

1 AMERICAN CIVIL LIBERTIES UNION
2 FOUNDATION OF NORTHERN
3 CALIFORNIA, INC.
4 JULIA HARUMI MASS - #189649
5 jmass@aclunc.org
6 MICHAEL T. RISHER - #191627
7 mrisher@aclunc.org
8 WILLIAM S. FREEMAN - #82002
9 wfreeman@aclunc.org
10 NOVELLA Y. COLEMAN - #281632
11 ncoleman@aclunc.org
12 CHRISTINE P. SUN - #218701
13 csun@aclunc.org
14 39 Drumm Street
15 San Francisco, CA 94111
16 Telephone: 415 621 2493
17 Facsimile: 415 255 8437

18 Attorneys for Plaintiffs

19 KEKER, VAN NEST & PETERS LLP
20 R. ADAM LAURIDSEN - #243780
21 alauridsen@keker.com
22 DAN JACKSON - #216091
23 djackson@keker.com
24 EDUARDO E. SANTACANA - #281668
25 esantacana@keker.com
26 JAY RAPAPORT - #281964
27 jrapaport@keker.com
28 GRACE Y. YANG - #286635
gyang@keker.com
IAN ASHER KANIG - #295523
ikanig@keker.com
CHESSIE THACHER - #296767
cthacher@keker.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Attorneys for Plaintiffs

SEE NEXT PAGE FOR ADDITIONAL COUNSEL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Hadil Al-Mowafak, Eric Miller, Jane Roe,
and John Doe, on behalf of themselves and
others similarly situated, and Jewish Family
& 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; Rex W.
Tillerson, Secretary of State; John Kelly,
Secretary of U.S. Department 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,

Defendants.

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

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

CLASS ACTION

Date Filed: February 2, 2017

1 AHILAN T. ARULANANTHAM - #237841
2 AMERICAN CIVIL LIBERTIES UNION
3 FOUNDATION OF SOUTHERN CALIFORNIA
4 1313 West 8th Street
5 Los Angeles, CA 90017
6 Telephone: (213) 977-5211
7 Facsimile: (213) 977-5297
8 Email: aarulanantham@aclu-sc.org

9 BARDIS VAKILI - #247783
10 DAVID LOY - #229235
11 ACLU FOUNDATION OF SAN DIEGO
12 AND IMPERIAL COUNTIES
13 P.O. Box 87131
14 San Diego, CA 92138-7131
15 Telephone: (619) 232-2121
16 Facsimile: (619) 232-0036
17 Email: bvakili@aclusandiego.org

18 ANDRE SEGURA - #247681
19 OMAR C. JADWAT*
20 AMERICAN CIVIL LIBERTIES UNION
21 FOUNDATION, IMMIGRANTS' RIGHTS PROJECT
22 125 Broad Street, 18th Floor
23 New York, NY 10004
24 Telephone: (212) 549-2618
25 Facsimile: (212) 549-2654
26 Email: asegura@aclu.org

27 CECILLIA D. WANG - #187782
28 JENNIFER CHANG NEWELL - #233033
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0770
Facsimile: (212) 395-0950
Email: cwang@aclu.org

*Pro Hac Vice Forthcoming

INTRODUCTION

1
2 1. President Donald J. Trump’s Executive Order, “Protecting the Nation from
3 Foreign Terrorist Entry into the United States” (No. 13,780, signed March 6, 2017) (the “New
4 Executive Order”), seeks to achieve “the same basic policy outcome” as his earlier Executive
5 Order bearing the same title, enforcement of which has been halted by court order. Despite
6 Defendants’ attempt to wrap the enjoined Order in new legal verbiage, the New Executive Order
7 is nothing more than a renewed attempt to fulfill a discriminatory campaign promise. Like its
8 predecessor, it violates the First and Fifth Amendments. The New Executive Order also violates
9 the separation of powers because it is contrary to Congress’s establishment of uniform rules of
10 naturalization, as expressed in the Immigration and Nationality Act (“INA”), and because it
11 exceeds the President’s constitutional authority at the expense of Congress’s power to legislate.
12 Defendants’ revisions to the Executive Order issued on January 27, 2017 (the “Original Executive
13 Order”) resolve none of its fatal flaws.

14 2. On December 7, 2015, then-candidate Trump issued a statement “calling for a total
15 and complete shutdown of Muslims entering the United States.” Defendant Trump remained
16 consistent on this position throughout his campaign for the presidency.

17 3. Following his election as President, Defendant Trump implemented his plan to ban
18 individuals on the basis of their religious beliefs: One week after he took office, on January 27,
19 2017, Defendant Trump issued Executive Order No. 13,769 (the “Original Executive Order”)
20 completely prohibiting for at least 90 days the entry or re-entry of all persons who are nationals of
21 seven predominantly Muslim countries—Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen (the
22 “Designated Countries”)—regardless of whether such persons held valid visas or are lawful
23 permanent residents of the United States. As one of Defendant Trump’s senior advisors
24 confirmed the next day, the Original Executive Order was an attempt to institute the promised
25 “Muslim ban.”

26 4. Also on January 27, 2017, the Deputy Assistant Secretary for Visa Services at the
27 Bureau of Consular Affairs of the Department of State, relying on the authority of the Original
28 Executive Order, summarily and provisionally revoked all valid nonimmigrant and immigrant

1 visas held by nationals of the Designated Countries, subject to exceptions not relevant here. This
2 revocation (“the Provisional Revocation Letter”) threatened the immigration status of thousands
3 of nationals of the Designated Countries who were in the United States or who resided in the
4 United States but were traveling abroad when the letter was issued.

5 5. The Original Executive Order and Provisional Revocation Letter created chaos at
6 airports around the country, as nationals of the Designated Countries were obstructed in their
7 lawful attempts to enter or re-enter the United States to continue their studies, conduct business,
8 and reunite with family members. The Original Executive Order was also the subject of
9 numerous legal challenges, including the original complaint in this action. Several courts
10 promptly issued injunctions prohibiting Defendants from enforcing both the Original Executive
11 Order and the Provisional Revocation Letter. In particular, the U.S. District Court for the
12 Western District of Washington issued a nationwide temporary restraining order, which
13 Defendants appealed to the Ninth Circuit Court of Appeals. Construing the order as a preliminary
14 injunction, the Ninth Circuit declined to stay its effect. The Court held that, at a minimum,
15 Defendants could not show a likelihood of success on the merits with respect to the due process
16 claims advanced by the States of Washington and Minnesota. *Washington v. Trump*, 847 F.3d
17 1151, 1165 (9th Cir. 2017).

18 6. Defendants, prevented by the courts from enforcing the unconstitutional Original
19 Executive Order, attempted a “do over” with the goal of drafting around some of the categories of
20 persons who had presented legal challenges. Notwithstanding a few cosmetic changes, however,
21 the New Executive Order was motivated by the same discriminatory animus, and was
22 promulgated in pursuit of the same unconstitutional goals, as the President’s advisors have made
23 abundantly clear. During a televised town-hall event on February 21, 2017, White House advisor
24 Stephen Miller, one of the architects of both executive orders, argued that the Original Executive
25 Order was “clearly legal.” He further stated that the New Executive Order was not intended to
26 change the means or ends of its predecessor, contending that the revisions were “mostly minor,
27
28

1 technical differences” and that, “[f]undamentally, you are going to have the same basic policy
2 outcome for the country.”¹

3 7. On March 6, 2017, Defendant Trump signed the New Executive Order, which
4 bears the same title as the Original Executive Order. The New Executive Order revokes and
5 replaces the Original Executive Order. It prohibits for at least 90 days the entry or re-entry of all
6 persons who are citizens or nationals of six of the seven predominantly Muslim countries covered
7 by the Original Executive Order—Iran, Libya, Somalia, Sudan, Syria, and Yemen (the “Revised
8 Designated Countries”), with certain exceptions. The New Executive Order removes Iraq from
9 the list of covered countries after Iraqi officials reportedly pressured Defendants to omit it. The
10 scope of the New Executive Order also no longer includes lawful permanent residents,
11 individuals with valid visas, or individuals who are in the United States as of March 16, 2017, the
12 effective date of the New Executive Order. However, the New Executive Order still maintains
13 the Original Executive Order’s complete bar on refugees for at least 120 days and a reduction of
14 refugee entries in the current fiscal year to 50,000.

