

Nos. 17-2231 (L), 17-2232, 17-2233, 17-2240 (Consolidated)

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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INTERNATIONAL REFUGEE ASSISTANCE PROJECT, a project of the Urban Justice Center, Inc., on behalf of itself and its clients; HIAS, INC., on behalf of itself and its clients; JOHN DOES # 1 & 3; JANE DOE #2; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., on behalf of itself and its members; MUHAMMED METEAB; PAUL HARRISON; IBRAHIM AHMED MOHOMED; ARAB AMERICAN ASSOCIATION OF NEW YORK, on behalf of itself and its clients,  
*Plaintiffs-Appellees,*

and

ALLAN HAKKY; SAMANEH TAKALOO,  
*Plaintiffs,*

v.

DONALD J. TRUMP, in his official capacity as President of the United States; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; ELAINE DUKE in her official capacity as Acting Secretary of Homeland Security; REX TILLERSON, in his official capacity as Secretary of State; DANIEL R. COATS, in his official capacity as Director of National Intelligence,  
*Defendants – Appellants.*

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No. 17-2231 (L)  
(8:17-cv-00361-TDC)

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[Caption continued on inside cover]

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**JOINT APPENDIX – VOLUME 2**

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IRANIAN ALLIANCES ACROSS BORDERS; JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE  
DOE #4; JANE DOE #5; JANE #6,

*Plaintiffs-Appellees,*

v.

DONALD J. TRUMP, in his official capacity as President of the United States; ELAINE C. DUKE, in  
her official capacity as Acting Secretary of Homeland Security; KEVIN K. MCALEENAN, in his official  
capacity as Acting Commissioner of U.S. Customs and Border Protection; JAMES MCCAMENT, in his  
official capacity as Acting Director of U.S. Citizenship and Immigration Services; REX TILLERSON;

JEFFERSON B. SESSIONS III, in his official capacity as Attorney General of the United States,

*Defendants – Appellants.*

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No. 17-2232  
(8:17-cv-02921-TDC)

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EBLAL ZAKZOK; SUMAYA HAMADMAD; FAHED MUQBIL; JOHN DOE #1; JOHN DOE #2;  
JOHN DOE #3,

*Plaintiffs-Appellees,*

v.

DONALD J. TRUMP, in his official capacity as President of the United States; UNITED STATES  
DEPARTMENT OF HOMELAND SECURITY; UNITED STATES DEPARTMENT OF STATE;

ELAINE C. DUKE, in her official capacity as Acting Secretary of Homeland Security; REX

TILLERSON, in his official capacity as Secretary of State,

*Defendants – Appellants.*

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No. 17-2233  
(1:17-cv-02969-TDC)

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INTERNATIONAL REFUGEE ASSISTANCE PROJECT, a project of the Urban Justice Center, Inc., on behalf of itself and its clients; HIAS, INC., on behalf of itself and its clients; JOHN DOES #1 AND 3; JANE DOE #2; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., on behalf of itself and its members; MUHAMMED METEAB; ARAB AMERICAN ASSOCIATION OF NEW YORK, on behalf of itself and its clients,  
*Plaintiffs – Appellants,*

and PAUL HARRISON; IBRAHIM AHMED MOHOMED; ALLAN HAKKY; SAMANEH TAKALOO,  
*Plaintiffs,*

v.

DONALD J. TRUMP, in his official capacity as President of the United States; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; ELAINE C. DUKE, in her official capacity as Acting Secretary of Homeland Security; REX TILLERSON, in his official capacity as Secretary of State; DANIEL R. COATS, in his official capacity as Director of National Intelligence,  
*Defendants – Appellees.*

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No. 17-2240  
(8:17-cv-00361-TDC)

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**JOINT APPENDIX  
TABLE OF CONTENTS**

**VOLUME 1**

	<u>Page(s)</u>
<b><i>International Refugee Assistance Project v. Trump,</i></b> <b>No. 8:17-cv-00361, D. Md.:</b>	
Docket entries, No. 8:17-cv-00361 .....	JA 1
Exhibits to Amended Motion for Temporary Restraining Order or Preliminary Injunction (Dkt. No. 95, March 11, 2017):	
2d Decl. of Rebecca Heller, (Dkt. No 95-1).....	JA 51
Decl. of Mark Hetfield (Dkt. No. 95-2).....	JA 61
Decl. of Beth Baron, (Dkt. No. 95-3).....	JA 86
Decl. of John Doe #1, (Dkt. No. 95-4).....	JA 93
Decl. of John Doe #3, (Dkt. No. 95-5).....	JA 97
Decl. of Mohammed Meteab, (Dkt. No. 95-6).....	JA 101
Decl. of Jane Doe #2, (Dkt. No. 95-7).....	JA 105
Decl. of Ibrahim Admed Mohomed, (Dkt. No. 95-8).....	JA 110
Decl. of Paul Harrison, (Dkt. No. 95-9).....	JA 112
Decl. of David Hausman, with Exhibits (Dkt. No. 95-10 – 95-12) .....	JA 116
Order Granting Leave to File Second Am. Compl. (Dkt. No. 201, Oct. 4, 2017).....	JA 471
Second Am. Compl. (Dkt. No. 203, Oct. 5, 2017) .....	JA 473

## VOLUME 2

### IRAP Exhibits to Mot. for Prelim. Inj.

(Dkt. No. 205-1, Oct. 6, 2017):

Decl. of Grannaz Amirjamshidi, .....	JA 548
Supp. Decl. of Beth Baron .....	JA 555
Decl. of Rama Issa-Ibrahim.....	JA 562
2d Decl. of John Doe #1 .....	JA 571
Decl. of John Doe #5 .....	JA 573
3d Decl. of Rebecca Heller .....	JA 576
2d Decl. of Jane Doe #2 .....	JA 581
2d Decl. of John Doe #3 .....	JA 585
Decl. of John Doe #4 .....	JA 587
Decl. of Afsaneh Khazaeli.....	JA 590
Decl. of Mohamad Mashta .....	JA 594
Decl. of Mohammed Meteab.....	JA 599
Decl. of Shapour Shirani .....	JA 602
Decl. of Fakhri Ziaolhagh.....	JA 605
Decl. of Abdul Mubarez.....	JA 608
Supp. Decl. of David Hausman, with Exhibit List and Exhibits.....	JA 614
Joint Decl. of Former National Security Officials (Dkt. No. 211-1, Oct. 11, 2017) .....	JA 892
Tr. of Prelim. Inj. Hearing (Oct. 16, 2017).....	JA 904
Mem. Op. (Dkt. No. 219, Oct. 17, 2017).....	JA 993
Order (Dkt. No. 220, Oct. 17, 2017).....	JA 1084
Notice of Appeal (Dkt. No. 223, Oct. 20, 2017).....	JA 1087
Notice of Cross-Appeal (Dkt. No. 229, Oct.. 23, 2017).....	JA 1090

VOLUME 3

***Iranian Alliances Across Borders v. Trump,***  
**No. 8:17-cv-02921 D. Md.:**

Docket entries, No. 8:17-cv-02921 ..... JA 1095

Amend. Compl. (Dkt. No. 37, Oct. 12, 2017) ..... JA 1112

Exhibits to Attchmt. 2, Suppl. Mem. in Supp. of Mot for Prelim. Inj.  
(Dkt. No. 26-2, Oct. 6, 2017):

    Ex. 1, Decl. of Mana Kharrazi  
    (Dkt. No. 26-3)..... JA 1150

    Ex. 2, Decl. of Jane Doe #1,  
    (Dkt. No. 26-4)..... JA 1157

    Ex. 3, Decl. of Jane Doe #2,  
    (Dkt. No. 26-5)..... JA 1162

    Ex. 4, Decl. of Jane Doe #3,  
    (Dkt. No. 26-6)..... JA 1165

    Ex. 5, Decl. of Jane Doe #5,  
    (Dkt. No. 26-7)..... JA 1170

    Ex. 6, Decl. of John Doe #6,  
    (Dkt. No. 26-8)..... JA 1174

Attachments to Mem. in Supp. of Mot. for Leave to File Two  
Additional Decls. (Dkt. No. 38-2, Oct. 13, 2017):

    Ex. A, Decl. of Naseem Pashai,  
    (Dkt. No. 38-3)..... JA 1178

    Ex. B, Decl. of Wallace Loh,  
    (Dkt. No. 38-4)..... JA 1184

    Ex. C, email exchange among counsel,  
    (Dkt. No. 38-5)..... JA 1196

Notice of Appeal (Dkt. No. 50, Oct. 20, 2017)..... JA 1198

***Zakzok v. Trump,***  
**No. 8:17-cv-02969 D. Md.:**

Docket entries, No. 8:17-cv-02969, D. Md. ....	JA 1201
Compl. (Dkt. No. 1, Oct 6, 2017) .....	JA 1214
Attachments to Mem. in Support of Mot. for Prelim. Inj. (Dkt. No. 6, Oct 10, 2017):	
Decl. of Fahed Muqbil, (Dkt. No. 6-1) .....	JA 1244
Decl. of Eblal Zakzok, (Dkt. No. 6-2) .....	JA 1249
Decl. of Sumaya Hamadmad, (Dkt. No. 6-3) .....	JA 1254
Decl. of John Doe #1, (Dkt. No. 6-4) .....	JA 1259
Decl. of Jane Doe #2, (Dkt. No. 6-5) .....	JA 1263
Decl. of Jane Doe #3, (Dkt. No. 6-6) .....	JA 1268
Decl. of Stephen Herzog, with Exhibit List, and Exhibits 1-14 (Dkt. No. 33-1 – 33-15, Oct. 14, 2017).....	JA 1270
Notice of Appeal (Dkt. No. 40, Oct. 20, 2017).....	JA 1494

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MARYLAND**  
**SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, ET AL.,

PLAINTIFFS,

V.

DONALD TRUMP, ET AL.,

DEFENDANTS.

CIVIL ACTION NO.: 8:17-CV-00361-TDC

**DECLARATION OF GRANNAZ  
AMIRJAMSHIDI**

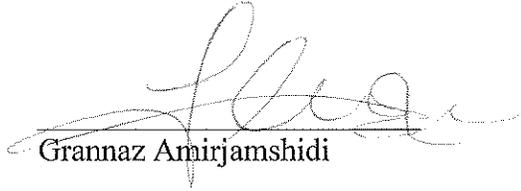
**DECLARATION OF GRANNAZ AMIRJAMSHIDI**

I, Grannaz Amirjamshidi, upon my personal knowledge, hereby submit this declaration pursuant 28 U.S.C. § 1746 and declare as follows:

1. I am a U.S. citizen of Iranian origin.
2. I submitted a prior declaration dated September 7, 2017, in support of a motion to add plaintiffs filed in this case in the U.S. Supreme Court. That declaration, attached as Exhibit A, is incorporated herein by reference.
3. The new Proclamation signed on September 24 means the same thing to me as the earlier orders. I see the ban as the same message that Muslims should be singled out for worse treatment, and another attempt to make sure we are viewed as different from other Americans.

4. The new ban is even worse because there is no end date, which means that my mother could indefinitely be banned from visiting us. This is even harder to imagine. Not being able to have my mother here to help take care of our toddler while we are in the hospital will be very hard on me and my husband. This is absolutely not fair and not correct.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Campbell on October 5, 2017

  
Grannaz Amirjamshidi

**EXHIBIT A**

DECLARATION OF GRANNAZ AMIRJAMSHIDI

I, Grannaz Amirjamshidi, upon my personal knowledge, hereby submit this declaration pursuant 28 U.S.C. § 1746 and declare as follows:

1. I am a U.S. citizen of Iranian origin, and I live in Campbell, California with my husband and 20-month-old son, who are both U.S. citizens.
2. I work in San Jose, California, as an engineer manager at a manufacturing company. I have a Master's degree in Operations Management.
3. I came to the United States as a lawful permanent resident in 2009 as part of the annual diversity visa lottery. At that time my husband and I were Iranian citizens living in Sweden, where I was studying. I applied to naturalize as soon as I was allowed to.
4. My mother is an Iranian citizen.
5. My mother lives in Toronto, Canada. From the time I moved to the United States up until last year, she would regularly travel to the United States to visit me. She applied for and received tourist visas 12 times during seven years. Her applications were always granted until last year. Sometimes her applications would be granted quickly, in a matter of days. But more recent applications took months to process and grant.
6. My mother's most recent visa application was in 2016. She attended her interview on July 7<sup>th</sup>, 2016, and was told that her application had been accepted and she should wait to be processed. We have regularly contacted the embassy for updates, and have been told the case is being processed. Most recently, in April 2017, the embassy told my mother that her application "remains pending." We do not know of any reason why she would be denied a tourist visa, which she has applied for and received many times before. Her visits would always be from a couple of days to a couple of weeks, never to exceed her visa expiration date.

7. My mother comes to the United States primarily to visit me and my family. We are very close, and we talk on the phone at least once a day. But that kind of communication is just not the same as being in the same place and spending time together. I miss her and it is painful not to be able to see her.

8. Even worse is the separation of my mother and my son. I want her to see him grow up and to spend time with him, and for him to get to know his grandmother. But phone calls and internet video cannot take the place of being together, especially for a young child like my son. I think it is unfair, cruel, and unacceptable to keep a child and his grandmother apart like this.

9. Having my mother come to visit is also very important as a support to my husband and me in raising our son. We do not have family in the area we live. When my mother is here, she can help with childcare, giving my husband and me a break and allowing us to save money on expensive child care. Without her visits, we are on our own.

10. It is extremely difficult for us to visit my mother, especially for any significant period of time. My husband and I both have demanding work schedules, making it next to impossible to travel for more than a long weekend. It is very hard to travel with my young son, especially to go such a long distance and for such a short period of time. Because of these difficulties, my mother has seen my son only once in the last year, when we travelled to Canada. The long flight and time-zone change were very hard on my son, so we are very hesitant to make the trip again.

11. The separation from my mother has recently gotten even worse. I am pregnant with our second child. This will make it even harder to travel. I cannot stand the idea of my mother not being able to visit while I am pregnant, for the birth, or to meet her new grandchild.

And the pregnancy and having a second young child will make not being able to lean on help and support from my mother even more difficult.

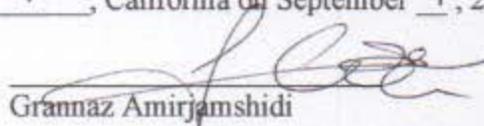
12. We have been waiting for my mother's visa for a long time, but every day we are kept apart is painful and unfair. If the ban on Iranians challenged in this case is allowed to be enforced, we will be faced with 90 more days of separation. If an officer denies her visa outright because of the ban, we would need to start over, and may face another extended period of processing—which has taken over a year already for her current application—before she is granted a visa.

13. I am a non-practicing Muslim.

14. I have followed the news about the President's statements about Muslims and the two orders he signed banning people from Iran and other Muslim countries. I understand those orders as an attempt to put in place at least part of the ban on Muslims he promised. The orders send the message that Muslims like me are not welcome in this country, that Muslim communities are bad or dangerous. This makes me feel singled out and condemned just because of who I am.

15. I have noticed the overall atmosphere towards Muslims change in the last year. People ask me whether I am a Muslim more than they used to, in ways that make me feel uncomfortable and singled out. I see people who are conspicuously Muslim, for example wearing head scarves, being stared at and drawing more seemingly suspicious attention. The hostility I sense is usually subtle here, but I think it is probably more blatant and explicit in other parts of the country. I believe these changes are at least in part because of what the President has said about Muslims and the orders he signed.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Campbell, California on September 7, 2017

  
Grannaz Amirjamshidi

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**SUPPLEMENTAL DECLARATION OF  
BETH BARON, PRESIDENT OF MIDDLE  
EAST STUDIES ASSOCIATION, IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

**SUPPLEMENTAL DECLARATION OF BETH BARON, PRESIDENT OF MIDDLE  
EAST STUDIES ASSOCIATION**

I, Beth Baron, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the President of the Middle East Studies Association (“MESA”), a Plaintiff in the above-captioned case. I previously submitted a declaration in this case dated March 10, 2017, which I incorporate herein by reference.
2. The Proclamation signed on September 24, 2017 (“EO-3”), imposing an indefinite ban on nationals of eight countries, will harm MESA and its members in the same ways as I described in my prior declaration.
3. For the reasons I previously explained, EO-3 will, among other things, hinder U.S.-based members’ ability to collaborate with colleagues from the banned countries in the United States and to recruit students from the banned countries to study in the United States.
4. As I previously explained, a large number of MESA members are Muslims. Approximately 73% of MESA’s membership is U.S.-based. Just as with the March Order, I

have heard from U.S.-based Muslim members that they understand EO-3 to be a continued attack on Islam. For example, one Muslim member explained that she understands EO-3 as “anti-Muslim given the broader political context of hate and xenophobia toward Muslims within which it was issued.” These members, including U.S. citizens and lawful permanent residents, experience EO-3 as an official condemnation of Islam and of themselves.

5. U.S.-based Muslim MESA members will also be separated from family because of EO-3. MESA has at least 150 U.S.-based members who are from the five predominantly Muslim countries banned by the March Order and EO-3 (Iran, Libya, Somalia, Syria, and Yemen). Dozens, if not more, of those individuals are seeking to bring family members, nationals of the banned countries, to visit or live in the United States.

6. For example, I am aware of a MESA member of Syrian decent seeking to bring his mother-in-law, a Syrian national, to the United States. He and his wife both recently became U.S. citizens and will be filing an immediate relative immigrant visa petition for his mother-in-law within the next several days. The member, who is a non-practicing Muslim and tenured professor, and his Muslim wife have experienced extreme stress because of the President’s anti-Muslim statements and the bans he has implemented. People have made anti-Muslim statements to the member because of the atmosphere created by the January ban. The member has lived in this country for 11 years and has raised his children here, but has expressed that the various versions of the ban make him feel unwelcome, even more so now that he is a citizen.

7. U.S.-based MESA members will also be harmed because students and colleagues will be unable to travel to the United States to study, collaborate, and exchange ideas with U.S.-based MESA members.

8. For example, I am aware of a U.S. citizen MESA member of Iranian decent whose ability to collaborate with other scholars has been and will be impeded by the ban. One such scholar, an Iranian feminist, had planned to attend this year's MESA meeting to present a paper. The chaos and uncertainty created by the January ban resulted in her not being able to attend. The member had planned to collaborate with the scholar while she was here. The member also hopes to facilitate the feminist scholar's, and two other collaborators', attendance at a planned Iranian Studies conference next year. This kind of in-person collaboration is particularly important because it is much more practical and safe than remote communication, which frequently creates security and confidentiality concerns with countries like Iran. The scholar has expressed that the inability to meet with these and other colleagues in person at U.S. conferences impoverishes his scholarship and hinders his ability to engage with others' ideas. Their collaborative work includes publishing co-authored scholarly articles and books, which require holding in-person meetings. In addition, he also planned to organize public talks outside these conferences for the visiting scholars, to allow them to share their work with wider University and interested public audiences. The member, who is a non-practicing Muslim, has also expressed that he experiences the ban, including this most recent version, as an anti-Muslim statement that makes him feel singled out and insecure.

9. Many of our U.S.-based members are concerned about sharing the details of their situations publicly, for fear that it could impact their immigration status or applications, or those of their relatives.

10. For the same reasons I previously explained, MESA itself will also be harmed by EO-3. Among other things, barring scholars from the designated countries will prevent them from attending MESA's annual meeting, impacting both our mission of fostering study and public

understanding of the Middle East, and significantly reducing MESA's annual income, nearly half of which comes from the annual meeting.

11. EO-3 will have a severe impact on our annual meeting regardless of whether it goes into effect in full on October 18 or at some later date. A ban imposed at nearly any part of the calendar year will lead to less participation in our annual meeting, by creating uncertainty and deterring initial applications; by barring or delaying the issuance of visas for those planning to attend; and by casting doubt on the availability of a visa, leading to other logistical barriers to scholars' participation.

12. It is logistically very complicated for scholars to arrange to visit the United States for MESA's meeting and other conferences. Applications to participate in our annual meeting are due in February, and scholars typically work on proposed papers and collaborations from the close of the previous November meeting up until the February deadline. A ban in effect between November and February will cause scholars to forego the opportunity to apply, impacting attendance at that year's meeting even if the ban ends up not being in place during the actual meeting in November.

13. MESA sends out decisions on acceptance of proposals in April. Visa applications are typically submitted around that time, as obtaining a visa can take anywhere from weeks to months and is very unpredictable. A ban in place during the middle months of the year will lead to the denial or delay of the issuance of visas. Moreover, scholars must arrange not only a visa, but also the logistics of panels and papers they intend to present, and funding for the trip. The denial or delay of visas would complicate and hamper all these other arrangements, again leading to fewer scholars participating in the meeting even if the ban ends up not being in place during the meeting in November.

14. I understand that some prospective meeting participants might be admitted pursuant to EO-3's waiver provision. But imposing the ban, even with a waiver, will lead to lower attendance at our meeting. Members have expressed to me that they do not want to go through these special procedures, that they consider it humiliating and demeaning to be treated as suspect, and that the special process sends the anti-Muslim message that they are not welcome, even if a waiver is granted. Also, applying for visas involves paying a fee and often expending other money to travel to an interview. Some members, like students, may have to find their own source for those funds, while others may be paid by their university. But either way, funding is limited, and members and other potential participants will choose to attend meetings in other countries instead of risking their funds on the chance of a waiver.

15. Finally, a ban in the months leading up to and including November, when our meeting is held, will bar scholars who have not yet obtained visas. Even if a visa can be obtained on short notice pursuant to EO-3's waiver provision, a delay or uncertainty with regard to visas can often throw preparations for panels as well as funding into doubt. A ban during those months will thus also impact the overall attendance and participation in our meeting.

16. For example, I am aware of an Iranian individual who is currently registered to attend this year's MESA meeting in November. He does not yet have a visa, and because of the cost and uncertainty created by the new ban, now plans not to attend. Because his cancellation is through no fault of his own, MESA's policy is to refund the registration fee if he cannot attend. However, if the ban is enjoined by late October, he may still have time to apply for and obtain a visa, and to attend the meeting.

17. Much of the information I have access to is about individuals who are already our MESA members. But non-members also attend our meetings, including individuals without

contact with MESA prior to registering for the meeting. The effects I have described, including being barred from obtaining a visa and being deterred from applying by the ban, will also keep these non-members from attending our conference. And each prospective participant who does not attend harms MESA financially and undermines our organizational mission.

18. EO-3 is indefinite in duration. MESA therefore must face these impacts not only for the 2017 meeting and 2018 meeting, but potentially 2019 and beyond. EO-3 is a long-term threat to our funding and our organizational goals.

19. The indefinite nature forces MESA to make costly choices now. For example, we should currently be negotiating contracts, including for hotel room blocks and conference room space, for our 2021 and 2022 meetings. The earlier those contracts are negotiated, the lower the prices will be for both MESA itself and our members and meeting participants. All of the available options impose costs on MESA: We can book more space, and pay for unused rooms if the ban leads to lower participation; we can book less space, and impose extra costs on members who will need to seek out rooms elsewhere if our reserved blocks are insufficient, likely leading prospective participants to forego the meeting; or we can wait to see what happens with the ban, leading to more expensive contractual rates overall.

20. EO-3 will also require MESA to divert its resources to address the needs of its members. Since the original ban Order in January, we have fielded dozens of inquiries from MESA members seeking information, advice, and advocacy to avoid the harmful effects of the three ban orders. We have also prepared memos about the ban for our membership, prepared statements on the bans, given talks regarding the bans, and developed a new task force on civil and human rights in part to address the ban. We expect to need to continue and increase these kinds of activities for our members if EO-3's indefinite ban goes into effect.

21. Because of these activities in response to the ban, we have been unable and will continue to be unable to pursue other organizational goals and initiatives to the degree we would like. For example, we have identified a need to establish a program to assist colleagues in countries where they face particular threats to their academic freedom, like Turkey, where universities have been closed and professors imprisoned. We would like to raise awareness of this issue, establish a network of scholars to help with career development for those threatened colleagues, and to fundraise. But our institutional resources are limited, and our work responding to the ban will at least delay work on this project, and other initiatives, and may make progress impossible indefinitely.

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



Beth Baron

Executed this 5<sup>th</sup> day of October, 2017

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**DECLARATION OF RAMA ISSA-  
IBRAHIM IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

**DECLARATION OF RAMA ISSA-IBRAHIM**

I, Rama Issa-Ibrahim, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am the Executive Director of the Arab-American Association of New York ("AAANY").
2. The AAANY is a social service and advocacy agency based in Bay Ridge, Brooklyn. AAANY was founded in 2001 by prominent and active members of the Arab-American and Arab immigrant communities to respond to the needs of low-income Arab immigrants in New York City.
3. Our mission is to support and empower the Arab-American and Arab immigrant community by providing the tools its members need to achieve independence, productivity, and stability. To that end, AAANY serves over 5,000 people a year, the vast majority of them women and girls. It provides direct services for immediate relief while simultaneously organizing and

building community capacity to address the long-term issues affecting the Arab and Muslim communities in New York.

4. AAANY is a trusted, community-based social service and advocacy agency, with a national platform and a growing base. Our aim is for families to achieve the ultimate goals of independence, productivity, and stability. With our full-time staff of twenty-seven employees, we serve well over 5,000 people per year, and we continue to grow. Around 95% of our clients are Arab. We also serve members of the Latino and Asian communities who reside in neighboring Sunset Park or Bensonhurst. Approximately 70% of our clients are women, and of those women, 65% are mothers with two or more children. Many of these mothers are recent immigrants from the Middle East; many are English language learners, and most are unemployed. Approximately 85% of our clients report their income as at or below the poverty line, and many are employed part-time, often in groceries, delis, food service, and transportation.

5. We are located on the ground floor of a busy, commercial avenue in the middle of the largest Arab community in the city. Thus, our lobby is constantly bustling with new and returning clients. We provide a one-stop shop for Arab families—a place where members of our community can talk to a lawyer about their immigration case, take an ESOL class, make an appointment with a mental health provider, and enroll their child in SAT tutoring all in the same day. All of our programs are free. In addition to hosting cultural events celebrating Arab heritage throughout the year, we offer the following services:

- Immigration services by Arabic, Spanish, French, and English speaking DOJ-accredited representatives and attorneys.
- Intensive ESOL courses at six different levels.
- One-on-one citizenship test preparation for those taking the naturalization exam.

- Legal consultations with Arabic speaking attorneys in family, criminal, and housing law.
- Comprehensive casework services including assistance with public benefits applications.
- Supportive counseling and referrals for victims of domestic violence.
- Mentorship programs for youth.
- Voter registration and ongoing civic engagement efforts.
- Advocacy on behalf of our community's most pressing issues: immigration, police accountability, and racial justice.
- Leadership development and political education for adult women.
- On-site healthcare enrollment.
- Screenings for mental health and onsite mental health services.
- Supportive programming for young women.

6. Due to increasing demand for immigration assistance and other services, we have grown in the past three years from a staff of 8 to a staff of 27. We gained full-time attorneys and received recognition and accreditation from the Department of Justice, becoming the largest legal service organization in Southwest Brooklyn.

7. Since 2001, AAANY has supported New York City's Arab and Muslim communities to access critical services. Over the past year, AAANY's Arab and Muslim clients have needed to adapt to respond to increasingly mainstream Islamophobia. Hate crimes against Muslims in New York City—particularly against women—have become significantly more common. In Bay Ridge alone, there have been dozens of reported attacks against Muslim women, and hundreds more throughout the city. As a result, our clients' anxieties, stress levels, depression, and reported mental health issues have skyrocketed. For recent immigrants from Syria and Yemen, these issues are compounded by the trauma of coming from war-torn

countries, dealing with migration, and losing family members in war. This discrimination and hostility has hit new heights in 2017 with the federal government's attempt to ban Muslims and the continued implication that Muslims are a national problem and an existential threat. The results of this rhetoric have been tangible and significant in Bay Ridge, where clients and community members have been attacked or harassed on the streets by their neighbors.

8. In 2016, thirty-two percent of our organizational budget was allocated to the provision of immigration services. Six of our fourteen full-time employees in 2016 focused solely on immigration legal services. In 2018, we anticipate over \$150,000 of in-kind support for our immigration services and have allocated at least \$360,000 to our immigration program. We partner with legal services organizations and law firms in the New York area to place cases with pro bono attorneys and provide a variety of direct services. In 2018, we will host two DOJ Accredited navigators through the Immigrant Justice Corps, as well as employ three DOJ Accredited navigators ourselves.

9. Our services include:

- Case management and application assistance for N-400 applications, Deferred Action for Childhood Arrivals (DACA), adjustment of status, Family Petitions (I-130), Permanent Resident Card renewals and replacements, Certificate of Citizenship, Removal of Conditions, Freedom of Information Act, Arrival-Departure Documents, and Temporary Protected Status (TPS).
- Legal assistance on applications for asylum, relief under the Violence Against Women Act, Special Immigrant Juvenile Status, and U and T Visas
- One-on-one tutoring and classroom instruction on civics and preparation for the Naturalization exam

- Outreach and education on immigration legislation, especially when it affects the Arab community.

10. Our navigators, who are not themselves attorneys, provide several services. First, they conduct an intake interview for our clients and assess their immigration (and other) legal needs. Second, they help directly with the filing of I-130 petitions for alien relatives, N-400 applications, Deferred Action for Childhood Arrivals (DACA), Adjustment of Status, Permanent Resident Card renewals and replacements, Certificate of Citizenship, Removal of Conditions, Freedom of Information Act, Arrival-Departure Documents, and Temporary Protected Status (TPS) immigration applications. Third, they work with in-house counsel provided by the New York Legal Assistance Group (NYLAG) in removal proceedings, Asylum, Special Immigrant Juvenile Status (“SJIS”), U and T visas and Violence Against Women Act (“VAWA”) cases, or refer such clients to outside counsel at Catholic Migration Services, the Urban Justice Center and the Legal Aid Society.

11. From January 2016 to July 2017, we filed approximately 1763 immigrant applications. This included approximately 326 applications from clients whose country of origin is one of the countries singled out by the Proclamation (“EO-3”). Therefore, approximately 19% of our clients are originally from one of the affected countries. In 2018, we anticipate these numbers will continue to grow, as our organization has acquired an additional in-kind Navigator from the Immigrant Justice Corps and is planning to hire a part-time immigration attorney specifically to support our community’s demand for assistance with filing petition for Petition for Alien Relative.

12. The first two versions of the ban caused immediate harm to our clients. During the first ban, many had friends and relatives who were unable to travel to the United States because of the ban, and the second ban threatened our clients' visa petitions.

13. The bans were also painful to our clients—and our staff—because of the message that they conveyed. Our clients, our staff, and I personally understood them as official attempts to impugn the religion of the vast majority of our clients, Islam. That message also seemed to have a frightening effect: an increase in hate crimes against Muslims affected many of our clients.

14. The ban also immediately harmed our organization. The cases in which we had spent significant resources helping clients petition for visas for family members were immediately put on hold. The duties of our immigration navigators were put at risk, as was one of the central missions of our organization—to help Arab-American immigrants navigate the immigration system.

15. The new September 24 proclamation has exactly the same effect. Our staff and clients understand its ban as a clear statement that our government regards us as a problem, and wishes to keep our families and countrymen out of the United States. The harmful message of the proclamation is exactly the same one as the message of the first Executive Order—that Muslims are not welcome here.

16. The proclamation will cause serious financial harm to our organization. If AAANY is no longer able to provide assistance with immigration petitions for our clients seeking to be reunited with loved ones from the banned countries, it will no longer be able to obtain grant support for those activities, and our immigration navigators' positions will be at risk. Our efforts to secure a part-time attorney specifically to work on family-based petitions will be

lost and our ability to provide one of the services most in demand from our community will be permanently put on hold.

