, 439 (1974); *see also Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir. 2006).

The standard for issuing a temporary restraining order is substantially identical to the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A "plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citation omitted).

"[I]f a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips *sharply* in the plaintiff's favor,' and the other two

Winter factors are satisfied." *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (emphasis by *Shell Offshore*)).

For the reasons that follow, Plaintiffs have met this burden here.

IV. Analysis of TRO Factors: Likelihood of Success on the Merits

The Court turns to whether Plaintiffs sufficiently establish a likelihood of success on the merits of their Count I claim that the Executive Order violates the Establishment Clause of the First Amendment. Because a reasonable, objective observer—enlightened by the specific historical context, contemporaneous public statements, and specific sequence of events leading to its issuance—would conclude that the Executive Order was issued with a purpose to disfavor a particular religion, in spite of its stated, religiously-neutral purpose, the Court finds that Plaintiffs, and Dr. Elshikh in particular, are likely to succeed on the merits of their Establishment Clause claim.[11]

A. Establishment Clause

"The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). To determine whether the Executive Order runs afoul of that command, the Court is guided by the three-part test for Establishment Clause claims

[11] The Court expresses no views on Plaintiffs' due-process or INA-based statutory claims.

set forth in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). According to *Lemon*, government action (1) must have a primary secular purpose, (2) may not have the principal effect of advancing or inhibiting religion, and (3) may not foster excessive entanglement with religion. *Id.* "Failure to satisfy any one of the three prongs of the *Lemon* test is sufficient to invalidate the challenged law or practice." *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1076-77 (9th Cir. 2010). Because the Executive Order at issue here cannot survive the secular purpose prong, the Court does not reach the balance of the criteria. *See id.* (noting that it is unnecessary to reach the second or third *Lemon* criteria if the challenged law or practice fails the first test).

B. The Executive Order's Primary Purpose

It is undisputed that the Executive Order does not facially discriminate for or against any particular religion, or for or against religion versus non-religion. There is no express reference, for instance, to any religion nor does the Executive Order—unlike its predecessor—contain any term or phrase that can be reasonably characterized as having a religious origin or connotation.

Indeed, the Government defends the Executive Order principally because of its religiously neutral text—"[i]t applies to six countries that Congress and the prior Administration determined posed special risks of terrorism. [The Executive Order] applies to *all* individuals in those countries, regardless of their religion." Gov't. Mem. in Opp'n 40. The Government does not stop there. By its reading, the Executive Order could

not have been religiously motivated because "the six countries represent only a small fraction of the world's 50 Muslim-majority nations, and are home to less than 9% of the global Muslim population . . . [T]he suspension covers *every* national of those countries, including millions of non-Muslim individuals[.]" Gov't. Mem. in Opp'n 42.

The illogic of the Government's contentions is palpable. The notion that one can demonstrate animus toward any group of people only by targeting all of them at once is fundamentally flawed. The Court declines to relegate its Establishment Clause analysis to a purely mathematical exercise. *See Aziz*, 2017 WL 580855, at *9 (rejecting the argument that "the Court cannot infer an anti-Muslim animus because [Executive Order No. 13,769] does not affect all, or even most, Muslims," because "the Supreme Court has never reduced its Establishment Clause jurisprudence to a mathematical exercise. It is a discriminatory purpose that matters, no matter how inefficient the execution" (citation omitted)). Equally flawed is the notion that the Executive Order cannot be found to have targeted Islam because it applies to *all individuals* in the six referenced countries. It is undisputed, using the primary source upon which the Government itself relies, that these six countries have overwhelmingly Muslim populations that range from 90.7% to 99.8%.[12] It would therefore be no paradigmatic leap to conclude that targeting these countries likewise targets Islam. Cer-

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[12] *See* Pew-Templeton Global Religious Futures Project, Muslim Population by Country (2010), *available at* http://www.globalreligiousfutures.org/religions/muslims.

tainly, it would be inappropriate to conclude, as the Government does, that it does not.

The Government compounds these shortcomings by suggesting that the Executive Order's neutral text is what this Court must rely on to evaluate purpose. Govt. Mem. in Opp'n at 42-43 ("[C]ourts may not 'look behind the exercise of [Executive] discretion' taken 'on the basis of a facially legitimate and bona fide reason.'"). Only a few weeks ago, the Ninth Circuit commanded otherwise: "It is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims." *Washington*, 847 F.3d at 1167-68 (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) ("Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality."); *Larson*, 456 U.S. at 254-55 (holding that a facially neutral statute violated the Establishment Clause in light of legislative history demonstrating an intent to apply regulations only to minority religions); and *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977) (explaining that circumstantial evidence of intent, including the historical background of the decision and statements by decisionmakers, may be considered in evaluating whether a governmental action was motivated by a discriminatory purpose)). The Supreme Court has been even more emphatic: courts may not "turn a blind eye to the context in which [a] policy arose." *McCreary Cty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 866 (2005) (citation and quotation

signals omitted).[13] "[H]istorical context and 'the specific sequence of events leading up to'" the adoption of a challenged policy are relevant considerations. *Id.* at 862; *see also Aziz*, 2017 WL 580855, at *7.

A review of the historical background here makes plain why the Government wishes to focus on the Executive Order's text, rather than its context. The record before this Court is unique. It includes significant and unrebutted evidence of religious animus driving the promulgation of the Executive Order and its related predecessor. For example—

> In March 2016, Mr. Trump said, during an interview, "I think Islam hates us." Mr. Trump was asked, "Is there a war between the West and radical Islam, or between the West and Islam itself?" He replied: "It's very hard to separate. Because you don't know who's who."

SAC ¶ 41 (citing *Anderson Cooper 360 Degrees: Exclusive Interview With Donald Trump* (CNN television broadcast Mar. 9, 2016, 8:00 PM ET), transcript *available at* https://goo.gl/y7s2kQ)). In that same interview, Mr. Trump stated: "But there's a tremendous hatred. And we have to be very vigilant. We have to be very careful. And we can't allow people coming into this country who have this hatred of the United States . . . [a]nd of people that are not Muslim."

Plaintiffs allege that "[l]ater, as the presumptive Republican nominee, Mr. Trump began using facially

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[13] In *McCreary*, the Supreme Court examined whether the posting of successive Ten Commandments displays at two county courthouses violated the Establishment Clause. 545 U.S. at 850-82.

neutral language, at times, to describe the Muslim ban." SAC ¶ 42. For example, they point to a July 24, 2016 interview:

> Mr. Trump was asked: "The Muslim ban. I think you've pulled back from it, but you tell me." Mr. Trump responded: "I don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territories. People were so upset when I used the 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."

SAC ¶ 44; Ex. 7 (*Meet the Press* (NBC television broadcast July 24, 2016), transcript *available at* https://goo.gl/jHc6aU). And during an October 9, 2016 televised presidential debate, Mr. Trump was asked:

> "Your running mate said this week that the Muslim ban is no longer your position. Is that correct? And if it is, was it a mistake to have a religious test?" Mr. Trump replied: "The Muslim ban is something that in some form has morphed into a[n] extreme vetting from certain areas of the world." When asked to clarify whether "the Muslim ban still stands," Mr. Trump said, "It's called extreme vetting."

SAC ¶ 45 (citing The American Presidency Project, *Presidential Debates: Presidential Debate at Washington University in St. Louis, Missouri* (Oct. 9, 2016), *available at* https://goo.gl/iIzf0A)).

The Government appropriately cautions that, in determining purpose, courts should not look into the "veiled psyche" and "secret motives" of government decisionmakers and may not undertake a "judicial psychoanalysis of a drafter's heart of hearts." Govt. Opp'n at

40 (citing *McCreary*, 545 U.S. at 862). The Government need not fear. The remarkable facts at issue here require no such impermissible inquiry. For instance, there is nothing "*veiled*" about this press release: "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States.[]" SAC ¶ 38, Ex. 6 (Press Release, Donald J. Trump for President, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015), *available at* https://goo.gl/D3OdJJ)). Nor is there anything "*secret*" about the Executive's motive specific to the issuance of the Executive Order:

> Rudolph Giuliani explained on television how the Executive Order came to be. He said: "When [Mr. 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.'"

SAC ¶ 59, Ex. 8. On February 21, 2017, commenting on the then-upcoming revision to the Executive Order, the President's Senior Adviser, Stephen Miller, stated, "Fundamentally, [despite "technical" revisions meant to address the Ninth Circuit's concerns in *Washington*,] you're still going to have the same basic policy outcome [as the first]." SAC ¶ 74.

These plainly-worded statements,[14] made in the months leading up to and contemporaneous with the signing of the Executive Order, and, in many cases, made by the Executive himself, betray the Executive Order's stated secular purpose. Any reasonable, objective observer would conclude, as does the Court for purposes of the instant Motion for TRO, that the stated secular purpose of the Executive Order is, at the very least, "secondary to a religious objective" of temporar-

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[14] There are many more. *See, e.g.*, Br. of The Roderick and Solange MacArthur Justice Center as Amicus Curiae in Supp. of Pls.' Mot. for TRO, ECF No. 204, at 19-20 ("It's not unconstitutional keeping people out, frankly, and until we get a hold of what's going on. And then if you look at Franklin Roosevelt, a respected president, highly respected. Take a look at Presidential proclamations back a long time ago, 2525, 2526, and 2527 what he was doing with Germans, Italians, and Japanese because he had to do it. Because look we are at war with radical Islam.") (quoting Michael Barbaro and Alan Rappeport, *In Testy Exchange, Donald Trump Interrupts and 'Morning Joe' Cuts to Commercial*, New York Times (Dec. 8, 2015), *available at* https://www.nytimes.com/politics/first-draft/2015/12/08/in-testy-exchange-donaldtrump-interrupts-and-morning-joe-cuts-to-commercial/)); Br. of Muslim Advocates et al. as Amici Curiae in Supp. of Pls.' Mot. for TRO, ECF No. 198, at 10-11 ("On June 13, 2016, after the attack on a nightclub in Orlando, Florida, Mr. Trump said in a speech: 'I called for a ban after San Bernardino, and was met with great scorn and anger, but now many are saying I was right to do so.' Mr. Trump then specified that the Muslim ban would be 'temporary,' 'and apply to certain 'areas of the world when [sic] there is a proven history of terrorism against the United States, Europe or our allies, until we understand how to end these threats.'") (quoting Transcript: Donald Trump's national security speech, *available at* http://www.politico.com/story/2016/06/transcript-donald-trump-national-security- speech-22427).

ily suspending the entry of Muslims. *See McCreary*, 545 U.S. at 864.[15]

To emphasize these points, Plaintiffs assert that the stated national security reasons for the Executive Order are pretextual. Two examples of such pretext include the security rationales set forth in Section 1(h):

> "[I]n 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." [Exec. Order] § 1(h). "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[.]" *Id.* Iraq is no longer included in the ambit of the travel ban, *id.*, and the Order states that a waiver could be granted for a foreign national that is a "young child." *Id.* § 3(c)(v).

TRO Mem. 13. Other indicia of pretext asserted by Plaintiffs include the delayed timing of the Executive Order, which detracts from the national security urgency claimed by the Administration, and the Executive Order's focus on nationality, which could have the

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[15] This Court is not the first to examine these issues. In *Aziz v. Trump,* United States District Court Judge Leonie Brinkema determined that plaintiffs were likely to succeed on the merits of their Establishment Clause claim as it related to Executive Order No. 13,769. Accordingly, Judge Brinkema granted the Commonwealth of Virginia's motion for preliminary injunction. *Aziz v. Trump*, ___ F. Supp. 3d ___, 2017 WL 580855, at *7-*10 (E.D. Va. Feb. 13, 2017).

paradoxical effect of "bar[ring] entry by a Syrian national who has lived in Switzerland for decades, but not a Swiss national who has immigrated to Syria during its civil war," revealing a "gross mismatch between the [Executive] Order's ostensible purpose and its implementation and effects." Pls.' Reply 20 (citation omitted).

While these additional assertions certainly call the motivations behind the Executive Order into greater question,[16] they are not necessary to the Court's Establishment Clause determination. *See Aziz,* 2017 WL 580855, at *8 (the Establishment Clause concerns addressed by the district court's order "do not involve an assessment of the merits of the president's national security judgment. Instead, the question is whether [Executive Order No. 13,769] was animated by national security concerns at all, as opposed to the impermissible notion of, in the context of entry, disfavoring one religious group, and in the context of refugees, favoring another religious group").

Nor does the Court's preliminary determination foreclose future Executive action. As the Supreme Court noted in *McCreary*, in preliminarily enjoining the third iteration of a Ten Commandments display, "we do not decide that the [government's] past actions forever taint any effort on their part to deal with the subject matter." *McCreary*, 545 U.S. at 873-74; *see also Felix v. City of Bloomfield*, 841 F.3d 848, 863

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[16] *See also* Br. of T.A., a U.S. Resident of Yemeni Descent, as Amicus Curiae in Supp. of Pls.' Mot. for TRO, ECF No. 200, at 15-25 (detailing evidence contrary to the Executive Order's national security justifications).

(10th Cir. 2016) ("In other words, it is possible that a government may begin with an impermissible purpose, or create an unconstitutional effect, but later take affirmative actions to neutralize the endorsement message so that "adherence to a religion [is not] relevant in any way to a person's standing in the political community." (quoting *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O'Connor, J., concurring))). Here, it is not the case that the Administration's past conduct must forever taint any effort by it to address the security concerns of the nation. Based upon the current record available, however, the Court cannot find the actions taken during the interval between revoked Executive Order No. 13,769 and the new Executive Order to be "genuine changes in constitutionally significant conditions." *McCreary*, 545 U.S. at 874.[17] The Court recognizes that "purpose needs to be taken seriously under the Establishment Clause and needs to be understood in light of context; an implausible claim that governmental purpose has changed should not

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[17] The Tenth Circuit asked: "What would be enough to meet this standard?"

> The case law does not yield a ready answer. But from the above principles we conclude that a government cure should be (1) purposeful, (2) public, and (3) at least as persuasive as the initial endorsement of religion. It should be purposeful enough for an objective observer to know, unequivocally, that the government does not endorse religion. It should be public enough so that people need not burrow into a difficult-to-access legislative record for evidence to assure themselves that the government is not endorsing a religious view. And it should be persuasive enough to countermand the preexisting message of religious endorsement.

Felix, 841 F.3d 863-64.

carry the day in a court of law any more than in a head with common sense." *Id.* Yet, context may change during the course of litigation, and the Court is prepared to respond accordingly.

Last, the Court emphasizes that its preliminary assessment rests on the peculiar circumstances and specific historical record present here. *Cf. Aziz,* 2017 WL 580855, at *9 ("The Court's conclusion rests on the highly particular 'sequence of events' leading to this specific [Executive Order No. 13,769] and the dearth of evidence indicating a national security purpose. The evidence in this record focuses on the president's statements about a 'Muslim ban' and the link Giuliani established between those statements and the [Executive Order].") (citing *McCreary*, 545 U.S. at 862).

V. Analysis of TRO Factors: Irreparable Harm

Dr. Elshikh has made a preliminary showing of direct, concrete injuries to the exercise of his Establishment Clause rights. *See, e.g.*, SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3. These alleged injuries have already occurred and likely will continue to occur upon implementation of the Executive Order.

Indeed, irreparable harm may be *presumed* with the finding of a violation of the First Amendment. *See Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also Washington*, 847 F.3d at 1169 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes

irreparable injury.'")) (additional citations omitted). Because Dr. Elshikh is likely to succeed on the merits of his Establishment Clause claim, the Court finds that the second factor of the *Winter* test is satisfied—that Dr. Elshikh is likely to suffer irreparable injury in the absence of a TRO.

VI. Analysis of TRO Factors: The Balance of Equities and Public Interest Weigh in Favor of Granting Emergency Relief

The final step in determining whether to grant the Plaintiffs' Motion for TRO is to assess the balance of equities and examine the general public interests that will be affected. Here, the substantial controversy surrounding this Executive Order, like its predecessor, illustrates that important public interests are implicated by each party's positions. *See Washington*, 847 F.3d at 1169. For example, the Government insists that the Executive Order is intended "to protect the Nation from terrorist activities by foreign nationals admitted to the United States[.]" Exec. Order, preamble. National security is unquestionably important to the public at large. Plaintiffs and the public, on the other hand, have a vested interest in the "free flow of travel, in avoiding separation of families, and in freedom from discrimination." *Washington*, 847 F.3d at 1169-70.

As discussed above, Plaintiffs have shown a strong likelihood of succeeding on their claim that the Executive Order violates First Amendment rights under the Constitution. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (emphasis added) (citing

Elrod, 427 U.S. at 373); *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[E]nforcement of an unconstitutional law is always contrary to the public interest." (citing *Lamprecht v. FCC*, 958 F.2d 382, 390 (D.C. Cir. 1992); *G & V Lounge v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

When considered alongside the constitutional injuries and harms discussed above, and the questionable evidence supporting the Government's national security motivations, the balance of equities and public interests justify granting the Plaintiffs' TRO. *See Aziz*, 2017 WL 580855, at * 10. Nationwide relief is appropriate in light of the likelihood of success on the Establishment Clause claim.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion for TRO is hereby GRANTED.

TEMPORARY RESTRAINING ORDER

It is hereby ADJUDGED, ORDERED, and DECREED that:

Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court.

No security bond is required under Federal Rule of Civil Procedure 65(c).

The Court declines to stay this ruling or hold it in abeyance should an emergency appeal of this order be filed.

Pursuant to Federal Rule of Civil Procedure 65(b)(2), the Court intends to set an expedited hearing to determine whether this Temporary Restraining Order should be extended. The parties shall submit a stipulated briefing and hearing schedule for the Court's approval forthwith.

IT IS SO ORDERED.

Dated: Mar. 15, 2017 at Honolulu, Hawai'i.

[SEAL OMITTED]

/s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CV. NO. 17-00050 DKW-KSC

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

[Filed: Mar. 29, 2017]

ORDER GRANTING MOTION TO CONVERT TEMPORARY RESTRAINING ORDER TO A PRELIMINARY INJUNCTION

INTRODUCTION

On March 15, 2017, the Court temporarily enjoined Sections 2 and 6 of Executive Order No. 13,780, entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 13209 (Mar. 6, 2017). *See* Order Granting Mot. for TRO, ECF No. 219 [hereinafter TRO]. Plaintiffs State of Hawai'i and Ismail Elshikh, Ph.D., now move to convert the TRO to a preliminary injunction. *See* Pls.' Mot. to Convert TRO to Prelim. Inj., ECF No. 238 [hereinafter Motion].

Upon consideration of the parties' submissions, and following a hearing on March 29, 2017, the Court concludes that, on the record before it, Plaintiffs have met their burden of establishing a strong likelihood of success on the merits of their Establishment Clause claim,

that irreparable injury is likely if the requested relief is not issued, and that the balance of the equities and public interest counsel in favor of granting the requested relief. Accordingly, Plaintiffs' Motion (ECF No. 238) is GRANTED.

BACKGROUND

The Court briefly recounts the factual and procedural background relevant to Plaintiffs' Motion. A fuller recitation of the facts is set forth in the Court's TRO. *See* TRO 3-14, ECF No. 219.

I. The President's Executive Orders

A. Executive Order No. 13,769

On January 27, 2017, the President of the United States issued Executive Order No. 13,769 entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 8977 (Jan. 27, 2017).[1] On March 6, 2017, the President issued another

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[1] On February 3, 2017, the State filed its complaint and an initial motion for TRO, which sought to enjoin Sections 3(c), 5(a)-(c), and 5(e) of Executive Order No. 13,769. Pls.' Mot. for TRO, Feb. 3, 2017, ECF No. 2. The Court stayed the case (*see* ECF Nos. 27 & 32) after the United States District Court for the Western District of Washington entered a nationwide preliminary injunction enjoining the Government from enforcing the same provisions of Executive Order No. 13,769 targeted by the State. *See Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017). On February 4, 2017, the Government filed an emergency motion in the United States Court of Appeals for the Ninth Circuit seeking a stay of the *Washington* TRO, pending appeal. That emergency motion was denied on February 9, 2017. *See Washington v. Trump*, 847 F.3d 1151 (9th Cir.) (per curium), *denying reconsideration en banc*, --- F.3d ---, 2017 WL 992527 (9th Cir. 2017). On March 8, 2017, the Ninth Circuit granted the Government's unop-

Executive Order, No. 13,780, identically entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States" (the "Executive Order"), 82 Fed. Reg. 13209. Like its predecessor, the Executive Order restricts the entry of foreign nationals from specified countries and suspends the United States refugee program for specified periods of time.

B. Executive Order No. 13,780

Section 1 of the Executive Order declares that its purpose is to "protect [United States] citizens from terrorist attacks, including those committed by foreign nationals." By its terms, the Executive Order also represents a response to the Ninth Circuit's per curiam decision in *Washington v. Trump*, 847 F.3d 1151. According to the Government, it "clarifies and narrows the scope of Executive action regarding immigration, extinguishes the need for emergent consideration, and eliminates the potential constitutional concerns identified by the Ninth Circuit." Notice of Filing of Executive Order 4-5, ECF No. 56.

Section 2 suspends from "entry into the United States" for a period of 90 days, certain nationals of six countries referred to in Section 217(a)(12) of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*: Iran, Libya, Somalia, Sudan, Syria, and Yemen. 8 U.S.C. § 1187(a)(12); Exec. Order § 2(c). The suspension of entry applies to nationals of these six countries who (1) are outside the United States on the new Executive Order's effective date of March 16, 2017; (2) do not have a valid visa on that date; and (3) did not

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posed motion to voluntarily dismiss the appeal. *See* Order, Case No. 17-35105 (9th Cir. Mar. 8, 2017), ECF No. 187.

have a valid visa as of 5:00 p.m. Eastern Standard Time on January 27, 2017 (the date of Executive Order No. 13,769). Exec. Order § 3(a). The 90-day suspension does not apply to: (1) lawful permanent residents; (2) any foreign national admitted to or paroled into the United States on or after the Executive Order's effective date (March 16, 2017); (3) any individual who has a document other than a visa, valid on the effective date of the Executive Order or issued anytime thereafter, that permits travel to the United States, such as an advance parole document; (4) any dual national traveling on a passport not issued by one of the six listed countries; (5) any foreign national traveling on a diplomatic-type or other specified visa; and (6) any foreign national who has been granted asylum, any refugee already admitted to the United States, or any individual granted withholding of removal, advance parole, or protection under the Convention Against Torture. *See* Exec. Order § 3(b). Under Section 3(c)'s waiver provision, foreign nationals of the six countries who are subject to the suspension of entry may nonetheless seek entry on a case-by-case basis.

Section 6 of the Executive Order suspends the U.S. Refugee Admissions Program for 120 days. The suspension applies both to travel into the United States and to decisions on applications for refugee status. *See* Exec. Order § 6(a). It excludes refugee applicants who were formally scheduled for transit by the Department of State before the March 16, 2017 effective date. Like the 90-day suspension, the 120-day suspension includes a waiver provision that allows the Secretaries of State and Homeland Security to admit refugee applicants on a case-by-case basis. *See* Exec. Order § 6(c).

Unlike Executive Order No. 13,769, the new Executive Order does not expressly refer to an individual's status as a "religious minority" or refer to any particular religion, and it does not include a Syria-specific ban on refugees.

II. Plaintiffs' Claims

Plaintiffs filed a Second Amended Complaint for Declaratory and Injunctive Relief ("SAC") on March 8, 2017 (ECF No. 64) simultaneous with their Motion for TRO (ECF No. 65). The State asserts that the Executive Order inflicts constitutional and statutory injuries upon its residents, employers, and educational institutions, while Dr. Elshikh alleges injuries on behalf of himself, his family, and members of his Mosque. SAC ¶ 1.

According to Plaintiffs, the Executive Order results in "their having to live in a country and in a State where there is the perception that the Government has established a disfavored religion." SAC ¶ 5. Plaintiffs assert that by singling out nationals from the six predominantly Muslim countries, the Executive Order causes harm by stigmatizing not only immigrants and refugees, but also Muslim citizens of the United States. Plaintiffs point to public statements by the President and his advisors regarding the implementation of a "Muslim ban," which Plaintiffs contend is the tacit and illegitimate motivation underlying the Executive Order. *See* SAC ¶¶ 35-60. Plaintiffs argue that, in light of these and similar statements "where the President himself has repeatedly and publicly espoused an improper motive for his actions, the President's action must be invalidated." Pls.' Mem. in Supp. of Mot. for TRO 2, ECF No. 65-1. Plaintiffs additionally present evidence

that they contend undermines the purported national security rationale for the Executive Order and demonstrates the Administration's pretextual justification for the Executive Order. *E.g.*, SAC ¶ 61 (citing Draft DHS Report, SAC, Ex. 10, ECF No. 64-10).

III. March 15, 2017 TRO

The Court's nationwide TRO (ECF No. 219) temporarily enjoined Sections 2 and 6 of the Executive Order, based on the Court's preliminary finding that Plaintiffs demonstrated a sufficient likelihood of succeeding on their claim that the Executive Order violates the Establishment Clause. *See* TRO 41-42. The Court concluded, based upon the showing of constitutional injury and irreparable harm, the balance of equities, and public interest, that Plaintiffs met their burden in seeking a TRO, and directed the parties to submit a stipulated briefing and preliminary injunction hearing schedule. *See* TRO 42-43.

On March 21, 2017, Plaintiffs filed the instant Motion (ECF No. 238) seeking to convert the TRO to a preliminary injunction prohibiting Defendants from enforcing and implementing Sections 2 and 6 of the Executive Order until the matter is fully decided on the merits. They argue that both of these sections are unlawful in all of their applications and that both provisions are motivated by anti-Muslim animus. Defendants oppose the Motion. *See* Govt. Mem. in Opp'n to Mot. to Convert TRO to Prelim. Inj., ECF No. 251. After full briefing and notice to the parties, the Court held a hearing on the Motion on March 29, 2017.

DISCUSSION

The Court's TRO details why Plaintiffs are entitled to preliminary injunctive relief. *See* TRO 15-43. The Court reaffirms and incorporates those findings and conclusions here, and addresses the parties' additional arguments on Plaintiffs' Motion to Convert.

I. Plaintiffs Have Demonstrated Standing At This Preliminary Phase

The Court previously found that Plaintiffs satisfied Article III standing requirements at this preliminary stage of the litigation. *See* TRO 15-21 (State), 22-25 (Dr. Elshikh). The Court renews that conclusion here.

A. Article III Standing

Article III, Section 2 of the Constitution permits federal courts to consider only "cases" and "controversies." *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)).

"At this very preliminary stage of the litigation, the [Plaintiffs] may rely on the allegations in their Complaint and whatever other evidence they submitted in support of their TRO motion to meet their burden."

Washington, 847 F.3d at 1159 (citing *Lujan*, 504 U.S. at 561). "With these allegations and evidence, the [Plaintiffs] must make a 'clear showing of each element of standing.'" *Id.* (quoting *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 907 (2014)). On the record presented at this preliminary stage of the proceedings, Plaintiffs meet the threshold Article III standing requirements.

B. The State Has Standing

For the reasons stated in the TRO, the State has standing based upon injuries to its proprietary interests. *See* TRO 16-21.[2]

The State sufficiently identified monetary and intangible injuries to the University of Hawaii. *See, e.g.*, Suppl. Decl. of Risa E. Dickson, Mot. for TRO, Ex. D-1, ECF No. 66-6; Original Dickson Decl., Mot. for TRO, Ex. D-2, ECF No. 66-7. The Court previously found these types of injuries to be nearly indistinguishable from those found sufficient to confer standing according to the Ninth Circuit's *Washington* decision. *See* 847 F.3d at 1161 ("The necessary connection can be drawn in at most two logical steps: (1) the Executive Order prevents nationals of seven countries from enter-

[2] The Court once again does not reach the State's alternative standing theory based on protecting the interests of its citizens as *parens patriae*. *See Washington*, 847 F.3d at 1168 n.5 ("The States have asserted other proprietary interests and also presented an alternative standing theory based on their ability to advance the interests of their citizens as *parens patriae*. Because we conclude that the States' proprietary interests as operators of their public universities are sufficient to support standing, we need not reach those arguments.").

ing Washington and Minnesota; (2) as a result, some of these people will not enter state universities, some will not join those universities as faculty, some will be prevented from performing research, and some will not be permitted to return if they leave. And we have no difficulty concluding that the States' injuries would be redressed if they could obtain the relief they ask for: a declaration that the Executive Order violates the Constitution and an injunction barring its enforcement."). The State also presented evidence of injury to its tourism industry. *See, e.g.,* SAC ¶ 100; Suppl. Decl. of Luis P. Salaveria, Mot. for TRO, Ex. C-1, ECF No. 66-4; Suppl. Decl. of George Szigeti, ¶¶ 5-8, Mot. for TRO, Ex. B-1, ECF No. 66-2.

For purposes of the instant Motion, the Court concludes that the State has preliminarily demonstrated that: (1) its universities will suffer monetary damages and intangible harms; (2) the State's economy is likely to suffer a loss of revenue due to a decline in tourism; (3) such harms can be sufficiently linked to the Executive Order; and (4) the State would not suffer the harms to its proprietary interests in the absence of implementation of the Executive Order. *See* TRO 21. These preliminary findings apply to each of the challenged Sections of the Executive Order. Accordingly, at this early stage of the litigation, the State has satisfied the requirements of Article III standing.

C. Dr. Elshikh Has Standing

Dr. Elshikh likewise has met his preliminary burden to establish standing to assert an Establishment Clause violation. *See* TRO 22-25. "The standing question, in plain English, is whether adherents to a religion have

standing to challenge an official condemnation by their government of their religious views[.] Their 'personal stake' assures the 'concrete adverseness' required." *See Catholic League for Religious & Civil Rights v. City & Cty. of San Francisco*, 624 F.3d 1043, 1048-49 (9th Cir. 2010) (en banc). Dr. Elshikh attests that the effects of the Executive Order are "devastating to me, my wife and children." Elshikh Decl. ¶ 6, Mot. for TRO, Ex. A, ECF No. 66-1; *see also id.* ¶¶ 1, 3 ("I am deeply saddened . . . . by the message that both [Executive Orders] convey—that a broad travel-ban is 'needed' to prevent people from certain Muslim countries from entering the United States."); SAC ¶ 90 ("Muslims in the Hawai'i Islamic community feel that the new Executive Order targets Muslim citizens because of their religious views and national origin. Dr. Elshikh believes that, as a result of the new Executive Order, he and members of the Mosque will not be able to associate as freely with those of other faiths."). The alleged injuries are sufficiently personal, concrete, particularized, and actual to confer standing in the Establishment Clause context. *E.g.,* SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3. These injuries have already occurred and will continue to occur if the Executive Order is implemented and enforced; the injuries are neither contingent nor speculative.

The final two aspects of Article III standing—causation and redressability—are also satisfied with respect to each of the Executive Order's challenged Sections. Dr. Elshikh's injuries are traceable to the new Executive Order and, if Plaintiffs prevail, a decision enjoining portions of the Executive Order would redress that injury. *See Catholic League*, 624 F.3d at

1053. At this preliminary stage of the litigation, Dr. Elshikh has accordingly carried his burden to establish standing under Article III.

The Court turns to the factors for granting preliminary injunctive relief.

II. Legal Standard: Preliminary Injunctive Relief

The underlying purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974); *see also Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir. 2006).

The Court applies the same standard for issuing a preliminary injunction as it did when considering Plaintiffs' Motion for TRO. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A "plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citation omitted).

The Court, in its discretion, may convert a temporary restraining order into a preliminary injunction. *See, e.g.*, *ABX Air, Inc. v. Int'l Bhd. of Teamsters*, No. 1:16-CV-1096, 2016 WL 7117388, at *5 (S.D. Ohio Dec. 7, 2016) (granting motion to convert TRO into a preliminary injunction because "Defendants fail to allege any material fact suggesting that, if a hearing were held, this Court would reach a different outcome"; "[n]othing has occurred to alter the analysis in the

Court's original TRO, and since this Court has already complied with the requirements for the issuance of a preliminary injunction, it can simply convert the nature of its existing Order."); *Productive People, LLC v. Ives Design*, No. CV-09-1080-PHX-GMS, 2009 WL 1749751, at *3 (D. Ariz. June 18, 2009) ("Because Defendants have given the Court no reason to alter the conclusions provided in its previous Order [granting a TRO], and because '[t]he standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction,' the Court will enter a preliminary injunction." (quoting *Brown Jordan Int'l, Inc. v. Mind's Eye Interiors, Inc.*, 236 F. Supp. 2d 1152, 1154 (D. Haw. 2002))). Here, the parties were afforded notice, a full-briefing on the merits, and a hearing both prior to entry of the original TRO and prior to consideration of the instant Motion.

For the reasons that follow and as set forth more fully in the Court's TRO, Plaintiffs have met their burden here.

III. Analysis of Factors: Likelihood of Success on the Merits

The Court's prior finding that Plaintiffs sufficiently established a likelihood of success on the merits of their Count I claim that the Executive Order violates the Establishment Clause remains undisturbed. *See* TRO 30-40.[3]

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[3] The Court again expresses no view on Plaintiffs' additional statutory or constitutional claims.

A. Establishment Clause

Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971), provides the benchmark for evaluating whether governmental action is consistent with or at odds with the Establishment Clause. According to *Lemon*, government action (1) must have a primary secular purpose, (2) may not have the principal effect of advancing or inhibiting religion, and (3) may not foster excessive entanglement with religion. *Id.* "Failure to satisfy any one of the three prongs of the *Lemon* test is sufficient to invalidate the challenged law or practice." *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1076-77 (9th Cir. 2010).

The Court determined in its TRO that the preliminary evidence demonstrates the Executive Order's failure to satisfy *Lemon*'s first test. *See* TRO 33-36. The Court will not repeat that discussion here. As no *new* evidence contradicting the purpose identified by the Court has been submitted by the parties since the issuance of the March 15, 2017 TRO, there is no reason to disturb the Court's prior determination.

Instead, the Federal Defendants take a different tack. They once more urge the Court not to look beyond the four corners of the Executive Order. According to the Government, the Court must afford the President deference in the national security context and should not "'look behind the exercise of [the President's] discretion' taken 'on the basis of a facially legitimate and bona fide reason.'" Govt. Mem. in Opp'n to Mot. for TRO 42-43 (quoting *Kliendienst v. Mandel*, 408 U.S. 753, 770 (1972)), ECF No. 145. No binding authority, however, has decreed that Establishment Clause juris-

prudence ends at the Executive's door. In fact, *every court* that has considered whether to apply the Establishment Clause to either the Executive Order or its predecessor (regardless of the ultimate outcome) has done so.[4] Significantly, this Court is constrained by the binding precedent and guidance offered in *Washington*. There, citing *Lemon*, the Ninth Circuit clearly indicated that the Executive Order is subject to the very type of secular purpose review conducted by this

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[4] *See Sarsour v. Trump*, No. 1:17-cv-00120 AJT-IDD, 2017 WL 1113305, at *11 (E.D. Va. Mar. 27, 2017) ("[T]he Court rejects the Defendants' position that since President Trump has offered a legitimate, rational, and non-discriminatory purpose stated in EO-2, this Court must confine its analysis of the constitutional validity of EO-2 to the four corners of the Order.") (citations omitted); *Int'l Refugee Assistance Project v. Trump*, No. TDC-17-0361, 2017 WL 1018235, at *16 (D. Md. Mar. 16, 2017) ("Defendants argue that because the Establishment Clause claim implicates Congress's plenary power over immigration as delegated to the President, the Court need only consider whether the Government has offered a 'facially legitimate and bona fide reason' for its action. *Mandel*, 408 U.S. at 777 . . . . [A]lthough '[t]he Executive has broad discretion over the admission and exclusion of aliens,' that discretion 'may not transgress constitutional limitations,' and it is 'the duty of the courts' to 'say where those statutory and constitutional boundaries lie.' *Abourezk[v. Reagan]*, 785 F.2d [1043,] 1061 [(D.C. Cir. 1986)]."); *Aziz v. Trump*, No. 1:17-CV-116 LMB-TCB, 2017 WL 580855, at *8 (E.D. Va. Feb. 13, 2017) ("Moreover, even if Mandel[, 408 U.S. at 770,] did apply, it requires that the proffered executive reason be 'bona fide.' As the Second and Ninth Circuits have persuasively held, if the proffered 'facially legitimate' reason has been given in 'bad faith,' it is not 'bona fide.' *Am. Academy of Religion v. Napolitano*, 573 F.3d 115, 126 (2d Cir. 2009); *Bustamante v. Mukasey*, 531 F.3d 1059, 1062 (9th Cir. 2008). That leaves the Court in the same position as in an ordinary secular purpose case: determining whether the proffered reason for the EO is the real reason.")).

Court in considering the TRO. *Washington*, 847 F.3d at 1167-68; *id.* at 1162 (stating that *Mandel* does not apply to the "promulgation of sweeping immigration policy" at the "highest levels of the political branches").

The Federal Defendants' arguments, advanced from the very inception of this action, make sense from this perspective—where the "historical context and 'the specific sequence of events leading up to'" the adoption of the challenged Executive Order are as full of religious animus, invective, and obvious pretext as is the record here, it is no wonder that the Government urges the Court to altogether ignore that history and context. *See McCreary Cty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 862 (2005). The Court, however, declines to do so. *Washington*, 847 F.3d at 1167 ("It is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims."). The Court will not crawl into a corner, pull the shutters closed, and pretend it has not seen what it has.[5] The Supreme Court and this Circuit both dictate otherwise, and that is the law this Court is bound to follow.

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[5] *See Int'l Refugee Assistance Project*, 2017 WL 1018235, at *14 ("Defendants have cited no authority concluding that a court assessing purpose under the Establishment Clause may consider only statements made by government employees at the time that they were government employees. Simply because a decisionmaker made the statements during a campaign does not wipe them from the 'reasonable memory' of a 'reasonable observer.'" (quoting *McCreary*, 545 U.S. at 866)).