15 8. A significant portion of the New Executive Order is devoted to presenting
16 argument that it and its predecessor are lawful or at least not subject to judicial review. For
17 example, the New Executive Order states that it “excludes from the suspensions categories of
18 aliens that have prompted judicial concerns.”

19 9. The New Executive Order further asserts that the former “order was not motivated
20 by animus toward any religion.” But the government cannot circumvent the Constitution’s
21 guarantees of freedom of religion, equal protection, and government neutrality toward religion
22 simply by disclaiming any intent to discriminate. As the Supreme Court explained in striking
23 down a law aimed at members of an unpopular religion, “[o]fficial action that targets religio[n]
24 . . . cannot be shielded by mere compliance with the requirement of facial neutrality. The Free
25 Exercise Clause protects against governmental hostility which is masked, as well as overt.”
26 *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). The

27 ¹ Taylor Link, *Stephen Miller admits the new executive order on immigration ban is same as the*
28 *old*, Salon (Feb. 22, 2017), <http://www.salon.com/2017/02/22/stephen-miller-admits-the-new-executive-order-on-immigration-ban-is-same-as-the-old/> (last visited Mar. 11, 2017).

1 Original Executive Order and the Provisional Revocation Letter violated the First and Fifth
2 Amendments because they were thinly veiled attempts to discriminate against Muslims by barring
3 them from entry to the United States. The New Executive Order is no different.

4 10. Moreover, Congress, acting pursuant to its constitutionally-granted powers, is
5 solely responsible for enacting legislation governing America's immigration system. A key
6 component of Congress's carefully-crafted system is the Immigration and Nationality Act. The
7 INA ensures that the United States does not adopt certain discriminatory immigration policies.
8 The INA prohibits preference or discrimination on the basis of "a person's race, sex, nationality,
9 place of birth or place of residence" in the issuance of immigrant visas. 8 U.S.C.
10 § 1152(a)(1)(A). Both the Original Executive Order and the Provisional Revocation Letter
11 directly contradicted this provision, as well as others, in the INA. The New Executive Order is
12 similarly flawed. The Constitution bars Defendants from defying Congress's legislative authority
13 in this manner.

14 11. Plaintiff Hadil Al-Mowafak is a Yemeni national who is currently in her freshman
15 year at Stanford University in Palo Alto, California. She possesses a valid F-1 student visa and
16 has continuously resided in the United States since September 17, 2016. Plaintiff Al-Mowafak's
17 student visa expires in the summer of 2017, and she must travel outside of the United States to
18 renew it. She fears that she will not be permitted to re-enter the United States because of the New
19 Executive Order and its continued implementation and, as a result, she will be prevented from
20 continuing her undergraduate studies.

21 12. Plaintiff Jane Roe is a United States citizen and a resident of California who was
22 recently married to a Syrian national living in the United Arab Emirates. The New Executive
23 Order prevents her from being united with her husband and celebrating their marriage with
24 friends and family in the United States.

25 13. Plaintiff John Doe is a lawful permanent resident in the United States and a native
26 of Iran who is married to an Iranian national living in Iran. The New Executive Order prevents
27 him from being united with his wife by barring her from entering the United States.

28

1 14. Plaintiff Eric Miller is a United States citizen and lifelong Californian who is in his
2 fourth year of graduate studies in physics at the University of California, Santa Cruz, where he
3 conducts cutting-edge particle-physics research. Mr. Miller wants to continue this research in
4 collaboration with an Iranian researcher who is planning to visit the United States in April 2017,
5 but the New Executive Order threatens to derail these plans.

6 15. Plaintiff Jewish Family & Community Services East Bay (“JFCS-EB”) provides
7 resettlement, legal, and other services in the San Francisco Bay Area to refugees and immigrants
8 from around the world, including from the Revised Designated Countries. The New Executive
9 Order will force JFCS-EB to divert its limited resources from critical ongoing work in support of
10 refugees and immigrants and will reduce the total number of refugees that JFCS-EB may assist.

11 16. The New Executive Order threatens irreparable harm to a broad variety of persons:
12 those whose spouses, family members, loved ones, teachers and colleagues will be prevented
13 from traveling to the United States; refugees who will be barred from seeking refuge in the
14 United States; organizations that engage in ongoing support of refugees and immigrants; and visa-
15 holders who live or have lived in the United States whose renewal of existing visas or application
16 for new visas will be impeded. Plaintiffs, each of whom is threatened with such harm, bring this
17 action on behalf of themselves and other persons similarly situated to challenge various
18 provisions of the New Executive Order that violate Article I, Section 1 of the Constitution, the
19 First Amendment, the equal protection and due process rights granted under the Fifth
20 Amendment, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 *et seq.*, the
21 constitutional separation of powers, the Immigration and Nationality Act, 8 U.S.C. § 1101
22 *et seq.*, and the Administrative Procedure Act.

23 JURISDICTION AND VENUE

24 17. This Court has jurisdiction under 5 U.S.C. § 706 and 28 U.S.C. §§ 1331 and 1361,
25 and has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201
26 *et seq.*
27
28

1 18. Venue properly lies within the Northern District of California under 28 U.S.C.
2 § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred
3 in the District.

4 **INTRADISTRICT ASSIGNMENT**

5 19. Pursuant to Civil Local Rule 3-2(c), this case has been assigned to the
6 San Francisco Division of this Court.

7 **PARTIES**

8 20. Plaintiff Hadil Al-Mowafak is a Yemeni national who is currently in her freshman
9 year at Stanford University in Palo Alto, California. She possesses a valid F-1 student visa and
10 has continuously resided in the United States since September 17, 2016. Her visa expires on
11 July 28, 2017, and she must travel outside of the United States to re-apply for a new visa.
12 Plaintiff Al-Mowafak fears that she will be prevented from re-entering the United States because
13 of the New Executive Order and its continued implementation, and that as a result, she will be
14 prevented from completing her undergraduate studies.

15 21. Plaintiff Jane Roe is a United States citizen and a resident of California. She was
16 recently married to a Syrian national who currently lives in Dubai in the United Arab Emirates.
17 Plaintiff Roe has filed an I-130 Petition for Alien Relative on behalf of her husband so that he can
18 immigrate to the United States. The New Executive Order not only prevents issuance of an
19 immigrant visa to Plaintiff Roe's husband, but prevents her husband from even traveling to the
20 United States so that they can celebrate their marriage with friends and family. Roe brings this
21 suit under a pseudonym because she fears retaliation against herself and her husband.

22 22. Plaintiff John Doe is a lawful permanent resident and native of Iran who lives in
23 California. He is currently a college student in Torrance, California. Plaintiff Doe is married to
24 an Iranian national who lives in Iran. He has filed an I-130 Petition for Alien Relative on behalf
25 of his wife so that she can immigrate to the United States. The New Executive Order not only
26 prevents issuance of an immigrant visa to Plaintiff Doe's wife, but prevents him from being
27 united with his wife by barring her from entering the United States. Doe brings this suit under a
28 pseudonym because he fears retaliation against himself and his wife.