17. Perhaps even more seriously, the proclamation will undermine AAANY's mission of helping its clients reunite with their families and build lives in the United States.

18. The proclamation also harms many of our clients directly by preventing them from reuniting with their families. We help many individuals navigate the visa petition process, and those clients' cases—along with the life plans being made around them—are now about to be put on hold indefinitely. For example:<sup>1</sup>

19. Mary, a Muslim U.S. citizen who immigrated from Yemen, resides in New York. Her husband, a national of Yemen, is currently living and working in Saudi Arabia. She recently gave birth to his child, and she does not have the means to visit him in Saudi Arabia. She submitted an I-130 petition on her husband's behalf to allow him to join her. Since he is the spouse of the U.S. citizen, an immigrant visa would be immediately available once his application is approved. Nonetheless, the petition has been pending with USCIS for 8 months. After the announcement of the proclamation, Mary sought advice from AAANY and asked whether her husband could at least seek a visitor visa to see his baby for the first time. We explained that the ban will likely prevent him from obtaining either an immigrant or a visitor visa.

20. Samira, a Muslim U.S. citizen who immigrated from Yemen, lives in New York City. She filed an I-130 on behalf of her parents, who remain in Yemen. Since she is over 21, an immigrant visa would be immediately available for her parents once their applications are approved. They are currently waiting for their interview to be scheduled; to attend, they will

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<sup>1</sup> Each of these examples employs a pseudonym to protect the confidentiality of our clients' information.

need to undertake a dangerous journey by boat to Djibouti. Samira's father's health is precarious. The new ban will likely prevent her parents from obtaining their immigrant visas, thereby keeping the family separating and preventing Samira's father from obtaining needed medical care.

21. Nadia, a Muslim U.S. citizen who immigrated from Yemen, lives in New York City. She filed an I-130 on behalf of her mother, who remains in Yemen. Her father has passed away, leaving her mother alone and without support in war-torn Yemen. Since Nadia is over 21, an immigrant visa would be immediately available for her mother once her application is approved. The I-130 petition remains pending, and the ban will likely prevent her mother from obtaining a visa, thereby preventing Nadia from providing a home and support for her mother, who is aging alone and without any assistance in a deteriorating war zone in Yemen.

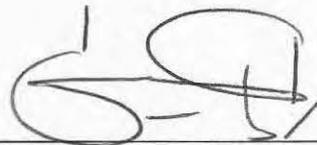
22. Nadeen, a U.S. citizen originally from Syria, is petitioning for visas for her parents, who live in Syria. She filed an I-130 on their behalf; it is dangerous for them remain in Syria, and their daughter and grandchildren are here in the United States. Since she is over 21, an immigrant visa would be immediately available for her parents once their applications were approved. The new ban will prevent them from obtaining their immigrant visas.

23. Mohammed, a Muslim U.S. citizen originally from Yemen, is petitioning for his two sons, aged 23 and 16. The I-130 petition remains pending. Mohammed's wife died when his younger son was only two years old, and both father and son have found life apart very difficult. Since the younger son is a minor child of a U.S. citizen, a visa would be immediately available for him if his application is approved, absent the ban. The ban will likely prevent Mohammad from being reunited with his son.

24. These are a few examples of how AAANY's clients will be harmed by the new ban. AAANY currently has more than twenty clients with pending visa petitions on behalf of loved ones from one of the countries banned by EO-3. It has many more who will be affected in other ways—for example, as their friends and more distant relatives become unable to come to this country.

25. Many of our clients are first generation immigrants and are unable to navigate the legal system on their own due to language and culture barriers: the U.S. legal system can be intimidating and confusing even to practicing attorneys . Moreover, in many of their countries of origin, dissent is not permitted and filing suit against their government under any circumstances is prohibited and cause for retaliation. Our clients are therefore usually fearful about filing suit individually.

26. I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at BROOKLYN, New York City, on October 5, 2017.



Rama Issa-Ibrahim

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**SECOND DECLARATION OF JOHN DOE  
# 1 IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

**SECOND DECLARATION OF JOHN DOE #1**

I, John Doe #1, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am still a Lawful Permanent Resident of Iranian origin, and I continue to live in Montgomery County, Maryland.
2. Since my declaration dated February 6, 2017, my wife was interviewed for processing at the U.S. Embassy in Armenia, and she received her visa to enter the United States in June, 2017. On July 3, 2017, my wife arrived at Dulles International Airport, and has lived with me in our home in Montgomery County, Maryland. On September 15, 2017, my wife's green card arrived in the mail.
3. The proclamation that Donald Trump issued on September 24, 2017 added a couple countries to the original list of banned countries, but the intent of the order is the same: to ban people from Muslim-majority countries. I do not feel that the addition of countries like

Venezuela or North Korea makes any difference: the Order still demonizes me for coming from a Muslim country, even though we are non-practicing Muslims.

4. The President's orders are meant to make international travel difficult, if not impossible, for people like my wife, and the reality of the ban affects individual people, not the governments whose policies the U.S. may disagree with. The Order makes me feel unwelcome and sends a clear message that the U.S. government does not want me here.

5. I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Montgomery County, Maryland, on October 5, 2017.

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John Doe #1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**DECLARATION OF JOHN DOE # 5 IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

**DECLARATION OF JOHN DOE #5**

I, John Doe #5, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a U.S. citizen of Yemeni origin, and I live in New York City. I have three brothers and one sister who are U.S. citizens, as was my father, who died recently. My wife and four children are all U.S. citizens as well.

2. I, along with my family, am Muslim.

3. I immigrated to the United States in 1994. Like many Yemeni-Americans, I initially went into the grocery business, but I later decided to move into the wireless industry. I now own a grocery store and several wireless stores, and I have investments in other stores as well.

4. Although my brothers and I now live in the United States, my mother and maternal grandmother are in Jordan. When the war broke out in Yemen in 2015, my mother and grandmother fled from Yemen to Jordan. They now live together in Irbid, Jordan, where they

have no friends or family, except for my sister, who has moved there temporarily to take care of them. My mother and my sister take care of my grandmother, who has Alzheimer's Disease. I'm worried for both of them, and I'm hoping they will be able to come to the United States as soon as possible, where they will be safe, and get good medical care, and we can be reunited. My mother has never met my daughter.

5. Soon after my mother and grandmother fled to Jordan, I filed an I-130 petition on my mother's behalf. My uncle, who is a U.S. citizen, did the same for my grandmother. My I-130 was approved, as was my uncle's and my mother and grandmother are waiting for interviews at the U.S. embassy in Amman, Jordan. I don't know of any reason why they would not be eligible for a visa.

6. When President Trump was still a candidate and said he wanted to impose a Muslim Ban, I thought that that could never happen in America. When it did happen, in January of this year, I felt like I was in a different country—in fact, this reminded me of what we left behind in Yemen. I came to the United States to search for freedom, justice and opportunity, and the ban goes against all of that.

7. Since the ban, I have heard anti-Islamic comments more frequently. Almost every week, I or someone I know is exposed to anti-Islamic harassment. For example, in the days after the ban, a man came into my grocery store and said that I make this country worse, and that he was happy with the ban.

8. This latest ban is very disappointing because after the protests and litigation, we thought it was unthinkable that there would still be a Muslim ban. The new ban normalizes Islamophobia. Before the bans, I felt that the government was always on our side, but now I feel that the government is legitimizing the bad things that people say about Muslims (and

the harm they sometimes do to them) and is even encouraging them. This latest ban is worse than the first one because it has no end date, so I don't know when the government will stop doing this to me and my family.

9. I am afraid to reveal my name in this lawsuit. I am aware that Muslims in the United States are at risk of harassment for their religious and political beliefs, and I have experienced that harassment firsthand. I am afraid that if I reveal my name in this lawsuit, I could become a target.

10. I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Bronx, New York, on October 04, 2017.

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John Doe #5

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**DECLARATION OF REBECCA HELLER,  
DIRECTOR OF IRAP, IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

**THIRD DECLARATION OF REBECCA HELLER**

I, Rebecca Heller, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Director and co-Founder of the International Refugee Assistance Project (“IRAP”), a project of the Urban Justice Center, Inc., a plaintiff in this case.
2. I previously submitted two declarations in this case, Dkt. Nos. 64-1 & 91-1, which I incorporate herein by reference.
3. The new Proclamation (“EO-3”) will directly harm IRAP and its clients.
4. During the first Executive Order (“EO-1”), IRAP became the focal point organization for volunteer attorneys across the country who went to airports to attempt to secure the release of individuals detained pursuant to EO-1.
5. IRAP continues to serve as a resource for attorneys and affected individuals to obtain legal information or assistance about all three executive orders (“EOs”), through outreach to legal aid organizations, dissemination of information to our volunteer attorney and student network, and through an email hotline created to respond to inquiries from attorneys and affected individuals in the United States and abroad.

6. Following EO-3, and in response to demand from our staff, clients, and partners, IRAP developed new informational material for attorneys, clients and affected family members in the United States, and clients and other individuals overseas.

7. We translated the new material into three languages and disseminated it publicly as well.

8. We also distributed these new materials, along with additional information about the impact of EO-3 on IRAP clients in particular, to over 700 IRAP-affiliated attorneys and 29 IRAP law school chapters with over 900 active student volunteers because of the deleterious effects EO-3 may have on their work with their clients.

9. In addition to time spent creating, translating, and distributing material to explicate the extensive harms of EO-3 to affected communities and individuals, IRAP has devoted staff resources to directly advise or assist those potentially adversely impacted by it.

10. IRAP staff and IRAP-affiliated attorneys and law students will also have to counsel current clients about the impact of EO-3 and its indefinite entry ban on the prospects of reuniting with certain family members in the future.

11. For example, 60 Syrian, Somali, Iranian, and Yemeni individuals who are current IRAP clients or have contacted IRAP for assistance since EO-1 was issued will require counseling about the ways in which future family-based immigration options for certain family members have been affected or limited due to the indefinite ban in EO-3.

12. None of the aforementioned actions are in the normal scope of IRAP's work, and have diverted significant resources away from IRAP's core mission, which is to help individuals fleeing violence and persecution find avenues to safety.

13. I anticipate that this work will continue indefinitely for IRAP under EO-3, since its bans are indefinite.

14. All three EOs have caused and continue to cause fear and distress for our clients and their family members in the U.S. and abroad.

15. In addition to the uncertainty and additional hurdles to finding safety and reuniting with family members that the EOs have injected into their lives, our clients feel that the EOs, including EO-3, condemn and stigmatize them as Muslims because of their faith.

16. One client, for example, was devastated by the issuance of EO-3, which indefinitely bans her family members (for whom she has an approved I-130 petition) who are living in dangerous conditions abroad. Since EO-1 was issued, this client (who lives in the United States) has been fearful because she has been bullied for wearing hijab. She has begun to doubt whether she or her children will ever receive equal treatment and opportunities in this country. She worries whether, as Muslims, they will ever truly be safe in the United States. She is considering moving away from the United States because the EOs make her feel unwelcome in this country because of her faith, and she does not want her children to have to live in an environment where their religion makes them targets for discrimination.

17. Our staff and operations have been directly adversely affected by the first two EOs, and these injuries will continue under EO-3.

18. Each year, IRAP brings overseas staff to its headquarters in New York for a week-long retreat to engage in staff trainings, organizational planning for the coming year, and team-building activities. This retreat is critical to our mission, which depends on open feedback between our field-staff and our U.S.-based staff to understand the conditions facing displaced

persons on the ground in the Middle East, and how we can best advocate for them in the U.S. It is also crucial for the training of overseas staff to carry out our mission on the ground.

19. IRAP overseas staff who are nationals of the affected country, including a Syrian national currently employed in a position critical to our operations, are barred entry under EO-3.

20. The absence of one or more important staff members from these annual training, strategic planning, and team-building efforts will have a significant negative impact on IRAP's operations and mission.

21. IRAP has existing and prospective clients, both in the United States and abroad, who will be adversely affected by EO-3.

22. IRAP has several current clients who are in the United States and have pending or approved I-130 petitions to be reunited with loved ones who are nationals of one of the countries banned by EO-3.

23. One such case involves an IRAP client of Syrian descent who is now a lawful permanent resident of the United States. IRAP is assisting him in his efforts to be reunited with his wife, who is of Syrian nationality. His wife was seriously injured in an explosion and has serious medical needs. Her husband has filed an I-130 family-based immigration petition with her as the beneficiary. That petition has been granted and the couple is currently waiting for the priority date to become current to apply for the visa. But since she is a Syrian national, she is indefinitely barred entry by EO-3.

24. This client, who is Muslim, has told us that EO-3 has devastated him and has made him feel both helpless and hopeless. As he has said, he has done everything that he was supposed to do—he followed all the procedures and filed all the right paperwork—and yet the government is still saying he cannot be reunited with his wife, and, to him, for no reason but the

desire to keep Muslims out of the U.S. He has not yet had the heart to tell his wife about EO-3, because he thinks it will make her lose all hope. The EOs, including EO-3, make him feel unwelcome here because of his faith. He also feels that the government of the United States believes that Muslims are less human than people of other religions, and that he is pre-judged to be a bad person because he is Muslim. As he told us: “The legal saying is ‘innocent until proven guilty.’ But me, I’m not considered innocent anymore.”

25. EO-3 provides that case-by-case waivers may be granted to those who demonstrate that denying entry would cause them “undue hardship,” would not “pose a threat to the national security or public safety of the United States,” and whose entry would be in the “national interest.” It further indicates that the Secretary of State and Secretary of Homeland Security shall adopt further guidance regarding waivers, and that waivers cannot be granted categorically.

26. Because there are no categorical waivers, and no clear guidance, there is tremendous uncertainty that impacts IRAP clients here and abroad.

27. IRAP is currently devoting extensive resources to a project that involves outreach, education, and assistance to IRAP’s clients and impacted communities to provide assistance with obtaining waivers to help impacted family members from affected countries reunite with loved ones. These efforts are diverting resources away from the work our organization would otherwise be doing helping some of the world’s most vulnerable people obtain legal entry to safe countries.



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Rebecca Heller  
Executed this 5th day of October, 2017

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**SECOND DECLARATION OF JANE DOE  
#2 IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

**SECOND DECLARATION OF JANE DOE #2**

I, Jane Doe #2, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am still a United States Citizen of Syrian origin, and I continue to live in Mecklenburg County, North Carolina.
2. I am still enrolled in college and studying to become a healthcare technician. I am a practicing Muslim and I wear a hijab.
3. Since my declaration dated March 10, 2017, my I-130 visa petition to bring my sister and her family to the United States has been approved. She is now able to access the U.S. Refugee Admission Program (“USRAP”) through the Priority-2 Direct Access Program for Iraqi and Syrian Beneficiaries of Form I-130 Petition for Alien Relatives. Her admission to the United States, however, is now barred by the President’s ban announced in September.
4. I have not had the courage to tell her about the President’s newly announced ban. Because the new proclamation will ban my sister and her family indefinitely from entering the

United States to join me and our parents, she faces a terrible set of options. My sister's family is still living in a refugee hotel on the Saudi Arabia-Yemen border and living in terrible, life-threatening conditions. The Saudi government has announced that before the end of they year they will begin requiring all refugees to pay monthly fees for each person in their family. My sister cannot afford the fees, which are so high that they would consume most of the monthly income any Syrian refugee is able to earn in Saudi Arabia.

5. In addition, just before Ramadan this year, the Saudi government issued eviction notices to the refugees living in my sister's building. While the evictions have not happened yet, they have happened in many other buildings in the area. The Saudi government has given evicted refugees the option to go back to Syria or Yemen. Because those options are so bad, some refugees go on their own to Egypt and cross over illegally. However, crossing illegally into Egypt requires a two-day trek in the desert. My brother barely survived the trip himself and has warned my sister against taking the route, especially with children.

6. If she is evicted from her building before she can come to the United States, my sister's plan is to go to Mecca and be homeless with her children. As a holy city where many people travel on pilgrimages, there are places where people, even those without money, can sit and access showers. She says that it is the only place where she would feel safe.

7. Because of all of this, I felt crazy after the President's latest ban was announced in late-September, which barred my sister and her family from entering. I felt like my mind stopped working; I was devastated. I have not even been able to talk about it with my parents or my sister yet. We have been living on hope and I do not want to talk to them about it until I can present another option that offers them some hope.

8. The anti-Muslim comments that President Trump has made, first as a candidate and then as President, have also negatively affected me and my family. When the President says things about how Muslims should be kicked out of the country or that we are barbarians, I feel unsafe. I understand the travel bans he has issued, from the first one in January to the latest in September, as fulfilling the promises he made as a candidate to condemn my religion.

9. After President Trump's comments, I considered whether I should stop wearing my hijab. In May, a woman I had never met before approached me and asked me why I was wearing a hijab. She asked if I wanted everyone to know that I was Muslim and told me that I needed to remove my hijab out of respect for this country. When I told her no one was making me wear the hijab and it was my freedom to wear it, she said I was stubborn and it was going to bring me more problems. Incidents like this make me feel fearful. At school, I avoid getting into conversations about politics or religion to avoid having problems with my peers.

10. Since the first ban was issued, I continually doubt that my family and I will have equal opportunities in this country because of our religion. The bans remind me of things the Syrian government would do when they wanted to strip away your rights. When I became a U.S. citizen, I was told that no one was above the Constitution, no matter who they were, even the President. But President Trump is violating the Constitution. The most recent ban made me really depressed because I feel like these kinds of actions – where the President is above the law – are what we fled from in Syria. My husband and I question whether we should remain in the United States or pursue other options because I do not want my children to be discriminated against or think that they are wrong because of the way that everyone looks at them.

11. I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Mecklenburg County, North Carolina, on October \_\_\_\_, 2017.



Jane Doe #2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**SECOND DECLARATION OF JOHN DOE  
# 3 IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

**SECOND DECLARATION OF JOHN DOE #3**

I, John Doe #3, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am still a Lawful Permanent Resident of Iranian origin, and I continue to live in Linthicum, Maryland, and I am still waiting to become a naturalized U.S. citizen.
2. Since my last declaration, my wife received her visa and was able to travel to the U.S. in May, 2017 and join me here. We have since remained here, since we are scared to leave the country out of the possibility of not being let back in.
3. The proclamation that Donald Trump issued on September 24, 2017 continues to make me feel like the U.S. government does not welcome Muslims in this country (or those he thinks are Muslim) under the assumption that everyone who comes from Iran is an Islamic terrorist. Even though new countries were added to the list, I do not feel any less vilified.
4. This proclamation and the other Orders that ban travel from certain Muslim-majority countries contribute to my fear of attacks like the shooting in Kansas, where

two Indian immigrants were shot and one killed by a white man motivated by hate, who mistakenly thought the two individuals were Iranian.

5. Although my wife was able to receive her visa and travel to the U.S. to join me here, the new ban could prevent other family members, like my parents, from being able to travel here. We want to start a family soon, and this Order will prevent my parents from being able to visit because they are citizens of Iran. They will not be able to come to the U.S. to meet their grandchildren, nor will they see our new life here in the U.S.

6. I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Linthicum, Maryland, on October 4, 2017.



John Doe #3

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**DECLARATION OF JOHN DOE #4 IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

**DECLARATION OF JOHN DOE #4**

I, John Doe #4, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a U.S. citizen of Iranian origin, and I live in Georgia.
2. I moved to the United States in 1977, and I have lived here ever since. I became a U.S. citizen in 1999. I have obtained two doctorates, one in Basic Medical Sciences and one in a clinical field. I am a tenured professor at a university; I have published over 80 scientific articles, which collectively have been cited about 1,300 times. I am proud to be an American citizen, and I regularly vote.
3. In early 2015, I met my wife, who lives in Iran. We got married in December 2015. Both she and I are nonpracticing Muslims.
4. In March 2016, I filed an I-130 petition for her to join me in the United States. That petition was approved in July 2016. In May 2017, my wife had her visa interview. At the interview, the officer told her that everything was fine, that she should check a website in

about a month, and that once her case number appeared there, she should send her passport to the consular office for the issuance of her visa.

5. Over 4 months after her interview date, her case number still has not appeared on the website and thus her visa has not been issued. I fear that her application is being delayed because the government is delaying the applications of Iranians and Muslims. Given that she will soon be subject to the new ban, I am at a loss for what to do.

6. Being apart from my wife is excruciatingly difficult for me and is adversely affecting my professional life, which requires the ability to focus and concentrate. Due to time differences, we can only communicate 2-3 hours daily on WhatsApp, and that is no substitute for being together. When she arrives here, we plan to start a family. I cannot help but feel that my life is incomplete without her. For example, I sometimes skip professional and social events because people ask where my wife is.

7. I cannot imagine leaving the United States, where I have built my whole life, but I also cannot imagine remaining separate from my wife. I do not understand why the government would ask me to make this choice. How could I possibly choose between my country and my wife?

8. My wife is suffering from the separation as well, and her suffering causes me pain. She is a clinical psychologist, but she quit her job after I petitioned for her to join me in the United States: she is concentrating on taking English courses so that she is ready to assimilate in the community and the culture when she joins me here. Her friends often ask her why she is not living with her husband.

9. When the first ban was announced in January, I was not only immediately afraid that my wife's visa application would be at risk, but I also felt insulted by the ban, which I

understood as an attempt to ban Muslims. It felt like collective punishment, and it was made worse by the fact that I thought that I had escaped government sponsorship of religion in staying outside Iran. Until the January ban, I had felt completely assimilated here, but since then I've noticed that I get more suspicious looks from people, and I feel that I am being labeled as a Muslim more often.

10. The latest version of the ban has made me feel this more strongly. I can see through the simple tactic of putting North Korea and a few Venezuelan officials on the list: this is still about keeping people out on the basis of their religion. The ban still affects the same people, and I continue to feel demeaned by the ban myself.

11. My wife and I are afraid to reveal our names in this lawsuit. I am concerned on my wife's behalf that she could be targeted by the government of Iran based on information that I am providing in this declaration: in Iran, it is not safe to admit to being a nonpracticing Muslim.

12. I am also aware that Muslims in the United States are at risk of harassment for their religious and political beliefs, and I am afraid that if I reveal my name in this lawsuit, I could become a target.

13. I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at \_\_\_\_\_, Georgia, on October 4, 2017.

  
\_\_\_\_\_  
John Doe #4

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**DECLARATION OF AFSANEH  
KHAZAELI IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

**DECLARATION OF AFSANEH KHAZAELI**

I, Afsaneh Khazaeli, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a naturalized U.S. citizen. I was born in Iran and currently reside in Edwardsville, Illinois.

2. I am the sole proprietor of Afsaneh's Alteration, a sewing store in Edwardsville that I opened in 1987.

3. I came to the United States in 1977 with my husband, Sadegh Khazaeli. Sadegh entered the United States as an F-1 student to obtain his PhD in Chemistry at Michigan State University. My son, Javad Mohammed Khazaeli, and I entered the United States as F-2 derivatives. In 1981, I gave birth to my son, Nima Hussein Khazaeli. He is a natural born U.S. citizen.

4. Upon receiving his Doctorate, Sadegh began to work as a professor at Southern Illinois University at Edwardsville, in 1982. In 1985, Sadegh, Javad, and I were granted

permanent residence. In 1988, I gave birth to my daughter, Samira Zohreh Khazaeli. She is a natural born U.S. citizen. In 1997, I was granted my citizenship.

5. In 2008, my sister Arezoo Karbassi visited me in the United States. We traveled across America and had a great time. She left before her visa expired.

6. In June 2014, my husband was diagnosed liposarcoma, a rare cancer of the connective tissue. He immediately had emergency surgery and began aggressive chemotherapy with the hope that the surgery and chemo would stop the cancer before it spread to the rest of his body.

7. On April 23, 2016, my sister Arezoo applied for another visitor visa to attend my daughter's wedding. She was interviewed on May 10, 2016 and was told that she had been approved pending additional background checks.

8. In December of 2016, we received the devastating news that my husband's cancer had returned and that his prognosis was terminal. I was holding out hope that my sister would be able to come and help me for even a month or two as the stress of taking care of my husband has been very difficult.

9. In late January of 2017, we received the exciting news that Arezoo's visa had been approved; she just needed to send her passport to Ankara to have the visa placed into the passport. She sent in her visa, and it was received by the embassy.

10. Unfortunately, one or two days later, the President issued Executive Order 13769, revoking all visas for Iranian nationals. Although revoked visas were later restored pursuant to the court orders enjoining that Order, visas that had not been printed in passports were not automatically restored. My sister was only offered one possible day to return to the

Embassy in Ankara to have a follow-up appointment, and she was unable to make that day. The Embassy refused to allow her to come on any other day.

11. Since the first ban went into effect, the availability of visa interview slots has virtually disappeared, and these appointments are now almost impossible to get. My sister is actively working to secure a visa appointment, both by going to the website on her own and by hiring travel agent to go to embassies in different countries on her behalf, to apply for a new visa, but because of EO-3, she will likely be unable to obtain that visa.

12. My sister will likely never see my husband again, and I will be deprived of her assistance as I deal with this terrible illness.

13. This has made me feel like a second-class citizen. My family has always done everything it can to support the United States.

14. My son Javad served for almost a decade as a federal counter-terrorism prosecutor in both the Bush and Obama administrations, serving with distinction first with the U.S. Department of Justice, Immigration and Naturalization Service, National Security Unit (Joint Terrorism Task Force) and then with the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, National Security Law Division.

15. My daughter currently serves as a state prosecutor litigating felony cases with child victims, including: physical abuse, sexual abuse, child pornography, and child deaths.

16. In January 2017, my husband was awarded the Martin Luther King Jr. Faculty Humanitarian award by Southern Illinois University at Edwardsville.

17. These acts of service have not protected us from this discriminatory Proclamation or its predecessors. My family and I are nonpracticing Muslims, and people

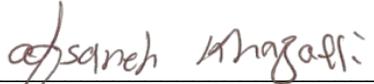
identify our family as Muslim because of where we came from and our names, especially because I have son with the middle name Mohammed.

18. The Executive Order has taken the discrimination that my family has previously endured because people have seen us as Muslims and made it into law.

19. For the first time in the more than 30 years that I have had my business, I was accosted by a customer about my religion. That incident occurred after the first Muslim ban.

20. These Orders have deprived me of the ability to freely associate with my family and have made my family the target of abuse and discrimination.

21. I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Edwardsville, Illinois on October 5, 2017.

  
Afsaneh Khazaeli

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MARYLAND**  
**SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, ET AL.,

PLAINTIFFS,

V.

DONALD TRUMP, ET AL.,

DEFENDANTS.

CIVIL ACTION NO.: 8:17-CV-00361-TDC

**DECLARATION OF MOHAMAD  
MASHTA**

**DECLARATION OF MOHAMAD MASHTA**

I, Mohamad Mashta, upon my personal knowledge, hereby submit this declaration pursuant 28 U.S.C. § 1746 and declare as follows:

1. I am a U.S. lawful permanent resident and a Syrian citizen.
2. I submitted a prior declaration dated September 22, 2017, in support of a motion to add plaintiffs filed in this case in the U.S. Supreme Court. That declaration, attached as Exhibit A, is incorporated herein by reference.
3. I see the Proclamation the President signed on September 24 as another attempt to follow through on the promises he made to ban Muslims. The changes between the three versions of the ban seem like they are intended to get his ban through the courts, but the anti-Muslim message remains the same. I no longer feel at home in this country.
4. I will always remember the date the Proclamation was signed, September 24, because it was so painful. Now my wife will be banned without an end date. I feel that the ban is making me choose between this country, which has been my home, and being with my wife. I

have again been unable to sleep because of the new ban, and have again had to take vacation time. I constantly worry about what the situation is and what will happen. I fear my wife may never get her visa.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Celina, OH on October 4, 2017

  
MHAMMAD MASHTA  
Mohamad Mashta

**EXHIBIT A**

DECLARATION OF MOHAMAD MASHTA

I, Mohamad Mashta, upon my personal knowledge, hereby submit this declaration pursuant 28 U.S.C. § 1746 and declare as follows:

1. I am a U.S. lawful permanent resident and a Syrian citizen.
2. I came to the United States in 2012 on a student visa. I applied for and was granted asylum and later became a lawful permanent resident. I believe in the “American Dream.”
3. I have a Master’s degree in electrical engineering and work as an engineer.
4. My wife is also a Syrian citizen. She left Syria in 2012 because the civil war made the country unsafe. She has lived in Sudan since then with her family. We married in 2015.
5. I applied for an immigrant visa for my wife in 2015, shortly after we married. My petition was granted about four months later. I submitted her visa application in June 2016. We waited a long time, but she was finally scheduled for an interview in Sudan in July 2017. At the interview, the officer asked for some additional information, which she provided. Her case has been in administrative processing since then. According to the monthly visa bulletin from the Department of State, a visa is currently available for her. I do not believe there is any legitimate reason for my wife’s application to be delayed or denied. I fear that she is being unfairly processed because she is Muslim.
6. Being separated from my wife is depressing and painful. We have now been living apart for two years, and every day we spend apart hurts. I have struggled during this time, and sometimes lose hope that we will ever be able to be together. When I can, I take vacations to visit her in Sudan. But that is no replacement for really being together.

7. I am a practicing Muslim, as is my wife.

8. I am familiar with the President's promises for a "Muslim Ban" and with the two executive orders he signed banning people from Syria and other countries. I see those orders as an attempt to follow through on the President's promise of a ban on Muslims.

9. When the first ban was announced in January, I was devastated. I could not sleep and could not work, and had to take a week of vacation time. I still have trouble sleeping because of the ban, which has left me feeling scared, depressed, and anxious about what will happen next. To me, the President's ban says that as Muslims we are not welcome in this country. It tells me the government does not want us here. It feels like an accusation for no reason that my wife and I are terrorists, and that we as Muslims cannot get along with other people in America. Those accusations are totally wrong and hurtful.

10. I have felt my interactions with Americans change since the first ban. The message of the ban, that Muslims like me are bad people unless proven otherwise, affects conversations I have all the time. I feel a lot of pressure to defend myself and other Muslims, to prove to people that I am not bad. I never felt that way before the first ban.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Celina, OH on September 22, 2017

  
MUHAMMAD MASHTA  
Mohamad Mashta

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**DECLARATION OF MOHAMMED  
METEAB IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

**DECLARATION OF MOHAMMED METEAB**

I, Mohammed Meteab, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a lawful permanent resident of Iraqi origin, and I live in Springfield, Massachusetts. I am a plaintiff in *International Refugee Assistance Project, et al. v. Donald Trump, et al.*
2. I am one of five brothers. We lived together with our families in Iraq. During and after the 2003 invasion of Iraq, my brothers and I all cooperated with the U.S. military, helping to establish the transitional government in the wake of the conflict in Najaf, Iraq. Because of our cooperation with the U.S. government, we received threats and were shot at by armed militia groups in Iraq.
3. In December 2013, one of my brothers fled to Jordan with all of his children and two of his children. The rest of my brothers and I also fled to Jordan with our wives and the rest of the children in early 2014. After being approved as a refugee, I came to the United States with my wife and children in 2015. Two of my brothers, Ahmed and Ali, have also been approved to

come to the United States as refugees but are still waiting in Jordan. Until the January ban, we had all expected that they would be here in early 2017.

4. In Iraq, my brothers and I lived together with our families, and we helped each other as one family. This separation is painful for all of us.

5. Although my brothers and I helped the United States government in Iraq, the January Executive Order stopped them from coming to here as refugees. My brothers and I are hurt that after cooperating with the U.S. military in Iraq and facing threats for our help, my brothers are being treated as if they are a threat to the United States.