B. Future Executive Action

The Court's preliminary determination does not foreclose future Executive action. The Court recognizes that it is not the case that the Administration's past conduct must forever taint any effort by it to address the security concerns of the nation. *See* TRO 38-39. Based upon the preliminary record available, however, one cannot conclude that the actions taken during the interval between revoked Executive Order No. 13,769 and the new Executive Order represent "*genuine* changes in constitutionally significant conditions." *McCreary*, 545 U.S. at 874 (emphasis added).

The Government emphasizes that "the Executive Branch revised the new Executive Order to avoid any Establishment Clause concerns," and, in particular, removed the preference for religious minorities provided in Executive Order No. 13,769. Mem. in Opp'n 21, ECF No. 251. These efforts, however, appear to be precisely what Plaintiffs characterize them to be: efforts to "sanitize [Executive Order No. 13,769's] refugee provision in order to 'be responsive to a lot of very technical issues that were brought up by the court.'" Mem. in Supp. of Mot. to Convert TRO to Prelim. Inj. 20, ECF No. 238-1 [hereinafter PI Mem.] (quoting SAC ¶ 74(a)). Plaintiffs also direct the Court to the President's March 15, 2017 description of the Executive Order as "a watered-down version of the first one." PI Mem. 20 (citing Katyal Decl. 7, Ex. A, ECF No. 239-1). "[A]n implausible claim that governmental purpose has changed should not carry the day in a court of law any more than in a head with common sense." *McCreary*, 545 U.S. at 874.

IV. Analysis of Factors: Irreparable Harm

Irreparable harm may be *presumed* with the finding of a violation of the First Amendment. *See Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). Because Dr. Elshikh is likely to succeed on the merits of his Establishment Clause claim, the Court finds that the second factor of the *Winter* test is satisfied—that Dr. Elshikh is likely to suffer irreparable, ongoing, and significant injury in the absence of a preliminary injunction. *See* TRO 40 (citing SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3).

V. Analysis of Factors: Balance of Equities And Public Interest

The final step in determining whether to grant Plaintiffs' Motion is to assess the balance of equities and examine the general public interests that will be affected. The Court acknowledges Defendants' position that the Executive Order is intended "to protect the Nation from terrorist activities by foreign nationals admitted to the United States[.]" Exec. Order, preamble. National security is unquestionably of vital importance to the public interest. The same is true with respect to affording appropriate deference to the President's constitutional and statutory responsibilities to set immigration policy and provide for the national defense. Upon careful consideration of the totality of the circumstances, however, the Court reaffirms its prior finding that the balance of equities and public interest weigh in favor of maintaining the status quo.

As discussed above and in the TRO, Plaintiffs have shown a strong likelihood of succeeding on their claim that the Executive Order violates First Amendment rights under the Constitution. *See* TRO 41-42; *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is *always* in the public interest to prevent the violation of a party's constitutional rights." (emphasis added) (citing *Elrod*, 427 U.S. at 373)).

VI. Scope of Preliminary Injunction: Sections 2 And 6

Having considered the constitutional injuries and harms discussed above, the balance of equities, and public interest, the Court hereby grants Plaintiffs' request to convert the existing TRO into a preliminary injunction. The requested nationwide relief is appropriate in light of the likelihood of success on Plaintiffs' Establishment Clause claim. *See, e.g., Texas v. U.S.*, 809 F.3d 134, 188 (5th Cir. 2015) ("[Because] the Constitution vests [district courts] with 'the judicial Power of the United States' . . . , [i]t is not beyond the power of the court, in appropriate circumstances, to issue a nationwide injunction." (citing U.S. Const. art. III, § 1)), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016); *see also Washington*, 847 F.3d at 1167 ("Moreover, even if limiting the geographic scope of the injunction would be desirable, the Government has not proposed a workable alternative form of the TRO that accounts for the nation's multiple ports of entry and interconnected transit system and that would protect the proprietary interests of the States at issue here while nevertheless applying only within the States' borders.").

The Government insists that the Court, at minimum, limit any preliminary injunction to Section 2(c) of the Executive Order. It makes little sense to do so. That is because the entirety of the Executive Order runs afoul of the Establishment Clause where "openly available data support[] a commonsense conclusion that a religious objective permeated the government's action," and not merely the promulgation of Section 2(c). *McCreary*, 545 U.S. at 863; *see* SAC ¶¶ 36-38, 58, 107; TRO 16, 24-25, 42. Put another way, the historical context and evidence relied on by the Court, highlighted by the comments of the Executive and his surrogates, does not parse between Section 2 and Section 6, nor does it do so between subsections within Section 2. Accordingly, there is no basis to narrow the Court's ruling in the manner requested by the Federal Defendants.[6] *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 539-40 (1993) ("[It would be]

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[6] Plaintiffs further note that the Executive Order "bans refugees at a time when the publicized refugee crisis is focused on Muslim-majority nations." Reply in Supp. of Mot. to Convert TRO to Prelim. Inj. 14. Indeed, according to Pew Research Center analysis of data from the State Department's Refugee Processing Center, a total of 38,901 Muslim refugees entered the United States in fiscal year 2016, accounting for nearly half of the almost 85,000 refugees who entered the country during that period. *See* Br. of Chicago, Los Angeles, New York, Philadelphia, & Other Major Cities & Counties as Amici Curiae in Supp. of Pls.' Mot. to Convert TRO to Prelim. Inj. 12, ECF No. 271-1 (citing Phillip Connor, *U.S. Admits Record Number of Muslim Refugees in 2016*, Pew Research Center (Oct. 5, 2016), http://www.pewresearch.org/fact-tank/2016/10/05/u-s-admits-record-number-ofmuslim-refugees-in-2016). "That means the U.S. has admitted the highest number of Muslim refugees of any year since date of self-reported religious affiliations first became publicly available in 2002." *Id.*

implausible to suggest that [Section 2(c)] but not the [other Sections] had as [its] object the suppression of [or discrimination against a] religion. . . . We need not decide whether the Ordinance 87-72 could survive constitutional scrutiny if it existed separately; it must be invalidated because it functions, with the rest of the enactments in question, to suppress Santeria religious worship.").

The Court is cognizant of the difficult position in which this ruling might place government employees performing what the Federal Defendants refer to as "inward-facing" tasks of the Executive Order. Any confusion, however, is due in part to the Government's failure to provide a workable framework for narrowing the scope of the enjoined conduct by specifically identifying those portions of the Executive Order that are in conflict with what it merely argues are "internal governmental communications and activities, most if not all of which could take place in the absence of the Executive Order but the status of which is now, at the very least, unclear in view of the current TRO." Mem. in Opp'n 29. The Court simply cannot discern, on the present record, a method for determining which enjoined provisions of the Executive Order are causing the alleged confusion asserted by the Government. *See, e.g.*, Mem. in Opp'n 28 ("[A]n internal review of procedures obviously can take place independently of the 90-day suspension-of-entry provision (though doing so would place additional burdens on the Executive Branch, which is one of the several reasons for the 90-day suspension (citing Exec. Order No. 13,780, § 2(c)). Without more, "even if the [preliminary injunction] might be overbroad in some respects, it is not our role to try, in

effect, to rewrite the Executive Order." *Washington*, 847 F.3d at 1167.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion to Convert Temporary Restraining Order to A Preliminary Injunction is hereby GRANTED.

PRELIMINARY INJUNCTION

It is hereby ADJUDGED, ORDERED, and DECREED that:

Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court.

No security bond is required under Federal Rule of Civil Procedure 65(c).

The Court declines to stay this ruling or hold it in abeyance should an appeal of this order be filed.

IT IS SO ORDERED.

Dated: Mar. 29, 2017 at Honolulu, Hawai'i.

[SEAL OMITTED]

/s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-15589
D.C. No. 1:17-cv-00050-DKW-KSC

STATE OF HAWAII; ISMAIL ELSHIKH,
PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX W. TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; UNITED STATES OF AMERICA,
DEFENDANTS-APPELLANTS

Argued and Submitted: May 15, 2017
Seattle, Washington
[Filed: June 12, 2017]

OPINION

Appeal from the United States District Court
for the District of Hawai'i
Derrick Kahala Watson, District Judge, Presiding

Before: MICHAEL DALY HAWKINS, RONALD M. GOULD, and RICHARD A. PAEZ, Circuit Judges.

OPINION[1]

PER CURIAM:

We are asked to delineate the statutory and constitutional limits to the President's power to control immigration in this appeal of the district court's order preliminarily enjoining two sections of Executive Order 13780 ("EO2" or "the Order"), "Protecting the Nation From Foreign Terrorist Entry Into the United States." The Immigration and Nationality Act ("INA") gives the President broad powers to control the entry of aliens, and to take actions to protect the American public. But immigration, even for the President, is not a one-person show. The President's authority is subject to certain statutory and constitutional restraints. We conclude that the President, in issuing the Executive Order, exceeded the scope of the authority delegated to him by Congress. In suspending the entry of more than 180 million nationals from six countries, suspending the entry of all refugees, and reducing the cap on the admission of refugees from 110,000 to 50,000 for the 2017 fiscal year, the President did not meet the essential precondition to exercising his delegated authority: The President must make a sufficient finding that the entry of these classes of people would be "detrimental to the interests of the United States." Further, the Order runs afoul of other provisions of the INA that prohibit nationality-based discrimination and require the President to follow a specific process when setting the annual cap on the admission of refugees. On these statutory bases, we affirm in large part the

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[1] We thank the parties and their counsel, as well as the amici, for their excellent briefs and arguments in this case.

district court's order preliminarily enjoining Sections 2 and 6 of the Executive Order.

I

A

One week after inauguration and without interagency review, President Donald J. Trump issued Executive Order 13769 ("EO1"). Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).[2] Entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States," EO1's stated purpose was to "protect the American people from terrorist attacks by foreign nationals admitted to the United States." *Id.* EO1 recited that "[n]umerous 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." *Id.*

EO1 mandated two main courses of action to assure that the United States remain "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." *Id.* In Section 3, the President invoked his authority under 8 U.S.C. § 1182(f) to suspend for 90 days immigrant and nonimmigrant entry into the United States of nationals from seven majority-Muslim countries: Iraq, Iran, Libya, Sudan, Somalia, Syria, and Yemen. *See id.* at 8978. In Section 5, the President immediately suspended the U.S.

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[2] EO1 was a predecessor to Executive Order 13780, which is the subject of the current appeal.

Refugee Admissions Program ("USRAP") for 120 days, imposed a ban of indefinite duration on the entry of refugees from Syria, and limited the entry of refugees to 50,000 in fiscal year 2017. *Id.* at 8979. EO1 also ordered that changes be made to the refugee screening process "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." *Id.* EO1 permitted the Secretaries of State and Homeland Security to make case-by-case exceptions to these restrictions "when in the national interest," and explained that it would be in the national interest "when the person is a religious minority in his country of nationality facing religious persecution." *Id.*

EO1 took immediate effect, causing great uncertainty as to the scope of the order, particularly in its application to lawful permanent residents. Notably, federal officials themselves were unsure as to the scope of EO1, which caused mass confusion at airports and other ports of entry. *See* Brief of the Foundation of Children of Iran and Iranian Alliance Across Borders as Amici Curiae, Dkt. No. 77 at 11-12 (describing how an Iranian visa holder was turned away while en route to the United States because of the confusion regarding the contours of EO1's scope); Brief of Former National Security Officials as Amici Curiae, Dkt. No. 108 at 25 n.53 & 54 (noting confusion at airports because officials were neither consulted nor informed of EO1 in advance).

Shortly after EO1 issued, the States of Washington and Minnesota filed suit in the Western District of Washington to enjoin EO1. On February 3, 2017, the district court granted a temporary restraining order

("TRO"). *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017). On February 4, 2017, the Government filed an emergency motion in our court, seeking a stay of the TRO pending appeal.

On February 9, 2017, this court denied the Government's emergency motion for a stay of the injunction. *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (per curiam), *reconsideration en banc denied*, 853 F.3d 933 (9th Cir. 2017). In so doing, the panel rejected the Government's arguments that EO1 was wholly unreviewable. *See id.* at 1161-64. After determining that the states had standing based on the alleged harms to their proprietary interests, *id.* at 1159-61, this court concluded that the states demonstrated a likelihood of success on their procedural due process claim, at least as to lawful permanent residents and nonimmigrant visa holders, *id.* at 1164-66. The panel did not review the states' other claims, including the statutory-based claims. *Id.* at 1164.

Rather than continue with the litigation, the Government filed an unopposed motion to voluntarily dismiss the underlying appeal after the President signed EO2. On March 8, 2017, this court granted that motion, which substantially ended the story of EO1. The curtain opens next to the present controversy regarding EO2.

B

On March 6, 2017, the President issued EO2, also entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States." Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017). The revised

Order was to take effect on March 16, 2017, at which point EO1 would be revoked. *Id.* at 13218. The Order expressly stated that EO1 "did not provide a basis for discriminating for or against members of any particular religion" and was "not motivated by animus toward any religion." *Id.* at 13210.

Section 2—"Temporary Suspension of Entry for Nationals of Countries of Particular Concern During Review Period"—reinstates the 90-day ban on travel for nationals of six of the seven majority-Muslim countries identified in EO1: Iran, Libya, Somalia, Sudan, Syria, and Yemen. *Id.* at 13213. Section 2 also directs the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence to "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." *Id.* at 13212. Section 2(c) states in full:

> 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.

Id. at 13213.

Regarding the six identified countries, EO2 explains:

> 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.

Id. at 13210. Based on the conditions of these six countries, "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." *Id.* at 13211.

The Order states that it no longer includes Iraq on the list of designated countries because of Iraq's "close cooperative relationship" with the United States and its recent efforts to enhance its travel documentation procedures. *Id.* at 13212. The Order also states that its scope has been narrowed from EO1 in response to "judicial concerns" about the suspension of entry with respect to certain categories of aliens. *Id.* EO2 applies only to individuals outside of the United States who do not have a valid visa as of the issuance of EO1 or EO2. EO2, unlike EO1, expressly exempts lawful permanent residents, dual citizens traveling under a passport issued by a country not on the banned list, asylees, and refugees already admitted to the United States. *See id.* at 13213-14. The Order also provides that consular officers or Customs and Border Protection officials can exercise discretion in authorizing case-by-case waivers to issue visas and grant entry during the suspension period, and offers examples of when waivers "could be appropriate." *See id.* at 13214-15.

Section 6—"Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017"—suspends USRAP for 120 days. *Id.* at 13215. During this period, the heads of certain executive agencies are directed to review the current USRAP application and adjudication processes, and to determine the additional procedures that "should" be required for individuals seeking admission as refugees. *See id.* at 13215-16. Invoking 8 U.S.C. § 1182(f), Section 6(b) reduces the number of

refugees to be admitted from 110,000 to 50,000 in fiscal year 2017. *Id.* at 13216. The Order also removes EO1's preference for refugees facing persecution as a member of a minority religion, and no longer imposes a complete ban on Syrian refugees. Section 6 further provides for discretionary case-by- case waivers. *Id.*

EO2 supplies additional information relevant to national security concerns. The Order includes excerpts from the State Department's 2015 Country Reports on Terrorism, that it asserts demonstrate "why . . . nationals [from the designated countries] continue to present heightened risk to the security of the United States." *Id.* at 13210; *see id.* at 13210-11 (providing a brief description of country conditions for each of the designated countries). The Order states that foreign nationals and refugees have committed acts of terrorism:

> 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.

Id. at 13212. EO2 does not discuss any instances of domestic terrorism involving nationals from Iran, Libya, Sudan, Syria, or Yemen.

C

Two versions of a report from the Department of Homeland Security ("DHS") surfaced after EO1 issued. First, a draft report from DHS, prepared about one month after EO1 issued and two weeks prior to EO2's issuance, concluded that citizenship "is unlikely to be a reliable indicator of potential terrorist activity" and that citizens of countries affected by EO1 are "[r]arely [i]mplicated in U.S.-[b]ased [t]errorism." Specifically, the DHS report determined that since the spring of 2011, at least eighty-two individuals were inspired by a foreign terrorist group to carry out or attempt to carry out an attack in the United States. Slightly more than half were U.S. citizens born in the United States, and the remaining persons were from twenty-six different countries—with the most individuals originating from Pakistan, followed by Somalia, Bangladesh, Cuba, Ethiopia, Iraq, and Uzbekistan. *Id.* Of the six countries included in EO2, only Somalia was identified as being among the "top" countries-of- origin for the terrorists analyzed in the report. During the time period covered in the report, three offenders were from

Somalia; one was from Iran, Sudan, and Yemen each; and none was from Syria or Libya. The final version of the report, issued five days prior to EO2, concluded "that most foreign-born, [U.S.]-based violent extremists likely radicalized several years *after* their entry to the United States, [thus] limiting the ability of screening and vetting officials to prevent their entry because of national security concerns" (emphasis added).

The same day EO2 issued, Attorney General Jefferson B. Sessions III and Secretary of Homeland Security John F. Kelly submitted a letter to the President recommending that he "direct[] a temporary pause in entry" from countries that are "unable or unwilling to provide the United States with adequate information about their nationals" or are designated as "state sponsors of terrorism."

D

The State of Hawai'i ("the State") filed a motion for a TRO seeking to enjoin EO1, which the District of Hawai'i did not rule on because of the nationwide TRO entered in the Western District of Washington. After EO2 issued, the State filed an amended complaint challenging EO2 in order "to protect its residents, its employers, its educational institutions, and its sovereignty." Dr. Elshikh, the Imam of the Muslim Association of Hawai'i, joined the State's challenge because the Order "inflicts a grave injury on Muslims in Hawai'i, including Dr. Elshikh, his family, and members of his Mosque." In 2015, Dr. Elshikh's wife filed an I-130 Petition for Alien Relative on behalf of her mother—Dr. Elshikh's mother-in-law—a Syrian national living in Syria. Dr. Elshikh fears that his mother- in-law will

not be able to enter the United States if EO2 is implemented. Plaintiffs named as Defendants Donald J. Trump, in his official capacity as President of the United States; the U.S. Department of Homeland Security; John F. Kelly, in his official capacity as Secretary of Homeland Security; the U.S. Department of State; Rex W. Tillerson, in his official capacity as Secretary of State; and the United States of America (collectively referred to as "the Government").

Plaintiffs allege that EO2 suffers similar constitutional and statutory defects as EO1 and claim that the Order violates: the Establishment Clause of the First Amendment; the equal protection guarantees of the Fifth Amendment's Due Process Clause on the basis of religion and/or national origin, nationality, or alienage; the Due Process Clause of the Fifth Amendment based on substantive due process rights; the Due Process Clause of the Fifth Amendment based on procedural due process rights; the Immigration and Nationality Act; the Religious Freedom Restoration Act; and the Administrative Procedure Act. For their INA claim, Plaintiffs specifically contend that EO2 violates the INA by discriminating on the basis of nationality, ignoring and modifying the statutory criteria for determining terrorism-related inadmissibility, and exceeding the President's delegated authority under the INA.[3] Plaintiffs also filed a motion for a TRO along with their amended complaint.

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[3] On appeal, Plaintiffs also contend that EO2 violates the INA because it ignores the codified procedures for setting annual refugee admissions provided in 8 U.S.C. § 1157.

On March 15, 2017, the district court granted the TRO, holding that Plaintiffs had shown a likelihood of success on the merits of their Establishment Clause claim, and entered a nationwide injunction prohibiting enforcement of Sections 2 and 6 of EO2. *See Hawai'i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 1011673 (D. Haw. Mar. 15, 2017) ("*Hawai'i TRO*"). On March 29, 2017, the district court granted Plaintiffs' motion to convert the TRO to a preliminary injunction. *See Hawai'i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 1167383 (D. Haw. Mar. 29, 2017) ("*Hawai'i PI*"). The district court declined to narrow the scope of the injunction, concluding that the entirety of Sections 2 and 6 of the Order ran afoul of the Establishment Clause and that the Government did not provide a workable framework for narrowing the scope of the enjoined conduct. *See id.* at *8. The court entered the following injunction:

> Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court.

Id. at *9.

On March 30, 2017, the Government filed a notice of appeal. This court granted the Government's unopposed motion to expedite the case. The Govern-

ment requests that this court vacate the preliminary injunction, or at least narrow the injunction, and also stay the injunction pending appeal.

II

The district court held that Plaintiffs were entitled to preliminary relief because they had made a strong showing of success on the merits of their Establishment Clause claim. Applying the secular purpose test from *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971), and relying on the historical record that contained "significant and unrebutted evidence of religious animus driving the promulgation of the Executive Order," the district court concluded that EO2 was issued with an intent to disfavor people of Islamic faith. *See Hawai'i TRO*, 2017 WL 1011673, at *12-16. In so doing, the district court decided an important and controversial constitutional claim without first expressing its views on Plaintiffs' statutory claims, including their INA-based claim. *See id.* at *11 n.11.

The INA claim was squarely before the district court and briefed and argued before this court. Mindful of the Supreme Court's admonition that "courts should be extremely careful not to issue unnecessary constitutional rulings," "[p]articularly where, as here, a case implicates the fundamental relationship between the Branches," we think it appropriate to turn first to the INA claim. *Am. Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153, 161 (1989) (per curiam); *accord Lying v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988) ("A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching

constitutional questions in advance of the necessity of deciding them.").

After first determining that Plaintiffs have standing to assert their INA-based statutory claim, we conclude that Plaintiffs have shown a likelihood of success on the merits of that claim and that the district court's preliminary injunction order can be affirmed in large part based on statutory grounds. For reasons further explained below, we need not, and do not, reach the Establishment Clause claim to resolve this appeal. *See Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) ("[I]f a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.").

III

Before turning to our review of Plaintiffs' statutory claim, we first address the Government's challenge to the preliminary injunction order on justiciability grounds. The Government contends both that Plaintiffs lack standing to pursue this case and that the case is not yet ripe. The Government further contends that the consular nonreviewability doctrine bars this court from reviewing EO2. We address each contention in turn.

A

"Article III of the Constitution limits federal-court jurisdiction to 'Cases' and 'Controversies.'" *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy" and limits who may

"maintain a lawsuit in federal court to seek redress for a legal wrong." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). "At this very preliminary stage of the litigation, [Plaintiffs] may rely on the allegations in their [amended complaint] and whatever other evidence they submitted in support of their [preliminary injunction] motion to meet their burden." *Washington*, 847 F.3d at 1159; *see Lujan*, 504 U.S. at 561.

The district court determined that both the State of Hawai'i and Dr. Elshikh have standing to pursue their Establishment Clause claim. *See Hawai'i TRO*, 2017 WL 1011673, at *7-10. The Government argues that Plaintiffs fail to satisfy the requirements of Article III standing to bring their Establishment Clause claim. Plaintiffs must establish standing for each of their claims. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). As we do not reach Plaintiffs' Establishment Clause claim, we address only whether Plaintiffs have standing to challenge EO2 based on their INA-based statutory claim and conclude that they do.

1

Dr. Elshikh is an American citizen of Egyptian descent. He alleges that EO2 will prevent his mother-in-law from obtaining a visa to reunite with her family. His mother-in-law is a Syrian national currently living in Syria; she last visited her family in Hawai'i in 2005 and has not yet met two of her five grandchildren. Dr. Elshikh's wife filed an I-130 Petition for Alien Relative on behalf of her mother in September 2015, and the petition was approved in February 2016. After EO1 issued, Dr. Elshikh was told that his mother-in-law's visa application for an immigrant visa had been put on hold. After EO1 was enjoined, he was notified that the application had progressed to the next stage of the process, and that her interview would be scheduled at an embassy overseas. Dr. Elshikh understandably and reasonably fears that EO2 will prevent his mother-in-law from entering the country.[4] Dr. Elshikh asserts that he has standing based on the barriers EO2 imposes in preventing him from reuniting his mother-in-law with his family.

This court and the Supreme Court have reviewed the merits of cases brought by U.S. residents with a

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[4] Dr. Elshikh also alleges that EO2 results in a disfavored religion in Hawai'i and the United States; that the Order communicates to his five children that their own country discriminates against individuals who share their ethnicity and religious beliefs; and that the Order has caused members of the Islamic community in Hawai'i, including members of his mosque, to feel that Muslim citizens are targeted because of their religion and national origin. For purposes of determining standing to pursue the INA-based statutory claim, we need not address these aspects of Dr. Elshikh's injury.

specific interest in the entry of a foreigner. *See, e.g.*, *Kerry v. Din*, 135 S. Ct. 2128, 2131 (2015) (involving a challenge by a U.S. citizen to the denial of her husband's visa); *Kleindienst v. Mandel*, 408 U.S. 753, 756-60 (1972) (addressing a challenge by American professors to the denial of a visa to a journalist they had invited to speak at several academic events); *Cardenas v. United States*, 826 F.3d 1164, 1167 (9th Cir. 2016) (determining that a U.S. citizen could challenge the denial of her husband's visa). Most similar to this case, in *Legal Assistance for Vietnamese Asylum Seekers v. Department of State, Bureau of Consular Affairs*, the D.C. Circuit determined that visa sponsors had standing to assert that the State Department's refusal to process visa applications of Vietnamese citizens living in Hong Kong violated 8 U.S.C. § 1152. 45 F.3d 469, 471-73 (D.C. Cir. 1995), *vacated on other grounds*, 519 U.S. 1 (1996). The court explained that the State Department's actions prolonged the separation of immediate family members, which resulted in injury to the sponsors. *Id.*

Dr. Elshikh seeks to reunite his mother-in-law with his family and similarly experiences prolonged separation from her. By suspending the entry of nationals from the six designated countries, including Syria, EO2 operates to delay or prevent the issuance of visas to nationals from those countries, including Dr. Elshikh's mother-in-law. Dr. Elshikh has alleged a concrete harm because EO2, specifically the operation of Section 2, is a barrier to reunification with his mother-in-law in light of her stalled visa process. *See id.* (holding that U.S. resident sponsors had standing to challenge the State Department's refusal to process visa applications); *Int'l Refugee Assistance Project v. Trump*,

— F.3d —–, No. 17-1351, 2017 WL 2273306, at *10 (4th Cir. May 25, 2017) (en banc), *as amended* (May 31, 2017) (identifying prolonged separation between plaintiff and his wife as a concrete harm). That his mother-in-law's visa application process was placed on hold when EO1 took effect, but moved forward when EO1 was enjoined, further shows that Dr. Elshikh's injury is concrete, real, and immediate if EO2 takes effect. Dr. Elshikh has thus alleged a sufficient injury-in-fact. While not challenged by the Government, it is also clear that Dr. Elshikh has established causation and redressability. His injuries are fairly traceable to the Order, satisfying causation, and enjoining EO2 will remove a barrier to reunification and redress that injury, satisfying redressability.

Dr. Elshikh has met the requirements for constitutional standing with respect to the INA-based statutory claim.

2

The State of Hawai'i alleges two primary theories of harm in asserting its standing: harm to its proprietary interests and impairment of its sovereign interests.

"[L]ike other associations and private parties, a State is bound to have a variety of proprietary interests. A State may, for example, own land or participate in a business venture." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982). "And like other such proprietors [the State] may at times need to pursue those interests in court." *Id.* at 601-02.

The State asserts that it has standing because of the injuries inflicted on its university. The University of

Hawai'i ("the University"), which the State operates, has twenty-three graduate students, at least twenty-nine visiting faculty members, and other permanent faculty members from the six countries designated in EO2. The State asserts that EO2 constrains the University's ability to recruit and enroll undergraduate and graduate students, and recruit and hire visiting faculty from the affected countries. The State also contends that EO2 threatens the University's ability to fulfill its educational mission by hampering recruitment of diverse students, preventing scholars from considering employment at the University, dissuading current professors and scholars from continuing their scholarship at the University, hindering the free flow of ideas, and harming its values of inclusiveness and tolerance.

Given the timing of the admissions cycle and this litigation, the State concedes that it is too soon to determine the full impact on recruitment, but asserts that individuals who are not current visa holders or lawful permanent residents would be precluded from considering the University. In its opposition brief, the State gave updated information, explaining that eleven graduate students from the countries affected by the Order have been admitted, and the University was still considering applications from twenty-one other affected applicants. After the case was submitted, Plaintiffs supplemented the record with further updates on the University's admissions cycle.[5] At least three graduate students, each from one of the six des-

[5] The Government did not oppose Plaintiffs' motion for leave to supplement the record, and we granted the motion.

ignated countries, have accepted their offers of admission and have committed to attending the University. There are eleven graduate student applicants, each from one of the six designated countries, with pending offers of admission for the 2017-18 school year. University classes begin on August 21, 2017, but at least two of the students who have accepted their offers of admission must be present on campus by August 1, 2017 and August 10, 2017, respectively, for their graduate programs. The State further explains that if EO2 takes effect now, these students' ability to obtain visas will be impeded.

Before Plaintiffs supplemented the record, the Government argued that the State had not identified any prospective student or faculty member who wished to enter the country *during* Section 2(c)'s 90-day period. However, the State's alleged harm is that EO2 *presently* constrains their recruitment efforts for students and faculty, and that EO2 deters prospective students and faculty members. Given the short admissions cycle—from when the University offers admissions to when international students must decide whether to attend—and the uncertainty of whether EO2 will inhibit their ability to secure a visa before the fall semester begins, EO2's deterrent effect is an injury that is "concrete" and "imminent," as opposed to merely "speculative." *See Lujan*, 504 U.S. at 560-61 (internal quotation marks omitted). Of course, a student who is not permitted to obtain a visa and enter our country would not accept an offer of admission.

The Government next contends that Plaintiffs cannot rely on events that unfolded after the filing of the complaint to establish standing. This argument is not

persuasive. The State had previously contended that its recruitment was constrained by EO2 and its supplemental declaration merely provides greater detail regarding the students who may be unable to join the academic community this fall if EO2 takes effect. We consider the supplemental information as further evidence that EO2 will harm the State because students affected by Section 2(c) may not attend the University, and the University will lose tuition and educational benefits.

The State's standing can thus be grounded in its proprietary interests as an operator of the University. EO2 harms the State's interests because (1) students and faculty suspended from entry are deterred from studying or teaching at the University; and (2) students who are unable to attend the University will not pay tuition or contribute to a diverse student body. *See Washington*, 847 F.3d at 1161 (holding that states, as operators of universities, had Article III standing to challenge EO1 based on harms to their proprietary interests); *Texas v. United States*, 809 F.3d 134, 155-63 (5th Cir. 2015), *as revised* (Nov. 25, 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016) (holding that the state of Texas had standing to challenge the Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA") program based on its alleged injury of subsidizing driver's licenses to DAPA beneficiaries). We further conclude that the State has shown that its injury is fairly traceable to EO2 and that enjoining EO2 would redress its harm.

The State also presents an alternative standing theory: that the Order impairs its sovereign interests in carrying out its refugee policies, among other things.

A state has an interest in its "exercise of sovereign power over individuals and entities within the relevant jurisdiction," which "involves the power to create and enforce a legal code." *Alfred L. Snapp & Son*, 458 U.S. at 601. The State contends that EO2 hinders the exercise of its sovereign power to enforce its laws and policies and this inflicts an injury sufficient to provide the State standing to challenge the Order. The State has laws protecting equal rights, barring discrimination, and fostering diversity. *See, e.g.*, Haw. Const. art. 1, §§ 2, 5; Haw. Rev. Stat. §§ 489-3, 515-3. Specific to refugees, the State created the Office of Community Services ("OCS"), which is directed to "[a]ssist and coordinate the efforts of all public and private agencies providing services which affect the disadvantaged, refugees, and immigrants." Haw. Rev. Stat. § 371K-4. OCS operates multiple programs for refugees.

The State has resettled three refugees this fiscal year, and at least twenty since 2010. EO2 would prevent the State from assisting with refugee resettlement and thus prevent it from effectuating its policies aimed at assisting refugee and immigrant populations. *See id.* The State's requested injunctive relief would permit it to assist in the resettlement of refugees, at least through fiscal year 2017. As the State exercises "sovereign power over individuals and entities within the relevant jurisdiction" in administering OCS, we conclude, at this preliminary stage, that the State has made sufficient allegations to support standing to challenge the refugee-related provisions of EO2. *See Alfred L. Snapp & Son*, 458 U.S. at 601; *see also Virginia ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253, 269 (4th Cir. 2011)

(collecting cases where state was found to possess sovereign standing based on state statutes that regulated behavior or provided for the administration of a state program).

Concluding that Dr. Elshikh and the State have satisfied Article III's standing requirements,[6] we turn to whether Plaintiffs are within the "zone of interests" protected by the INA.

3

Because Plaintiffs allege a statutory claim, we must determine whether they meet the requirement of having interests that "fall within the zone of interests protected by the law invoked." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388 (2014) (internal quotation marks omitted).

We have little trouble determining that Dr. Elshikh is within the zone of interests of the INA to challenge EO2 based on this statutory claim. He asserts that the travel ban prevents his mother-in-law from reuniting with his family. *See Legal Assistance for Vietnamese Asylum Seekers*, 45 F.3d at 471-72 ("The INA authorizes the immigration of family members of United States citizens and permanent resident aliens. In origi-

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[6] The State has asserted other proprietary interests, including the loss of tourism revenue. The State also appears to present a standing theory based on its quasi-sovereign interests, as *parens patriae*, to secure its residents from the harmful effects of discrimination. We do not reach these arguments because we conclude that the State's proprietary interests, as an operator of the University of Hawai'i, and its sovereign interests, in carrying out its refugee programs and policies, are sufficient to confer standing. *See Washington*, 847 F.3d at 1161 n.5.

nally enacting the INA, Congress implemented the underlying intention of our immigration laws regarding the preservation of the family unit. Given the nature and purpose of the statute, the resident appellants fall well within the zone of interest Congress intended to protect." (internal quotation marks, citations, and alterations omitted)).

Likewise, the State's efforts to enroll students and hire faculty members who are nationals from the six designated countries fall within the zone of interests of the INA. The INA makes clear that a nonimmigrant student may be admitted into the United States. *See* 8 U.S.C. § 1101(a)(15)(F) (identifying students qualified to pursue a full course of study); 8 C.F.R. § 214.2(f) (providing the requirements for nonimmigrant students, including those in colleges and universities). The INA also provides that nonimmigrant scholars and teachers may be admitted into the United States. *See, e.g.*, 8 U.S.C. § 1101(a)(15)(J) (identifying students, scholars, trainees, teachers, professors, research assistants, specialists, or leaders in fields of specialized knowledge or skill); *id.* § 1101(a)(15)(H) (identifying aliens coming to perform services in a specialty occupation); *id.* § 1101(a)(15)(O) (identifying aliens with extraordinary abilities in the sciences, arts, education, business, or athletics). International students and visiting faculty may qualify for F-1 visas, J-1 27 visas, H-1B visas, or O-1 visas. *See* Directory of Visa Categories, U.S. Dep't of State, https://travel.state.gov/content/visas/en/general/all-visa-categories.html (last visited June 6, 2017). The INA leaves no doubt that the State's interests in student- and employment-based

visa petitions for its students and faculty are related to the basic purposes of the INA.

The State's interest in effectuating its refugee resettlement policies and programs also falls within the zone of interests protected by the INA. *See* 8 U.S.C. § 1101(a)(42) (defining "refugees"); *id.* § 1157 (providing the procedure for determining the number of refugee admissions). These provisions of the INA were amended to provide a "systematic procedure" for the admission of refugees into the United States, as well as "uniform provisions for the effective resettlement and absorption of those refugees who are admitted." Refugee Act of 1980, Pub. L. No. 96-212, § 101, 94 Stat. 102 (1980). The State argues that EO2 upsets this finely-tuned system devised by Congress.

We conclude that Plaintiffs' claims of injury as a result of the alleged statutory violations are, at the least, "*arguably* within the zone of interests" that the INA protects.[7] *Bank of Am. Corp. v. City of Miami, Fla.*, 137 S. Ct. 1296, 1303 (2017) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970)).

Plaintiffs have standing to assert their INA-based statutory claim that EO2 exceeds the scope of the President's authority under the INA and conflicts with various INA provisions.

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[7] The Government also argues that third party prudential standing limitations counsel against this court deciding Plaintiffs' Establishment Clause claim. To the extent this argument applies to Plaintiffs' INA-based statutory claim, we reject it because Plaintiffs have shown that they have suffered injuries as a result of EO2.

B

The Government next argues that Plaintiffs' claims are speculative and not ripe. "Ripeness is peculiarly a question of timing, designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1122 (9th Cir. 2009) (internal quotations marks and alteration omitted). "Our role is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000).

We are unpersuaded by the Government's arguments that *until* a student or faculty member requests a waiver and it is denied, or *until* Dr. Elshikh's mother-in-law requests a waiver and she is denied,[8] Plaintiffs injuries are not ripe because they assume "contingent future events that may not occur." *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotation marks omitted)).

Although the waiver may, in theory, provide students, visiting faculty members, or Dr. Elshikh's mother-in-law an opportunity to obtain visas, the waiver is

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[8] The Government needlessly argues that travel conditions in Syria make it speculative that Dr. Elshikh's mother-in-law would have made her application interview scheduled for May 24, 2017. This argument does not diminish Dr. Elshikh's argument that the Order's suspension of entry of nationals from the six designated countries creates a significant obstacle to reuniting his mother-in-law with him and his family.

discretionary. Indeed, no one can count on it. The Order poses hardships to nationals from the six designated countries by barring throughout the suspension period their ability to obtain visas. The waiver provision neither guarantees that waivers will be granted nor provides a process for applying for a waiver; moreover, the ultimate decision is clearly committed to a consular officer's discretion. *See* 82 Fed. Reg. at 13214 ("Case-by-case waivers *could be appropriate* in circumstances such as the following . . . .") (emphasis added); *id.* at 13219 (stating that nothing in the Order provides any "enforceable" rights). The discretionary waiver is not "a sufficient safety valve," *Washington*, 847 F.3d at 1169, and is a far cry from the "contingent future" argued by the Government. Here, nationals from the six designated countries, including Dr. Elshikh's mother-in-law and students who have accepted, or been offered, admission to the University of Hawai'i, are burdened by EO2 because they are not permitted entry, and whether they might obtain a waiver is speculative and at the discretion of a consular officer or a Customs and Border Protection official. *See* 82 Fed. Reg. at 13214.