1 23. Plaintiff Eric Miller is a United States citizen and lifelong Californian who is
2 currently a graduate student at the University of California, Santa Cruz. Plaintiff Miller conducts
3 cutting-edge research in particle physics focusing on “electroweak baryogenesis,” which offers a
4 model for explaining the imbalance in matter and antimatter in the observable universe. This
5 research will be the basis of his Ph.D. thesis. Plaintiff Miller’s research requires in-person
6 collaboration with an Iranian physicist who has twice received visas to enter the United States for
7 academic trips, but who will not be permitted to enter the United States under the New Executive
8 Order. Defendants’ actions impede Plaintiff Miller’s research and threaten to delay his academic
9 career substantially.

10 24. Plaintiff Jewish Family & Community Services East Bay (“JFCS-EB”), founded in
11 1877 as the Daughters of Israel Relief Society, serves and supports Alameda and Contra Costa
12 County residents of all ages, races, and religions. It has a long history of working to resettle and
13 provide legal and other services in the San Francisco Bay Area to refugees and immigrants from
14 many countries, including people from the Revised Designated Countries. Plaintiff JFCS-EB
15 supports those refugees and immigrants who are already present in the area and stands ready to
16 provide immediate assistance and services to additional refugees and immigrants upon their entry
17 to the United States. Defendants’ actions impede JFCS-EB’s ability to carry out its mission of
18 assisting refugees.

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

21 26. Defendant U.S. Department of State is a cabinet department of the United States
22 federal government with responsibility for issuing visas.

23 27. Defendant U.S. Department of Homeland Security (“DHS”) is a cabinet
24 department of the United States federal government with the primary mission of securing the
25 United States.

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

1 29. Defendant Rex W. Tillerson is the Secretary of State. He is sued in his official
2 capacity.

3 30. Defendant John Kelly is the Secretary of DHS. He is sued in his official capacity.

4 31. Defendant Kevin K. McAleenan is the Acting Commissioner of CBP. He is sued
5 in his official capacity.

6 32. Defendant Brian Humphrey is the Field Director of the San Francisco Field Office
7 of CBP. He is sued in his official capacity.

8 **STATEMENT OF FACTS**

9 **Defendant Trump's January 27, 2017 Executive Order**

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

13 34. The Original Executive Order, citing the threat of terrorism committed by foreign
14 nationals, purported to direct a variety of changes to the manner and extent to which non-citizens
15 may seek and obtain admission to the United States. Among other things, the Original Executive
16 Order imposed a 120-day moratorium on the resettlement of refugees; proclaimed "that the entry
17 of nationals of Syria as refugees is detrimental to the interests of the United States," and therefore
18 "suspend[ed]" indefinitely their entry to the country; and limited to 50,000 the number of
19 refugees from all countries who may be admitted in fiscal year 2017 on the ground that admission
20 of a greater number of refugees would be "detrimental to the interests of the United States."

21 35. Under Section 3(c) of the Original Executive Order, Defendant Trump proclaimed
22 "that the immigrant and nonimmigrant entry into the United States of aliens from countries
23 referred to in Section 217(a)(12) of the INA, 8 U.S.C. § 1187(a)(12), would be detrimental to the
24 interests of the United States," and that he therefore had "suspend[ed] entry into the United
25 States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this
26 order," with narrow exceptions not relevant here. This section of the Original Executive Order
27 prevented all nationals of such countries from entering the United States, regardless of whether
28 they were otherwise admissible, subject to narrow exceptions not relevant here.

1 36. Section 1 of the Original Executive Order, entitled “Purpose,” stated that at the
2 time of the September 11, 2001 terrorist attacks, “State Department policy prevented consular
3 officers from properly scrutinizing the visa applications of several of the 19 foreign nationals”
4 involved in those attacks. But the Original Executive Order did not impose any restrictions on the
5 nationals of the countries from which the September 11 attackers hailed.

6 37. On the same day the Original Executive Order issued, the Deputy Assistant
7 Secretary for Visa Services at the Bureau of Consular Affairs of the Department of State, relying
8 on the Original Executive Order, issued a letter purporting to provisionally revoke all valid
9 nonimmigrant and immigrant visas of nationals of the Designated Countries, subject to exceptions
10 not relevant here. The now-revoked Provisional Revocation Letter was not publicized. To the
11 contrary, it was withheld from the public until it was filed four days later under a “Notice of
12 Supplemental Authority” in multiple cases challenging the Original Executive Order. The
13 existence of the Provisional Revocation Letter broadened the chaos caused by the Original
14 Executive Order. The federal government issued no public or legally binding guidance regarding
15 the meaning or proper interpretation of the Provisional Revocation Letter. A copy of the
16 Provisional Revocation Letter is attached to this Complaint as Exhibit B.

17 38. The Provisional Revocation Letter also appeared to expand the scope of the
18 Original Executive Order. In addition to impacting persons seeking to enter the United States, it
19 also applied to persons already present in the country. Under Section 221(a)(1)(B) of the INA,
20 8 U.S.C. § 1227(a)(i)(B), any alien whose nonimmigrant visa has been revoked under 8 U.S.C.
21 § 1201(i) (which is INA § 221(i), referenced in the Provisional Revocation Letter) is deportable.
22 Immigration attorneys reported that the Provisional Revocation Letter was being applied to
23 immigrants lawfully residing within the United States who had pending applications for asylum,
24 lawful permanent residence, or other immigration benefits.

25 **The Text and History of the Original Executive Order Show Discriminatory Intent**

26 39. The Original Executive Order and the Provisional Revocation Letter applied to
27 nationals of seven countries, all of which are majority Muslim countries: Iraq, Iran, Libya,
28 Somalia, Sudan, Syria, and Yemen. The Original Executive Order, by its express terms,

1 suspended immigrant and nonimmigrant entry into the United States based on nationality, place
2 of birth, or place of residence. The Provisional Revocation Letter similarly revoked “all valid
3 nonimmigrant and immigrant visas of nationals” based on nationality, place of birth, or place of
4 residence.

5 40. The Original Executive Order was an attempt by Defendant Trump to fulfill a
6 campaign promise to ban Muslims from entering the United States. In a written announcement
7 dated December 7, 2015 and entitled, “Donald J. Trump Statement on Preventing Muslim
8 Immigration,” then-candidate Trump said that he was “calling for a total and complete shutdown
9 of Muslims entering the United States.” This statement is still displayed on the official Trump-
10 Pence website.²

11 41. Also on December 7, 2015, Defendant Trump sent a tweet reading: “DONALD J.
12 TRUMP STATEMENT ON PREVENTING MUSLIM IMMIGRATION,” which linked to his
13 written statement bearing the same title.³ Defendant Trump read a slightly modified version of
14 the statement himself in public, declaring that “Donald J. Trump is calling for a total and
15 complete shutdown of Muslims entering the United States until our country’s representatives can
16 figure out what the hell is going on. We have no choice.”⁴

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

24 ² Donald J. Trump for President, Inc., *Donald J. Trump Statement on Preventing Muslim*
25 *Immigration* (Dec. 7, 2015), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> (last visited Mar. 11, 2017).

26 ³ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 7, 2015, 2:32 p.m.),
27 <https://twitter.com/realDonaldTrump/status/673993417429524480> (last visited Mar. 11, 2017).

28 ⁴ Jenna Johnson, *Trump Calls for ‘Total and complete shutdown of Muslims entering the United States’*, *The Washington Post* (Dec. 7, 2015), <http://wpo.st/O0uY2> (last visited Mar. 11, 2017).