6. When the first ban was announced in January, I was not only afraid that my brothers and their families would be delayed in coming to the United States, but I also felt personally affected by the ban, which I (and everyone else) understood as an attempt to ban Muslims. Since the first ban went into effect, my family has felt afraid. My wife, who wears a hijab, does not like to go out alone. My niece has been harassed on the street and in school, and even the teachers have said they were concerned for how my children may be treated. Until the January ban, I felt worried about my family stuck in Jordan but we felt safe and lucky to be here in the United States. When I first arrived in the US I didn't feel discriminated against at all. I loved how people were so friendly and welcoming here. But now I've noticed that my family gets more suspicious looks from people since the first ban went into place. This ban has made discrimination into official policy, and I think encourages people to act in this harmful way towards Muslims.

7. Because of the harassment she has faced wearing a hijab, my wife goes out less and less. Since our kids have returned to school this fall, my wife has faced more harassment when she takes the kids to school and picks them up in the afternoon. When she walks down the street, some young men stand on the sidewalk, yell in an intimidating way, "Allah Hu Akbar," act out

detonating a bomb, and then laugh at her. This has happened multiple times and makes my wife feel scared. As a result, I am thinking about moving our family to another area but I'm not sure if we won't face the same problem in another area. And we shouldn't have to move to another area to avoid this harassment.

8. The latest version of the ban has made me feel this more strongly. Even though the new ban adds people from other religions and who are from North Korea plus some Venezuelans on the list, this ban is still targeted at Muslims. This ban is a tool for discrimination, and the new and old bans impact how I feel as a Muslim living in the United States. Everyone can see that the ban is still targeting Muslims, and I continue to feel personally targeted in this way.

9. I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Springfield, Massachusetts on October 5, 2017.

A handwritten signature in black ink, appearing to read 'Mohammed Meteab', written over a horizontal line.

Mohammed Meteab

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

DECLARATION OF SHAPOUR SHIRANI  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION

DECLARATION OF SHAPOUR SHIRANI

I, Shapour Shirani, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a U.S. citizen of Irani origin, and I live in Boyds, Maryland. I moved to the United States in 1993, and lived here until 2005. During that time, I worked at different jobs including in the trucking business and for several years operated my own business. In 2003, I became a United States citizen. On one of my trips back to Iran, I met my current wife and we were married in Iran in 2004. Because of my medical condition, I decided to remain in Iran. My wife is a national of Iran, and still lives there.

2. I have had a history of Vestibular Schwannoma, which is a tumor developed from the balance and hearing nerves supplying the inner ear. I had the tumor removed many years ago, but I have had multiple reconstruction surgeries and many complications associated with the procedures. As my medical condition deteriorated over the years, my wife and I decided that it would be best for me to return to the U.S. and petition for her and our

adopted daughter so that they can join me in the U.S. I returned to the U.S. in February of 2016 and reestablished my domicile in Boyds, MD. Returning to the U.S. has allowed me to receive medical care at the John Hopkins Community Physicians Practice. It has also allowed me to live close to my cousin, brother-in-law, and nephew who all live in the U.S. (as citizens or lawful permanent residents) and who have always helped me emotionally and financially.

3. After I moved back to the United States, I filed an I-130 petition for my wife to join me. That petition was approved, and my wife had her visa interview at the U.S. Embassy in Ankara, Turkey, on February 22, 2017.

4. Nothing went wrong at the interview, and I know of no reason why my wife would not be eligible for a visa. Her visa is in administrative processing.

5. Being apart from my wife and daughter in the United States is extremely difficult for me, especially in light of my medical condition. I have chronic weakness, unstable gait and vision impairment, which have prevented me from working. My wife's admission to the U.S. would not only allow her to help care for me, and she will also be able to work and help with our household's financial needs. It makes me very sad and frustrated that I have to be apart from her.

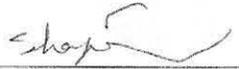
6. I am a nonpracticing Muslim, and the fact that the policy keeping me from my wife is aimed at Muslims makes my situation even more painful. Since the first travel ban, in January of this year, I have noticed a difference in how I am treated. I now feel that I am discriminated against for being Muslim. I notice this, for example, when I first arrive back home and speak with the customs agents, who seem more suspicious now.

7. The new travel ban makes me feel even worse, because this time it is indefinite and might not end after 90 days. I worry that this discrimination against Muslims could

persist now and would interfere with my rights as a U.S. citizen to live with my wife of over 13 years in the U.S.

8. I am visiting my family in Iran temporarily now; I will return home to the United States later in October.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Esfahan, Iran, on October 5, 2017.

  
\_\_\_\_\_  
Shapour Shirani

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**DECLARATION OF FAKHRI  
ZIAOLHAGH IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

**DECLARATION OF FAKHRI ZIAOLHAGH**

I, Fakhri Ziaolhagh, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a U.S. citizen of Irani origin, and I live in Gaithersburg, Maryland. I moved to the United States in 2008, on an employer-sponsored visa, together with my husband and my younger son. My mother, two brothers, my aunt and cousins all live in the United States, and all are U.S. citizens.

2. When I moved here with my husband and younger son, I was unable to bring my two older sons with me as my dependents because they were over 21. I therefore filed I-130 petitions for them in November of 2009. One of my sons was able to obtain a student visa to pursue his masters degree in computer science but my other son has remained in Iran waiting to be able to be reunited with me, his father, his brothers and the rest of our family in the U.S.

3. My I-130 petition for that son was approved less than a month later in December of 2009. We knew that there would be a long wait for the priority date to become

current, but we decided it was worth the wait. During this period, my son knew that if he got married, that could delay his visa application. Also, he has minimized his international travel because we have feared that too many trips outside of the country could delay or hurt his visa application.

4. After I became a U.S. citizen, I immediately notified the State Department so that the petition filed on behalf of my son could be upgraded in the family based preference category.

5. My son's priority date became current in December of 2016, and he had his visa interview on May 22, 2017. His visa has been in administrative processing ever since. I know of no reason why his visa should not be approved, and I expect it to be approved soon if the new travel ban does not go into effect.

6. Ever since we moved to the United States, my son has been living alone in Iran. It's hard for him there because his whole family is here in the United States. The uncertainty about when and whether he can come to the United States affects everything for him—it's hard for him to get a good job, and he has avoided marrying so that his ability to join us is not further delayed.

7. As a mother, I am always thinking of him. I'm always thinking of how it would benefit him to be here. It's especially hard for us, and for him, on holidays, when we have to celebrate separately. He's just waiting, waiting, waiting.

8. This separation is especially hard for me because I know that the first ban and this ban were motivated by mistrust of Muslims. I am Muslim, and I wear a head scarf. I've noticed that people look at me more, and differently, ever since the first ban. Every time there is any sort of violent incident in the United States, I worry that we as Muslims will be blamed.

9. I feel that this new proclamation is still about Muslims, and it's worse because this time it has no end date. I remember what the President said about us as Muslims, and I wish we could back to the time before either ban, when I felt that I was living in a free country and did not need to fear discrimination.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Rockville, Maryland, on October 4, 2017.

  
\_\_\_\_\_  
Fakhri Ziaolhagh

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**DECLARATION OF ABDUL MUBAREZ  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

**DECLARATION OF ABDUL MUBAREZ**

I, Abdul Mubarez, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am the President of the Yemeni-American Merchants Association (YAMA). YAMA was founded in response to this Administration's first Muslim Ban. When that ban was first announced, it reminded us of the frequent harassment that we in the Yemeni-American community suffer. People sometimes come into our bodegas (small grocery stores) and tell us, because we are Muslim, that we are terrorists or that we should go back home, and these incidents became more frequent after the election—and even more frequent after the ban was announced.

2. I, along with other Yemeni business owners, had been following the news, and we knew that President Trump had promised to implement a Muslim Ban. We were shocked and hurt when he followed through on that promise. We understood the ban as an official attempt to vilify our religion, and that message was especially painful because it was coupled with

extreme harm to our community: the ban would prevent family members from joining us in this country. We knew that we wanted to do something to protest. We heard through social media that people were going to JFK airport to protest the ban, and we decided to go there as well. We filmed that protest and put the video on a Yemeni-American Facebook page.

3. There was a strong response to that video, and we decided to hold a meeting to discuss how we could continue to protest against the ban. At that meeting we thought about what the ban meant. The ban's message was that we and our religion are bad, and we realized that the ban was written by people who did not know us. We wanted to do something to help people understand who we are and how we are important to this city.

4. We called ourselves a collective of business owners and activists coming together against the ban, and we decided to organize a bodega owners' strike in order to show that Yemeni-Americans stood together against the ban. We posted a notice on a Facebook page, and we spread the word that bodega owners would close their shops on February 2, 2017, from noon until 8pm. We organized a rally in downtown Brooklyn for that time.

5. One thousand bodegas closed that day. We realized that we had started a group, and people told us that we should keep the organization going. They explained that having an organization could help members with practical things, including immigration issues, and also help them advocate for their interests with local authorities.

6. We decided to organize more meetings and events. In April 2017, YAMA held an educational forum for Yemeni merchants that drew over 300 participants; Congressional leaders and local elected officials spoke about community engagement and immigration issues.

7. We formed a board. That board has four members. I am the President; Zaid Nagi is the Vice President; and Abdul Kani Bahaibih and Debbie Almontaser are members of the board.

8. After the Supreme Court made its stay decision at the end of June, YAMA held a press conference in Brooklyn that attracted more than 50,000 viewers on Facebook.

9. People who came to multiple meetings, and who communicated with us often about issues affecting the community, started to self-identify as members of the organization, and to be seen by others as members, too.

10. We estimate that we currently have 200-300 members. We hope that we will soon have more. The organization communicates with members and others in the community through a Facebook page for the Yemeni-American community that has over 180,000 followers. We are pursuing formal incorporation as a nonprofit organization.

11. Once we are incorporated, we plan to help our members with common problems that they encounter as immigrants and business owners. For example, we already are starting to offer immigration clinics and do advocacy on immigration issues. And we plan to help our members with local regulatory issues as well.

12. Many Yemenis come to this country, learn the bodega business and open their stores with a bare minimum of English proficiency. Due to this, many don't fully understand the consumer affairs laws and guidelines. Many get summons that can be easily waived or addressed with the agency that issued the summons. Sadly they often don't know this, and sometimes go to lawyers who overcharge them for their services. YAMA will help members to resolve these issues themselves and to educate them about their rights as business owners. We

have also worked on issue advocacy with our community, for example, on a proposed cigarette licensing.

13. Our organization, and the Yemeni-American community, understands the September 24 proclamation as an effort to condemn our religion and our community. The proclamation also presents a grave threat to the visa applications of family members and friends of our members.

14. The new ban will affect almost all of our members. In the days after the January ban, every member was affected by the ban in some way—every member knew of someone who was being prevented from coming to the United States. Although a few Yemenis seeking nonimmigrant visas are now exempted from the ban, our members who are awaiting the arrival of close family members will now have to wait indefinitely. The new ban will also harm our organization and its mission: for example, our immigration clinics will no longer be useful to members petitioning for their relatives to join them in the United States.

15. This waiting is not just a delay—since the ban is indefinite, our members don't know whether they ever will be joined by their family. And for many of our members, waiting means leaving family in danger, since Yemen is in the midst of a war.

16. Added to the pain of separation and the fear of harm to family members is the knowledge that this ban, like the two before it, is intended to show that the government does not respect our members' religion. That, together with the frequent day-to-day anti-Islamic comments that our members report, makes members worry that they are not welcome in this country—despite their having lived here lawfully for many years.

17. Many of our members affected by the ban are not willing to step forward as individual plaintiffs to challenge the ban. They are afraid of repercussions from the

government and from individuals who are hostile to Muslims. This fear is especially strong for members who grew up in Yemen and learned to be afraid to challenge a government openly.

18. I am aware of how the ban will harm several members in particular, and I am including their stories, using pseudonyms, as examples of how the ban will harm our members:

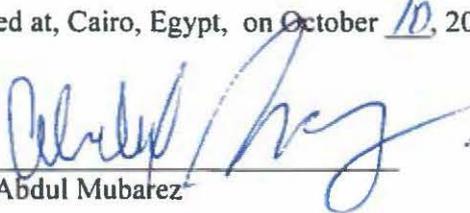
19. Sameer is a lawful permanent resident and a practicing Muslim from Yemen. He is a member of YAMA. Sameer came to the United States in 2006 and is married to a U.S. citizen, with whom he has one son, also a U.S. citizen. He was previously married and has three children from his first marriage; all are Yemeni and currently live in Turkey. Prior to coming to the United States, Sameer was a journalist and outspoken critic of the Yemeni government. He continues to speak out against the government on social media. His children cannot stay indefinitely in Turkey, and he fears that if they must return to Yemen, they will be imprisoned or kidnapped in retaliation for his vocal opposition to the government. Sameer's wife petitioned for his two younger children, aged 10 and 16, to come to the United States, and she received an approval notice from USCIS in August. Since then, Sameer has had no news regarding the status of his children's visa appointments, and he is worried that the new Executive Order will prevent his children from joining him here. Since the first ban went into effect, Sameer has felt a noticeable difference in how he is treated in the community. He says people look at him like a guilty person and like he isn't welcome here anymore. Before the ban, Sameer felt that the United States was a dream for every person and that in this country, no one could be discriminated against. He feels the new ban is the same as the old in that it is against Muslims.

20. Ahmed came to the United States in 1997 and has been a U.S. citizen since 2004. He is a practicing Muslim and a member of YAMA. Ahmed has petitioned for his

wife and five children—aged 3, 8, 13, 16, and 18—to join him in the United States. All of them are Yemeni citizens and currently live in Djibouti, and Ahmed has already had two appointments at the U.S. consulate in Djibouti with his family. Because of the ban, Ahmed is living in limbo, unable to bring his family with him to the United States. Ahmed feels that the new ban and the January ban are the same as both mainly ban Muslims. Ahmed says that the ban has made him feel worried about the separation from his family and scared here in the United States because the message is coming from the highest people in government that Muslims are terrorists, and this hurts him as a Muslim.

21. Alex is a lawful permanent resident from Yemen who came to the United States in January 2014. He is a practicing Muslim and a member of YAMA. Alex's wife and seven-month old son live in Yemen. He petitioned for his wife and son to come to the United States in March 2017 but has not received any news regarding the status of their application. It is costly and time-consuming for him to visit his family in Yemen, and he worries about them constantly given the separation and the political situation in Yemen at the moment. He fears that the new ban will make it even more difficult for him to be reunited with his wife and child. Alex says that before the January ban, he was able to live his life and work without any problems, and that the laws here applied to everyone and treated everyone the same regardless of religion. But now people are constantly asking him if he is Muslim and questions about Yemen and the dangers there and he feels singled out.

22. I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at, Cairo, Egypt, on October 10, 2017.

  
Abdul Mubarez

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al,

Defendants.

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

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**SUPPLEMENTAL DECLARATION OF DAVID HAUSMAN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

I, David Hausman, upon my personal knowledge and in accordance with 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney with the American Civil Liberties Union Immigrants' Rights Project. As a witness, I could and would testify competently as to the matters set forth below.
2. A true and correct copy of Proclamation No. 9465, "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats," signed September 24, 2017, is attached hereto as Exhibit A. This Proclamation can also be found at <https://www.gpo.gov/fdsys/pkg/FR-2017-09-27/pdf/2017-20899.pdf>.
3. A true and correct copy of the U.S. Department of State's "Important Announcement" regarding the "Presidential Proclamation on Visas" is attached hereto as Exhibit B. This announcement can also be found at <https://travel.state.gov/content/visas/en/immigrate/Immigrate-Announcement.html>.

4. A true and correct copy of the May 11, 2016 Fox News article entitled “Trump: You learn very little from tax returns, they are ‘meaningless’” is attached hereto as Exhibit C. The article can also be found at <http://www.foxnews.com/transcript/2016/05/11/trump-learn-very-little-from-tax-returns-are-meaningless.html>.
5. A true and correct copy of a June 12, 2016 Facebook post entitled “Donald J. Trump Statement Regarding Tragic Terrorist Attack in Orlando, Florida,” is attached hereto as Exhibit D. The post can also be found at <https://www.facebook.com/DonaldTrump/posts/10157160462435725>.
6. A true and correct copy of the June 13, 2016 Politico article entitled “Transcript: Donald Trump's national security speech,” is attached hereto as Exhibit E. The article can also be found at <http://www.politico.com/story/2016/06/transcript-donald-trump-national-security-speech-224273>.
7. A true and correct copy of the June 27, 2016 NBC News article entitled “In His Words: Donald Trump on the Muslim Ban, Deportations,” is attached hereto as Exhibit F. The article can also be found at <https://www.nbcnews.com/politics/2016-election/his-words-donald-trump-muslim-ban-deportations-n599901>.
8. A true and correct copy of the August 15, 2016 The Hill article entitled “FULL SPEECH: Donald Trump addresses Radical Islamic Terrorism” is attached hereto as Exhibit G. The article can also be found at <http://thehill.com/blogs/pundits-blog/presidential-campaign/291498-full-transcript-donald-trump-addresses-radical>.
9. A true and correct copy of the September 1, 2016 New York Times article entitled “Transcript of Donald Trump’s Immigration Speech,” is attached hereto as Exhibit H. The article can also be found at <https://www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html>.
10. A true and correct copy of the transcript of the October 9, 2016 Presidential Debate at Washington University in St. Louis, Missouri is attached hereto as Exhibit I. The article can also be found at <http://www.presidency.ucsb.edu/ws/index.php?pid=119038>.
11. A true and correct copy of the January 29, 2017 New York Times article entitled “How Trump’s Rush to Enact an Immigration Ban Unleashed Global Chaos,” is attached hereto as Exhibit J. The article can also be found at <https://www.nytimes.com/2017/01/29/us/politics/donald-trump-rush-immigration-order-chaos.html>.
12. A true and correct copy of the January 30, 2017 Politico article entitled “Hill staffers secretly worked on Trump’s immigration order,” is attached hereto as Exhibit K. The article can also be found at <http://www.politico.com/story/2017/01/trump-immigration-congress-order-234392>.

13. A true and correct copy of a Tweet sent on February 4, 2017, at 5:12 a.m. from the President's Twitter account, @realDonaldTrump, is attached hereto as Exhibit L. The Tweet can also be found at <https://twitter.com/realdonaldtrump/status/827867311054974976>.
14. A true and correct copy of the February 10, 2017 Politico article entitled "Trump team plans a new executive order," is attached hereto as Exhibit M. The article can also be found at <http://www.politico.com/story/2017/02/trump-9th-circuit-ruling-next-steps-234902>.
15. A true and correct copy of the February 21, 2017 Fox News article entitled "Miller: New order will be responsive to the judicial ruling; Rep. Ron DeSantis: Congress has gotten off to a slow start," is attached hereto as Exhibit N. The article can also be found at <http://www.foxnews.com/transcript/2017/02/21/miller-new-order-will-be-responsive-to-judicial-ruling-rep-ron-desantis.html>.
16. A true and correct copy of the February 25, 2017 CNN article entitled "White House effort to justify travel ban causes growing concern for some intelligence officials" is attached hereto as Exhibit O. The article can also be found at <http://www.cnn.com/2017/02/23/politics/white-house-effort-to-justify-travel-ban-causes-growing-concern-for-some-intel-officials/>.
17. A true and correct copy of the March 16, 2017 Time article entitled "Read President Trump's Response to the Travel Ban Ruling: It 'Makes Us Look Weak'" is attached hereto as Exhibit P. The article can also be found at <http://time.com/4703622/president-trump-speech-transcript-travel-ban-ruling/>.
18. A true and correct copy of the May 8, 2017 CNN article entitled "Yates on Trump's travel ban: 'Arguments have to be based on truth'" is attached hereto as Exhibit Q. The article can also be found at <http://www.cnn.com/2017/05/08/politics/sally-yates-donald-trump-travel-ban/index.html>. The full testimony is available at 2017 WLNR 14276548.
19. A true and correct copy of a Tweet sent on June 3, 2017, at 4:17 p.m. from the President's Twitter account, @realDonaldTrump, is attached hereto as Exhibit R. The Tweet can also be found at <https://twitter.com/realdonaldtrump/status/871143765473406976>.
20. A true and correct copy of all Tweets sent on June 5, 2017, from the President's Twitter account, @realDonaldTrump, is attached hereto as Exhibit S. The Tweets can also be found at <https://twitter.com/search?l=&q=from%3Arealdonaldtrump%20since%3A2017-06-05%20until%3A2017-06-06&src=typd>.
21. A true and correct copy of the June 6, 2017 NBC News article entitled "Trump's Tweets 'Official Statements,' Spicer Says" is attached hereto as Exhibit T. The article can also be found at <https://www.nbcnews.com/politics/white-house/trump-s-tweets-official-statements-spicer-says-n768931>.

22. A true and correct copy of a Tweet sent on June 13, 2017, at 3:44 a.m. from the President's Twitter account, @realDonaldTrump, is attached hereto as Exhibit U. The Tweet can also be found at <https://twitter.com/realdonaldtrump/status/874578159676665857>.
23. A true and correct copy of the June 14, 2017 Presidential Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence is attached hereto as Exhibit V. The memorandum can also be found at <https://www.whitehouse.gov/the-press-office/2017/06/14/presidential-memorandum-secretary-state-attorney-general-secretary>.
24. A true and correct copy of a Tweet sent on August 17, 2017, at 11:45 a.m. from the President's Twitter account, @realDonaldTrump, is attached hereto as Exhibit W. The Tweet can also be found at <https://twitter.com/realdonaldtrump/status/898254409511129088>.
25. A true and correct copy of the August 14, 2017 Cato At Liberty article entitled "A Dozen Times Trump Equated his Travel Ban with a Muslim Ban," is attached hereto as Exhibit X. The article can also be found at <https://www.cato.org/blog/dozen-times-trump-equated-travel-ban-muslim-ban>.
26. A true and correct copy of the August 31, 2017 Cato At Liberty article entitled "Very Few Immigration Vetting Failures of Terrorists Since 9/11," is attached hereto as Exhibit Y. The article can also be found at <https://www.cato.org/blog/very-few-immigration-vetting-failures-terrorists-911>.
27. A true and correct copy of the September 15, 2017 The Hill article entitled "Trump urges 'larger, tougher' travel ban after London bombing," is attached hereto as Exhibit Z. The article can also be found at <http://thehill.com/homenews/administration/350802-trump-calls-for-larger-tougher-travel-ban-in-response-to-london>.
28. A true and correct copy of the Congressional Research Service report, Executive Authority to Exclude Aliens, Cong. Res. Serv., dated January 23, 2017, is attached hereto as Exhibit AA. This report can also be found at <https://fas.org/sgp/crs/homsec/R44743.pdf>.
29. A true and correct copy of the Central Intelligence Agency's World Listing Factbook website providing countries' population is attached hereto as Exhibit BB. This demographic information can also be found at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html>.
30. A true and correct copy of the September 26, 2017 Cato article entitled "The Basic Premise of Trump's Travel Ban Is Wrong," is attached hereto as Exhibit CC. The article can also be found at <https://www.cato.org/publications/commentary/basic-premise-trumps-travel-ban-wrong>.

31. A true and correct copy of the September 28, 2017 FiveThirtyEight article entitled “Trump’s Latest Travel Order Still Looks A Lot Like A Muslim Ban,” is attached hereto as Exhibit DD. The article can also be found at <https://fivethirtyeight.com/features/trumps-latest-travel-order-still-looks-a-lot-like-a-muslim-ban/>.
32. A true and correct copy of the White House fact sheet entitled “Proclamation on Enhancing Vetting Capabilities,” is attached hereto as Exhibit EE. The fact sheet can also be found at <https://www.whitehouse.gov/the-press-office/2017/09/24/fact-sheet-proclamation-enhancing-vetting-capabilities-and-processes>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, based on my personal knowledge. Executed at New York, NY on October 6, 2017.



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David Hausman  
AMERICAN CIVIL LIBERTIES UNION  
IMMIGRANTS’ RIGHTS PROJECT  
125 Broad Street  
New York, NY 10004  
(212) 549-2549  
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# **Exhibit A**

## Presidential Documents

Proclamation 9645 of September 24, 2017

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

By the President of the United States of America

#### A Proclamation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) *Chad.*

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

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

(b) *Iran.*

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

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

(c) *Libya.*

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

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

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

(d) *North Korea.*

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

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

(e) *Syria.*

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

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

(f) *Venezuela.*

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

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

(g) *Yemen.*

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

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

(h) *Somalia*.

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) entry would be in the national interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Chad, North Korea, and Venezuela.

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

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

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

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

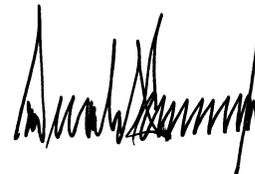
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

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

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

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

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Filed 9-26-17; 11:15 am]  
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# **Exhibit B**



# U.S. VISAS

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## Important Announcement

### Presidential Proclamation on Visas

On September 24, 2017, the President issued a Presidential Proclamation titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats." Per Section 2 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry Into The United States), a global review was conducted to determine what additional information is needed from each foreign country to assess whether foreign nationals who seek to enter the United States pose a security or safety threat. As part of that review, the Department of Homeland Security (DHS) developed a comprehensive set of criteria to evaluate the information-sharing practices, policies, and capabilities of foreign governments on a worldwide basis. At the end of that review, which included a 50-day period of engagement with foreign governments aimed at improving their information sharing practices, there were seven countries whose information sharing practices were classified as "inadequate" and for which the President deemed it necessary to impose certain restrictions on the entry of nonimmigrants and immigrants who are nationals of these countries. The President also deemed it necessary to impose restrictions on one country due to the "special concerns" it presented. These restrictions are considered important to addressing the threat these existing information-sharing deficiencies, among other things, present to the security and welfare of the United States and pressuring host governments to remedy these deficiencies.

Nationals of the eight countries are subject to various travel restrictions per the following table as outlined in the P.P.

Country	Nonimmigrant Visas	Immigrant and Diversity Visas
Chad	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
Iran	No nonimmigrant visas except F, M, and J student visas	No immigrant or diversity visas
Libya	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
North Korea	No nonimmigrant visas	No immigrant or diversity visas
Syria	No nonimmigrant visas	No immigrant or diversity visas
Venezuela	No B-1, B-2 or B-1/B-2 visas of any kind for officials of the following government agencies Ministry of Interior, Justice, and	No restrictions

	Peace; the Administrative Service of Identification, Migration, and Immigration; the Corps of Scientific Investigations, Judicial and Criminal; the Bolivarian Intelligence Service; and the People's Power Ministry of Foreign Affairs, and their immediate family members.	
Yemen	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
Somalia		No immigrant or diversity visas

The implementation of the Presidential Proclamation (P.P.) at our embassies and consulates abroad pursuant to the proclamation is as follows:

**Phase 1:** From 3:30 p.m. EDT on Sunday, September 24, 2017 until 12:01 a.m. EDT on Wednesday, October 18, 2017:

**a) Nationals of Iran, Libya, Syria, Yemen, and Somalia.** Nationals of these five countries will generally remain under suspension of travel except for those individuals who have a credible claim of a "bona fide relationship" with a close family member or entity in the United States. "Close family" is defined as a parent, including parent-in-law, spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, and first-cousin. For all relationships, half or step status is included (e.g., "half-brother" or "step-sister"). "Close family" does not include any other "extended" family members. A credible claim of a bona fide relationship with a "U.S. entity" must be formal, documented, and formed in the ordinary course rather than for the purpose of evading suspension of entry under the P.P. If the national does not qualify for this exemption, they may be eligible for other exceptions or waivers listed in the P. P.

**b) Nationals of Sudan.** As of 3:30 p.m. EDT on Sunday, September 24, 2017, Sudanese nationals are no longer subject to travel restrictions.

**Phase 2:** Beginning 12:01 a.m. EDT on Wednesday, October 18, 2017:

**c) Nationals of Chad, Iran, Libya, North Korea, Syria, Venezuela, Yemen and Somalia:** The exceptions and waivers listed in the P.P. are applicable for qualified applicants, but the bona fide relationship exception is no longer applicable.

We do not plan to cancel previously scheduled visa application appointments. In accordance with all applicable court orders, executive orders, and proclamations, for nationals of the eight designated countries, a consular officer will make a determination in the course of the interview whether an applicant otherwise eligible for a visa is exempt from the P.P. or, if not, will consider whether the applicant is eligible for a waiver under the P.P., and may be issued a visa.

The P.P. provides specifically that no visas issued before its effective date will be revoked pursuant to the P.P., and it does not apply to nationals of affected countries who have valid visas on the date it becomes effective.

The National Visa Center (NVC) will continue to work on in-process cases for these applicants. You should continue to pay fees, complete your Form DS-260 immigrant visa applications, and submit your financial and civil supporting documents to NVC. NVC will review your case file and schedule a visa interview appointment if no additional paperwork is required. During the interview, a consular officer will carefully review the case to determine whether the applicant is affected by the P.P. and, if so, whether the case qualifies for an exemption during phase 1 of implementation or a waiver during Phase 2 of implementation. The National Visa Center (NVC) will continue to work on in-process cases for these applicants. You should continue to pay fees, complete your Form DS-260 immigrant visa applications, and submit your financial and civil supporting documents to NVC. NVC will review your case file and schedule a visa interview appointment if no additional paperwork is required. During the interview, a consular officer will carefully review the case to determine whether the applicant is affected by the P.P. and, if so, whether the case qualifies for an exemption during phase 1 of implementation or a waiver during Phase 2 of implementation.

We will keep those traveling to the United States and partners in the travel industry informed as we implement the order in a professional, organized, and timely way.

### Frequently Asked Questions

**I received my immigrant visa but I haven't yet entered the United States. Can I still travel there using my immigrant visa?**

The P.P. provides specifically that no visas issued before the effective date of the P.P. will be revoked pursuant to the P.P., and it does not apply to nationals of affected countries who have valid visas on the date it becomes effective.

**I recently had my immigrant visa interview at a U.S. Embassy or Consulate overseas, but my case is still being considered. What will happen now?**

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, you should proceed to submit your documentation. After receiving any required missing documentation or completion of any administrative processing, the U.S. embassy or consulate where you were interviewed will contact you with more information.

**I am currently working on my case with NVC. Can I continue?**

Yes. You should continue to pay fees, complete your Form DS-260 immigrant visa applications, and submit your financial and civil supporting documents to NVC. NVC will continue reviewing cases and scheduling visa interviews overseas. During the interview, a consular officer will carefully review the case to determine whether the applicant is affected by the P.P. and, if so, whether the case qualifies for an exception or may qualify for a waiver.

**What immigrant visa classes are subject to the Executive Order?**

**During Phase 1 of implementation:** Qualified applicants from Iran, Libya, Syria, Yemen, and Somalia in the immediate-relative and family-based immigrant visa categories are generally eligible for the bona fide close familial relationship exception since it is inherent in the requirements for the visa. Likewise, qualified employment-based immigrant visa applicants generally are eligible for the exception from the P.P., since they have a bona fide formal, documented relationship with a U.S. entity formed in the ordinary course. Unlike other employment-based immigrant visa applicants, certain self-petitioning employment-based first preference applicants with no job offer in the United States and special immigrant visas under INA section 101(a)(27)) would need to demonstrate that they have a bona fide relationship with an entity in the United States or otherwise qualify for a different exception or waiver. Diversity visa applicants will need to demonstrate a qualifying relationship or qualify for a waiver since a relationship with a person or entity in the United States is not required for such visas.

An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she qualifies for an exception or waiver. A consular officer will carefully review each case to determine whether the applicant is affected by the P.P. and, if so, whether the case qualifies for an exception or waiver.

**During Phase 2 of implementation:** All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the P.P. and restricted. All immigrant visa classifications for nationals of Venezuela are unrestricted. The bona fide relationship exception is no longer applicable. An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the P.P. A consular officer will carefully review each case to determine whether the applicant is affected by the P.P. and, if so, whether the case qualifies for an exception or a waiver.