We decline the Government's invitation to wait until Plaintiffs identify a visa applicant who was denied a discretionary waiver to assess whether Plaintiffs have shown a likelihood of success on the merits of their claims. Regardless of whether Dr. Elshikh's mother-in-law or the University's prospective students and faculty members might conceivably obtain such a waiver, they will face substantial hardship if we were to first require that they try to obtain a waiver before we will consider their case. *Cf. Abbott Labs. v. Gardner*,

387 U.S. 136, 149 (1967). We conclude that the claim is ripe for review.

C

Finally, the Government renews the argument it made before this court in *Washington v. Trump* that we may not review EO2 because the consular nonreviewability doctrine counsels that the decision to issue or withhold a visa is not subject to judicial review. *See Li Hing of Hong Kong, Inc. v. Levin*, 800 F.2d 970, 971 (9th Cir. 1986) ("[I]t has been consistently held that the consular official's decision to issue or withhold a visa is not subject either to administrative or judicial review."). We reject this argument.

Plaintiffs do not seek review of an individual consular officer's decision to grant or to deny a visa pursuant to valid regulations, which could implicate the consular nonreviewability doctrine. Plaintiffs instead challenge "the President's *promulgation* of sweeping immigration policy." *Washington*, 847 F.3d at 1162. Courts can and do review both constitutional and statutory "challenges to the substance and implementation of immigration policy." *Id.* at 1163; *see, e.g.*, *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 187-88 (1993) (addressing the merits of a challenge that an executive order violated the INA and the United Nations Convention Relating to the Status of Refugees); *INS v. Chadha*, 462 U.S. 919, 940-41 (1983) (addressing whether a section of the INA that authorized one House of Congress to invalidate a decision of the Executive to allow a deportable alien to remain in the United States was unconstitutional).

This case is justiciable because Plaintiffs seek judicial review of EO2, contending that EO2 exceeds the statutory authority delegated by Congress and constitutional boundaries. "This is a familiar judicial exercise." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012). We reject the Government's argument that the Order is not subject to judicial review. Although "[t]he Executive has broad discretion over the admission and exclusion of aliens, [] that discretion is not boundless. It extends only as far as the statutory authority conferred by Congress and may not transgress constitutional limitations. It is the duty of the courts, in cases properly before them, to say where those statutory and constitutional boundaries lie." *Abourezk v. Reagan*, 785 F.2d 1043, 1061 (D.C. Cir. 1986), *aff'd*, 484 U.S. 1 (1987).

Whatever deference we accord to the President's immigration and national security policy judgments does not preclude us from reviewing the policy at all. *See Rostker v. Goldberg*, 453 U.S. 57, 70 (1981) ("[D]eference does not mean abdication."); *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010) ("Our precedents, old and new, make clear that concerns of national security and foreign relations do not warrant abdication of the judicial role.").

We do not abdicate the judicial role, and we affirm our obligation "to say what the law is" in this case. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). We turn to the merits of the appeal of the preliminary injunction order.

IV

A

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Id.* at 20. We may affirm the district court's entry of the preliminary injunction "on any ground supported by the record." *Enyart v. Nat'l Conference of Bar Exam'rs, Inc.*, 630 F.3d 1153, 1159 (9th Cir. 2011).

B

We consider whether Plaintiffs are entitled to preliminary relief based on the likelihood that EO2 violates the INA.[9] First, we address whether the Presi-

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[9] This claim looks at whether the President appropriately exercised his authority under § 1182(f) by satisfying its precondition, and whether, and to what extent, his authority under § 1182(f) is cabined by other provisions of the INA. Because this challenge does not look at whether "the Executive exercises this [delegated and conditional exercise of] power *negatively*," *Mandel*, 408 U.S. at 770 (emphasis added), nor involves a constitutional challenge by a citizen to a visa denial on the basis of congressionally enumerated standards, *id.* at 769-70, but rather looks at whether the President exceeded the scope of his delegated authority, we do not apply *Mandel*'s "facially legitimate and bona fide reason," *id.*, standard. *See Sale*, 509 U.S. at 166-77 (reviewing whether the executive order complied with the INA without reference to *Mandel*'s standard).

dent complied with the conditions set forth in § 1182(f), which are necessary for invoking his authority. We next address the conflicts between EO2 and other provisions of the INA.

1

Under Article I of the Constitution, the power to make immigration laws "is entrusted exclusively to Congress." *Galvan v. Press*, 347 U.S. 522, 531 (1954); *see* U.S. Const. art. I, § 8, cl. 4 ("The Congress shall have Power . . . [t]o establish an uniform Rule of Naturalization . . . ."); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) ("[O]ver no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." (internal quotation marks omitted)); *id.* at 796 ("The conditions of entry for every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification . . . have been recognized as matters solely for the responsibility of the Congress . . . ." (internal quotation marks omitted)).

In the INA of 1952, Congress delegated some of its power to the President through Section 212(f), which provides:

> 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).

In Section 2(c) of the Order, the President invokes this power along with § 1185(a)[10] to suspend for 90 days the entry of nationals from the six designated countries. *See* 82 Fed. Reg. at 13213. In Section 6(a) of the Order, the President invokes neither section to suspend travel of refugees and to suspend decisions on applications for refugee status for 120 days, but, in Section 6(b), the President invokes § 1182(f) to cap refugee admissions at 50,000 for the 2017 fiscal year. *Id.* at 13215-16.

The parties dispute whether EO2 falls clearly within the President's congressionally delegated authority. To be sure, § 1182(f) gives the President broad authority to suspend the entry of aliens or classes of aliens. However, this authority is not unlimited. *Cf. Kent v. Dulles*, 357 U.S. 116, 129 (1958) ("[I]f that power is delegated, the standards must be adequate to pass scrutiny by the accepted tests."); *J.W. Hampton, Jr.,*

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[10] Section 1185(a)(1) states:

> Unless otherwise ordered by the President, it shall be unlawful —(1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe[.]

8 U.S.C. § 1185(a)(1). The Government does not argue that § 1185(a)(1) provides an independent basis for the suspension of entry. Because, here, this section does not grant the President a meaningfully different authority than § 1182(f), and 35 because § 1182(f) specifically provides for the President's authority to suspend entry, our analysis proceeds under § 1182(f), understanding that the "reasonable rules, regulations, and orders" the President prescribes would need to, at a minimum, align with the President's authority under § 1182(f).

& Co. v. United States, 276 U.S. 394, 409 (1928) ("[L]egislative action is not a forbidden delegation of legislative power" if Congress provides an "intelligible principle to which the person or body authorized . . . is directed to conform."). Section 1182(f) requires that the President *find* that the entry of a class of aliens into the United States *would be detrimental* to the interests of the United States.[11] This section requires that the President's findings support the conclusion that entry of all nationals from the six designated countries, all refugees, and refugees in excess of 50,000 would be harmful to the national interest. There is no sufficient finding in EO2 that the entry of the excluded classes would be detrimental to the interests of the United States.

i

Section 2(c) declares 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" and directs that the entry of nationals from those designated countries be barred for 90 days. 82 Fed. Reg. at 13213. The provision bans more than 180 million people from entry based on their national origin, including nationals who may have never been physically present in those coun-

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[11] We construe the term "detrimental" to have its common-sense, dictionary definition. Detrimental is defined as "causing loss or damage; harmful, injurious, hurtful." *Detrimental*, Oxford English Dictionary, http://www.oed.com/view/Entry/51332?redirectedFrom=detrimental#eid. Throughout the opinion, in addition to the term "detrimental," we also use its synonyms "harmful" and "injurious."

tries. *See* Brief of Former National Security Officials as Amici Curiae, Dkt. No. 108 at 17. Section 2(c) states:

> [1] To temporarily reduce investigative burdens on relevant agencies during the review period [of the United States' vetting procedures], [2] to ensure the proper review and maximum utilization of available resources for the screening and vetting of foreign nationals, [3] to ensure that adequate standards are established to prevent infiltration by foreign terrorists, and [4] 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.

82 Fed. Reg. at 13213. The Government explains that the Order's objective "is to address the risk that potential terrorists might exploit possible weaknesses in the Nation's screening and vetting procedures while the review of those procedures is underway."

We reject the first three reasons provided in Section 2(c) because they relate to preservation of government resources to review existing procedures and ensure adequate vetting procedures. There is no finding that present vetting standards are inadequate, and no finding that absent the improved vetting procedures there likely will be harm to our national interests. These identified reasons do not support the conclusion that

the entry of nationals from the six designated countries would be harmful to our national interests.

We turn to the fourth reason—national security concerns—and examine whether it confers a legally sufficient basis for the President's conclusion that the nationality-based entry restriction is warranted. Section 1(d) of the Order explains that nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen warrant additional scrutiny because:

> 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.

Id. at 13210 (emphasis added).

Because of these country conditions, the Order concludes that "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."

Id. at 13211. The Order further indicates that "hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States[,]" but does not identify the number of nationals from the six designated countries who have been so convicted.[12] *See id.* at 13212.

The Order makes no finding that nationality alone renders entry of this broad class of individuals a heightened security risk to the United States. *See Int'l Refugee Assistance Project*, 2017 WL 2273306, at *31 (Keenan, J., concurring in part and concurring in the judgment) ("[T]he Second Executive Order does not state that any *nationals* of the six identified countries, *by virtue of their nationality*, intend to commit terrorist acts in the United States or otherwise pose a detriment to the interests of the United States.").

The Order does not tie these nationals in any way to terrorist organizations within the six designated countries. It does not identify these nationals as contributors to active conflict or as those responsible for insecure country conditions. It does not provide any

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[12] Amicus Cato Institute explains that over the past decade and a half, only twenty-six nationals from the six designated countries have been convicted for any kind of terrorism offense, and that only four nationals from the six designated countries have been convicted of attempting or plotting a terrorist attack in the United States in that time frame. Brief of the Cato Institute as Amicus Curiae, Dkt. No. 170 at 11-12. Since the September 11, 2001 attacks, twelve people have succeeded in carrying out fatal domestic terrorist attacks—none committed by nationals from the six designated countries in EO2. *See* Brief of Foundation of Children of Iran and Iranian Alliance Across Borders as Amici Curiae, Dkt. No. 77 at 23.

link between an individual's nationality and their propensity to commit terrorism or their inherent dangerousness.[13] In short, the Order does not provide a

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[13] Former Presidents have invoked § 1182(f) under non-exigent circumstances to address compromised security conditions abroad but have tied exclusions to the culpable conduct of barred aliens, such as aliens who contributed to a country's situation in a specified way or were members of particular narrowly defined and/or dangerous groups. *See* Kate M. Manuel, *Executive Authority to Exclude Aliens: In Brief* 6-10, Congressional Research Service (2017) (listing categories of aliens excluded under 8 U.S.C. § 1182(f)); *see also* 9 *Foreign Affairs Manual* § 302.14-3(B)(1)(b) (2016), https://fam.state.gov/FAM/09FAM/09FAM030214.html (stating that executive orders issued under § 1182(f) have typically applied to "individuals"; have sometimes been "based on affiliation"; and otherwise have suspended entry "based on objectionable conduct"); Brief of Former Federal Immigration and Homeland Security Officials as Amici Curiae, Dkt. No. 176 at 18-19 ("None of the Executive actions cited elsewhere by the Government, nor any others known to amici, invoked § 1182(f) to suspend entry from one or more countries based on the assumption that nationals from those countries were inherently dangerous." (footnotes omitted)). President Obama's Executive Order 13726, for example, suspended the entry into the United States of persons who were responsible or complicit in particular actions or policies that threaten the stability of Libya. *See* 81 Fed. Reg. 23559 (Apr. 19, 2016).

In two instances, former Presidents have distinguished classes of aliens on the basis of nationality. But these distinctions were made not because of a particular concern that entry of the individuals themselves would be detrimental, but rather, as retaliatory diplomatic measures responsive to government conduct directed at the United States. For example, President Carter's proclamation barring the future entry of Iranians occurred during the exigent circumstance of the Iranian hostage crisis. This was one of many sanctions imposed to increase political pressure on the Iranian government to ensure the safe return of American hostages. *See* Exec. Order 12172, 44 Fed. Reg. 67947 (Nov. 26, 1979), *amended by*

rationale explaining why permitting entry of nationals from the six designated countries under current protocols would be detrimental to the interests of the United States.[14]

The Order's discussion of country conditions fails to bridge the gap. Indeed, its use of nationality as the sole basis for suspending entry means that nationals

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Exec. Order 12206, 45 Fed. Reg. 24101 (Apr. 7, 1980); President Jimmy Carter, *Sanctions Against Iran Remarks Announcing U.S. Actions*, The American Presidency Project (Apr. 7, 1980), http://www.presidency.ucsb.edu/ws/?pid=33233%20. President Reagan's suspension of entry of certain Cuban nationals as immigrants came as a response to the Cuban government's own suspension of "all types of procedures regarding the execution" of an immigration agreement between the United States and Cuba, which had "disrupt[ed] normal migration procedures between the two countries." *See* Proclamation No. 5517, 51 Fed. Reg. 30470 (Aug. 22, 1986).

[14] Indeed, the President recently confirmed his assessment that it is the "countries" that are inherently dangerous, rather than the 180 million individual nationals of those countries who are barred from entry under the President's "travel ban." *See* Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 6:20 PM), https://twitter.com/realDonaldTrump/status/871899511 525961728 ("That's right, we need a TRAVEL BAN for certain DANGEROUS countries, not some politically correct term that won't help us protect our people!") (emphasis in original); *see also* Elizabeth Landers, White House: Trump's tweets are "official statements", CNN (June 6, 2017, 4:37 PM), http://www.cnn.com/2017/06/06/politics/trump-tweets-official-statements/ (reporting the White House Press Secretary's confirmation that the President's tweets are "considered official statements by the President of the United States"). We take judicial notice of President Trump's statement as the veracity of this statement "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2).

without significant ties to the six designated countries, such as those who left as children or those whose nationality is based on parentage alone, should be suspended from entry. Yet, nationals of other countries who do have meaningful ties to the six designated countries—and may be contributing to the very country conditions discussed—fall outside the scope of Section 2(c). Consequently, EO2's focus on nationality "could have the paradoxical effect of barring entry by a Syrian national who has lived in Switzerland for decades, but not a Swiss national who has immigrated to Syria during its civil war." *Hawai'i TRO*, 2017 WL 1011673, at *15 (internal quotation marks and alterations omitted); *see also* Brief of the Cato Institute as Amicus Curiae, Dkt. No. 170 at 14-15 (providing statistics on nationals of the designated countries living in other countries as migrants, refugees, or asylum seekers and explaining that Syrian and Iranian nationals do not gain nationality by virtue of their place of birth).

Although the Order explains that country conditions in the six designated countries lessen their governments' ability to share information about nationals seeking to travel to our country, the Order specifically avoids making any finding that the current screening processes are inadequate. As the law stands, a visa applicant bears the burden of showing that the applicant is eligible to receive a visa or other document for entry and is not inadmissible. *See* 8 U.S.C. § 1361. The Government already can exclude individuals who do not meet that burden. *See id.* The Order offers no further reason explaining how this individualized adjudication process is flawed such that permitting entry of

an entire class of nationals is injurious to the interests of the United States.

Finally, the Order relies on 8 U.S.C. § 1187(a)(12) to explain why the six countries have been designated. 82 Fed. Reg. at 13210. In § 1187(a)(12), Congress prevented use of the Visa Waiver Program by dual nationals of, or those who have visited in the last six years, (1) Iraq and Syria, (2) any country designated by the Secretary of State as a state sponsor of terrorism, and (3) 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. Rather than setting an outright ban on entry of nationals from these countries, Congress restricted access to the tourist Visa Waiver Program and instead required that persons who are nationals of or have recently traveled to these countries enter the United States with a visa. This provision reflects Congress's considered view on similar security concerns that the Order seeks to address. *See Chadha*, 462 U.S. at 951, 959 (explaining that our founders "consciously" chose to place the legislative process in the hands of a "deliberate and deliberative" body). The Order identifies no new information to justify Section 2(c)'s blanket ban as contrasted with § 1187(a)(12)'s restriction from the Visa Waiver Program. Moreover, relying on § 1187(a)(12) alone, which requires that aliens from these countries undergo vetting through visa procedures, does not explain why their *entry* would be detrimental to the interests of the United States. To the contrary, it effectively negates the Order's statement of detriment—that the "*unrestricted* entry into the United States of nationals [of the six designated

countries] would be detrimental to the interests of the United States." 82 Fed. Reg. at 13213 (emphasis added). Section 1187(a)(12) dictates that the entry of individuals covered by the Order is never "unrestricted."

In conclusion, the Order does not offer a sufficient justification to suspend the entry of more than 180 million people on the basis of nationality. National security is not a "talismanic incantation" that, once invoked, can support any and all exercise of executive power under § 1182(f). *United States v. Robel*, 389 U.S. 258, 263-64 (1967); *see also Korematsu v. United States*, 323 U.S. 214, 235 (1944) (Murphy, J., dissenting) ("[T]he exclusion order necessarily must rely for its reasonableness upon the assumption that all persons of Japanese ancestry may have a dangerous tendency to commit sabotage and espionage and to aid our Japanese enemy in other ways. It is difficult to believe that reason, logic or experience could be marshalled in support of such an assumption."). Section 1182(f) requires that the President exercise his authority only after meeting the precondition of finding that entry of an alien or class of aliens *would be* detrimental to the interests of the United States. Here, the President has not done so.

ii

Section 6(a) suspends travel of refugees into the United States under USRAP and suspends decisions on applications for refugee status for 120 days but does not specifically announce that the entry of refugees would be detrimental to the interests of the United States. 82 Fed. Reg. at 13215.

Assuming the President also relied on § 1182(f) to suspend USRAP for 120 days, EO2 provides the following information to possibly support the conclusion that refugee admissions would injure the national interest. First, EO2 explains that the screening and vetting procedures associated with 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," and that it is the policy of the United States to improve screening and vetting procedures associated with USRAP. *Id.* at 13209. Section 1(h) cites two examples of refugees who have been convicted of terrorism-related crimes in the United States:

> [1] [I]n 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.[15] [2] [I]n October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was

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[15] These two Iraqi nationals pleaded guilty to federal terrorism charges for engaging in terrorism against Americans overseas and providing material support to foreign terrorists and did not face charges for planning a domestic terrorist attack. *See* Press Release: Former Iraqi Terrorists Living in Kentucky Sentenced for Terrorist Activities, U.S. Dep't of Justice, https://www.justice.gov/opa/pr/former-iraqi-terrorists-living-kentucky-sentenced-terrorist-activities (Jan. 29, 2013) (last visited June 6, 2017).

> sentenced to 30 years in prison for attempting to use a weapon of mass destruction . . . .[16]

82 Fed. Reg. at 13212. Section 1(h) also explains that there are "more than 300 persons who entered the United States as refugees [who] are currently the subjects of counterterrorism investigations by the Federal Bureau of Investigation." *Id.*

EO2 does not reveal any threat or harm to warrant suspension of USRAP for 120 days and does not support the conclusion that the entry of refugees in the interim time period would be harmful. Nor does it provide any indication that present vetting and screening procedures are inadequate.[17] Instead, EO2 justifies the 120-day suspension as a review period of USRAP application and adjudication processes. 82 Fed. Reg. at 13215. The Government reiterates that the Presi-

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[16] This Somali national entered the United States at the age of three in approximately 1994; the conduct underlying his conviction occurred in 2010 when he was nineteen years old. *See United States v. Mohamud*, 843 F.3d 420, 423 (9th Cir. 2016). His background is consistent with DHS's report that most foreign-born, U.S.-based violent extremists are "likely radicalized several years *after* their entry to the United States," thus "limiting the ability of screening and vetting officials to prevent their entry because of national security concerns" (emphasis added).

[17] Refugees receive the most thorough vetting of all travelers to the United States in a process that takes eighteen to twenty-four months. By the time refugees are approved for resettlement in the United States, they have been reviewed by the United Nations High Commissioner for Refugees, the National Counterterrorism Center, the Federal Bureau of Investigation, the Department of Homeland Security, the Department of Defense, the Department of State, and the U.S. intelligence community. *See* Brief of Former National Security Officials as Amici Curiae, Dkt. No. 108 at 14-16.

dent directed the suspension "in order to allow the Secretary of State to review application and adjudication processes." These explanations do not support a finding that the travel and admission of refugees would be detrimental to the interests of the United States.

iii

Section 6(b) of EO2 restricts entry of refugees to no more than 50,000 in the 2017 fiscal year because entry in excess of 50,000 "would be detrimental to the interests of the United States." 82 Fed. Reg. at 13216. But in accordance with 8 U.S.C. § 1157, President Obama previously determined that the admission of 110,000 refugees to the United States during fiscal year 2017 was justified by humanitarian concerns or otherwise in the national interest. *See* Presidential Determination on Refugee Admissions for Fiscal Year 2017, Presidential Determination No. 2016-13, 81 Fed. Reg. 70315 (Sept. 28, 2016); *see also* Proposed Refugee Admissions for Fiscal Year 2017: Report to the Congress, https://www.state.gov/documents/organization/262168.pdf.[18]

To the extent that 60,000 additional refugees can be considered a class of aliens, EO2 makes *no* findings to justify barring entry in excess of 50,000 as detrimental to the interests of the United States. EO2 gives no explanation for why the 50,001st to the 110,000th refugee would be harmful to the national interest, nor does

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[18] As of May 31, 2017, the United States has admitted 46,403 refugees in the 2017 fiscal year. U.S. Dep't of State, Bureau of Population, Refugees, and Migration, Refugee Admissions Report (2017), http://www.wrapsnet.org/admissions-and-arrivals (last visited June 6, 2017).

it specify any further threat to national security. And there is not any rationale explaining why the previous target admission of 110,000 refugees this fiscal year was justified by humanitarian concerns or otherwise in the national interest, *see* 8 U.S.C. § 1157(a)(2), but that the entry of more than 50,000 refugees this same fiscal year would be detrimental to the national interest. Here too, the President did not meet the statutory precondition of exercising his authority under § 1182(f) to cap refugee admissions.

The actions taken in Sections 2 and 6 require the President first to make sufficient findings that the entry of nationals from the six designated countries and the entry of all refugees would be detrimental to the interests of the United States. We conclude that the President did not satisfy this precondition before exercising his delegated authority. Plaintiffs have shown a likelihood of success on the merits of their claim that the President exceeded his authority under §§ 1182(f) and 1185(a).

2

Plaintiffs contend that Section 2(c) of the Order violates the INA because it discriminates on the basis of nationality, thus violating the non-discrimination mandate of § 1152(a)(1)(A) of the INA. They argue that although the President is given broad authority under § 1182(f), this authority is restrained by § 1152(a)(1)(A).

Contemporaneous to enacting the Civil Rights Act of 1964 and the Voting Rights Act of 1965, Congress passed the INA of 1965 to eliminate the "national origins system as the basis for the selection of immigrants to the United States." H.R. Rep. No. 89-745, at 8 (1965).

Section 1152(a)(1)(A) was enacted as part of that act, and provides:

> [N]o person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, *nationality*, place of birth, or place of residence.

8 U.S.C. § 1152(a)(1)(A) (emphasis added). Section 1152(a)(1)(A) contains specific exemptions, and § 1182(f) is not among them.

The Government tries to reconcile the Order's Section 2(c) with § 1152(a)(1)(A) by arguing that Section 2(c) bars *entry* of nationals from the six designated countries but does not deny the *issuance of immigrant visas* based on nationality. EO2's suspension of entry on the basis of nationality, however, in substance operates as a ban on visa issuance on the basis of nationality. The Order's text confirms as much. Its primary purpose is to evaluate screening and vetting procedures associated with the visa issuance process. 82 Fed. Reg. at 13209. EO2 affects nationals of the six designated countries who were outside of the United States on the effective date of the Order but did not have a valid visa at specific times, such as the effective date of EO1. 82 Fed. Reg. at 13213. Further, it provides for a waiver so consular officers or Customs and Border Protection officials may authorize the issuance of visas during the suspension period. *Id.* at 13214. The Government also stresses that it should not be required to issue visas for aliens who are validly barred from entry, explaining that "[r]equiring that such aliens be issued visas permitting them to travel to this country, only to be denied entry upon arrival, would create needless

difficulties and confusion." Indeed, the Government clarified at oral argument that as a practical matter, the entry ban would be implemented through visa denials. Moreover, the statute makes clear that aliens deemed inadmissible under § 1182, including under § 1182(f) "are ineligible to receive visas," thus confirming the substantial overlap between a denial of entry under § 1182(f) and a visa denial. *See* 8 U.S.C. § 1182(a); *see also Int'l Refugee Assistance Project*, 2017 WL 2273306, at *52 (Thacker, J., concurring) (explaining that the Government's "own arguments and the text and operation of [EO2] belie [the] notion" that the visa issuance process is a different activity than suspension of entry).

We cannot blind ourselves to the fact that, for nationals of the six designated countries, EO2 is effectively a ban on the issuance of immigrant visas. If allowed to stand, EO2 would bar issuance of visas based on nationality in violation of § 1152(a)(1)(A). The Government did not dispute this point at oral argument, and it stands to reason that the whole system of the visa issuance would grind to a halt for nationals of the six designated countries whose entry is barred from the United States. Issuance of visas will automatically stop for those who are banned based on nationality. Yet Congress could not have used "more explicit language" in "unambiguously direct[ing] that no nationality-based discrimination shall occur." *Legal Assistance for Vietnamese Asylum Seekers*, 45 F.3d at 473.

The Government additionally argues that § 1152(a)(1)(A) does not displace the President's preexisting authority under § 1182(f), because the Presi-

dent may validly bar *entry* and the non-discrimination mandate applies strictly to the *issuance of visas*. Based on the plain statutory text, the Government contends that the non-discrimination mandate of § 1152(a)(1)(A) does not reach the President's suspension of entry under § 1182(f).

This argument, however, presents a clear conflict between § 1152(a)(1)(A) and § 1182, because it would enable the President to restore discrimination on the basis of nationality that Congress sought to eliminate. It is our duty, if possible, to reconcile the President's statutory authority under § 1182(f) with the non-discrimination mandate of § 1152(a)(1)(A). We begin with the instruction that "all parts of a statute, if at all possible, are to be given effect." *Weinberger v. Hyson, Westcott & Dunning, Inc.*, 412 U.S. 609, 633 (1973); *accord Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("A court must . . . fit, if possible, all parts into an harmonious whole." (internal citation and quotation marks omitted)). We also look "to the design of the statute as a whole and to its object and policy." *Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991) (quoting *Crandon v. United States*, 494 U.S. 152, 158 (1990)).

Under the Government's argument, the President could circumvent the limitations set by § 1152(a)(1)(A) by permitting the issuance of visas to nationals of the six designated countries, but then deny them entry. Congress could not have intended to permit the President to flout § 1152(a) so easily. *See Dada v. Mukasey*, 554 U.S. 1, 16 (2008) (courts should not read statutes in such a way that renders them a "nullity" or is "unsustainable").

To avoid this result, and to give effect to § 1152(a)(1)(A), the section "is best read to prohibit discrimination throughout the visa process, which must include the decision whether to admit a visa holder upon presenting the visa." Brief of Former Immigration and Homeland Security Officials as Amici Curiae, Dkt. No. 176 at 9. In prohibiting nationality-based discrimination in the issuance of immigrant visas, Congress also in effect prohibited nationality-based discrimination in the admission of aliens. "Congress could not have intended to prohibit discrimination at the embassy, but permit it at the airport gate." Brief of Technology Companies as Amici Curiae, Dkt. No. 180 at 20. We do not suggest that visa holders must gain automatic entry into the United States, but rather, that visa holders cannot be discriminated against on the basis of "race, sex, nationality, place of birth, or place of residence" throughout the visa process, whether during the issuance of a visa or at the port of entry.[19]

Our conclusion that § 1152(a)(1)(A)'s nondiscrimination mandate cabins the President's authority under § 1182(f) is reinforced by other canons of statutory construction.

First, a later enacted, more specific statute generally governs over an earlier, more general one. *See* Antonin Scalia & Bryan A. Garner, *Reading Law:*

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[19] While a foreign national may properly obtain a visa, this does not guarantee entry into the United States because they may otherwise be inadmissible. *See* 8 U.S.C. § 1201(h) ("Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted to the United States."); *see also* 8 U.S.C. § 1182 (listing the myriad ways an alien can be deemed inadmissible).

The Interpretation of Legal Texts 183-87 (2012). Here, § 1152(a)(1)(A) was enacted in 1965, after § 1182(f) was enacted in 1952. Section 1152(a)(1)(A) is also more specific, and sets a limitation on the President's broad authority to exclude aliens—he may do so, but not in a way that discriminates based on nationality. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) ("The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one.").

Second, § 1152(a)(1)(A) specifically identifies exemptions from the non-discrimination mandate, implying that unmentioned sections are not exempted. *See United Dominion Indus., Inc. v. United States*, 532 U.S. 822, 836 (2001) ("The logic that invests the omission with significance is familiar: the mention of some implies the exclusion of others not mentioned."). Section 1152(a)(1)(A) explicitly exempts three different INA provisions from its application—8 U.S.C. §§ 1101(a)(27), 1151(b)(2)(A)(i), and 1153—all of which deal with giving preference to certain immigrants, such as family members of current citizens and permanent residents. Had Congress likewise intended to permit § 1182(f) to override § 1152(a)(1)(A)'s non-discrimination requirement, it would have done so in the same way it did for the other provisions.

The Government contends that §§ 1182(f) and 1185(a)(1) "have long been understood to permit the president to draw nationality-based distinctions." However, as discussed above, *supra* note 13, prior executive

orders and proclamations did not suspend classes of aliens on the basis of national origin, but instead on the basis of affiliation or culpable conduct. *See* Kate M. Manuel, *Executive Authority to Exclude Aliens: In Brief* 6-10, Congressional Research Service (2017). The other instances cited by the Government are distinguishable. The executive order at issue in *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155 (1993), made no nationality-based distinctions and concerned "suspend[ing] the entry of aliens coming by sea to the United States without necessary documentation." Exec. Order No. 12807, 57 Fed. Reg. 23133 (May 24, 1992). President Carter's executive orders in response to the Iranian hostage crisis delegated authority to the Secretary of State and the Attorney General to prescribe limitations governing the entry of Iranian nationals and did not ban Iranian immigrants outright. *See* Exec. Order 12172, 44 Fed. Reg. 67947 (Nov. 26, 1979), *amended by* Exec. Order 12206, 45 Fed. Reg. 24101 (Apr. 7, 1980). Finally, President Reagan's Proclamation 5517 suspended the entry of Cuban nationals coming as immigrants, with some exceptions. 51 Fed. Reg. 30470 (Aug. 22, 1986). The proclamation did not exclude all foreign nationals, as exceptions were provided, and the proclamation was in response to Cuba's decision "'to suspend all types of procedures regarding the execution' of the December 14, 1984, immigration agreement between the United States and Cuba."[20]

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[20] Because these executive actions were not challenged as violations of § 1182(f) or § 1152(a)(1)(A), "the judiciary [has not] address[ed] whether the order[s] complied with those provisions or the Constitution." *Int'l Refugee Assistance Project*, 2017 WL 2273306, at *45 n.11 (Wynn, J., concurring).

Id. To be clear, Presidents have invoked §§ 1182(f) and 1185(a)(1) to restrict certain aliens or classes of aliens from entering the United States, but EO2 is unprecedented in its scope, purpose, and breadth.

The Government also argues that the President may engage in discrimination on the basis of nationality because of the exception provided in § 1152(a)(1)(B). Section 1152(a)(1)(B) provides, "[n]othing in [§ 1152(a)(1)(A)] shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed." However, this provision governs the Secretary of State's manner and place for processing applications, not the President's asserted ability to deny immigrant visas on the basis of nationality.

Having considered the President's authority under § 1182(f) and the non-discrimination mandate of § 1152(a)(1)(A), we also conclude that Plaintiffs have shown a likelihood of success on the merits of their claim that Section 2(c) of the Order, in suspending the issuance of immigrant visas and denying entry based on nationality, exceeds the restriction of § 1152(a)(1)(A) and the overall statutory scheme intended by Congress.

3

Aside from the President's failure to make the requisite findings to justify reducing the entry of refugees in fiscal year 2017 as an exercise of authority under § 1182(f), Plaintiffs contend that 8 U.S.C. § 1157 circumscribes the President's actions in setting the number of refugees to be admitted this fiscal year. We agree.

The Refugee Act of 1980 amended the INA "to provide a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States, and to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted." Pub. L. No. 96-212, § 101, 94 Stat. 102 (1980).

The Act requires that the President, after consulting with Congress, set the annual admission of refugees before the beginning of every fiscal year:

> [T]he number of refugees who may be admitted under this section in any fiscal year . . . shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.

8 U.S.C. § 1157(a)(2). "Appropriate consultation" is defined as "discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives." *Id.* § 1157(e). After undergoing this process in 2016, President Obama determined that the admission of 110,000 refugees to the United States during fiscal year 2017 was justified by humanitarian concerns or otherwise in the national interest. *See* 81 Fed. Reg. at 70315. Section 6(b) of EO2 reduced the refugee admission cap for the same year to 50,000. *See* 82 Fed. Reg. at 13216.

The statute requires the President to set the number of annual refugee admissions (1) before the start of the new fiscal year, and (2) after appropriate consulta-

tion with Congress. The Government responds that § 1157 only refers to a ceiling—not the floor—for the number of refugees who may be admitted, and that §§ 1182(f) and 1185(a)(1) permit the President to lower the number of refugees permitted to enter.

We disagree. This interpretation reads out the language that the number of refugees who may be admitted *shall be* the number determined by the President. *See* 8 U.S.C. § 1157(a)(2). The Government's argument would require us to conclude that Congress set forth very specific requirements for the President to provide the number and allocation of the refugees to be admitted as justified by humanitarian concerns or the national interest, after appropriate consultation, only to permit the President to order a midyear reduction in the level of refugee admissions, and to do so without consulting Congress. Section 1157 contemplates that the President, after consultation with Congress, may *increase* the number of refugees admitted in the middle of the fiscal year, but does not provide a mechanism for the President to *decrease* the number of refugees to be admitted mid-year. *See id.* § 1157(b) (describing how, after appropriate consultation, the President may fix a number of additional refugees to be admitted to the United States).

Well-settled interpretive canons further explain why § 1182(f) does not give the President authority to override the requirements of § 1157. First, applying the "later in time" canon, § 1182(f) was adopted in 1952, and § 1157 was adopted in 1980, indicating that this subsequent statute shapes the scope of the President's authority. *See Brown & Williamson Tobacco Corp.*, 529 U.S. at 143 ("The 'classic judicial task of reconciling

many laws enacted over time, and getting them to 'make sense' in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute.'" (quoting *United States v. Fausto*, 484 U.S. 439, 453 (1988))).

Second, § 1157, the more specific provision, controls the more general § 1182(f). *See id.* ("This is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand."); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976). Section 1157 provides a very specific process for "appropriate consultation" that the President must follow before setting the number of refugees to be admitted to the United States that is justified by humanitarian concerns or is otherwise in the national interest. "Appropriate consultation" requires in-person discussions between cabinet-level representatives and members of Congress "to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, [and] to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest . . . ." 8 U.S.C. § 1157(e). As part of the consultation, the Executive also must present the following information:

> (1) A description of the nature of the refugee situation.
>
> (2) A description of the number and allocation of the refugees to be admitted and an analysis of conditions within the countries from which they came.

> (3) A description of the proposed plans for their movement and resettlement and the estimated cost of their movement and resettlement.
>
> (4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States.
>
> (5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees.
>
> (6) An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States.
>
> (7) Such additional information as may be appropriate or requested by such members.

Id. According to the statute, this information would ideally be provided at least two weeks in advance of the discussions. *Id.*

Congress prescribed specific actions the President must take before setting the number of refugees who may be admitted as justified by humanitarian concerns or as otherwise in the national interest. *See generally* 8 U.S.C. § 1157. The President relied on § 1182(f)—an earlier and more general provision—to conclude that admission of refugees above 50,000 is detrimental to the interest of the United States. But § 1157, a "narrow, precise, and specific" statutory provision, may not be overridden by § 1182(f), a provision "covering a more generalized spectrum" of issues. *Radzanower*, 426 U.S. at 153-54; *see also Nitro-Lift Techs., LLC v. Howard*, 133 S. Ct. 500, 504 (2012) (explaining that the

interpretive principle *generalia specialibus non derogant* means that "the specific governs the general" and applies to conflict between "laws of equivalent dignity").

As a result, Plaintiffs have also shown a likelihood of success on the merits for their argument that Section 6(b) of EO2 conflicts with 8 U.S.C. § 1157.

4

Plaintiffs additionally argue that EO2 conflicts with 8 U.S.C. § 1182(a)(3)(B), which sets forth detailed and "specific criteria for determining terrorism-related inadmissibility." *Din*, 135 S. Ct. at 2140.

EO2 attempts to eliminate the marginal risk of "erroneously permitting entry of a national of one of these countries who intends to commit terrorist acts," 82 Fed. Reg. at 13211, by suspending entry of all nationals from the six designated countries. We need not decide the precise scope of § 1182(f) authority in relation to § 1182(a)(3)(B) because the President has not met the precondition to exercising his power under § 1182(f), that is, of making a detrimentality finding. We note, however, that executive action should not render superfluous Congress's requirement that there be a "reasonable ground to believe" that an alien "is likely to engage after entry in any [specifically defined] terrorist activity," 8 U.S.C. § 1182(a)(3)(B)(i)(II), and other specific grounds for terrorism-related admissibility. *Cf. Abourezk*, 785 F.2d at 1049 n.2 ("The President's sweeping proclamation power [under § 1182(f)] provides a safeguard against the danger posed by any particular case or class of cases *that is not covered* by one of the categories in section 1182(a)." (emphasis added)); *Allende v. Shultz*, 845 F.2d 1111, 1118 (1st Cir.