⁵ Nick Gass, *Trump not bothered by comparisons to Hitler*, *Politico* (Dec. 8, 2015),

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

6 44. Defendant Trump repeatedly referred to a ban on Muslim immigration on the
7 campaign trail. For example, in a speech on June 13, 2016, Defendant Trump stated, “I called for
8 a ban after San Bernardino and was met with great scorn and anger. But now many . . . are saying
9 that I was right to do so.”⁷

10 45. In a July 24, 2016 interview on Meet the Press, a reporter asked Defendant Trump
11 if a plan similar to the now-enacted Executive Order was a “rollback” from “[t]he Muslim Ban.”
12 Defendant Trump rejected the suggestion: “I don’t think so. I actually don’t think it’s a rollback.
13 In fact, you could say it is an expansion. I’m looking now at territories. People were so upset
14 when I used the word Muslim. Oh, you can’t use the word Muslim.”⁸

15 46. 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 “You know my plans. All along, I’ve been proven to
18 be right” and that he was “100% correct” in his position.⁹

19 47. In the days after the promulgation of the Original Executive Order, Defendant
20 Trump referred to it as a “ban.” On January 30, 2017, Defendant Trump tweeted: “If the ban
21 were announced with a one week notice, the ‘bad’ would rush into our country during that

22 <http://www.politico.com/trump-muslims-shutdown-hitler-comparison> (last visited Mar. 11, 2017).

23 ⁶ CNN, *Trump defends proposal to ban Muslims entering U.S.*, at 0:15 and 8:45 (Dec. 13, 2015),
24 <https://www.youtube.com/watch?v=JKtcdn0zAqw> (last visited Mar. 11, 2017).

25 ⁷ Tara Golshan, *Read Donald Trump’s most inflammatory speech yet on Muslims and
immigration*, Vox (June 13, 2016), <http://www.vox.com/2016/6/13/11925122/trump-orlando-foreign-policy-transcript> (last visited Mar. 11, 2017).

26 ⁸ *Meet the Press* (NBC television broadcast July 24, 2016), *transcript available at*
27 <http://www.nbcnews.com/meet-the-press/meet-press-july-24-2016-n615706> (last visited Mar. 11,
2017).

28 ⁹ 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 Mar. 11, 2017).

1 week.”¹⁰ On February 1, 2017, Defendant Trump expressed his indifference to whether the
2 Original Executive Order was characterized as a ban on Muslims: “Everyone is arguing whether
3 or not it is a BAN. Call it what you want”¹¹

4 48. Senior advisors to Defendant Trump have long engaged in anti-Muslim rhetoric
5 that provides additional support for the notion that the Original Executive Order was prompted by
6 animus toward Islam and Muslims.

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

17 50. In an interview on January 28, 2017, one of Defendant Trump’s senior advisors,
18 Rudolph Giuliani, left no doubt that the ban on entry from nationals of the Designated Countries
19 was intended to carry out a ban on Muslims, and that the Original Executive Order was crafted to
20 create a pretextual cover for a Muslim ban. Mr. Giuliani stated: “I’ll tell you the whole history of
21 it. So, when he [Defendant Trump] first announced it, he said, ‘Muslim ban.’ He called me up.
22 He said, ‘Put a commission together. Show me the right way to do it legally.’”¹³

23 ¹⁰ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 30, 2017, 5:31 a.m.),
24 <https://twitter.com/realDonaldTrump/status/826060143825666051> (last visited Mar. 11, 2017).

25 ¹¹ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 1, 2017, 4:50 a.m.),
26 <https://twitter.com/realDonaldTrump/status/826774668245946368> (last visited Mar. 11, 2017).

27 ¹² J. Lester Feder, *This Is How Steve Bannon Sees The Entire World*, BuzzFeedNews (Nov. 16,
28 2016), <https://www.buzzfeed.com/lesterfeder/this-is-how-steve-bannon-sees-the-entire-world>
(last visited Mar. 11, 2017).

¹³ Amy B. Wang, *Trump Asked for a ‘Muslim Ban,’ Giuliani Says — and Ordered a Commission to do it ‘Legally’*, The Washington Post (Jan. 29, 2017) <http://wpo.st/xzuY2> (last visited Mar. 11, 2017).

1 51. On January 29, 2017, an anonymous “senior administration official” briefed a
2 reporter from Breitbart.com on the intended purpose of the Original Executive Order: “The
3 reality, though, is that the situation [of large Islamic populations] that exists today in parts of
4 France, in parts of Germany, in Belgium, etcetera, is not a situation we want replicated inside the
5 United States.”¹⁴

6 52. Defendant Trump and his agents also made clear that they intended to favor non-
7 Muslim nationals of the Designated Countries over Muslim nationals of those countries. In an
8 interview with the Christian Broadcasting Network on January 27, 2017, Defendant Trump
9 asserted that the United States had been discriminating against Christian refugees from Syria in
10 favor of Muslims, claiming that “If you were a Muslim, you could come in. But if you were
11 Christian, it was almost impossible.” He continued, “they were chopping off the heads of
12 everybody but more so the Christians. I thought it was very, very unfair. So we are going to help
13 them.”¹⁵

14 53. Consistent with Defendant Trump’s expressed intent to favor Christians, Section
15 5(e) of the Original Executive Order authorized the Secretaries of the Department of State and the
16 Department of Homeland Security to admit individuals who are “member[s] of a religious
17 minority” in their countries of nationality who are “facing religious persecution.” This provision
18 directly granted Christians and other religions preference over Muslim refugees.

19 54. Defendant Trump demonstrated that the Original Executive Order’s discussion of
20 national security was a pretextual cover for discrimination by failing to seriously consult national
21 security experts or agencies before issuing the Original Executive Order. A bipartisan group of
22 former high-ranking national security officials has declared that, in prior cases, a President’s
23 “considered judgment” in national security has “rested on cleared views from expert agencies
24 with broad experience on the matters presented to him.” In this case, by contrast, there was “little
25

26 ¹⁴ Neil Munro, *Left Protests While Trump Junks Obama’s Global Immigration Plan*, Breitbart
27 (Jan. 30, 2017), <http://www.breitbart.com/big-government/2017/01/30/trump-changes-immigration-favor-american-values/> (parenthetical in original) (last visited Mar. 11, 2017).

28 ¹⁵ John Hayward, *Trump: Christian Refugees ‘Horribly Treated,’ ‘We Are Going to Help Them’*,
Breitbart (Jan. 27, 2017), <http://www.breitbart.com/national-security/2017/01/27/trump-will-give-persecuted-christians-priority-refugee-status/> (last visited Mar. 11, 2017).

1 evidence” of “thorough interagency legal and policy processes designed to address current
2 terrorist threats.”¹⁶

3 55. The pretextual nature of Defendants’ national security claims is further confirmed
4 by the fact that, according to available data, “[f]oreigners from th[e] [Designated Countries] have
5 killed zero Americans in terrorist attacks on U.S. soil between 1975 and the end of 2015.”¹⁷

6 **Injunction of the January 27, 2017 Executive Order**

7 56. In the weeks following the issuance of the Original Executive Order, dozens of
8 lawsuits were filed challenging it as unconstitutional and unlawful. Almost immediately, courts
9 around the country began enjoining portions of the Original Executive Order.

10 57. On January 30, 2017, the State of Washington filed a lawsuit challenging the
11 order, later joined by the State of Minnesota. On February 3, 2017, the U.S. District Court for the
12 Western District of Washington issued a temporary restraining order prohibiting enforcement of
13 Sections 3(c), 5(a), 5(b), 5(c), and 5(e) of the Original Executive Order. *Washington v. Trump*,
14 No. C17-0141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017).