**I sponsored my family member for an immigrant visa, and his interview appointment is after the effective date of the P.P.. Will he still be able to receive a visa?**

**During Phase 1 of implementation:** Qualified applicants from Iran, Libya, Syria, Yemen, and Somalia in the immediate-relative and family-based immigrant visa categories are generally eligible for the bona fide close familial relationship exception since it is inherent in the requirements for the visa. Likewise, qualified employment-based immigrant visa applicants generally are eligible for the exception from the P.P., since they have a bona fide formal, documented relationship with a U.S. entity formed in the ordinary course. Unlike other employment-based immigrant visa applicants, certain self-petitioning employment-based first preference applicants with no job offer in the United States and special immigrant visas under INA section 101(a)(27)) would need to demonstrate that they have a bona fide relationship with an entity in the United States or otherwise qualify for a different exception or waiver.

**During Phase 2 of implementation:** All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Presidential Proclamation and suspended. The bona fide relationship exception is no longer applicable. An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the P.P. A consular officer will carefully review each case to determine whether the applicant is affected by the P.P. and, if so, whether the applicant qualifies for an exception or a waiver.

**I am applying for a K (fiancé) visa. My approved I-129 petition is only valid for four months. Can you expedite my case?**

The National Visa Center already expedites all Form I-129F petitions to embassies and consulates overseas. Upon receipt of the petition and case file, the embassy or consulate will contact you with instructions on scheduling your interview appointment.

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- [Diversity Visa Program](#)
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- [Straight Facts on U.S. Visas](#)

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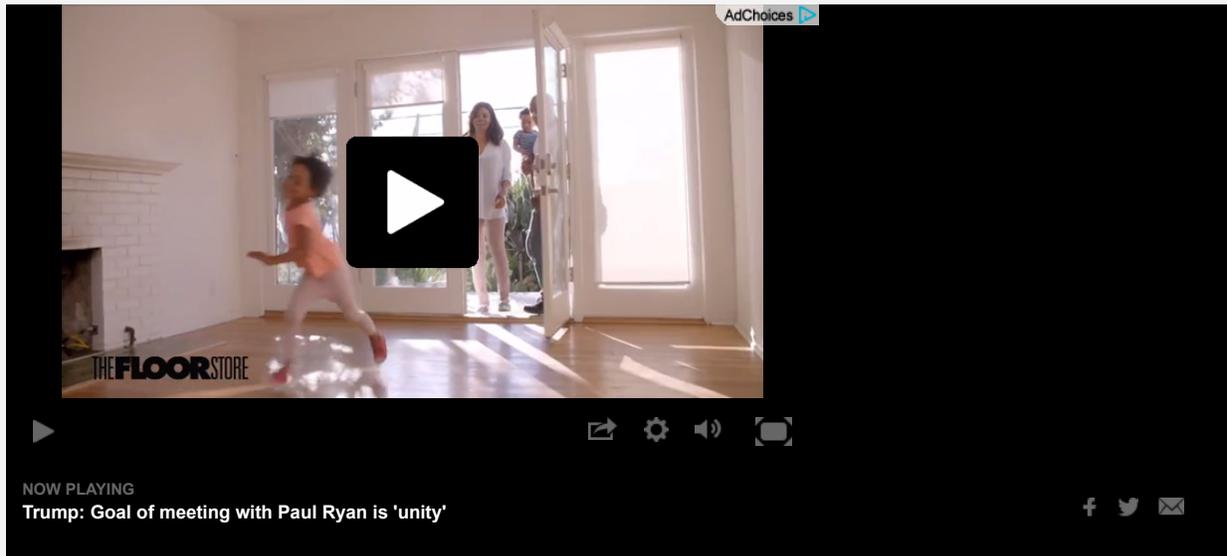
# **Exhibit C**

OTR INTERVIEWS

## Trump: You learn very little from tax returns, they are 'meaningless'

Published May 11, 2016

Fox News



*This is a rush transcript from "On the Record," May 11, 2016. This copy may not be in its final form and may be updated.*

**GRETA VAN SUSTEREN, FOX NEWS HOST:** Right now, Donald Trump, today, he talked about working with the GOP. Tomorrow he has a meeting with Speaker Paul Ryan.

**(BEGIN VIDEO CLIP)**

**PAUL RYAN, SPEAKER OF THE HOUSE:** This election is too important to go into election at half strength. That means we need a real unification of our party.

**(END VIDEO CLIP)**

**VAN SUSTEREN:** So what does Donald Trump think about that? Well, he also drops a few clues about picking his V.P. nominee. And there is more. He has some surprises in store for the Republican convention.

**(BEGIN VIDEOTAPE)**

**VAN SUSTEREN:** Donald, nice to see you.

**DONALD TRUMP, GOP PRESIDENTIAL CANDIDATE:** Thank you.

**VAN SUSTEREN:** Congratulations on your wins last night.

**TRUMP:** Yes. It was a great evening.

**VAN SUSTEREN:** Always more fun to win, isn't it?

**TRUMP:** It's much better. We've had it both ways. Much better.

**VAN SUSTEREN:** All right.

Case 8:17-cv-00361-TDC Document 205-1 Filed 10/06/17 Page 92 of 344  
Republican party, who is the leader of the Republican Party today. You are the presumptive nominee, not the nominee yet. And we've got the Speaker of the House Paul Ryan.

So who is the leader?

**TRUMP:** Well, I would say Paul Ryan. I mean, I would really think that. I'm doing very well. I'm leading in every category, and I think I'm going to have a record number of votes. I already have a record number of votes, come to think of it and millions of votes more than they had four years ago. Many millions of votes more.

And I think I set the all-time record for votes gotten by a Republican candidate. But, I would say Paul for the time being and maybe for a long time.

**VAN SUSTEREN:** Tomorrow you're going to meet with Paul Ryan and with Reince Priebus.

What's the goal?

**TRUMP:** I think just unity. And, you know, we will see how it goes. And I think it will go well.

Paul is a good person. I don't know Paul well. And I think that's part of the meeting. We have to get to know. And don't forget he knew everybody else because they are governors, they are senators. I am a businessman.

And I think we want to get to know each other. I think we want to see if we have the same ideas because I represent a large group of people with very strong ideas and foundations. And I think we want to see a little bit about that.

And, you know, hopefully, it will work out. We're going to have a very successful campaign. The polls have been, you know, through the roof. In fact, I guess over the last three days, they have gone up amazingly. I'm now winning in Ohio and winning in a lot of places. So it's been, it's been a very interesting week.

**VAN SUSTEREN:** Can you have unity with Speaker Ryan when you have differences on immigration and entitlements which are very important topics to the Republican Party and the rest of the nation. And I think probably he thinks you should probably tone it down a bit on your language.

**TRUMP:** I think you can. I mean, you know, we always have differences. No matter what you have, you're going to have differences. If you agree on 70 percent, that's always a lot.

But we will have, you know, I'm a strong border person, and so are millions of people, obviously, because that's one of the reasons I'm here. That's one of the reasons you're interviewing me instead of one of the people that you no longer can interview, you know. It wouldn't make sense.

So I think you can, actually, Greta. I think you can.

**VAN SUSTEREN:** You mentioned those other people. Some of them signed a pledge and aren't going to endorse you or said they haven't. You're thought on that.

**TRUMP:** Well, they are dishonorable people. I mean, anybody that signs the pledge, I can think of Jeb Bush signed the pledge. And he is not going to honor it. So that's a dishonorable person.

Now, I would imagine he will ultimately honor it because, you know, they wanted me to sign the pledge. Everybody wanted me. I was the big one that everybody wanted me to sign.

**VAN SUSTEREN:** Well, you held off at first.

**TRUMP:** You remember with the raising of your hand and the whole thing. So I ended up signing the pledge. And then these people, they don't honor it.

I think that somebody like Lindsey Graham will end up signing the pledge, because I actually think he is an honorable person. And I think he will sign the pledge.

I think that, Jeb, I don't know what he is going to do.

**VAN SUSTEREN:** Going back to immigration and Speaker Ryan.

Now I heard today that you had at least discussed a possible immigration commission, is that right?

**TRUMP:** I'm looking at it very strongly with Rudy Giuliani heading it.

**VAN SUSTEREN:** Has he said he would?

**TRUMP:** I have spoken to him a little while ago. We are going to put together a group of probably five or six people. Very, very highly thought of people. And I think Rudy will head it up. And we'll look at the Muslim ban or temporary ban as we call it. And we'll look at some other things on immigration and I have a lot of confidence in Rudy Giuliani.

**VAN SUSTEREN:** Have you decided whether you will back off on the ban. I realize it was a ban -- it was a temporary ban, but with unlimited temporary period, it could go on forever that way it --

**TRUMP:** No. It was never meant to be. That's why it was temporary. Sure, I would back off on it. I would like to back off as soon as possible. Because, frankly, I would like to see something happen. But we have to be vigilant.

There is a radical Islamic terrorism problem that, you know, our president doesn't even want to talk about. All you have to do is take a look at the World Trade Center. Take a look at San Bernardino or Paris. What a disaster that was. And so many other locations.

Just last night in Germany, look what happened on the train. And it's a big problem. People -- we're going to have to solve the problem

But I think by putting together a commission, a group of people that are highly respected in this field like Rudy and others, I think that could lead to something pretty good.

**VAN SUSTEREN:** The ban, the way it's described, even as a temporary ban would have, for instance, barred Amir Hekmati the marine who is over in Iran held prisoner, he wouldn't be able to come back. And the Muslims sort of serving in our military overseas, they wouldn't come back.

**TRUMP:** No, they would all comeback. I mean we have exceptions. And, again, it's temporary and ultimately it's my aim to have it lifted.

Now right now, there is no ban. But I would like to see -- there has to be an idea. There has to be something. Because there is some pretty bad things going on.

And I have Muslim friends. Great Muslim friends who are telling me you are so right. It's -- there is something going on that we have to get to the bottom of it. So we'll see what happens

But I think by putting five, six, or seven people together that have expertise in the field, I think that would be good. And Rudy is a smart guy. He's a tough guy. He gets it. He understands the problem and he is willing to talk about the problem. And he will head it up and he has agreed to do so.

**VAN SUSTEREN:** All right. I don't want to beat a dead horse. But it's a ban on Muslims with exceptions and it would be temporary.

**TRUMP:** And, of course, you have to have exceptions.

**VAN SUSTEREN:** OK. Well, the way that everybody read it. It was across the table.

**TRUMP:** Well, you have exceptions. But -- and ideally, you won't have a ban very long. I mean, we just have to find out what's happening.

I mean, you take a look what's happening -- I'm not just talking to him. I'm talking about all over the world.

You look at Germany. It's a mess. You look at Sweden, where they have a section that they just started. It's a total mess. I mean, something has to happen.

**VAN SUSTEREN:** I guess it's a constitutional implication that's, you know, certainly is why I'm pressing you on this.

**TRUMP:** Well, we'll take a look. As far as the Syrians coming in, you know, the thousands and thousands of Syrians coming in from immigration, we have to build a safe zone. We have to do something. I'll get, frankly, the Gulf States to put up money and they will be willing to put it up. I guarantee you they will put it up because they haven't put up much right now.

And I don't want to spend the money on it because our country doesn't have any money. We are \$19 trillion in the hole. We are going to be 21 trillion very, very soon because of the budgets that were recently passed. The omnibus budget, et cetera.

And we are really a nation that doesn't have the money. We have to pay off debt. Not create more debt. So we will get a safe zone some place in Syria, or numerous safe zones and we will build and we'll use other people's money, meaning other country's money. The Gulf States in particular and we will do something very good.

But I am absolutely against having more people flowing into this country -- no documentation, no papers, no nothing. Nobody knows where they come from. And this is what Obama is taking them, tens of thousands.

Hillary Clinton wants to double and triple the efforts. She wants to do it even more so. And we will have problems like you have never seen before if we do that.

**VAN SUSTEREN:** All right, tax returns. You said that you don't intend to release your tax returns.

**TRUMP:** No, no, I didn't say that. I said I am being audited. I'm being audited.

**VAN SUSTEREN:** But what about the returns that are not being audited.

**TRUMP:** No, no, here's a link, but it goes way back.

**VAN SUSTEREN:** How far back are you being audited?

**TRUMP:** I don't know. I would have to ask. Quite -- long enough that it would matter. And there is a link between that and other things. And as soon as the audit is finished, I'd love to --

**VAN SUSTEREN:** Length of what?

**TRUMP:** It's just a very relatively simple audit. I will tell you what's unfair. Every year for many years, I have been audited. And I have friends that are very rich that don't get audited. They never get audited. I get audited every single year. And I think it's actually very unfair.

**VAN SUSTEREN:** Do you think it's deliberate, intentional, being (INAUDIBLE)?

**(CROSSTALK)**

**TRUMP:** I don't know. That I have friends that are very wealthy people. I say how often do you get audited? They didn't even know what I meant. They're never audited. I'm audited every single year. I think it's very unfair.

**VAN SUSTEREN:** If the audit goes back seven years, would you release the eighth year back? Would you be willing to do that?

**(CROSSTALK)**

**TRUMP:** No. Number one, it would be meaningless. I would have to find out how far back it goes.

But number one, when you go back eight years, that's pretty --

**(CROSSTALK)**

**VAN SUSTEREN:** I know. But people are suspicious.

**TRUMP:** And I'll tell you something --

**VAN SUSTEREN:** But people are suspicious that you are not releasing because in January of 2012, you said to me that Mitt Romney was making a big mistake by not releasing his. So naturally that's become --

**(CROSSTALK)**

**TRUMP:** I don't know, but he wasn't under audit. I'm under audit. No lawyer would say release it when you're under audit. And these are very simple orders.

**VAN SUSTEREN:** I agree. I'm a lawyer. I wouldn't have someone, but --

**TRUMP:** You represented me, and I'm under audit.

**(CROSSTALK)**

**VAN SUSTEREN:** I would tell you not to release. I agree. If I were your lawyer.

**(CROSSTALK)**

**TRUMP:** So the answer is don't release. Hopefully, before the election, I will release and I would like to release.

By the way, you learn very little from a tax return. You know, I have released my financials and my financials show tremendous numbers. Very little debt. All of that. You don't learn very much from a tax return.

**VAN SUSTEREN:** I think part of the things that they are releasing though is it dispels that argument that there's something going on, that you are not doing it. It takes the mystery off.

**TRUMP:** You don't learn anything. A tax return you learn very, very little. I mean, I have released highly complex, detailed financials in line with the federal elections commission. We put them in, I think it's 99 pages or close to 100 pages of detail saying what a great company I built.

You know, I built a company with very little debt. All of this stuff has certified numbers. Very, very little debt. Tremendous cash flow. Tremendous value. Great assets. I mean, that's something. And people go over that and they are very impressed.

You learn very little from a tax return.

But here's the thing, Greta, when you are under audit and you just said it, as a lawyer --

**(CROSSTALK)**

**VAN SUSTEREN:** And I totally agree. If you were my client and you are under audited, I would say don't release them. But I just think there are some years outside the audit that might **(INAUDIBLE)**

**(CROSSTALK)**

**TRUMP:** First of all, if there are, they are meaningless. OK? It doesn't matter because they are so far back. But at the right time, I will release them. I hope to release them. I would like to release them. But when I'm under audit, I can't do that.

**VAN SUSTEREN:** Terrible situation in Baghdad today. Three bombs went off. There are about 100 people killed, probably more die from their injuries within a short time.

If you are president today, and you get the news, you get awakened, what do you do?

**TRUMP:** Well, look, the war in Iraq is a disaster. I was against it from the beginning. We should have never been there.

I always have to preface that by saying that that was bad judgment. Hillary Clinton had bad judgements. She raised her hand, a bad judgment. On email. She's got bad judgment on everything. We should have never been there.

**(CROSSTALK)**

OK. Now we're there. We have a crooked government. We have a government that's dishonest as hell. The money is being squandered and stolen. And the oil is being stolen and everything is a mess. And now they have probably ISIS going in and bombing the hell out of the place with these horrible bombs that kill lots of innocent people. It is a hell hole. It's a mess. It's something we should have never been involved in. Now we're involved.

What are you going to do? You have to be very tough. You have to be very stringent. But you have a government there that's totally corrupt. You have a bunch of corrupt people in that government and the whole thing is a shame.

**VAN SUSTEREN:** All right. That's the problem. What do we do? We've got 5,000 troops there now

I mean, if you are president, do you do more? Do you do less? What do you do?

**TRUMP:** We're going to get rid of ISIS. But when it's not ISIS, it will be somebody else.

I mean, look, we have been over there for so many years. We have spent probably now it's up to \$5 trillion in the Middle East. \$5 trillion in the Middle East.

At some point, we have to get the hell out. You know that, ISIS, you will knock them out. It will be somebody else. It's going to continue to form. It's a mess. And we have to get rid of ISIS. You know, they chop off the heads and they drown the people in cages and we have to do it. And they blow up people. Probably this was ISIS or ISIS-related that took place in Baghdad.

But at some point, we have to get back to our country. Our country, our infrastructure is falling apart. Our highways, our roads, our bridges, our tunnels, our airports, they are falling apart. We are like a third world country. \$5 trillion, we could have rebuilt our country and had plenty of money left over.

(END VIDEOTAPE)

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### Conversation



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# **Exhibit D**

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Donald J. Trump

June 12, 2016 ·

**DONALD J. TRUMP STATEMENT REGARDING TRAGIC TERRORIST ATTACK IN ORLANDO, FLORIDA**

Last night, our nation was attacked by a radical Islamic terrorist. It was the worst terrorist attack on our soil since 9/11, and the second of its kind in 6 months. My deepest sympathy and support goes out to the victims, the wounded, and their families.

In his remarks today, President Obama disgracefully refused to even say the words 'Radical Islam'. For that reason alone, he should step down. If Hillary Clinton, after this attack, still cannot say the two words 'Radical Islam' she should get out of this race for the Presidency.

If we do not get tough and smart real fast, we are not going to have a country anymore. Because our leaders are weak, I said this was going to happen – and it is only going to get worse. I am trying to save lives and prevent the next terrorist attack. We can't afford to be politically correct anymore.

The terrorist, Omar Mir Saddique Mateen, is the son of an immigrant from Afghanistan who openly published his support for the Afghanistani Taliban and even tried to run for President of Afghanistan. According to Pew, 99% of people in Afghanistan support oppressive Sharia Law.

We admit more than 100,000 lifetime migrants from the Middle East each year. Since 9/11, hundreds of migrants and their children have been implicated in terrorism in the United States.

Hillary Clinton wants to dramatically increase admissions from the Middle East, bringing in many hundreds of thousands during a first term – and we will have no way to screen them, pay for them, or prevent the second generation from radicalizing.

We need to protect all Americans, of all backgrounds and all beliefs, from Radical Islamic Terrorism - which has no place in an open and tolerant society. Radical Islam advocates hate for women, gays, Jews, Christians and all Americans. I am going to be a President for all Americans, and I am going to protect and defend all Americans. We are going to make America safe again and great again for everyone.

- Donald J. Trump

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# **Exhibit E**

# POLITICO

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Donald J. Trump speaks at the Saint Andelm College New Hampshire Institute of Politics in Manchester, N.H. on June 13.

## **Transcript: Donald Trump's national security speech**

06/13/2016 03:06 PM EDT

*As posted on his website, this is the transcript of Donald Trump's June 13 speech on national security and terrorism in the wake of the Orlando massacre. Underlined segments are the author's.*

Thank you for joining me today.

This was going to be a speech on Hillary Clinton and how bad a President, especially in these times of Radical Islamic Terrorism, she would be.

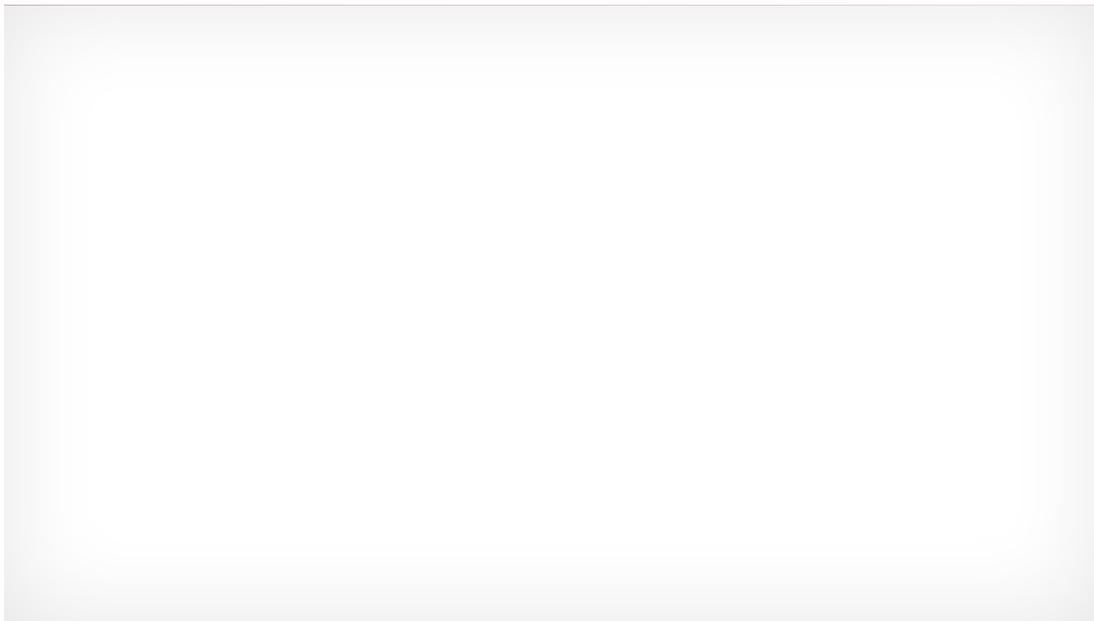
Even her former Secret Service Agent, who has seen her under pressure and in times of stress, has stated that she lacks the temperament and integrity to be president.

There will be plenty of opportunity to discuss these important issues at a later time, and I will deliver that speech soon.

But today there is only one thing to discuss: the growing threat of terrorism inside of our borders.

The attack on the Pulse Nightclub in Orlando, Florida, was the worst terrorist strike on our soil since September 11th, and the worst mass shooting in our country's history.

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So many people dead, so many people gravely injured, so much carnage, such a disgrace.

The horror is beyond description.

The families of these wonderful people are totally devastated. Likewise, our whole nation, and indeed the whole world, is devastated.

We express our deepest sympathies to the victims, the wounded, and their families.

We mourn, as one people, for our nation's loss – and pledge our support to any and all who need it.

I would like to ask now that we all observe a moment of silence for the victims of the attack.

[SILENCE]

Our nation stands together in solidarity with the members of Orlando's LGBT Community.

This is a very dark moment in America's history.

A radical Islamic terrorist targeted the nightclub not only because he wanted to kill Americans, but in order to execute gay and lesbian citizens because of their sexual orientation.

It is a strike at the heart and soul of who we are as a nation.

It is an assault on the ability of free people to live their lives, love who they want and express their identity.

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### **Trump: Clinton, Obama protecting terrorists to be 'politically correct'**

By LOUIS NELSON

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It is an attack on the right of every single American to live in peace and safety in their own country.

We need to respond to this attack on America as one united people – with force, purpose and determination.

But the current politically correct response cripples our ability to talk and think and act clearly.

If we don't get tough, and we don't get smart – and fast – we're not going to have a country anymore -- there will be nothing left.

The killer, whose name I will not use, or ever say, was born to Afghan parents who immigrated to the United States. His father published support for the Afghan Taliban, a regime which murders those who don't share its radical views. The father even said he was running for President of that country.

The bottom line is that the only reason the killer was in America in the first place was because we allowed his family to come here.

That is a fact, and it's a fact we need to talk about.

We have a dysfunctional immigration system which does not permit us to know who we let into our country, and it does not permit us to protect our citizens.

We have an incompetent administration, and if I am not elected President, that will not change over the next four years -- but it must change, and it must change now.

With fifty people dead, and dozens more wounded, we cannot afford to talk around the issue anymore -- we have to address it head on.

I called for a ban after San Bernardino, and was met with great scorn and anger but now, many are saying I was right to do so -- and although the pause is temporary, we must find out what is going on. The ban will be lifted when we as a nation are in a position to properly and perfectly screen those people coming into our country.

The immigration laws of the United States give the President the power to suspend entry into the country of any class of persons that the President deems detrimental to the interests or security of the United States, as he deems appropriate.

I will use this power to protect the American people. When I am elected, I will suspend immigration from areas of the world when there is a proven history of terrorism against the United States, Europe or our allies, until we understand how to end these threats.

After a full, impartial and long overdue security assessment, we will develop a responsible immigration policy that serves the interests and values of America.

We cannot continue to allow thousands upon thousands of people to pour into our country, many of whom have the same thought process as this savage killer.

Many of the principles of Radical Islam are incompatible with Western values and institutions.

Radical Islam is anti-woman, anti-gay and anti-American.

I refuse to allow America to become a place where gay people, Christian people, and Jewish people, are the targets of persecution and intimidation by Radical Islamic preachers of hate and violence.

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## **Trump attacks Obama: 'He's got something else in mind'**

By NICK GASS

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It's not just a national security issue. It is a quality of life issue.

If we want to protect the quality of life for all Americans – women and children, gay and straight, Jews and Christians and all people – then we need to tell the truth about Radical Islam.

We need to tell the truth, also, about how Radical Islam is coming to our shores.

We are importing Radical Islamic Terrorism into the West through a failed immigration system -- and through an intelligence community held back by our president.

Even our own FBI Director has admitted that we cannot effectively check the backgrounds of the people we are letting into America.

All of the September 11th hijackers were issued visas.

Large numbers of Somali refugees in Minnesota have tried to join ISIS.

The Boston Bombers came here through political asylum.

The male shooter in San Bernardino – again, whose name I won't mention -- was the child of immigrants from Pakistan, and he brought his wife – the other terrorist - from Saudi Arabia, through another one of our easily exploited visa programs.

Immigration from Afghanistan into the United States has increased nearly five-fold in just one year. According to Pew Research, 99% of people in Afghanistan support oppressive Sharia Law.

We admit many more from other countries in the region who share these same oppressive views.

If we want to remain a free and open society, then we have to control our borders.

Yet, Hillary Clinton – for months and despite so many attacks – repeatedly refused to even say the words “radical Islam,” until I challenged her yesterday to say the words or leave the race.

However, Hillary Clinton – who has been forced to say the words today after policies she supports have caused us so much damage – still has no clue what Radical Islam is, and won't speak honestly about what it is.

She is in total denial, and her continuing reluctance to ever name the enemy broadcasts weakness across the world.

In fact, just a few weeks before the San Bernardino slaughter, Hillary Clinton explained her refusal to say the words Radical Islam. Here is what she said: "Muslims are peaceful and tolerant people, and have nothing whatsoever to do with terrorism."

Hillary Clinton says the solution is to ban guns. They tried that in France, which has among the toughest gun laws in the world, and 130 were brutally murdered by Islamic terrorists in cold blood. Her plan is to disarm law-abiding Americans, abolishing the 2nd amendment, and leaving only the bad guys and terrorists with guns. She wants to take away Americans' guns, then admit the very people who want to slaughter us.

I will be meeting with the NRA, which has given me their earliest endorsement in a Presidential race, to discuss how to ensure Americans have the means to protect themselves in this age of terror.

The bottom line is that Hillary supports the policies that bring the threat of Radical Islam into America, and allow it to grow overseas.

In fact, Hillary Clinton's catastrophic immigration plan will bring vastly more Radical Islamic immigration into this country, threatening not only our security but our way of life.

When it comes to Radical Islamic terrorism, ignorance is not bliss – it's deadly.

The Obama Administration, with the support of Hillary Clinton and others, has also damaged our security by restraining our intelligence-gathering and failing to support law enforcement. They have put political correctness above common sense, above your safety, and above all else.

I refuse to be politically correct.

I will do the right thing--I want to straighten things out and to Make America Great Again.

The days of deadly ignorance will end, and they will end soon.

As President I will give our intelligence community, law enforcement and military the tools they need to prevent terrorist attacks.

We need an intelligence-gathering system second to none. That includes better cooperation between state, local and federal officials – and with our allies.

I will have an Attorney General, a Director of National Intelligence, and a Secretary of Defense who will know how to fight the war on Radical Islamic Terrorism – and who will

have the support they require to get the job done.

We also must ensure the American people are provided the information they need to understand the threat.

The Senate Subcommittee on Immigration has already identified hundreds of immigrants charged with terrorist activities inside the United States since September 11th.

Nearly a year ago, the Senate Subcommittee asked President Obama's Departments of Justice, State and Homeland Security to provide the immigration history of all terrorists inside the United States.

These Departments refused to comply.

President Obama must release the full and complete immigration histories of all individuals implicated in terrorist activity of any kind since 9/11.

The public has a right to know how these people got here.

We have to screen applicants to know whether they are affiliated with, or support, radical groups and beliefs.

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### **Trump takes credit for 'being right on radical Islamic terrorism'**

By **NOLAN D. MCCASKILL** and **KRISTEN EAST**

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We have to control the amount of future immigration into this country to prevent large pockets of radicalization from forming inside America.

Even a single individual can be devastating, just look at what happened in Orlando. Can you imagine large groups?

Truly, our President doesn't know what he is doing. He has failed us, and failed us badly, and under his leadership, this situation will not get any better -- it will only get worse.

Each year, the United States permanently admits more than 100,000 immigrants from the Middle East, and many more from Muslim countries outside the Middle East. Our government has been admitting ever-growing numbers, year after year, without any effective plan for our security.

In fact, Clinton's State Department was in charge of the admissions process for people applying to enter from overseas.

Having learned nothing from these attacks, she now plans to massively increase admissions without a screening plan, including a 500% increase in Syrian refugees.

This could be a better, bigger version of the legendary Trojan Horse.

We can't let this happen.

Altogether, under the Clinton plan, you'd be admitting hundreds of thousands of refugees from the Middle East with no system to vet them, or to prevent the radicalization of their children.

The burden is on Hillary Clinton to tell us why she believes immigration from these dangerous countries should be increased without any effective system to screen who we are bringing in.

The burden is on Hillary Clinton to tell us why we should admit anyone into our country who supports violence of any kind against gay and lesbian Americans.

The burden is also on Hillary Clinton to tell us how she will pay for it. Her plan will cost Americans hundreds of billions of dollars long-term.

Wouldn't this money be better spent on rebuilding America for our current population, including the many poor people already living here?

We have to stop the tremendous flow of Syrian refugees into the United States – we don't know who they are, they have no documentation, and we don't know what they're planning.

What I want is common sense. I want a mainstream immigration policy that promotes American values.

That is the choice I put before the American people: a mainstream immigration policy designed to benefit America, or Hillary Clinton's radical immigration policy designed to benefit politically-correct special interests.

We've got to get smart, and tough, and vigilant, and we've got to do it now, because later is too late.

The media talks about “homegrown,” terrorism, but Islamic radicalism, and the networks that nurture it, are imports from overseas.

Yes, there are many radicalized people already inside our country as a result of the poor policies of the past. But the whole point is that it will be much, much easier to deal with our current problem if we don't keep on bringing in people who add to the problem.

For instance, the controversial Mosque attended by the Boston Bombers had as its founder an immigrant from overseas charged in an assassination plot.

This shooter in Orlando was the child of an immigrant father who supported one of the most repressive regimes on Earth. Why would we admit people who support violent hatred?

Hillary Clinton can never claim to be a friend of the gay community as long as she continues to support immigration policies that bring Islamic extremists to our country who suppress women, gays and anyone who doesn't share their views.

She can't have it both ways. She can't claim to be supportive of these communities while trying to increase the number of people coming in who want to oppress them.

How does this kind of immigration make our life better? How does this kind of immigration make our country better?

Why does Hillary Clinton want to bring people here—in vast numbers—who reject our values?

