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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JANE ROE 1, JOHN DOE 1, JANE ROE 2,
and JOHN DOE 2, on behalf of themselves and
others similarly situated, and JEWISH
FAMILY AND COMMUNITY SERVICES
EAST BAY,

Plaintiffs,

v.

DONALD TRUMP, President of the United
States; U.S. DEPARTMENT OF STATE; U.S.
DEPARTMENT OF HOMELAND
SECURITY; U.S. CUSTOMS AND BORDER
PROTECTION; OFFICE OF THE DIRECTOR
OF NATIONAL INTELLIGENCE; REX W.
TILLERSON, Secretary of State; KIRSTJEN
NIELSEN, Secretary of Homeland Security;
KEVIN MCALEENAN, Acting Commissioner
of U.S. Customs and Border Protection; BRIAN
HUMPHREY, Field Director, San Francisco
Field Office of U.S. Customs and Border
Protection; and DANIEL COATS, Director of
National Intelligence,

Defendants.

Case No. 3:17-cv-00557-WHO

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

CLASS ACTION

Date Filed: February 2, 2017

Trial Date: None Set

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INTRODUCTION

1
2 1. On December 7, 2015, then-candidate Donald Trump issued a statement “calling
3 for a total and complete shutdown of Muslims entering the United States.” Since then—over the
4 course of two years—Defendant Trump has remained consistent on this position, pushing for a
5 radical transformation of the country’s immigration laws to target and exclude Muslims. Since
6 taking office, Defendant Trump has issued four executive orders in an effort to implement his
7 campaign promise. The two most recent executive orders—like the two struck down before
8 them—are antithetical to this nation’s fundamental values and contrary to the law.

9 2. One week after he took office, on January 27, 2017, Defendant Trump issued
10 Executive Order No. 13,769 (“EO-1”), prohibiting for at least 90 days the entry or re-entry of all
11 persons who were nationals of seven predominantly Muslim countries, regardless of whether they
12 held valid visas or were lawful permanent residents of the United States, and suspending the
13 admission of refugees into America for 120 days. Several courts promptly held EO-1 to be
14 discriminatory and unconstitutional, and issued injunctions prohibiting Defendants from
15 enforcing it.

16 3. Prevented by the courts from enforcing the unconstitutional EO-1, Defendants
17 attempted a “do over” with the goal of drafting around previous legal challenges.
18 Notwithstanding a few cosmetic changes, however, Executive Order No. 13,780 (“EO-2”) was
19 motivated by the same discriminatory animus, and was promulgated in pursuit of the same
20 unconstitutional goals. District courts in Maryland and Hawai‘i enjoined EO-2’s bar on entry of
21 citizens of designated countries, decisions largely affirmed by their respective courts of appeals.

22 4. Now, Defendants are attempting yet another “do-over.” In Proclamation No. 9645
23 (“EO-3”), Defendants bar entry of persons from predominantly Muslim countries, and in
24 Executive Order No. 13815 (“EO-4”), Defendants indefinitely block the paths by which almost
25 all Muslim refugees are admitted to the United States. Like their predecessors, EO-3 and EO-4
26 impose sweeping changes to America’s immigration systems, focused on effectuating Defendant
27 Trump’s campaign promise of “a total and complete shutdown of Muslims entering the United
28 States.”

PARTIES

1
2 10. Plaintiff Jane Roe 1 is a United States citizen and a resident of California. Less
3 than a year ago, she married a Syrian national who currently lives in Dubai in the United Arab
4 Emirates. Plaintiff Roe 1 has filed an I-130 Petition for Alien Relative on behalf of her husband
5 so that he can immigrate to the United States. EO-3 not only prevents issuance of an immigrant
6 visa to Plaintiff Roe 1’s husband, but prevents her husband from even traveling to the United
7 States so that they can celebrate their marriage with friends and family. Roe 1 brings this suit
8 under a pseudonym because she fears retaliation against herself and her husband.

9 11. Plaintiff John Doe 1 is a lawful permanent resident and native of Iran who lives in
10 California. He is currently a college student in Torrance, California. Plaintiff Doe 1 is married to
11 an Iranian national who lives in Iran. He has filed an I-130 Petition for Alien Relative on behalf
12 of his wife so that she can immigrate to the United States. EO-3 not only prevents issuance of an
13 immigrant visa to Plaintiff Doe 1’s wife, but prevents him from being united with his wife by
14 barring her from entering the United States. Doe 1 brings this suit under a pseudonym because he
15 fears retaliation against himself and his wife.

16 12. Plaintiff Jewish Family and Community Services East Bay (JFCS-EB), founded in
17 1877 as the Daughters of Israel Relief Society, serves and supports Alameda and Contra Costa
18 County residents of all ages, races, and religions. It has a long history of working to resettle and
19 provide legal and other services in the San Francisco Bay Area to refugees and immigrants from
20 many countries, including people from the countries at issue here. Plaintiff JFCS-EB supports
21 those refugees and immigrants who are already present in the area and stands ready to provide
22 immediate assistance and services to additional refugees and immigrants upon their entry to the
23 United States. Defendants’ actions impede JFCS-EB’s ability to carry out its mission of assisting
24 refugees.

25 13. Plaintiff Jane Roe 2 is a refugee and native of Uganda who lives in California. She
26 has filed a Refugee Follow-to-Join Petition/Form I-730 for her daughter, who is almost four years
27 old, so that she can join her in the United States. EO-4 and the accompanying agency
28 memorandum suspends the processing of follow-to-join petitions like the one Roe 2 filed for her

1 daughter, and prevents Roe 2 from being reunited with her daughter. Roe 2 brings this suit under
2 a pseudonym because she fears retaliation against herself as well as her daughter and family
3 overseas.

4 14. Plaintiff John Doe 2 is a United States citizen and resident of California. He fled
5 violence and persecution in Somalia, and sought and received asylum in the United States. His
6 mother and younger brother, who are nationals of Somalia, have been approved for resettlement
7 to the United States through the U.S. Refugee Admissions Program. After receiving all medical
8 and security clearances and being booked for travel to the United States, Doe 2's mother and
9 brother were blocked from travelling by EO-1 and, later, EO-2. EO-4 and the accompany agency
10 memorandum suspends the processing of refugees like Doe 2's mother and brother, and prevents
11 Doe 2 from reuniting with them.

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

14 16. Defendant U.S. Department of State is a cabinet department of the United States
15 federal government with responsibility for issuing visas.

16 17. Defendant U.S. Department of Homeland Security ("DHS") is a cabinet
17 department of the United States federal government with the primary mission of securing the
18 United States.

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

22 19. Defendant Office of the Director of National Intelligence ("ODNI") is an
23 independent agency of the United States federal government with the primary mission of assisting
24 the Director of National Intelligence by integrating foreign, military and domestic intelligence to
25 secure the United States and its interests abroad.

26 20. Defendant Rex W. Tillerson is the Secretary of State. He is sued in his official
27 capacity.

28

1 28. Despite the 120-day suspension of the USRAP, section 5(e) of EO-1 authorized
2 the Secretaries of State and Homeland Security to admit refugees to the United States “on a case-
3 by-case basis,” specifically refugees who were “religious minorit[ies] in their home countries.”

4 29. Under Section 3(c) of EO-1, Defendant Trump proclaimed “that the immigrant and
5 nonimmigrant entry into the United States of aliens from countries referred to in Section
6 217(a)(12) of the INA, 8 U.S.C. § 1187(a)(12), would be detrimental to the interests of the United
7 States,” and that he therefore had “suspend[ed] entry into the United States, as immigrants and
8 nonimmigrants, of such persons for 90 days from the date of this order,” with narrow exceptions
9 not relevant here, regardless of whether they were otherwise admissible.

10 30. Section 1 of EO-1, entitled “Purpose,” stated that at the time of the September 11,
11 2001 terrorist attacks, “State Department policy prevented consular officers from properly
12 scrutinizing the visa applications of several of the 19 foreign nationals” involved in those attacks.
13 But EO-1 did not impose any restrictions on the nationals of the countries from which the
14 September 11 attackers hailed.

15 31. On the same day EO-1 issued, the Deputy Assistant Secretary for Visa Services at
16 the Bureau of Consular Affairs of the Department of State, relying on EO-1, issued a letter
17 purporting to provisionally revoke all valid nonimmigrant and immigrant visas of nationals of the
18 designated countries, subject to exceptions not relevant here. A copy of the Provisional
19 Revocation Letter is attached to this Complaint as Exhibit B. The Provisional Revocation Letter
20 appeared to expand the scope of EO-1. In addition to impacting persons seeking to enter the
21 United States, it also applied to persons already present in the country. Under Section
22 221(a)(1)(B) of the INA, 8 U.S.C. § 1227(a)(i)(B), any alien whose nonimmigrant visa has been
23 revoked under 8 U.S.C. § 1201(i) (which is INA § 221(i), referenced in the Provisional
24 Revocation Letter) is deportable.

25 32. EO-1 and the Provisional Revocation Letter applied to nationals of seven
26 countries, all of which are majority Muslim countries: Iraq, Iran, Libya, Somalia, Sudan, Syria,
27 and Yemen. EO-1, by its express terms, suspended immigrant and nonimmigrant entry into the
28 United States based on nationality, place of birth, or place of residence. The Provisional

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

3 33. EO-1 was an attempt by Defendant Trump to fulfill a campaign promise to ban
4 Muslims from entering the United States. Among his statements targeting Muslims generally,
5 Defendant Trump focused on the entry of refugees from majority-Muslim countries.

6 34. On July 11, 2015, Defendant Trump gave a speech in which he falsely claimed
7 that Muslim refugees were given preference over Christian refugees in entry to the United States:
8 “If you’re from Syria and you’re a Christian, you cannot come into this country, and they’re the
9 ones that are being decimated. If you are Islamic . . . it’s hard to believe, you can come in so
10 easily.”¹

11 35. In a written announcement dated December 7, 2015 and entitled, “Donald J.
12 Trump Statement on Preventing Muslim Immigration,” then-candidate Trump said that he was
13 “calling for a total and complete shutdown of Muslims entering the United States.” This
14 statement remained on the official Trump-Pence website after Defendant Trump was sworn in as
15 President and Defendants have never repudiated it.²

16 36. Also on December 7, 2015, Defendant Trump sent a tweet reading: “DONALD J.
17 TRUMP STATEMENT ON PREVENTING MUSLIM IMMIGRATION,” which linked to his
18 written statement bearing the same title, and is still live on Twitter.³ Defendant Trump read a
19 slightly modified version of the statement himself in public, declaring that “Donald J. Trump is
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21
22

23 ¹ See Louis Jacobson, *Donald Trump Says if You’re From Syria and a Christian, You Can’t Come*
24 *to the U.S. as a Refugee*, PolitiFact (July 20, 2015, 10:00 a.m. EST),
<http://www.politifact.com/truth-o-meter/statements/2015/jul/20/donald-trump/donald-trump-says-if-youre-syria-and-christianyou-/> (last visited Dec. 6, 2017).

25 ² See Donald J. Trump for President, Inc., *Donald J. Trump Statement on Preventing Muslim*
26 *Immigration* (Dec. 7, 2015),
<https://web.archive.org/web/20170508054010/https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> (last visited Dec. 6, 2017).

27 ³ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 7, 2015, 2:32 p.m.),
28 <https://twitter.com/realDonaldTrump/status/673993417429524480> (last visited Dec. 6, 2017).