1988) ("Each subsection [of § 1182(a)] creates a different and distinct ground for exclusion.").

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Finally, we note that in considering the President's authority, we are cognizant of Justice Jackson's tripartite framework in *Youngstown Sheet & Tube Co. v. Sawyer*. *See* 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring). Section 1182(f) ordinarily places the President's authority at its maximum. "When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Id.* at 635. However, given the express will of Congress through § 1152(a)(1)(A)'s non-discrimination mandate, § 1157's procedure for refugee admissions to this country, and § 1182(a)(3)(B)'s criteria for determining terrorism-related inadmissibility, the President took measures that were incompatible with the expressed will of Congress, placing his power "at its lowest ebb." *Id.* at 637. In this zone, "Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system." *Id.* at 638. We have based our decision holding the entry ban unlawful on statutory considerations, and nothing said herein precludes Congress and the President from reaching a new understanding and confirming it by statute. If there were such consensus between Congress and the President, then we would view Presidential power at its maximum, and not in the weakened state based on conflict with statutory law. *See id.* at 635-38.

* * *

In sum, we conclude that Plaintiffs have shown a likelihood of success on the merits at least as to their arguments that EO2 contravenes the INA by exceeding the President's authority under § 1182(f), discriminating on the basis of nationality, and disregarding the procedures for setting annual admissions of refugees.[21]

C

The current record is sufficient to permit the court's evaluation of the irreparable harms threatening Plaintiffs. Plaintiffs identify harms, such as prolonged separation from family members, constraints to recruiting and attracting students and faculty members to the University of Hawai'i, decreased tuition revenue, and the State's inability to assist in refugee resettlement. Many of these harms are not compensable with monetary damages and therefore weigh in favor of finding irreparable harm. *See, e.g.*, *Washington*, 847 F.3d at 1169 (identifying harms such as harms to States' university employees and students, separated families, and stranded States' residents abroad); *Regents of Univ. of Cal. v. Am. Broad. Cos., Inc.*, 747 F.2d 511, 520 (9th Cir. 1984) (crediting intangible harms such as the "impairment of their ongoing recruitment programs [and] the dissipation of alumni and community goodwill and support garnered over the years"); *cf. Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 503-04 (1977)

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[21] Because this claim relates to EO2's conflict with the INA, we leave open whether and in what circumstances the President may suspend entry under his inherent powers as commander-in-chief or in a time of national emergency. *See, e.g.*, *Legal Assistance for Vietnamese Asylum Seekers*, 45 F.3d at 473.

(explaining that "the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition").

We conclude Plaintiffs are likely to suffer irreparable harm in the absence of preliminary relief.

D

In considering the equities of a preliminary injunction, we next "balance the competing claims of injury" and "consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 555 U.S. at 24.

The district court did not abuse its discretion in finding that the balance of hardships tipped in Plaintiffs' favor. The Government argues that the injunction causes direct, irreparable injury by constraining the Executive's authority in "protect[ing] national security on behalf of the entire United States."[22] "[T]he Government's interest in combating terrorism is an urgent objective of the highest order." *Humanitarian*

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[22] To the extent the Government argues that it is injured simply by nature of the judiciary limiting the President's authority, *ipso facto*, when it argues that it suffered a "form of irreparable injury" because it was "enjoined by a court from effectuating statutes enacted by representatives of its people," we reject that argument. *See Robel*, 389 U.S. at 264 ("[The] concept of 'national defense' cannot be deemed an end in itself, justifying any exercise of . . . power designed to promote such a goal. Implicit in the term 'national defense' is the notion of defending those values and ideals which set this Nation apart."); *see also Int'l Refugee Assistance Project*, 2017 WL 2273306, at *25 (rejecting the Government's "institutional injury" argument, as "even the President's actions are not above judicial scrutiny").

Law Project, 561 U.S. at 28. Nonetheless, the President must exercise his authority under § 1182(f) lawfully by making sufficient findings justifying that entry of certain classes of aliens would be detrimental to the national interest and ensuring that such exercise does not conflict with other INA provisions. Because the President has not done so, we cannot conclude that national security interests outweigh the harms to Plaintiffs. *See Int'l Refugee Assistance Project*, 2017 WL 2273306, at *32 (Keenan, J., concurring in part and concurring in the judgment).

Further, the Government has not put forth evidence of injuries resulting from the preliminary injunction, or how the screening and vetting procedures in place before the Order was enjoined were inadequate such that the Order should take immediate effect. Continuing to enjoin portions of EO2 restores immigration procedures and programs to the position they were in prior to its issuance. *See Washington*, 847 F.3d at 1168; *see also* Brief of Former National Security Officials as Amici Curiae, Dkt. No. 108 at 9 (explaining that a number of amici officials, in office on January 20, 2017 and current on active intelligence, knew of no "credible terrorist threat streams directed against the United States" at that time).

In weighing the harms, the equities tip in Plaintiffs' favor.

E

Plaintiffs must finally show that preliminary injunctive relief is in the public interest.

National security is undoubtedly a paramount public interest. *See Haig v. Agee*, 453 U.S. 280, 307 (1981)

("[N]o governmental interest is more compelling than the security of the Nation.").[23] Although we recognize that "sensitive and weighty interests of national security and foreign affairs" are implicated, *Humanitarian Law Project*, 561 U.S. at 33-34, the President must nonetheless exercise his executive power under § 1182(f) lawfully. The public interest is served by "curtailing unlawful executive action." *Texas*, 809 F.3d at 187.

The public interests in uniting families and supporting humanitarian efforts in refugee resettlement sup-

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[23] Several amici contend that the Order not only serves no national security interest, but actually harms our security. *See, e.g.*, Brief of Former National Security Officials as Amici Curiae, Dkt. No. 108 at 2 (explaining that the Order will harm the country's national security and foreign policy interest: "It will endanger troops in the field, and disrupt key counterterrorism and national security partnerships. It will aid the propaganda effort of the Islamic State in Iraq and the Levant ("ISIL") and support its recruitment message. By feeding the narrative that the United States is at war with Islam, the Order will impair relationships with the very Muslim communities that law enforcement professionals rely on to address the threat of terrorism. And it will have a damaging humanitarian and economic impact."); Brief of Former Federal Immigration and Homeland Security Officials as Amici Curiae, Dkt. No. 176 at 20-21 ("[T]he Order weakens vetting protocols and procedures by using national-origin discrimination as a substitute for individualized threat assessments. The Order also threatens to fracture critical military, intelligence, and counterterrorism partnerships and hinder cooperation with the very communities with which law enforcement professionals work to disrupt terrorist plots."); Brief of *Doe* Plaintiffs as Amici Curiae, Dkt. No. 276, Ex. G., U.S. Dep't of State, Dissent Channel: Alternatives to Closing Doors in Order to Secure Our Borders (voicing the State Department officers' concerns about EO1). A draft DHS report also concluded that citizenship "is unlikely to be a reliable indicator of potential terrorist activity."

port the conclusion that the public interest is served by preliminarily enjoining EO2 and maintaining the status quo. *Cf. Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005) ("Public policy supports recognition and maintenance of a family unit. The [INA] was intended to keep families together. It should be construed in favor of family units and the acceptance of responsibility by family members."); *Kaliski v. Dist. Dir. of INS*, 620 F.2d 214, 217 (9th Cir. 1980) (explaining that "the humane purpose" of the INA is to reunite families).

Amici also have identified specific harms that will result if EO2 takes effect, bolstering the conclusion that the injunction is in the public interest. They explain that EO2 would, *inter alia*: curtail children's ability to travel to the United States to obtain life-saving medical care, *see* Brief of the Foundation for the Children of Iran and Iranian Alliances Across Borders as Amici Curiae, Dkt. No. 77; undermine the efforts of religious organizations in the United States rendering humanitarian aid, *see* Brief of Episcopal Bishops as Amici Curiae, Dkt. No. 87; compromise the diversity interests that are central to universities, *see* Brief of New York University as Amicus Curiae, Dkt. No. 95; deter international students, faculty, and scholars from studying at American universities and harm the research mission of universities, *see* Brief of Colleges and Universities as Amici Curiae, Dkt. No. 97; impose additional hardship for child refugees already facing violence and trauma, *see* Brief of Professional Society on the Abuse of Children as Amicus Curiae, Dkt. No. 107; immediately harm refugees who will be denied entry and risk the vitality of entire refugee assistance

programs and resettlement efforts, *see* Brief of Interfaith Group of Religions and Interreligious Organizations as Amici Curiae, Dkt. No. 121, Brief of Oxfam America as Amicus Curiae, Dkt. No. 149, Brief of HIAS, IRC, and USCRI as Amici Curiae, Dkt. No. 155, Brief of *Doe* Plaintiffs as Amici Curiae, Dkt. No. 276; uniquely exclude Muslim family members, scholars, religious leaders, and professionals from entry, *see* Brief of Muslim Rights, Professional, and Public Health Organizations as Amici Curiae, Dkt. No. 124, Brief of Muslim Justice League et al. as Amici Curiae, Dkt. No. 207; inflict proprietary harms on the states by harming state colleges, disrupting staffing and research at state medical institutions, and reducing tax revenues and reinvestment of refugee funding into local economies, *see* Brief of Illinois et al. as Amici Curiae, Dkt. No. 125; undermine trust between law enforcement and immigrant communities and inflict financial and social costs, such as loss of tourism dollars, *see* Brief of Chicago et al. as Amici Curiae, Dkt. No. 137; interfere with union members' ability to do their work and serve the American public, *see* Brief of Service Employees International Union et al. as Amici Curiae, Dkt. No. 166; harm American competitiveness by disrupting ongoing business operations and inhibiting technology companies' abilities to attract talent, business, and investment to the United States, *see* Brief of Technology Companies as Amici Curiae, Dkt. No. 180, Brief of Massachusetts Technology Leadership Council as Amicus Curiae, Dkt. No. 194; place victims of gender-based violence at particular risk, *see* Tahirih Justice Center et al. as Amici Curiae, Dkt. No. 185; interrupt foreign artists' exhibitions and performances in the United States, *see* Brief of the Associa-

tion of Art Museum Directors et al. as Amici Curiae, Dkt. No. 204; and prevent U.S. citizens and lawful permanent residents from receiving visits from or reuniting with family members, *see* Brief of Human Rights First et al. as Amici Curiae, Dkt. No. 222.

The public interest favors affirming the preliminary injunction. *See Winter*, 555 U.S. at 24 ("In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.").

* * *

Plaintiffs have satisfied all four factors to warrant entry of the preliminary injunction. *See id.* at 20. The district court did not abuse its discretion in granting an injunction.

V

With respect to the injunction's scope, the Government contends that the district court erred by enjoining internal government procedures, giving nationwide relief, and entering an order against the President.

We review the scope of a preliminary injunction for abuse of discretion. *McCormack v. Hiedeman*, 694 F.3d 1004, 1010 (9th Cir. 2012). Although the district court has "considerable discretion in fashioning suitable relief and defining the terms of an injunction," *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991), there are limitations on this discretion. Injunctive relief must be tailored to remedy the specific harms shown by the plaintiffs. *See id.* ("Injunctive relief . . . must be tailored to remedy the specific harm alleged."); *Califano v. Yamasaki*, 442 U.S. 682,

702 (1979) ("[T]he scope of injunctive relief is dictated by the extent of the violation established . . . ."). "An overbroad injunction is an abuse of discretion." *Stormans*, 586 F.3d at 1140.

A

The Government first argues that the injunction improperly enjoins enforcement of parts of Sections 2 and 6 that are unrelated to any alleged harm to Plaintiffs—specifically, the provisions that pertain to internal government operations and procedures.

Portions of Section 2 require various agencies to conduct a review of worldwide vetting procedures to determine what additional information, if any, is needed from each foreign country to adjudicate a visa application, prepare a report on the results of the worldwide review, submit a list of countries that do not provide requested information to the President, and recommend other lawful restrictions or limitations deemed necessary for the security of the United States. 82 Fed. Reg. at 13212-13. Likewise, during the interim period when refugee admissions is suspended, Section 6 directs the Secretary of State, in conjunction with the Secretary of Homeland Security and the Director of National Intelligence, to conduct an internal review and implement additional procedures identified by the review. *Id.* at 13215. Section 6 also requires the Secretary of State to review the "existing law" to determine how State and local jurisdictions could have greater involvement in the process of determining refugee placement. *Id.* at 13216.

Although other unenjoined sections of EO2 permit interagency coordination to review vetting procedures,

the district court nonetheless abused its discretion in enjoining the inward-facing tasks of Sections 2 and 6. Enjoining the entirety of Sections 2 and 6 was not narrowly tailored to addressing only the harms alleged. For example, internal determinations regarding the necessary information for visa application adjudications do not have an obvious relationship to the constitutional rights at stake or statutory conflicts at issue here. Plaintiffs have not shown how the Government's internal review of its vetting procedures will harm them. We vacate the preliminary injunction to the extent it enjoins internal review procedures that do not burden individuals outside of the executive branch of the federal government. *See Bresgal v. Brock*, 843 F.2d 1163, 1171 (9th Cir. 1987) ("An injunction against a government agency must be structured to take into account 'the well-established rule that the government has traditionally been granted the widest latitude in the "dispatch of its own internal affairs."'" (quoting *Rizzo v. Goode*, 423 U.S. 362, 378-79 (1976))); *cf. Bowen v. Roy*, 476 U.S. 693, 700 (1986) (explaining that the Free Exercise Clause "affords an individual protection from certain forms of governmental compulsion [but] does not afford an individual a right to dictate the conduct of the Government's internal procedures").

B

The Government next argues that the district court erred in enjoining Section 6's refugee provisions, specifically the suspension of refugees and adoption of the 50,000 refugee cap.

The State alleges that Section 6 will force it to abandon the refugee program that embodies the State's tra-

ditions of openness and diversity. The State has several policies that aid and resettle refugees, and has a "long history of welcoming refugees impacted by war and oppression." As discussed earlier, OCS, a division of the Department of Labor and Industrial Relations, is directed to "[a]ssist and coordinate the efforts of all public and private agencies providing services which affect the disadvantaged, refugees, and immigrants." Haw. Rev. Stat. § 371K-4(5). OCS also operates the Refugee Social Services Program and the Refugee Cash and Medical Assistance Program. *See* Department of Labor and Industrial Relations, Office of Community Services, 2017 Hawaii State Plan for Refugee Assistance and Services (2016); https://labor.hawaii.gov/ocs/files/2013/02/FY17-State-Plan-for-Hawaii.pdf (last visited June 6, 2017). The State further highlights that aiding refugees is central to the mission of private organizations, like Catholic Charities Hawai'i and Pacific Gateway Center.

Since fiscal year 2010, at least twenty refugees have arrived and resettled in Hawai'i, and in fiscal year 2017 to date, three have resettled there. While this is a small number of refugees, it does not diminish Hawai'i's interest in effectuating its refugee programs and investments. Enjoining the suspension and cap would protect the State's programs and efforts in resettling refugees.

Although the Government is correct in pointing out that most of Plaintiffs' alleged injuries center on the implementation of Section 2(c), at this preliminary stage of litigation, the district court did not abuse its discretion by enjoining Section 6's operative provisions suspending refugee admission on the basis of the cur-

rent record. We therefore reject the Government's challenge on this point.

C

The Government next contends that the district court erred by enjoining Section 2(c) as to all persons everywhere, rather than redressing only Plaintiffs' injuries. The Government requests that the nationwide injunction be limited to Plaintiffs only.[24]

The district court identified two reasons to support a nationwide injunction. First, the district court emphasized that in certain circumstances, it is appropriate for courts to issue nationwide injunctions. *Hawai'i PI*, 2017 WL 1167383, at *8. As the Fifth Circuit observed in *Texas v. United States*, nationwide injunctions are particularly appropriate in the immigration context because "immigration laws of the United States should be enforced vigorously and *uniformly*." 809 F.3d at 187-88; *see* U.S. Const. art. I, § 8, cl. 4 ("The Congress shall have Power . . . [t]o establish an *uniform* Rule of Naturalization . . . .") (emphasis added). Enjoining the conduct as to Plaintiffs may result in "fragmented immigration policy [that] would run afoul of the constitutional and statutory requirement for uniform immigration law and policy." *Washington*, 847 F.3d at 1166-67 (citing to *Texas*, 809 F.3d at 187-88)).

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[24] The Government also argues that to the extent § 1152(a)(1)(A) cabins executive authority, the injunction entered by the district court can only apply to immigrant visas and should not apply to *nonimmigrant* visas. We decline to narrow the injunction on the grounds proposed by the Government because, even assuming the Government is correct, the President failed to meet the precondition to exercising his authority under § 1182(f).

Second, the district court made clear that the Government did not provide a workable framework for narrowing the geographic scope of the injunction. *See id.* at 1167 ("[E]ven if limiting the geographic scope of the injunction would be desirable, the Government has not proposed a workable alternative form of the TRO that accounts for the nation's multiple ports of entry and interconnected transit system and that would protect the proprietary interests of the States at issue here while nevertheless applying only within the States' borders."). On appeal, the Government has not offered any new workable method of limiting the geographic scope of the injunction.

An "injunction is not necessarily made over-broad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—*if such breadth is necessary to give prevailing parties the relief to which they are entitled*." *Bresgal*, 843 F.2d at 1170-71. Narrowing the injunction to apply only to Plaintiffs would not cure the statutory violations identified, which in all applications would violate provisions of the INA. *See Int'l Refugee Assistance Project*, 2017 WL 2273306, at *27 (affirming the nationwide injunction because Section 2(c) of EO2 likely violates the Establishment Clause, and its constitutional deficiency "would endure" in all applications); *cf. Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) ("[W]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." (quoting *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989))).

The district court did not abuse its discretion in entering a nationwide preliminary injunction.

D

Finally, the Government argues that the district court erred by issuing an injunction that runs against the President himself. This position of the Government is well taken. Generally, we lack "jurisdiction of a bill to enjoin the President in the performance of his official duties." *Franklin v. Massachusetts*, 505 U.S. 788, 802-03 (1992) (quoting *Mississippi v. Johnson*, 71 U.S. 475, 501 (1866)); *see id.* at 802 ("[I]njunctive relief against the President himself is extraordinary, and should . . . raise[] judicial eyebrows."). Injunctive relief, however, may run against executive officials, including the Secretary of Homeland Security and the Secretary of State. *See, e.g.*, *Youngstown Sheet & Tube Co.*, 343 U.S. at 588-89 (holding that President Truman did not act within his constitutional power in seizing steel mills and affirming the district court's decision enjoining the Secretary of Commerce from carrying out the order); *Franklin*, 505 U.S. at 802-03.

We conclude that Plaintiffs' injuries can be redressed fully by injunctive relief against the remaining Defendants, and that the extraordinary remedy of enjoining the President is not appropriate here. *See Franklin*, 505 U.S. at 803. We therefore vacate the district court's injunction to the extent the order runs against the President, but affirm to the extent that it runs against the remaining "Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them."

E

The district court did err in enjoining the entirety of Sections 2 and 6, particularly the portions that pertain to interagency review, despite the Government's requests for clarification and requests to narrow the injunction to enjoin conduct that actually harms Plaintiffs. The district court abused its discretion in enjoining inward-facing agency conduct because enjoining this conduct would not remedy the harms asserted by Plaintiffs. Further, the district court abused its discretion in enjoining the President. We would not be able to affirm in full the preliminary injunction even if Plaintiffs were also likely to succeed on their constitutional claims, for reasons that enjoining internal review procedures does not remedy harms to Plaintiffs and because it is improper to enjoin the President without necessity. As we have affirmed the injunction in part on statutory grounds, and vacated certain parts on the basis of considerations governing the proper scope of an injunction, we need not consider the constitutional claims here.

VI

We affirm in part and vacate in part the district court's preliminary injunction order. As to the remaining Defendants, we affirm the injunction as to Section 2(c), suspending entry of nationals from the six designated countries for 90 days; Section 6(a), suspending USRAP for 120 days; and Section 6(b), capping the entry of refugees to 50,000 in the fiscal year 2017. We vacate the portions of the injunction that prevent the Government from conducting internal reviews, as otherwise directed in Sections 2 and 6, and the injunction to

the extent that it runs against the President. We remand the case to the district court with instructions to re-issue a preliminary injunction consistent with this opinion.[25]

AFFIRMED in part; VACATED in part; and REMANDED with instructions. Each party shall bear its own costs on appeal.

[25] The Government's motion for a stay pending appeal is **DENIED** as moot.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CV. NO. 17-00050 DKW-KSC

STATE OF HAWAI'I AND ISMAIL ELSHIKH,
PLAINTIFFS

v.

DONALD J. TRUMP, ET AL.,
DEFENDANTS

[July 6, 2017]

ORDER DENYING PLAINTIFFS' EMERGENCY MOTION TO CLARIFY SCOPE OF PRELIMINARY INJUNCTION

On June 26, 2017, the United States Supreme Court granted certiorari in this matter, granted in part the Government's stay application, "and narrow[ed] the scope of the injunction[]" entered by this Court with respect to Sections 2(c), 6(a), and 6(b) of Executive Order 13,780.[1] *Trump v. Int'l Refugee Assistance Project*, Nos. 16-1436 and 16-1540, slip op. at 11-12 (June 26, 2017) [hereinafter Slip. Op.] (per curiam). Plaintiffs State of Hawai'i and Ismail Elshikh, Ph.D. seek clarifi-

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[1] Executive Order 13,780 is entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 13209 (Mar. 6, 2017) [hereinafter EO-2].

cation from this Court regarding the Supreme Court's modification of the preliminary injunction, in light of the manner in which the Government began implementing the non-enjoined portions of EO-2 on June 29, 2017. *See* Pls.' Emergency Mot. to Clarify Scope of Prelim. Inj., ECF No. 293 [hereinafter Motion]; *see also* Pls.' Proposed Order Granting Mot., ECF No. 315-1 (reflecting consideration of "the preliminary injunction entered on March 29, 2017 (Dkt. No. 270), amended on June [1]9, 2017 (Dkt. No. 291), and modified by subsequent decision of the United States Supreme Court").

Upon careful consideration of the parties' submissions, it is evident that the parties quarrel over the meaning and intent of words and phrases authored not by this Court, but by the Supreme Court in its June 26, 2017 *per curiam* decision. That is, the parties' disagreements derive neither from this Court's temporary restraining order, this Court's preliminary injunction, nor this Court's amended preliminary injunction,[2] but from the modifications to this Court's injunction ordered by the Supreme Court. Accordingly, the clarification

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[2] *See Hawaii v. Trump*, --- F. Supp. 3d ---, 2017 WL 1011673 (D. Haw. Mar. 15, 2017) (TRO); *Hawaii v. Trump*, --- F. Supp. 3d ---, 2017 WL 1167383 (D. Haw. Mar. 29, 2017) (Prelim. Inj.); Am. Prelim. Inj., *Hawaii v. Trump*, CV. NO. 17-00050 (D. Haw. June 19, 2017), ECF No. 291.

to the modifications that the parties seek should be more appropriately sought in the Supreme Court.[3]

The Supreme Court stayed the preliminary injunction with respect to Section 2(c) in the following manner—

> The injunctions remain in place only with respect to parties similarly situated to Doe, Dr. Elshikh, and Hawaii. In practical terms, this means that § 2(c) may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States. All other foreign nationals are subject to the provisions of EO-2.

Slip Op. at 12.[4]

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[3] Federal Rule of Civil Procedure 62(c) allows this Court to issue further orders with respect to an injunction it issued, notwithstanding appeal. *See Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). "[A]n application with regard to an injunction ordinarily must be made in the first instance to the district court under Rule 62(c) and it is only if relief is not obtained there that the appellate court will consider acting under Rule 62(g)." 11 Wright, Miller, & Kane, Fed. Prac. & Proc. Civ. § 2904 (3d ed. 2013). That is perhaps the reason Plaintiffs opted to proceed here. However, where, as here, the challenges do not derive from this Court's *own* orders, the Court sees no reason why the starting point had to originate here, or even why it made sense to do so.

[4] The Supreme Court explained that the facts in the instant case and in No. 16-1436 (*IRAP*) "illustrate the sort of relationship that qualifies"—

In evaluating the Government's application for a stay, the Supreme Court observed that, "[i]n assessing the lower courts' exercise of equitable discretion, we

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> For individuals, a close familial relationship is required. A foreign national who wishes to enter the United States to live with or visit a family member, like Doe's wife or Dr. Elshikh's mother-in-law, clearly has such a relationship. As for entities, the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO-2. The students from the designated countries who have been admitted to the University of Hawaii have such a relationship with an American entity. So too would a worker who accepted an offer of employment from an American company or a lecturer invited to address an American audience.

Slip Op. at 12. With respect to enjoined portions of Section 6 relating to refugees, the Supreme Court reasoned that the "equitable balance struck [with respect to Section 2(c)] applies in this context as well." Slip Op. at 13. It held that—

> An American individual or entity that has a bona fide relationship with a particular person seeking to enter the country as a refugee can legitimately claim concrete hardship if that person is excluded. As to these individuals and entities, we do not disturb the injunction. But when it comes to refugees who lack any such connection to the United States, for the reasons we have set out, the balance tips in favor of the Government's compelling need to provide for the Nation's security.
>
> The Government's application to stay the injunction with respect to §§ 6(a) and (b) is accordingly granted in part. Section 6(a) may not be enforced against an individual seeking admission as a refugee who can credibly claim a bona fide relationship with a person or entity in the United States. Nor may § 6(b); that is, such a person may not be excluded pursuant to § 6(b), even if the 50,000-person cap has been reached or exceeded.

Id. (citations omitted).

bring to bear an equitable judgment of our own." Slip Op. at 10 (citing *Nken v. Holder*, 556 U.S. 418, 433 (2009)). The Supreme Court's equitable judgment to "tailor a stay," *id.*, resulted in modifications to this Court's preliminary injunction. These modifications spurred the Government's subsequent efforts to interpret the stay and implement the non-enjoined portions of EO-2 by June 29, 2017. Plaintiffs' Motion challenges only the Government's interpretation of the Supreme Court's June 26, 2017 stay. To be clear, the standard Plaintiffs ask this Court to clarify—i.e., "a credible claim of a bona fide relationship with a person or entity in the United States," Slip Op. at 12—is not set forth in any order of this Court.[5]

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[5] Plaintiffs' briefs acknowledge as much. *See, e.g.*, Pls.' Mem. in Supp. 1, ECF No. 293-1 ("That standard, the Supreme Court made clear, protects any foreign national with a 'close familial relationship' with a person in the United States[.]" (citation omitted)); Pls.' Mem. in Supp. 2 ("This Court should clarify as soon as possible that the Supreme Court meant what it said, and that foreign nationals that credibly claim connections with this country cannot be denied entry under the President's illegal Order."); Pls.' Reply 1, ECF No. 303 ("The Government fundamentally misconstrues the Supreme Court's partial stay. The [Supreme] Court did not concoct an abstract 'bona fide relationship' standard that the Government can tailor to its liking[.]"); Reply 2 ("The Court should correct the Government's path, holding the Government to the clear terms of the Supreme Court's order." (footnote omitted)). *But see* Motion 3 ("The Government has indicated publicly that it will begin enforcing the non-enjoined portions of [EO-2] in a manner that conflicts with this Court's preliminary injunction, as well as the Supreme Court's June 26, 2017 ruling that [EO-2] may not be enforced against foreign nationals and refugees 'who have a credible claim of

Because Plaintiffs seek clarification of the June 26, 2017 injunction modifications authored by the Supreme Court, clarification should be sought there, not here. This Court will not upset the Supreme Court's careful balancing and "equitable judgment" brought to bear when "tailor[ing] a stay" in this matter. Slip Op. at 10. Nor would this district court presume to substitute its own understanding of the stay for that of the originating Court's "exercise of discretion and judgment" in "[c]rafting a preliminary injunction . . . dependent as much on the equities of a given case as the substance of the legal issues it presents." Slip Op. at 9. This Court declines to usurp the prerogative of the Supreme Court to interpret its own order and defers in the first instance. *See Ala. Nursing Home Ass'n v. Harris*, 617 F.2d 385, 388 (5th Cir. 1980) ("Great deference is due the interpretation placed on the terms of an injunctive order by the court who issued and must enforce it."); *cf. Alley v. U.S. Dep't of Health & Human Servs.*, 590 F.3d 1195, 1202 (11th Cir. 2009) ("The district court is in the best position to interpret its own orders." (internal quotation marks omitted)).[6]

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a bona fide relationship with a person or entity in the United States.'" (quoting Slip Op. at 11, 13)).

[6] *See also Regents of the Univ. of Cal. v. Aisen*, No. 15-CV-1766, 2016 WL 4681177, at *1 (S.D. Cal. Sept. 7, 2016) ("The Supreme Court teaches that when questions arise as to the interpretation or application of an injunction order, a party should seek clarification or modification from the issuing court, rather than risk disobedience and contempt.") (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949)).

CONCLUSION

For the foregoing reasons, Plaintiffs' request for clarification is DENIED without prejudice to its re-filing with the Supreme Court.[7]

IT IS SO ORDERED.

Dated: July 6, 2017 at Honolulu, Hawai'i.

[SEAL]

/s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge

State of Hawaii, et al. v. Trump, et al.; Civil No. 17-00050 DKW-KSC; **ORDER DENYING PLAINTIFFS' EMERGENCY MOTION TO CLARIFY SCOPE OF PRELIMINARY INJUNCTION**

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[7] Of course, if the Supreme Court wishes for this Court to decide the merits of the issues raised by Plaintiffs' Motion in the first instance, this Court will promptly do so.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-16366

D.C. No 1:17-cv-00050-DKW-KSC

District of Hawaii, Honolulu

STATE OF HAWAII; ISMAIL ELSHIKH,
PLAINTIFFS-APPELLANTS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX W. TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; UNITED STATES OF AMERICA,
DEFENDANTS-APPELLEES

[July 7, 2017]

ORDER

Before: HAWKINS, GOULD, and PAEZ, Circuit Judges.

This is an appeal of the district court's July 6, 2017 denial of Plaintiffs' "Emergency Motion to Clarify Scope of Preliminary Injunction." Plaintiffs requested that the district court "clarify the scope of the Court's June 19, 2017 amended preliminary injunction." The

district court denied the clarification motion, explaining that, because it was the Supreme Court—not the district court—that issued the June 26, 2017 order staying in part the district court's preliminary injunction, clarification of the June 26 order must be sought from the Supreme Court. Plaintiffs have filed an emergency motion requesting that this court enjoin the Government from violating the Supreme Court's June 26 order or directing the district court to do so.

We lack jurisdiction to address Plaintiffs' appeal of the district court's order denying the motion to clarify the scope of the injunction. This court possesses jurisdiction to review only final judgments and a limited set of interlocutory orders. *See* 28 U.S.C. §§ 1291, 1292(a). The district court's order neither resulted in a final judgment nor engaged in action deemed immediately appealable in 28 U.S.C. § 1292(a). Specifically, the district court's order did not "grant[], continu[e], modify[], refus[e], or dissolv[e]" an injunction, or "refus[e] to dissolve or modify" an injunction. *Id.* § 1291(a)(1).

Nor do any of the various judicially-crafted bases for appellate jurisdiction apply under these circumstances. Because the "practical effect" of Plaintiffs' requested relief is declaratory in nature—not injunctive—we do not construe their clarification motion before the district court as one for injunctive relief. *See, e.g.*, *Alsea Valley All. v. Dep't of Commerce*, 358 F.3d 1181, 1186 (9th Cir. 2004). And this scenario does not present an order of "practical finality" because—as discussed below—Plaintiffs may seek injunctive relief from the district court. *Cf. Nehmer v. U.S. Dep't of Veterans Affairs*, 494 F.3d 846, 856 n.5 (9th Cir. 2007); *All*

Alaskan Seafoods, Inc. v. M/V Sea Producer, 882 F.2d 425, 428 n.2 (9th Cir. 1989).

Because we lack jurisdiction to review the district court's order, this appeal is DISMISSED and Plaintiffs' "Emergency Motion under FRAP 8 and Circuit Rule 27-3 for Injunction Pending Appeal" is DENIED as moot.[1]

Finally, we note that although the district court may not have authority to *clarify* an order of the Supreme Court, it does possess the ability to interpret and enforce the Supreme Court's order, as well as the authority to enjoin against, for example, a party's violation of the Supreme Court's order placing effective limitations on the scope of the district court's preliminary injunction. *Cf. United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 79-80 (9th Cir. 1951). But Plaintiffs' motion before the district court was clear: it sought clarification of the Supreme Court's June 26 order, not injunctive relief. Because the district court was not asked to grant injunctive relief or to modify the injunction, we do not fault it for not doing so.

IT IS SO ORDERED.

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[1] Plaintiffs' emergency motion also seeks a writ of mandamus. Because the district court's denial of Plaintiffs' motion for clarification was not clear error, the extraordinary power of mandamus is not appropriate. *See Bauman v. U.S. Dist. Ct.*, 557 F.2d 650, 654-55 (9th Cir. 1977). Plaintiffs' motion for a writ of mandamus is DENIED.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CV. NO. 17-00050 DKW-KSC

STATE OF HAWAI'I AND ISMAIL ELSHIKH,
PLAINTIFFS

v.

DONALD J. TRUMP, ET AL.,
DEFENDANTS

[July 13, 2017]

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO ENFORCE, OR, IN THE ALTERNATIVE, TO MODIFY PRELIMINARY INJUNCTION

INTRODUCTION

On June 26, 2017, the United States Supreme Court granted certiorari in this matter, granted in part the Government's stay application, "and narrow[ed] the scope of the injunction[]" entered by this Court with respect to Sections 2(c), 6(a), and 6(b) of Executive Order 13,780.[1] *Trump v. Int'l Refugee Assistance Project*, Nos. 16-1436 (16A1190) and 16-1540 (16A1191),

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[1] Executive Order 13,780 is entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 13209 (Mar. 6, 2017) [hereinafter EO-2].

slip op. at 11-12 (U.S. June 26, 2017) [hereinafter Slip. Op.] (per curiam). Plaintiffs challenge the Government's implementation of the non-enjoined portions of EO-2, asking this Court to enforce or, in the alternative, to modify the scope of the existing preliminary injunction. *See* Pls.' Mot. to Enforce or, In the Alternative, to Modify Prelim. Inj., ECF No. 328 [hereinafter Motion].

Upon careful consideration of the parties' expedited submissions, the Court concludes that on the record before it, Plaintiffs have met their burden of establishing that the requested injunctive relief is necessary to preserve the status quo pending appeal regarding the definition of "close familial relationship" employed by the Government with respect to Sections 2(c), 6(a) and 6(b) of EO-2. Plaintiffs have similarly met their burden with respect to refugees with a formal assurance, as it relates to the Government's implementation of Sections 6(a) and 6(b) of EO-2, and participants in the Lautenberg Program. Plaintiffs' Motion is accordingly GRANTED in these respects and DENIED to the extent other relief is sought, for the reasons detailed below.

BACKGROUND

The Court briefly recounts the factual and procedural background relevant to Plaintiffs' Motion.

I. Prior Proceedings

A. This Court's March 29, 2017 Preliminary Injunction

On March 15, 2017, the Court temporarily enjoined Sections 2 and 6 of EO-2 nationwide ("TRO"). *See Hawaii v. Trump*, --- F. Supp. 3d ---, 2017 WL 1011673

(D. Haw. Mar. 15, 2017). Upon Plaintiffs' motion, full briefing, and a March 29, 2017 hearing, the Court converted the TRO into a preliminary injunction ("PI"). *Hawaii v. Trump*, --- F. Supp. 3d ---, 2017 WL 1167383 (D. Haw. Mar. 29, 2017). The Government appealed the Court's ruling on March 30, 2017. Notice of Appeal, ECF No. 271.

B. The Ninth Circuit's June 12, 2017 Opinion

The Ninth Circuit's June 12, 2017 *per curiam* opinion affirmed the injunction as to Section 2(c), suspending entry of nationals from the six designated countries for 90 days; Section 6(a), suspending the U.S. Refugee Admissions Program ("USRAP") for 120 days; and Section 6(b), capping the entry of refugees to 50,000 in fiscal year 2017. *Hawaii v. Trump*, --- F.3d ---, 2017 WL 2529640, at *29 (9th Cir. June 12, 2017) (per curiam). The Ninth Circuit vacated the portions of the injunction that prevented the Government from conducting internal reviews, as otherwise directed in Sections 2 and 6, and the injunction to the extent that it ran against the President. *Id.*, 2017 WL 2529640, at *29. The Ninth Circuit remanded to this Court with instructions to enter an amended injunction consistent with its opinion. This Court accordingly entered an amended injunction on June 19, 2017, upon issuance of the expedited mandate. Am. Prelim. Inj., *Hawaii v. Trump*, No. 1:17-cv-00050-DKW-KSC (D. Haw. June 19, 2017), ECF No. 291.

II. The Supreme Court's June 26, 2017 Order

The Government petitioned for certiorari and filed an application to stay both the preliminary injunction

entered in this case and the one entered by the District of Maryland in a case now consolidated on appeal. *Int'l Refugee Assistance Project v. Trump*, --- F. Supp. 3d ---, 2017 WL 1018235 (D. Md. Mar. 16, 2017) [hereinafter *IRAP*] (issuing preliminary injunction); *aff'd in part, vacated in part*, 857 F.3d 554 (4th Cir. May 25, 2017) (No. TDC-17-0361, D. Md.; renumbered No. 17-1351, 4th Cir.). On June 26, 2017, the Supreme Court granted certiorari in both cases. Slip Op. at 9. The Supreme Court also granted "the Government's applications to stay the injunctions, to the extent the injunctions prevent enforcement of §2(c) with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States," Slip Op. at 11-12.