Ask yourself, who is really the friend of women and the LGBT community, Donald Trump with his actions, or Hillary Clinton with her words? Clinton wants to allow Radical Islamic terrorists to pour into our country—they enslave women, and murder gays.

I don't want them in our country.

Immigration is a privilege, and we should not let anyone into this country who doesn't support our communities – all of our communities.

America has already admitted four times more immigrants than any country on earth, and we continue to admit millions more with no real checks or scrutiny.

Not surprisingly, wages for our workers haven't budged in many years.

So whether it's matter of national security, or financial security, we can't afford to keep on going like this. We owe \$19 trillion in debt, and no longer have options.

All our communities, from all backgrounds, are ready for some relief. This is not an act of offense against anyone; it is an act of defense.

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## **White House smacks down 'small' Trump for Obama attacks**

By NICK GASS

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I want us all to work together, including in partnership with our Muslim communities. But Muslim communities must cooperate with law enforcement and turn in the people who they know are bad – and they do know where they are.

I want to fix our schools, roads, bridges and job market. I want every American to succeed. Hillary Clinton wants to empty out the Treasury to bring people into the country that include individuals who preach hate against our own citizens.

I want to protect our citizens – all of our citizens.

The terrorist attack on the Pulse Night Club demands a full and complete investigation into every aspect of the assault.

In San Bernardino, as an example, people knew what was going on, but they used the excuse of racial profiling for not reporting it.

We need to know what the killer discussed with his relatives, parents, friends and associates.

We need to know if he was affiliated with any radical Mosques or radical activists and what, if any, is their immigration status.

We need to know if he travelled anywhere, and who he travelled with.

We need to make sure every single last person involved in this plan – including anyone who knew something but didn't tell us – is brought to justice.

If it can be proven that somebody had information about any attack, and did not give this information to authorities, they must serve prison time .

America must do more – much more – to protect its citizens, especially people who are potential victims of crimes based on their backgrounds or sexual orientations.

It also means we must change our foreign policy.

The decision to overthrow the regime in Libya, then pushing for the overthrow of the regime in Syria, among other things, without plans for the day after, have created space for ISIS to expand and grow.

These actions, along with our disastrous Iran deal, have also reduced our ability to work in partnership with our Muslim allies in the region.

That is why our new goal must be to defeat Islamic terrorism, not nation-building.

For instance, the last major NATO mission was Hillary Clinton's war in Libya. That mission helped unleash ISIS on a new continent.

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### **Christie talks 'radical Islam,' doesn't address Trump's remarks**

By **MATT FRIEDMAN**

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I've said NATO needs to change its focus to stopping terrorism. Since I've raised that criticism, NATO has since announced a new initiative focused on just that.

America must unite the whole civilized world in the fight against Islamic terrorism, just like we did against communism in the Cold War.

We've tried it President Obama's way. He gave the world his apology tour, we got ISIS, and many other problems, in return.

I'd like to conclude my remarks today by again expressing our solidarity with the people of Orlando who have come under attack.

When I am President, I pledge to protect and defend all Americans who live inside of our borders. Wherever they come from, wherever they were born, all Americans living here and following our laws will be protected.

America will be a tolerant and open society.

America will also be a safe society.

We will protect our borders at home.

We will defeat ISIS overseas.

We will ensure every parent can raise their children in peace and safety.

We will make America rich again.

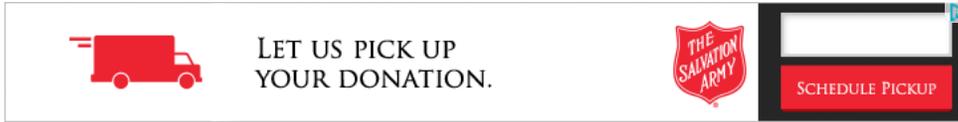
We will make America safe again.

We will make American Great Again.

Thank you.

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POLITICS JUN 27 2016, 4:58 PM ET

# In His Words: Donald Trump on the Muslim Ban, Deportations

by ALI VITALI

SHARE  

During his two-day Scottish property tour, Donald Trump spurred headlines and questions surrounding his controversial temporary Muslim ban and plans to deport undocumented immigrants in the United States.

On Saturday, during gaggles held on four holes of his Aberdeen golf course, Trump told reporters it "wouldn't bother" him if a Scottish Muslim came into the United States under his proposed policy plan. The response poked a glaring hole in Trump's initial blanket ban of all Muslims entering the United States and prompted multiple – and still unanswered -- questions about what this meant for Trump's most controversial policy going into the general election.

A few hours after the gaggle, in an interview with Bloomberg, Trump was confronted with his plans for immigration – the very hot button issue that launched Trump's candidacy in a cloud of controversy. On his plans to deport the estimated 11 million undocumented immigrants in the United States, Trump said that he "would not call it mass deportation" and later tweeted that he did not like that terminology. He did not, however, clarify if deportations were still a central theme of his plan – though this was very clearly established point during the primaries.

Here he is in his own words, on both of these issues:

### The Muslim Ban December 7, 2015

Just a few hours before a rally in Mt. Pleasant, South Carolina, Donald Trump released a policy proposal online which called for a "total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on." The 2015 policy proposed a blanket ban on Muslims based on what Trump called "hatred" of the West innate in Islam.

In the days that followed, Trump pointed to what he considered historical precedent to defend his singling out of the Muslim religion with his ban. He used FDR's Proclamations 2525, 2526, and 2527, which applied to Japanese, Italian, and German Americans in the aftermath of Pearl Harbor as examples. Those proclamations authorized the U.S. to "detain allegedly potentially dangerous enemy aliens" and led to the internment of many of these individuals.

### December 8, 2015

Appearing on MSNBC's Morning Joe, Trump said "take a look at [FDR's] presidential proclamations back a long time ago, 2525, 2526, 2527. What he was doing with Germans, Italians, and Japanese because he had to do it." Trump also pushed back on the premise that he was ordering internment camps but said "we have to get a hand around a very serious problem." When asked directly about the U.S. internment of Japanese Americans during World War II, Trump said "we're not talking about internment; this is a whole different thing."

#### **October 29, 2015**

On Fox Business' Varney and Company, Trump advocated for the first time monitoring mosques as a way to deal with radical Islamic terror. Asked if he'd consider closing some mosques, Trump said "absolutely, I think it's great." Moments later, when pressed on if he could actually close mosques, Trump was less certain. "Well, I don't know. I haven't heard about the closing of the mosque. It depends if the mosque is, you know, loaded for bear, I don't know. You're going to have to certainly look at it."

#### **June 13, 2016**

One day after the Pulse Nightclub terror attack that left 49 dead in Orlando, Florida, Trump spoke about the need to suspend immigration, this time not explicitly mentioning his proposed Muslim ban. Trump promised to "suspend immigration from areas of the world where there is a proven history of terrorism against the United States, Europe or our allies, until we fully understand how to end these threats." These new calls for tightened immigration rules read by many as an expansion of his already strict immigration policy.

The position became further clouded in a tweet after the speech, with Trump including a new specification: "suspending immigration from nations tied to Islamic terror." The tweet seemed to narrow the Muslim ban's focus to states with Islamic terror ties but marked a departure from Trump's previous blanket policy prescriptions.

#### **June 15, 2016**

In Atlanta, Georgia, Trump once again reiterated his support for a Muslim ban, saying that the ban applied "in particular" to people "coming from certain horrible" parts of the world with terror ties, but not calling for an end to a blanket ban on Muslims.

"We have to stop, on a temporary basis, at least but we have to stop people from pouring into our country. ... It's a temporary ban, in particular for certain people coming from certain horrible -- where you have tremendous terrorism in the world, you know what those places are. But we have to put a stop to it. We have to put a stop to it, until such time as we can figure out what is going on. Because right now, we don't have a clue what's going on, folks. We don't have a clue."

At that same rally, Trump also continued to push for monitoring mosques. "We have to go and we have to maybe check, respectfully, the mosques, and we have to check other places because this is a problem that, if we don't solve it, it's going to eat our country alive. OK? It's going to eat our country alive."

#### **June 22, 2016**

Trump's tone on Muslims shifted during a Clinton-focused speech just before his Scotland trip. Trump's usual rhetoric on radical Islamic terror was replaced by comments about "peaceful Muslims." On Wednesday, in a large room at his Trump SoHo Hotel, the GOP nominee discussed ISIS as an entity separate from Islam as a whole and distinguished them from "peaceful Muslims." He

said at the time: "ISIS also threatens peaceful Muslims across the Middle East, and peaceful Muslims across the world, who have been terribly victimized by horrible brutality – and who only want to raise their kids in peace and safety."

#### **June 25, 2016**

Traveling on business in Scotland, Trump responded to a question during his third gaggle of the day about whether he would be OK with a Scottish or British Muslim coming into the United States, in light of his ban. Trump replied: "doesn't bother me, doesn't bother me."

After another Q&A session, this one on the course's 18th green, Trump told the Daily Mail: "I don't want people coming in – I don't want people coming in from certain countries. I don't want people coming in from the terror countries. You have terror countries! I don't want them, unless they're very, very strongly vetted."

When asked which countries constitute the "terror countries," Trump said, "they're pretty well decided. All you have to do is look!"

Walking with several reporters off the golf course, Trump spokeswoman Hope Hicks said that the candidate's just-articulated policy wasn't a change from his explicitly proposed plans. National finance chairman Steven Mnuchin articulated a terror and country-focus to Trump's plan, saying "it is about terrorism and not about religion. It's about Muslims from countries that support terrorism."

A few hours later on Saturday, eating lunch in his clubhouse, Trump told Bloomberg News "I want terrorists out. I want people that have bad thoughts out. I would limit specific terrorist countries and we know who those countries are."

#### **June 27, 2016**

Questions on Trump's confusing comments followed him back across the pond. In a brief phone call with NBC, Trump said his Muslim ban would apply "in particular [to] the terrorist states." It's still unclear if this extra vetting subsumes his blanket ban or if this is an extra layer of focus within the existing ban.

Trump did however open up the ban to include all people, of all religions who come from Trump-designated terror states. When pressed by NBC's Hallie Jackson on whether his ban would apply to other religions other than Islam, for example Christians in Syria, Trump allowed that : "Christians are going to be vetted very, very seriously, if you're a Christian and you try to get in from Syria."

Trump then added that he thinks "Christians from Syria have been treated unbelievably badly by this country," further confusing the parameters of his ban.

When asked which "terror nations" Trump would focus on, he did not give much by way of criteria for designation these countries. "Terror nations," Trump repeated. "Look it up. They have a list of terror nations."

Trump was, however, unequivocal about immigrants from Syria, telling NBC that he "would stop that entirely" and again pushing for safe zones in Syria. "We'll work with other people to put up the money" for that, Trump said, echoing what he's said on the campaign trail that he'd ask Gulf Nations to pay for said safe zone. Trump has previously promised that all refugees in the US from Syria will be sent back if he is elected.

#### **Deportation of Undocumented Immigrants**

Trump does not state in his original policy plan that he wants to deport all undocumented immigrants. He outlines the need to deport “all illegal aliens in gangs” as well as “all criminal aliens,” and advocates “criminal penalties” for those individuals who overstay or refuse to leave after their visas expire. Absent from this plan are the words “mass deportation” – but that doesn’t mean it’s not implied in the policy prescription.

On the trail, Trump’s hawkish tone on immigration has been on display from the start – saying clearly that he will seek to deport the estimated 11 million undocumented immigrants in the United States if he is elected. The refrain that “they have to come in legally” is one of Trump’s more consistent policy tenets.

#### **August 16, 2015**

Trump tells NBC’s Chuck Todd that he would “keep the families together...but they have to go.” He notes that they could come back through a legal process.

#### **November 12, 2015**

Trump’s Fort Dodge, Iowa rally was dominated by coverage of his remarks about Ben Carson being “pathological” and comparing his former rival to a child molester. But during that rally Trump asserted his deportation stance clearly: “I’m tougher on illegal immigration than anybody. That’s what I’m saying we have to take people that are here illegally and we have to move them out and you know what, it’s going to be done, it’s going to be done, it’s going to work and now even the other candidates are saying, ‘you know what, I think he’s right.’ They don’t know, we have to do it.”

That same day, however, Trump denounced Mitt Romney’s self-deportation plan, calling it “mean spirited” and saying that his own, similar plan is anything but during an interview with Fox’s Bret Baier. Trump said Romney’s plan “was crazy, because it doesn’t work. [Romney] was talking about people are just going to walk out of the country.”

But as Trump outlined how his own plan would work, the differences seemed scarce. Trump described his plans as wanting “people to go out and to have to come in through the legal process.” The main difference, Trump maintained then and in other interviews at the time, was that Trump’s plan would allow people to re-enter legally and that the deportation process, while not detailed, would be humane. “There will be deportation,” Trump said. “And hopefully they’ll be able to come back into the country.”

#### **April 28, 2016**

Asked by NBC’s Matt Lauer if he’s backing off talk of the wall along the Southern border and deporting 11 million undocumented immigrants, Trump replied: “no, not at all.” He doubled down then saying that “when I’m talking about immigration...I’m talking about that and more in the form of immigration, the wall, undocumented immigrants being -- having to be brought out of the country. And we will do that. It has never been a worse situation than we have right now.”

#### **June 25, 2016**

Trump tells Bloomberg News that he would have a “heart” with his immigration policies, attacking President Obama for deporting “vast numbers of people.”

“I think people are going to find that I have not only the best policies, but I will have the biggest heart of anybody,” Trump said in the interview. When asked about if he would issue “mass deportations” Trump responded, “no, I would not call it mass deportations.” He did not elaborate on if his prior calls for exactly that were no longer on the table. 

TOPICS POLITICS, DONALD TRUMP, FIRST READ, 2016 ELECTION

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↓ NEXT STORY Bernie Sanders on Some Supporters Not Voting for Clinton: 'No Kidding!'

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POLITICS SEP 17 2017, 12:26 PM ET

# Bernie Sanders on Some Supporters Not Voting for Clinton: 'No Kidding!'

by KAILANI KOENIG



WASHINGTON — Sen. Bernie Sanders on Sunday chalked up the fact that some of his supporters during 2016's Democratic primaries eventually voted for Donald Trump in the general election to "the nature of politics."

"People say not everybody who voted for Bernie ended up voting for Hillary, no kidding!" Sanders said on "Meet The Press."

He added, "That's what happens in politics," specifically pointing to some samples that have showed as many as a quarter of Clinton's primary voters in 2008 ended up voting for John McCain in the general election.

"That's the nature of politics," he said. "Most people, you know, are not rigidly Democrats or Republicans. They vote where they want. I worked as hard as I could to see that Hillary Clinton would be elected president."

The Vermont senator was responding to criticism that Clinton leveled at him in her new book and in recent media appearances that he didn't do enough to bring his supporters to her side after their contentious Democratic primary for president last year.

A recent survey of 50,000 people from the Cooperative Congressional Election Study estimated that as many as 12 percent of people who voted for Sanders in a primary ended up voting for Trump in the general.

"After endorsing Hillary Clinton, I went all over this country," Sanders said Sunday.

But he didn't hold back from criticizing the Democratic Party. A long-time Independent, he did not indicate that he had any plans to run as a Democrat in Vermont's Senate election next year.

"The current model of the Democratic Party obviously is not working," he said. "Republicans control the House, the Senate. They control the White House. They control two thirds of the governor's offices throughout this country. In my view Chuck, what we need to do is to reach out to independents."

Sanders on Sunday was also promoting his "Medicare For All" bill proposal that he unveiled this week. At least 15 Democrats have so far signed on to supporting it — signaling a fast shift among the Democratic ranks for a single-payer health care system.

"In my view, a Medicare for all, single-payer program will address those issues and guarantee health care to all people in a cost-effective way," Sanders said.

But he wasn't under any illusion that it will be passed any time soon under Republican control of Congress and the White House.

"It's not going to happen tomorrow," Sanders added. "I fully admit that. But we need to put the benchmark down there and go forward." 🌈

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KAILANI KOENIG

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TOPICS POLITICS, 2016 ELECTION, FIRST READ, POLITICS NEWS

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FIRST PUBLISHED SEP 17 2017, 10:22 AM ET

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↓ NEXT STORY In New Book, Hillary Clinton Says 'My Skin Crawled' During Debate With Trump

# **Exhibit G**



# FULL SPEECH: Donald Trump addresses Radical Islamic Terr

BY THE HILL STAFF - 08/15/16 04:01 PM EDT

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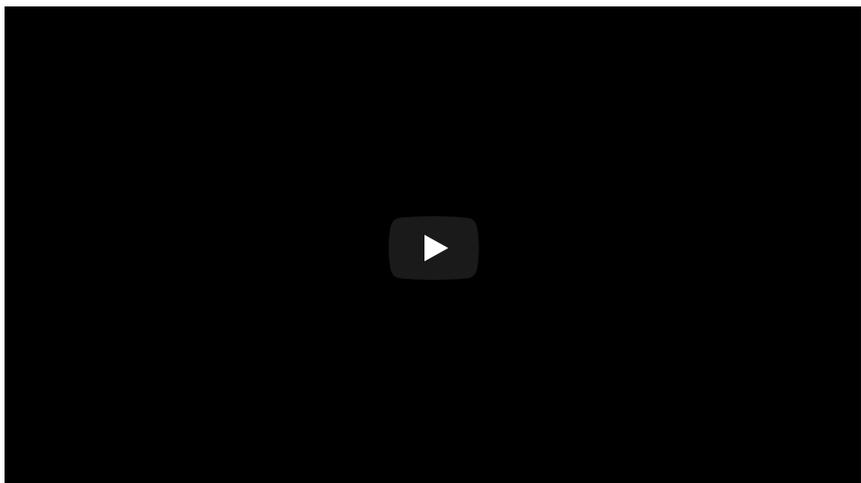
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Thank you. It is great to be with you this afternoon.

Today we begin a conversation about how to Make America Safe Again.

In the 20<sup>th</sup> Century, the United States defeated Fascism, Nazism, and Communism.

Now, a different threat challenges our world: Radical Islamic Terrorism.

This summer, there has been an ISIS attack launched outside the war zones of the Middle East every 84 hours.

Here, in America, we have seen one brutal attack after another.

13 were murdered, and 38 wounded, in the assault on Ft. Hood.

The Boston Marathon Bombing wounded and maimed 264 people, and ultimately left five dead – including 2 police officers.

In Chattanooga, Tennessee, five unarmed marines were shot and killed at a military recruiting center.

Last December, 14 innocent Americans were gunned down at an office party in San Bernardino, another 22 were injured.

In June, 49 Americans were executed at the Pulse Nightclub in Orlando, and another 53 were injured. It was the worst mass shooting in our history, and the worst attack on the LGBTQ community in our history.

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In Europe, we have seen the same carnage and bloodshed inflicted upon our closest allies.

In January of 2015, a French satirical newspaper, Charlie Hebdo, was attacked for publishing cartoons of the prophet Mohammed. Twelve were killed, including two police officers, and 11 were wounded. Two days later, four were murdered in a Jewish Deli.

In November of 2015, terrorists went on a shooting rampage in Paris that slaughtered 130 people, and wounded another 368. France is suffering gravely, and the tourism industry is being massively affected in a most negative way.

In March of this year, terrorists detonated a bomb in the Brussels airport, killing 32 and injuring 340.

This July, in the South of France, an Islamic terrorist turned his truck into an instrument of mass murder, plowing down and killing 85 men, women and children – and wounding another 308. Among the dead were 2 Americans – a Texas father, and his 11-year-old son.

A few weeks ago, in Germany, a refugee armed with an axe wounded five people in a gruesome train attack.

Only days ago, an ISIS killer invaded a Christian church in Normandy France, forced an 85-year-old priest to his knees, and slit his throat before his congregation.

Overseas, ISIS has carried out one unthinkable atrocity after another.

Children slaughtered, girls sold into slavery, men and women burned alive. Crucifixions, beheadings and drownings. Ethnic minorities targeted for mass execution. Holy sites desecrated.

Christians driven from their homes and hunted for extermination. ISIS rounding-up what it calls the “nation of the cross” in a campaign of genocide.

We cannot let this evil continue.

Nor can we let the hateful ideology of Radical Islam – its oppression of women, gays, children, and nonbelievers – be allowed to reside or spread within our own countries.

We will defeat Radical Islamic Terrorism, just as we have defeated every threat we have faced in every age before.

But we will not defeat it with closed eyes, or silenced voices.

Anyone who cannot name our enemy, is not fit to lead this country. Anyone who cannot condemn the hatred, oppression and violence of Radical Islam lacks the moral clarity to serve as our President.

The rise of ISIS is the direct result of policy decisions made by President Obama and Secretary Clinton.

Let's look back at the Middle East at the very beginning of 2009, before the Obama-Clinton Administration took over.

Libya was stable.

Syria was under control.

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Iraq was experiencing a reduction in violence. The group that would become what we now call ISIS was close to being extinguished.

Iran was being choked off by economic sanctions.

Fast-forward to today. What have the decisions of Obama-Clinton produced?

Libya is in ruins, our ambassador and three other brave Americans are dead, and ISIS has gained a new base of operations.

Syria is in the midst of a disastrous civil war. ISIS controls large portions of territory. A refugee crisis now threatens Europe and the United States.

In Egypt, terrorists have gained a foothold in the Sinai desert, near the Suez Canal, one of the most essential waterways in the world.

Iraq is in chaos, and ISIS is on the loose.

ISIS has spread across the Middle East, and into the West. In 2014, ISIS was operating in some 7 nations. Today they are fully operational in 18 countries with aspiring branches in 6 more, for a total of 24 – and many believe it is even more than that. The situation is likely worse than the public knows: a new Congressional report reveals that the Administration has downplayed the growth of ISIS, with 40% of surveyed analysts saying they had experienced efforts to manipulate their findings.

At the same time, ISIS is trying to infiltrate refugee flows into Europe and the United States.

Iran, the world's largest state sponsor of terrorism, is now flush with

\$150 billion in cash released by the United States – plus another \$400 million in ransom. Worst of all, the Nuclear deal puts Iran, the number one state sponsor of Radical Islamic Terrorism, on a path to nuclear weapons.

In short, the Obama-Clinton foreign policy has unleashed ISIS, destabilized the Middle East, and put the nation of Iran – which chants 'Death to America' – in a dominant position of regional power and, in fact, aspiring to be a dominant world power.

It all began in 2009 with what has become known as President Obama's global 'Apology Tour.'

In a series of speeches, President Obama described America as "arrogant," "dismissive" "derisive" and a "colonial power." He informed other countries that he would be speaking up about America's "past errors." He pledged that we would no longer be a "senior partner," that "sought to dictate our terms." He lectured CIA officers of the need to acknowledge their mistakes, and described Guantanamo Bay as a "rallying cry for our enemies."

Perhaps no speech was more misguided than President Obama's speech to the Muslim World delivered in Cairo, Egypt, in 2009.

In winning the Cold War, President Ronald Reagan repeatedly touted the superiority of freedom over communism, and called the USSR the Evil Empire.

Yet, when President Obama delivered his address in Cairo, no such moral courage could be found. Instead of condemning the oppression of women and gays in many Muslim nations, and the systematic violations of human rights, or the financing of global terrorism, President Obama tried to draw an equivalency between our human rights record and theirs.

His naïve words were followed by even more naïve actions.

The failure to establish a new Status of Forces Agreement in Iraq, and the election-driven timetable for withdrawal, surrendered our gains in that country and led directly to the rise of ISIS.

The failures in Iraq were compounded by Hillary Clinton's disaster in Libya. President Obama has since said he regards Libya as his worst mistake. According to then-Secretary of Defense Robert Gates, the invasion of Libya was nearly a split decision, but Hillary Clinton's forceful advocacy for the intervention was the deciding factor.

With one episode of bad judgment after another, Hillary Clinton's policies launched ISIS onto the world.

Yet, as she threw the Middle East into violent turmoil, things turned out well for her. The Clintons made almost \$60 million in gross income while she was Secretary of State.

Incident after incident proves again and again: Hillary Clinton lacks the judgement, the temperament and the moral character to lead this nation. Importantly, she also lacks the mental and physical stamina to take on ISIS, and all the many adversaries we face – not only in terrorism, but in trade and every other challenge we must confront to turn this country around.

It is time for a new approach.

Our current strategy of nation-building and regime change is a proven failure. We have created the vacuums that allow terrorists to grow and thrive.

I was an opponent of the Iraq war from the beginning – a major difference between me and my opponent.

Though I was a private citizen, whose personal opinions on such matters was not sought, I nonetheless publicly expressed my private doubts about the invasion. Three months before the invasion I said, in an interview with Neil Cavuto, to whom I offer my best wishes for a speedy recovery, that “perhaps [we] shouldn't be doing it yet,” and that “the economy is a much bigger problem.”

In August of 2004, very early in the conflict, I made a detailed statement to Esquire magazine. Here is the quote in full:

"Look at the war in Iraq and the mess that we're in. I would never have handled it that way. Does anybody really believe that Iraq is going to be a wonderful democracy where people are going to run down to the voting box and gently put in their ballot and the winner is happily going to step up to lead the country? C'mon.

Two minutes after we leave, there's going to be a revolution, and the meanest, toughest, smartest, most vicious guy will take over. And he'll have weapons of mass destruction, which Saddam didn't have.

"What was the purpose of this whole thing? Hundreds and hundreds of young people killed. And what about the people coming back with no arms and legs? Not to mention the other side. All those Iraqi kids who've been blown to pieces. And it turns out that all of the reasons for the war were blatantly wrong. All this for nothing."

So I have been clear for a long time that we should not have gone in. But I have been just as clear in saying what a catastrophic mistake Hillary Clinton and President Obama made with the reckless way in which they pulled out.

After we had made those hard-fought sacrifices and gains, we should never have made such a sudden withdrawal – on a timetable advertised to our enemies. Al Qaeda in Iraq had been decimated, and Obama and Clinton gave it new life and allowed it to spread across the world.

By that same token, President Obama and Hillary Clinton should never have attempted to build a Democracy in Libya, to push for immediate regime change in Syria, or to support the overthrow of Mubarak in Egypt.

One more point on this: I have long said that we should have kept the oil in Iraq – another area where my judgement has been proven correct. According to CNN, ISIS made as much \$500 million in oil sales in 2014 alone, fueling and funding its reign of terror. If we had controlled the oil, we could have prevented the rise of ISIS in Iraq – both by cutting off a major source of funding, and through the presence of U.S. forces necessary to safeguard the oil and other vital infrastructure. I was saying this constantly and to whoever would listen: keep the oil, keep the oil, keep the oil, I said – don't let someone else get it.

If they had listened to me then, we would have had the economic benefits of the oil, which I wanted to use to help take care of the wounded soldiers and families of those who died – and thousands of lives would have been saved.

This proposal, by its very nature, would have left soldiers in place to guard our assets. In the old days, when we won a war, to the victor belonged the spoils. Instead, all we got from Iraq – and our adventures in the Middle East – was death, destruction and tremendous financial loss.

But it is time to put the mistakes of the past behind us, and chart a new course.

If I become President, the era of nation-building will be ended. Our new approach, which must be shared by both parties in America, by our allies overseas, and by our friends in the Middle East, must be to halt the spread of Radical Islam.

All actions should be oriented around this goal, and any country which shares this goal will be our ally. We cannot always choose our friends, but we can never fail to recognize our enemies.

As President, I will call for an international conference focused on this goal. We will work side-by-side with our friends in the Middle East, including our greatest ally, Israel. We will partner with King Abdullah of Jordan, and President Sisi of Egypt, and all others who recognize this ideology of death that must be extinguished.

We will also work closely with NATO on this new mission. I had previously said that NATO was obsolete because it failed to deal adequately with

terrorism; since my comments they have changed their policy and now have a new division focused on terror threats.

I also believe that we could find common ground with Russia in the fight against ISIS. They too have much at stake in the outcome in Syria, and have had their own battles with Islamic terrorism.

My Administration will aggressively pursue joint and coalition military operations to crush and destroy ISIS, international cooperation to cut-off their funding, expanded intelligence sharing, and cyberwarfare to disrupt and disable their propaganda and recruiting. We cannot allow the internet to be used as a recruiting tool, and for other purposes, by our enemy – we must shut down their access to this form of communication, and we must do so immediately.

Unlike Hillary Clinton, who has risked so many lives with her careless handling of sensitive information, my Administration will not telegraph exact military plans to the enemy. I have often said that General MacArthur and General Patton would be in a state of shock if they were alive today to see the way President Obama and Hillary Clinton try to recklessly announce their every move before it happens – like they did in Iraq – so that the enemy can prepare and adapt.

The fight will not be limited to ISIS. We will decimate Al Qaeda, and we will seek to starve funding for Iran-backed Hamas and Hezbollah. We can use existing UN Security Council resolutions to apply new sanctions.

Military, cyber and financial warfare will all be essential in dismantling Islamic terrorism.

But we must use ideological warfare as well.

Just as we won the Cold War, in part, by exposing the evils of communism and the virtues of free markets, so too must we take on the ideology of Radical Islam.

While my opponent accepted millions of dollars in Foundation donations from countries where being gay is an offense punishable by prison or death, my Administration will speak out against the oppression of women, gays and people of different faith.

Our Administration will be a friend to all moderate Muslim reformers in the Middle East, and will amplify their voices.

This includes speaking out against the horrible practice of honor killings, where women are murdered by their relatives for dressing, marrying or acting in a way that violates fundamentalist teachings.

Over 1,000 Pakistani girls are estimated to be the victims of honor killings by their relatives each year. Recently, a prominent Pakistani social media star was strangled to death by her brother on the charge of dishonoring the family. In his confession, the brother took pride in the murder and said: "Girls are born to stay home and follow traditions."

Shockingly, this is a practice that has reached our own shores.

One such case involves an Iraqi immigrant who was sentenced to 34 years in jail for running over his own daughter claiming she had become "too Westernized."

To defeat Islamic terrorism, we must also speak out forcefully against a hateful ideology that provides the breeding ground for violence and terrorism to grow.

A new immigration policy is needed as well.

The common thread linking the major Islamic terrorist attacks that have recently occurred on our soil – 9/11, the Ft. Hood shooting, the Boston Bombing, the San Bernardino attack, the Orlando attack – is that they have involved immigrants or the children of immigrants.

Clearly, new screening procedures are needed.

A review by the U.S. Senate Immigration Subcommittee has identified 380 foreign-born individuals charged with terrorism or terrorism-related offenses between 9/11 and 2014, and many more since then.

We also know that ISIS recruits refugees after their entrance into the country – as we have seen with the Somali refugee population in Minnesota.

Beyond terrorism, as we have seen in France, foreign populations have brought their anti-Semitic attitudes with them.

In Cologne, Germany, on New Year's Eve, we have seen the reports of sexual violence and assault. Pew polling shows that in many of the countries from which we draw large numbers of immigrants, extreme views about religion – such as the death penalty for those who leave the faith – are commonplace.

A Trump Administration will establish a clear principle that will govern all decisions pertaining to immigration: we should only admit into this country those who share our values and respect our people.

In the Cold War, we had an ideological screening test. The time is overdue to develop a new screening test for the threats we face today.

In addition to screening out all members or sympathizers of terrorist groups, we must also screen out any who have hostile attitudes towards our country or its principles – or who believe that Sharia law should supplant American law.

Those who do not believe in our Constitution, or who support bigotry and hatred, will not be admitted for immigration into the country.

Only those who we expect to flourish in our country – and to embrace a tolerant American society – should be issued immigrant visas.

To put these new procedures in place, we will have to temporarily suspend immigration from some of the most dangerous and volatile regions of the world that have a history of exporting terrorism.

As soon as I take office, I will ask the State Department and the Department of Homeland Security to identify a list of regions where adequate screening cannot take place. We will stop processing visas from those areas until such time as it is deemed safe to resume based on new circumstances or new procedures.

The size of current immigration flows are simply too large to perform adequate screening.