1 calling for a total and complete shutdown of Muslims entering the United States until our
2 country’s representatives can figure out what the hell is going on... We have no choice.”⁴

3 37. The next day, Defendant Trump was questioned about his statements calling for a
4 ban on Muslim immigration. Defendant Trump compared his proposal to proclamations issued
5 by President Franklin Delano Roosevelt’s “solution for Germans, Italians, Japanese many years
6 ago.” When asked about how he would change the process of admitting aliens to the country,
7 Defendant Trump said customs agents “would say, are you Muslim?” He was then asked: “And
8 if they said yes, they would not be allowed in the country?” Defendant Trump responded:
9 “That’s correct.”⁵

10 38. On December 13, 2015, during an interview on CNN, Defendant Trump
11 reaffirmed his intent to institute a ban on Muslims entering the country. When asked about his
12 “call . . . for, ‘a total and complete shutdown of Muslims entering the U.S.,’” Defendant Trump
13 nodded his head and defended his position. Later, when he was asked whether he thought the ban
14 would be constitutional, he replied, “first of all, they’re not citizens.”⁶

15 39. Defendant Trump repeatedly referred to a ban on Muslim immigration and the
16 supposed threat posed by refugees from Muslim countries on the campaign trail. For example, in
17 March 2016, Defendant Trump professed in separate interviews “I think Islam hates us” and
18 “We’re having problems with the Muslims, and we’re having problems with Muslims coming
19 into the country.”⁷ Similarly, in a speech on June 13, 2016, Defendant Trump stated, “I called for
20 a ban after San Bernardino and was met with great scorn and anger. But now many . . . are saying
21 that I was right to do so.” Calling the admission of “hundreds of thousands of refugees from the

22 ⁴ Jenna Johnson, *Trump Calls for ‘Total and complete shutdown of Muslims entering the United*
23 *States*, The Washington Post (Dec. 7, 2015), <http://wpo.st/O0uY2> (last visited Dec. 6, 2017).

24 ⁵ Nick Gass, *Trump not bothered by comparisons to Hitler*, Politico (Dec. 8, 2015),
<http://www.politico.com/trump-muslims-shutdown-hitler-comparison> (last visited Dec. 6, 2017).

25 ⁶ CNN, *Trump defends proposal to ban Muslims entering U.S.*, at 0:15 and 8:45 (Dec. 13, 2015),
<https://www.youtube.com/watch?v=JKtcdn0zAqw> (last visited Dec. 6, 2017).

26 ⁷ Jenna Johnson and Abigail Hauslohner, *‘I think Islam hates us’: A timeline of Trump’s*
27 *comments about Islam and Muslims*, The Washington Post (May 20, 2017),
https://www.washingtonpost.com/news/post-politics/wp/2017/05/20/i-think-islam-hates-us-a-timeline-of-trumps-comments-about-islam-and-muslims/?utm_term=.87208e5a37dc (last visited
28 Dec. 6, 2017).

1 Middle East” a “better, bigger, more horrible version than the legendary Trojan horse,” Defendant
 2 Trump claimed that refugees were “trying to take over our children and convince them how
 3 wonderful ISIS is and how wonderful Islam is.” He stated unequivocally, “We have to stop the
 4 tremendous flow of Syrian refugees into the United States.”⁸

5 40. In a July 24, 2016 interview on Meet the Press, a reporter asked Defendant Trump
 6 if a plan similar to the later-enacted EOs was a “rollback” from “[t]he Muslim Ban.” Defendant
 7 Trump rejected the suggestion: “I don’t think so. I actually don’t think it’s a rollback. In fact,
 8 you could say it’s an expansion. I’m looking now at territories. People were so upset when I
 9 used the word Muslim. Oh, you can’t use the word Muslim. Remember this. And I’m okay with
 10 that, because I’m talking territory instead of Muslim.”⁹

11 41. During the presidential debate held on October 9, 2016, Defendant Trump stated
 12 that the Muslim ban would be implemented under the guise of “extreme vetting from certain areas
 13 of the world.” He rejected the admission of further Syrian refugees, describing their admission as
 14 the “great Trojan horse of all time.”¹⁰

15 42. After the election, on December 22, 2016, a reporter asked Defendant Trump
 16 whether his “plans to create a Muslim registry or ban Muslim immigration to the United States”
 17 had changed. Defendant Trump responded that “You know my plans. All along, I’ve been
 18 proven to be right” and that he was “100% correct” in his position.¹¹

19 43. On January 27, 2017, the day on which EO-1 was issued, Defendant Trump
 20 expressed his intention during an interview with the Christian Broadcasting Network to prioritize
 21 Christian refugees, citing again the false claim that Muslim refugees had been given preference

22 ⁸ Tara Golshan, *Read Donald Trump’s most inflammatory speech yet on Muslims and*
 23 *immigration*, Vox (June 13, 2016), <http://www.vox.com/2016/6/13/11925122/trump-orlando-foreign-policy-transcript> (last visited Dec. 6, 2017).

24 ⁹ *Meet the Press* (NBC television broadcast July 24, 2016), *transcript available at*
 25 <http://www.nbcnews.com/meet-the-press/meet-press-july-24-2016-n615706> (last visited Dec. 6, 2017).

26 ¹⁰ The American Presidency Project, *Presidential Debates: Presidential Debate at Washington*
 27 *University in St. Louis, Missouri* (Oct. 9, 2016), <http://www.presidency.ucsb.edu/ws/index.php?pid=119038> (last visited Dec. 6, 2017).

28 ¹¹ Katie Reilly, *Donald Trump on Proposed Muslim Ban: ‘You Know My Plans’*, Time (Dec. 21, 2016), <http://time.com/4611229/donald-trump-berlin-attack/> (last visited Dec. 6, 2017).

1 for admission to the United States: “Do you know if you were a Christian in Syria it was
 2 impossible, at least very tough to get into the United States? If you were a Muslim you could
 3 come in, but if you were a Christian, it was almost impossible and the reason that was so unfair,
 4 everybody was persecuted in all fairness, but they were chopping off the heads of everybody but
 5 more so the Christians. And I thought it was very, very unfair. So we are going to help them.”¹²

6 44. In the days after the promulgation of EO-1, Defendant Trump referred to it as a
 7 “ban.” On January 30, 2017, Defendant Trump tweeted: “If the ban were announced with a one
 8 week notice, the ‘bad’ would rush into our country during that week.”¹³

9 45. Senior advisors to Defendant Trump have long engaged in anti-Muslim rhetoric
 10 that provides additional support for the notion that EO-1 was prompted by animus toward Islam
 11 and Muslims.

12 46. In the summer of 2014, Stephen Bannon, former chief strategist and senior
 13 counselor to Defendant Trump, advocated for separation from those of the Muslim faith, telling a
 14 meeting of the Human Dignity Institute: “If you look back at the long history of the Judeo-
 15 Christian West struggle against Islam, I believe that our forefathers kept their stance, and I think
 16 they did the right thing. I think they kept it out of the world, whether it was at Vienna, or Tours,
 17 or other places It bequeathed to use the great institution that is the church of the West.”
 18 Bannon continued: “[T]hey were able to stave this off, and they were able to defeat it, and they
 19 were able to bequeath to us a church and a civilization that really is the flower of mankind, so I
 20 think it’s incumbent on all of us to do what I call a gut check, to really think about what our role
 21 is in this battle that’s before us.”¹⁴

22
 23 ¹² David Brody, *Brody File Exclusive: President Trump Says Persecuted Christians Will Be*
 24 *Given Priority as Refugees*, CBN News (Jan. 27, 2017),
 25 [http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-](http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees)
[says-persecuted-christians-will-be-given-priority-as-refugees](http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees) (last visited Dec. 6, 2017).

26 ¹³ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 30, 2017, 5:31 a.m.),
 27 <https://twitter.com/realDonaldTrump/status/826060143825666051> (last visited Dec. 6, 2017).

28 ¹⁴ J. Lester Feder, *This Is How Steve Bannon Sees The Entire World*, BuzzFeedNews (Nov. 16,
 2016), <https://www.buzzfeed.com/lesterfeder/this-is-how-steve-bannon-sees-the-entire-world>
 (last visited Dec. 6, 2017).

1 47. In an interview on January 28, 2017, one of Defendant Trump’s senior advisors,
2 Rudolph Giuliani, left no doubt that the ban on entry from nationals of the designated countries
3 was intended to carry out a ban on Muslims, and that EO-1 was crafted to create a pretextual
4 cover for a Muslim ban. Mr. Giuliani stated: “I’ll tell you the whole history of it. So, when he
5 [Defendant Trump] first announced it, he said, ‘Muslim ban.’ He called me up. He said, ‘Put a
6 commission together. Show me the right way to do it legally.’”¹⁵

7 48. On January 29, 2017, an anonymous “senior administration official” briefed a
8 reporter from Breitbart.com on the intended purpose of EO-1: “The reality, though, is that the
9 situation [of large Islamic populations] that exists today in parts of France, in parts of Germany,
10 in Belgium, etcetera, is not a situation we want replicated inside the United States.”¹⁶

11 49. Defendant Trump demonstrated that EO-1’s discussion of national security was a
12 pretextual cover for discrimination by failing to consult national security experts or agencies
13 before issuing EO-1. A bipartisan group of former high-ranking national security officials has
14 declared that, in prior cases, a President’s “considered judgment” in national security has “rested
15 on cleared views from expert agencies with broad experience on the matters presented to him.”
16 In this case, by contrast, there was “little evidence” of “thorough interagency legal and policy
17 processes designed to address current terrorist threats.”¹⁷

18 50. The pretextual nature of Defendants’ national security claims was further
19 confirmed by the fact that, according to available data, “[f]oreigners from th[e] [designated
20 countries] ha[d] killed zero Americans in terrorist attacks on U.S. soil between 1975 and the end
21 of 2015.”¹⁸

22 ¹⁵ Amy B. Wang, *Trump Asked for a ‘Muslim Ban,’ Giuliani Says — and Ordered a Commission*
23 *to do it ‘Legally’*, The Washington Post (Jan. 29, 2017) <http://wpo.st/xzuY2> (last visited Dec. 6,
2017).

24 ¹⁶ Neil Munro, *Left Protests While Trump Junks Obama’s Global Immigration Plan*, Breitbart
25 (Jan. 30, 2017), [http://www.breitbart.com/big-government/2017/01/30/trump-changes-](http://www.breitbart.com/big-government/2017/01/30/trump-changes-immigration-favor-american-values/)
[immigration-favor-american-values/](http://www.breitbart.com/big-government/2017/01/30/trump-changes-immigration-favor-american-values/) (parenthetical in original) (last visited Dec. 6, 2017).

26 ¹⁷ Joint Declaration of Madeleine K. Albright *et al.*, *Aziz v. Trump*, No. 1:17-cv-00116-LMB-
TCB, Doc. No. 57, ¶¶ 1-2, 7.

27 ¹⁸ Alex Nowrath, *Little National Security Benefit to Trump’s Executive Order on Immigration*,
28 Cato Institute (Jan. 25, 2017), [https://www.cato.org/blog/little-national-security-benefit-trumps-](https://www.cato.org/blog/little-national-security-benefit-trumps-executive-order-immigration)
[executive-order-immigration](https://www.cato.org/blog/little-national-security-benefit-trumps-executive-order-immigration) (last visited Dec. 6, 2017).

1 51. On January 30, 2017, the State of Washington filed a lawsuit challenging EO-1,
2 later joined by the State of Minnesota. On February 3, 2017, the U.S. District Court for the
3 Western District of Washington issued a temporary restraining order prohibiting enforcement of
4 various sections of EO-1. *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040, at *2
5 (W.D. Wash. Feb. 3, 2017).

6 52. Defendant Trump filed a notice of appeal and emergency motion to stay the TRO.
7 Construing the TRO as a preliminary injunction, a three-judge panel of the Ninth Circuit Court of
8 Appeals denied that motion on February 9, 2017, holding that the government had failed to show
9 it was likely to defeat the states' due-process arguments and that the states' First Amendment
10 claims presented significant constitutional questions. *Washington v. Trump*, 847 F.3d 1151,
11 1167–68 (9th Cir. 2017) (per curiam).

12 EO-2

13 53. On February 9, 2017, the day that the Ninth Circuit Court of Appeals issued its *per*
14 *curiam* order denying Defendant Trump's emergency motion to stay, Defendant Trump tweeted
15 "SEE YOU IN COURT, THE SECURITY OF OUR NATION IS AT STAKE!"¹⁹

16 54. However, one week later, on February 16, 2017, Defendant Trump reversed
17 himself and informed the Ninth Circuit he would instead issue a revised executive order.
18 Defendant Trump informed the Ninth Circuit that he was not seeking *en banc* review of the
19 panel's decision because "the President intends in the near future to rescind the Order and replace
20 it with a new, substantially revised Executive Order to eliminate what the panel erroneously
21 thought were constitutional concerns." *Washington v. Trump*, No. 17-35105, Doc. No. 154 (9th
22 Cir. Feb. 16, 2017).