More specifically, the Supreme Court stayed the preliminary injunctions relating to Section 2(c) in the following manner—

> The injunctions remain in place only with respect to parties similarly situated to Doe, Dr. Elshikh, and Hawaii. In practical terms, this means that §2(c) may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States. All other foreign nationals are subject to the provisions of EO-2.

Slip Op. at 12. The Supreme Court explained that the facts in this case and in *IRAP* "illustrate the sort of relationship that qualifies"—

> For individuals, a close familial relationship is required. A foreign national who wishes to enter the United States to live with or visit a family

> member, like Doe's wife or Dr. Elshikh's mother-in-law, clearly has such a relationship. As for entities, the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO-2. The students from the designated countries who have been admitted to the University of Hawaii have such a relationship with an American entity. So too would a worker who accepted an offer of employment from an American company or a lecturer invited to address an American audience. Not so someone who enters into a relationship simply to avoid §2(c): For example, a nonprofit group devoted to immigration issues may not contact foreign nationals from the designated countries, add them to client lists, and then secure their entry by claiming injury from their exclusion.

Slip Op. at 12.

With respect to the enjoined portions of Section 6 relating to refugee admissions and the refugee cap, the Supreme Court reasoned that the "equitable balance struck [with respect to Section 2(c)] applies in this context as well." Slip Op. at 13. It held—

> An American individual or entity that has a bona fide relationship with a particular person seeking to enter the country as a refugee can legitimately claim concrete hardship if that person is excluded. As to these individuals and entities, we do not disturb the injunction. But when it comes to refugees who lack any such connection to the United States, for the reasons we have set out, the balance tips in favor of the Government's compelling need to provide for the Nation's security.

> The Government's application to stay the injunction with respect to §§6(a) and (b) is accordingly granted in part. Section 6(a) may not be enforced against an individual seeking admission as a refugee who can credibly claim a bona fide relationship with a person or entity in the United States. Nor may §6(b); that is, such a person may not be excluded pursuant to §6(b), even if the 50,000-person cap has been reached or exceeded.

Id. (internal citations omitted).

III. Plaintiffs' Challenge To The Government's Implementation Of EO-2

The Government began enforcing the non-enjoined portions of EO-2 on June 29, 2017 at 8:00 p.m. EDT. In doing so, the Government published guidance to its agencies on the implementation and enforcement of EO-2, guidance that has been amended, and which the Government has indicated will be amended again, as circumstances warrant. *See* Katyal Decl., Exs. A-C, & F, ECF Nos. 329-1, 329-2, 329-3, & 329-6.

The Government's guidance defines "close familial relationship" as including a parent, parent-in-law, spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling (whether whole or half), and step relationships. These relationships are exempt from EO-2. The Government's definition does not include

grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law and sisters-in-law.[2] Plaintiffs challenge the Government's narrower construction.

With respect to refugee program guidance, the Government instructed agencies that, "[t]he fact that a resettlement agency in the United States has provided a formal assurance for a refugee seeking admission . . . is not sufficient in and of itself to establish a qualifying relationship for that refugee with an entity in the United States." Katyal Decl., Ex. B, Dep't of State, *untitled guidance document* (received by Pls. June 29, 2017), ECF No. 329-2. The Government also initially indicated that it had not determined whether refugees with a "bona fide relationship with a person or entity in the United States" would be permitted to travel after July 6, 2017, and would issue further guidance. *See id.* Updated guidance from the State Department instructs its private voluntary agency partners that "[n]o new [advanced booking notifications ('ABNs')] for travel for cases with or without the required bona fide relationship to a person or entity in the United States may be requested at this time. We hope to allow new ABNs for such cases to resume in the

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[2] The Government's first official guidance published on June 29, 2017, before enforcement of Sections 2(c), 6(a), and 6(b), indicated that fiancés would not be considered to be close family members for purposes of applying the Supreme Court's decision. That guidance was subsequently updated to include fiancés. *See* Katyal Decl., Ex. C, Dep't of State, *Exec. Order on Visas*, at 3 (June 29, 2017), ECF No. 329-3, *available at* https://travel.state.gov/content/travel/en/news/important-annoucement.html.

very near future, once we clarify verification procedures." Katyal Decl., Ex. F, E-mail from Lawrence E. Bartlett, Dir., Office of Admissions, Bureau of Population, Refugees, & Migration, to Voluntary Agencies (July 3, 2017, 16:30 EDT), ECF No. 329-6. Plaintiffs contest this guidance, principally asserting that refugees with a formal assurance can credibly claim a bona fide relationship with a refugee resettlement agency.

Plaintiffs additionally request that the Court recognize that certain client relationships with legal services organizations are protected by this Court's injunction, and that the participants in three specific refugee programs are categorically exempt from EO-2: "U.S.-affiliated Iraqis" at risk of persecution because of their contributions to the United States' combat mission in Iraq; participants in the Central American Minors Program; and participants in the Lautenberg Program, each of which, Plaintiffs argue, requires participants to have close family ties with the United States, a relationship with a "designated resettlement agency," or both. Plaintiffs ask the Court to issue an order either enforcing or modifying its amended preliminary injunction to reflect the scope of relief requested in the Motion.[3]

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[3] Plaintiffs request that the Court issue an order enforcing or modifying its preliminary injunction to reflect that

> (1) the injunction bars the Government from implementing the Executive Order against grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States; (2) the injunction prohibits the Government from applying sections 6(a) and 6(b) to exclude refugees who: (i) have a formal assurance from a resettlement

DISCUSSION

I. Legal Standard

Federal Rule of Civil Procedure 62(c) allows this Court to issue further orders with respect to an injunction it issued, notwithstanding appeal, in order to preserve the status quo or ensure compliance with its earlier orders. *See Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001).[4]

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agency within the United States (ii) have a bona fide client relationship with a U.S. legal services organization; or (iii) are in the U.S. Refugee Admissions Program ("USRAP") through the Iraqi Direct Access Program for "U.S.-affiliated Iraqis," the Central American Minors Program, or the Lautenberg Program; (3) the injunction bars defendants from suspending any part of the refugee admission process, including any part of the "Advanced Booking" process, for individuals with a bona fide relationship with a U.S. person or entity; and (4) the preliminary injunction prohibits the Government from applying a presumption that an applicant lacks "a bona fide relationship with a person or entity in the United States."

Mot. 1-2.

[4] *See also Hoffman for & on Behalf of N.L.R.B. v. Beer Drivers & Salesmen's Local Union No. 888*, 536 F.2d 1268, 1276 (9th Cir. 1976) (addressing situations in which a district court "has a continuing duty to maintain a status quo" and stating, "[w]e believe the rule should be, and we so hold that, in the kinds of cases where the court supervises a continuing course of conduct and where as new facts develop additional supervisory action by the court is required, an appeal from the supervisory order does not divest the district court of jurisdiction to continue its supervision, even though in the course of that supervision the court acts upon or modifies the order from which the appeal is taken"). The current status quo pending appeal is the preliminary injunction which enjoins defendants from

Pursuant to Rule 62(c), "[t]he court may modify or broaden the scope of its injunction under its continuing duty to supervise the relief granted if it is informed of new facts that require additional supervisory action."[5] *Nat'l Grange of the Order of Patrons of Husbandry v. Cal. State Grange*, 182 F. Supp. 3d 1065, 1074 (E.D. Cal. 2016) (citing, *inter alia*, *Sys. Fed'n No. 91 v. Wright*, 364 U.S. 642, 647-48 (1961) (holding that a district court has "wide discretion" to modify an injunction based on changed circumstances or new facts); *A & M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098-99 (9th Cir. 2002) (modification of injunction during pendency of appeal was proper to clarify the injunction and supervise compliance in light of new facts)).[6]

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enforcing portions of EO-2, as modified by the Supreme Court's June 26, 2017 order.

[5] *See also Toussaint v. McCarthy*, 801 F.2d 1080, 1090 (9th Cir. 1986) ("A change in the law may constitute a changing circumstance requiring the modification of an injunction. An intervening judicial opinion may require modification of an injunction."), *overruled in part on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

[6] Plaintiffs initially moved this Court to clarify the scope of the injunction, in light of the Supreme Court's June 26, 2017 modification (ECF. No. 293), a motion which the Court denied without reaching the merits. *See Hawaii v. Trump*, --- F. Supp. 3d ----, 2017 WL 2882696 (D. Haw. July 6, 2017). On July 7, 2017, the Ninth Circuit dismissed Plaintiffs' appeal of that decision and denied as moot their motion for an injunction pending appeal. *See Hawaii v. Trump*, No. 17-16366, slip op. at 3 (9th Cir. July 7, 2017), ECF No. 3. The Ninth Circuit explained that although this Court does "not have authority to *clarify* an order of the Supreme Court, it does possess the ability to interpret and enforce the Supreme Court's order, as well as the authority to enjoin against, for exam-

This Court is guided by the Supreme Court's instruction that "[c]rafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." Slip. Op. at 9 (citations omitted).

With this framework in mind, the Court turns to Plaintiffs' specific requests for injunctive relief.

II. The Government's Implementation Of The Supreme Court's "Close Familial Relationship" Standard Is Unduly Restrictive

Plaintiffs request that the Court enjoin the Government from implementing EO-2 against grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States. The Supreme Court held that foreign nationals who claim a bona fide relationship with a person in the United States must have a "close familial relationship" in order to be excluded from the effects of EO-2, but the Supreme Court did not comprehensively define that phrase. Slip Op. at 12. The Government, in an effort to provide consular officials and agencies with the necessary guidance to implement the standard

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ple, a party's violation of the Supreme Court's order placing effective limitations on the scope of the district court's preliminary injunction." *Id.* Because Plaintiffs now seek such injunctive relief, the Court reaches the merits of their request, consistent with the Ninth Circuit's guidance. *See id.* ("Plaintiff's motion before the district court was clear: it sought clarification of the Supreme Court's June 26 order, not injunctive relief. Because the district court was not asked to grant injunctive relief or to modify the injunction, we do no fault it for not doing so.").

in a very short window of time, created a list of family relations it claims satisfies the standard. The Government's list includes only parents, parents-in-law, spouses, fiancés, children, adult sons or daughters, sons-in-law, daughters-in-law, siblings (whether whole or half), and step relationships, principally in reliance on certain provisions within the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101 *et seq.*, applicable to family-based immigrant visas. *See, e.g.*, 8 U.S.C. §§ 1101(b)(1)-(2); 1151(b)(2); 1153(a); 1184(d).[7]

In its June 26, 2017 decision, the Supreme Court identified illustrative, but not exhaustive, examples of "close familial relationships." A spouse and a mother-in-law "clearly" qualify, but which other relationships meet this standard is less clear. *See* Slip Op. at 12. What is clear from the Supreme Court's decision is that this Court's analysis is to be guided by consideration of whether foreign nationals have a requisite "connection" or "tie" to this country. *See* Slip Op. at 11 (holding that the injunction is not to be enforced against foreign nationals with "no connection to the United States at all," those who "lack[] any connection to this country," and "when there is no tie between the foreign national and the United States."). Put another way, context matters. And when appropriately considered in the

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[7] The Government contends that, to the extent it also relies on INA provisions that govern the "allocation of a numerically-limited number of visas . . . [,] all of these provisions draw lines in the context of determining which familial relationships are close enough to petition for a visa under the INA. That is exactly the type of line-drawing that the Supreme Court's opinion requires." Mem. in Opp'n 5 n.2 (citation omitted).

context of the June 26 order, the Government's narrowly defined list finds no support in the careful language of the Supreme Court or even in the immigration statutes on which the Government relies.

First, the Government's utilization of the specific, family-based visa provisions of the INA identified above constitutes cherry-picking and resulted in a predetermined and unduly restrictive reading of "close familial relationship." Other, equally relevant federal immigration statutes define a close family in a much broader manner. *See, e.g.*, *Reno v. Flores*, 507 U.S. 292, 297, 310 (1993) (including "aunts, uncles, [and] grandparents" as among "close blood relatives") (quoting 8 C.F.R. § 242.24 (1992), recodified at 8 C.F.R. § 236.3(b)(1)(iii)); *see also* Fam. Sponsor Immigration Act of 2002, Pub. L. 107-150, § 2(a) (entitled "Permitting Substitution of Alternative Close Family Sponsor In Case of Death of Petitioner," and amending 8 U.S.C. § 1183a(f) to allow sisters-in-law, brothers-in-law, grandparents, and grandchildren to sponsor aliens for admission).[8]

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[8] Plaintiffs additionally identify other immigration laws that enable an individual to seek admission on behalf of "[g]randchild(ren)" and "[n]iece[s] or nephew[s]," 81 Fed. Reg. 92,266, 92,280 (Dec. 19, 2016); to apply for asylum if a "grandparent, grandchild, aunt, uncle, niece, or nephew" resides in the United States, 69 Fed. Reg. 69,480, 69,488 (Nov. 29, 2004); to apply for naturalization on behalf of a grandchild, 8 U.S.C. § 1433(a); and to qualify as a special immigrant if he is the "grandparent" of a person in the United States, *see* USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 421(b)(3) (2001).

Second, Defendants point to nothing in the Supreme Court's order that supports their truncated reading. In fact, the Supreme Court specifically included a mother-in-law within its definition of "close family" despite the exclusion of mothers-in-law from the statutes relied upon by the Government in crafting its guidance. The Supreme Court was clear that EO-2 may not be enforced against Dr. Elshikh's mother-in-law, not because she is merely the mother of his wife, but because she "clearly has such a [close familial] relationship" with Dr. Elshikh himself. Slip. Op. at 12. Had the Supreme Court intended to protect only immediate family members and parents-in-law, surely it could have said so. It did not.

Indeed, Supreme Court case law drawn from other contexts supports a broader definition of "close familial relationship" than that urged by the Government. *See, e.g.*, *Moore v. City of E. Cleveland*, 431 U.S. 494, 503-04 (1977) (holding that the invalidation of a local housing ordinance was warranted, in part, because the "tradition of uncles, aunts, cousins, and especially grandparents sharing a household with parents and children has roots equally venerable and equally deserving of constitutional recognition"); *Troxel v. Granville*, 530 U.S. 57, 63-65 (2000) (plurality opinion) ("[D]emographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to house-

hold. . . . In many cases, grandparents play an important role.").[9]

In sum, the Government's definition of "close familial relationship" is not only not compelled by the Supreme Court's June 26 decision, but contradicts it. Equally problematic, the Government's definition represents the antithesis of common sense. Common sense, for instance, dictates that close family members be defined to include grandparents. Indeed, grandparents are the *epitome* of close family members. The Government's definition excludes them. That simply cannot be. *See generally Klayman v. Obama*, 142 F. Supp. 3d 172, 188 (D.D.C. 2015) (noting that courts should not "abandon all common sense" when considering injunctive relief).[10]

In light of the careful balancing of the hardships and the equitable considerations mandated by the Supreme Court, the Court finds that Plaintiffs have met their burden of establishing that the specific requested injunctive relief related to EO-2 is necessary to preserve the status quo pending appeal. Plaintiffs' Motion is accord-

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[9] *See also Caldwell v. Brown*, No. C09-1332RSL, 2010 WL 3501839, at *2 (W.D. Wash. Sept. 3, 2010) ("[T]he grandparent-grandchild relationship is entitled to respect and some level of recognition in our society. As the United States Supreme Court has recognized, grandparents often play an 'important role' in the lives of their grandchildren. . . . The question is not whether grandparents are important members of the American family: they are." (quoting *Troxel*, 530 U.S. at 64)).

[10] Although the Government contends that its "reasonable construction" is entitled to deference (*see* Mem. in Opp'n 9), it offers no authority in support of that proposition.

ingly granted with respect to this issue, and the Court will modify the injunction in the manner requested.

III. The Government May Not Exclude Refugees With A Credible Claim Of A Bona Fide Relationship With A Person Or Entity In The United States

Plaintiffs ask the Court to modify the injunction with respect to Sections 6(a) and 6(b) in several respects, each of which is addressed in turn.

A. The Government May Not Exclude Refugees Covered By a Formal Assurance Between The Government And A United States Refugee Resettlement Agency

Plaintiffs seek to prevent the Government from implementing agency guidance that "[t]he fact that a resettlement agency in the United States has provided a formal assurance for a refugee seeking admission . . . is not sufficient in and of itself to establish a qualifying relationship for the refugee with an entity in the United States." Katyal Decl., Ex. B, Dep't of State, *untitled guidance document* (received by Pls. June 29, 2017), ECF No. 329-1. Plaintiffs insist that a formal assurance issued by a resettlement agency satisfies the Supreme Court's bona fide relationship requirement due to the formal nature of the agreement and the extensive obligations it triggers on the part of the voluntary agency or affiliate.

The parties do not dispute that before *any* refugee is admitted to the United States under the USRAP, the Department of State must receive a commitment ("assurance") from a resettlement agency. *See* Mem. in Opp'n to Emergency Mot. to Clarify, Bartlett Decl.

¶¶ 14-19; ECF No. 301-1; *see id.* ¶ 16 ("All refugees receive a sponsorship assurance from a resettlement agency before they travel to the United States."). Once a particular refugee has been approved by the Department of Homeland Security and provides a satisfactory medical evaluation, the refugee is assigned to one of several Government-contracted resettlement agencies, which then submits an assurance agreeing to provide basic, required services if and when the refugee arrives in the United States. Bartlett Decl. ¶¶ 19-21, ECF No. 301-1. The Government quarrels with the effect of such an assurance. According to the Government, because the assurance is an agreement between the State Department and a resettlement agency, not an agreement between a resettlement agency and the refugee who benefits from the assurance, the assurance cannot evidence the type of bona fide relationship contemplated by the Supreme Court. Mem. in Opp'n 11. The Court disagrees.

Nothing in the Supreme Court's decision requires a refugee to enter into a contract with a United States entity in order to demonstrate the type of formal relationship necessary to avoid the effects of EO-2. An assurance from a United States refugee resettlement agency, in fact, meets each of the Supreme Court's touchstones: it is formal, it is a documented contract, it is binding, it triggers responsibilities and obligations, including compensation, it is issued specific to an individual refugee only when that refugee has been approved for entry by the Department of Homeland Security, and it is issued in the ordinary course, and historically has been for decades. *See* Slip Op. at 12. Bona fide

does not get any more bona fide than that.[11] Accordingly, Plaintiffs' Motion is granted with respect to this specific request for injunctive relief.[12]

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[11] Even if the Government is correct that the resettlement agency providing an assurance typically does not have "direct contact" with the refugee prior to his or her arrival, no such "direct contact" is required anywhere in the Supreme Court's decision. Moreover, the resettlement agency's binding commitments arise when the agency provides a formal sponsorship assurance. *See* Bartlett Decl. ¶¶ 20-21, ECF No. 301-1*; see also* Suppl. Hetfield Decl. ¶¶ 4-5, ECF No. 336-3. The resettlement agency suffers a "concrete injury" in the form of lost resources when resettlement is thwarted by the very Government that approved that refugee's admission. *See Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 729, 731-732 (S.D. Ind.), *aff'd* 838 F.3d 902 (7th Cir. 2016); *see also Exodus Refugee Immigration, Inc. v. Pence*, No. 1:15-cv-01858-TWP-DKL, 2016 WL 1222265, at *5 (S.D. Ind. Mar. 29, 2016) (denying stay pending appeal pursuant to Rule 62(c), based, in part, on finding that the "State's conduct harms [the resettlement agency by] requir[ing] it to shift its resources to make up for the funding it will lose, [which] will have a detrimental effect on its Syrian and non-Syrian clients' resettlement and transition to life in the United States"), *aff'd* 838 F.3d 902 (7th Cir. 2016). A relationship that results in such concrete hardship to a United States entity is precisely the circumstance that the Supreme Court has found to be deserving of exclusion from the effects of EO-2. *See* Slip Op. at 13.

[12] Plaintiffs complain of travel procedures and booking dates that they assert the Government is using to flout this Court's injunction. *See, e.g.*, Suppl. Hetfield Decl. ¶¶ 4-5 & Ex. A (E-mail from Lawrence E. Bartlett, to Voluntary Agencies (July 8, 2017, 8:05 EDT)), ECF No. 336-3. As best the Court can discern, regardless of the booking date involved, these complaints all relate to refugees with formal assurances, who the Court has now determined have the requisite bona fide relationship contemplated by the Supreme Court, and who are therefore excluded from the application of EO-2. No further relief covering these refugees appears to be

B. No Modification With Respect To Legal Services Organizations Is Warranted

Plaintiffs request that the Court modify its injunction to specify that the Government is prohibited from applying Sections 6(a) and 6(b) to exclude refugees who have a bona fide client relationship with a United States legal services organization.

The Government previously noted that there currently is no applicable guidance regarding the treatment of legal services providers because the nature of such representational services varies significantly. *See* Mem. in Opp'n to Emergency Mot. to Clarify Prelim Inj. 20-21, ECF No. 301. The Court agrees. Plaintiffs, for instance, advocate that foreign nationals consulting abroad with "affiliates" of American legal services providers regarding United States immigration law qualify as having a credible claim of a bona fide relationship with a person or entity in the United States. That conclusion, while conceivable, appears to be nearly impossible to reach absent additional facts, such as with respect to the nature of the consultation and affiliation. A categorical exemption of the sort requested would run afoul of the Supreme Court's order, which provides at least one example of when such a legal services client relationship would not be protected. *See* Slip Op. at 12.

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necessary, and the Court denies any such request as moot. If this ruling and the related injunction modifications set forth in this Order do not resolve or do not address Plaintiffs' travel procedure concerns, an application offering further detail may be filed.

Accordingly, to the extent Plaintiffs seek injunctive relief on behalf of IRAP and similar legal services providers, they fail to meet their burden, and the Court declines to issue the categorical modification sought.

C. Categorical Modifications Relating To U.S.-Affiliated Iraqis, The Central American Minors Program, And The Lautenberg Program

Plaintiffs, joined by amici IRAP and HIAS, ask that the Court enforce or modify the injunction due to the Government's alleged refusal to recognize particular refugees who have the requisite relationship to a United States entity or close family member contemplated by the Supreme Court. More specifically, Plaintiffs seek relief on behalf of refugees who accessed the USRAP through the Iraqi Direct Access Program for U.S.-Affiliated Iraqis, the Central American Minors Program, and the Lautenberg Program. *See* Br. of IRAP *et al.* as Amici Curiae in Supp. of Pls.' Mot. 10-13, ECF No. 339.

1. Direct Access Program For U.S.-Affiliated Iraqis

Plaintiffs contend that refugee applicants in the Iraqi Direct Access Program for U.S.-Affiliated Iraqis are categorically exempt from Sections 6(a) and 6(b) because they necessarily have the requisite bona fide relationship with a United States person or entity. *See* Mem. in Supp. of Mot. 15 n.6; *see also* Br. of IRAP *et al.* as Amici Curiae in Supp. of Pls.' Mot. 11-12; Allen Decl. ¶¶ 17-24, ECF No. 336-5 (describing mechanics and goals of program). Under the program, Iraqis who believe they are at risk or have experienced seri-

ous harm as a result of associating with the United States Government since March 20, 2003 may apply directly for resettlement as refugees in the United States, upon "verifiable proof of U.S.-affiliated employment." *See* Dep't of State, Bureau of Population, Refugees, & Migration, *Fact Sheet: U.S. Refugee Admissions Program (USRAP) Direct Access Program for U.S.-Affiliated Iraqis* (Mar. 11, 2016), *available at* https://www.state.gov/j/prm/releases/factsheets/2016/254650.htm ("The following individuals and their derivatives (spouse and unmarried children under age 21), with verifiable proof of U.S.-affiliated employment, may seek access through this program: 1. Iraqis who work/worked on a full-time basis as interpreters/translators for the U.S. Government (USG) or Multi-National Forces (MNF-I) in Iraq; 2. Iraqis who are/were employed by the USG in Iraq[.]"). Program applicants need not be current employees of the United States or a United States-affiliated entity.

The Government opposes this request because the "Iraqi Direct Access Program includes certain non-qualifying relationships with the U.S. Government itself, as well as past (not current) relationships." Mem. in Opp'n 15 n.6. The Court concurs. Although U.S-Affiliated Iraqis with verifiable past employment relationships with United States entities may qualify for participation in the program, these applicants are not necessarily exempt from EO-2. The Supreme Court's guidance, as it relates to Section 6, clearly contemplates relationships that are current and existing. That does not necessarily follow with respect to certain Iraqi Direct Access Program applicants.

Accordingly, on the record before the Court, categorical relief is not appropriate, and Plaintiffs' Motion is denied with respect to the Iraqi Direct Access Program for U.S.-Affiliated Iraqis.

2. Central American Minors Program

The Central American Minors ("CAM") program "protects Central Americans at risk by allowing lawfully present parents in the United States to request refugee status for their children in El Salvador, Honduras, and Guatemala via the U.S. Refugee Admissions Program." *See* Dep't of State, *Cent. Am. Minors Program* (Nov. 2014), *available at* https://www.state.gov/j/prm/ra/cam/index.htm. The Government argues that because the program also allows "caregivers" who are merely "related to" the in-country parent or qualifying child to apply to the program, these participants do not necessarily have a sufficiently close relationship to a United States-based parent to qualify as a "close family member." *See* Mem in Opp'n 15 n.6; *see also* Dep't of State, *Worldwide Refugee Admissions Processing System (WRAPS), CAM Frequently Asked Questions* (Nov. 2016), *available at* https://www.wrapsnet.org/s/CAM-Frequently-Asked-Questions-November-2016.docx.

While it appears that most of those eligible to participate in the program (*e.g.*, minors with parents lawfully in the United States) would fall within those excluded from EO-2, that is not categorically true for all of those in the program. Because caregivers need not have the requisite "close familial relationship" to the in-country parent, program-wide relief is not appropriate. Consequently, Plaintiffs' Motion is denied with respect to

refugees who are in the USRAP through the CAM Program.

3. Lautenberg Program

The Lautenberg Program permits certain nationals of the former Soviet Union and other countries with "close family in the United States" to apply for refugee status. *See* Dep't of State, *Proposed Refugee Admissions for Fiscal Year 2017* (Sept. 15, 2016), *available at* https://www.state.gov/j/prm/releases/docsforcongress/261956.htm ("This Priority 2 designation applies to Jews, Evangelical Christians, and Ukrainian Catholic and Orthodox religious adherents identified in the Lautenberg Amendment, Public Law No. 101-167, § 599D, 103 Stat. 1261 (1989) (codified at 8 U.S.C. § 1157) as amended ('Lautenberg Amendment'), with close family in the United States.").

The Government opposes Plaintiffs' request for categorical relief with respect to the Lautenberg Program solely because the program includes grandparents and grandchildren as "close family." *See* Mem. in Opp'n 15 n.6 ("The Lautenberg Program . . . includes grandparents and grandchildren in the family relationship criteria for applicants."); *see also* Suppl. Hetfield Decl. ¶ 6, ECF No. 336-3. In light of the Court's determination that grandparents and grandchildren are within the penumbra of "close family" for purposes of the Supreme Court's June 26 decision, the Court rejects the Government's position with respect to the Lautenberg Program. That is, because all participants admitted through the Lautenberg Program, including grandparents and grandchildren, *must* have a "close familial relationship" as that term is used in

the Supreme Court's stay order, the categorical relief requested by Plaintiffs is appropriate. As a result, Plaintiffs' Motion is granted with respect to refugees who are in the USRAP through the Lautenberg Program.

IV. No Modification Is Warranted With Respect To The Government's Alleged Use Of A "Presumption"

In their Motion, Plaintiffs request modification of the injunction to prevent the Government from applying a so-called presumption that an applicant lacks the requisite bona fide relationship identified by the Supreme Court. However, Plaintiffs present no substantive argument or authority in support of their request. *See* Mot. 2, ECF No. 328; Mem. in Supp. of Mot., ECF No. 328-1. In fact, even in the face of the Government's opposition, which correctly noted that Plaintiffs appear to have abandoned their presumption contention (*see* Mem. in Opp'n 2 n.1), Plaintiffs' reply brief remained silent (*see generally* Reply, ECF No. 342).

The Court accordingly finds that Plaintiffs have abandoned their presumption argument, notwithstanding the relief sought in their proposed orders. Because Plaintiffs present no discussion or authority in support of this request, there is no basis to award the injunctive relief sought, and the Motion is denied.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion is GRANTED IN PART and DENIED IN PART. The Court declines to stay this ruling or hold it in abeyance should an emergency appeal of this order be filed.

The Court MODIFIES the preliminary injunction entered on March 29, 2017, amended on June 19, 2017, and partially stayed by a June 26, 2017 decision of the United States Supreme Court, to provide as follows:

PRELIMINARY INJUNCTION

It is hereby ADJUDGED, ORDERED, and DECREED that:

Defendants JOHN F. KELLY, in his official capacity as Secretary of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of Executive Order No. 13,780 across the Nation—except for those portions of Sections 2 and 6 providing for internal review procedures that do not burden individuals outside of the executive branch of the federal government. Enforcement of the enjoined provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court.

Defendants JOHN F. KELLY, in his official capacity as Secretary of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; and

all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them are enjoined fully from the following:

1. Applying section 2(c), 6(a) and 6(b) of Executive Order 13,780 to exclude grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States.

2. Applying Section 6(a) and 6(b) of Executive Order 13,780 to exclude refugees who: (i) have a formal assurance from an agency within the United States that the agency will provide, or ensure the provision of, reception and placement services to that refugee; or (ii) are in the U.S. Refugee Admissions Program through the Lautenberg Program.

IT IS SO ORDERED.

Dated: July 13, 2017 at Honolulu, Hawai‘i.

[SEAL]

/s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge

State of Hawaii, et al. v. Trump, et al.; Civil No. 17-00050 DKW-KSC; **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO ENFORCE, OR, IN THE ALTERNATIVE, TO MODIFY PRELIMINARY INJUNCTION**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

DECLARATION OF ISMAIL ELSHIKH, PhD

DECLARATION OF ISMAIL ELSHIKH, PhD

I, Ismail Elshikh, PhD declare the following:

1. I am an American citizen of Egyptian descent, and a resident of Hawai'i. I have been a resident of Hawai'i for over a decade. My wife, Dana, who is of Syrian descent, and my five children are also American citizens and residents of Hawai'i. I am proud to be an American citizen, and consider the United States to be my home country. Because of my allegiance to America, and my deep belief in the American ideals of democracy and equality, I am deeply saddened by the passage of the Executive Order barring nationals from

now-six Muslim majority countries from entering the United States.

2. I am the Imam of the Muslim Association of Hawai'i. As Imam, I am a leader within the local Hawai'i Islamic community. I believe strongly in the First Amendment, religious equality, and that individuals of different faiths should be allowed to exercise their religious beliefs, free from government suppression, and in a way that does not harm others. The members of my Mosque consider Hawai'i to be home. They are integrated into local society and culture. They have friends and family within and outside of the local Islamic community.

3. My five children are 12, 10, 8, 5 and almost 2 years of age. They have all been United States citizens, and Hawai'i residents, since birth. All of my children were born at Kaiser Hospital in Honolulu, Hawai'i. My older children attend school in Honolulu, and they have many friends from all walks of life. They are aware of both President Trump's initial travel ban and of his modified travel ban issued Monday, March 6 and are deeply saddened by the message that both convey—that a broad travel-ban is "needed" to prevent people from certain Muslim countries from entering the United States. They are deeply affected by the knowledge that the United States—their own country—would discriminate against individuals who are of the same ethnicity as them, including members of their own family, and who hold the same religious beliefs. They do not fully understand why this is happening, but they feel hurt, confused, and sad. When my children go to school and see other kids with their

grandparents, they ask me: "Dad, how come we can't have our grandmother like our friends; is it because we are Muslims?"

4. The revised travel ban will have a direct personal effect on me, my wife, and my children because it creates an obstacle to the ability of my mother-in-law (and my children's grandmother) to visit them in Hawai'i. My wife's mother is a Syrian national, living in Syria, with a Syrian travel document. She has been making concrete plans to visit my family for many years. It is not easy for Syrian citizens or residents, like my wife's mother, to obtain visitor travel documentation from the American government permitting entry into the United States. My wife filed an I-130 Petition for Alien Relative, on behalf of her mother, with the United States government in September 2015. The Petition was approved in February 2016, and my wife's mother was eagerly anticipating the completion of the rest of her visa application process. On January 31, 2017—days after President Trump signed the first Executive Order putting in place the original travel ban—I called the National Visa Center to inquire as to whether the Executive Order would impact my mother-in-law's visa application. I was told that it would; namely that as a result of the Executive Order, her application for an immigrant visa was now on hold and would not proceed to the next stage in the process. On February 3, 2017, the District Court for the District of Washington temporarily enjoined the enforcement of the travel ban, and the Ninth Circuit denied the Government's application for a stay. On March 2, 2017, we received an email from the National Visa Center informing us that

my mother-in-law's visa application was now in fact proceeding to the next stage of the process, and her interview would be scheduled at an embassy overseas. No date was set, but the letter stated that most interviews are set within three months. On March 6, 2017, the President signed the new travel ban. From what I understand, this will put us exactly back in the position we were in on January 31—her application will now be put on hold, indefinitely.

5. My mother-in-law has been looking forward to visiting my family for years. She last visited Hawai'i in 2005, when she stayed for one month. She has not yet met two of my five children. Only my oldest child remembers meeting her grandmother.

6. President Trump's issuance of the new Executive Order banning Syrian nationals from entering the United States has directly impacted my family by complicating, once again, my mother-in-law's ability to visit Hawai'i to see, spend time with, and get to know her grandchildren. This is devastating to me, my wife and children. I believe that it is also devastating to my mother-in-law.

7. As an Imam, I work with many members of the Hawai'i Islamic community. Many members of my Mosque are upset about the revised travel ban, and some are very fearful. All feel that the travel ban targets Muslim citizens because of their religious views and national origin. The travel ban has a very real and direct impact upon their lives. Although many members of my Mosque consider Hawai'i to be home, many have family and friends still living in the countries affected by the revised travel ban. While the

travel ban remains in effect, these individuals live in forced separation from those family members and friends.

8. I personally know of more than 20 individuals who are members of my community and mosque, who have immediate relatives in the six designated countries under the new Executive Order. These persons will now be unable to receive visits from their relatives —including spouses, parents, and children.

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

Dated: Honolulu, Hawai'i, Mar. 8, 2017.

/s/ ISMAIL ELSHIKH, PhD
ISMAIL ELSHIKH, PHD

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

SUPPLEMENTAL DECLARATION OF GEORGE SZIGETI

SUPPLEMENTAL DECLARATION OF GEORGE SZIGETI

I, GEORGE SZIGETI do declare and would competently testify as follows.

1. I am the President and Chief Executive Officer of the Hawaii Tourism Authority (HTA). I have served in this role since May 2015. From 2012 to 2015, I was the President and CEO of the Hawaii Lodging and Tourism Association, a private organization of Hawaii tourism industry leaders, which represents over 700 lodging properties and businesses across the State.

2. The HTA was established in 1998 as the lead state agency for Hawaii's tourism industry. The HTA is the state agency charged with the research, development, and fostering of tourism in Hawai‘i. HTA's mission is to strategically manage Hawai‘i tourism in a sustainable manner consistent with economic goals, cultural values, preservation of natural resources, community desires, and visitor industry needs.

3. This declaration supplements the information in my earlier declaration, dated February 2, 2017.

4. HTA maintains data regarding visitor arrivals and total visitor spending for various regions around the world.

5. The data maintained by our agency shows that 278 visitors arrived from the Middle East in January 2017. This is a decrease from 348 visitors from the same region in January 2016. The January 2017 data is estimated at present.

6. As our data is maintained, the region Middle East includes Iran, Syria, and Yemen.

7. The data maintained by our agency also shows that 89 visitors arrived from Africa during January 2017. This is a decrease from 141 visitors who arrived from Africa in January 2016. The January 2017 data is estimated at present.

8. As our data is maintained, the region Africa includes Libya, Somalia, and Sudan.

9. HTA also maintains data about the reasons why visitors come to Hawaii, such as vacation, business, or to visit family and friends.

10. Our data shows that in 2016, Hawai‘i hosted more than 8.8 million visitors by air. Of these over 8.8 million visitors, approximately 5.4 million visitors came from elsewhere in the United States; 1.5 million came from Japan; 478,000 came from Canada; 443,000 came from other Asian countries; 399,000 came from Oceania (including Australia and New Zealand); 142,000 came from Europe; 26,000 came from Latin America; and another 325,000 came from the rest of the world (including the Middle East and Africa).

11. Of the 8.8 million total visitors who came to Hawai‘i in 2016, 8.2% of them (more than 720,000) came to visit family and friends here. Of the 325,000 visitors who came to Hawai‘i in 2016 from the areas of the globe that include the Middle East and Africa, 12.3% of them (nearly 40,000) came to visit family and friends here.

12. Our data shows that in 2015, Hawai‘i hosted more than 8.5 million visitors by air. Of these over 8.5 million visitors, approximately 5.3 million visitors came from elsewhere in the United States; 1.5 million came from Japan; 512,000 came from Canada; 393,000 came from other Asian countries; 399,000 came from Oceania (including Australia and New Zealand); 145,000 came from Europe; 28,000 came from Latin America; and another 290,000 came from the rest of the world (including the Middle East and Africa).

13. Of the 8.5 million visitors who came to Hawai‘i in 2015, 8.4% of them (more than 717,000) came to visit family and friends here. Of the 290,000 visitors who came from the areas of the globe that include the Middle East and Africa, 11.9% of them (around 34,000) came to visit family and friends here.

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

Executed on 4th of Mar., 2017, in Honolulu, Hawai‘i.

/s/ GEORGE SZIGETI
GEORGE SZIGETI

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

ORIGINAL DECLARATION OF GEORGE SZIGETI

DECLARATION OF GEORGE SZIGETI

I, GEORGE SZIGETI do declare and would competently testify as follows.

1. I am the President and Chief Executive Officer of the Hawaii Tourism Authority (HTA). I have served in this role since May 2015. From 2012 to 2015, I was the President and CEO of the Hawaii Lodging and Tourism Association, a private organization of Hawaii tourism industry leaders, which represents over 700 lodging properties and businesses across the State.