15 58. Defendant Trump filed a notice of appeal and emergency motion to stay the TRO.
16 A three-judge panel of the Ninth Circuit Court of Appeals denied that motion on February 9,
17 2017. *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (per curiam). The court rejected the
18 government’s claim that the President has “unreviewable authority to suspend the admission of
19 any class of aliens,” *id.* at 1161–64, and held that the government had failed to show that it would
20 likely defeat the States’ due process claims, *id.* at 1164–67. The court acknowledged that the
21 States’ religious discrimination claims also “raise[d] serious allegations and present[ed]
22 significant constitutional questions,” but reserved judgment on those questions and the remainder
23 of the States’ claims. *Id.* at 1167–68. The court set an expedited briefing schedule for the appeal.
24 *Id.*, Doc. No. 135 (Feb. 9, 2017).

25
26 ¹⁶ Joint Declaration of Madeleine K. Albright *et al.*, *Aziz v. Trump*, No. 1:17-cv-00116-LMB-
27 TCB, Doc. No. 57, ¶¶ 1-2, 7.

28 ¹⁷ Alex Nowstateh, *Little National Security Benefit to Trump’s Executive Order on Immigration*,
Cato Institute (Jan. 25, 2017), <https://www.cato.org/blog/little-national-security-benefit-trumps-executive-order-immigration> (last visited Mar. 11, 2017).

Defendant Trump's March 6, 2017 Executive Order

59. After the Ninth Circuit refused to stay the injunction issued by the District Court for the Western District of Washington, Defendant Trump and his staff initially claimed that they intended to continue to defend the Original Executive Order. On February 9, 2017, the day that the Ninth Circuit Court of Appeals issued its *per curiam* order denying Defendant Trump's emergency motion to stay, Defendant Trump tweeted "SEE YOU IN COURT, THE SECURITY OF OUR NATION IS AT STAKE!"¹⁸

60. One week later, on February 16, 2017, Defendant Trump reversed himself and informed the Ninth Circuit he would instead issue a revised executive order. Defendant Trump informed the Ninth Circuit that he was not seeking *en banc* review of the panel's decision because "the President intends in the near future to rescind the Order and replace it with a new, substantially revised Executive Order to eliminate what the panel erroneously thought were constitutional concerns." *Washington v. Trump*, No. 17-35105, Doc. No. 154 (9th Cir. Feb. 16, 2017). The same day, the court stayed *en banc* proceedings in reliance on Defendant Trump's representation. *Id.*, Doc. No. 161 (Feb. 16, 2017).

61. That same day, Defendant Trump held a press conference during which he claimed that the Original Executive Order was not flawed, and that "we had a bad court. Got a bad decision." Nevertheless, he stated: "We're going to put in a new executive order next week sometime."¹⁹

62. On February 21, 2017, senior White House advisor Stephen Miller appeared on a Fox News television program and explained that Defendant Trump's revised executive order would address "a lot of very technical issues that were brought up by the court," but would "have the same basic policy outcome."²⁰

¹⁸ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 9, 2017, 3:35 p.m.), <https://twitter.com/realDonaldTrump/status/829836231802515457> (last visited Mar. 11, 2017).

¹⁹ *Full Transcript and Video: Trump News Conference*, The New York Times (Feb. 16, 2017), <https://www.nytimes.com/2017/02/16/us/politics/donald-trump-press-conference-transcript.html> (last visited Mar. 11, 2017).

²⁰ *Trump adviser says new travel ban will have 'same basic policy outcome'*, Fox News (Feb. 21, 2017), <http://www.foxnews.com/politics/2017/02/21/trump-adviser-says-new-travel-ban-will-have-same-basic-policy-outcome.html> (last visited Mar. 11, 2017).

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

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

13 65. According to a senior government official, Defendant Trump did not accept DHS’s
14 conclusion; he instead directed other intelligence agencies to produce the desired reports. This
15 course of conduct “prompted some in government to wonder whether the White House [wa]s
16 shopping around among agencies for the report that best bolsters their policy and legal support for
17 it.”²³ A senior administration official explained: “The president asked for an intelligence
18 assessment. This is not the intelligence assessment the president asked for.”²⁴

19 ²¹ Jake Tapper & Pamela Brown, *White House effort to justify travel ban causes growing concern*
20 *for some intelligence officials*, CNN (Feb. 25, 2017),
[http://www.cnn.com/2017/02/23/politics/white-house-effort-to-justify-travel-ban-causes-](http://www.cnn.com/2017/02/23/politics/white-house-effort-to-justify-travel-ban-causes-growing-concern-for-some-intel-officials)
21 [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 Mar. 11, 2017).

22 ²² U.S. Dep’t of Homeland Sec., Office of Intelligence & Analysis, *Citizenship Likely an*
Unreliable Indicator of Terrorist Threat to United States,
23 [https://www.documentcloud.org/documents/3474730-DHS-intelligence-document-on-President-](https://www.documentcloud.org/documents/3474730-DHS-intelligence-document-on-President-Donald.html)
[Donald.html](https://www.documentcloud.org/documents/3474730-DHS-intelligence-document-on-President-Donald.html) (last visited Mar. 11, 2017); *see also* Vivian Salama & Alicia A. Caldwell, *AP*
24 *Exclusive: DHS report disputes threat from banned nations*, Associated Press (Feb. 24, 2017),
[http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-](http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-threat-posed-travel-ban-nations)
[threat-posed-travel-ban-nations](http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-threat-posed-travel-ban-nations) (last visited Mar. 11, 2017).

25 ²³ Jake Tapper & Pamela Brown, *White House effort to justify travel ban causes growing concern*
for some intelligence officials, CNN (Feb. 25, 2017),
26 [http://www.cnn.com/2017/02/23/politics/white-house-effort-to-justify-travel-ban-causes-](http://www.cnn.com/2017/02/23/politics/white-house-effort-to-justify-travel-ban-causes-growing-concern-for-some-intel-officials)
[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 Mar. 11, 2017).

27 ²⁴ Shane Harris, *Donald Trump Rejects Intelligence Report on Travel Ban*, *The Wall Street*
28 *Journal* (Feb. 24, 2017), [https://www.wsj.com/articles/donald-trump-rejects-intelligence-report-](https://www.wsj.com/articles/donald-trump-rejects-intelligence-report-on-travel-ban-1487987629)
[on-travel-ban-1487987629](https://www.wsj.com/articles/donald-trump-rejects-intelligence-report-on-travel-ban-1487987629) (last visited Mar. 11, 2017).

1 66. The desired intelligence never materialized. To the contrary, in a further report,
2 the Office of Intelligence and Analysis found that Defendants’ proposed vetting procedures are
3 unlikely to stop the threat that the New Executive Order purports to address. The Office of
4 Intelligence and Analysis concluded that “most foreign-born, US-based violent extremists likely
5 radicalized several years after their entry to the United States, limiting the ability of screening and
6 vetting officials to prevent their entry because of national security concerns.”²⁵

7 67. Further belying their claims of an urgent national security threat, Defendants
8 delayed the release of the New Executive Order until after Defendant Trump’s address to a joint
9 session of Congress on February 28, 2017. According to a senior administration official,
10 Defendant Trump decided to delay signing a revised executive order after the speech because
11 “[w]e want the EO to have its own ‘moment.’”²⁶

12 68. Finally, on March 6, 2017, Defendant Trump signed the New Executive Order,
13 No. 13,780, which bears the same title as the Original Executive Order. A copy of the New
14 Executive Order is attached hereto as Exhibit C.