23 55. On February 21, 2017, senior White House advisor Stephen Miller appeared on a
24 Fox News television program and explained that Defendant Trump's revised executive order
25
26

27 ¹⁹ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 9, 2017, 3:35 p.m.),
28 <https://twitter.com/realDonaldTrump/status/829836231802515457> (last visited Dec. 6, 2017).

1 would address “a lot of very technical issues that were brought up by the court,” but would “have
2 the same basic policy outcome.”²⁰

3 56. Just as Defendant Trump had earlier asked Rudolph Giuliani to “show [him] the
4 right way to do it [the Muslim ban] legally,” Defendants again sought to create “legal” cover for
5 their discriminatory ban. This time, Defendants ordered Defendant DHS to “help build the legal
6 case” for EO-1 by requesting an intelligence report that would substantiate the President’s
7 national security claims. A senior White House official told CNN that one way Defendant Trump
8 intended to bolster his case was to “use[] a more expansive definition of terrorist activity than has
9 been used by other government agencies in the past.”²¹

10 57. As part of Defendants’ efforts to insulate any revised executive order from claims
11 that it was discriminatory, Defendants sought intelligence reports to justify the scope of the
12 immigration ban. In response, however, DHS’s in-house intelligence branch, the Office of
13 Intelligence and Analysis, issued a report concluding—contrary to Defendants’ assertions—that
14 “citizenship is unlikely to be a reliable indicator of potential terrorist activity.”²²

15 58. According to a senior government official, Defendant Trump did not accept DHS’s
16 conclusion; he instead directed other intelligence agencies to produce the desired reports. This
17 course of conduct “prompted some in government to wonder whether the White House [wa]s
18 shopping around among agencies for the report that best bolsters their policy and legal support for
19

20
21 ²⁰ *Trump adviser says new travel ban will have ‘same basic policy outcome’*, Fox News (Feb. 21,
22 2017), <http://www.foxnews.com/politics/2017/02/21/trump-adviser-says-new-travel-ban-will-have-same-basic-policy-outcome.html> (last visited Dec. 6, 2017).

23 ²¹ Jake Tapper & Pamela Brown, *White House effort to justify travel ban causes growing concern*
24 *for some intelligence officials*, CNN (Feb. 25, 2017),
<http://www.cnn.com/2017/02/23/politics/white-house-effort-to-justify-travel-ban-causes-growing-concern-for-some-intel-officials> (last visited Dec. 6, 2017).

25 ²² U.S. Dep’t of Homeland Sec., Office of Intelligence & Analysis, *Citizenship Likely an*
26 *Unreliable Indicator of Terrorist Threat to United States*,
<https://www.documentcloud.org/documents/3474730-DHS-intelligence-document-on-President-Donald.html>
27 (last visited Dec. 6, 2017); *see also* Vivian Salama & Alicia A. Caldwell, *AP*
Exclusive: DHS report disputes threat from banned nations, Associated Press (Feb. 24, 2017),
28 <http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-threat-posed-travel-ban-nations> (last visited Dec. 6, 2017).

1 it.”²³ A senior administration official explained: “The president asked for an intelligence
2 assessment. This is not the intelligence assessment the president asked for.”²⁴

3 59. In a further report, the Office of Intelligence and Analysis found that Defendants’
4 proposed vetting procedures were unlikely to stop the threat that EO-2 purported to address. The
5 Office of Intelligence and Analysis concluded that “most foreign-born, US-based violent
6 extremists likely radicalized several years after their entry to the United States, limiting the ability
7 of screening and vetting officials to prevent their entry because of national security concerns.”²⁵

8 60. Finally, on March 6, 2017, Defendant Trump signed EO-2, No. 13,780, which bore
9 the same title as EO-1. A copy of EO-2 is attached to this Complaint as Exhibit C.

10 61. While EO-2 revoked EO-1, it had the same policy aim as the one enjoined by the
11 courts—to shut down immigration from predominantly Muslim countries.

12 62. EO-2 instituted a 90-day suspension of travel to the United States by nationals of
13 six of the Muslim-majority countries designated in EO-1—Iran, Libya, Somalia, Sudan, Syria,
14 and Yemen—effective March 16, 2017, while exempting several categories of individuals. It also
15 re-instituted the 120-day bar on the U.S. refugee program and the reduction in refugee entries.

16 63. The revised Section 1, titled “Policy and Purpose,” was a multi-page argument
17 attempting to backfill the justification for EO-1. To give just one example: Section 1 omitted EO-
18 1’s reference to the “hostile attitudes” of immigrants from the designated countries “toward [the
19 United States] and its founding principles,” including those who would “place violent ideologies
20 over American law.” EO-1 closely tracked Defendant Trump’s August 2016 speech in
21 Youngstown, Ohio, where Defendant Trump unveiled his plan to impose ideological tests as part

22
23 ²³ Jake Tapper & Pamela Brown, *White House effort to justify travel ban causes growing concern*
24 *for some intelligence officials*, CNN (Feb. 25, 2017),
[http://www.cnn.com/2017/02/23/politics/white-house-effort-to-justify-travel-ban-causes-
growing-concern-for-some-intel-officials](http://www.cnn.com/2017/02/23/politics/white-house-effort-to-justify-travel-ban-causes-growing-concern-for-some-intel-officials) (last visited Dec. 6, 2017).

25 ²⁴ Shane Harris, *Donald Trump Rejects Intelligence Report on Travel Ban*, *The Wall Street*
26 *Journal* (Feb. 24, 2017), [https://www.wsj.com/articles/donald-trump-rejects-intelligence-report-
on-travel-ban-1487987629](https://www.wsj.com/articles/donald-trump-rejects-intelligence-report-on-travel-ban-1487987629) (last visited Dec. 6, 2017).

27 ²⁵ MSNBC, *TRMS Exclusive: DHS document undermines Trump case for travel ban* (Mar. 2,
28 2017) [http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-
trump-case-travel-ban](http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban) (last visited Dec. 6, 2017).

1 of screening immigrants applying to enter the United States. Defendant Trump used almost the
2 exact same language in his speech, except that he said “Sharia law” instead of “violent
3 ideologies.”²⁶

4 64. In place of the “violent ideologies” language, EO-2 instead referred to “detecting
5 foreign nationals who may commit, aid, or support acts of terrorism and in preventing those
6 individuals from entering the United States.” EO-2 made this assertion notwithstanding the fact
7 that, since 1975, there had been no incidents of terrorism-related killings in the United States by
8 foreign nationals admitted as immigrants from any of the six countries it targeted.

9 65. EO-2 cited the Department of State’s Country Reports on Terrorism 2015 (June
10 2016) to support its inclusion of the six designated countries.²⁷ EO-2 explained, for example, that
11 Iran, Sudan, and Syria had been designated state sponsors of terrorism. But as EO-2 itself
12 conceded, those three countries had been so designated for decades, and no new factual basis was
13 cited to justify why a blanket travel ban on nationals of those countries might be needed.
14 Somalia’s presence on the list was purportedly justified because it had been designated as a
15 “terrorist safe haven.” But the cited State Department report also listed three predominantly
16 Christian nations as “terrorist safe havens”—the Philippines, Colombia, and Venezuela. EO-2
17 did not include any of these other countries or explain why they were omitted.²⁸ Finally, Yemen
18 and Libya were listed as conflict zones—a label that could also apply to many other countries not
19 included in EO-2.

20 66. District courts in Maryland and Hawai‘i enjoined the ninety-day travel ban in EO-
21 2 before it could take effect, decisions affirmed in large part by the Fourth and Ninth Circuits.
22 *Int’l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539 (D. Md. 2017), *aff’d in part and*

23
24 ²⁶ Christina Wilkie & Elise Foley, *Donald Trump Proposes Ideological Test for Entry to the*
25 *United States*, The Huffington Post (Aug. 15, 2016),
http://www.huffingtonpost.com/entry/donald-trump-immigration-test_us_57b224c9e4b007c36e4fc81e (last visited Dec. 6, 2017).

26 ²⁷ U.S. Dep’t of State, *Country Reports on Terrorism 2015* (June 2016),
27 <https://www.state.gov/j/ct/rls/crt/2015/> (last visited Dec. 6, 2017).

28 ²⁸ U.S. Dep’t of State, *Country Reports on Terrorism 2015*, Chapter 5: Terrorist Safe Havens
(June 2016), <https://www.state.gov/j/ct/rls/crt/2015/257522.htm> (last visited Dec. 6, 2017).

1 *vacated in part*, 857 F.3d 554 (4th Cir. 2017) (en banc) (“*IRAP*”); *Hawai‘i v. Trump*, 245 F.
2 Supp. 3d 1227 (D. Haw. 2017), *aff’d in part and vacated in part*, 859 F.3d 741 (9th Cir. 2017).

3 67. On June 26, 2017, the Supreme Court granted certiorari in *IRAP* and *Hawai‘i* and
4 consolidated both cases for argument. It also partially stayed the injunctions in those cases “to
5 the extent the injunctions prevent enforcement of § 2(c) with respect to foreign nationals who lack
6 any bona fide relationship with a person or entity in the United States.” *Trump v. Int’l Refugee*
7 *Assistance Project*, 137 S. Ct. 2080, 2087 (2017).

8 68. During the legal challenges to EO-2, Defendant Trump repeatedly labeled it a
9 “watered down” and “politically correct” version of his desired travel ban, which he had signed
10 only reluctantly at the behest of the Justice Department. Shortly after the *Hawai‘i* district court
11 granted a temporary restraining order against EO-2, Defendant Trump told a rally that EO-2 “was
12 a watered-down version of [EO-1] that was also blocked by another judge and should have never
13 been blocked to start with.” Defendant Trump further stated: “I think we ought to back to the
14 first one and go all the way.”²⁹ Similarly, on June 5, 2017, Defendant Trump tweeted that “[t]he
15 Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically
16 correct version they submitted to S.C.”³⁰

17 69. During separate events in April 2017, Defendant Trump repeated his campaign
18 warnings about Syrian refugees—by referencing an allegorical poem, “The Snake”—and again
19 emphasized his desire to give preference to Christian refugees, who he claimed had been
20 mistreated previously as compared to Muslim refugees in the Middle East.³¹

21 ²⁹ Jessica Taylor, *Trump Blasts Court’s Travel Ban Block: ‘This Ruling Makes Us Look Weak’*,
22 NPR (Mar. 15, 2017), <http://www.npr.org/2017/03/15/520342737/trump-blasts-courts-travel-ban-block-this-ruling-makes-us-look-weak> (last visited Dec. 6, 2017).

23 ³⁰ Donald J. Trump (@realdonaldtrump), Twitter (June 5, 2017, 3:46 P.M.),
24 <https://twitter.com/realdonaldtrump/status/871675245043888128?lang=en> (last visited Dec. 6,
2017).

25 ³¹ Marc Fisher, *Trump Invigorates, Enchants Crowd During Rally in Harrisburg, Pa.*, The
26 Washington Post (Apr. 29, 2017), https://www.washingtonpost.com/politics/100-days-in-trump-invigorates-enchants-crowd-during-rally-in-harrisburg-pa/2017/04/29/c656d764-2aa7-11e7-a616-d7c8a68c1a66_story.html?utm_term=.5cae790f1a77 (last visited Dec. 6, 2017).; Scott Johnson,
27 *At the White House with Trump*, PowerlineBlog.com (Apr. 25, 2017),
28 <http://www.powerlineblog.com/archives/2017/04/at-the-white-house-with-trump.php> (last visited
Dec. 6, 2017).

1 70. In response to a terrorist attack in Barcelona in August 2017, Defendant Trump
 2 tweeted, “Study what General Pershing of the United States did to terrorists when caught. There
 3 was no more Radical Islamic Terror for 35 years!”³² Defendant Trump referred to an apocryphal
 4 story of General John J. Pershing killing Muslim prisoners in the Philippines by shooting them
 5 with bullets dipped in pigs’ blood.³³

6 71. On September 15, 2017, a little over a week before EO-3 was issued, Defendant
 7 Trump tweeted, “The travel ban into the United States should be far larger, tougher and more
 8 specific-but stupidly, that would not be politically correct!”³⁴

9 72. The 90-day period in Section 2(c) of EO-2 had been set to expire during Supreme
 10 Court proceedings, but on June 14, 2017 Defendant Trump issued a memorandum declaring “the
 11 effective date of each enjoined provision [in EO-2] to be the date and time at which the
 12 referenced injunctions are lifted or stayed with respect to that provision.”³⁵ On September 24,
 13 2017, Defendant Trump issued EO-3 and took the position that Section 2(c) had expired on
 14 September 24, 90 days after the Supreme Court’s partial stay.