2. The HTA was established in 1998 as the lead state agency for Hawaii's tourism industry. The HTA is the state agency charged with the research, development, and fostering of tourism in Hawai'i. HTA's mission is to strategically manage Hawai'i tourism in a sustainable manner consistent with economic goals, cultural values, preservation of natural resources, community desires, and visitor industry needs.

3. The Tourism Special Fund was also established in 1998. It is a set percentage of the transient accommodations tax collections that is assessed on hotels, vacation rentals, and other accommodations. It is used by the HTA to market, develop, and support Hawaii's tourism economy.

4. Among its responsibilities, HTA is charged with:

    a. setting tourism policy and direction from a statewide perspective;

    b. developing and implementing the State's tourism marketing plan and efforts;

    c. supporting programs and initiatives that enhance and showcase Hawaii's diverse peoples, places, and cultures of the islands, in order to deliver an incomparable visitor experience, including supporting Native Hawaiian culture and community, signature events and festivals, and preservation and proper use of Hawaii's striking natural resources;

d. managing programs and activities to sustain a healthy tourism industry for the State;

e. coordinating tourism-related research, planning, promotional and outreach activities with the public and private sectors; and

f. encouraging distribution of visitors across all of the Hawaiian Islands to balance capacity.

5. HTA maintains data regarding visitor arrivals and total visitor spending for various regions around the world

6. The data maintained by our agency shows the following for the last five years:

	2012	2013	2014	2015	2016
Total Visitor Expenditures (in Million $)	$14,364.8	$14,520.5	$14,973.3	$15,110.9	$15,745.7
Total arrivals (by air and cruise ships)	8,028,743	8,174,461	8,320,785	8,679,564	8,941,394
Arrivals by Air	7,867,143	8,003,474	8,196,342	8,563,018	8,832,598
Arrivals by cruise ship	161,600	170,987	124,443	116,546	108,796

The total visitor expenditures reported in this chart from 2012-2015 includes supplemental business expenditures. For 2016, the data is

preliminary and the supplemental business expenditures have been estimated.

7. To translate, Hawaii's tourism industry brought well over $14 billion into the State during 2012 to 2014. In 2015 and 2016, it brought in over $15 billion. Tourism is the leading economic driver in the State.

8. As this data shows, airline travel is far and away the preferred method to travel to Hawai'i. In 2016, for example, a total of 8,941,394 people arrived in the islands. Only 108,796 of this total (1.2%) arrived by cruise ship.

9. Our data also shows that there is a steady flow of visitors from the Middle East and Africa. The data maintained by our agency shows the following for the last five years:

Visitor Arrivals	2012	2013	2014	2015	2016
Middle East	3,565	3,182	5,784	6,804	5,451
Africa	1,345	1,111	1,877	2,090	1,725

This data reflects visitor arrivals, in surveys taken for air arrivals. The 2016 data is preliminary.

10. As our data is maintained, the region Middle East includes Iran, Iraq, Syria, and Yemen.

11. As our data is maintained, the region Africa includes Libya, Somalia, and Sudan.

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

Executed on 2 of Feb., 2017, in Honolulu, Hawaii.

/s/ GEORGE SZIGETI
GEORGE SZIGETI

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

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STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

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SUPPLEMENTAL DECLARATION OF
LUIS P. SALAVERIA

SUPPLEMENTAL DECLARATION OF
LUIS P. SALAVERIA

I, LUIS P. SALAVERIA, do declare and would competently testify as follows.

1. I am the Director of the State of Hawaii Department of Business, Economic Development and Tourism (DBEDT). I have held this position since December 2014. Prior to this position, I served as the State's Deputy Director of Finance from 2011 to 2014.

2. As Director, I lead DBEDT's efforts to achieve a Hawaii economi that embraces innovation and is globally competitive and dynamic, providing opportunities for all Hawaii's citizens.

3. Through our attached agencies, we also foster planned community development, create affordable workforce housing units in high-quality living environments, and promote innovative job growth.

4. This declaration supplements the declaration I submitted to this Court earlier, dated February 2, 2017. In that declaration, I offered my observations about the potential impact President Trump's executive order, issued January 27, 2017, could have on Hawaii's economy, including our tourism industry. It is my understanding that this original executive order temporarily banned travel from seven Muslim-majority countries.

5. I am aware that on March 6, 2017, President Trump issued a new executive order. This order temporarily bans travel from six Muslim-majority countries, and does not apply to legal permanent residents or other designated, limited, and narrow categories of non-citizens.

6. The observations I made regarding the potential impact the first executive order could have on Hawaii apply just as much to the new executive order. Hawaii's financial and business interests in its tourist economy; Hawaii's well-earned reputation and brand as a place of wel-

come, inclusivity, and tolerance; and Hawaii's efforts to position itself as a hub of international business are all threatened by the new executive order in the same manner as they were by the first order.

7. I am also aware that the new executive order was issued after weeks of speculation and uncertainty, after the federal government represented on February 16, 2017 that a new order would be issued in the near future. The shifting and uncertain nature of federal policies regarding travel to the United States itself poses a problem for Hawaii.

8. I am aware that the new executive order expands the President's directive to the Department of Homeland Security to conduct a "worldwide review" about what information may be needed from "each foreign country" to determine whether nationals from that country should be granted a visa or otherwise admitted to the United States. I am aware that the executive order envisions a report from the Department of Homeland Security twenty days after the effective date of the order, with an indication of what additional information may be necessary from each country. This has the potential to introduce further uncertainty into planned and future international travel to the United States.

9. Hawaii has millions of visitors annually from all over the world. I expect, given the uncertainty the new executive order and its predecessor have caused to international travel generally,

that these changing policies may depress tourism, business travel, and financial investments in Hawaii.

10. Many of our visitors are tourists who travel here for vacation. Uncertainty regarding the future of federal policies impacting air travel may discourage visitors from undertaking the advance planning typically involved with a Hawaiian vacation. It may also cause would-be visitors to choose other destinations where such uncertainty is not an issue.

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

Executed on 6th of Mar., 2017, in Honolulu, Hawaii.

/s/ LUIS P. SALAVERIA
LUIS P. SALAVERIA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

ORIGINAL DECLARATION OF LUIS P. SALAVERIA

DECLARATION OF LUIS P. SALAVERIA

I, LUIS P. SALAVERIA, do declare and would competently testify as follows.

1. I am the Director of the State of Hawaii Department of Business, Economic Development and Tourism (DBEDT). I have held this position since December 2014. Prior to this position, I served as the State's Deputy Director of Finance from 2011 to 2014.

2. As Director, I lead DBEDT's efforts to achieve a Hawaii economy that embraces innovation

and is globally competitive and dynamic, providing opportunities for all Hawaii's citizens.

3. Through our attached agencies, we also foster planned community development, create affordable workforce housing units in high-quality living environments, and promote innovative sector job growth.

4. In my professional experience working for and promoting Hawaii, the ability for government and business leaders to travel to each other's respective countries is critical to maintaining Hawaii's tourism economy and to expand our local economy's potential beyond tourism.

5. The networking and trust-building that occurs as a result of travel is not something that can be replicated through phone calls, emails, or video-conferences. Meaningful relationships between government agencies, private businesses, and community organizations is best accomplished through direct interaction and face-to-face engagements.

6. I have recently traveled to Japan, Korea, and the Philippines to explore opportunities for collaborative engagements in renewable energy and to discuss Hawaii's renewable energy laws.

7. As a result of my trip to the Philippines, a delegation from that country came to Hawaii to participate in our annual Clean Energy Summit. They also participated in one of our business start-up accelerator programs and invested funds into the program. This outcome would

not have been possible if not for the willingness of these individuals to travel to Hawaii.

8. The State of Hawaii maintains a number of sister-state relationships with countries throughout world. Countries such as China, Indonesia, Japan, Philippines, and Taiwan are partners to Hawaii in this global economy, and these relationships are integral to maintaining Hawaii's position as a global destination and place of business. The ability to interact with these countries without concern of impeded travel by individuals from those countries is crucial to these relationships.

9. Through news coverage and through conversations with others in state government, I am aware of Executive Order entitled, "Protecting the Nation from Foreign Terrorist Entry Into the United States," which was issued by President Donald Trump on January 27, 2017. It is my understanding that the Executive Order temporarily bars entry into the United States of any person who is a citizen of any one of six countries: Iraq, Iran, Somalia, Sudan, Libya and Yemen. It is my understanding that the Executive Order indefinitely bars entry into the United States of any person who is a citizen of Syria. It is my understanding that this bar to travel to the United States applies regardless of whether the person in question poses a specific threat of violence or any connection to terrorist activities in any way.

10. I am also aware that a great deal of confusion and inconsistent implementation occurred as the Executive Order was placed into effect nationwide. I am generally aware of the news coverage regarding the Executive Order and how its impact is being felt around the world and here in Hawaii.

11. Based on my professional experience it is my opinion that this Executive Order has the potential to inhibit and impair Hawaii's relationships with foreign countries. Hawaii has millions of visitors annually from all over the world. I expect, given the instability it has caused to international travel generally, that this Executive Order may depress tourism, business travel, and financial investments in Hawaii. It is also my opinion that the confusion and difficulties brought about by the Executive Order may result in visitors who would choose to visit Hawaii to instead look at other destinations where travel will not be impeded.

12. In my experience as DBEDT director, Hawaii has always been viewed as a place of acceptance, hospitality, and cultural diversity. Any potential action that could jeopardize that reputation has the ability to do irreparable harm to our State's brand. For many of our visitors, Hawaii is a vacation destination, and people generally take vacations to places where they feel welcome, invited, and safe.

13. In addition to being a tourist destination, Hawaii has been positioning itself for many years as a

hub of international business, located midway between Asia and the continental United States. In my time in state government I have witnessed and been part of efforts to attract business and financial investments to Hawaii by emphasizing our inclusiveness and diversity. I believe that the Executive Order causes harm to this reputation and may negatively impact Hawaii's ability to attract future investments from countries that are not currently named in the Executive Order.

14. In my professional travel experience working to expand Hawaii's businesses, I have learned how important it is that Hawaii maintain its reputation as a place of inclusivity and welcome. I believe the Executive Order threatens this reputation.

15. There is no recent parallel to this situation and the Executive Order was recently issued. At this point, it is difficult to determine with precision how its effects will play out for Hawaii's air travelers. Hawaii is uniquely positioned geographically, in the middle of the Pacific Ocean. For the vast majority of our visitors, flying is the only way to travel here. Given the confusion, controversy, and shifting instructions from the federal government regarding the Executive Order, travelers may consider the current situation as a reason for not undertaking travel to Hawaii.

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

Executed on 2nd of Febr., 2017, in Honolulu, Hawaii.

/s/ LUIS P. SALAVERIA
LUIS P. SALAVERIA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

SUPPLEMENTAL DECLARATION OF
RISA E. DICKSON

SUPPLEMENTAL DECLARATION OF
RISA E. DICKSON

I, Risa E. Dickson, do declare and would competently testify as follows.

1. I am Vice President for Academic Planning and Policy, at the University of Hawai'i System. I began this role in February 2015. Previously, I worked at California State University, San Bernardino from 1991-2014. Among the positions I held there included Associate Provost for Academic Personnel. As Associate Prov-

ost, my office processed and monitored visa for international faculty.

2. As Vice President I have overall responsibility for leadership, planning, and intercampus coordination of academic affairs, student affairs, academic policy and planning, institutional research and analysis, international and strategic initiatives, and the Hawai‘i P-20 Partnerships for Education. Given my current role with international and strategic initiatives, and my previous experience with recruitment of international faculty, I am well aware of the importance of the role of international faculty in the vibrancy of a healthy university.

3. This declaration supplements the declaration I previously filed with this court, dated February 1, 2017.

4. I am aware that President Trump issued an executive order on January 27, 2017, which temporarily banned travel from seven Muslim-majority countries. I am also aware that on March 6, 2017, President Trump issued a new executive order. This order temporarily bans travel from six Muslim-majority countries, and does not apply to legal permanent residents or other designated, limited, and narrow categories of non-citizens.

5. Despite these changes, many of the impacts of the new executive order will be the same on the University community as were caused by the old executive order. The new executive order

threatens the University's status as an international institution. As with all institutions of higher learning, the scholarship and community of the University rely upon the collaborative exchanges of ideas and research partnerships. The University relies upon faculty, teaching, research, conferences, and program activities that regularly require travel outside the United States. The new executive order will undermine the University's ability to fully engage in the international exchange of ideas and research partnerships. Affected individuals will be understandably reluctant to travel when their ability to return to Hawaii is uncertain. This uncertainty threatens the University's programs, which regularly require travel outside the United States.

6. The new executive order will also hinder the diversity of thought and experience that forms the backbone of any institution of higher education. A diverse student body is part of the educational experience for all students. Given my experience in higher education, I expect that the new executive order will deter students, scholars and faculty from attending our institution. Our experience with higher education indicates that the new executive order will have not just the direct impacts described here, but will likely deter students, scholars and faculty from *other* countries and communities from attending our institutions.

7. The executive order will directly impact the University of Hawai'i. The University presently has approximately 23 graduate students from the six countries included in the new Executive Order. These students attend our institution under valid visas issued by the United States government. They study and work alongside the University's many thousands of other students. The University also has employees including faculty from two of the designated countries, namely Iran and Sudan, who are here on immigrant visas. In addition, the University has at least 29 visiting faculty members and scholars with valid visas from the six countries affected by the new Executive Order. Given the new Executive Order, the University's ability to recruit and enroll students and graduate students, and recruit and hire visiting faculty from the six affected countries, is constrained. Were it not for the new Executive Order, I would expect these activities to take place both in the coming school year and in the near future.

8. Though it is too soon to determine the full impact of the new executive order and its predecessor on the University's future recruitment efforts, we are anticipating that recruitment for undergraduate students, graduate students, permanent faculty members, or visiting faculty members or scholars from the six affected countries may be impacted. Individuals who are neither legal permanent residents nor cur-

rent visa holders will be entirely precluded from considering our institution. This sort of recruitment of students, graduate students, scholars, and faculty—including those from the six designated countries—is important to the diversity of thought and ideas on campus, which the University seeks to foster. As outlined above, the University currently has a number of professors, scholars, and students from the affected countries, and an active program in Persian Language, Linguistics, and Culture. We will be unable to foster further growth in this population because the new executive order will prevent scholars or professors from those countries from considering employment in the United States and at the University of Hawai'i. This may directly impact the University of Hawai'i's ability to recruit and accept the most qualified students and faculty.

9. In addition, we are concerned that the environment caused by these federal orders might dissuade some of our current professors or scholars from continuing their scholarship in the United States and at our institution.

10. In observing the shifting federal policies on immigration from these countries, we stand by our previously stated concern that the new executive order will hinder the free flow of information and ideas, as did its predecessor.

11. As with the State of Hawai'i generally, the University of Hawai'i prides itself on a reputation of inclusiveness, tolerance, and diversity.

The new executive order threatens this reputation, and our ability to fully embrace our priority as a global university and one of the most diverse institutions of higher education.

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

DATED: Mar. 8, 2017, in Honolulu, Hawai‘i.

/s/ RISA E. DICKSON
RISA E. DICKSON

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

ORIGINAL DECLARATION OF RISA E. DICKSON

I, Risa E. Dickson, do declare and would competently testify as follows.

1. I am Vice President for Academic Planning and Policy, at the University of Hawai'i system. I began this role in February 2015. Previously, I worked at California State University, San Bernardino from 1991-2014. Among the positions I held there included Associate Provost for Academic Personnel. As Associate Provost, my office processed and monitored visa for international faculty.

2. As Vice President I have overall responsibility for leadership, planning, and intercampus coordination of academic affairs, student affairs,

policy and planning, institutional research and analysis, international and strategic initiatives, and the Hawai‘i P-20 Partnerships for Education. Given my current role with international and strategic initiatives, and my previous experience with recruitment of international faculty, I am well aware of the importance of the role of international faculty in the vibrancy of a healthy university.

3. The University of Hawai‘i system was founded in 1907 and includes three universities, seven community colleges, and community-based learning centers across six of the Hawaiian Islands.

4. The University is a leading engine for economic growth and diversification in Hawai‘i. The University stimulates the local economy with jobs, research, and skilled workers.

5. The University is a unique and important institution in our island State, and in our nation. Because of Hawai‘i's unique geographic location, the University is able to offer unique research and employment opportunities in the fields of astronomy and oceanography.

6. Hawai‘i's location in the Pacific Ocean, balanced between east and west, creates opportunities for international leadership and collaboration.

7. The University is an international institution. This is reflected in our diverse faculty, which includes approximately four hundred and seventy-seven international faculty members legally present in the United States. Throughout the

University system, we have study abroad or exchange programs in thirty-three different countries. Throughout the University system, we have 489 separate international agreements with 353 institutions in forty different countries, providing opportunities for learning and collaboration for our faculty and scholars.

8. The University has been apprised of the Executive Order entitled, "Protecting the Nation from Foreign Terrorist Entry Into the United States," which was issued by President Donald Trump on January 27, 2017. I have been informed that the Executive Order temporarily bars entry into the United States of any person who is a citizen of any one of seven countries: Syria, Iraq, Iran, Somalia, Sudan, Libya and Yemen. I have also been informed that this bar to travel to the United States applies regardless of whether the person in question poses any individualized threat of violence or any connection to terrorist activities in any way.

9. This Executive Order directly impacts the University of Hawai'i community. The University presently has approximately 27 graduate students from the seven countries affected by the Executive Order. These students attend our institution under valid visas issued by the United States government. These students study and work alongside the University's many thousands of other students, who hail from all over Hawai'i, the United States, and the world.

10. The University has permanent resident faculty from the same seven affected countries, namely Iran, Iraq and Sudan. I am aware of at least ten faculty members who fall within this category and are subject to the Executive Order. There may be more faculty members who fall within this category, because we do not actively track legal permanent residency.

11. In addition, the University also has visiting faculty and scholars who are directly affected by the Executive Order. The University has at least thirty faculty members with valid visas who are from the seven countries affected by this Executive Order As with all institutions of higher education, the scholarship and community of the University of Hawai‘i relies upon the collaborative exchange of ideas and research partnerships. The University relies upon faculty, teaching, research, conferences, and program activities that regularly require travel outside the United States.

12. The Executive Order will affect the ability for the faculty and students discussed above to have the freedom to fully engage in their fields of study, by effectively prohibiting travel outside the United States for those affected individuals who are present here today. It is anticipated that the Executive Order will negatively impact their development as scholars and professors; deprive them of the chance to visit family and friends in their countries of origin, or to attend significant personal events such as weddings

and funerals; and prevent their family and friends from being able to reunite with their families, visit Hawai‘i or move here permanently. I am aware of faculty who have planned trips to reunite with family members and are concerned about their ability to return to their work and home.

13. The Executive Order will also hinder the diversity of thought and experience that forms the backbone of any institution of higher education. A diverse student body is part of the educational experience for all students. This is immeasurably enriched by our international students and schools, including those from the seven countries targeted in the Executive Order.

14. The University of Hawaii stands with the higher education community nationwide in our concern over the impact the Executive Order has on the free flow of information and ideas. Our experience with higher education indicates that the Executive Order will have not just the direct impacts described here, but will also deter students, scholars and faculty from other affected countries and communities from attending our institutions.

15. The University of Hawai‘i and the State of Hawai‘i have been immeasurably strengthened through the diversity of the students and faculty we attract. The fundamental values of our nation and our State have long supported the welcoming of others to our Islands and embracing them into our communities.

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

DATED: Honolulu, Hawai‘i, Feb. 1, 2017.

/s/ RISA E. DICKSON
RISA E. DICKSON

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

DECLARATION OF HAKIM OUANSAFI

DECLARATION OF HAKIM OUANSAFI

I, HAKIM OUANSAFI, do declare and would competently testify as follows.

1. I am the Chairman of the Muslim Association of Hawaii. I have held this position for approximately 15 years. I have been a resident of Hawaii since 1998.

2. I have personal knowledge of the matters set forth in this declaration.

3. The Muslim Association of Hawaii is the only formal Muslim organization in the State of Hawaii. The Association owns the Mosque on

Oahu. Dr. Elshik, the plaintiff in this case, is an employee of the Association.

4. As Chairman of the Muslim Association of Hawaii, I am the official contact person for any matters affecting the Association and the Muslim community.

5. Having lived in Hawaii for nearly 20 years, I know well the members of our Muslim community. Members of our congregation will direct newcomers and visitors to me, and it is part of my responsibility as Chairman to greet any newcomers and visitors.

6. Within the last two years, we have had 104 Friday prayer gatherings at the Mosque. Typically 300-400 people a week attend the Friday prayer gatherings. I attend every single one except when I am traveling.

7. I am aware that on March 6, 2017, President Trump issued a new executive order that temporarily bans travel from six Muslim-majority countries. My understanding is that the executive order does not apply to legal permanent residents or other specified limited categories of non-citizens.

8. On at least half a dozen occasions in the last two years (2015-2016), foreign nationals visiting Hawaii from at least one of the six countries in the March 6 executive order have attended our Friday prayer gatherings. I specifically recall having guests from Yemen and Libya.

9. In addition, I am aware of at least two families from Libya who were here in Hawaii while going for medical training at one of the local hospitals. They were here on visas, and have since moved. They attended the Mosque regularly.

10. In addition, I am also aware of at least one student from Sudan who attended the University of Hawaii for his Ph.D. studies in the last couple of years.

11. Our Mosque brings people together from all over the world, including individuals visiting or temporarily residing in Hawaii from the six countries in the March 6 executive order. The executive order, by telling such individuals they are no longer welcome in this country, has undermined the atmosphere in our entire community, and has also stymied the ability of members of our community to associate freely without retaliation.

12. The executive order has also increased fear, anxiety, and grief for families living permanently here in Hawaii who are unable to have their loved ones from the six designated countries visit them here.

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

Executed on Mar. 8, 2017 in Honolulu, Hawaii.

/s/ HAKIM OUANSAFI
HAKIM OUANSAFI

Fact Sheet: Aviation Security Enhancements for Select Last Point of Departure Airports with Commercial Flights to the United States

Release Date: March 21, 2017

Office of Public Affairs
Contact: 202-282-8010

Overview: Change to international travel carry-on items

Evaluated intelligence indicates that terrorist groups continue to target commercial aviation and are aggressively pursuing innovative methods to undertake their attacks, to include smuggling explosive devices in various consumer items. Based on this information, Secretary of Homeland Security John Kelly and Transportation Security Administration Acting Administrator Huban Gowadia have determined it is necessary to enhance security procedures for passengers at certain last point of departure airports to the United States.

These enhancements apply to 10 specific airports. The affected overseas airports are: Queen Alia International Airport (AMM), Cairo International Airport (CAI), Ataturk International Airport (IST), King Abdul-Aziz International Airport (JED), King Khalid International Airport (RUH), Kuwait International Airport (KWI), Mohammed V Airport (CMN), Hamad International Airport (DOH), Dubai International Airport (DXB), and Abu Dhabi International Airport (AUH).

The aviation security enhancements will include requiring that all personal electronic devices larger than a cell phone or smart phone be placed in checked baggage at

10 airports where flights are departing for the United States.

Impacted International Flights Bound for the United States

These enhanced security measures will only affect flights from 10 of the more than 250 airports that serve as last points of departure to the United States. A small percentage of flights to the United States will be affected, and the exact number of flights will vary on a day to day basis. Airlines will know in advance which flights are affected by these measures

Large Electronic Devices

Electronic devices larger than a cell phone/smart phone will not be allowed to be carried onboard the aircraft in carry-on luggage or other accessible property. Electronic devices that exceed this size limit must be secured in checked luggage. Necessary medical devices will be allowed to remain in a passenger's possession after they are screened.

The approximate size of a commonly available smartphone is considered to be a guideline for passengers. Examples of large electronic devices that will not be allowed in the cabin on affected flights include, but are not limited to:

- Laptops
- Tablets
- E-Readers
- Cameras
- Portable DVD players
- Electronic game units larger than a smartphone

- Travel printers/scanners

There is no impact on domestic flights in the United States or flights departing the United States. Electronic devices will continue to be allowed on all flights originating in the United States.

For more information and travel tips, please visit www.TSA.gov (https://www.TSA.gov).

# # #

Topics: Air (/topics/air)

Keywords: aviation security (/keywords/aviation-security, aviation (/keywords/aviation)

Last Published Date: March 21, 2017

Q&A: Aviation Security Enhancements for Select Last Point of Departure Airports with Commercial Flights to the United States

Release Date: March 21, 2017

UPDATED: March 24, 2017 5:00 p.m. EST
Office of the Press Secretary
Contact: 202-282-8010

Q1: Why is the U.S. Government taking these steps now? Are these new policies in response to a specific terrorist threat or plot?

A1: The U.S. Government is concerned about terrorists' ongoing interest in targeting commercial aviation, including transportation hubs over the past two years, as evidenced by the 2015 airliner downing in Egypt, the 2016 attempted airliner downing in Somalia, and the 2016 armed attacks against airports in Brussels and Istanbul. Evaluated intelligence indicates that terrorist groups continue to target commercial aviation, to include smuggling explosive devices in various consumer items.

Based on this trend, the Transportation Security Administration (TSA), in consultation with relevant Departments and Agencies, has determined it is prudent to enhance security, to include airport security procedures for passengers at certain last point of departure airports to the United States. These enhancements include more stringent measures applied to 10 specific airports.

The enhancement in security will require that all personal electronic devices (PEDs) larger than a cell phone

or smart phone be placed in checked baggage. These items will no longer be allowed to be carried onto aircraft at 10 select airports where flights are departing for the United States. Approved medical devices may be brought into the cabin after additional screening.

This security enhancement will be implemented through a Security Directive (SD)/Emergency Amendment (EA) process, which includes industry notification, to affected air carriers that will implement the requirements.

Q2: Why is DHS/TSA doing this now?

A2: The Department of Homeland Security, in close cooperation with our intelligence community partners, continuously assesses and evaluates the threat environment. While a number of existing security measures remain in place, others will be modified, as deemed necessary to protect travelers. DHS will continue to adjust its security measures to ensure the highest levels of aviation security without unnecessary disruption to travelers.

Q3: Is there a specific or credible threat to aviation?

A3: We have reason to be concerned about attempts by terrorist groups to circumvent aviation security and terrorist groups continue to target aviation interests. Implementing additional security measures enhances our ability to mitigate further attempts against the overseas aviation industry.

Q4: Did new intelligence drive a decision to modify security procedures?

A4: Yes, intelligence is one aspect of every security-related decision. The record of terrorist attempts to destroy aircraft in flight is longstanding and well-known. We continually re-assess old intelligence and collect new intelligence.

Q5: How did you select these airports and which ones are affected?

A5: DHS, in close cooperation with our intelligence community partners, selected these airports based on the current threat picture. The affected overseas airports are: Queen Alia International Airport (AMM), Cairo International Airport (CAI), Ataturk International Airport (IST), King Abdul-Aziz International Airport (JED), King Khalid International Airport (RUH), Kuwait International Airport (KWI), Mohammed V Airport (CMN), Hamad International Airport (DOH), Dubai International Airport (DXB), and Abu Dhabi International Airport (AUH).

Q6: Could more airports be added in the future, and might some of those be in the U.S.?

A6: As threats change, so too will TSA's security requirements.

Q7: How long will these new procedures remain in place?

A7: The new procedures remain in place until the threat changes. These are risk-based decisions and TSA continuously assesses security risks and seeks to

balance necessary security requirements with their operational impact on the industry.

Q8: Why won't these procedures continue indefinitely, like the prohibition on bringing liquids through security screening?

A8: See above.

Q9: How are you defining, "larger than a smart phone?"

A9: The size and shape of smart phones varies by brand. Smartphones are commonly available around the world and their size is well understood by most passengers who fly internationally. Please check with your airline if you are not sure whether your smart-phone is impacted.

Q10: Why does this only apply to large electronic devices? Why doesn't this apply to mobile phones?

A10: TSA seeks to balance risk with impacts to the traveling public and has determined that cell phones and smart phones will be allowed in accessible property at this time.

Q11: Is air travel safe?

A11: Yes. Today, all air travelers are subject to a robust security system that employs multiple layers of security, both seen and unseen, including:

- Intelligence gathering and analysis
- Cross-checking passenger manifests against watchlists
- Thorough screening at checkpoints
- Random canine team screening at airports
- Reinforced cockpit doors

- Federal air marshals
- Armed pilots
- A vigilant public

In combination, these layers provide enhanced security creating a much stronger and protected transportation system for the traveling public. TSA continually assesses and evaluates the current threat environment and adjusts security measures as necessary to ensure the highest levels of aviation security without unnecessary disruption to travelers.

Q12: How will TSA ensure foreign airports and air carriers are complying with the new procedures?

A12: TSA conducts assessments of foreign airports and inspections of airlines to ensure all U.S. regulations and International security standards are being met at last point of departures to the United States. TSA directly assesses the security posture of last points of departure airports under the Foreign Airport Assessment Program (FAAP) and evaluates the implementation of the internationally recognized International Civil Aviation Organization (ICAO) standards. TSA also utilizes its regulatory authorities over the air carriers which serve the United States to implement enhanced security measures at foreign locations. As an element of each air carrier's legally binding approval to operate to and from the United States, the airline agrees to meet all security requirements stipulated by TSA.

Q13: How does this affect the American public, either those traveling to/from these selected airports and those flying within the U.S.?

A13: All passengers flying through and from these locations will have to place electronic devices that are larger than a cell phone/smart phone in their checked bags regardless of the passenger's citizenship.

Q14: Will the security procedures continue to apply to both international and domestic passengers?

A14: This applies to all passengers traveling from 10 specific airports overseas.

Q15: Why are you only implementing these measures overseas, could the same tactics be used domestically?

A15: Electronic devices will still be allowed on all flights originating in the United States. Security procedures, both seen and unseen, are in place to mitigate the risk to flights in the United States.

Q16: Does TSA have to hire additional officers, or transfer some to the affected airports, to ensure the new screening procedures are followed?

A16: No additional TSA personnel are needed because TSA does not conduct screening at airports outside the United Sates.

Q17: Are the security measures introduced on July 2, 2014 still in place?

A17: A number of those implemented security measures remain in place while others may be modified as deemed necessary to protect travelers. Since July 2, 2014, a number of foreign governments have themselves

enhanced aviation security, buttressing and replacing our own measures at these airports when it became routine at overseas airports for security officials to ask some passengers to turn on their electronic devices, including cell phones, before boarding flights to the United States.

Q18: How many flights does this affect?

A18: This will only impact flights from 10 of the more than 250 airports that serve as last points of departure to the United States. This will only impact a small percentage of flights to the United States. The exact number of flights will vary on a day to day basis.

Q19: How many passengers will be affected?

A19: These measures will apply to all passengers on flights from the 10 last points of departure airports, a small fraction of passengers traveling to the United States by air each day.

Q20: Will this affect passengers enrolled in trusted traveler programs?

A20: These measures will apply to all passengers on flights from certain locations regardless of trusted traveler status.

Q21: What do you recommend passengers do if they are flying out of one of the last point of departure airports?

A21: Passengers should pack large personal electronic devices in checked bags and contact their air carrier with additional questions.

Q22: How will this affect the screening process at the airport?

A22: Generally, passengers will be instructed to place large electronic devices in their checked bags when traveling from one of the last point of departure airports. We provided guidance to the airlines who will determine how to implement and inform their passengers.

Q23: How will this affect passengers with connections?

A23: TSA recommends passengers transferring at one of the 10 affected airports place any large personal electronic devices in their checked bags upon check-in at their originating airport.

Q24: Can you provide any examples of recent terrorist plotting against the aviation sector? Please highlight the trend you're concerned about.

A24: Although the U.S. has instituted robust aviation security measures since 9/11, our information indicates that terrorist groups' efforts to execute an attack against the aviation sector are intensifying given that aviation attacks provide an opportunity to cause mass casualties and inflict significant economic damage, as well as generate overwhelming media coverage.

We note that disseminated propaganda from various terrorist groups is encouraging attacks on aviation, to include tactics to circumvent aviation security. Terrorist propaganda has highlighted the attacks against aircraft in Egypt with a soda can packed with explosives in October 2015, and in Somalia using an explosives-laden laptop in February 2016.

Terrorists have historically tried to hide explosives in shoes in 2001, use liquid explosives in 2006, and conceal explosives in printers in 2010 and suicide devices in underwear in 2009 and 2012. Within the last year, we have also seen attacks conducted at airports to include in Brussels and Istanbul.

Q25: How were these countries informed?

A25: USG officials coordinated with their foreign counterparts to inform them of the changing threat. TSA has a formal process for notifying airlines through the EA/SD process. This process was used to notify affected airlines of the needed changes.

Q26: How will this be implemented?

A26: The Airlines will have 96 hours to implement. The manner of an EA/SD is to tell an airline the end result required (no electronic devices larger than a cell phone allowed in the cabin) and allow them the flexibility to implement within their business model.

Q27: Will U.S. direct hires/diplomats posted in these countries be told to take other routes/airlines?

A27: No. U.S. government employees in the affected countries have the option, but are not required, to modify their travel routes. The new routes must comply with all U.S. government travel regulations.

Q28: Will this apply to flights departure to affected countries?

A28: No. At this time, evaluated intelligence says that the threat exists at the 10 last point of departure airports.

Q29: Does this start tomorrow?

A29: Airlines were notified on March 21st at 3:00 a.m. EDT. They have 96 hours within which to comply.

Q30: How long will these enhanced security measures be in effect?

A30: These measures will be in effect indefinitely. However, DHS and TSA continue to evaluate our aviation security processes and policies based on the most recent intelligence.

Q31: What will happen to my checked bag with my electronic devices once I land in the United States?

A31: TSA will increase explosives detection screening of passenger luggage on select international inbound flights upon domestic arrival. The screening will occur prior to releasing the luggage back to passengers. It is possible that this process may result in delays for connecting luggage.

Q32: Once I arrive in the U.S. and retrieve my bag, what if I miss my connecting flight to my final U.S. destination?

A32: Contact your connecting airline on how best to rebook to your final U.S. destination. Additionally, consider contacting your airline prior to your flight to inquire about your connection time.

Q33: What U.S. domestic airports will be impacted?

A33: Atlanta (ATL), Boston (BOS), Chicago O'Hare (ORD), Dallas-Ft. Worth (DFW), Ft. Lauderdale (FLL), Houston Intercontinental (IAH), Los Angeles (LAX), Miami (MIA), Orlando (MCO), New York Ken-

nedy (JFK), Philadelphia (PHL), San Francisco (SFO), Seattle-Tacoma (SEA), and Washington Dulles (IAD).

Q34: What do I do if my electronics are damaged or missing from my baggage when I arrive at my destination?

A34: Regardless of where you are flying to/from or what airline you are flying on, you should always contact your airline if there is an issue with your checked baggage.

Q35: Are U.S. government employees who are assigned U.S. government laptops also restricted from carrying their laptops in carry-on bags on these flights?

A35: The limits on the size of electronics in carry-on bags apply to all passengers, including U.S. government employees with U.S. government-issued laptops.

Q36: What is the procedure if something screens positive for explosives?

A36: TSA partners with local law enforcement officials at each airport and has protocols in place for proper response when a bag triggers an alarm during screening.

# # #

Topics: Air (/topics/air)

Keywords: aviation (/keywords/aviation) , aviation security (/keywords/aviation-security)

Last Published Date: March 24, 2017

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

No. 1:17-cv-00050-DKW-KJSC

STATE OF HAWAI'I, PLAINTIFF

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

DECLARATION OF LAWRENCE E. BARTLETT

Judge: Hon. Derrick K. Watson

DECLARATION OF LAWRENCE E. BARTLETT

I, Lawrence E. Bartlett, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a career member of the Senior Executive Service and currently serve as the Director of the Refugee Admissions Office within the Bureau of Populations, Refugees and Migration at United States Department of State. I have been in this position for six years. The statements contained in this declaration are based on my personal knowledge or on information provided to me in my official capacity.

2. In Fiscal Year 2017 to date, 38,484 refugees have arrived and been resettled in the United States. Of that number, 3 were resettled in Hawaii.

3. In Fiscal Year 2016, 84,994 refugees arrived and were resettled in the United States. Of that number, none were resettled in Hawaii.

4. In Fiscal Year 2015, 63,933 refugees arrived and were resettled in the United States. Of that number, 7 were resettled in Hawaii.

5. In Fiscal Year 2014, 69,987 refugees arrived and were resettled in the United States. Of that number, 2 were resettled in Hawaii.

6. In Fiscal Year 2013, 92,926 refugees arrived and were resettled in the United States. Of that number, 6 were resettled in Hawaii.

7. In Fiscal Year 2012, 58,238 refugees arrived and were resettled in the United States. Of that number, one was resettled in Hawaii.

8. In Fiscal Year 2011, 56,424 refugees arrived and were resettled in the United States. Of that number, none were resettled in Hawaii.

9. In Fiscal Year 2010, 73,311 refugees arrived and were resettled in the United States. Of that number, one was resettled in Hawaii.

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

Executed this 28th day of Mar., 2017.

/s/ LAWRENCE E. BARTLETT
LAWRENCE E. BARTLETT
Director of the Office of Admissions
Bureau of Populations, Refugees and Migration
United States Department of State

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF HAWAI'I

CIVIL ACTION NO. 1:17-CV-00050-DKW-KSC

HAWAII, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL., DEFENDANTS

DECLARATION OF REBECCA HELLER, DIRECTOR OF THE INTERNATIONAL REFUGEE ASSISTANCE PROJECT

DECLARATION OF REBECCA HELLER

I, Rebecca Heller, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Director and co-founder of the International Refugee Assistance Project ("IRAP"), a project of the Urban Justice Center, Inc. I have been with IRAP since August 2008.