15 69. While the New Executive Order revokes the Original Executive Order, *see* New
16 EO § 13, it has the same policy aim as the one enjoined by the courts—to shut down immigration
17 from predominantly Muslim countries.

18 70. The New Executive Order institutes a 90-day suspension of travel to the United
19 States by nationals of the six Revised Designated Countries, effective March 16, 2017, while
20 exempting several categories of individuals. It also re-institutes the 120-day bar on the U.S.
21 refugee program and the reduction in refugee entries.

22 71. The revised Section 1, titled “Policy and Purpose,” is a multi-page argument
23 attempting to backfill the justification for the Original Executive Order. The Section attempts to
24 refute the allegations by the States of Washington and Minnesota—and the allegations of
25

26 ²⁵ MSNBC, *TRMS Exclusive: DHS document undermines Trump case for travel ban* (Mar. 2,
27 2017) [http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-](http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban)
[trump-case-travel-ban](http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban) (last visited Mar. 10, 2017).

28 ²⁶ Jeremy Diamond (@JDiamond1), Twitter (Feb. 28, 2017, 8:20 p.m.),
<https://twitter.com/JDiamond1/status/836793355401056256> (last visited Mar. 11, 2017).

1 plaintiffs around the country—that the Original and the New Executive Orders were designed to
2 discriminate against Muslims. *See* New EO § 1(b)(iv).

3 72. Section 1 omits the Original Executive Order’s reference to the “hostile attitudes”
4 of immigrants from the Designated Countries “toward [the United States] and its founding
5 principles,” including those who would “place violent ideologies over American law.” The
6 Original Executive Order had drawn this statement nearly verbatim from Defendant Trump’s
7 August 2016 speech in Youngstown, Ohio, where Defendant Trump unveiled his plan to impose
8 ideological tests as part of screening immigrants applying to enter the United States. Defendant
9 Trump used almost the exact same language in his speech, except that he said “Sharia law”
10 instead of “violent ideologies.” Specifically, Defendant Trump proclaimed: “In addition to
11 screening out all members or sympathizers of terrorist groups, we must also screen out any who
12 have hostile attitudes toward our country or its principles—or who believe that Sharia law should
13 supplant American law.”²⁷

14 73. In an attempt to paper-over the ideological and religious basis of the “Muslim ban”
15 as set forth in the Original Executive Order, the New Executive Order instead refers to “detecting
16 foreign nationals who may commit, aid, or support acts of terrorism and in preventing those
17 individuals from entering the United States.” New EO § 1(a). The New Executive Order makes
18 this assertion notwithstanding the fact that, since 1975, there have been no incidents of terrorism-
19 related killings in the United States by foreign nationals admitted as immigrants from any of the
20 six Revised Designated Countries. The New Executive Order conjures up a threat with a dubious
21 factual basis to disguise the underlying rationale of attempting to exclude immigrants from the six
22 majority-Muslim Revised Designated Countries.

23 74. The New Executive Order cites the Department of State’s Country Reports on
24 Terrorism 2015 (June 2016) to support its inclusion of the six Revised Designated Countries.
25 New EO § 1(e).²⁸ The New Executive Order explains, for example, that Iran, Sudan, and Syria

26 ²⁷ Christina Wilkie & Elise Foley, *Donald Trump Proposes Ideological Test for Entry to the*
27 *United States*, The Huffington Post (Aug. 15, 2016),
28 http://www.huffingtonpost.com/entry/donald-trump-immigration-test_us_57b224c9e4b007c36e4fc81e (last visited Mar. 11, 2017).

²⁸ U.S. Dep’t of State, *Country Reports on Terrorism 2015* (June 2016),

1 have been designated state sponsors of terrorism. But as the New Executive Order itself
2 concedes, those three countries have been so designated for decades, and no new factual basis is
3 cited to justify why a blanket travel ban on nationals of those countries might be needed now.
4 Somalia’s presence on the list is purportedly justified because it has been designated as a
5 “terrorist safe haven.” But the cited State Department report also lists three predominantly
6 Christian nations as “terrorist safe havens”—the Philippines, Colombia, and Venezuela. The
7 New Executive Order does not include any of these other countries or explain why they are
8 omitted.²⁹ Finally, Yemen and Libya are listed as conflict zones—a label that could also apply to
9 many other countries not included in the New Executive Order.

10 75. Section 1 also purports to justify the suspension of the refugee program by
11 claiming, without explanation or support, that “[t]errorist groups have sought to infiltrate several
12 nations through refugee programs.” New EO § 1(b)(iii). Section 1(h) also claims that “more than
13 300 persons who entered the United States as refugees are currently the subjects of
14 counterterrorism investigations by the Federal Bureau of Investigation.” The New Executive
15 Order does not explain how many of those 300, if any, are nationals of the countries affected by
16 the Order.³⁰ Defendants have refused to reveal that figure, or how many of the 300 entered the
17 United State recently, as opposed to decades ago, or the stage of the investigations.³¹

18 76. Section 2(c), largely unchanged from the corresponding section of the Original
19 Executive Order, implements the 90-day travel ban on nationals and citizens of the Revised
20 Designated Countries. Section 3(b) exempts certain visa-holders from that general 90-day ban.
21 New EO §§ 2(c), 3(b).

22
23
24 <https://www.state.gov/j/ct/rls/crt/2015/> (last visited Mar. 11, 2017).

25 ²⁹ 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 Mar. 11, 2017).

26 ³⁰ See Dahlia Lithwick, *The Bogus Logic of Trump’s New Travel Ban*, Slate (Mar. 6, 2017),
http://www.slate.com/articles/news_and_politics/jurisprudence/2017/03/trump_s_new_travel_ban_is_full_of_bogus_evidence_and_sketchy_claims.html (last visited Mar. 11, 2017).

27 ³¹ Josh Gerstein & Nolan McCaskill, *Trump eases up on travel ban with new executive order*,
28 Politico (Mar. 6, 2017), <http://www.politico.com/story/2017/03/trump-releases-new-travel-ban-executive-order-235720> (last visited Mar. 11, 2017).

1 77. In Section 3(c), the New Executive Order states that consular officers or CBP
2 officials “may . . . decide, on a case-by-case basis to authorize the issuance of a visa to, or to
3 permit the entry of, a foreign national for whom entry is otherwise suspended if the foreign
4 national has demonstrated to the officer’s satisfaction that denying entry during the suspension
5 period would cause undue hardship, and that his or her entry would not pose a threat to national
6 security and would be in the national interest.” The discretion to admit individuals on a case-by-
7 case basis under the New Executive Order is narrower than under the Original Executive Order,
8 which had more generally permitted the issuance of visas and other immigration benefits when
9 “in the national interest.” Section 3(c) describes certain “circumstances” where “case-by-case
10 waivers could be appropriate.” Section 3(c) does not mandate an exception from or waiver of the
11 New Executive Order in any circumstances. Section 3(c) includes no notice requirement for the
12 denial of a waiver on any grounds.

13 **Facts About Plaintiff Hadil Al-Mowafak**

14 78. Plaintiff Hadil Al-Mowafak is a Yemeni national who is currently in her freshman
15 year at Stanford University in Palo Alto, California, and hopes to earn her undergraduate degree
16 in 2020. She possesses a valid F-1 multiple-entry student visa that was issued on July 29, 2016.
17 She has continuously resided in the United States since September 17, 2016.