15 EO-3

16 73. Like its predecessors, EO-3 imposes sweeping bans on immigration and entry to
 17 the United States targeting citizens of Muslim-majority countries, subject to certain exceptions
 18 and case-by-case discretionary waivers. A copy of EO-3 is attached to this Complaint as Exhibit
 19 D.

20
 21
 22 ³² Donald J. Trump (@realdonaldtrump), Twitter (August 17, 2017, 11:45 A.M.),
<https://twitter.com/realdonaldtrump/status/898254409511129088> (last visited Dec. 6, 2017).

23 ³³ *Defiant, Trump Laments Assault on Culture and Revives a Bogus Pershing Story*, The New
 24 York Times (Aug. 17, 2017), [https://www.nytimes.com/2017/08/17/us/politics/trump-
 25 charlottesville-confederate-statues.html?&moduleDetail=section-news-
 0&action=click&contentCollection=U.S.®ion=Footer&module=MoreInSection&version=Wh
 atsNext&contentID=WhatsNext&pgtype=article](https://www.nytimes.com/2017/08/17/us/politics/trump-charlottesville-confederate-statues.html?&moduleDetail=section-news-0&action=click&contentCollection=U.S.®ion=Footer&module=MoreInSection&version=WhatsNext&contentID=WhatsNext&pgtype=article) (last visited Dec. 6, 2017).

26 ³⁴ Donald J. Trump (@realdonaldtrump), Twitter (Sept. 15, 2017, 6:54 A.M.),
<https://twitter.com/realDonaldTrump/status/908645126146265090> (last visited Dec. 6, 2017).

27 ³⁵ Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland
 28 Security, and the Director of National Intelligence, *Effective Date in Executive Order 13780*, 82
 Fed. Reg. 27965, 27966 (June 14, 2017).

1 74. Defendant Trump characterized EO-3 on the day it was released: “The travel ban:
2 The tougher, the better.”³⁶

3 75. Section 2 of EO-3 indefinitely bans immigration from five of the seven
4 predominantly Muslim countries identified in EO-1—Iran, Libya, Somalia, Syria, and Yemen—
5 as well as from another Muslim-majority country, Chad (hereafter, “EO-3 Countries”). It also
6 categorically forbids nationals of Syria from entering the United States on non-immigrant visas.
7 Citizens of Iran are barred from obtaining all non-immigrant visas except student and exchange
8 visitor visas. Citizens of Libya, Yemen and Chad are also barred from obtaining tourist and
9 business visas, which account for the overwhelming majority of nonimmigrant visas issued to
10 nationals of those countries.

11 76. While Section 2 also restricts entry by nationals of two non-Muslim-majority
12 countries—North Korea and Venezuela—their inclusion has a negligible effect on the flow of
13 persons from those nations. Previously, virtually no North Koreans traveled to the United States.
14 And because EO-3 would exempt North Koreans traveling to the United States on diplomatic or
15 South Korean passports, the only North Koreans who might actually be affected are the handful
16 of officials or academics who attend conferences in the United States.³⁷ Section 2’s effect on
17 Venezuelan nationals is also limited. The only Venezuelans targeted are officials of certain
18 government agencies and their relatives, and then only for business and tourist visas.

19 77. EO-3, like its predecessors, cites no specific instance of vetting failures for
20 nationals of the designated countries. Such failures are, in fact, incredibly rare.³⁸

21
22 ³⁶ The White House, Office of the Press Sec’y, *Press Gaggle by President Trump, Morristown*
23 *Municipal Airport, 9/24/2017* (Sept. 24, 2017), [https://www.whitehouse.gov/the-press-](https://www.whitehouse.gov/the-press-office/2017/09/24/press-gaggle-president-trump-morristown-municipal-airport-9242017)
24 [office/2017/09/24/press-gaggle-president-trump-morristown-municipal-airport-9242017](https://www.whitehouse.gov/the-press-office/2017/09/24/press-gaggle-president-trump-morristown-municipal-airport-9242017) (last
visited Dec. 6, 2017).

25 ³⁷ Emily Rauhala, *Almost no North Koreans travel to the U.S., so why ban them?*, Washington
26 Post (Sept. 25, 2017), [https://www.washingtonpost.com/world/almost-no-north-koreans-travel-to-](https://www.washingtonpost.com/world/almost-no-north-koreans-travel-to-the-us-so-why-ban-them/2017/09/25/822ac340-a19c-11e7-8c37-e1d99ad6aa22_story.html?utm_term=.030cc6a2f661)
[the-us-so-why-ban-them/2017/09/25/822ac340-a19c-11e7-8c37-](https://www.washingtonpost.com/world/almost-no-north-koreans-travel-to-the-us-so-why-ban-them/2017/09/25/822ac340-a19c-11e7-8c37-e1d99ad6aa22_story.html?utm_term=.030cc6a2f661)
[e1d99ad6aa22_story.html?utm_term=.030cc6a2f661](https://www.washingtonpost.com/world/almost-no-north-koreans-travel-to-the-us-so-why-ban-them/2017/09/25/822ac340-a19c-11e7-8c37-e1d99ad6aa22_story.html?utm_term=.030cc6a2f661) (last visited Dec. 6, 2017).

27 ³⁸ David Bier, *Very Few Immigration Vetting Failures of Terrorists Since 9/11*, Cato Institute
28 (Aug. 31, 2017), <https://www.cato.org/blog/very-few-immigration-vetting-failures-terrorists-911>
(last visited Dec. 6, 2017).

1 78. Instead, Section 1 of EO-3 claims that the DHS performed a country-by-country
2 review to determine what information was needed from each foreign country to determine
3 whether a national of that country seeking admission posed a security or public-safety threat. In
4 performing this review, DHS adopted certain “baseline criteria” that closely resemble the
5 statutory requirements for participating in the congressionally established Visa Waiver Program,
6 which permits foreign nationals to travel to the United States for temporary visits without visas.
7 8 U.S.C. § 1187.

8 79. In the Visa Waiver Program, Congress did not provide that nationals of countries
9 that fail to meet the statutory requirements for visa waivers would be barred from entry. Rather,
10 it determined that they should be excluded from the Visa Waiver Program and subject to the
11 normal vetting that accompanies a non-immigrant visa.

12 80. Congress reaffirmed its confidence in these vetting procedures—and its rejection
13 of nationality-based bans—as recently as 2015. In response to concerns about growing terrorist
14 threats worldwide—including threats emanating from countries listed in the various EOs—
15 Congress amended the Visa Waiver Program to make certain visitors to and dual nationals of
16 these countries ineligible for visa-less travel and authorized the Executive Branch to add new
17 countries to the list based on the terrorist threat in those countries. Again, Congress chose not to
18 enact sweeping nationality-based bans on entry.

19 81. EO-3 states that, as a result of the country-by-country review conducted by DHS,
20 sixteen countries were deemed “inadequate” under the baseline criteria and 31 countries were “at
21 risk” of becoming “inadequate.” Yet, at most only seven of the sixteen countries deemed
22 “inadequate” are subject to entry restrictions: Chad, Iran, Libya, North Korea, Syria, Venezuela,
23 and Yemen. Though Iraq did not meet the baseline criteria, it was not included in the travel ban.
24 And Somalia, while determined to meet the baseline criteria, was included in the ban.

25 82. EO-3 does not impose any categorical entry restrictions on nationals of non-
26 Muslim majority countries (except for North Korea, from which there are virtually no entries).
27 As dozens of former executive agency officials with national security and intelligence expertise
28

1 noted in a declaration, one such country, Belgium, has “widely-documented problems with
2 information sharing, and [its] nationals have carried out terrorist attacks on Europe.”³⁹

3 83. District courts in Hawai‘i and Maryland enjoined EO-3 on October 17, 2017,
4 before it could take effect. See *Hawai‘i v. Trump*, --- F. Supp. 3d ---, 2017 WL 4639560 (D.
5 Haw. Oct. 17, 2017); *Int’l Refugee Assistance Project v. Trump*, --- F. Supp. 3d ---, 2017 WL
6 4674314 (D. Md. Oct. 17, 2017). The Ninth Circuit Court of Appeals stayed the preliminary
7 injunction issued by the U.S. District Court for the District of Hawaii except as to “foreign
8 nationals who have a credible claim of a bona fide relationship with a person or entity in the
9 United States.” *Hawai‘i v. Trump*, Order, No. 17-17158 (9th Cir. Nov. 13, 2017). On December
10 4, 2017, the Supreme Court stayed enforcement of the *Hawai‘i* and *IRAP* injunctions pending
11 appellate review.

12 **EO-4**

13 84. Whereas EO-1 and EO-2 had suspended the entry of refugees, EO-3 is silent as to
14 the future of USRAP. The President thus addressed that question in Executive Order 13815,
15 issued October 24, 2017 and titled “Resuming the United States Refugee Admissions Program
16 With Enhanced Vetting Capabilities.” 82 C.F.R. 50055 (“EO-4”). A copy of EO-4 is attached to
17 this Complaint as Exhibit E.

18 85. EO-4 cites no examples of refugee admissions leading to any specific national
19 security threat in the United States. In fact, since the Refugee Act of 1980 created today’s
20 rigorous screening procedures for refugee admissions, not one foreign-born refugee has
21 successfully committed a terrorist attack in this country.⁴⁰

22 86. EO-4 explains that EO-2 had called for “a uniform baseline for screening and
23 vetting standards and procedures applicable to all travelers who seek to enter the United States.”
24 Likewise, EO-4 observes that EO-2 had suspended the admission of refugees and called for the

25
26 ³⁹ Joint Declaration of Former National Security Officials ¶ 12, *State v. Trump*, No. 17-141 (W.D. Wash. Oct. 11, 2017), Dkt. # 194-18.

27 ⁴⁰ Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, 798 Policy Analysis at 1, 13,
28 Sept. 13, 2016 (Cato Institute) (“*Terrorism and Immigration*”),
https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798_2.pdf (last visited Dec. 6, 2017).

1 Secretary of State, Secretary of Homeland Security, and Director of National Intelligence to
2 review the USRAP application and adjudication process.

3 87. Consequently, EO-4 explains, a working group that convened in the wake of EO-2
4 had “identified several ways to enhance the process for screening and vetting refugees and began
5 implementing those improvements.”

6 88. EO-4 thus announced that USRAP would resume. It explained that “the
7 improvements to the USRAP vetting process are generally adequate to ensure the security and
8 welfare of the United States, [and] that the Secretary of State and Secretary of Homeland Security
9 may resume that program,” but stated—with little additional explanation—that State and DHS
10 “will apply special measures to certain categories of refugees whose entry continues to pose
11 potential threats to the security and welfare of the United States.”

12 89. Section 3(a)(i) of EO-4 sets forth that “[t]he Secretary of State and the Secretary of
13 Homeland Security shall coordinate to assess any risks to the security and welfare of the United
14 States that may be presented by the entry into the United States through the USRAP of stateless
15 persons and foreign nationals.” Citing sections 207(c) and 212(a) of the INA, as well as section
16 402(4) of the Homeland Security Act of 2002 and “other applicable authorities,” EO-4 then calls
17 on “the Secretary of Homeland Security, in consultation with the Secretary of State, [to]
18 determine, as appropriate and consistent with applicable law, whether any actions should be taken
19 to address the risks to the security and welfare of the United States presented by permitting any
20 category of refugees to enter this country, and, if so, what those actions should be.”

21 90. Section 3(a)(ii) of EO-4 provides the Secretary of Homeland Security with the
22 authority to modify or terminate, at any time, any actions taken pursuant to section 3(a)(i).
23 Further, EO-4 states that, within 90 days of the order and annually thereafter, the Secretary of
24 Homeland Security shall determine whether to modify or terminate any actions taken to address
25 risks to the United States posed by the admission of any category of refugees.