We admit about 100,000 permanent immigrants from the Middle East every year. Beyond that, we admit hundreds of thousands of temporary workers and visitors from the same regions. If we don't control the numbers, we can't perform adequate screening.

By contrast, my opponent wants to increase the flow of Syrian refugees by 550% percent.

The United States Senate Subcommittee on Immigration estimates that Hillary Clinton's plan would mean roughly 620,000 refugees from all current refugee-sending nations in her first term, assuming no cuts to other refugee programs. This would be additional to all other non-refugee immigration.

The Subcommittee estimates her plan would impose a lifetime cost of roughly \$400 billion when you include the costs of healthcare, welfare, housing, schooling, and all other entitlement benefits that are excluded from the State Department's placement figures.

In short, Hillary Clinton wants to be America's Angela Merkel, and you know what a disaster this massive immigration has been to Germany and the people of Germany – crime has risen to levels that no one thought would they would ever see. We have enough problems in our country, we don't need another one.

Finally, we will need to restore common sense to our security procedures.

Another common feature of the past attacks that have occurred on our soil is that warning signs were ignored.

The 9/11 hijackers had fraud all over their visa applications. The Russians warned us about the Boston Bombers, here on political asylum, and the attackers were even twice interviewed by the FBI.

The female San Bernardino shooter, here on a fiancé visa from Saudi Arabia, wrote of her support for Jihad online. A neighbor saw suspicious behavior but didn't warn authorities, because said they didn't want to be accused of racially profiling – now many are dead and gravely wounded.

The shooter in Orlando reportedly celebrated in his classroom after 9/11. He too was interviewed by the FBI. His father, a native of Afghanistan, supported the oppressive Taliban regime, and expressed anti-American views – and by the way, was just seen sitting behind Hillary Clinton with a big smile on his face all the way through her speech. He obviously liked what she had to say.

The Ft. Hood Shooter delivered a presentation to a room full of mental health experts before the attacks in which he threw out one red flag after another. He even proclaimed that "we love death more than you love life!"

These warnings signs were ignored because political correctness has replaced common sense in our society

That is why one of my first acts as President will be to establish a Commission on Radical Islam – which will include reformist voices in the Muslim community who will hopefully work with us. We want to build bridges and erase divisions.

The goal of the commission will be to identify and explain to the American public the core convictions and beliefs of Radical Islam, to identify the

warning signs of radicalization, and to expose the networks in our society that support radicalization.

This commission will be used to develop new protocols for local police officers, federal investigators, and immigration screeners.

We will also keep open Guantanamo Bay, and place a renewed emphasis on human intelligence. Drone strikes will remain part of our strategy, but we will also seek to capture high-value targets to gain needed information to dismantle their organizations. Foreign combatants will be tried in military commissions.

Finally, we will pursue aggressive criminal or immigration charges against anyone who lends material support to terrorism. Similar to the effort to take down the mafia, this will be the understood mission of every federal investigator and prosecutor in the country.

To accomplish a goal, you must state a mission: the support networks for Radical Islam in this country will be stripped out and removed one by one.

Immigration officers will also have their powers restored: those who are guests in our country that are preaching hate will be asked to return home.

To make America safe again, we must work together again.

Our victory in the Cold War relied on a bipartisan and international consensus. That is what we must have to defeat Radical Islamic terrorism.

But just like we couldn't defeat communism without acknowledging that communism exists – or explaining its evils – we can't defeat Radical Islamic Terrorism unless we do the same.

This also means we have to promote the exceptional virtues of our own way of life – and expecting that newcomers to our society do the same.

Pride in our institutions, our history and our values should be taught by parents and teachers, and impressed upon all who join our society.

Assimilation is not an act of hostility, but an expression of compassion. Our system of government, and our American culture, is the best in the world and will produce the best outcomes for all who adopt it.

This approach will not only make us safer, but bring us closer together as a country.

Renewing this spirit of Americanism will help heal the divisions in our country. It will do so by emphasizing what we have in common – not what pulls us apart.

This is my pledge to the American people: as your President I will be your greatest champion. I will fight to ensure that every American is treated equally, protected equally, and honored equally. We will reject bigotry and oppression in all its forms, and seek a new future built on our common culture and values as one American people.

Only this way, will we make America Great Again and Safe Again – For Everyone.

Thank you.

TAGS YOUNGSTOWN UNITED STATES IRAQ SYRIA IRAN 2016 PRESIDENTIAL CAMPAIGN  
REPUBLICAN PARTY ISIS HILLARY CLINTON OHIO FOREIGN POLICY RADICAL ISLAMIC TERRORISM



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# **Exhibit H**

**The New York Times** | <https://nyti.ms/2cc9a86>

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# Transcript of Donald Trump's Immigration Speech

SEPT. 1, 2016

*Following is a transcript of the remarks by Donald J. Trump on immigration in Phoenix on Wednesday, as transcribed by the Federal News Service.*

**TRUMP:** Wow. Thank you. That's a lot of people, Phoenix, that's a lot of people.

(APPLAUSE)

Thank you very much.

Thank you, Phoenix. I am so glad to be back in Arizona.

(APPLAUSE)

The state that has a very, very special place in my heart. I love people of Arizona and together we are going to win the White House in November.

(APPLAUSE)

Now, you know this is where it all began for me. Remember that massive crowd also? So, I said let's go and have some fun tonight. We're going to Arizona, O.K.?

This will be a little bit different. This won't be a rally speech, per se. Instead, I'm going to deliver a detailed policy address on one of the greatest challenges facing our country today, illegal immigration.

(APPLAUSE)

I've just landed having returned from a very important and special meeting with the president of Mexico, a man I like and respect very much. And a man who truly loves his country, Mexico.

And, by the way, just like I am a man who loves my country, the United States.

(APPLAUSE)

We agree on the importance of ending the illegal flow of drugs, cash, guns, and people across our border, and to put the cartels out of business.

(APPLAUSE)

We also discussed the great contributions of Mexican-American citizens to our two countries, my love for the people of Mexico, and the leadership and friendship between Mexico and the United States. It was a thoughtful and substantive conversation and it will go on for awhile. And, in the end we're all going to win. Both countries, we're all going to win.

This is the first of what I expect will be many, many conversations. And in a Trump administration we're going to go about creating a new relationship between our two countries, but it's going to be a fair relationship. We want fairness.

(APPLAUSE)

But to fix our immigration system, we must change our leadership in Washington and we must change it quickly. Sadly, sadly there is no other way. The truth is our immigration system is worse than anybody ever realized. But the facts aren't known because the media won't report on them. The politicians won't talk

about them and the special interests spend a lot of money trying to cover them up because they are making an absolute fortune. That's the way it is.

Today, on a very complicated and very difficult subject, you will get the truth. The fundamental problem with the immigration system in our country is that it serves the needs of wealthy donors, political activists and powerful, powerful politicians. It's all you can do. Thank you. Thank you.

(APPLAUSE)

Let me tell you who it does not serve. It does not serve you the American people. Doesn't serve you. When politicians talk about immigration reform, they usually mean the following: amnesty, open borders, lower wages. Immigration reform should mean something else entirely. It should mean improvements to our laws and policies to make life better for American citizens.

(APPLAUSE)

Thank you. But if we're going to make our immigration system work, then we have to be prepared to talk honestly and without fear about these important and very sensitive issues. For instance, we have to listen to the concerns that working people, our forgotten working people, have over the record pace of immigration and its impact on their jobs, wages, housing, schools, tax bills and general living conditions.

These are valid concerns expressed by decent and patriotic citizens from all backgrounds, all over. We also have to be honest about the fact that not everyone who seeks to join our country will be able to successfully assimilate. Sometimes it's just not going to work out. It's our right, as a sovereign nation, to chose immigrants that we think are the likeliest to thrive and flourish and love us.

(APPLAUSE)

Then there is the issue of security. Countless innocent American lives have been stolen because our politicians have failed in their duty to secure our borders and enforce our laws like they have to be enforced. I have met with many of the great parents who lost their children to sanctuary cities and open borders. So many

people, so many, many people. So sad. They will be joining me on this stage in a little while and I look forward to introducing, these are amazing, amazing people.

Countless Americans who have died in recent years would be alive today if not for the open border policies of this administration and the administration that causes this horrible, horrible thought process, called Hillary Clinton.

(APPLAUSE)

This includes incredible Americans like 21-year-old Sarah Root. The man who killed her arrived at the border, entered federal custody and then was released into the U.S., think of it, into the U.S. community under the policies of the White House Barack Obama and Hillary Clinton. Weak, weak policies. Weak and foolish policies.

He was released again after the crime, and now he's out there at large. Sarah had graduated from college with a 4.0, top student in her class one day before her death.

Also among the victims of the Obama-Clinton open-border policy was Grant Ronnebeck, a 21-year-old convenience store clerk and a really good guy from Mesa, Arizona. A lot of you have known about Grant.

He was murdered by an illegal immigrant gang member previously convicted of burglary, who had also been released from federal custody, and they knew it was going to happen again.

Another victim is Kate Steinle. Gunned down in the sanctuary city of San Francisco, by an illegal immigrant, deported five previous times. And they knew he was no good.

Then there is the case of 90-year-old Earl Olander, who was brutally beaten and left to bleed to death in his home, 90 years old and defenseless. The perpetrators were illegal immigrants with criminal records a mile long, who did not meet Obama administration standards for removal. And they knew it was going to happen.

In California, a 64-year-old Air Force veteran, a great woman, according to everybody that knew her, Marilyn Pharis, was sexually assaulted and beaten to death

with a hammer. Her killer had been arrested on multiple occasions but was never, ever deported, despite the fact that everybody wanted him out.

A 2011 report from the Government Accountability Office found that illegal immigrants and other non-citizens, in our prisons and jails together, had around 25,000 homicide arrests to their names, 25,000.

On top of that, illegal immigration costs our country more than \$113 billion a year. And this is what we get. For the money we are going to spend on illegal immigration over the next 10 years, we could provide one million at-risk students with a school voucher, which so many people are wanting.

While there are many illegal immigrants in our country who are good people, many, many, this doesn't change the fact that most illegal immigrants are lower skilled workers with less education, who compete directly against vulnerable American workers, and that these illegal workers draw much more out from the system than they can ever possibly pay back.

And they're hurting a lot of our people that cannot get jobs under any circumstances.

But these facts are never reported. Instead, the media and my opponent discuss one thing and only one thing, the needs of people living here illegally. In many cases, by the way, they're treated better than our vets.

Not going to happen anymore, folks. November 8th. Not going to happen anymore.

(APPLAUSE)

**AUDIENCE:** Trump! Trump! Trump!

The truth is, the central issue is not the needs of the 11 million illegal immigrants or however many there may be — and honestly we've been hearing that number for years. It's always 11 million. Our government has no idea. It could be three million. It could be 30 million. They have no idea what the number is.

Frankly our government has no idea what they're doing on many, many fronts, folks.

(APPLAUSE)

But whatever the number, that's never really been the central issue. It will never be a central issue. It doesn't matter from that standpoint. Anyone who tells you that the core issue is the needs of those living here illegally has simply spent too much time in Washington.

(APPLAUSE)

Only the out of touch media elites think the biggest problems facing America — you know this, this is what they talk about, facing American society today is that there are 11 million illegal immigrants who don't have legal status. And, they also think the biggest thing, and you know this, it's not nuclear, and it's not ISIS, it's not Russia, it's not China, it's global warming.

To all the politicians, donors, and special interests, hear these words from me and all of you today. There is only one core issue in the immigration debate, and that issue is the well being of the American people.

(APPLAUSE)

Nothing even comes a close second. Hillary Clinton, for instance, talks constantly about her fears that families will be separated, but she's not talking about the American families who have been permanently separated from their loved ones because of a preventable homicide, because of a preventable death, because of murder.

No, she's only talking about families who come here in violation of the law. We will treat everyone living or residing in our country with great dignity. So important.

We will be fair, just, and compassionate to all, but our greatest compassion must be for our American citizens.

(APPLAUSE)

Thank you.

President Obama and Hillary Clinton have engaged in gross dereliction of duty by surrendering the safety of the American people to open borders, and you know it better than anybody right here in Arizona. You know it.

President Obama and Hillary Clinton support sanctuary cities. They support catch and release on the border. They support visa overstays. They support the release of dangerous, dangerous, dangerous, criminals from detention. And they support unconstitutional executive amnesty.

Hillary Clinton has pledged amnesty in her first 100 days, and her plan will provide Obamacare, Social Security, and Medicare for illegal immigrants, breaking the federal budget.

On top of that she promises uncontrolled, low-skilled immigration that continues to reduce jobs and wages for American workers, and especially for African-American and Hispanic workers within our country. Our citizens.

Most incredibly, because to me this is unbelievable, we have no idea who these people are, where they come from. I always say Trojan horse. Watch what's going to happen, folks. It's not going to be pretty.

This includes her plan to bring in 620,000 new refugees from Syria and that region over a short period of time. And even yesterday, when you were watching the news, you saw thousands and thousands of people coming in from Syria. What is wrong with our politicians, our leaders if we can call them that. What the hell are we doing?

(APPLAUSE)

Hard to believe. Hard to believe. Now that you've heard about Hillary Clinton's plan, about which she has not answered a single question, let me tell you about my plan. And do you notice...

(APPLAUSE)

And do you notice all the time for weeks and weeks of debating my plan, debating, talking about it, what about this, what about that. They never even mentioned her plan on immigration because she doesn't want to get into the quagmire. It's a tough one, she doesn't know what she's doing except open borders and let everybody come in and destroy our country by the way.

(APPLAUSE)

While Hillary Clinton meets only with donors and lobbyists, my plan was crafted with the input from Federal Immigration offices, very great people. Among the top immigration experts anywhere in this country, who represent workers, not corporations, very important to us.

I also worked with lawmakers, who've led on this issue on behalf of American citizens for many years. And most importantly I've met with the people directly impacted by these policies. So important.

Number one, are you ready? Are you ready?

(APPLAUSE)

We will build a great wall along the southern border.

(APPLAUSE)

**AUDIENCE:** Build the wall! Build the wall! Build the wall!

And Mexico will pay for the wall.

(APPLAUSE)

One hundred percent. They don't know it yet, but they're going to pay for it. And they're great people and great leaders but they're going to pay for the wall.

On day one, we will begin working on an impenetrable, physical, tall, power, beautiful southern border wall.

(APPLAUSE)

We will use the best technology, including above and below ground sensors that's the tunnels. Remember that, above and below.

(APPLAUSE)

Above and below ground sensors. Towers, aerial surveillance and manpower to supplement the wall, find and dislocate tunnels and keep out criminal cartels and Mexico you know that, will work with us. I really believe it. Mexico will work with us. I absolutely believe it. And especially after meeting with their wonderful, wonderful president today. I really believe they want to solve this problem along with us, and I'm sure they will.

(APPLAUSE)

Number two, we are going to end catch and release. We catch them, oh go ahead. We catch them, go ahead.

(APPLAUSE)

Under my administration, anyone who illegally crosses the border will be detained until they are removed out of our country and back to the country from which they came.

(APPLAUSE)

And they'll be brought great distances. We're not dropping them right across. They learned that. President Eisenhower. They'd drop them across, right across, and they'd come back. And across.

Then when they flew them to a long distance, all of a sudden that was the end. We will take them great distances. But we will take them to the country where they came from, O.K.?

Number three. Number three, this is the one, I think it's so great. It's hard to believe, people don't even talk about it. Zero tolerance for criminal aliens. Zero. Zero.

(APPLAUSE)

Zero. They don't come in here. They don't come in here.

According to federal data, there are at least two million, two million, think of it, criminal aliens now inside of our country, two million people criminal aliens. We will begin moving them out day one. As soon as I take office. Day one. In joint operation with local, state, and federal law enforcement.

Now, just so you understand, the police, who we all respect — say hello to the police. Boy, they don't get the credit they deserve. I can tell you. They're great people. But the police and law enforcement, they know who these people are.

They live with these people. They get mocked by these people. They can't do anything about these people, and they want to. They know who these people are. Day one, my first hour in office, those people are gone.

(APPLAUSE)

And you can call it deported if you want. The press doesn't like that term. You can call it whatever the hell you want. They're gone.

Beyond the two million, and there are vast numbers of additional criminal illegal immigrants who have fled, but their days have run out in this country. The crime will stop. They're going to be gone. It will be over.

(APPLAUSE)

They're going out. They're going out fast.

Moving forward. We will issue detainers for illegal immigrants who are arrested for any crime whatsoever, and they will be placed into immediate removal proceedings if we even have to do that.

We will terminate the Obama administration's deadly, and it is deadly, non-enforcement policies that allow thousands of criminal aliens to freely roam our streets, walk around, do whatever they want to do, crime all over the place.

That's over. That's over, folks. That's over.

Since 2013 alone, the Obama administration has allowed 300,000 criminal aliens to return back into United States communities. These are individuals encountered or identified by ICE, but who were not detained or processed for deportation because it wouldn't have been politically correct.

My plan also includes cooperating closely with local jurisdictions to remove criminal aliens immediately. We will restore the highly successful Secure Communities Program. Good program. We will expand and revitalize the popular 287(g) partnerships, which will help to identify hundreds of thousands of deportable aliens in local jails that we don't even know about.

Both of these programs have been recklessly gutted by this administration. And those were programs that worked.

This is yet one more area where we are headed in a totally opposite direction. There's no common sense, there's no brain power in our administration by our leader, or our leaders. None, none, none.

On my first day in office I am also going to ask Congress to pass Kate's Law, named for Kate Steinle...

(APPLAUSE)

... to ensure that criminal aliens convicted of illegal reentry receive strong mandatory minimum sentences. Strong.

(APPLAUSE)

And then we get them out.

Another reform I'm proposing is the passage of legislation named for Detective Michael Davis and Deputy Sheriff Danny Oliver, two law enforcement officers recently killed by a previously deported illegal immigrant.

The Davis-Oliver bill will enhance cooperation with state and local authorities to ensure that criminal immigrants and terrorists are swiftly, really swiftly, identified and removed. And they will go face, believe me. They're going to go.

We're going to triple the number of ICE deportation officers.

(APPLAUSE)

Within ICE I am going to create a new special deportation task force focused on identifying and quickly removing the most dangerous criminal illegal immigrants in America who have evaded justice just like Hillary Clinton has evaded justice, O.K.?

(APPLAUSE)

Maybe they'll be able to deport her.

(APPLAUSE)

The local police who know every one of these criminals, and they know each and every one by name, by crime, where they live, they will work so fast. And our local police will be so happy that they don't have to be abused by these thugs anymore.

There's no great mystery to it, they've put up with it for years, and now finally we will turn the tables and law enforcement and our police will be allowed to clear up this dangerous and threatening mess.

We're also going to hire 5,000 more Border Patrol agents.

(APPLAUSE)

Who gave me their endorsement, 16,500 gave me their endorsement.

And put more of them on the border instead of behind desks which is good. We will expand the number of border patrol stations significantly.

I've had a chance to spend time with these incredible law enforcement officers, and I want to take a moment to thank them. What they do is incredible.

(APPLAUSE)

And getting their endorsement means so much to me. More to me really than I can say. Means so much. First time they've ever endorsed a presidential candidate.

Number four, block funding for sanctuary cities. We block the funding. No more funds.

(APPLAUSE)

We will end the sanctuary cities that have resulted in so many needless deaths. Cities that refuse to cooperate with federal authorities will not receive taxpayer dollars, and we will work with Congress to pass legislation to protect those jurisdictions that do assist federal authorities. Number five, cancel unconstitutional executive orders and enforce all immigration laws.

(APPLAUSE)

We will immediately terminate President Obama's two illegal executive amnesties in which he defied federal law and the Constitution to give amnesty to approximately five million illegal immigrants, five million.

(BOOING)

And how about all the millions that are waiting on line, going through the process legally? So unfair.

Hillary Clinton has pledged to keep both of these illegal amnesty programs, including the 2014 amnesty which has been blocked by the United States Supreme Court. Great.

Clinton has also pledged to add a third executive amnesty. And by the way, folks, she will be a disaster for our country, a disaster in so many other ways.

And don't forget the Supreme Court of the United States. Don't forget that when you go to vote on November 8. And don't forget your Second Amendment. And don't forget the repeal and replacement of Obamacare.

(APPLAUSE)

And don't forget building up our depleted military. And don't forget taking care of our vets. Don't forget our vets. They have been forgotten.

(APPLAUSE)

Clinton's plan would trigger a constitutional crisis unlike almost anything we have ever seen before. In effect, she would be abolishing the lawmaking powers of Congress in order to write her own laws from the Oval Office. And you see what bad judgment she has. She has seriously bad judgment.

(BOOING)

Can you imagine? In a Trump administration all immigration laws will be enforced, will be enforced. As with any law enforcement activity, we will set priorities. But unlike this administration, no one will be immune or exempt from enforcement. And ICE and Border Patrol officers will be allowed to do their jobs the way their jobs are supposed to be done.

(APPLAUSE)

Anyone who has entered the United States illegally is subject to deportation. That is what it means to have laws and to have a country. Otherwise we don't have a country.

Our enforcement priorities will include removing criminals, gang members, security threats, visa overstays, public charges. That is those relying on public welfare or straining the safety net along with millions of recent illegal arrivals and overstays who've come here under this current corrupt administration.

(APPLAUSE)

Number six, we are going to suspend the issuance of visas to any place where adequate screening cannot occur.

(APPLAUSE)

According to data provided by the Senate Subcommittee on Immigration, and the national interest between 9/11 and the end of 2014, at least 380 foreign born individuals were convicted in terror cases inside the United States. And even right

now the largest number of people are under investigation for exactly this that we've ever had in the history of our country.

Our country is a mess. We don't even know what to look for anymore, folks. Our country has to straighten out. And we have to straighten out fast.

The number is likely higher. But the administration refuses to provide this information, even to Congress. As soon as I enter office I am going to ask the Department of State, which has been brutalized by Hillary Clinton, brutalized.

(BOOING)

Homeland Security and the Department of Justice to begin a comprehensive review of these cases in order to develop a list of regions and countries from which immigration must be suspended until proven and effective vetting mechanisms can be put in place.

I call it extreme vetting right? Extreme vetting. I want extreme. It's going to be so tough, and if somebody comes in that's fine but they're going to be good. It's extreme.

And if people don't like it, we've got have a country folks. Got to have a country. Countries in which immigration will be suspended would include places like Syria and Libya. And we are going to stop the tens of thousands of people coming in from Syria. We have no idea who they are, where they come from. There's no documentation. There's no paperwork. It's going to end badly folks. It's going to end very, very badly.

For the price of resettling one refugee in the United States, 12 could be resettled in a safe zone in their home region. Which I agree with 100 percent. We have to build safe zones and we'll get the money from Gulf states. We don't want to put up the money. We owe almost \$20 trillion. Doubled since Obama took office, our national debt.

But we will get the money from Gulf states and others. We'll supervise it. We'll build safe zones which is something that I think all of us want to see.

Another reform involves new screening tests for all applicants that include, and this is so important, especially if you get the right people. And we will get the right people. An ideological certification to make sure that those we are admitting to our country share our values and love our people.

(APPLAUSE)

Thank you. We're very proud of our country. Aren't we? Really? With all it's going through, we're very proud of our country. For instance, in the last five years, we've admitted nearly 100,000 immigrants from Iraq and Afghanistan. And these two countries according to Pew Research, a majority of residents say that the barbaric practice of **honor** killings against women are often or sometimes justified. That's what they say.

(APPLAUSE)

That's what they say. They're justified. Right? And we're admitting them to our country. Applicants will be asked their views about **honor** killings, about respect for women and gays and minorities. Attitudes on radical Islam, which our president refuses to say and many other topics as part of this vetting procedure. And if we have the right people doing it, believe me, very, very few will slip through the cracks. Hopefully, none.

(APPLAUSE)

Number seven, we will insure that other countries take their people back when they order them deported.

(APPLAUSE)

There are at least 23 countries that refuse to take their people back after they've been ordered to leave the United States. Including large numbers of violent criminals, they won't take them back. So we say, O.K., we'll keep them. Not going to happen with me, not going to happen with me.

(APPLAUSE)

Due to a Supreme Court decision, if these violent offenders cannot be sent home, our law enforcement officers have to release them into your communities.

(APPLAUSE)

And by the way, the results are horrific, horrific. There are often terrible consequences, such as Casey Chadwick's tragic death in Connecticut just last year. Yet despite the existence of a law that commands the secretary of state to stop issuing visas to these countries.

Secretary Hillary Clinton ignored this law and refused to use this powerful tool to bring nations into compliance. And, they would comply if we would act properly.

In other words, if we had leaders that knew what they were doing, which we don't.

The result of her misconduct was the release of thousands and thousands of dangerous criminal aliens who should have been sent home to their countries. Instead we have them all over the place. Probably a couple in this room as a matter of fact, but I hope not.

According to a report for the Boston Globe from the year 2008 to 2014 nearly 13,000 criminal aliens were released back into U.S. communities because their home countries would not, under any circumstances, take them back. Hard to believe with the power we have. Hard to believe.

We're like the big bully that keeps getting beat up. You ever see that? The big bully that keeps getting beat up.

These 13,000 releases occurred on Hillary Clinton's watch. She had the power and the duty to stop it cold, and she decided she would not do it.

(BOOING)

And Arizona knows better than most exactly what I'm talking about.

(APPLAUSE)

Those released include individuals convicted of killings, sexual assaults, and some of the most heinous crimes imaginable.

The Boston Globe writes that a Globe review of 323 criminals released in New England from 2008 to 2012 found that as many as 30 percent committed new offenses, including rape, attempted murder, and child molestation. We take them, we take them.

(BOOING)

Number eight, we will finally complete the biometric entry-exit visa tracking system which we need desperately.

(APPLAUSE)

For years Congress has required biometric entry-exit visa tracking systems, but it has never been completed. The politicians are all talk, no action, never happens. Never happens.

Hillary Clinton, all talk. Unfortunately when there is action it's always the wrong decision. You ever notice?

In my administration we will ensure that this system is in place. And, I will tell you, it will be on land, it will be on sea, it will be in air. We will have a proper tracking system.

Approximately half of new illegal immigrants came on temporary visas and then never, ever left. Why should they? Nobody's telling them to leave. Stay as long as you want, we'll take care of you.

Beyond violating our laws, visa overstays pose — and they really are a big problem — pose a substantial threat to national security. The 9/11 Commission said that this tracking system should be a high priority and would have assisted law enforcement and intelligence officials in August and September 2001 in conducting a search for two of the 9/11 hijackers that were in the United States on expired visas.

And you know what that would have meant, what that could have meant. Wouldn't that have been wonderful, right? What that could have meant.

Last year alone nearly half a million individuals overstayed their temporary visas. Removing these overstays will be a top priority of my administration.

(APPLAUSE)

If people around the world believe they can just come on a temporary visa and never, ever leave, the Obama-Clinton policy, that's what it is, then we have a completely open border, and we no longer have a country.

We must send a message that visa expiration dates will be strongly enforced.

Number nine, we will turn off the jobs and benefits magnet.

(APPLAUSE)

We will ensure that E-Verify is used to the fullest extent possible under existing law, and we will work with Congress to strengthen and expand its use across the country.

Immigration law doesn't exist for the purpose of keeping criminals out. It exists to protect all aspects of American life. The work site, the welfare office, the education system, and everything else.

That is why immigration limits are established in the first place. If we only enforced the laws against crime, then we have an open border to the entire world. We will enforce all of our immigration laws.

(APPLAUSE)

And the same goes for government benefits. The Center for Immigration Studies estimates that 62 percent of households headed by illegal immigrants use some form of cash or non-cash welfare programs like food stamps or housing assistance.

Tremendous costs, by the way, to our country. Tremendous costs. This directly violates the federal public charge law designed to protect the United States Treasury.

Those who abuse our welfare system will be priorities for immediate removal.

(APPLAUSE)

Number 10, we will reform legal immigration to serve the best interests of America and its workers, the forgotten people. Workers. We're going to take care of our workers.

And by the way, and by the way, we're going to make great trade deals. We're going to renegotiate trade deals. We're going to bring our jobs back home. We're going to bring our jobs back home.

We have the most incompetently worked trade deals ever negotiated probably in the history of the world, and that starts with Nafta. And now they want to go TPP, one of the great disasters.

We're going to bring our jobs back home. And if companies want to leave Arizona and if they want to leave other states, there's going to be a lot of trouble for them. It's not going to be so easy. There will be consequence. Remember that. There will be consequence. They're not going to be leaving, go to another country, make the product, sell it into the United States, and all we end up with is no taxes and total unemployment. It's not going to happen. There will be consequences.

(APPLAUSE)

We've admitted 59 million immigrants to the United States between 1965 and 2015. Many of these arrivals have greatly enriched our country. So true. But we now have an obligation to them and to their children to control future immigration as we are following, if you think, previous immigration waves.

We've had some big waves. And tremendously positive things have happened. Incredible things have happened. To ensure assimilation we want to ensure that it works. Assimilation, an important word. Integration and upward mobility.

(APPLAUSE)

Within just a few years immigration as a share of national population is set to break all historical records. The time has come for a new immigration commission to develop a new set of reforms to our legal immigration system in order to achieve the following goals.

To keep immigration levels measured by population share within historical norms. To select immigrants based on their likelihood of success in U.S. society and their ability to be financially self-sufficient.

(APPLAUSE)

We take anybody. Come on in, anybody. Just come on in. Not anymore.

You know, folks, it's called a two-way street. It is a two-way street, right? We need a system that serves our needs, not the needs of others. Remember, under a Trump administration it's called America first. Remember that.

(APPLAUSE)

To choose immigrants based on merit. Merit, skill, and proficiency. Doesn't that sound nice? And to establish new immigration controls to boost wages and to ensure that open jobs are offered to American workers first. And that in particular African-American and Latino workers who are being shut out in this process so unfairly.

(APPLAUSE)

And Hillary Clinton is going to do nothing for the African-American worker, the Latino worker. She's going to do nothing. Give me your vote, she says, on November 8th. And then she'll say, so long, see you in four years. That's what it is.

She is going to do nothing. And just look at the past. She's done nothing. She's been there for 35 years. She's done nothing. And I say what do you have to lose? Choose me. Watch how good we're going to do together. Watch.

(APPLAUSE)

You watch. We want people to come into our country, but they have to come into our country legally and properly vetted, and in a manner that serves the national

interest. We've been living under outdated immigration rules from decades ago. They're decades and decades old.

To avoid this happening in the future, I believe we should sunset our visa laws so that Congress is forced to periodically revise and revisit them to bring them up to date. They're archaic. They're ancient. We wouldn't put our entire federal budget on auto pilot for decades, so why should we do the same for the very, very complex subject of immigration?

So let's now talk about the big picture. These 10 steps, if rigorously followed and enforced, will accomplish more in a matter of months than our politicians have accomplished on this issue in the last 50 years. It's going to happen, folks. Because I am proudly not a politician, because I am not behold to any special interest, I've spent a lot of money on my campaign, I'll tell you. I write those checks. Nobody owns Trump.

I will get this done for you and for your family. We'll do it right. You'll be proud of our country again. We'll do it right. We will accomplish all of the steps outlined above. And, when we do, peace and law and justice and prosperity will prevail. Crime will go down. Border crossings will plummet. Gangs will disappear.

And the gangs are all over the place. And welfare use will decrease. We will have a peace dividend to spend on rebuilding America, beginning with our American inner cities. We're going to rebuild them, for once and for all.

For those here illegally today, who are seeking legal status, they will have one route and one route only. To return home and apply for reentry like everybody else, under the rules of the new legal immigration system that I have outlined above. Those who have left to seek entry —

Thank you.

Thank you. Thank you. Those who have left to seek entry under this new system — and it will be an efficient system — will not be awarded surplus visas, but will have to apply for entry under the immigration caps or limits that will be established in the

future. TRUMP: We will break the cycle of amnesty and illegal immigration. We will break the cycle. There will be no amnesty.