2. As IRAP's Director, I oversee all of IRAP's operations and activities, including programming and development. I am in constant, regular communication with my staff who provide legal representation to vulnerable individuals and consult with pro bono attorneys and law students working on IRAP cases. I also represent a number of refugee and visa cases myself, consult with numerous attorneys work-

ing on related cases, monitor field conditions on the ground in the Middle East/North Africa Region, liaise with the U.S. government and the United Nations around refugee and visa processing issues, and coordinate partnerships with numerous NGOs working with and advocating for refugees and immigrants in the U.S. and abroad.

3. Throughout my eight and a half years working on Middle East refugee issues, I have overseen, consulted on and/or represented thousands of cases. I also teach a seminar on refugee law and practice at Yale Law School. Founded in 2008, IRAP's mission is to provide and facilitate free legal services for vulnerable populations around the world, including refugees, who seek to escape persecution and find safety in the United States and other Western countries. IRAP has a staff of over 25 individuals based in offices in New York, Lebanon, and Jordan. IRAP works with 29 law school chapters and over 75 firms to provide pro bono assistance to persecuted individuals around the world. IRAP relies on the volunteer and pro bono assistance to meet the needs of its client base.

4. IRAP lawyers provide legal assistance to refugees and other immigrants to the United States throughout the resettlement process. IRAP also assists many individuals (including refugees, asylees, Lawful Permanent Residents and U.S. Citizens) inside the United States who need assistance filing family reunification peti-

tions for family members overseas. IRAP has provided legal counseling and assistance to nearly 20,000 individuals.

5. Since its inception, IRAP has helped to resettle over 3,200 individuals from 55 countries of origin, with the majority resettled to the United States.

6. IRAP's client base includes refugees from Iraq, Afghanistan, Egypt, Eritrea, Ethiopia, Iran, Jordan, Kuwait, Libya, Pakistan, Palestine, Somalia, Sudan, Syria, Turkey, and Yemen. Of IRAP's current 606 open cases, 421 families are from one of the six countries or are refugees from other countries and targeted in the new Executive Order.

7. Many of IRAP's clients have been referred to the US for resettlement by UNHCR. UNHCR only refers the most vulnerable refugees for resettlement, such as unaccompanied minors, women-at-risk, and individuals with urgent medical or protection concerns. Less than 1% of refugees worldwide are referred for resettlement by UNHCR. If UNHCR refers an individual to USRAP, they are likely extremely vulnerable and have strong, pre-vetted refugee claims. Further, once UNHCR refers a refugee to USRAP, it precludes them from referring the refugee to another country until the USRAP process is completed.

8. IRAP works with some of the most vulnerable individuals in the world, including US..-

affiliated refugees, LGBTI refugees, women who have survived trafficking, sexual and gender-based violence, and children with emergency medical needs.

9. As the refugee resettlement process is quite intricate, some background on the various programs will help explain the importance of recognizing the attorney-client relationship between a refugee and a legal services provider as well as how many refugees have a de facto bona fide relationship with a person or entity in the United States.

The U.S government's interpretation of the Supreme Court decision contradicts the basic mechanics of the U.S. Refugee Admissions Program, as all refugees must eventually form a direct relationship to a U.S. entity in order to be resettled to the United States.

10. Refugees are resettled to the United States through three "priority" streams, which are different ways to access the U.S. Refugee Admissions Program ("USRAP"). Though the names of these categories are "Priority 1," "Priority 2," and "Priority 3" (or P-1, P-2, and P-3), these names do not indicate the order of priority.

11. Priority 1 (P-1) referrals are individuals who are referred based on particular, individual needs. These cases may be referred to the U.S. Refugee Assistance Program ("USRAP") by the United Nations High Commissioner for Refugees ("UNHCR"), or, in much smaller numbers, by a U.S. Embassy or a qualified NGO.

Although not required, some refugees referred by UNHCR have close family members in the United States, including grandparents, aunts, uncles, and cousins.

12. Refugees who access USRAP via a U.S. Embassy are often personally known to the embassy. State Department guidance in the Foreign Affairs Manual gives examples of these individuals such as prominent members of a political opposition or religious minority, well-known journalists, or LGBTI individuals. Similarly, NGOs which refer refugees to USRAP must have been trained by the Departments of State and Homeland Security and work with the State Department's regional refugee coordinator to make the referral.

13. One of IRAP's P-1 clients is a transgender Sudanese activist who fled to Egypt as a result of severe persecution because of her LGBTI work. She became known to the U.S. Embassy in Sudan which referred her to the State Department and she was given access to USRAP. She has been now waiting in limbo for a USCIS interview to be scheduled and remains in danger in Cairo where transgender individuals are routinely harassed, assaulted, and persecuted.

By definition, refugees in the Central American Minors Program, the Lautenberg religious minorities program, and the Direct Access Program for U.S.-affiliated Iraqis and Syrians must have a direct relationship with a U.S. person or entity to access USRAP.

14. Priority 2 (P-2) referrals are individuals who are eligible for resettlement based on a State Department determination that they belong to a group of "special humanitarian concern" to the United States. Several P-2 groups exist including Refugee Processing for Religious Minorities in the Former Soviet Union and in Iran (known as the Lautenberg Amendment), the Central American Minors Program, and the Direct Access Program for U.S.-affiliated Iraqis and Syrians. All of these P-2 categories require a direct U.S. tie in order to access the U.S. refugee resettlement program.

15. The P-2 group for religious minorities in the Former Soviet Union and in Iran (authorized by the Lautenberg Amendment), requires a U.S.-based resettlement agency to initiate the application for the refugee, thereby immediately establishing a direct relationship between a U.S. entity and the refugee. Religious minorities in the Former Soviet Union include Jews, Evangelical Christians, Ukrainian Orthodox, and Catholics. A spouse, parent, child, sibling, or grandparent can initiate the application through the resettlement agency by filing an Affidavit of Relationship. Those same categories of family members are eligible to apply for refugee status. Religious minorities in Iran include Christians, Jews, Mandeans, Baha'is, and Zorastrians, and a U.S. relative or friend may initiate the application.

16. Another P-2 group, the Central American Minors ("CAM") program, exists for refugee children from El Salvador, Guatemala, and Honduras who have parents lawfully in the United States. The program was founded to give children an alternative to the dangerous journey that some children had attempted without authorization. The purpose of the program is to reunite families in a safe manner. The program requires the minors to demonstrate a relationship to their parents via DNA testing and filing an Affidavit of Relationship.

17. One of the larger P-2 groups is known as the Direct Access Program for U.S.-affiliated Iraqis and Syrians ("DAP"). The Direct Access Program allows Iraqis and Syrians who have a U.S. tie, either by family or employment, to come to the United States through the refugee program.

18. In 2008, the bipartisan Refugee Crisis in Iraq Act was signed into law, allowing six categories of Iraqis to access USRAP based on work for the US government or a US-based entity or family connections with individuals in the United States. In order to access USRAP through employment, Iraqis must have either worked as an interpreter for the U.S. Government or Multi-National Forces in Iraq, been employed by the U.S. government in Iraq, been employed by a U.S. funded organization or entity, or been employed by a U.S.-based media organization or NGO. Before being inter-

viewed by USCIS, the State Department must verify the employment relationship through contracts, HR letters, badges of employment, and letters of recommendation from U.S. supervisors.

19. Both Iraqi and Syrian nationals with an approved I-130 petition are also eligible for the DAP. This program allows participants to obtain travel documents before their visa priority date would otherwise become current, thereby allowing them to join their families sooner in the United States. Both groups, in all circumstances, will satisfy the bona fide relationship test because the program requires a direct relationship with a U.S. entity or family member to access the program. At least 50,000 individuals are waiting for interviews in the Iraqi program; we estimate that 60,000 total individuals may be waiting for admission under the Iraqi and Syrian DAP.

20. Our P-2 refugee clients face extreme danger while they wait to be processed. For example, one of our clients completed his pre-screening interview on June 12, 2017 and is awaiting his USCIS interview. As he waits, he hides in his apartment in Baghdad, Iraq, with his wife and children. If they leave their apartment, they are in danger of being killed by radical Shiite militia known as the Mahdi Army. The Mahdi Army already killed one of his brothers and has tortured another because of the family's behalf of the U.S. government. They are intent on

killing IRAP's client as well and is only means of true safety is resettlement to the United States.

21. Another P-2 IRAP client is a 36-year-old Syrian refugee who fled to Yemen and then Saudi Arabia with her husband and two young children. Her sister is a U.S. Citizen, living in the United States, who filed an I-130 petition for her to come to the United States. The petition has been proved the client has accessed USRAP through DAP. She cannot return to Syria, where she was persecuted for her religion. Her and her family's lives continue to be in grave danger in Saudi Arabia, where she lives near the Yemeni border and is exposed to frequent rocket attacks and ongoing military conflict.

Refugees in family reunification programs clearly demonstrate their bona fide relationship to a U.S. person because the U.S.-based relative is required to access USRAP.

22. Priority 3 (P-3) referrals are individuals with close relatives—parents, children, and spouses —recently admitted to the United States as a refugee or asylee and require DNA testing to access USRAP. P-3 submissions have four procedural requirements: (1) affidavit of relationship (AOR); (2) minimum age; (3) five-year filing; and (4) DNA testing. To initiate a P-3 case, a local resettlement agency must submit an Affidavit of Relationship ("AOR") on behalf of the P-3 applicant. In order to complete the

form, the principal relative must upload current digital photographs of all family members, derivatives, and add-ons. Once completed, the local agency will submit the AOR to a Refugee Processing Center, which will then refer it to USCIS for case creation, processing, and adjudication. P-3 applications require DNA relationship testing between the principal relative and their biological parents or biological children. The principal relative bears the initial costs of DNA testing. We estimate that 2,000 individuals are awaiting admission in the P-3 program.

23. Alternatively, an individual who has been granted asylum or refugee status in the United States and who was also the principal applicant for his or her family may petition to have his or her spouse and/or unmarried child(ren) under the age of 21 "follow-to-join" him or her in the United States. A Form I-730 Refugee/Asylee Relative Petition must be filed for each qualifying family member within two years of the principal applicant's admission as a refugee or grant of asylum.

The U.S. Refugee Admissions Program requires that all refugees have a direct relationship to a U.S. entity in order to be resettled.

24. Refugees who do not have a family member in the U.S. or a relationship with a U.S. entity prior to their referral to USRAP, will necessarily develop a relationship with a U.S. entity at some point in the processing. Two particu-

lar points in processing may lead to such a relationship.

25. First, once a refugee has completed multiple interviews assessing their eligibility for refugee status, his or her name is submitted to any one of the nine non-profit agencies that contract with the U.S. government to provide resettlement (specifically reception and placement services) and integration services. These voluntary resettlement agencies, called "volags," receive names of refugees cleared for travel, and then provide "assurances," or a guarantee that they will provide their services to that individual when they arrive. Assurances typically happen close to the last stages of the resettlement process, which is the arrival notice. As of June 26, 2017, there were 26,353 assured (but not arrived) individuals in the USRAP pipeline. Some, but not all, of the services volags provide include picking refugees up at the airport, providing them with culturally appropriate meals, securing them with long-term housing, accessing benefits and healthcare, and providing job training.

26. These assurances constitute a direct tie to a U.S. entity. However, the government has indicated that they will not resettle all currently assured refugees after July 6, 2017, despite their direct relationships with U.S. entities. There are assured refugees booked for travel to the United States through July 27, 2017, and

resettlement agencies across the United States have been preparing tirelessly for their arrival.

27. Second, an individual may have legal representation from a U.S.-based organization; IRAP is the primary organization that provides legal representation to refugees in the USRAP.

28. Furthermore, many P-1 refugees who do have close family ties in the United States would not qualify for resettlement under the government's current interpretation of a "bona fide relationship" under the Supreme Court decision.

29. For example, a Ukranian refugee who is currently scheduled for travel to the United States after July 6, 2017, would no longer be allowed to enter the United States because her the closest family member she has in the United States is her grandmother.

30. As a result of the government's current interpretation of the Supreme Court's decision, many refugees—those who lack any of the family relationships that the government currently recognizes—would have their applications delayed by months or years. These long delays could result from the 120-ban because security and medical checks only line up for a short window, after which the applicant must restart the security check process. Additionally, with a lowered refugee cap of 50,000, there are fewer resettlement slots available this fiscal year, adding to the delays in resettlement.

See Ex. __). Yet all of these clients have a strong relationship with IRAP itself.

Representation by legal service providers, such as IRAP, constitute an attorney-client relationship and qualify as a bona fide relationship between a refugee and a U.S. person or entity.

31. Because of the complexity of the refugee resettlement process, IRAP lawyers and *pro bono* legal teams work closely with their clients to bring them to safety. The representation that IRAP provides is intensive and includes multiple forms of assistance. For example, IRAP has offices in Amman, Jordan and Beirut, Lebanon which are staffed with U.S.-barred attorneys where they regularly meet with refugee clients, prep them for and accompany them to interviews, and assist them with psychosocial, educational, and medical referrals to local partner organizations. IRAP also has case workers on staff, such as individuals trained in social work, who provide non-legal support to our clients.

32. The intake and screening process itself establishes a strong relationship between the organization and the client. This process can take several weeks to months, with IRAP attorneys or volunteers spending hours each day interviewing a client, establishing the facts underpinning his or her application, and preparing a declaration and application on the basis of those facts.

33. After an intensive and exhaustive intake process, IRAP may take on a refugee's case for representation after signing a formal representation agreement. These cases frequently require two to three years of representation, if not longer. IRAP attorneys assist refugees through the process by conducting extensive fact finding to corroborate their clients' claims, drafting legal submissions before UNHCR and the U.S. government advocating for their client's case, and preparing their clients for the adjudication interviews which can last for hours. Additionally, IRAP attorneys monitor their clients' medical and protection needs and will request the relevant agency to expedite processing if there is urgency in the case. For P-2 DAP employment cases, IRAP attorneys will assist with verifying the client's affiliation with the U.S. government, a U.S.-funded NGO, or a U.S. media organization. For P-2 DAP family cases, IRAP attorneys assist the U.S.-based family member with filing a Form I-130 to USCIS and then continues representing the refugee client once they access USRAP.

34. If an application is denied by UNHCR, IRAP staff will assist clients by submitting an appeal. If the U.S. government denies a client refugee status, IRAP attorneys prepare a Request for Review ("RFR") on behalf of the client and also file Freedom of Information Act ("FOIA") requests to supplement their RFR. They conduct further client interviews to prepare sup-

plemental declarations, draft the request itself, and help the client prepare for the interview.

35. Moreover, IRAP attorneys have provided guidance and advice to their refugee clients entering the United States and have filed habeas petitions for clients who have been unlawfully detained trying to enter the United States.

36. During this process, IRAP also provides other forms of practical assistance. For example, IRAP has worked with partner organizations to provided safe housing for clients whose lives are in immediate danger while they await the outcomes of USRAP. IRAP has also worked with psychologists and psychiatrists to provide counseling and evaluations to refugees who have suffered from severe persecution and trauma and are in need of mental health treatment.

The U.S. government's interpretation of the Supreme Court decision reflects a fundamental misunderstanding of USRAP and an attempt to dismantle a lifeline for persecuted individuals. The government's actions continue to take a toll on IRAP's clients and resources.

37. The government's interpretation of the injunction will also continue the significant backlog in the USRAP that resulted from the first Executive Order, delaying the processing of many of IRAP's clients' cases. This delay will force IRAP to exhaust more of its resources, as the average lifespan of a case now grows significantly. IRAP has a legal department com-

posed of staff attorneys who advise and provide consultation to its network of pro bono legal volunteers on their casework. Because of delays in processing, IRAP's attorneys must spend significantly more time on each case, providing guidance about alternative routes to safety and possible exemptions. In addition to IRAP's staff attorneys' existing and ongoing responsibilities, they must now also draft and review additional submissions to State and to the Department of Homeland Security ("DHS"), such as waiver requests for admission to the United States for their clients, which will be reviewed by a case-by-case basis under the new Executive Order. Further, IRAP's field staff must largely give up their work on refugee case processing and focus primarily on ensuring the local safety of refugees who thought their lives would be saved for resettlement, and who are now caught in life-threatening limbo.

38. As a result of the government's narrow interpretation, IRAP attorneys must also counsel their own clients about the changes in law as well as pursue other resettlement options for them, even though many were already being processed in the U.S. Refugee Admissions Program ("USRAP"). The first Executive Order has already wasted significant resources (typically hundreds of hours of legal representation over the course of many years navigating USRAP), forcing IRAP and our clients to make the Hobson's choice between starting the pro-

cess over with another country, attempting to shelter in place in spite of life-threatening circumstances, or undertaking dangerous journeys to reach safety across other borders.

39. I am deeply concerned by the U.S. government's interpretation of the Supreme Court decision. In addition to many refugees in USRAP accessing the program through a bona fide relationship to a U.S. person or entity, all refugees develop a bona fide relationship to a U.S.-based entity once a resettlement agency assures their reception and placement in the United States. Thus, to deny refugees in USRAP admission to the United States based on a lack of bona fide ties is contrary to the functioning of the refugee resettlement program.

40. Moreover, I believe that the government's actions reflect an attempt to dismantle USRAP. For example, in June 2017, I learned of denials of 50 Somali refugee cases out of Kenya even though USCIS had not yet interviewed any of those families. In other words, they were denied before a U.S. immigration officer even looked at their case. Having worked with refugees for nearly a decade, I have never seen this type of denial en masse before, and I fear that the government is seeking to block entire nationalities from coming to the United States through USRAP.

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

Dated: June 30, 2017

/s/ REBECCA HELLER
REBECCA HELLER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-CV-00050-DKW-KSC

STATE OF HAWAI'I, PLAINTIFF

v.

DONALD TRUMP, ET AL., DEFENDANTS

DECLARATION OF MARK HETFIELD, PRESIDENT AND CEO OF HIAS, INC.

DECLARATION OF MARK HETFIELD, PRESIDENT AND CEO OF HIAS, INC.

I, Mark Hetfield, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the President and Chief Executive Officer of HIAS, Inc.

2. HIAS was founded in 1881 as the Hebrew Immigrant Aid Society to assist Jews fleeing pogroms in Russia and Eastern Europe. It is the world's oldest —and only Jewish—national refugee resettlement agency. Today, HIAS serves refugees and persecuted people of all faiths and nationalities around the globe. Since HIAS's founding, the organization has helped more than 4.5 million refugees start new lives. In 2016 alone, HIAS provided services to more than 350,000 refugees and asylum seekers globally.

3. HIAS has offices in twelve countries worldwide, including its headquarters in Silver Spring, Maryland, its principal place of business, and additional domestic offices in New York City and Washington, D.C.

4. HIAS's refugee resettlement work is grounded in, and an expression of, the organization's sincere Jewish beliefs. The Torah, Judaism's central and most holy text, commands followers to welcome, love, and protect the stranger. The Jewish obligation to the stranger is repeated in various ways throughout the Torah, more than any other teaching or commandment. HIAS believes that this religious commandment demands concern for and protection of persecuted people of all faiths. The Torah also teaches that the Jewish people are to welcome, protect, and love the stranger because "we were strangers in the land of Egypt" (Leviticus 19:34). Throughout their history, violence and persecution have made the Jewish people a refugee people. Thus, both our history and our values lead HIAS to welcome all refugees in need of protection. A refusal to aid persecuted people of any one faith, because of stigma attached to that faith, violates HIAS's deeply held religious convictions.

5. HIAS's client base includes refugees and their families abroad and those located in the United States. Hundreds of these clients hail from the six countries singled out in Section 2(c) of the March 6 Executive Order, including Syria, Iran, Sudan, Somalia, and Yemen. Other clients, who will also be affected by the 120-day ban on refugees in Section 6(a) of the Order, hail from countries that include Iraq, Ukraine, Bhutan, the Democratic Republic of the Congo, Afghanistan,

Eritrea, Tanzania, Ethiopia, Central African Republic, Burundi, South Sudan, Uganda, Russia, Belarus, Burma, and El Salvador. Its overseas clients are seeking refugee status, and do so precisely because they face a real risk of persecution at home. They remain in precarious situations often in third countries.

6. The refugee resettlement process typically begins with the office of the United Nations High Commissioner for Refugees ("UNHCR"), which interviews and screens the applicant and determines whether the applicant may qualify as a refugee, and where the applicant may resettle. In certain circumstances, specially trained non-governmental organizations will identify the refugee and begin this process. Some refugee-clients of HIAS started the application process without a referral from the UNHCR or entity. Some of these refugees are close relative of asylees and refugees already in the United States; others belong to specific groups identified in by statute or the U.S. Department of State as eligible for direct access to the refugee and resettlement program.

7. The U.S. Department of State or U.S. Citizenship and Immigration Services will then assign the refugee to a Resettlement Support Center ("RSC"). HIAS is one of five agencies that operate RSCs. These relationships are formal, documented, and formed in the ordinary course of HIAS's business. None of these relationships were formed for the purpose of evading the refugee ban.

8. The RSC operated by HIAS in Austria is primarily intended for Iranian refugees who fled religious persecution in Iran. Every one of those Iranian refu-

gees has a relationship with a person in the United States who is the "anchor" for that case, who initiates the resettlement application, and who provides a "Care and Maintenance deposit" to ensure that the applicant will be able to cover his or her living expenses while waiting to be processed in Austria. None of the relationships between the U.S. anchor and the applicant was arranged for the purpose of evading the refugee ban. Under the policy of the U.S. Refugee Admissions Program, the U.S. anchor may or may not be a close relative of the refugee applicant.

9. The RSCs are responsible for organizing the physical processing of refugee applicants, educating the applicant about the process, and preparing the physical case file. The RSC will also interview the applicant and enter the relevant application document into the Department of State's Worldwide Refugee Admission Processing System ("WRAPS"), cross reference and verify the data, and send information required for a background check to other U.S. agencies.

10. Even before many individuals are referred to an RSC, HIAS provides intensive psychosocial, legal and livelihood assistance to vulnerable refugees around the world. It works closely with the UN refugee agency to identify cases that cannot secure durable solutions in the countries to which they have fled. HIAS staff develop in-depth relationships with clients who receive psychosocial assistance, including individual counseling and group therapy. Staff also develop bonds with refugees through our legal work which includes asylum preparation and through our livelihoods and employment services. Through HIAS' comprehensive pro-

gramming, staff come to understand all of the challenges that these individuals experience either because of the persecution they have faced in their countries of origin or because of the issues they deal with in the countries of asylum. HIAS build relationships with individual clients as well as other family members ensuring that they are able to access protection services and durable solutions.

11. HIAS staff involved in referring cases for resettlement are in close contact with the UN refugee agency to determine the progress of clients that are referred through the United States Refugee Admissions Program (USRAP). HIAS staff is often in contact with refugees after they have been resettled to the United States to find out how they are faring and obtain feedback on how we can improve our services. Because of the intensive work that HIAS has done with clients through direct services, HIAS is able to maintain ties after they are no longer in the countries of first asylum.

12. Clients referred to the USRAP must fall into certain categories of vulnerability. As such, HIAS builds up these ties through the close support that we provide to clients particularly by way of the psychosocial and mental health services HIAS offer which help refugees recover from trauma and move on with their lives. For those refugees who simply cannot access the protection that they need to stay safe, HIAS assists them to secure durable solutions, thus developing strong ties with individuals through the provided support.

13. The RSC process can often take 18-24 months or longer, during which time the RSC serves as the pri-

mary point of contact as the refugee undergoes the extensive background checks and processing required by U.S. governmental entities. The RSC will also work with the refugee applicant to address any changes related to application that occur in the course of the process, such as whether refugee's application needs to be considered for expedited consideration, or if there is a change to the family composition, such as a birth, death, divorce, or marriage.

14. Should the application proceed, applicants must complete a cultural orientation course and a medical screening, the results of which are also entered into WRAPS.

15. If the case is cleared, resettlement agency representatives, who meet weekly to review WRAPS information, will determine where to resettle the refugee. Should the applicant be assigned to the United States, the applicant will be subject to further screening from United States Customs and Border Protection, and the Transportation Administration's Secure Flight Program.

16. Once all refugee processing is complete, refugee clients are assigned via the State Department's allocation process to one of nine non-profit agencies that contract with the United States government as resettlement agencies. HIAS is one of the nine resettlement agencies. To serve these refugees, HIAS currently holds sub-agreements with 18 local organizations ("affiliates") who operate and oversee 21 resettlement sites across the country. Once a refugee is approved for resettlement, they are matched to a local affiliate, who then provides an "assurance," which is a

guarantee that the affiliate will provide services to the individual when he/she arrives.

17. As a resettlement agency, HIAS and its affiliates are required to arrange for the reception and placement of refugees in the United States and offer appropriate assistance during their initial resettlement in the United States; provide refugees with basic necessities and core services during their initial period of resettlement; and in coordination with publicly supported refugee service and assistance programs, assist refugees in achieving economic self-sufficiency through employment as soon as possible after their arrival in the United States. These relationships are formal, documented, and formed in the ordinary course of HIAS's business. None of these relationships were formed for the purpose of evading the refugee ban.

18. After a refugee has been given an assurance, but before the refugee has been issued a visa, HIAS and its affiliates begin the involved process of arranging for the reception, placement, and appropriate initial resettlement assistance for the refugee. Refugees typically travel 2 to 6 weeks after receiving an assurance by one of the affiliates.

19. As a resettlement agency, HIAS and its affiliates ensure that the arriving refugees assigned to it are met at the airport of final destination and transported to furnished living quarters and provided culturally appropriate, ready-to-eat food and seasonal clothing as necessary to meet immediate needs.

20. HIAS and its affiliates also find housing for the refugee or refugee family, provides them with money

for rent and utilities for up to three months, and supplies them with initial food and medical care before government-funded benefits begin. In addition, HIAS and its affiliates' case management services include providing initial safety orientation followed by weeks of extensive cultural orientation to adjust them to life in America, and HIAS and its affiliates assist the refugee or refugee family in enrolling in ESL classes, school, employment services, and benefits programs (including Medicare, food stamps and Supplemental Security Income for the elderly and disabled).

21. During this time, HIAS and its affiliates develop a close relationship with the refugee or refugee family, as they provide critical support during this vulnerable and challenging time. For example, local affiliates work to provide many of the things the family is likely to need immediately upon their arrival, including finding housing and furnishing it, stocking the pantry, a and making the family a welcome meal for their first night. When the refugees arrive, the affiliates often greet them at the airport, along with needed translators and caseworkers. After the refugees arrive, the affiliates will help with transportation and facilitate conversation while the refugees learn English, and even provide babysitting services so that the refugees can undertake the necessary steps to transition to life in America, like taking an English placement test or getting social security cards.

22. If HIAS and its affiliates are not able to resettle individuals who are already approved or assured, they will not only lose the $950 per capita funding they are allocated through their cooperative agreement with the

Department of State, impacting staff capacity, but they will also lose the resources and monies expended securing the necessities they are required to provide by the cooperative agreement.

23. In FFY 2016, HIAS's cooperative agreement with the Department of State provided that HIAS and its affiliates would resettle 3,768 refugees and Special Immigrants Visas ("SIVs") in the United States. However, as the number of refugees and SIV's approved for admission increased, HIAS eventually resettled 4,191 individuals that year. The Department of State, aware that it would significantly increase capacity for refugees in FFY 2017, then requested that HIAS apply for higher numbers of arrivals as the refugee program expanded. As a result, in its cooperative agreement for FFY 2017, HIAS was engaged to resettle 4,794 refugees and SIVs.

24. Of the hundreds of clients worldwide who have been vetted, approved for refugee status, and allocated and assured to a HIAS site, only a small number are currently scheduled for travel. Of those, 2 families of 8 total refugees are from the six banned countries and at least 6 lack a US tie as recognized by the State Department's current guidance. Many of these individuals will be prevented from travel as a direct result of the Executive Order, leaving them in precarious situations.

25. Additionally, the federal government is only committing to allowing refugees to travel through July 6, even though other refugees have travel dates booked beyond that date.

26. As a result of the Federal Government's interpretation of the Supreme Court's stay, many of these individuals will still be prevented or delayed from entering the United States, despite the fact that they have a bona fide relationship with a person or entity in the United States. Because security and medical clearances have expiration dates, it is likely that some refugees would lose their readiness for travel during the suspension period and lengthy checks would need to be repeated. Every day that these individuals' entry is delayed, they remain in precarious situations.

27. Because of the extensive time this interview process takes, stopping interviews can delay refugee admissions for next year since the approval process requires several steps and includes several time limited now it delays admission even next year despite living under the new cap. In order for refugees to be cleared to travel, the refugees need travel documents, medical clearance and current security clearance. Delays can cause any one of these pieces to expire, rendering the refugee unable to travel and requiring renewals. Refugees remain in precarious, stressful situations while waiting for final resettlement and family reunification.

28. Many of HIAS's clients abroad whose refugee status has been approved but have yet to be scheduled for travel, including clients from the six banned countries, belong to a category of refugees who, by definition, have a bona fide relationship with a United States entity or a close family relationship.

29. This includes individuals whose family members have petitioned, applied, or sponsored them for refugee

status (often through HIAS and its affiliates as the very first step in initiating a resettlement case.). Refugees seeking entry under Priority 3 or P-3 status have either a parent, child, or spouse who has been recently admitted to the United States as a refugees or asylee. HIAS and its affiliates have pending applications for clients seeking to enter the United States under the P-3 (Priority Three) program.

30. Some HIAS clients have been approved as refugee status through the Central American Minors program, which permits U.S. relatives of persecuted children in Central America to petition for these children to immigrate here. These children remain in vulnerable and dangerous situations in their home countries, despite having been approved for refugee status, and their U.S. family members are forced to endure continued separation from and concern for these children. Other refugee categories are similar in that the characteristics permitting individuals to apply for refugee status under the program guidelines themselves establish a bona fide relationship with a person or entity in the United States, such as for example, the Priority 2 or P-2 program for individuals in Eurasia, the Baltics, El Salvador, Guatemala, and Honduras.

31. Also under the Direct Access Program for Iraqis (DAP for Iraqis) and the Direct Access Program for Syrians (DAP for Syrians), individuals can apply directly with USRAP without the need for a referral from UNHCR. This is based on these individual's current or prior relationship with a U.S. entity. Individuals who are eligible to apply for DAP include those who are at risk of or have experienced serious harm as

a result of their association with the U.S. government or a U.S. entity. This includes individuals who have worked in Iraq or Syria for the U.S. government as interpreters or translators, those employed by U.S. media organization or U.S. non-governmental organizations. Refugees applying through DAP have by definition established a relationship that is "formal, documented, and formed in the ordinary course" because establishing such a relationship is what qualifies them to apply through DAP in the first instance.

32. All beneficiaries of a Form I-730 Refugee/Asylee Relative Petitions have a family member in the United States who has petitioned on their behalf. HIAS represents clients in their family petitions and currently represents at least one client whose family member is from one of the banned countries.

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

/s/ MARK HETFIELD
MARK HETFIELD

Executed this 30 day of June 2017

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-CV-00050-DKW-KSC

STATE OF HAWAI'I, PLAINTIFF

v.

DONALD TRUMP, ET AL., DEFENDANTS

SUPPLEMENTAL DECLARATION OF MARK HETFIELD, PRESIDENT AND CEO OF HIAS, INC.

SUPPLEMENTAL DECLARATION OF MARK HETFIELD, PRESIDENT AND CEO OF HIAS, INC.

I, Mark Hetfield, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the President and Chief Executive Officer of HIAS, Inc.

2. This declaration supplements my prior declaration in this case, signed June 30, 2017.

3. The positions the federal government has taken in interpreting the Supreme Court's limited stay order threaten concrete and significant harm to HIAS and its clients. This declaration will highlight some of our clients who are or will be affected by the government's interpretation of the Supreme Court order of June 26,

2017 that refugees with a bona fide relationship with an entity or person in the United States be exempt from the entry restrictions in the Executive Order of March 6.

4. I am aware that the government asserted after June 26 that the fact of an assurance by a refugee resettlement organization like HIAS for a refugee does not establish a bona fide relationship to a U.S. entity for refugees. HIAS and our affiliates have currently assured that we can and will resettle several hundred specific refugees who not yet been admitted to the United States. All of these assurances were given, and these individuals became our clients, prior to when the Supreme Court entered the partial stay on June 26, 2017. Some of these clients have no relatives in the United States as far as HIAS knows. Preventing these clients of HIAS from traveling would waste the efforts and resources HIAS and its affiliates have already expended to prepare for their reception in the United States.

5. Several of HIAS's assured clients were already authorized by the U.S. government for travel after July 12, but under the government's new policy will no longer be permitted to travel unless the government is convinced they have a "close family member" in the United States or a bona fide relationship with a U.S. entity. That policy is reflected in an email HIAS received from the U.S. Department of State on July 10, 2017. A true and correct copy of the email, with names and email addresses redacted, is attached as Exhibit A to this declaration. We have identified nine HIAS clients who have not yet been admitted to the United States, who are currently booked for travel after July 12,

2017, and who have no family members in the United States of which HIAS is aware. Based on the guidance of the July 10 email, travel will be cancelled for ten of HIAS' refugee clients.

6. The government's narrow new interpretation of "close familial relationship" in the Supreme Court limited stay order contradicts its previous interpretations and will also adversely impact HIAS's clients. In HIAS's experience, the close relatives which a refugee may have in the United States (grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law and sisters-in-law) will often not be covered by the government's new interpretation of "close family member." For example, we have identified HIAS clients whose only family in the United States to HIAS's knowledge are, respectively: a grandmother; a grandfather; a grandson; an aunt; an uncle; a cousin; a niece and a nephew; and a sister-in-law. One of the refugees assured by HIAS whose travel will be cancelled is an individual who was approved as a refugee through the Lautenberg program. His qualifying family tie in the United States is with his grandmother and he was also expecting to join his two aunts and uncle in this country. According to the Federal Government's current interpretation of the Supreme Court ruling, a grandparent or a grandchild is not a "close family member." Yet in the official instructions issued earlier by the Department of State about the very same Lautenberg program for refugees from the former Soviet Union, the Department of State specifies that "Immediate relatives include spouses, parents, children, sib-

lings, grandparents and grandchildren of legal U.S. residents."

7. The government has so far refused to recognize that individuals in several refugee programs, including the Central American Minor and Lautenberg programs for certain nationals of Iran and the former Soviet republics, are exempt from the ban by virtue of these refugee programs' pre-existing eligibility requirements of having U.S. ties. Currently, HIAS has more than 140 refugee clients who already established ties to the U.S. and who have been approved for the U.S. Refugee Admissions Programs through the Central American Minor and Lautenberg programs. Assessing their ties to the United States on a case-by-case basis will result in possible errors and needless delays that could exacerbate or heighten risks to refugees who continue to be in danger in the countries in which they are located due to protection concerns or needed acute medical care. This is also putting considerable stress and strain on HIAS staff whose workload has increased with the added requirement of explaining these changed requirements to applicants and documenting and establishing 'bona fide relationships' for these categories of cases.

8. Any additional delay in any of these cases, which should be exempt under the Supreme Court's order, will seriously harm HIAS clients. For example, one approved refugee client booked for travel after July 12 is in need of urgent hypertension treatment in the United States. HIAS is concerned that any delay will exacerbate this individual's medical condition. Other clients remain in precarious situations including remaining in physical danger and living in uncertain situations in third coun-

tries while they wait for final travel arrangements. I am aware of one refugee family HIAS has assured that fled Syria, where family members had been killed, to Jordan. In Jordan, they do not have work permission and rely on friends and family for support, but are falling behind on rent and bills and face eviction. A United States citizen family friend is prepared to assist them in their integration into the United States.

9. HIAS and its partners have already taken concrete steps on behalf of many of these individuals, For example, I am aware of a Syrian family lacking family ties in the United States which HIAS had assured for resettlement in New York. A synagogue and a church had partnered in cooperation with HIAS to welcome and support the refugee family and assist them in their integration into the United States. In order to do so, the congregations had raised funds and rented and furnished an apartment, but because of the government's interpretation of the Supreme Court ruling the family is now in limbo in spite of the relationship with HIAS and faith-based entities.

10. Even a relatively short delay of weeks or a month caused by additional processing time for refugees, particularly for those already assured, could cause current security checks to expire, potentially adding years of waiting in dangerous situations before the refugees can travel to safety in the United States.

11. Prior to receiving assurances to travel to the United States, all refugee applicants are subject to numerous security and vetting checks. Refugees must successfully clear all of these checks in order to be approved for resettlement and granted an assurance by

a resettlement agency. Several of these checks can take months or years to complete.

12. First, refugees must clear a Consular Lookout and Support System ("CLASS") check, run by the Department of State Refugee Processing Center. The CLASS check is valid for 15 months.

13. Second, refugees must receive an approved Security Advisory Opinion ("SAO") from the Department of State for *every* identity document possessed by *every* member of the case. This means that a family of four who each has a passport and national identification card must receive eight separate SAOs. Further, none of the SAOs may be obtained concurrently—they must be issued one at a time. Each SAO is valid for a period of 15 months.

14. Third, refugees must undergo an Inter-Agency Check ("IAC") which varies from six months to two years to complete. The IAC involves numerous U.S. intelligence agencies all running the refugees' names, identification documents, and biometrics against proprietary databases (meaning that each agency must run the data check separately). It expires after 33 months.

15. Finally, a Department of Homeland Security officer takes fingerprints which are valid for 15 months.

16. Prior to being assured, each refugee also undergoes a medical check, which is valid for six months.

17. Each of these checks is only valid for certain periods of time. Once the time elapses, the checks "expire" and must be re-initiated.

18. Determining whether refugees have a bona fide relationship on a case-by-case basis will likely result in many refugees having at least one clearance expire during that additional processing time.

19. The expiration of a single clearance often creates a snowball effect because while the first check is being re-run, others will sequentially expire. For that reason, any appreciable delay in processing can result in a refugee's resettlement to the United States being delayed for months or years.