26 91. At the same time EO-4 issued, the Administration released a Memorandum to the
27 President from Defendants Tillerson, Duke, and Coats titled “RESUMING THE UNITED
28 STATES REFUGEE ADMISSIONS PROGRAM WITH ENHANCED VETTING

1 CAPABILITIES” (the “Memorandum”). The Memorandum was dated October 23, 2017. A
2 copy of the Memorandum is attached to this Complaint as Exhibit F.

3 92. The Memorandum appears to exercise the authority that the President had
4 purported to grant in Section 3 of EO-4 to take additional actions with respect to the admission of
5 refugees.

6 93. The Memorandum, like EO-4, explains that, in EO-2, the President had instructed
7 the Secretary of State to halt the travel of refugees into the United States and the Secretary of
8 Homeland Security to suspend the processing of applications for refugee status, for a period of
9 120 days, during which the Secretaries of State and Homeland Security and the Director of
10 National Intelligence are ordered to review USRAP screening procedures.

11 94. The Memorandum sets forth that the Secretary of State had convened a working
12 group that sought to identify ways to “enhance the refugee screening and vetting processes” and
13 that the Secretaries of State and Homeland Security have begun to implement the identified
14 improvements.

15 95. Defendants Tillerson, Duke, and Coats conclude that enhanced vetting procedures
16 they had implemented were sufficient to allow the admission of refugees to resume, subject to
17 two significant exceptions: (1) applications from refugees hailing from eleven particular countries
18 would be “deprioritized;” and (2) follow-to-join refugees would not be permitted admission.

19 **SAO Refugees**

20 96. *First*, the Memorandum states that its authors “continue to have concerns
21 regarding the admission of nationals of, and stateless persons who last habitually resided in, 11
22 particular countries previously identified as posing a higher risk to the United States through their
23 designation on the Security Advisory Opinion (SAO) list.”

24 97. The SAO process was designed in the wake of 9/11 to allow multiagency review
25 of certain visa applications that the government deems to warrant additional scrutiny.
26
27
28

1 98. As initially conceived, visa applicants from any country were potentially subject to
2 SAO review. For refugees, males ages 16-50 from (or, for stateless persons, last residing in)
3 countries on the so-called SAO list were subject to SAO review.⁴¹

4 99. Although the Memorandum did not identify the eleven countries in question, it has
5 been widely reported that they are Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South
6 Sudan, Sudan, Syria, and Yemen (hereafter, “SAO Countries”).⁴² All but South Sudan and North
7 Korea are Muslim-majority countries—in fact, each of the nine countries is more than 85 percent
8 Muslim.

9 100. The Memorandum states that the Department of State, DHS, and ODNI will
10 “conduct a detailed threat analysis and review for nationals of these high risk countries and
11 stateless persons who last habitually resided in those countries, including a threat assessment of
12 each country, pursuant to section 207(c) and application portions of section 212(a) of the” INA,
13 section 402(4) of the Homeland Security Act, “and other applicable authorities.”

14 101. While that review is ongoing, the Memorandum states, the Department of State
15 and DHS will “prioritize refugee applications from other non-SAO countries,” allocating
16 resources to “process applicants from non-SAO countries for whom the processing may not be as
17 resource intensive.”

18 102. Although the Memorandum purports only to afford refugee applications from SAO
19 Countries a lower priority—which, even taken at face value, not only makes it less likely that any
20 particular SAO refugee will be admitted, but also increases the processing time for applicants
21 from SAO Countries—the practical effect of the Memorandum is to bar the admission of all
22 refugees from SAO countries unless they are granted a waiver based on a finding that they would
23 “fulfill critical foreign policy interests.” The Memorandum’s changes for refugees from SAO

24
25 ⁴¹ Ted Hesson, *Trump Targets 11 Nations in Refugee Order*, Politico (Oct. 24, 2017),
<https://www.politico.com/story/2017/10/24/refugee-nations-trump-administration-muslim-244135> (last visited Dec. 6, 2017).

26 ⁴² See Yeganeh Torbati & Mica Rosenberg, *Under Trump Plan, Refugees from 11 Countries Face*
27 *Additional U.S. Barriers*, Reuters, Oct. 24, 2017, <https://www.reuters.com/article/us-usa-immigration-refugees/under-trump-plan-refugees-from-11-countries-face-additional-u-s-barriers-idUSKBN1CT2IV> (last visited Dec. 6, 2017).

1 countries likely ensure that *no* SAO refugees will be admitted during the fiscal year that began in
2 October 2017. That is because the President capped the total number of refugees that the United
3 States plans to accept for that fiscal year at 45,000—the lowest cap since 1980 and a number that
4 will likely already have been reached if and when the SAO review is complete.

5 103. The Memorandum also states that, while the SAO review is underway, the
6 Department of State and DHS will “carefully scrutinize the applications of nationals of countries
7 on the SAO list, or of stateless persons who last habitually resided in those countries, and []
8 consider individuals for potential admission whose resettlement in the United States would fulfill
9 critical foreign policy interests, without compromising national security and the welfare of the
10 United States.”

11 104. The Memorandum states that the staff of the Defendant agencies are directed to
12 complete the SAO review, and identify “what additional safeguards, if any, are necessary,” within
13 90 days.

14 105. The Memorandum nowhere explains how procedures identified in response to EO-
15 2 remain insufficient for the SAO countries.

16 106. Nor does the Memorandum explain the dramatic shift from an individualized SAO
17 review process—in which certain individuals were subject to additional scrutiny—to a categorical
18 suspension of admission of all refugees from the SAO Countries.

19 107. Nor does any statute cited in the EO-4 or the Memorandum—or any statute
20 whatsoever—grant the Secretaries of State and DHS and the Director of National Intelligence the
21 authority these officials arrogated to themselves in drafting the Memorandum.

22 108. Most refugees—again, more than 80 percent—from the SAO countries are
23 Muslim. And, not surprisingly, the vast majority of Muslim refugees that have been settled in the
24 United States over the past three years—nearly 80 percent—have come from the nine majority-
25 Muslim countries.

26 109. The effect, then, of suspending the flow of refugees from these nine countries is
27 generally to prevent the settlement of Muslim refugees in the United States. And the effect of
28 prioritizing refugee applications from other countries is to prioritize Christian refugees over

1 Muslim refugees; about 70 percent of the refugees settled in the United States from non-SAO
2 countries over the past three years have been Christians.

3 **Follow-to-Join Refugees**

4 110. *Second*, the Memorandum explained that “additional security measures must be
5 implemented promptly for derivative refugees—those who are ‘following-to-join’ principal
6 refugees that have already been resettled in the United States—regardless of nationality.”

7 111. The follow-to-join (“FTJ”) process allows refugees already admitted to the United
8 States—principal refugees—to petition for a spouse or unmarried minor child to join them in this
9 country. The INA accords such spouses and children the same status as the principal refugee. 8
10 U.S.C. § 1157(c)(2)(A).

11 112. DHS regulations, in turn, dictate that “[a] spouse . . . and/or child(ren) . . . *shall* be
12 granted refugee status if accompanying or following-to-join the principal alien.” 8 C.F.R.
13 § 207.7(a) (emphasis added).

14 113. These regulations spell out the scheme through which a principal refugee can seek
15 admission of a FTJ relative. The principal refugee must complete for each FTJ relative a separate
16 Form I-730, which calls for information about the FTJ relative’s location, previous travels to the
17 United States, language skills, and travel documents, and provide documentary evidence
18 sufficient to show “that the petitioner is a refugee” and “the claimed relationship of the petitioner
19 to the beneficiary.” *Id.* § 207.7(d)(e). An FTJ relative must also submit to an interview by a
20 USCIS officer or State Department consular officer.

21 114. Notwithstanding that comprehensive statutory and regulatory scheme, the
22 Memorandum posits that FTJ refugees, “unlike principal refugees, do not undergo enhanced DHS
23 review, which includes soliciting information from the refugee applicant earlier in the process to
24 provide for a more thorough screening process, as well as vetting certain nationals or stateless
25 persons against classified databases.”

26 115. The Memorandum thus completely suspends admission of FTJ refugees. It states
27 “that additional security measures must be implemented before admission of following-to-join
28

1 refugees can resume,” but does not explain why processing cannot continue while those measures
2 are being implemented.

3 116. Following EO-4, Defendant Trump continued to draw an explicit connection
4 between his Executive Orders and efforts to stop immigration by Muslims to the United States.
5 On November 29, 2017, Defendant Trump retweeted three videos from a British ultranationalist
6 group entitled (inaccurately) “Muslim migrant beats up Dutch boy on crutches!”, “Muslim
7 Destroys a Statue of Virgin Mary!”, and “Islamist mob pushes teenage boy off roof and beats him
8 to death!” Defendant Trump’s press secretary subsequently defended the tweets by saying “[t]he
9 threat is real.”⁴³ Later that day, when asked “Does the President think that Muslims are a threat
10 to the United States?”, Defendant Trump’s deputy press secretary answered, “the President has
11 addressed these issues with the travel order that he issued earlier this year and the companion
12 proclamation.”⁴⁴

13 117. To date, neither Defendant Trump nor the other individual Defendants have
14 repudiated the explicit and continuous hostility towards Muslims demonstrated by Defendant
15 Trump and his administration. EO-4 will harm the national security and foreign policy interests of
16 the United States.⁴⁵

17 **Security Screenings Applicable to Refugees in USRAP**

18 118. The detailed, multi-step and multi-agency security screening process that was in
19 place for refugees admitted through USRAP prior to the issuance of EO-4 and the Memorandum
20 illustrates the lack of reasoned justification for the sudden, indefinite suspension of SAO Country
21 refugees and FTJ refugees.

22
23 ⁴³ *Trump Shares Inflammatory Anti-Muslim Videos, and Britain’s Leader Condemns Them*, The
24 New York Times (Nov. 29, 2017), <https://www.nytimes.com/2017/11/29/us/politics/trump-anti-muslim-videos-jayda-fransen.html> (last visited Dec. 6, 2017).

25 ⁴⁴ The White House, Office of the Press Sec’y, *Press Gaggle by Principal Deputy Press*
26 *Secretary Raj Shah en route St. Louis, MO* (Nov. 29, 2017), <https://www.whitehouse.gov/the-press-office/2017/11/29/press-gaggle-principal-deputy-press-secretary-raj-shah-en-route-st-louis>
27 (last visited Dec. 6, 2017).

28 ⁴⁵ See Joint Declaration of Former National Security Officials, *Jewish Family Svc. of Seattle v. Trump*, No. 17-cv-1707-RSM (W.D. Wash. Nov. 16, 2017), Dkt. # 46.

1 119. Prior to the issuance of EO-4 and the Memorandum, refugees in USRAP were
 2 subject to “the most intensive security screening of any traveler to the United States.”⁴⁶ The
 3 Department of State had stated unequivocally that “No traveler to the United States is subject to
 4 more rigorous security screening than the refugees the U.S. Government considers for admission.
 5 Only after the U.S. Government’s rigorous and lengthy security screening process has been
 6 completed and an applicant is not found to pose a threat does the U.S. Government grant that
 7 individual refugee admission” to the United States.⁴⁷

8 120. Particularly relevant to refugees from SAO Countries, the Department of State
 9 possesses “a great deal of experience screening and admitting large numbers of refugees from
 10 chaotic environments, including where intelligence holdings are limited.”⁴⁸

11 121. If there is any “doubt” about risks to the United States posed by a refugee
 12 applicant, “DHS denies applications on national security grounds and the individual never travels
 13 to the United States.”⁴⁹

14 122. The Department of State and the U.S. Citizenship and Immigration Services within
 15 DHS carry out numerous biographical and biometric checks of refugee applicants against a
 16 variety of databases.⁵⁰ These include:

- 17 a. Checks against the Department of State’s Consular Lookout and Support System
 18 (“CLASS”), containing various agencies’ records regarding visa denials, immigration
 19 violations, criminal histories, terrorist watch lists from the National Counterterrorism
 20 Center/Terrorist Screening Center, and other information;
- 21 b. SAO name checks for certain refugee applicants, which are carried out by the FBI and
 22 intelligence agencies;

23
 24 ⁴⁶ Fact Sheet: U.S. Refugee Admissions Program FAQ’s, U.S. Dep’t of State (Jan. 20, 2017),
<https://www.state.gov/j/prm/releases/factsheets/2017/266447.htm> (last visited Dec. 6, 2017).