(APPLAUSE)

Our message to the world will be this. You cannot obtain legal status or become a citizen of the United States by illegally entering our country. Can't do it.

(APPLAUSE)

This declaration alone will help stop the crisis of illegal crossings and illegal overstays, very importantly. People will know that you can't just smuggle in, hunker down and wait to be legalized. It's not going to work that way. Those days are over.

(APPLAUSE)

Importantly, in several years when we have accomplished all of our enforcement and deportation goals and truly ended illegal immigration for good, including the construction of a great wall, which we will have built in record time. And at a reasonable cost, which you never hear from the government.

(APPLAUSE)

And the establishment of our new lawful immigration system then and only then will we be in a position to consider the appropriate disposition of those individuals who remain.

That discussion can take place only in an atmosphere in which illegal immigration is a memory of the past, no longer with us, allowing us to weigh the different options available based on the new circumstances at the time.

(APPLAUSE)

Right now, however, we're in the middle of a jobs crisis, a border crisis and a terrorism crisis like never before. All energies of the federal government and the legislative process must now be focused on immigration security. That is the only conversation we should be having at this time, immigration security. Cut it off.

Whether it's dangerous materials being smuggled across the border, terrorists entering on visas or Americans losing their jobs to foreign workers, these are the problems we must now focus on fixing. And the media needs to begin demanding to hear Hillary Clinton's answer on how her policies will affect Americans and their security.

(APPLAUSE)

These are matters of life and death for our country and its people, and we deserve answers from Hillary Clinton. And do you notice, she doesn't answer.

She didn't go to Louisiana. She didn't go to Mexico. She was invited.

She doesn't have the strength or the stamina to make America great again. Believe me.

(APPLAUSE)

What we do know, despite the lack of media curiosity, is that Hillary Clinton promises a radical amnesty combined with a radical reduction in immigration enforcement. Just ask the Border Patrol about Hillary Clinton. You won't like what you're hearing.

The result will be millions more illegal immigrants; thousands of more violent, horrible crimes; and total chaos and lawlessness. That's what's going to happen, as sure as you're standing there.

This election, and I believe this, is our last chance to secure the border, stop illegal immigration and reform our laws to make your life better. I really believe this is it. This is our last time. November 8. November 8. You got to get out and vote on November 8.

(APPLAUSE)

It's our last chance. It's our last chance. And that includes Supreme Court justices and Second Amendment. Remember that. So I want to remind everyone what we're fighting for and who we are fighting for.

I am going to ask — these are really special people that I've gotten to know. I'm going to ask all of the "Angel Moms" to come join me on the stage right now.

These are amazing women.

(APPLAUSE)

These are amazing people.

(APPLAUSE)

**AUDIENCE:** USA! USA! USA!

I've become friends with so many. But Jamiel Shaw, incredible guy, lost his son so violently. Say just a few words about your child.

**(SPEAKER'S VOICE):** My son Ronald da Silva (ph) was murdered April 27, 2002 by an illegal alien who had been previously deported. And what so — makes me so outrageous is that we came here legally.

Thank you, Mr. Trump. I totally support you. You have my vote.

**TRUMP:** Thank you, thank you.

**(SPEAKER'S VOICE):** God bless you.

(APPLAUSE)

**TRUMP:** You know what? Name your child and come right by. Go ahead.

**(SPEAKER'S VOICE):** Laura Wilkerson. And my son was Joshua Wilkerson. He was murdered by an illegal in 2010. And I personally support Mr. Trump for our next president.

(APPLAUSE)

**(SPEAKER'S VOICE):** My name is Ruth Johnston Martin (ph). My husband was shot by an illegal alien. He fought the good fight but he took his last breath in

2002. And I support this man who's going to change this country for the better. God bless you.

(APPLAUSE)

**(SPEAKER'S VOICE):** My name Maureen Maloney (ph), and our son Matthew Denise (ph) was 23 years old when he was dragged a quarter of a mile to his death by an illegal alien, while horrified witnesses were banging on the truck trying to stop him.

(APPLAUSE)

**(SPEAKER'S VOICE):** Our son Matthew Denise, if Donald Trump were president in 2011, our son Matthew Denise and other Americans would be alive today.

(APPLAUSE)

**(SPEAKER'S VOICE):** Thank you. My name is Kathy Woods (ph). My son Steve (ph), a high school senior, 17 years old, went to the beach after a high school football game. A local gang came along, nine members. The cars were battered to — like war in Beirut. And all I can say is they murdered him and if Mr. Trump had been in office then the border would have been secure and our children would not be dead today.

(APPLAUSE)

**(SPEAKER'S VOICE):** Hi. My name is Brenda Sparks (ph), and my son is named Eric Zapeda (ph). He was raised by a legal immigrant from Honduras only to be murdered by an illegal in 2011. His murderer never did a second in handcuffs or jail. Got away with killing an American. So I'm voting for trump. And by the way, so is my mother.

(APPLAUSE)

**(SPEAKER'S VOICE):** My name is Dee Angle (ph). My cousin Rebecca Ann Johnston (ph), known as Becky, was murdered on January the 1st, 1989 in North

Little Rock, Arkansas. Thank you. And if you don't vote Trump, we won't have a country. Trump all the way.

(APPLAUSE)

**(SPEAKER'S VOICE):** I'm Shannon Estes (ph). And my daughter Shaley Estes (ph), 22 years old, was murdered here in Phoenix last July 24 by a Russian who overstayed his visa. And vote Trump.

(APPLAUSE)

**(SPEAKER'S VOICE):** I'm Mary Ann Mendoza, the mother of Sergeant Brandon Mendoza, who was killed in a violent head-on collision in Mesa.

Thank you.

I want to thank Phoenix for the support you've always given me, and I want to tell you what. I'm supporting the man who will — who is the only man who is going to save our country, and what we our going to be leaving our children.

(APPLAUSE)

**(SPEAKER'S VOICE):** I'm Steve Ronnebeck, father of Grant Ronnebeck, 21 years old. Killed January 22, 2015 by an illegal immigrant who shot him in the face. I truly believe that Mr. Trump is going to change things. He's going to fight for my family, and he's going to fight for America.

(APPLAUSE)

**TRUMP:** These are amazing people, and I am not asking for their endorsement, believe me that. I just think I've gotten to know so many of them, and many more, from our group. But they are incredible people and what they're going through is incredible, and there's just no reason for it. Let's give them a really tremendous hand.

(APPLAUSE)

That's tough stuff, I will tell you. That is tough stuff. Incredible people.

So, now is the time for these voices to be heard. Now is the time for the media to begin asking questions on their behalf. Now is the time for all of us as one country, Democrat, Republican, liberal, conservative to band together to deliver justice, and safety, and security for all Americans.

Let's fix this horrible, horrible, problem. It can be fixed quickly. Let's our secure our border.

(APPLAUSE)

Let's stop the drugs and the crime from pouring into our country. Let's protect our social security and Medicare. Let's get unemployed Americans off the welfare and back to work in their own country.

This has been an incredible evening. We're going to remember this evening. November 8, we have to get everybody. This is such an important state. November 8 we have to get everybody to go out and vote.

We're going to bring — thank you, thank you. We're going to take our country back, folks. This is a movement. We're going to take our country back.

Thank you.

(APPLAUSE)

Thank you.

This is an incredible movement. The world is talking about it. The world is talking about it and by the way, if you haven't been looking to what's been happening at the polls over the last three or four days I think you should start looking. You should start looking.

(APPLAUSE)

Together we can save American lives, American jobs, and American futures. Together we can save America itself. Join me in this mission, we're going to make America great again.

Thank you. I love you. God bless you, everybody. God bless you. God bless you, thank you.

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# **Exhibit I**



John Woolley and Gerhard Peters

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Former Secretary of State Hillary Clinton (D) and Businessman Donald Trump (R)

MODERATORS:

Anderson Cooper (CNN) and Martha Raddatz (ABC News)

RADDATZ: Ladies and gentlemen the Republican nominee for president, Donald J. Trump, and the Democratic nominee for president, Hillary Clinton. [applause]

COOPER: Thank you very much for being here. We're going to begin with a question from one of the members in our town hall. Each of you will have two minutes to respond to this question. Secretary Clinton, you won the coin toss, so you'll go first. Our first question comes from Patrice Brock. Patrice?

QUESTION: Thank you, and good evening. The last debate could have been rated as MA, mature audiences, per TV parental guidelines. Knowing that educators assign viewing the presidential debates as students' homework, do you feel you're modeling appropriate and positive behavior for today's youth?

CLINTON: Well, thank you. Are you a teacher? Yes, I think that that's a very good question, because I've heard from lots of teachers and parents about some of their concerns about some of the things that are being said and done in this campaign.

And I think it is very important for us to make clear to our children that our country really is great because we're good. And we are going to respect one another, lift each other up. We are going to be looking for ways to celebrate our diversity, and we are going to try to reach out to every boy and girl, as well as every adult, to bring them in to working on behalf of our country.

I have a very positive and optimistic view about what we can do together. That's why the slogan of my campaign is "Stronger Together," because I think if we work together, if we overcome the divisiveness that sometimes sets Americans against one another, and instead we make some big goals—and I've set forth some big goals, getting the economy to work for everyone, not just those at the top, making sure that we have the best education system from preschool through college and making it affordable, and so much else.

If we set those goals and we go together to try to achieve them, there's nothing in my opinion that America can't do. So that's why I hope that we will come together in this campaign. Obviously, I'm hoping to earn your vote, I'm hoping to be elected in November, and I can promise you, I will work with every American.

I want to be the president for all Americans, regardless of your political beliefs, where you come from, what you look like, your religion. I want us to heal our country and bring it together because that's, I think, the best way for us to get the future that our children and our grandchildren deserve.

COOPER: Secretary Clinton, thank you. Mr. Trump, you have two minutes.

TRUMP: Well, I actually agree with that. I agree with everything she said. I began this campaign because I was so tired of seeing such foolish things happen to our country. This is a great country. This is a great land. I've gotten to know the people of the country over the last year-and-a-half that I've been doing this as a politician. I cannot believe I'm saying that about myself, but I guess I have been a politician.

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And my whole concept was to make America great again. When I watch the deals being made, when I watch what's happening with some horrible things like Obamacare, where your health insurance and health care is going up by numbers that are astronomical, 68 percent, 59 percent, 71 percent, when I look at the Iran deal and how bad a deal it is for us, it's a one-sided transaction where we're giving back \$150 billion to a terrorist state, really, the number one terror state, we've made them a strong country from really a very weak country just three years ago.

When I look at all of the things that I see and all of the potential that our country has, we have such tremendous potential, whether it's in business and trade, where we're doing so badly. Last year, we had almost \$800 billion trade deficit. In other words, trading with other countries. We had an \$800 billion deficit. It's hard to believe. Inconceivable.

You say who's making these deals? We're going to make great deals. We're going to have a strong border. We're going to bring back law and order. Just today, policemen was shot, two killed. And this is happening on a weekly basis. We have to bring back respect to law enforcement. At the same time, we have to take care of people on all sides. We need justice.

But I want to do things that haven't been done, including fixing and making our inner cities better for the African-American citizens that are so great, and for the Latinos, Hispanics, and I look forward to doing it. It's called make America great again.

**COOPER:** Thank you, Mr. Trump. The question from Patrice was about are you both modeling positive and appropriate behavior for today's youth? We received a lot of questions online, Mr. Trump, about the tape that was released on Friday, as you can imagine. You called what you said locker room banter. You described kissing women without consent, grabbing their genitals. That is sexual assault. You bragged that you have sexually assaulted women. Do you understand that?

**TRUMP:** No, I didn't say that at all. I don't think you understood what was—this was locker room talk. I'm not proud of it. I apologize to my family. I apologize to the American people. Certainly I'm not proud of it. But this is locker room talk.

You know, when we have a world where you have ISIS chopping off heads, where you have—and, frankly, drowning people in steel cages, where you have wars and horrible, horrible sights all over, where you have so many bad things happening, this is like medieval times. We haven't seen anything like this, the carnage all over the world.

And they look and they see. Can you imagine the people that are, frankly, doing so well against us with ISIS? And they look at our country and they see what's going on.

Yes, I'm very embarrassed by it. I hate it. But it's locker room talk, and it's one of those things. I will knock the hell out of ISIS. We're going to defeat ISIS. ISIS happened a number of years ago in a vacuum that was left because of bad judgment. And I will tell you, I will take care of ISIS.

**COOPER:** So, Mr. Trump...

**TRUMP:** And we should get on to much more important things and much bigger things.

**COOPER:** Just for the record, though, are you saying that what you said on that bus 11 years ago that you did not actually kiss women without consent or grope women without consent?

**TRUMP:** I have great respect for women. Nobody has more respect for women than I do.

**COOPER:** So, for the record, you're saying you never did that?

**TRUMP:** I've said things that, frankly, you hear these things I said. And I was embarrassed by it. But I have tremendous respect for women.

**COOPER:** Have you ever done those things?

**TRUMP:** And women have respect for me. And I will tell you: No, I have not. And I will tell you that I'm going to make our country safe. We're going to have borders in our country, which we don't have now. People are pouring into our country, and they're coming in from the Middle East and other places.

We're going to make America safe again. We're going to make America great again, but we're going to make America safe again. And we're going to make America wealthy again, because if you don't do that, it just—it sounds harsh to say, but we have to build up the wealth of our nation.

**COOPER:** Thank you, Mr. Trump.

**TRUMP:** Right now, other nations are taking our jobs and they're taking our wealth.

**COOPER:** Thank you, Mr. Trump.

**TRUMP:** And that's what I want to talk about.

**COOPER:** Secretary Clinton, do you want to respond?

**CLINTON:** Well, like everyone else, I've spent a lot of time thinking over the last 48 hours about what we heard and saw. You know, with prior Republican nominees for president, I disagreed with them on politics, policies, principles, but I never questioned their fitness to serve.

Donald Trump is different. I said starting back in June that he was not fit to be president and commander-in-chief. And many Republicans and independents have said the same thing. What we all saw and heard on Friday was Donald talking about women, what he thinks about women, what he does to women. And he has said that the video doesn't represent who he is.

But I think it's clear to anyone who heard it that it represents exactly who he is. Because we've seen this throughout the campaign. We have seen him insult women. We've seen him rate women on their appearance, ranking them from one to ten. We've seen him embarrass women on TV and on Twitter. We saw him after the first debate spend nearly a week denigrating a former Miss Universe in the harshest, most personal terms.

So, yes, this is who Donald Trump is. But it's not only women, and it's not only this video that raises questions about his fitness to be our president, because he has also targeted immigrants, African-Americans, Latinos, people with disabilities, POWs, Muslims, and so many others.

So this is who Donald Trump is. And the question for us, the question our country must answer is that this is not who we are. That's why—to go back to your question—I want to send a message—we all should—to every boy and girl and, indeed, to the entire world that America already is great, but we are great because we are good, and we will respect one another, and we will work with one another, and we will celebrate our diversity.

These are very important values to me, because this is the America that I know and love. And I can pledge to you tonight that this is the America that I will serve if I'm so fortunate enough to become your president.

**RADDATZ:** And we want to get to some questions from online...

**TRUMP:** Am I allowed to respond to that? I assume I am.

**RADDATZ:** Yes, you can respond to that.

**TRUMP:** It's just words, folks. It's just words. Those words, I've been hearing them for many years. I heard them when they were running for the Senate in New York, where Hillary was going to bring back jobs to upstate New York and she failed.

I've heard them where Hillary is constantly talking about the inner cities of our country, which are a disaster education-wise, jobwise, safety-wise, in every way possible. I'm going to help the African-Americans. I'm going to help the Latinos, Hispanics. I am going to help the inner cities.

She's done a terrible job for the African-Americans. She wants their vote, and she does nothing, and then she comes back four years later. We saw that firsthand when she was United States senator. She campaigned where the primary part of her campaign...

**RADDATZ:** Mr. Trump, Mr. Trump—I want to get to audience questions and online questions.

**TRUMP:** So, she's allowed to do that, but I'm not allowed to respond?

**RADDATZ:** You're going to have—you're going to get to respond right now.

**TRUMP:** Sounds fair.

**RADDATZ:** This tape is generating intense interest. In just 48 hours, it's become the single most talked about story of the entire 2016 election on Facebook, with millions and millions of people discussing it on the social network. As we said a moment ago, we do want to bring in questions from voters around country via social media, and our first stays on this topic. Jeff from Ohio asks on Facebook, "Trump says the campaign has changed him. When did that happen?" So, Mr. Trump, let me add to that. When you walked off that bus at age 59, were you a different man or did that behavior continue until just recently? And you have two minutes for this.

**TRUMP:** It was locker room talk, as I told you. That was locker room talk. I'm not proud of it. I am a person who has great respect for people, for my family, for the people of this country. And certainly, I'm not proud of it. But that was something that happened.

If you look at Bill Clinton, far worse. Mine are words, and his was action. His was what he's done to women. There's never been anybody in the history politics in this nation that's been so abusive to women. So you can say any way you want to say it, but Bill Clinton was abusive to women.

Hillary Clinton attacked those same women and attacked them viciously. Four of them here tonight. One of the women, who is a wonderful woman, at 12 years old, was raped at 12. Her client she represented got him off, and she's seen laughing on two separate occasions, laughing at the girl who was raped. Kathy Shelton, that young woman is here with us tonight.

So don't tell me about words. I am absolutely—I apologize for those words. But it is things that people say. But what President Clinton did, he was impeached, he lost his license to practice law. He had to pay an \$850,000 fine to one of the women. Paula Jones, who's also here tonight.

And I will tell you that when Hillary brings up a point like that and she talks about words that I said 11 years ago, I think it's disgraceful, and I think she should be ashamed of herself, if you want to know the truth. [*applause*]

**RADDATZ:** Can we please hold the applause? Secretary Clinton, you have two minutes.

**CLINTON:** Well, first, let me start by saying that so much of what he's just said is not right, but he gets to run his campaign any way he chooses. He gets to decide what he wants to talk about. Instead of answering people's questions, talking about our agenda, laying out the plans that we have that we think can make a better life and a better country, that's his choice.

When I hear something like that, I am reminded of what my friend, Michelle Obama, advised us all: When they go low, you go high. [*applause*]

And, look, if this were just about one video, maybe what he's saying tonight would be understandable, but everyone can draw their own conclusions at this point about whether or not the man in the video or the man on the stage respects women. But he never apologizes for anything to anyone.

He never apologized to Mr. and Mrs. Khan, the Gold Star family whose son, Captain Khan, died in the line of duty in Iraq. And Donald insulted and attacked them for weeks over their religion.

He never apologized to the distinguished federal judge who was born in Indiana, but Donald said he couldn't be trusted to be a judge because his parents were, quote, "Mexican."

He never apologized to the reporter that he mimicked and mocked on national television and our children were watching. And he never apologized for the racist lie that President Obama was not born in the United States of America. He owes the president an apology, he owes our country an apology, and he needs to take responsibility for his actions and his words.

**TRUMP:** Well, you owe the president an apology, because as you know very well, your campaign, Sidney Blumenthal—he's another real winner that you have—and he's the one that got this started, along with your campaign manager, and they were on television just two weeks ago, she was, saying exactly that. So you really owe him an apology. You're the one that sent the pictures around your campaign, sent the pictures around with President Obama in a certain garb. That was long before I was ever involved, so you actually owe an apology.

Number two, Michelle Obama. I've gotten to see the commercials that they did on you. And I've gotten to see some of the most vicious commercials I've ever seen of Michelle Obama talking about you, Hillary.

So, you talk about friend? Go back and take a look at those commercials, a race where you lost fair and square, unlike the Bernie Sanders race, where you won, but not fair and square, in my opinion. And all you have to do is take a look at WikiLeaks and just see what they say about Bernie Sanders and see what Deborah Wasserman Schultz had in mind, because Bernie Sanders, between super-delegates and Deborah Wasserman Schultz, he never had a chance. And I was so surprised to see him sign on with the devil.

But when you talk about apology, I think the one that you should really be apologizing for and the thing that you should be apologizing for are the 33,000 e-mails that you deleted, and that you acid washed, and then the two boxes of e-mails and other things last week that were taken from an office and are now missing.

And I'll tell you what. I didn't think I'd say this, but I'm going to say it, and I hate to say it. But if I win, I am going to instruct my attorney general to get a special prosecutor to look into your situation, because there has never been so many lies, so much deception. There has never been anything like it, and we're going to have a special prosecutor.

When I speak, I go out and speak, the people of this country are furious. In my opinion, the people that have been long-term workers at the FBI are furious. There has never been anything like this, where e-mails—and you get a subpoena, you

get a subpoena, and after getting the subpoena, you delete 33,000 e-mails, and then you acid wash them or bleach them, as you would say, very expensive process.

So we're going to get a special prosecutor, and we're going to look into it, because you know what? People have been—their lives have been destroyed for doing one-fifth of what you've done. And it's a disgrace. And honestly, you ought to be ashamed of yourself.

**RADDATZ:** Secretary Clinton, I want to follow up on that.

[*crosstalk*]

**RADDATZ:** I'm going to let you talk about e-mails.

**CLINTON:** ... because everything he just said is absolutely false, but I'm not surprised.

**TRUMP:** Oh, really?

**CLINTON:** In the first debate...[*laughter*]

**RADDATZ:** And really, the audience needs to calm down here.

**CLINTON:** ... I told people that it would be impossible to be fact-checking Donald all the time. I'd never get to talk about anything I want to do and how we're going to really make lives better for people.

So, once again, go to HillaryClinton.com. We have literally Trump—you can fact check him in real time. Last time at the first debate, we had millions of people fact checking, so I expect we'll have millions more fact checking, because, you know, it is—it's just awfully good that someone with the temperament of Donald Trump is not in charge of the law in our country.

**TRUMP:** Because you'd be in jail. [*applause*]

**RADDATZ:** Secretary Clinton...

**COOPER:** We want to remind the audience to please not talk out loud. Please do not applaud. You're just wasting time.

**RADDATZ:** And, Secretary Clinton, I do want to follow up on e-mails. You've said your handing of your e-mails was a mistake. You disagreed with FBI Director James Comey, calling your handling of classified information, quote, "extremely careless." The FBI said that there were 110 classified e-mails that were exchanged, eight of which were top secret, and that it was possible hostile actors did gain access to those e-mails. You don't call that extremely careless?

**CLINTON:** Well, Martha, first, let me say—and I've said before, but I'll repeat it, because I want everyone to hear it—that was a mistake, and I take responsibility for using a personal e-mail account. Obviously, if I were to do it over again, I would not. I'm not making any excuses. It was a mistake. And I am very sorry about that.

But I think it's also important to point out where there are some misleading accusations from critics and others. After a year-long investigation, there is no evidence that anyone hacked the server I was using and there is no evidence that anyone can point to at all—anyone who says otherwise has no basis—that any classified material ended up in the wrong hands.

I take classified materials very seriously and always have. When I was on the Senate Armed Services Committee, I was privy to a lot of classified material. Obviously, as secretary of state, I had some of the most important secrets that we possess, such as going after bin Laden. So I am very committed to taking classified information seriously. And as I said, there is no evidence that any classified information ended up in the wrong hands.

**RADDATZ:** OK, we're going to move on.

**TRUMP:** And yet she didn't know the word—the letter C on a document. Right? She didn't even know what that word—what that letter meant.

You know, it's amazing. I'm watching Hillary go over facts. And she's going after fact after fact, and she's lying again, because she said she—you know, what she did with the e-mail was fine. You think it was fine to delete 33,000 e-mails? I don't think so.

She said the 33,000 e-mails had to do with her daughter's wedding, number one, and a yoga class. Well, maybe we'll give three or three or four or five or something. 33,000 e-mails deleted, and now she's saying there wasn't anything wrong.

And more importantly, that was after getting a subpoena. That wasn't before. That was after. She got it from the United States Congress. And I'll be honest, I am so disappointed in congressmen, including Republicans, for allowing this to

Our Justice Department, where our husband goes on to the back of a airplane for 39 minutes, talks to the attorney general days before a ruling is going to be made on her case. But for you to say that there was nothing wrong with you deleting 39,000 e-mails, again, you should be ashamed of yourself. What you did—and this is after getting a subpoena from the United States Congress.

**COOPER:** We have to move on.

**TRUMP:** You did that. Wait a minute. One second.

**COOPER:** Secretary Clinton, you can respond, and then we got to move on.

**RADDATZ:** We want to give the audience a chance.

**TRUMP:** If you did that in the private sector, you'd be put in jail, let alone after getting a subpoena from the United States Congress.

**COOPER:** Secretary Clinton, you can respond. Then we have to move on to an audience question.

**CLINTON:** Look, it's just not true. And so please, go to...

**TRUMP:** Oh, you didn't delete them?

**COOPER:** Allow her to respond, please.

**CLINTON:** It was personal e-mails, not official.

**TRUMP:** Oh, 33,000? Yeah.

**CLINTON:** Not—well, we turned over 35,000, so...

**TRUMP:** Oh, yeah. What about the other 15,000?

**COOPER:** Please allow her to respond. She didn't talk while you talked.

**CLINTON:** Yes, that's true, I didn't.

**TRUMP:** Because you have nothing to say.

**CLINTON:** I didn't in the first debate, and I'm going to try not to in this debate, because I'd like to get to the questions that the people have brought here tonight to talk to us about.

**TRUMP:** Get off this question.

**CLINTON:** OK, Donald. I know you're into big diversion tonight, anything to avoid talking about your campaign and the way it's exploding and the way Republicans are leaving you. But let's at least focus...

**TRUMP:** Let's see what happens...[*crosstalk*]

**COOPER:** Allow her to respond.

**CLINTON:** ... on some of the issues that people care about tonight. Let's get to their questions.

**COOPER:** We have a question here from Ken Karpowicz. He has a question about health care. Ken?

**TRUMP:** I'd like to know, Anderson, why aren't you bringing up the e-mails? I'd like to know. Why aren't you bringing...

**COOPER:** We brought up the e-mails.

**TRUMP:** No, it hasn't. It hasn't. And it hasn't been finished at all.

**COOPER:** Ken Karpowicz has a question.

**TRUMP:** It's nice to—one on three.

**QUESTION:** Thank you. Affordable Care Act, known as Obamacare, it is not affordable. Premiums have gone up. Deductibles have gone up. Copays have gone up. Prescriptions have gone up. And the coverage has gone down. What will you do to bring the cost down and make coverage better?

**COOPER:** That first one goes to Secretary Clinton, because you started out the last one to the audience.

**CLINTON:** If he wants to start, he can start. No, go ahead, Donald.

**TRUMP:** No, I'm a gentlemen, Hillary. Go ahead. [laughter]

**COOPER:** Secretary Clinton?

**CLINTON:** Well, I think Donald was about to say he's going to solve it by repealing it and getting rid of the Affordable Care Act. And I'm going to fix it, because I agree with you. Premiums have gotten too high. Copays, deductibles, prescription drug costs, and I've laid out a series of actions that we can take to try to get those costs down.

But here's what I don't want people to forget when we're talking about reining in the costs, which has to be the highest priority of the next president, when the Affordable Care Act passed, it wasn't just that 20 million got insurance who didn't have it before. But that in and of itself was a good thing. I meet these people all the time, and they tell me what a difference having that insurance meant to them and their families.

But everybody else, the 170 million of us who get health insurance through our employees got big benefits. Number one, insurance companies can't deny you coverage because of a pre-existing condition. Number two, no lifetime limits, which is a big deal if you have serious health problems.

Number three, women can't be charged more than men for our health insurance, which is the way it used to be before the Affordable Care Act. Number four, if you're under 26, and your parents have a policy, you can be on that policy until the age of 26, something that didn't happen before.

So I want very much to save what works and is good about the Affordable Care Act. But we've got to get costs down. We've got to provide additional help to small businesses so that they can afford to provide health insurance. But if we repeal it, as Donald has proposed, and start over again, all of those benefits I just mentioned are lost to everybody, not just people who get their health insurance on the exchange. And then we would have to start all over again.

Right now, we are at 90 percent health insurance coverage. That's the highest we've ever been in our country.

**COOPER:** Secretary Clinton, your time is up.

**CLINTON:** So I want us to get to 100 percent, but get costs down and keep quality up.

**COOPER:** Mr. Trump, you have two minutes.

**TRUMP:** It is such a great question and it's maybe the question I get almost more than anything else, outside of defense. Obamacare is a disaster. You know it. We all know it. It's going up at numbers that nobody's ever seen worldwide. Nobody's ever seen numbers like this for health care.

It's only getting worse. In '17, it implodes by itself. Their method of fixing it is to go back and ask Congress for more money, more and more money. We have right now almost \$20 trillion in debt.

Obamacare will never work. It's very bad, very bad health insurance. Far too expensive. And not only expensive for the person that has it, unbelievably expensive for our country. It's going to be one of the biggest line items very shortly.

We have to repeal it and replace it with something absolutely much less expensive and something that works, where your plan can actually be tailored. We have to get rid of the lines around the state, artificial lines, where we stop insurance companies from coming in and competing, because they want—and President Obama and whoever was working on it—they want to leave those lines, because that gives the insurance companies essentially monopolies. We want competition.

You will have the finest health care plan there is. She wants to go to a single-payer plan, which would be a disaster, somewhat similar to Canada. And if you haven't noticed the Canadians, when they need a big operation, when something happens, they come into the United States in many cases because their system is so slow. It's catastrophic in certain ways.

But she wants to go to single payer, which means the government basically rules everything. Hillary Clinton has been after this for years. Obamacare was the first step. Obamacare is a total disaster. And not only are your rates going up by numbers that nobody's ever believed, but your deductibles are going up, so that unless you get hit by a truck, you're never going to be able to use it.

**COOPER:** Mr. Trump, your time...

**TRUMP:** It is a disastrous plan, and it has to be repealed and replaced.

**COOPER:** Secretary Clinton, let me follow up with you. Your husband called Obamacare, quote, "the craziest thing in the world," saying that small-business owners are getting killed as premiums double, coverage is cut in half. Was he mistaken or was the mistake simply telling the truth?

**CLINTON:** No, I mean, he clarified what he meant. And it's very clear. Look, we are in a situation in our country where if we were to start all over again, we might come up with a different system. But we have an employer-based system. That's where the vast majority of people get their health care.

And the Affordable Care Act was meant to try to fill the gap between people who were too poor and couldn't put together any resources to afford health care, namely people on Medicaid. Obviously, Medicare, which is a single-payer system, which takes care of our elderly and does a great job doing it, by the way, and then all of the people who were employed, but people who were working but didn't have the money to afford insurance and didn't have anybody, an employer or anybody else, to help them.

That was the slot that the Obamacare approach was to take. And like I say, 20 million people now have health insurance. So if we just rip it up and throw it away, what Donald's not telling you is we just turn it back to the insurance companies the way it used to be, and that means the insurance companies...

**COOPER:** Secretary Clinton...

**CLINTON:** ... get to do pretty much whatever they want, including saying, look, I'm sorry, you've got diabetes, you had cancer, your child has asthma...

**COOPER:** Your time is up.

**CLINTON:** ... you may not be able to have insurance because you can't afford it. So let's fix what's broken about it, but let's not throw it away and give it all back to the insurance companies and the drug companies. That's not going to work.

**COOPER:** Mr. Trump, let me follow up on this.

**TRUMP:** Well, I just want—just one thing. First of all, Hillary, everything's broken about it. Everything. Number two, Bernie Sanders said that Hillary Clinton has very bad judgment. This is a perfect example of it, trying to save Obamacare, which is a disaster.

**COOPER:** You've said you want to end Obamacare...

**TRUMP:** By the way...

**COOPER:** You've said you want to end Obamacare. You've also said you want to make coverage accessible for people with pre-existing conditions. How do you force insurance companies to do that if you're no longer mandating that every American get insurance?