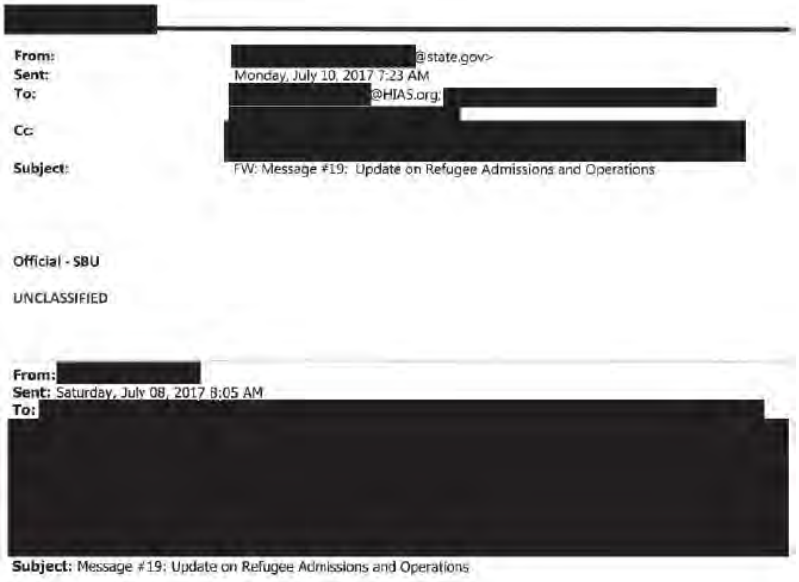
20. The government has instructed that refugee interviews that have already been scheduled should be cancelled unless the applicant "has a claim to a bona fide relationship with an individual in the U.S." *See* Exhibit A. The instructions do *not* make an exception for individuals with a bona fide relationship to an *entity* in the United States, meaning that interviews for those individuals will be cancelled under current guidance.

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

/s/ MARK HETFIELD
MARK HETFIELD

Executed this 10th day of July 2017

EXHIBIT A to Supplemental Declaration of Mark Hetfield, President and CEO of HIAS, Inc.



[redacted]

From: [redacted]@state.gov>
Sent: Monday, July 10, 2017 7:23 AM
To: [redacted]@HIAS.org; [redacted]
Cc: [redacted]
Subject: FW: Message #19: Update on Refugee Admissions and Operations

Official - SBU

UNCLASSIFIED

From: [redacted]
Sent: Saturday, July 08, 2017 8:05 AM
To: [redacted]
Subject: Message #19: Update on Refugee Admissions and Operations

Dear colleagues,

Thank you all for the quick turnaround on collecting bona fide relationship (BFR) documentation from passengers on ABN for travel next week. PRM has sent back a number of responses to the RSCs confirming the validity of these relationships and we are actively working through the rest.

Please see below for additional detailed guidance:

1. We have been informed that all passengers traveling on July 11 and July 12 may proceed as planned, whether or not they have a credible claim to a bona fide relationship with an individual or entity in the United States. Effective July 13, only cases with a credible claim to a bona fide relationship to a person or entity in the

U.S. may travel until the end of the 120-day pause.

2. RSCs are asked to immediately begin reaching out to all passengers currently on ABN for any travel date, in the order of the closest to departure, to confirm whether any case member has a credible claim to a bona fide relationship with an individual or entity in the U.S., as defined in Message #17. Please see the below list of relevant documentation types (Annex A).

3. RSCs do not need to include documentation for the following category of refugee: I-730 (Visa 93), Syrian and Iraqi beneficiaries of approved I-130s, P3 family reunification, and CAM (unless a caregiver is included in the application). These cases may travel and do not need to appear on lists submitted to PRM/A Program Officers.

4. Once BFR documentation is received from the applicant, the RSC should scan and upload it to WRAPS with the document type of "Bona Fide Relationship Evidence" following WRAPS SOPs. [Note: This document type was recently added to WRAPS. If the evidence is a document that is already attached to the case, attach an additional copy of the document and select BFR Evidence as the document type.] Past BFR documentation that has been uploaded without using these labels should be re-scanned and re-uploaded with the correct labels.

5. Once documentation is uploaded for all passengers on a given travel day, the list must be sent

to your PRM/A Program Officer, copied to the Overseas Section Chief. RSCs with fewer passengers may group passengers traveling over multiple days together on one list. Each list should contain at least all passengers departing on a given day (in other words, please do not break up passengers into multiple lists for a single departure day). Lists should be sent at least daily until further notice, unless multiple travel days are included on a single list.

6. RSCs should only send cases that claim a qualified BFR to PRM/A. Cases that do not claim a qualified BFR may not travel. Once BFR documentation is sent to PRM/A, RSCs should enter the following case comment in WRAPS, "Requested PRM BFR Credible Claim Determination." If the case does not claim a qualified BFR, the RSC should enter the following case comment, "RSC determines no Credible Claim to BFR."

7. RSCs are responsible for canceling the travel of all cases that do not have a credible claim to a BFR in the U.S. RSCs should work with IOM regional offices to ensure this travel is cancelled. RPC will issue further guidance on tracking and labeling cases that have been approved or placed on hold in the coming week.

8. When compiling lists of passengers with qualifying BFRs, RSCs should check all cross-references (hard and soft) to determine whether any of the cross-references has a qualifying relationship with the first case. In other words, case A is cross-

referenced with case B. If case A's arrival in the United States would create a qualifying BFR for case B, the RSC should include case B together with case A on the list of cases sent to their PRM/A Program Officer for review, noting the relationship between A and B. Anyone on case B may have the relationship with anyone on case A.

9. In cooperation with DHS/USCIS, PRM/A Program Officers will provide confirmation of the credible claim to the BFR by email back to the RSC. These emails must be scanned and uploaded into WRAPS and the decision should be noted in case comments as "PRM BFR Credible Claim Determination Received: Qualified" or "PRM BFR Credible Claim Determination Received: Not Qualified." Once confirmation is received, the applicant may travel.

10. When the BFR is first claimed by the applicant, RSCs must check what information is already in WRAPS on this relationship. Normally the BFR should already appear in the family tree. The minimum information about the BFR required in WRAPS is name, qualifying relationship, and city and state in the U.S. Thus, if the applicant claims a BFR that does not appear in WRAPS at all, or if the location is listed as Unknown, the RSC must enter this additional BFR documentation in WRAPS. These additions will trigger an IAC bio-diff. If the RSC receives additional information from the applicant on a claim to a BFR in the U.S., such as phone number or email

address, this should be entered into WRAPS as well.

11. DHS/USCIS is preparing to conduct circuit rides in quarter four. For scheduled circuit rides, RSCs should reach out to all applicants scheduled for interview to confirm whether any case member has a claim to a bona fide relationship with an individual in the U.S. Only those making a claim (and qualifying cross-references per #7 above) should remain on the schedule for interview. RSCs should ensure BFR documentation is uploaded into WRAPS following the above guidance and included in the case file prior to interview.

12. RSCs should contact all applicants to request BFR documentation as applicants reach the following stages (the documentation only needs to be collected once, depending on which stage the person is currently at):

    i. When scheduled for an upcoming circuit ride

    ii. When scheduled for I-590 stamping (if not already done at point i)

    iii. When RFD (if not already done at point i or ii)

13. We are still confirming the types of relationships with U.S. entities that will qualify as bona fide relationships under the Supreme Court ruling. Assurances alone do not qualify, nor does the fact that the case is an embassy referral.

Please flag any potential relationships with entities in the U.S. to your PRM/A Program Officer for guidance.

14. PRM will issue guidance the week of July 10 on when new ABNs may be scheduled for new cases with bona fide relationships.
15. Public messaging and updated text for RSC websites will be forthcoming.

Annex A: Relevant documentation to establish a credible claim to a bona fide relationship with an individual in the United States:

- birth certificates
- marriage certificates
- pending/approved I-130 petitions
- pending/approved I-730s
- RSC and UNHCR family trees (including the family tree of the family member in the United States)
- Affidavits of Relationship
- sworn affidavits (by applicant, family members in U.S., other family members, entity in the United States)
- databases (e.g. CCD, CLAIMS, CIS, WRAPS)
- testimony
- previous statements to RSC or UNHCR
- DNA

- any other documentation/evidence that corroborates the relationship

Official

UNCLASSIFIED

EXHIBIT D

DECLARATION OF GENERAL JOHN R. ALLEN

I, John R. Allen, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a retired U.S. Marine Corps four-star general and former commander of the International Security Assistance Force (ISAF) in Afghanistan. I am currently a senior fellow and co-director of the Center for 21st Century Security and Intelligence at the Brookings Institute.

2. Prior to joining the Brookings Institute, I served as the Special Presidential Envoy for the Global Coalition to Counter ISIL. I served in the military for nearly 38 years in a variety of positions in the Marine Corps and the Joint Force. I commanded at every level in the Marine Corps through the Marine Expeditionary Brigade. I served as the G-3 operations officer of the 2nd Marine Division. I was the aide de camp and military secretary to the 31st commandant of the Marine Corps.

3. As the commander of the NATO ISAF and United States Forces in Afghanistan from July 2011 to February 2013, I commanded the 150,000 U.S. and NATO forces in Afghanistan. During this time, we recovered the 33,000 U.S. surge forces, moved the Afghan National Security Forces into the lead for combat operations, and pivoted NATO forces from being a conventional combat force into an advisory command.

4. Prior to my time in Afghanistan I served in Iraq from 2006-2008. I served as Deputy Command-

ing General, II Marine Expeditionary Force and Commanding General, 2nd Marine Expeditionary Brigade, deploying to Iraq for Operation Iraqi Freedom and serving as the Deputy Commanding General of Multi-National Forces West and II MEF (Forward) in Al Anbar Province, Iraq. As Deputy Commanding General, I worked closely with and relied heavily on our Iraqi allies.

5. The U.S. military's Iraqi employees, contractors, and sub-contractors have close relationships with U.S. entities and were essential to U.S. military operations in Iraq. All military operations depend on robust and trustworthy relationships with local partners. In Iraq, the U.S. military worked with Iraqis, either through direct employment or through contract or subcontract relationships, to provide essential services, such as translation and interpretation, base support, security, logistics and maintenance, construction, transportation, or communication support.

6. Local national Iraqis worked closely with U.S. military officials, U.S. contractors, or U.S. subcontractors to complete projects that were vital to the success of the U.S. mission. For example, I personally worked closely with Iraqi interpreters to communicate with local Iraqi leaders in Al Anbar Province in Iraq. The accurate interpretation and cultural understanding that my interpreter provided was essential to our work of providing security to the province.

7. The U.S. military required documentation from and vetted all local Iraqi employees, contractors,

sub-contractors, and vendors. Our Iraqi allies were vetted and screened throughout their employment. The U.S. military's local national employees and vendors were all required to be vetted through security background checks, which were implemented to prevent anyone who was a threat to the U.S. mission from being employed or given access to a U.S. base.

8. The U.S. military used intelligence databases, including information from Iraqi government records and biometric data such as fingerprints, to both screen and periodically rescreen all local nationals who would have had access to a U.S. base or have worked closely with the U.S. mission. Iraqis who had access to bases or sensitive locations were issued badges required for entry and had to follow strict security protocols. Iraqis who failed to follow protocols or who were deemed to be a threat to security were fired and tracked in such databases.

9. Because of their close relationship with the U.S. mission, U.S.-affiliated Iraqis and their families were and continue to be under an ongoing, serious threat of being killed by our enemies. Our Iraqi allies risk their lives to support the U.S. mission. The enemies of the U.S. mission in Iraq have targeted and killed, and will continue to target and kill, Iraqis who are affiliated with the U.S. through employment as an interpreter or a contractor.

10. There are significant numbers of enemy actors who target U.S.-affiliated Iraqis. This most nota-

bly includes ISIS, but there are many other militias and groups, of multiple religious sects, political affiliations, and locations within Iraq, that seek to harm U.S.-affiliated Iraqis. Because of the large number of threats, a targeted U.S.-affiliated Iraqi may not find safety in any part of Iraq.

11. Mere evidence of an U.S. affiliation, such as a badge to enter a U.S. base, can put an Iraqi at risk. When the enemies are unable to target individuals directly, they will target family members of U.S.-affiliated Iraqis.

12. U.S. affiliated Iraqis face extreme danger while they wait to be processed. Local national interpreters and contractors have been killed while working alongside U.S. forces, and they have also been killed at their homes or while traveling to U.S. bases.

13. As a result of these threats, every extra day our allies must wait for refugee applications to be processed can literally mean life or death.

14. For the U.S. military, the Priority 2 Direct Access Program for U.S.-Affiliated Iraqi refugees (P2-DAP) is a promise to help our Iraqi allies that ensures their safety and their continued support for the U.S. mission. When the Refugee Crisis in Iraq Act, also known as the Kennedy Act, was signed into law, it was a promise by the United States to provide protection to our Iraqi allies who were vital to our missions' safety and success.

15. Specifically, the Refugee Crisis in Iraq Act was signed into law on January 28, 2008. It commit-

ted the United States to a more ambitious set of programs to provide US.-affiliated Iraqis facing danger inside Iraq routes of escape to the United States. One program that the Act established allowed Iraqis with demonstrated work for the U.S. government (USG), contractors, or U.S.-based NGOs or media organizations, to directly access the U.S. refugee admissions program. This is known as the Priority 2 Direct Access Program for U.S.-Affiliated Iraqis (P-2 DAP). Today, this is the path by which wartime allies who served alongside us in Iraq can find safe passage to the United States.

16. As this program is crucial for the success of our military operations in Iraq and our future military operations abroad (including Afghanistan), ensuring its vitality is key. The program is strictly reserved for Iraqis and their family members who have documented ties with U.S. entities and U.S. citizens from their work supporting the U.S. mission in Iraq. A detailed background on the specific aspects of this program will explain the redundancy in having refugees in this program prove they have a de facto bona fide relationship with a person or entity in the United States and show the need to exempt refugees in this program from the refugee freeze.

17. The U.S. government agencies administering P2-DAP verify the documentation and relationship with the U.S. military or U.S. entity that employed the Iraqi applicant or family member, as well as the threat in Iraq due to that relationship. The

Iraqi P2-DAP applicants at issue[1] must have been employed by an entity affiliated with the U.S. mission in Iraq, or be a family member of an employee; that relationship must be documented, and that documentation must be submitted to the U.S. government, reviewed by the Department of State, and verified for an application to proceed.

18. The Refugee Crisis in Iraq Act established "Direct Access" for a designated class of Iraqi refugees, those who have experienced severe harm, or who believe they are at risk of serious harm, as result of their association with the USG. In order to qualify, an applicant must have to have been an employee of the USG, an interpreter/translator for the USG or Multi-National Forces, an employee of U.S.-affiliated organization or entity closely associated with the U.S. mission in Iraq that has received USG funding, an employee of an U.S. NGO or media organization, or a spouse, children, parent, sibling of someone with the qualifying work.

19. In order to apply to the program, applicants must email the International Organization for Migra-

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[1] The Iraqi P2-DAP program also includes Iraqis with a U.S. affiliation based on a family member in the United States who has filed and received approval of an I-130 immigration petition on their behalf. The administration has indicated that all of those applicants will be considered to have close family relationships and therefore will not be subject to the refugee ban. The discussion of "Iraqi P2-DAP applicants" in this declaration is therefore limited to Iraqis who were employed by U.S.-affiliated entities and their family.

tion (IOM), which operates aspects of the program for the Department of State, with their basic biographic data and copies of documents related to their U.S.-affiliated work, including but not limited to their badges, letters of recommendation, and contracts that prove USG funding. In addition, applicants are required to have a point of contact at their qualifying employer verify the applicant's employment with the company.

20. IOM collects and reviews the information. The Department of State reviews and determines whether the U.S. affiliation has been independently verified. After verifying that applicants have qualifying ties to the USG and its mission in Iraq, IOM schedules applicants for a pre-screening interview to further assess the applicants' eligibility for the program.

21. Once IOM decides that the basic requirements appear to be met, applicants interview with the Department of Homeland security personnel, to further demonstrate that they meet the U.S refugee definition in addition to providing additional evidence that they are a member of the designated P-2 population.

22. This means that, by definition, any Iraqi refugee with a pending application in the Iraqi DAP program has already been adjudicated by the United States to have a concrete, bona fide and documented relationship with a U.S. entity.

23. Requiring Iraqi P-2 DAP applicants to again prove their previously verified bona fide relationship

needlessly and senselessly delays the process, risks the deaths of our allies and their families, and harms the U.S. military's reputation and operations overseas. I am deeply concerned by the U.S. government's interpretation of the Supreme Court decision, as it will unnecessarily delay processing and may shut down the entire program. These delays and shutdowns have life threatening impacts on our allies who already risked their lives to advance our mission.

24. Iraqi P2-DAP applicants must have a bona fide relationship with a U.S. entity based on their or a family member's employment. That relationship was independently verified in order to allow them access to apply for P2-DAP and again, in-person, during the refugee application process. To put these applications on hold pending further verification of a bona fide relationship is to put our allies and their families needlessly and senselessly in harm's way.

25. Military operations depend on robust and trustworthy relationships with local partners. If the United States wishes to continue achieving success in current and future operations overseas, it must protect those who help enable that success. U.S. partners in other conflict zones, including Afghanistan (where thousands of U.S. troops are currently deployed), are watching to see how the United States treats its networks in Iraq. Maintaining the promises made to those Iraqis who served with us is not only principled but will improve our military's effectiveness in other

regions; it will instill confidence and loyalties where local supporters are needed. The effectiveness of future missions depends on the United States' willingness and ability to safeguard those individuals, and their families, who risk their lives in support of U.S. missions.

26. Military service instills in a person certain values: Loyalty. Duty. Honor. Integrity. These values apply universally; to each other, to our nation, and also to all those who stood by our sides when we needed their assistance. Many of us can point to a moment when one of our foreign allies saved our lives—often by taking up arms against our common enemies. They acted because they believed in America, in our mission, and in the promise that was given. We should keep that promise, and among the ways we do this is to continue the P-2 DAP program for those Iraqi allies.

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

Signature: /s/ JOHN R. ALLEN, GEN. USMC (RET.)

Executed this 10th day of July, 2017

July 11, 2017

CWS Declaration

Church World Service (CWS), a humanitarian agency that brings together 37 Protestant, Anglican and Orthodox member communions. The CWS constituency represents more than 30 million people in the United States who affirm the importance of refugee resettlement as a private-public partnership that has broad support from communities across the country.

I, Erol Kekic, am the executive director of the CWS Immigration and Refugee Program (IRP). I have worked in the field of refugee protection and resettlement for more than 21 years, leading CWS's work in humanitarian protection and development of durable solutions that bridge the gap between disaster relief and development. Before serving as the associate director and then executive director of CWS IRP, I served as the associate director for the Lutheran Family and Community Service Immigration and Refugee Program and assistant director for resettlement for the Lutheran Immigration and Refugee Service, both in New York. I have a Bachelor of Science degree in chemical engineering at the University of Sarajevo and have done graduate work at The University of Detroit-Mercy in Michigan and at Oxford University Refugee Study Centre in the UK.

The United States Refugee Admissions Program (USRAP) works with nine agencies to resettle refugees into communities across the country; one of these agencies is CWS, which agreed to serve 8,687 individuals in FY 2017. Of this number, CWS has already

resettled **6,664** refugees and has an additional **3,626** individuals in its assured-not-yet-arrived overseas pipeline (some of whom may arrive next year); all of whom have been waiting for years to flee from harm and the chance to live in safety.

U.S. Ties Who Are Not "Bona fide relationships" Under the Administration's Interpretation

Of the 3,626 currently in the CWS pipeline who have been assured and have a U.S. tie, 1,072 individuals do not have what the Administration considers to be a "bona fide relationship". In its interpretation of the Supreme Court's decision on this case, the Administration is asserting that refugees who have expected to join their grandmothers, aunts, uncles, cousins, nieces, nephews and friends do not have a "bona fide relationship" with an individual in the United States.

Among the group of individuals being impacted by the Administration's interpretation of a bona fide relationship is a 93 year old grandmother resettled to the US, who three years ago filed family reunification applications for her daughter and granddaughter from Ukraine, both of whom are booked to arrive in the United States in two weeks' time. Unfortunately, neither the mother nor the daughter, who are both, importantly, religious minorities, a group that the State Department has prioritized for resettlement, will be allowed to depart for the U.S. Their cases are "hard-cross-referenced", which means one cannot travel without the other, and as the granddaughter does not have what is considered to be a "bona fide relationship" to her U.S. tie (i.e.: her grandmother), the mother —who has a bona fide relationship—will also be pre-

vented from travel. As a result, this 93 year old grandmother may never be reunited with her daughter or granddaughter.

"Cross-Referenced" Family Members

Resettlement Support Centers (RSCs), which pre-screen refugees referred to the US program regularly process refugees as "cross-referenced" cases if a refugee identifies a need to travel and/or live in the same location with a family member or friend. These decisions are often vulnerability or dependency based. Guidance from the federal government to RSCs on cross-referencing specifies that "a cross-reference is a link between cases for the purpose of travel and resettlement. Cross-referenced cases are those that have an established association with each other[1]."

If they need to be processed together (travel and live together), the RSC will hard-cross-reference (HCR) them to ensure they go through each step in the process together. If they want to resettle together, but one case has more urgent needs, the RSC will normally soft-cross-reference (SCR) their cases. Soft-cross referencing ensures that they will eventually be reunited in the same location in the U.S.

Implementation of this recognizes that many refugee families are not commonly that of a nuclear family, but that grandparents, cousins, aunts and uncles frequently play a role in raising children and that familial rela-

[1] RSC SOP 2: Pre-screening. This SOP describes minimum standards set forth by PRM and RPC, and guides local implementation by RSCs within their regional coverage.

tionships do not end at the "bona fide" level as currently defined by the Administration. CWS has hundreds of individuals who may not have a "bona fide" relationship to a U.S. tie as currently defined by the Administration, but whose cases are cross-referenced to cases of family or friends who have already arrived in the U.S.

Refugees "Without US ties"

CWS also has **1,384** refugees in its assured-not-yet-arrived pipeline who do not have a U.S. tie, but who have no option to return home or be integrated into their host country. Among these individuals is a displaced Somali family of ten. Their children have been diagnosed as malnourished and continue to live in unsafe conditions. One of them was, in fact, attacked on his way to his interview with the resettlement support staff and suffered severe head trauma. Their mother suffers from strokes that have left half her body paralyzed. After having spent the past 19 years in a desolate refugee camp along the border of Kenya and Somalia, they finally were meant to arrive in the U.S. this week but their travel has been cancelled. "If these and other refugees are denied entry, families like this—who face an existential threat every day—will be in limbo indefinitely. Their medical exams and security checks will expire, they will not receive adequate treatment for their serious medical conditions; their children will remain malnourished and unable to attend school, and their future uncertain. Despite being told that they were approved for admission to the U.S., the promise of resettling safely in the U.S. will now be revoked, for no fault of their own.

I declare under penalty of perjury that the foregoing is true and correct. Executed on Thursday, July 13th, 2017.

Respectfully,

/s/ EROL KEKIC
EROL KEKIC
Executive Director, Immigration and Refugee Programs
Church World Service

Declaration of John Feruzi

1. My name is John Feruzi. I am around 21 years old. I do not know the exact day and month that I was born, but I do know I was born in 1995. I was born in the Congo. Now I live in Dzaleka Refugee Camp in Malawi.

2. I cannot say anything about my birth parents because never knew them. I went to live with my uncle, Mwenda Watata, when I was very young. I do not consider him my uncle. He is my father. I call him "Baba," which means "Dad" in Swahili. His wife is like my mother. She raised me, too. She breastfed me as a child. I call my aunt "Mom." I do not refer to them as my uncle and aunt. They are my parents.

3. Dad is the only father I have ever known. He means everything to me. I love him very much. He brought me up. I have loved living with him. He has always been there for me.

4. I lived with Dad and Mom ever since I was a child, ever since I can remember. Dad always says I am his child, even though I am listed as his nephew on paperwork. He refers to me when he talks about his sons, because he has always considered me to be his son. Though we are cousins by birth, his birth children and I consider each other brothers and sisters. I am considered born into the family, not just a cousin.

5. My dad means everything to me. He took me to school. He gave me advice just as he did to his birth children. He took care of me when I was

sick. He treated me exactly the same as his other children. We always ate together as a family.

6. When I was about 14 years old, Congo soldiers attacked our house and our family. I do not remember many details, but I remember that our family was on the run until we reached Malawi. That is really all I can remember. I was about 14 at the time. I believe we came to Malawi around October of 2009. We applied for refugee status around that time.

7. Our whole family started the application process together. We filed together. I was included because I was considered one of his children, even though I am listed as his nephew in the application. We went through all the steps together. We were fingerprinted at the same time. We took our photos at the same time. We all went to the interviews together. We completed our forms together and turned them in together. We finished the process together. We made travel arrangements together. Our cases progressed together. Dad handled everything and told us children what we needed to do.

8. Dad and Mom never officially adopted me. We just never thought it was necessary. Mom breastfed me. I was their kid. It was never a question. I was listed as their nephew on the paperwork, but we were all still processed together as a family. The fact that I was their nephew by birth never came up in my interview. It never was an issue until we all got to the airport to travel to the United States and they divided us. I never

expected it to be an issue. We always thought I would be resettled with the rest of the family.

9. On the 4th of July, 2017, our whole family went to the airport together. We were all going to be resettled in Arkansas in the United States.

10. I expected that we would travel together and live together in the United States. All of a sudden, we got to the airport and I was told to stay behind. I think maybe this was because I was not considered family. I do not understand this system. I feel like I don't understand anything anymore. All the people I grew up with are gone. This is my family. This is my Dad. This is my Mom. These are my brothers and sisters. I am separated from the people I love most in the world. My family is in the U.S. now without me. They are all there, except me. I am in the refugee camp without them.

11. I am not someone who cries easily. After this happened, I cried more than ever before in my life. I'm not in a good situation emotionally. All the people I care about are gone. My father who took care of me my whole life is gone. My whole family is all gone. I can't wrap my head around what happened. I don't understand why it happened. I'm scared I'll never get to join them. I'm afraid I'll never see Dad, Mom, and my brothers and sisters again.

12. I am providing this declaration in the hopes that somehow it might help my family and I be together again.

13. If anyone can get in touch with my dad, please tell him I'm thinking of him and the family. Please tell my dad I love him and miss him so much. If there is anything I can do to help move this process along, I'll do it. I'll do whatever I can. I just want to be with my family again.

14. I authorize Marissa Ram, attorney with the International Refugee Assistance Project ("IRAP") to sign this declaration on my behalf. I live in Dzaleka Refugee Camp and I do not have access to a printer. I would have to go out and pay to use one. Unfortunately, I do not have any money. Dad helped provide for me and now that he is gone I do not have any money. If my signature is needed at a later date and someone can pay for mailing service, I can and will sign the declaration myself. This declaration has been read to me in Swahili, a language I understand and am fluent in. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 13 of July, 2017
New York, New York
/s/ MARISSA RAM

MARISSA RAM, Attorney with the International Refugee Assistance Project, on behalf of **John Feruzi**

Interpreter Certification

I, Nancy Wallace, certify that l am fluent in the English and Swahili languages, and that the verbal translation I provided to the declarant of the above document from English into Swahili is complete, true, and accurate to the best of my abilities.

Executed on 13 of July, 2017
Davis, California
/s/ NANCY WALLACE
NANCY WALLACE

Declaration of Mwenda Watata

1. My name is Mwenda Watata. I was born in Mboko in the Democratic Republic of Congo on January 20, 1956. In my culture, we say our family name first, then our given name. In my paperwork for the United States, my name is written in reverse order, with my given name first and my family name last. U.S. documents list my name as Watata Mwenda.

2. I am fluent in several languages, including Swahili and French.

3. I have eleven children. I have eight biological sons, two biological daughters, and my son John Fernzi. In terms of defining family, I have always seen John as my own son.

4. I don't know the exact day that John was born, but it was sometime in August of 1995. To my knowledge, he is listed as 21 years old on official paperwork.

5. John is the biological son of my younger brother, who is now deceased.

6. When John was just about one month old, my younger brother left him with me. Cholera was rampant during this time. Many people died from it. My younger brother and his wife died, too. John came to live with us. My wife, Nyasa Safi, had just had a baby boy about a month ago, too. They were around the same age. We think they might even be just a few days apart.

7. My wife breastfed them together. It was as if she had given birth to two babies. We raised them together. We raised them as both our children. We treated them both exactly the same.

8. My role as a father was the same with all my children. I never discriminated or treated my children differently from one another. Two of my biological children have a different mom than Nyasa. I loved them all the same. John is my child. He is my son.

9. I just never saw the need to legally adopt John. He was our son. He didn't know his biological mother and father. My wife breastfed him just as she did with his brother. We raised them together. He has never lived with anyone else except us.

10. I also didn't see the need to adopt him because that is just not necessary in our culture. In our cultural tradition, these distinctions between family aren't important. We're related by blood. We're a family. If someone passes away, you take care of their children. Their children become your children. My brother's son became my son. I raised John since he was a baby. He is my child. I was and am responsible for him. There is just no need to legally adopt in our culture.

11. In 2009, we were attacked by Congo soldiers outside our home. They wanted to take my life. So we had to flee. We eventually reached Malawi and in or around October 2009, we applied for refugee status there.

12. Throughout our life in the DRC and Malawi, I have never left anyone behind, even when we had to flee. It was very important to me to keep the family together. That includes my son John.

13. I just can't understand why John was made to stay behind. I truly don't understand. We went through every step of process together, fingerprints, photos, interviews. To my understanding John was being considered our child throughout the process, even though legally he is my nephew. This never came up as a problem during the interviews. Nothing seemed strange about the process. We were honest in our answers. There were no weird questions. No one ever asked us why we didn't adopt John.

14. We were all expecting to move together. So I don't understand why this happened in the end. I don't understand why we were separated from him.

15. On July 4, 2017, officers from Dzaleka Refugee Camp accompanied us from the camp to the airport. When we arrived at the airport, they called out the names of the travelers. One by one all of our names were called. Except my son John. Despite going through the whole process together as a family and arranging our travel together, he was not on that list.

16. It was very confusing. It's hard to wrap my head around what happened.

17. One of the officers from the refugee camp told us not to worry about it. He said maybe John would join us in a week and told us to go on ahead. They

didn't give us any reason. We all cried about it. But it seemed like our tears didn't help at all.

18. It's been more than a week and we are still separated. John's still not here. It doesn't seem like he is coming now. And no one can tell us why.

19. I understand John's belief that he was left behind because he's not considered family. The only difference between him and all my other children that are here with me is that he is legally my nephew. All my sons are here. Except John. When he was left behind at the airport, it was like leaving my son.

20. John's mom is just devastated. One of her children is not with her. There is a gap in our family. It's not the same anymore. John has been with us his whole life. His siblings are depressed. There is something missing. I'm heartbroken because John is not sitting next to me like the rest of my sons. All my sons are here, except John. I want to see him. I miss him. I want him to be here with me. We need him home with us.

21. I am very worried about John because I don't even know if he's safe. What if he's been attacked? He's in a refugee camp. Anything can happen there and now he's all alone.

22. I'm worried about his health. Is he eating? Does he even have enough to eat? I always made sure all my kids had good, healthy food. I made sure they all had enough to eat, even when times were hard. I provided everything for my children.

23. If I could speak with John right now, I would tell him to please not to lose hope. There are people trying to help. I believe something good can come out of this. I believe we will be together again.

24. If there is anything anyone can do to help reunite me with my son, I hope someone will let me know.

25. This declaration has been read to me in French, a language I understand and am fluent in. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 13 of July, 2017
Fayetteville, Arkansas
/s/ MWENDA WATATA
MWENDA WATATA

Interpreter Certification

I, Shezza Dallal, certify that I am fluent in the English and French languages, and that the verbal translation I provided to the declarant of the above document from English into French is complete, true, and accurate to the best of my abilities.

Executed on 13 of July, 2017
New York, New York
/s/ SHEZZA DALLAL
SHEZZA DALLAL

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-15589

STATE OF HAWAII, ET AL., PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, ET AL.,
DEFENDANTS-APPELLANTS

On Appeal from the United States District Court
for the District of Hawaii, No. 1:17-cv-00050-DKW-KSC
District Judge Derrick K. Watson

SECOND SUPPLEMENTAL DECLARATION OF RISA E. DICKSON

I, Risa E. Dickson, do solemnly swear and would competently testify as follows.

1. I am Vice President for Academic Planning and Policy at the University of Hawai'i System. I began this role in February 2015. As Vice President, I have overall responsibility for leadership, planning, and intercampus coordination of academic affairs, student affairs, and academic policy and planning, among other things.

2. On April 20, 2017, the University of Hawai'i ("University") posted a story on-line about the number of international students admitted to the University for the 2017-2018 school year. *UH a popular destination for international students,*

UH News (Apr. 20, 2017), http://www.hawaii.edu/news/2017/04/20/uh-a-popular-destination-for-international-students/.

3. As reported in the story, as of that date, 11 graduate students, each of whom are from one of the six countries affected by the March 6, 2017 executive order, had received offers of admission from their respective programs at the University, for the 2017-2018 school year, and an additional 21 total graduate students from the six affected countries were still being considered for admission by their respective programs.

4. Since this on-line story was posted, as of May 12, 2017, the University's records reflect that at least three graduate applicants, each from one of the six affected countries, have accepted their respective offers of admission and thus committed to attend the University in the Fall. The University's records reflect that each of these students is a national of one of the six affected countries.

5. In addition, since the on-line story was posted, as of May 12, 2017, the University's records reflect that three additional offers of admission were extended to graduate applicants, each of whom is from one of the six affected countries. Therefore, as of May 12, 2017, there are 11 graduate applicants, each from one of the six designated countries, with pending offers of admission for the 2017-2018 school year.

6. Classes begin for the upcoming school year on August 21, 2017. All students, campus-wide, need to be present by at least that date to begin their classes. Additionally, many students at UH have mandatory orientation, registration, or other activities that begin before the classes start.

7. Campus-wide graduate student orientation begins August 14, 2017, but is optional. However, each program has its own requirements for when new graduate students must arrive on campus. Of the three students who have accepted their offers of admission noted above, at least one of them must be on campus by August 1, 2017 and another must be on campus by August 10, 2017.

8. In general, graduate student applicants who receive offers of admission are asked to respond within 30 days of receipt of the offer letter. However, graduate programs may extend that deadline. As a result, the process of admitting new graduate students extends over the summer until classes begin.

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

Dated: Honolulu, Hawai'i, May 18, 2017.

/s/ RISA E. DICKSON
RISA E. DICKSON

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 Secre-

tary 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.

/s/ DONALD J. TRUMP
DONALD J. TRUMP

THE WHITE HOUSE,

Jan. 27, 2017.

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 effec-

tive date of this order, and a fourth report within 150 days of the effective date of this order.

Sec. 3. *Scope and Implementation of Suspension.*

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

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

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

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

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

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

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

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

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

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

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

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

(i) the foreign national has previously been admitted to the United States for a continuous period of

work, study, or other long-term activity, is outside the United States on the effective date of this order, seeks to reenter the United States to resume that activity, and the denial of reentry during the suspension period would impair that activity;

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

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

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

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

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

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

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

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

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

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

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

order, a second report within 100 days of the effective date of this order, and a third report within 200 days of the effective date of this order.

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

pursuant to this subsection are adequate to ensure the security and welfare of the United States.

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

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

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

ment 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.

/s/ DONALD J. TRUMP
DONALD J. TRUMP

THE WHITE HOUSE,

Mar. 6, 2017.

Presidential Documents

Memorandum of June 14, 2017

Effective Date in Executive Order 13780

Memorandum for the Secretary of State[,] the Attorney General[,] the Secretary of Homeland Security[, and] the Director of National Intelligence

This memorandum provides guidance for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence in light of two preliminary injunctions that bar enforcement of certain provisions of Executive Order 13780, "Protecting the Nation from Foreign Terrorist Entry into the United States" (Mar. 6, 2017). The preliminary injunction entered by the United States District Court for the District of Maryland, and affirmed in substantial part by the United States Court of Appeals for the Fourth Circuit, bars enforcement of section 2(c) of the Executive Order. The portions of the preliminary injunction entered by the United States District Court for the District of Hawaii that were affirmed by the recent decision of the United States Court of Appeals for the Ninth Circuit bar enforcement of certain provisions of sections 2 and 6 of the Executive Order.

Various provisions of sections 2 and 6 of the Executive Order (as well as sections 3 and 12(c), which delineate the scope of the suspension contained in section 2(c)), refer to the Order's effective date. Section 14 of the Executive Order provides that the Order was effective

at 12:01 a.m., eastern daylight time on March 16, 2017. Sections 2 and 6, however, were enjoined before that effective date, and the courts of appeals have affirmed the injunctions with respect to certain provisions of sections 2 and 6. As a result, under the terms of the Executive Order, the effective date of the enjoined provisions (as well as related provisions of sections 3 and 12(c)) is delayed or tolled until those injunctions are lifted or stayed.

In light of questions in litigation about the effective date of the enjoined provisions and in the interest of clarity, I hereby declare the effective date of each enjoined provision to be the date and time at which the referenced injunctions are lifted or stayed with respect to that provision. To the extent it is necessary, this memorandum should be construed to amend the Executive Order.

Because the injunctions have delayed the effective date of section 12(c), no immigrant or nonimmigrant visa issued before the effective date of section 2(c) shall be revoked pursuant to the Executive Order.

I hereby direct the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence to jointly begin implementation of each relevant provision of sections 2 and 6 of the Executive Order 72 hours after all applicable injunctions are lifted or stayed with respect to that provision, to ensure an orderly and proper implementation of those provisions. Prior to that time, consular officers may issue valid visas to, and the Secretary of Homeland Security may admit, otherwise eligible aliens without regard to sections 2 and 6. If not otherwise

revoked, visas and other travel documents issued during this period remain valid for travel as if they were issued prior to the effective date.

/s/ DONALD J. TRUMP
DONALD J. TRUMP

THE WHITE HOUSE,
Washington, June 14, 2017