25 ⁴⁷ *Id.*

26 ⁴⁸ *Id.*

27 ⁴⁹ *Id.*

28 ⁵⁰ U.S. Citizenship and Immigration Services, Refugee Processing and Security Screening:
 USRAP Screening, <https://www.uscis.gov/refugeescreening> (last visited Dec. 6, 2017).

- 1 c. An Interagency Check (“IAC”), in which intelligence agencies screen biographic data
- 2 of the refugee applicants;
- 3 d. An FBI Fingerprint Check through the Next Generation Identification system
- 4 (“NGI”);
- 5 e. A check through DHS Automated Biometric Identification System (“IDENT” and
- 6 formerly known as “US-VISIT”);
- 7 f. A check through the Department of Defense Forensics and Biometrics Agency
- 8 (“DFBA”)’s Automated Biometric Identification System (“ABIS”);
- 9 g. A check through CBP’s National Targeting Center-Passenger System (“NTC-P”); and
- 10 h. For applicants raising national security concerns, processing through the Controlled
- 11 Application Review and Resolution Process (“CARRP”).

12 123. Further, USCIS carries out an extensive, in-person interview with the refugee

13 applicant overseas. At the interview, the USCIS officer draws upon his or her specialized and

14 extensive training on fraud detection and prevention, security protocols, interviewing techniques,

15 any fraud trends or security issues specific to the population they will be interviewing, in order to

16 craft lines of questioning, assess the credibility of the refugee, and determine whether the refugee

17 poses any risk to the United States.

18 124. Syrian refugees are subject to heightened security screening. USCIS officers

19 receive an expanded 1-week training on Syria-specific topics, including a classified intelligence

20 briefing, in order to pose appropriate questions during the in-person interview with a Syrian

21 refugee applicant and assess whether he or she has been involved in terrorist or criminal activity.

22 Certain Syrian refugees are subject to enhanced review in the form of coordination between

23 USCIS and the Fraud Detection and National Security Directorate (“FDNS”) to monitor terrorist

24 watch lists and intelligence data.

25 125. Only after these biographic and biometric checks are completed and cleared does

26 USCIS approve a Form I-590, Registration for Classification as Refugee, for the refugee

27

28

1 applicant.⁵¹ Approval of a Form I-590 undergoes supervisory review prior to a final decision.
2 Further, “certain categories of sensitive cases—including certain national security related cases”
3 are submitted to the headquarters of the USCIS Refugee Affairs Division for additional
4 coordination with law enforcement or intelligence agencies prior to a final decision being made.

5 126. CBP also conducts final vetting and inspection prior to and upon a refugee’s
6 arrival to the United States.

7 127. Following-to-join refugees also undergo a thorough and lengthy screening
8 process.⁵²

9 **EO-3, EO-4, and the Memorandum Will Irreparably Harm Plaintiffs**

10 **Plaintiff Jane Roe 1**

11 128. Plaintiff Jane Roe 1 is a United States citizen and resident of California. She
12 graduated from high school in California in 2010 and earned a bachelor’s degree from California
13 State University, Long Beach in 2015.

14 129. In January 2017, Plaintiff Roe 1 married a native of Syria who lives in Dubai in
15 the United Arab Emirates and works there for a technology company. The marriage ceremony is
16 legally binding in the United Arab Emirates, but Plaintiff Roe 1 and her husband plan to have a
17 further wedding ceremony in the United States to celebrate their marriage with friends and family
18 in this country. Plaintiff Roe 1 and her husband also wish to live together in the United States as
19 a married couple. Plaintiff Roe 1 has therefore filed an I-130 Petition for Alien Relative on
20 behalf of her husband so he can immigrate to the United States.

21 130. Plaintiff Roe 1 and her husband are both practicing Muslims and were married in
22 the Islamic faith. Plaintiff Roe 1 feels stigmatized because EO-3 and EO-4 target people from
23 majority-Muslim countries and were issued following Defendant Trump’s negative statements
24 about Muslims and prior EOs targeting Muslims.

25
26 ⁵¹ Fact Sheet: U.S. Refugee Admissions Program FAQ’s, U.S. Dep’t of State (Jan. 20, 2017),
<https://www.uscis.gov/refugeescreening> (last visited Dec. 6, 2017).

27 ⁵² U.S. Department of State, Bureau of Consular Affairs, Follow-to-Join Refugees and Asylees,
28 <https://travel.state.gov/content/visas/en/immigrate/join-refugees-and-asylees.html> (last visited
Dec. 6, 2017).

1 131. Defendants' actions will prevent Plaintiff Roe 1 and her husband from celebrating
2 their marriage and living together as a married couple in the United States.

3 **Plaintiff John Doe 1**

4 132. Plaintiff John Doe 1 is a lawful permanent resident who resides in California.
5 Plaintiff Doe 1 is a native of Iran and earned a degree in civil engineering in that country. He
6 hopes to pursue a civil engineering career in the United States and is currently a college student in
7 Torrance, California.

8 133. In January 2017, Plaintiff Doe 1 married an Iranian woman who lives in Iran.
9 Plaintiff Doe 1 and his wife wish to live together in the United States as a married couple.
10 Plaintiff Doe 1 has therefore filed an I-130 Petition for Alien Relative on behalf of his wife so she
11 can immigrate to the United States.

12 134. Defendants' actions will prevent Plaintiff Doe 1 and his wife from living together
13 in the United States, and bar Plaintiff Doe 1's wife from even visiting him.

14 **Plaintiff Jane Roe 2**

15 135. Plaintiff Jane Roe 2 is a native of Uganda. She arrived in the United States as a
16 refugee after suffering physical violence because she is a lesbian. She lives in California, where
17 she works and is studying for her GED.

18 136. In 2014, Plaintiff Roe 2 fled from her home in Uganda to Kenya in order to escape
19 a mob that had beaten her and was still pursuing her. She was forced to leave her infant daughter
20 behind in Uganda. Plaintiff Roe 2 has not been able to return to Uganda to see her daughter since
21 she left the country.

22 137. Plaintiff Roe 2's daughter is almost four years old. She lives in Uganda with
23 Plaintiff Roe 2's mother and sister, all of whom are at risk because of Plaintiff Roe 2's sexual
24 orientation.

25 138. After Plaintiff Roe 2 arrived in the United States, she filed a Refugee Follow-to-
26 Join/Form I-730 petition for her daughter so that they could be reunited and live in the United
27 States together.

28

1 139. EO-4 and the Memorandum have suspended the processing of FTJ petitions such
2 as the one Plaintiff Roe 2 submitted for her daughter. EO-4 and the Memorandum have
3 prevented Plaintiff Roe 2's daughter from traveling to the United States and reuniting with her
4 mother.

5 140. Plaintiff Roe 2 suffers from the painful separation from her daughter, which is
6 prolonged by EO-4 and the Memorandum.

7 **John Doe 2**

8 141. Plaintiff John Doe 2 is a United States citizen and a resident of California. He
9 sought and received asylum in the United States as a result of persecution he suffered in Somalia.

10 142. While his father and two of his brothers were killed as a result of tribal violence in
11 Somalia, Doe 2's mother and younger brother were able to escape and seek refuge in Ethiopia.
12 Doe 2's mother and younger brother are nationals of Somalia.

13 143. Doe 2's mother and younger brother were approved for resettlement to the United
14 States through the USRAP. Prior to the issuance of EO-1, Doe 2's mother and younger brother
15 had completed their medical exam and cultural orientation successfully and obtained all security
16 clearances needed to travel to the United States. Their scheduled travel to the United States was
17 canceled as a result of EO-1.

18 144. Doe 2's mother and younger brother were then rescheduled for travel to the United
19 States. But the issuance of EO-2 resulted in the cancellation of their travel yet again.

20 145. EO-4 and the Memorandum have suspended the processing and admission of Doe
21 2's mother and brother because they are nationals of Somalia. EO-4 and the Memorandum have
22 prevented Doe 2's mother and brother from traveling to the United States and reuniting with Doe
23 2.

24 146. Doe 2's mother and younger brother have been told that their resettlement to the
25 United States as refugee is "on hold." Doe 2 and his mother and brother have no information on
26 when their case is moving forward, if at all.

27 147. Doe 2 is deeply hurt and disappointed to be separated from his mother and brother.
28

1 148. Doe 2 believes he and his family have been targeted by President Trump and the
2 refugee ban because they are Muslim. If his family were not Muslim, his mother and brother
3 would be able to travel to the United States. When Doe 2 came to the United States and sought
4 asylum, he felt welcomed and valued. He now feels that his contributions are not worth as much.

5 149. Doe 2's family also suffers from the feeling of being stigmatized due to their
6 religion. His children ask repeatedly whether President Trump has refused to allow their
7 grandmother to come to the United States because she is Muslim.

8 **JFCS-EB**

9 150. Plaintiff JFCS-EB provides resettlement, legal, and other services in the San
10 Francisco Bay Area to refugees and immigrants from around the world, including from the
11 countries subject to EO-4. Plaintiff JFCS-EB supports refugees and immigrants who are already
12 present in the area, and stands ready to provide immediate assistance and services to additional
13 refugees and immigrants upon their entry to the United States.

14 151. Defendants' actions impede JFCS-EB's ability to carry out its mission of assisting
15 refugees. Specifically, EO-4 and the Memorandum will have immediate, harmful, and long-
16 lasting consequences for JFCS-EB.

17 152. At the most fundamental level, EO-4 and the Memorandum will prevent JFCS-EB
18 from fully realizing its mission of resettling and assisting refugees in the Bay Area. When
19 Defendants issued EO-4 and the Memorandum, JFCS-EB had established relationships with
20 refugees seeking to bring family members to the United States on follow-to-join petitions. At the
21 time, JFCS-EB was also assisting in the resettlement of refugees from the SAO countries and
22 providing services to family members and friends of SAO country refugees. As a result of the
23 EO-4 and the Memorandum, JFCS-EB will be unable to serve its SAO and follow-to-join clients.

24 153. Further, JFCS-EB also will be forced to divert its already-strained resources to
25 help those that EO-4 and the Memorandum will cause to experience great stress, uncertainty, and
26 anxiety—particularly its Muslim clients. (The vast majority of refugees from the SAO countries
27 are Muslim.) While the provision of mental health and legal services is part of JFCS-EB's
28

1 mission, the sharp increases in demand go well beyond what JFCS-EB's client base normally
2 needs and will force it to devote less attention to the other essential work it does.

3 154. EO-4 and the Memorandum will also cause JFCS-EB financial harm and inject
4 uncertainty into its program planning processes. The federal government provides per refugee
5 funding to agencies participating in USRAP. In JFCS-EB's case, this funding comes via the
6 national resettlement agency HIAS. JFCS-EB uses USRAP funds to support the staffing and
7 administrative costs associated with operating its resettlement programs. By preventing
8 admission of refugees with whom JFCS-EB has an established relationship and whom JFCS-EB
9 expected to serve in the United States foreseeable future, EO-4 and the Memorandum will cause
10 JFCS-EB to suffer a direct financial loss that in turn impacts its planning and budget. Because of
11 the length and complexity of the refugee admissions process, JFCS-EB cannot simply count on
12 other refugees to take the place of now-barred clients and make up for the lost funding.

13 155. EO-4 and the Memorandum reduce the total number of refugees that JFCS-EB
14 may assist.

15 CLASS ACTION ALLEGATIONS

16 156. Pursuant to Federal Rule of Civil Procedure 23(b)(1) and (b)(2), Plaintiffs Jane
17 Roe 1 and John Doe 1 bring this action as a class action on their own behalf and on behalf of all
18 other United States citizens and lawful permanent residents in California who have an interest in
19 the entry to the United States of nationals or citizens of the EO-3 Countries who, but for EO-3,
20 would be able to travel to the United States (the "EO-3 Class"). The EO-3 Class includes, but is
21 not limited to, the following sub-classes: (a) United States citizens and lawful permanent
22 residents in California with spouses or relatives who are nationals or citizens of other countries
23 and, but for EO-3, would be able to travel to the United States; and (b) United States citizens and
24 lawful permanent residents in California who wish to hear, associate, or collaborate with nationals
25 or citizens of other countries who, but for EO-3, would be able to travel to the United States.