18 79. Plaintiff Al-Mowafak’s visa expires on July 28, 2017. She must leave the United
19 States to re-apply for a visa so that she will be able to resume her studies at Stanford in the fall.
20 Plaintiff Al-Mowafak currently plans to travel to the United Kingdom, where she will reside with
21 her sister while completing the visa re-application process. Plaintiff Al-Mowafak fears that if she
22 is not permitted to re-enter the United States because of the New Executive Order and its
23 implementation, she will be prevented from continuing her undergraduate studies.

24 80. Plaintiff Al-Mowafak also plans to travel to Yemen in the summer of 2017 to visit
25 her husband, who lives in Yemen. Because Defendants’ actions currently bar Plaintiff Al-
26 Mowafak’s husband from obtaining a visa to visit her in the United States, the only way that
27 Plaintiff Al-Mowafak can see her husband is if she travels to Yemen to visit him. Plaintiff Al-
28

1 Mowafak's husband would visit her in the United States if Defendants' actions did not bar him
2 from obtaining a visa.

3 **Facts About Plaintiff Jane Roe**

4 81. Plaintiff Jane Roe is a United States citizen and resident of California. She
5 graduated from high school in California in 2010 and earned a bachelor's degree from California
6 State University, Long Beach in 2015.

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

14 83. Plaintiff Roe and her husband are both practicing Muslims and were married in the
15 Islamic faith. Plaintiff Roe feels stigmatized because the Original and New Executive Orders
16 target people from majority-Muslim countries and were issued following Defendant Trump's
17 negative statements about Muslims.

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

20 **Facts About Plaintiff John Doe**

21 85. Plaintiff John Doe is a lawful permanent resident who resides in California.
22 Plaintiff Doe is a native of Iran and earned a degree in civil engineering in that country. He hopes
23 to pursue a civil engineering career in the United States and is currently a college student in
24 Torrance, California.

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

1 87. Defendants’ actions will prevent Plaintiff Doe and his wife from living together in
2 the United States, and bar Plaintiff Doe’s wife from even visiting him.

3 **Facts About Plaintiff Eric Miller**

4 88. Plaintiff Eric Miller is a United States citizen and lifelong Californian. He is
5 currently a fourth-year graduate student in physics at the University of California, Santa Cruz
6 (“UCSC”).

7 89. Plaintiff Miller is attempting to pursue a major research project into “electroweak
8 baryogenesis,” which offers a model for explaining the imbalance in matter and antimatter in the
9 observable universe. Because this project will be the basis of his Ph.D. thesis, demonstrating its
10 viability is essential for Plaintiff Miller to take the examination for Ph.D. candidate status.

11 90. Key to this research project is collaboration with Venus Keus, an Iranian citizen
12 and post-doctoral researcher at the University of Helsinki in Finland. Dr. Keus is a leader in
13 several fields of theoretical physics, including early universe cosmology. She has twice visited
14 the United States on visas to meet and collaborate with colleagues and leaders in her field.

15 91. Plaintiff Miller began collaborating with Dr. Keus on the baryogenesis project
16 roughly six months ago. Unfortunately, Dr. Keus has only been able to collaborate on this project
17 via email, telephone, and Skype. And due to the time difference between Santa Cruz and
18 Helsinki, the team has only been able to have conversations for brief periods at inconvenient
19 times.

20 92. The inability to collaborate in person has had a profoundly negative effect on
21 Plaintiff Miller’s research. While the research team has been able to resolve certain theoretical
22 requirements for their model, they have been unable to piece them together and determine the
23 overall direction that the research should take. To move the project forward, the research team
24 must be able to discuss it at length and in a way that facilitates a natural, free-flowing exchange of
25 ideas. Face-to-face contact is essential.

26 93. Recognizing the importance of extended, in-person collaboration, a UCSC physics
27 professor has invited Dr. Keus to visit UCSC for a month-long visit in April 2017. The invitation
28 to Dr. Keus was extended before Defendant Trump signed the Original Executive Order.

1 Defendant Trump's attempts to bar entry into the United States by citizens of the Revised
2 Designated Countries jeopardizes Dr. Keus's visit.

3 94. On information and belief, Dr. Keus has applied for a new visa and was initially
4 scheduled for a consular interview at the United States embassy in Helsinki on February 13, 2017.
5 That interview was canceled after Defendant Trump issued the Original Executive Order. After
6 that Order was enjoined, Dr. Keus was allowed to reschedule her interview for February 22, 2017.
7 But her application has not yet been approved, and the New Executive Order will bar her entry
8 into the United States.

9 95. Defendants' actions will seriously harm Plaintiff Miller's academic career. Unless
10 and until Dr. Keus can visit the United States, Plaintiff Miller's research will continue to be
11 hampered by the inability to communicate effectively with a key participant, which will result in
12 indefinite delays. This, in turn, prevents Plaintiff Miller from scheduling the examination that
13 will allow him to progress to Ph.D. candidate status. Unless Dr. Keus's visit to the United States
14 goes forward in April 2017 as planned, Plaintiff Miller will not be able to advance to Ph.D.
15 candidate status for the foreseeable future.

16 **Facts About Plaintiff JFCS-EB**

17 96. Plaintiff JFCS-EB provides resettlement, legal, and other services in the
18 San Francisco Bay Area to refugees and immigrants from around the world, including from the
19 Revised Designated Countries. Plaintiff JFCS-EB supports refugees and immigrants who are
20 already present in the area, and stands ready to provide immediate assistance and services to
21 additional refugees and immigrants upon their entry to the United States.

22 97. Defendants' actions impede JFCS-EB's ability to carry out its mission of assisting
23 refugees.

24 98. As a result of both the Original and New Executive Orders, JFCS-EB has been
25 forced to divert its limited resources from critical ongoing work in support of refugees and
26 immigrants. The confusion and chaos caused by the Original and New Executive Orders has
27 resulted in increased usage of JFCS-EB's services, including increases in requests for legal and
28 mental health services.

1 99. At the same time, the New Executive Order reduces the total number of refugees
2 that JFCS-EB may assist. The New Executive Order improperly suspends the United States
3 Refugee Assistance Program for 120 days and drastically reduces the number of refugees to be
4 admitted into the United States.

5 100. For the reasons set forth below, the New Executive Order is *ultra vires* and
6 unlawfully deprives Plaintiffs of their rights under the United States Constitution and the
7 Immigration and Nationality Act.

8 CLASS ACTION ALLEGATIONS

9 101. Pursuant to Federal Rule of Civil Procedure 23(b)(1) and (b)(2), Plaintiffs Eric
10 Miller, Jane Roe and John Doe bring this action as a class action on their own behalf and on
11 behalf of all other United States citizens and lawful permanent residents in California who have
12 an interest in the entry to the United States of nationals or citizens of other countries who, but for
13 the New Executive Order, would be able to travel to the United States. This class includes, but is
14 not limited to, the following sub-classes: (a) United States citizens and lawful permanent
15 residents in California with spouses or immediate relatives who are nationals or citizens of other
16 countries and, but for the New Executive Order, would be able to travel to the United States; and
17 (b) United States citizens and lawful permanent residents in California who wish to hear,
18 associate, or collaborate with nationals or citizens of other countries who, but for the New
19 Executive Order, would be able to travel to the United States.

20 102. Pursuant to Federal Rule of Civil Procedure 23(b)(1) and (b)(2), Plaintiff Hadil Al-
21 Mowafak brings this action as a class action on her own behalf and on behalf of all other
22 nationals or citizens of the Revised Designated Countries who live or have lived in California
23 following a lawful entry into the United States and desire to renew existing visas or apply for new
24 visas, but will be impeded from doing so by the New Executive Order.