26 157. Pursuant to Federal Rule of Civil Procedure 23(b)(1) and (b)(2), Plaintiff John Doe
27 2 brings this action as a class action on his own behalf and on behalf of all other individuals
28 residing in California with relatives who are nationals of or stateless persons who last habitually

1 resided in the SAO Countries and who are in the USRAP awaiting resettlement to the United
2 States (the “SAO Refugee Class”).

3 158. Pursuant to Federal Rule of Civil Procedure 23(b)(1) and (b)(2), Plaintiff Jane Roe
4 2 brings this action as a class action on her own behalf and on behalf of all other refugees residing
5 in California, including those who have since adjusted their status to Lawful Permanent Resident,
6 who have filed I-730/follow-to-join applications for their family members (the “FTJ Refugee
7 Class”).

8 159. Upon information and belief, the Plaintiff Classes are so numerous that joinder is
9 impracticable.

10 160. With respect to the EO-3 Class, according to the Annual Report of the Visa Office,
11 in 2016, the last year for which data are available, the United States issued approximately 73,000
12 immigrant and non-immigrant visas to nationals of EO-3 Countries. On information and belief,
13 many United States citizens and lawful permanent residents in California have spouses or
14 immediate family members who are nationals or citizens of the EO-3 Countries and, but for EO-
15 3, would be able to travel to the United States. On information and belief, hundreds of United
16 States citizens or lawful permanent residents in California wish to hear, associate, or collaborate
17 with nationals or citizens of the EO-3 Countries who, but for EO-3, would be able to travel to the
18 United States.

19 161. With respect to the SAO Refugee Class, almost 85,000 refugees were admitted to
20 the United States during FY 2016. More than 53,000 refugees were admitted to the United States
21 during FY 2017, with approximately 23,000 of these refugees coming from the nine Muslim-
22 majority SAO Countries.⁵³ Of refugees from SAO Countries admitted to the United States in FY
23 2017, over 3,000 were resettled in California.⁵⁴

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27 ⁵³ See Department of State, Bureau of Population, Refugees, and Migration, Office of Admissions
– Refugee Processing Center, <http://ireports.wrapsnet.org> (last visited Dec. 6, 2017).

28 ⁵⁴ *Id.*

1 162. With respect to the FTJ Refugee Class, in fiscal year 2015, 2,035 follow-to-join
2 refugees were admitted to the United States.⁵⁵ On information and belief, a large number of
3 refugees in California and have relatives for whom they have filed or could file follow-to-join
4 petitions and whose admission as follow-to-join refugees is blocked by EO-4.

5 163. The claims of the EO-3 Class, the SAO Refugee Class, and the FTJ Refugee Class
6 members share common issues of law, including but not limited to whether EO-3, EO-4 and the
7 Memorandum violate the INA and the constitutional separation of powers; their rights to free
8 association, freedom from the establishment of religion, religious exercise, equal protection and
9 due process rights under the First and Fifth Amendments; the Religious Freedom Restoration Act;
10 and the Administrative Procedure Act.

11 164. The claims of the EO-3 Class members share common issues of fact, including but
12 not limited to whether EO-3 is being or will be enforced to prevent nationals or citizens of the
13 EO-3 Countries from entering the United States from abroad, even though they would otherwise
14 be admissible.

15 165. The claims of the SAO Refugee Class and the FTJ Refugee Class members share
16 common issues of fact, including but not limited to whether EO-4 and the Memorandum are
17 being or will be enforced to prevent nationals of or stateless persons who last habitually resided in
18 the SAO Countries or individuals for whom an I-730/follow-to-join petition has been filed from
19 being admitted to the United States, even though they would otherwise be admissible.

20 166. The claims or defenses of the named Plaintiffs are typical of the claims or defenses
21 of members of each of the Plaintiff Class.

22 167. The named Plaintiffs will fairly and adequately protect the interests of the EO-3
23 Class, the SAO Refugee Class, and the FTJ Refugee Class. The named Plaintiffs have no interest
24 that is now or may be potentially antagonistic to the interests of the Plaintiff Class they seek to
25 represent. The attorneys representing the named Plaintiffs include experienced civil rights

26 ⁵⁵ Dep't of Homeland Security, Office of Immigration Statistics, Policy Directorate, *Annual Flow*
27 *Report Refugees and Asylees: 2015* (Nov. 2016),
28 https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2015.pdf (last visited
Dec. 6, 2017).

1 attorneys and are considered able practitioners in federal constitutional litigation. These attorneys
2 should be appointed as class counsel.

3 168. Defendants have acted, have threatened to act, and will act on grounds generally
4 applicable to all three Plaintiff Classes, thereby making final injunctive and declaratory relief
5 appropriate to the classes as a whole. All three Plaintiff Classes may therefore be properly
6 certified under Federal Rule of Civil Procedure 23(b)(2).

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

12 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

13 170. An actual and substantial controversy exists between Plaintiffs and Defendants as
14 to their respective legal rights and duties. Plaintiffs contend that, as applied to them and to others
15 in the plaintiff classes, EO-3, EO-4, and the Memorandum are unlawful and unconstitutional.
16 Defendants contend the opposite.

17 171. If not enjoined by the Court, Defendants will implement EO-3, EO-4 and the
18 Memorandum in derogation of the rights of Plaintiffs and others in the plaintiff classes. Such
19 implementation will impose irreparable injury on the plaintiffs and other class members.

20 172. Plaintiffs have no plain, speedy, and adequate remedy at law.

21 **CLAIMS FOR RELIEF**

22 **COUNT ONE**

23 **IMMIGRATION AND NATIONALITY ACT**

24 **(Asserted by Jane Roe 1, John Doe 1, and the EO-3 Class)**

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

27
28

1 from, and to associate freely with, nationals or citizens of other countries who, but for EO-4 and
2 the Memorandum, would be able to travel to the United States.

3 204. EO-4 and the Memorandum violate Plaintiffs' First Amendment rights.

4 **COUNT NINE**

5 **RELIGIOUS FREEDOM RESTORATION ACT**

6 **(Asserted by Plaintiff John Doe 2 and the SAO Refugee Class)**

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

9 206. EO-4 and the Memorandum will have the effect of imposing a special disability on
10 the basis of religious views or religious status, by withdrawing important immigration benefits
11 principally from Muslims on account of their religion. In doing so, EO-4 and the Memorandum
12 place a substantial burden on the exercise of religion of Plaintiff John Doe 2 and the SAO
13 Refugee Class in a way that is not the least restrictive means of furthering a compelling
14 governmental interest.

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

17 **COUNT TEN**

18 **FIFTH AMENDMENT – EQUAL PROTECTION**

19 **(Asserted by Plaintiff John Doe 2 and the SAO Refugee Class)**

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

22 209. EO-4 and the Memorandum are substantially motivated by animus toward—and
23 have a disparate effect on—Muslims, which violates the equal protection component of the Due
24 Process Clause of the Fifth Amendment.

COUNT ELEVEN

IMMIGRATION AND NATIONALITY ACT

(Asserted by Plaintiff JFCS, Plaintiff Jane Roe 2, and the FTJ Refugee Class)

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

211. The INA establishes a statutory entitlement to the admission of spouses and children following-to-join refugees previously admitted to the United States. *See* 8 U.S.C. § 1157(c)(2)(A).

212. Plaintiff Jane Roe 2 and the FTJ Refugee Class have filed I-730/follow-to-join petitions and have complied with all legal and procedural eligibility requirements for admission to the United States. They are therefore entitled to the admission of their following-to-join relatives pursuant to 8 U.S.C. § 1157(c)(2)(A).

213. Plaintiff JFCS serves clients who have filed I-730/follow-to-join petitions and have complied with all legal and procedural eligibility requirements for admission to the United States.

214. Defendants’ actions as set forth above were, and Defendants’ anticipated actions to enforce EO-4 and the Memorandum will violate 8 U.S.C. § 1157(c)(2)(A) because they suspend entry of following-to-join refugees who are entitled to admission to the United States once they have complied with all legal and procedural eligibility requirements.

COUNT TWELVE

ADMINISTRATIVE PROCEDURE ACT – SUBSTANTIVE VIOLATION

(Asserted by Plaintiff JFCS, Plaintiffs Jane Roe 2 and John Doe 2, the SAO Refugee Class, and the FTJ Refugee Class)

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

216. Defendants’ actions as set forth above were, and Defendants’ anticipated actions to enforce EO-4 and the Memorandum will, unless enjoined, be arbitrary, capricious, discriminatory, an abuse of discretion, or otherwise not in accordance with law; contrary to

1 constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority,
2 or limitations, or short of statutory right; and without observance of procedure required by law, in
3 violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)-(D).

4 **COUNT THIRTEEN**

5 **ADMINISTRATIVE PROCEDURE ACT – PROCEDURAL VIOLATION**

6 **(Asserted by Plaintiff JFCS, Plaintiffs Jane Roe 2 and John Doe 2, the SAO Refugee Class,**
7 **and the FTJ Refugee Class)**

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

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

13 219. Section 553 of the APA, 5 U.S.C. § 553, requires federal agencies to provide
14 notice and comment before issuing substantive rules.

15 220. The APA further requires courts to hold unlawful and set aside any agency action
16 taken “without observance of procedure required by law.” *Id.* § 706(2)(D).

17 221. The Memorandum is a substantive and legislative rule because it effectively
18 repeals and restricts the statutory entitlement in 8 U.S.C. § 1157(c)(2)(A) for spouses and
19 children, who have complied with the legal and procedural requirements, to join a refugee
20 previously admitted to the United States. In addition, the Memorandum is a substantive and
21 legislative rule because it fundamentally alters Defendants’ existing procedures and policies with
22 respect to refugees from the SAO Countries. By doing so, Defendants have prevented individuals
23 from entering the United States, impacting their substantive rights.

24 222. Defendants issued the Memorandum without fulfilling the procedural requirements
25 of the APA.

26 223. By failing comply with the procedural requirements of the APA prior to issuing
27 the substantive rules contained in the Memorandum, Defendants violated the APA.

28 224. These violations cause ongoing harm to Plaintiffs.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

- 1. A determination that this action may properly be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(b)(1) and (b)(2);
- 2. A declaration that EO-3 violates the rights of Plaintiffs and Plaintiff Class members for the reasons set forth above;
- 3. A declaration that the Memorandum and any portion of EO-4 that provides the authority for the Memorandum violate the rights of all Plaintiffs, the SAO Refugee Class, and the FTJ Refugee Class for the reasons set forth above;
- 4. A preliminary and permanent injunction against enforcement of Section 2 of EO-3;
- 5. A preliminary and permanent injunction against the enforcement of the Memorandum as against Plaintiffs or members of the SAO Refugee Class and the FTJ Refugee Class in connection with admission of their relatives to the United States as refugees.
- 6. An award to the Plaintiff Classes of reasonable costs and attorneys' fees; and,
- 7. Such other and further relief that this Court may deem fit and proper.

Dated: December 8, 2017

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EXHIBIT A

Federal Register

Vol. 82, No. 20

Wednesday, February 1, 2017

Presidential Documents

Title 3—

Executive Order 13769 of January 27, 2017

The President

Protecting the Nation From Foreign Terrorist Entry Into the United States

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

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

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

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

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

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

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President

a report on the results of the review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed for adjudications and a list of countries that do not provide adequate information, within 30 days of the date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State and the Director of National Intelligence.

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

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

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

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

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

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

Sec. 4. *Implementing Uniform Screening Standards for All Immigration Programs.* (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program, as part of the adjudication process for immigration benefits, to identify individuals seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of a uniform screening standard and procedure, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not

used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

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

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

(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioritization.

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

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest—including when the person is a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship—and it would not pose a risk to the security or welfare of the United States.

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

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

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

Sec. 7. *Expedited Completion of the Biometric Entry-Exit Tracking System.*

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

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

Sec. 8. *Visa Interview Security.* (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1202, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.