25 103. The Classes are so numerous that joinder is impracticable. According to the
26 Annual Report of the Visa Office, in 2015, the last year for which data are available, the United
27 States issued approximately 85,000 immigrant and non-immigrant visas to nationals from the
28 seven Designated Countries. On information and belief, many United States citizens and lawful

1 permanent residents in California have spouses or immediate family members who are nationals
2 or citizens of the Revised Designated Countries and, but for the New Executive Order, would be
3 able to travel to the United States. On information and belief, hundreds of United States citizens
4 or lawful permanent residents in California wish to hear, associate, or collaborate with nationals
5 or citizens of the Revised Designated Countries who, but for the New Executive Order, would be
6 able to travel to the United States. On information and belief, at least hundreds of nationals or
7 citizens of the Revised Designated Countries are visa-holders who live or have lived in California
8 and desire to renew existing visas or apply for new visas, but will be impeded from doing so by
9 the New Executive Order.

10 104. The claims of the Plaintiff Class members share common issues of law, including
11 but not limited to whether the New Executive Order violates their rights to free association,
12 freedom from the establishment of religion, religious exercise, equal protection and due process
13 rights under the First and Fifth Amendments, the constitutional separation of powers, the
14 Religious Freedom Restoration Act, the Immigration and Nationality Act, and the Administrative
15 Procedure Act.

16 105. The claims of the Plaintiff Class members share common issues of fact, including
17 but not limited to whether the New Executive Order is being or will be enforced to prevent
18 nationals or citizens of the Revised Designated Countries or refugees from entering the United
19 States from abroad, even though they would otherwise be admissible.

20 106. The claims or defenses of the named Plaintiffs are typical of the claims or defenses
21 of members of the Plaintiff Classes.

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

27 108. Defendants have acted, have threatened to act, and will act on grounds generally
28 applicable to the Plaintiff Classes, thereby making final injunctive and declaratory relief

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

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

7 **CLAIMS FOR RELIEF**

8 **COUNT ONE**
9 **FIRST AMENDMENT – ESTABLISHMENT, FREE EXERCISE,**
10 **SPEECH, AND ASSEMBLY CLAUSES**

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

13 111. The First Amendment prohibits the establishment of a religion, the prohibition of
14 the free exercise of religion and the abridgement of freedom of speech or association.

15 112. The New Executive Order constitutes an unlawful attempt to discriminate against
16 Muslims and to establish a preference for one religion over another. References in the New
17 Executive Order to the Revised Designated Countries are transparently a pretext for the
18 underlying aim to establish this preference.

19 113. Plaintiffs are harmed by this preference in that Defendants seek to disadvantage
20 them, their associates, and their clients as compared to adherents to other religions, in the
21 consideration of their lawful admission to the United States.

22 114. The New Executive Order interferes with the Rights of Plaintiff Jane Roe to
23 exercise her religion.

24 115. The New Executive Order violates the rights of named Plaintiffs to receive
25 information and speech from, and to associate freely with, nationals or citizens of other countries
26 who, but for the New Executive Order, would be able to travel to the United States.

27 116. The New Executive Order violates Plaintiffs' First Amendment rights.
28

1 **COUNT TWO**
2 **RELIGIOUS FREEDOM RESTORATION ACT**

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

5 118. The New Executive Order will have the effect of imposing a special disability on
6 the basis of religious views or religious status, by withdrawing important immigration benefits
7 principally from Muslims on account of their religion. In doing so, the New Executive Order
8 places a substantial burden on Plaintiff Roe’s exercise of religion in a way that is not the least
9 restrictive means of furthering a compelling governmental interest.

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

12 **COUNT THREE**
13 **FIFTH AMENDMENT – EQUAL PROTECTION**

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

16 121. The New Executive Order is substantially motivated by animus toward—and has a
17 disparate effect on—Muslims, which also violates the equal protection component of the Due
18 Process Clause of the Fifth Amendment.

19 **COUNT FOUR**
20 **FIFTH AMENDMENT – PROCEDURAL DUE PROCESS**

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

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

26 124. The Due Process Clause requires that the government will not, without fair
27 procedure, deprive individuals of the rights to associate with a spouse or immediate family
28 member, to associate or collaborate with an individual for the exchange of ideas, or to travel.

1 125. The United States government also is obligated by international law and by U.S.
2 law, including but not limited to the INA, 8 U.S.C. §1101(a)(13)(C), to fairly process for entry
3 those persons who have complied with all of the legal and procedural requirements for lawful
4 entry into the United States.

5 126. Defendants’ actions, as described above, have denied Plaintiffs’ associates and/or
6 clients who are currently outside the United States the opportunity to enter the United States in
7 violation of the procedural due process rights guaranteed by the Fifth Amendment. Defendants’
8 actions were taken without a facially legitimate and bona fide reason.

9 **COUNT FIVE**
10 **U.S. CONSTITUTION, ARTICLE I, SECTION 1 – SEPARATION OF POWERS**

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

13 128. The Constitution vests “All legislative Powers” in the Congress. U.S. Const. art. I,
14 § 1. “The Founders of this Nation entrusted the law making power to the Congress alone in both
15 good and bad times.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 589 (1952).

16 129. The New Executive Order infringes upon Congress’s law-making power, in
17 violation of the separation of powers established by Article I, Section 1 of the Constitution.

18 130. This violation of the separation of powers has injured Plaintiffs, as discussed
19 above.

20 **COUNT SIX**
 IMMIGRATION AND NATIONALITY ACT

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

23 132. The New Executive Order violates the Immigration and Nationality Act, including
24 but not limited to the INA’s prohibition on discriminating in issuance of immigrant visas based
25 on a person’s nationality, place of birth, or place of residence. 8 U.S.C. § 1152(a)(1)(A).

26 133. Further, Defendants’ actions as set forth above threaten the constitutional
27 separation of powers by exceeding the scope of delegation made by Congress in the INA.

28

**COUNT SEVEN
ADMINISTRATIVE PROCEDURE ACT**

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

135. Defendants’ actions as set forth above were, and Defendants’ anticipated actions to enforce Sections 2(c), 6(a) and 6(b) of the New Executive Order will, unless enjoined, be arbitrary, capricious, discriminatory, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)-(D).

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 the New Executive Order violates the rights of Plaintiffs and Plaintiff Class members for the reasons set forth above.
3. A preliminary and permanent injunction against enforcement of Sections 2(c), 6(a), and 6(b) of the New Executive Order;
4. An award to the Plaintiff Classes of reasonable costs and attorneys’ fees; and,
5. Such other and further relief that this Court may deem fit and proper.

Dated: March 13, 2017

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA, INC.

By: /s/ Julia Harumi Mass
JULIA HARUMI MASS

Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March 13, 2017

KEKER, VAN NEST & PETERS LLP

By: /s/ R. Adam Lauridsen
R. ADAM LAURIDSEN

Attorneys for Plaintiffs

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.

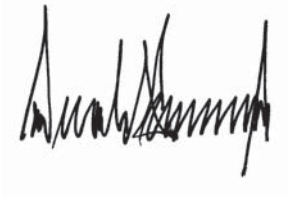
Sec. 11. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(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 a stylized name, possibly "Donald Trump", written in a cursive script.

THE WHITE HOUSE,
January 27, 2017.

EXHIBIT B



*Deputy Assistant Secretary
for Visa Services*

Washington, D.C. 20520

January 27, 2017

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

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

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

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

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

EXHIBIT C

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.

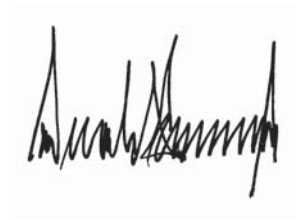
(b) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements.

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