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

Sec. 9. *Visa Validity Reciprocity.* The Secretary of State shall review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If a country does not treat United States nationals seeking nonimmigrant visas in a reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by the foreign country, to the extent practicable.

Sec. 10. *Transparency and Data Collection.* (a) To be more transparent with the American people, and to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available within 180 days, and every 180 days thereafter:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security reasons since the date of this order or the last reporting period, whichever is later;

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

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

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

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

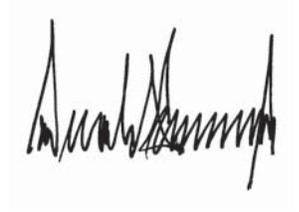
Sec. 11. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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

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

THE WHITE HOUSE,
January 27, 2017.

EXHIBIT B



United States Department of State

*Deputy Assistant Secretary
for Visa Services*

Washington, D.C. 20520

January 27, 2017

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

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

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

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

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

Edward J. Ramotowski
Deputy Assistant Secretary
Bureau of Consular Affairs
Department of State

EXHIBIT C

Federal Register

Presidential Documents

Vol. 82, No. 45

Thursday, March 9, 2017

Title 3—

Executive Order 13780 of March 6, 2017

The President

Protecting the Nation From Foreign Terrorist Entry Into the United States

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. *Scope and Implementation of Suspension.*

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

- (i) are outside the United States on the effective date of this order;
- (ii) did not have a valid visa at 5:00 p.m., eastern standard time on January 27, 2017; and
- (iii) do not have a valid visa on the effective date of this order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

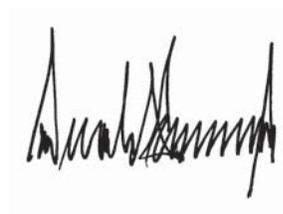
Sec. 16. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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

A handwritten signature in black ink, appearing to be a stylized name, possibly "Donald Trump", written on a light-colored background.

THE WHITE HOUSE,
March 6, 2017.

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

EXHIBIT D

Presidential Documents

Proclamation 9645 of September 24, 2017

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

By the President of the United States of America

A Proclamation

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

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

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

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

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

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

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

(c) Section 2(a) of Executive Order 13780 directed a “worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public-safety threat.” That review culminated in a report submitted to the President by the Secretary of Homeland Security on July 9, 2017. In that review, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, developed a baseline for the kinds of information required from foreign governments to support the United States Government’s ability to confirm the identity of individuals seeking entry into the United States as immigrants and nonimmigrants, as well as individuals applying for any other benefit under the immigration laws, and to assess whether they are a security or public-safety threat. That baseline incorporates three categories of criteria:

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

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

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

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

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

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

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

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

(h) Section 2(e) of Executive Order 13780 directed the Secretary of Homeland Security to "submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of foreign nationals of countries that have not provided the information requested until they do so or until the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or has adequately shared information through other means." On September 15, 2017, the Secretary of Homeland Security submitted a report to me recommending entry restrictions and limitations on certain nationals of 7 countries determined to be "inadequate" in providing such information and in light of other factors discussed in the report. According to the report, the recommended restrictions would help address the threats that the countries' identity-management protocols, information-sharing inadequacies, and other risk factors pose to the security and welfare of the United

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

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

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

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

(i) Section 2(e) of Executive Order 13780 also provided that the "Secretary of State, the Attorney General, or the Secretary of Homeland Security may also submit to the President the names of additional countries for which

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

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

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

(a) *Chad.*

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

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

(b) *Iran.*

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

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

(c) *Libya.*

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

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

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

(d) *North Korea.*

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

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

(e) *Syria.*

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

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

(f) *Venezuela.*

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

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

(g) *Yemen.*

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

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

(h) *Somalia*.

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

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

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

(i) are outside the United States on the applicable effective date under section 7 of this proclamation;

(ii) do not have a valid visa on the applicable effective date under section 7 of this proclamation; and

(iii) do not qualify for a visa or other valid travel document under section 6(d) of this proclamation.

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

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

(ii) any foreign national who is admitted to or paroled into the United States on or after the applicable effective date under section 7 of this proclamation;

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

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

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

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

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

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

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

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

(C) entry would be in the national interest.

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

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

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

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

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

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

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

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

(A) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the applicable effective date under section 7 of this proclamation, seeks to reenter the United States to resume that activity, and the denial of reentry would impair that activity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Any individual whose visa was marked revoked or marked canceled as a result of Executive Order 13769 of January 27, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry under the terms and conditions of the visa marked revoked or marked canceled. Any prior cancellation or revocation of a visa that was solely pursuant to Executive Order 13769 shall not be the basis of inadmissibility for any future determination about entry or admissibility.

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

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

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

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

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

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

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

(ii) Chad, North Korea, and Venezuela.

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

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

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

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

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

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

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

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

A handwritten signature in black ink, appearing to be the signature of Donald Trump, located in the bottom right corner of the page.

EXHIBIT E



Presidential Documents

Executive Order 13815 of October 24, 2017

Resuming the United States Refugee Admissions Program With Enhanced Vetting Capabilities

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

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

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

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

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

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

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

(f) Section 2 of Proclamation 9645 of September 24, 2017 (Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats), suspended and limited, subject to exceptions and case-by-case waivers, the entry into the United States of foreign nationals of eight countries. As noted in that Proclamation, those suspensions and limitations are in the interest of the United States because of certain deficiencies in those countries' identity-management and information-sharing protocols and procedures, and because of the national security and public-safety risks that emanate from their territory, including risks that result from the significant presence of terrorists within the territory of several of those countries.

(g) The entry restrictions and limitations in Proclamation 9645 apply to the immigrant and nonimmigrant visa application and adjudication processes, which foreign nationals use to seek authorization to travel to the United States and apply for admission. Pursuant to section 3(b)(iii) of Proclamation 9645, however, those restrictions and limitations do not apply to those who seek to enter the United States through the USRAP.

(h) Foreign nationals who seek to enter the United States with an immigrant or nonimmigrant visa stand in a different position from that of refugees who are considered for entry into this country under the USRAP. For a variety of reasons, including substantive differences in the risk factors presented by the refugee population and in the quality of information available to screen and vet refugees, the refugee screening and vetting process is different from the process that applies to most visa applicants. At the same time, the entry of certain refugees into the United States through the USRAP poses unique security risks and considerable domestic challenges that require the application of substantial resources.

Sec. 2. Resumption of the U.S. Refugee Admissions Program. (a) Section 6(a) of Executive Order 13780 provided for a temporary, 120-day review of the USRAP application and adjudication process and an accompanying worldwide suspension of refugee travel to the United States and of application decisions under the USRAP. That 120-day period expires on October 24, 2017. Section 6(a) further provided that refugee travel and application decisions could resume after 120 days for stateless persons and for the nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence jointly determine that the additional procedures identified through the USRAP review process are adequate to ensure the security and welfare of the United States. The Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have advised that the improvements to the USRAP vetting process are generally adequate to ensure the security and welfare of the United States, that the Secretary of State and Secretary of Homeland Security may resume that program, and that they will apply special measures to certain categories of refugees whose entry continues to pose potential threats to the security and welfare of the United States.

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

(c) The suspension of the USRAP and other processes specified in section 6(a) of Executive Order 13780 are no longer in effect. Subject to the conditions set forth in section 3 of this order, the Secretary of State may resume

travel of qualified and appropriately vetted refugees into the United States, and the Secretary of Homeland Security may resume adjudicating applications for refugee resettlement.

Sec. 3. *Addressing the Risks Presented by Certain Categories of Refugees.*

(a) Based on the considerations outlined above, including the special measures referred to in subsection (a) of section 2 of this order, Presidential action to suspend the entry of refugees under the USRAP is not needed at this time to protect the security and interests of the United States and its people. The Secretary of State and the Secretary of Homeland Security, however, shall continue to assess and address any risks posed by particular refugees as follows:

(i) The Secretary of State and the Secretary of Homeland Security shall coordinate to assess any risks to the security and welfare of the United States that may be presented by the entry into the United States through the USRAP of stateless persons and foreign nationals. Under section 207(c) and applicable portions of section 212(a) of the INA, 8 U.S.C. 1157(c) and 1182(a), section 402(4) of the Homeland Security Act of 2002, 6 U.S.C. 202(4), and other applicable authorities, the Secretary of Homeland Security, in consultation with the Secretary of State, shall determine, as appropriate and consistent with applicable law, whether any actions should be taken to address the risks to the security and welfare of the United States presented by permitting any category of refugees to enter this country, and, if so, what those actions should be. The Secretary of State and the Secretary of Homeland Security shall administer the USRAP consistent with those determinations, and in consultation with the Attorney General and the Director of National Intelligence.

(ii) Within 90 days of the date of this order and annually thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall determine, as appropriate and consistent with applicable law, whether any actions taken to address the risks to the security and welfare of the United States presented by permitting any category of refugees to enter this country should be modified or terminated, and, if so, what those modifications or terminations should be. If the Secretary of Homeland Security, in consultation with the Secretary of State, determines, at any time, that any actions taken pursuant to section 3(a)(i) should be modified or terminated, the Secretary of Homeland Security may modify or terminate those actions accordingly. The Secretary of Homeland Security and the Secretary of State shall administer the USRAP consistent with the determinations made under this subsection, and in consultation with the Attorney General and the Director of National Intelligence.

(b) Within 180 days of the date of this order, the Attorney General shall, in consultation with the Secretary of State and the Secretary of Homeland Security, and in cooperation with the heads of other executive departments and agencies as he deems appropriate, provide a report to the President on the effect of refugee resettlement in the United States on the national security, public safety, and general welfare of the United States. The report shall include any recommendations the Attorney General deems necessary to advance those interests.

Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

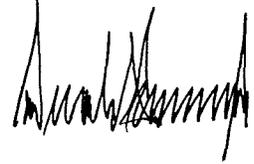
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

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

A handwritten signature in black ink, appearing to be a stylized name, possibly "Donald Trump", written in a cursive script.

THE WHITE HOUSE,
October 24, 2017.

[FR Doc. 2017-23630
10-26-17; 11:15 am]
Billing code 3295-F8-P

EXHIBIT F

MEMORANDUM TO THE PRESIDENT

OCT 23 2017

FROM: Rex W. Tillerson
Secretary
Department of State

Elaine Duke
Acting Secretary
Department of Homeland Security

Daniel Coats
Director
Office of the Director of National Intelligence

RESUMING THE UNITED STATES REFUGEE ADMISSIONS
PROGRAM WITH ENHANCED VETTING CAPABILITIES

In section 6(a) of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), you directed a review to strengthen the vetting process for the U.S. Refugee Admissions Program (USRAP). You instructed the Secretary of State to suspend the travel of refugees into the United States under that program, and the Secretary of Homeland Security to suspend decisions on applications for refugee status, for a temporary, 120-day period, subject to certain exceptions. During the 120-day suspension period, Section 6(a) required the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, to review the USRAP application and adjudication processes to determine what additional procedures should be used to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States, and to implement such additional procedures.

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

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

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

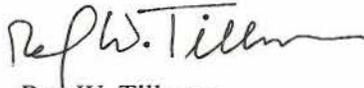
Notwithstanding the additional procedures identified or implemented during the last 120 days, we continue to have concerns regarding the admission of nationals of, and stateless persons who last habitually resided in, 11 particular countries previously identified as posing a higher risk to the United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

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

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

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

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



Rex W. Tillerson
Secretary
Department of State



Elaine Duke
Acting Secretary
Department of
Homeland Security



Dan Coats
Director
National Intelligence

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

Section 6(a) of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), required a review of the United States Refugee Admissions Program (USRAP) application and adjudication process during a 120-day period to determine what additional procedures should be used to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States. The Secretary of State (State), in conjunction with the Secretary of Homeland Security (DHS) and in consultation with the Director of National Intelligence (ODNI) established an interagency working group (the Section 6(a) Working Group) to undertake this review.

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

Interagency Approach to the Review

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

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

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

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

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Additional Procedures for Refugee Applicants Seeking Resettlement in the United States

Application Process:

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

Interview and Adjudication Process:

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

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System Checks:

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

Additional Review Process for Certain Categories of Refugee Applicants

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

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

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

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

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

Form I-730 Refugee Following-to-Join Processing

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

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

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