**TRUMP:** We're going to be able to. You're going to have plans...

**COOPER:** What does that mean?

**TRUMP:** Well, I'll tell you what it means. You're going to have plans that are so good, because we're going to have so much competition in the insurance industry. Once we break out—once we break out the lines and allow the competition to come...

**COOPER:** Are you going—are you going to have a mandate that Americans have to have health insurance?

**TRUMP:** President Obama—Anderson, excuse me. President Obama, by keeping those lines, the boundary lines around each state, it was almost gone until just very toward the end of the passage of Obamacare, which, by the way, was a fraud. You know that, because Jonathan Gruber, the architect of Obamacare, was said—he said it was a great lie, it was a big lie. President Obama said you keep your doctor, you keep your plan. The whole thing was a fraud, and it doesn't work.

But when we get rid of those lines, you will have competition, and we will be able to keep pre-existing, we'll also be able to help people that can't get—don't have money because we are going to have people protected.

And Republicans feel this way, believe it or not, and strongly this way. We're going to block grant into the states. We're going to block grant into Medicaid into the states...

**COOPER:** Thank you, Mr. Trump.

**TRUMP:** ... so that we will be able to take care of people without the necessary funds to take care of themselves.

**COOPER:** Thank you, Mr. Trump.

**RADDATZ:** We now go to Gorbah Hamed with a question for both candidates.

**QUESTION:** Hi. There are 3.3 million Muslims in the United States, and I'm one of them. You've mentioned working with Muslim nations, but with Islamophobia on the rise, how will you help people like me deal with the consequences of being labeled as a threat to the country after the election is over?

**RADDATZ:** Mr. Trump, you're first.

**TRUMP:** Well, you're right about Islamophobia, and that's a shame. But one thing we have to do is we have to make sure that—because there is a problem. I mean, whether we like it or not, and we could be very politically correct, but whether we like it or not, there is a problem. And we have to be sure that Muslims come in and report when they see something going on. When they see hatred going on, they have to report it.

As an example, in San Bernardino, many people saw the bombs all over the apartment of the two people that killed 14 and wounded many, many people. Horribly wounded. They'll never be the same. Muslims have to report the problems when they see them.

And, you know, there's always a reason for everything. If they don't do that, it's a very difficult situation for our country, because you look at Orlando and you look at San Bernardino and you look at the World Trade Center. Go outside. Look at Paris. Look at that horrible—these are radical Islamic terrorists.

And she won't even mention the word and nor will President Obama. He won't use the term "radical Islamic terrorism." Now, to solve a problem, you have to be able to state what the problem is or at least say the name. She won't say the name and President Obama won't say the name. But the name is there. It's radical Islamic terror. And before you solve it, you have to say the name.

**RADDATZ:** Secretary Clinton?

**CLINTON:** Well, thank you for asking your question. And I've heard this question from a lot of Muslim-Americans across our country, because, unfortunately, there's been a lot of very divisive, dark things said about Muslims. And even someone like Captain Khan, the young man who sacrificed himself defending our country in the United States Army, has been subject to attack by Donald.

I want to say just a couple of things. First, we've had Muslims in America since George Washington. And we've had many successful Muslims. We just lost a particular well-known one with Muhammad Ali.

My vision of America is an America where everyone has a place, if you're willing to work hard, you do your part, you contribute to the community. That's what America is. That's what we want America to be for our children and our grandchildren.

It's also very short-sighted and even dangerous to be engaging in the kind of demagogic rhetoric that Donald has about Muslims. We need American Muslims to be part of our eyes and ears on our front lines. I've worked with a lot of different Muslim groups around America. I've met with a lot of them, and I've heard how important it is for them to feel that they are wanted and included and part of our country, part of our homeland security, and that's what I want to see.

It's also important I intend to defeat ISIS, to do so in a coalition with majority Muslim nations. Right now, a lot of those nations are hearing what Donald says and wondering, why should we cooperate with the Americans? And this is a gift to ISIS and the terrorists, violent jihadist terrorists.

We are not at war with Islam. And it is a mistake and it plays into the hands of the terrorists to act as though we are. So I want a country where citizens like you and your family are just as welcome as anyone else.

**RADDATZ:** Thank you, Secretary Clinton.

Mr. Trump, in December, you said this. "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what the hell is going on. We have no choice. We have no choice." Your running mate said this week that the Muslim ban is no longer your position. Is that correct? And if it is, was it a mistake to have a religious test?

**TRUMP:** First of all, Captain Khan is an American hero, and if I were president at that time, he would be alive today, because unlike her, who voted for the war without knowing what she was doing, I would not have had our people in Iraq. Iraq was disaster. So he would have been alive today.

The Muslim ban is something that in some form has morphed into an extreme vetting from certain areas of the world. Hillary Clinton wants to allow hundreds of thousands—excuse me. Excuse me..

**RADDATZ:** And why did it morph into that? No, did you—no, answer the question. Do you still believe...

**TRUMP:** Why don't you interrupt her? You interrupt me all the time.

**RADDATZ:** I do.

**TRUMP:** Why don't you interrupt her?

**RADDATZ:** Would you please explain whether or not the Muslim ban still stands?

**TRUMP:** It's called extreme vetting. We are going to areas like Syria where they're coming in by the tens of thousands because of Barack Obama. And Hillary Clinton wants to allow a 550 percent increase over Obama. People are coming into our country like we have no idea who they are, where they are from, what their feelings about our country is, and she wants 550 percent more. This is going to be the great Trojan horse of all time.

We have enough problems in this country. I believe in building safe zones. I believe in having other people pay for them, as an example, the Gulf states, who are not carrying their weight, but they have nothing but money, and take care of people. But I don't want to have, with all the problems this country has and all of the problems that you see going on, hundreds of thousands of people coming in from Syria when we know nothing about them. We know nothing about their values and we know nothing about their love for our country.

**RADDATZ:** And, Secretary Clinton, let me ask you about that, because you have asked for an increase from 10,000 to 65,000 Syrian refugees. We know you want tougher vetting. That's not a perfect system. So why take the risk of having those refugees come into the country?

**CLINTON:** Well, first of all, I will not let anyone into our country that I think poses a risk to us. But there are a lot of refugees, women and children—think of that picture we all saw of that 4-year-old boy with the blood on his forehead because he'd been bombed by the Russian and Syrian air forces.

There are children suffering in this catastrophic war, largely, I believe, because of Russian aggression. And we need to do our part. We by no means are carrying anywhere near the load that Europe and others are. But we will have vetting that is as tough as it needs to be from our professionals, our intelligence experts and others.

But it is important for us as a policy, you know, not to say, as Donald has said, we're going to ban people based on a religion. How do you do that? We are a country founded on religious freedom and liberty. How do we do what he has advocated without causing great distress within our own country? Are we going to have religious tests when people fly into our country? And how do we expect to be able to implement those?

So I thought that what he said was extremely unwise and even dangerous. And indeed, you can look at the propaganda on a lot of the terrorists sites, and what Donald Trump says about Muslims is used to recruit fighters, because they want to create a war between us.

And the final thing I would say, this is the 10th or 12th time that he's denied being for the war in Iraq. We have it on tape. The entire press corps has looked at it. It's been debunked, but it never stops him from saying whatever he wants to say.

**TRUMP:** That's not been debunked.

**CLINTON:** So, please...

**TRUMP:** That has not been debunked.

**CLINTON:** ... go to HillaryClinton.com and you can see it.

**TRUMP:** I was against—I was against the war in Iraq. Has not been debunked. And you voted for it. And you shouldn't have. Well, I just want to say...

**RADDATZ:** There's been lots of fact-checking on that. I'd like to move on to an online question...

**TRUMP:** Excuse me. She just went about 25 seconds over her time.

**RADDATZ:** She did not.

**TRUMP:** Could I just respond to this, please?

**RADDATZ:** Very quickly, please.

**TRUMP:** Hillary Clinton, in terms of having people come into our country, we have many criminal illegal aliens. When we want to send them back to their country, their country says we don't want them. In some cases, they're murderers, drug lords, drug problems. And they don't want them.

And Hillary Clinton, when she was secretary of state, said that's OK, we can't force it into their country. Let me tell you, I'm going to force them right back into their country. They're murderers and some very bad people.

And I will tell you very strongly, when Bernie Sanders said she had bad judgment, she has really bad judgment, because we are letting people into this country that are going to cause problems and crime like you've never seen. We're also letting drugs pour through our southern border at a record clip. At a record clip. And it shouldn't be allowed to happen.

ICE just endorsed me. They've never endorsed a presidential candidate. The Border Patrol agents, 16,500, just recently endorsed me, and they endorsed me because I understand the border. She doesn't. She wants amnesty for everybody. Come right in. Come right over. It's a horrible thing she's doing. She's got bad judgment, and honestly, so bad that she should never be president of the United States. That I can tell you.

**RADDATZ:** Thank you, Mr. Trump. I want to move on. This next question from the public through the Bipartisan Open Debate Coalition's online forum, where Americans submitted questions that generated millions of votes. This question involves WikiLeaks release of purported excerpts of Secretary Clinton's paid speeches, which she has refused to release, and one line in particular, in which you, Secretary Clinton, purportedly say you need both a public and private position on certain issues. So, Tu, from Virginia asks, is it OK for politicians to be two-faced? Is it acceptable for a politician to have a private stance on issues? Secretary Clinton, your two minutes.

**CLINTON:** Well, right. As I recall, that was something I said about Abraham Lincoln after having seen the wonderful Steven Spielberg movie called "Lincoln." It was a master class watching President Lincoln get the Congress to approve the 13th Amendment. It was principled, and it was strategic.

And I was making the point that it is hard sometimes to get the Congress to do what you want to do and you have to keep working at it. And, yes, President Lincoln was trying to convince some people, he used some arguments, convincing other people, he used other arguments. That was a great—I thought a great display of presidential leadership.

But, you know, let's talk about what's really going on here, Martha, because our intelligence community just came out and said in the last few days that the Kremlin, meaning Putin and the Russian government, are directing the attacks, the hacking on American accounts to influence our election. And WikiLeaks is part of that, as are other sites where the Russians hack information, we don't even know if it's accurate information, and then they put it out.

We have never in the history of our country been in a situation where an adversary, a foreign power, is working so hard to influence the outcome of the election. And believe me, they're not doing it to get me elected. They're doing it to try to influence the election for Donald Trump.

Now, maybe because he has praised Putin, maybe because he says he agrees with a lot of what Putin wants to do, maybe because he wants to do business in Moscow, I don't know the reasons. But we deserve answers. And we should demand that Donald release all of his tax returns so that people can see what are the entanglements and the financial relationships that he has...

**RADDATZ:** We're going to get to that later. Secretary Clinton, you're out of time.

**CLINTON:** ... with the Russians and other foreign powers.

**RADDATZ:** Mr. Trump?

**TRUMP:** Well, I think I should respond, because—so ridiculous. Look, now she's blaming—she got caught in a total lie. Her papers went out to all her friends at the banks, Goldman Sachs and everybody else, and she said things—WikiLeaks that just came out. And she lied. Now she's blaming the lie on the late, great Abraham Lincoln. That's one that I haven't...  
[laughter]

OK, Honest Abe, Honest Abe never lied. That's the good thing. That's the big difference between Abraham Lincoln and you. That's a big, big difference. We're talking about some difference.

But as far as other elements of what she was saying, I don't know Putin. I think it would be great if we got along with Russia because we could fight ISIS together, as an example. But I don't know Putin.

But I notice, anytime anything wrong happens, they like to say the Russians are—she doesn't know if it's the Russians doing the hacking. Maybe there is no hacking. But they always blame Russia. And the reason they blame Russia because they think they're trying to tarnish me with Russia. I know nothing about Russia. I know—I know about Russia, but I know nothing about the inner workings of Russia. I don't deal there. I have no businesses there. I have no loans from Russia.

I have a very, very great balance sheet, so great that when I did the Old Post Office on Pennsylvania Avenue, the United States government, because of my balance sheet, which they actually know very well, chose me to do the Old Post Office.

between the White House and Congress, chose me to do the Old Post Office. One of the primary area things, in fact, perhaps the primary thing was balance sheet. But I have no loans with Russia. You could go to the United States government, and they would probably tell you that, because they know my sheet very well in order to get that development I had to have.

Now, the taxes are a very simple thing. As soon as I have—first of all, I pay hundreds of millions of dollars in taxes. Many of her friends took bigger deductions. Warren Buffett took a massive deduction. Soros, who's a friend of hers, took a massive deduction. Many of the people that are giving her all this money that she can do many more commercials than me gave her—took massive deductions.

I pay hundreds of millions of dollars in taxes. But—but as soon as my routine audit is finished, I'll release my returns. I'll be very proud to. They're actually quite great.

**RADDATZ:** Thank you, Mr. Trump.

**COOPER:** We want to turn, actually, to the topic of taxes. We have a question from Spencer Maass. Spencer?

**QUESTION:** Good evening. My question is, what specific tax provisions will you change to ensure the wealthiest Americans pay their fair share in taxes?

**COOPER:** Mr. Trump, you have two minutes.

**TRUMP:** Well, one thing I'd do is get rid of carried interest. One of the greatest provisions for people like me, to be honest with you, I give up a lot when I run, because I knock out the tax code. And she could have done this years ago, by the way. She's a United States—she was a United States senator.

She complains that Donald Trump took advantage of the tax code. Well, why didn't she change it? Why didn't you change it when you were a senator? The reason you didn't is that all your friends take the same advantage that I do. And I do. You have provisions in the tax code that, frankly, we could change. But you wouldn't change it, because all of these people gave you the money so you can take negative ads on Donald Trump.

But—and I say that about a lot of things. You know, I've heard Hillary complaining about so many different things over the years. "I wish you would have done this." But she's been there for 30 years she's been doing this stuff. She never changed. And she never will change. She never will change.

We're getting rid of carried interest provisions. I'm lowering taxes actually, because I think it's so important for corporations, because we have corporations leaving—massive corporations and little ones, little ones can't form. We're getting rid of regulations which goes hand in hand with the lowering of the taxes.

But we're bringing the tax rate down from 35 percent to 15 percent. We're cutting taxes for the middle class. And I will tell you, we are cutting them big league for the middle class.

And I will tell you, Hillary Clinton is raising your taxes, folks. You can look at me. She's raising your taxes really high. And what that's going to do is a disaster for the country. But she is raising your taxes and I'm lowering your taxes. That in itself is a big difference. We are going to be thriving again. We have no growth in this country. There's no growth. If China has a GDP of 7 percent, it's like a national catastrophe. We're down at 1 percent. And that's, like, no growth. And we're going lower, in my opinion. And a lot of it has to do with the fact that our taxes are so high, just about the highest in the world. And I'm bringing them down to one of the lower in the world. And I think it's so important—one of the most important things we can do. But she is raising everybody's taxes massively.

**COOPER:** Secretary Clinton, you have two minutes. The question was, what specific tax provisions will you change to ensure the wealthiest Americans pay their fair share of taxes?

**CLINTON:** Well, everything you've heard just now from Donald is not true. I'm sorry I have to keep saying this, but he lives in an alternative reality. And it is sort of amusing to hear somebody who hasn't paid federal income taxes in maybe 20 years talking about what he's going to do.

But I'll tell you what he's going to do. His plan will give the wealthy and corporations the biggest tax cuts they've ever had, more than the Bush tax cuts by at least a factor of two. Donald always takes care of Donald and people like Donald, and this would be a massive gift. And, indeed, the way that he talks about his tax cuts would end up raising taxes on middle-class families, millions of middle-class families.

Now, here's what I want to do. I have said nobody who makes less than \$250,000 a year—and that's the vast majority of Americans as you know—will have their taxes raised, because I think we've got to go where the money is. And the money is with people who have taken advantage of every single break in the tax code.

And, yes, when I was a senator, I did vote to close corporate loopholes. I voted to close, I think, one of the loopholes he took advantage of when he claimed a billion-dollar loss that enabled him to avoid paying taxes.

I want to have a tax on people who are making a million dollars. It's called the Buffett rule. Yes, Warren Buffett is the one who's gone out and said somebody like him should not be paying a lower tax rate than his secretary. I want to have a surcharge on incomes above \$5 million.

We have to make up for lost times, because I want to invest in you. I want to invest in hard-working families. And I think it's been unfortunate, but it's happened, that since the Great Recession, the gains have all gone to the top. And we need to reverse that.

People like Donald, who paid zero in taxes, zero for our vets, zero for our military, zero for health and education, that is wrong.

**COOPER:** Thank you, Secretary.

**CLINTON:** And we're going to make sure that nobody, no corporation, and no individual can get away without paying his fair share to support our country.

**COOPER:** Thank you. I want to give you—Mr. Trump, I want to give you the chance to respond. I just wanted to tell our viewers what she's referring to. In the last month, taxes were the number-one issue on Facebook for the first time in the campaign. The New York Times published three pages of your 1995 tax returns. They show you claimed a \$916 million loss, which means you could have avoided paying personal federal income taxes for years. You've said you pay state taxes, employee taxes, real estate taxes, property taxes. You have not answered, though, a simple question. Did you use that \$916 million loss to avoid paying personal federal income taxes for years?

**TRUMP:** Of course I do. Of course I do. And so do all of her donors, or most of her donors. I know many of her donors. Her donors took massive tax write-offs.

**COOPER:** So have you paid personal federal income tax?

**TRUMP:** A lot of my—excuse me, Anderson—a lot of my write-off was depreciation and other things that Hillary as a senator allowed. And she'll always allow it, because the people that give her all this money, they want it. That's why.

See, I understand the tax code better than anybody that's ever run for president. Hillary Clinton—and it's extremely complex—Hillary Clinton has friends that want all of these provisions, including they want the carried interest provision, which is very important to Wall Street people. But they really want the carried interest provision, which I believe Hillary's leaving. Very interesting why she's leaving carried interest.

But I will tell you that, number one, I pay tremendous numbers of taxes. I absolutely used it. And so did Warren Buffett and so did George Soros and so did many of the other people that Hillary is getting money from. Now, I won't mention their names, because they're rich, but they're not famous. So we won't make them famous.

**COOPER:** So can you—can you say how many years you have avoided paying personal federal income taxes?

**TRUMP:** No, but I pay tax, and I pay federal tax, too. But I have a write-off, a lot of it's depreciation, which is a wonderful charge. I love depreciation. You know, she's given it to us.

Hey, if she had a problem—for 30 years she's been doing this, Anderson. I say it all the time. She talks about health care. Why didn't she do something about it? She talks about taxes. Why didn't she do something about it? She doesn't do anything about anything other than talk. With her, it's all talk and no action.

**COOPER:** In the past...

**TRUMP:** And, again, Bernie Sanders, it's really bad judgment. She has made bad judgment not only on taxes. She's made bad judgments on Libya, on Syria, on Iraq. I mean, her and Obama, whether you like it or not, the way they got out of Iraq, the vacuum they've left, that's why ISIS formed in the first place. They started from that little area, and now they're in 32 different nations, Hillary. Congratulations. Great job.

**COOPER:** Secretary—I want you to be able to respond, Secretary Clinton.

**CLINTON:** Well, here we go again. I've been in favor of getting rid of carried interest for years, starting when I was a senator from New York. But that's not the point here.

**TRUMP:** Why didn't you do it? Why didn't you do it?

**COOPER:** Allow her to respond.

**CLINTON:** Because I was a senator with a Republican president.

**TRUMP:** Oh, really?

**CLINTON:** I will be the president and we will get it done. That's exactly right.

**TRUMP:** You could have done it, if you were an effective—if you were an effective senator, you could have done it. If you were an effective senator, you could have done it. But you were not an effective senator.

**COOPER:** Please allow her to respond. She didn't interrupt you.

**CLINTON:** You know, under our Constitution, presidents have something called veto power. Look, he has now said repeatedly, "30 years this and 30 years that." So let me talk about my 30 years in public service. I'm very glad to do so.

Eight million kids every year have health insurance, because when I was first lady I worked with Democrats and Republicans to create the Children's Health Insurance Program. Hundreds of thousands of kids now have a chance to be adopted because I worked to change our adoption and foster care system. After 9/11, I went to work with Republican mayor, governor and president to rebuild New York and to get health care for our first responders who were suffering because they had run toward danger and gotten sickened by it. Hundreds of thousands of National Guard and Reserve members have health care because of work that I did, and children have safer medicines because I was able to pass a law that required the dosing to be more carefully done.

When I was secretary of state, I went around the world advocating for our country, but also advocating for women's rights, to make sure that women had a decent chance to have a better life and negotiated a treaty with Russia to lower nuclear weapons. Four hundred pieces of legislation have my name on it as a sponsor or cosponsor when I was a senator for eight years.

I worked very hard and was very proud to be re-elected in New York by an even bigger margin than I had been elected the first time. And as president, I will take that work, that bipartisan work, that finding common ground, because you have to be able to get along with people to get things done in Washington.

**COOPER:** Thank you, secretary.

**CLINTON:** I've proven that I can, and for 30 years, I've produced results for people.

**COOPER:** Thank you, secretary.

**RADDATZ:** We're going to move on to Syria. Both of you have mentioned that.

**TRUMP:** She said a lot of things that were false. I mean, I think we should be allowed to maybe...

**RADDATZ:** No, we can—no, Mr. Trump, we're going to go on. This is about the audience.

**TRUMP:** Excuse me. Because she has been a disaster as a senator. A disaster.

**RADDATZ:** Mr. Trump, we're going to move on. The heart-breaking video of a 5-year-old Syrian boy named Omran sitting in an ambulance after being pulled from the rubble after an air strike in Aleppo focused the world's attention on the horrors of the war in Syria, with 136 million views on Facebook alone.

But there are much worse images coming out of Aleppo every day now, where in the past few weeks alone, 400 people have been killed, at least 100 of them children. Just days ago, the State Department called for a war crimes investigation of the Syrian regime of Bashar al-Assad and its ally, Russia, for their bombardment of Aleppo.

So this next question comes through social media through Facebook. Diane from Pennsylvania asks, if you were president, what would you do about Syria and the humanitarian crisis in Aleppo? Isn't it a lot like the Holocaust when the U.S. waited too long before we helped? Secretary Clinton, we will begin with your two minutes.

**CLINTON:** Well, the situation in Syria is catastrophic. And every day that goes by, we see the results of the regime by Assad in partnership with the Iranians on the ground, the Russians in the air, bombarding places, in particular Aleppo, where there are hundreds of thousands of people, probably about 250,000 still left. And there is a determined effort by the Russian air force to destroy Aleppo in order to eliminate the last of the Syrian rebels who are really holding out against the Assad regime.

Russia hasn't paid any attention to ISIS. They're interested in keeping Assad in power. So I, when I was secretary of state, advocated and I advocate today a no-fly zone and safe zones. We need some leverage with the Russians, because they are not going to come to the negotiating table for a diplomatic resolution, unless there is some leverage over them. And we have to work more closely with our partners and allies on the ground.

But I want to emphasize that what is at stake here is the ambitions and the aggressiveness of Russia. Russia has decided that it's all in, in Syria. And they've also decided who they want to see become president of the United States, too, and it's not me. I've stood up to Russia. I've taken on Putin and others, and I would do that as president.

I think wherever we can cooperate with Russia, that's fine. And I did as secretary of state. That's how we got a treaty reducing nuclear weapons. It's how we got the sanctions on Iran that put a lid on the Iranian nuclear program without firing a single shot. So I would go to the negotiating table with more leverage than we have now. But I do support the effort to investigate for crimes, war crimes committed by the Syrians and the Russians and try to hold them accountable.

**RADDATZ:** Thank you, Secretary Clinton. Mr. Trump?

**TRUMP:** First of all, she was there as secretary of state with the so-called line in the sand, which...

**CLINTON:** No, I wasn't. I was gone. I hate to interrupt you, but at some point...

**TRUMP:** OK. But you were in contact—excuse me. You were...

**CLINTON:** At some point, we need to do some fact-checking here.

**TRUMP:** You were in total contact with the White House, and perhaps, sadly, Obama probably still listened to you. I don't think he would be listening to you very much anymore.

Obama draws the line in the sand. It was laughed at all over the world what happened.

Now, with that being said, she talks tough against Russia. But our nuclear program has fallen way behind, and they've gone wild with their nuclear program. Not good. Our government shouldn't have allowed that to happen. Russia is new in terms of nuclear. We are old. We're tired. We're exhausted in terms of nuclear. A very bad thing.

Now, she talks tough, she talks really tough against Putin and against Assad. She talks in favor of the rebels. She doesn't even know who the rebels are. You know, every time we take rebels, whether it's in Iraq or anywhere else, we're arming people. And you know what happens? They end up being worse than the people.

Look at what she did in Libya with Gadhafi. Gadhafi's out. It's a mess. And, by the way, ISIS has a good chunk of their oil. I'm sure you probably have heard that. It was a disaster. Because the fact is, almost everything she's done in foreign policy has been a mistake and it's been a disaster.

But if you look at Russia, just take a look at Russia, and look at what they did this week, where I agree, she wasn't there, but possibly she's consulted. We sign a peace treaty. Everyone's all excited. Well, what Russia did with Assad and, by the way, with Iran, who you made very powerful with the dumbest deal perhaps I've ever seen in the history of deal-making, the Iran deal, with the \$150 billion, with the \$1.7 billion in cash, which is enough to fill up this room.

But look at that deal. Iran now and Russia are now against us. So she wants to fight. She wants to fight for rebels. There's only one problem. You don't even know who the rebels are. So what's the purpose?

**RADDATZ:** Mr. Trump, Mr. Trump, your two minutes is up.

**TRUMP:** And one thing I have to say.

**RADDATZ:** Your two minutes is up.

**TRUMP:** I don't like Assad at all, but Assad is killing ISIS. Russia is killing ISIS. And Iran is killing ISIS. And those three have now lined up because of our weak foreign policy.

**RADDATZ:** Mr. Trump, let me repeat the question. If you were president...*[laughter]*...what would you do about Syria and the humanitarian crisis in Aleppo? And I want to remind you what your running mate said. He said provocations by Russia need to be met with American strength and that if Russia continues to be involved in air strikes along with the Syrian government forces of Assad, the United States of America should be prepared to use military force to strike the military targets of the Assad regime.

**TRUMP:** OK. He and I haven't spoken, and I disagree. I disagree.

**RADDATZ:** You disagree with your running mate?

**TRUMP:** I think you have to knock out ISIS. Right now, Syria is fighting ISIS. We have people that want to fight both at the same time. But Syria is no longer Syria. Syria is Russia and it's Iran, who she made strong and Kerry and Obama made into a very powerful nation and a very rich nation, very, very quickly, very, very quickly.

**RADDATZ:** What do you think will happen if Aleppo falls?

**TRUMP:** I think Aleppo is a disaster, humanitarian-wise.

**RADDATZ:** What do you think will happen if it falls?

**TRUMP:** I think that it basically has fallen. OK? It basically has fallen. Let me tell you something. You take a look at Mosul. The biggest problem I have with the stupidity of our foreign policy, we have Mosul. They think a lot of the ISIS leaders are in Mosul. So we have announcements coming out of Washington and coming out of Iraq, we will be attacking Mosul in three weeks or four weeks.

Well, all of these bad leaders from ISIS are leaving Mosul. Why can't they do it quietly? Why can't they do the attack, make it a sneak attack, and after the attack is made, inform the American public that we've knocked out the leaders, we've had a tremendous success? People leave. Why do they have to say we're going to be attacking Mosul within the next four to six weeks, which is what they're saying? How stupid is our country?

**RADDATZ:** There are sometimes reasons the military does that. Psychological warfare.

**TRUMP:** I can't think of any. I can't think of any. And I'm pretty good at it.

**RADDATZ:** It might be to help get civilians out.

**TRUMP:** And we have General Flynn. And we have—look, I have 200 generals and admirals who endorsed me. I have 21 Congressional Medal of Honor recipients who endorsed me. We talk about it all the time. They understand, why can't they do something secretly, where they go in and they knock out the leadership? How—why would these people stay there? I've been reading now...

**RADDATZ:** Tell me what your strategy is.

**TRUMP:** ... for weeks—I've been reading now for weeks about Mosul, that it's the harbor of where—you know, between Raqqa and Mosul, this is where they think the ISIS leaders are. Why would they be saying—they're not staying there anymore. They're gone. Because everybody's talking about how Iraq, which is us with our leadership, goes in to fight Mosul.

Now, with these 200 admirals and generals, they can't believe it. All I say is this. General George Patton, General Douglas MacArthur are spinning in their grave at the stupidity of what we're doing in the Middle East.

**RADDATZ:** I'm going to go to Secretary Clinton. Secretary Clinton, you want Assad to go. You advocated arming rebels, but it looks like that may be too late for Aleppo. You talk about diplomatic efforts. Those have failed. Cease-fires have failed. Would you introduce the threat of U.S. military force beyond a no-fly zone against the Assad regime to back up diplomacy?

**CLINTON:** I would not use American ground forces in Syria. I think that would be a very serious mistake. I don't think American troops should be holding territory, which is what they would have to do as an occupying force. I don't think that is a smart strategy.

I do think the use of special forces, which we're using, the use of enablers and trainers in Iraq, which has had some positive effects, are very much in our interests, and so I do support what is happening, but let me just...

**RADDATZ:** But what would you do differently than President Obama is doing?

**CLINTON:** Well, Martha, I hope that by the time I—if I'm fortunate...

**TRUMP:** Everything.

**CLINTON:** I hope by the time I am president that we will have pushed ISIS out of Iraq. I do think that there is a good chance that we can take Mosul. And, you know, Donald says he knows more about ISIS than the generals. No, he doesn't.

There are a lot of very important planning going on, and some of it is to signal to the Sunnis in the area, as well as Kurdish Peshmerga fighters, that we all need to be in this. And that takes a lot of planning and preparation.

I would go after Baghdadi. I would specifically target Baghdadi, because I think our targeting of Al Qaida leaders—and I was involved in a lot of those operations, highly classified ones—made a difference. So I think that could help.

I would also consider arming the Kurds. The Kurds have been our best partners in Syria, as well as Iraq. And I know there's a lot of concern about that in some circles, but I think they should have the equipment they need so that Kurdish and Arab fighters on the ground are the principal way that we take Raqqa after pushing ISIS out of Iraq.

**RADDATZ:** Thank you very much. We're going to move on...

**TRUMP:** You know what's funny? She went over a minute over, and you don't stop her. When I go one second over, it's like a big deal.

**RADDATZ:** You had many answers.

**TRUMP:** It's really—it's really very interesting.

**COOPER:** We've got a question over here from James Carter. Mr. Carter?

**QUESTION:** My question is, do you believe you can be a devoted president to all the people in the United States?

**COOPER:** That question begins for Mr. Trump.

**TRUMP:** Absolutely. I mean, she calls our people deplorable, a large group, and irredeemable. I will be a president for all of our people. And I'll be a president that will turn our inner cities around and will give strength to people and will give economics to people and will bring jobs back.

Because NAFTA, signed by her husband, is perhaps the greatest disaster trade deal in the history of the world. Not in this country. It stripped us of manufacturing jobs. We lost our jobs. We lost our money. We lost our plants. It is a disaster. And now she wants to sign TPP, even though she says now she's for it. She called it the gold standard. And by the way, at the last debate, she lied, because it turned out that she did say the gold standard and she said she didn't say it. They actually said that she lied. OK? And she lied. But she's lied about a lot of things.

I would be a president for all of the people, African-Americans, the inner cities. Devastating what's happening to our inner cities. She's been talking about it for years. As usual, she talks about it, nothing happens. She doesn't get it done.

Same with the Latino Americans, the Hispanic Americans. The same exact thing. They talk, they don't get it done. You go into the inner cities and—you see it's 45 percent poverty. African-Americans now 45 percent poverty in the inner cities. The education is a disaster. Jobs are essentially nonexistent.

I mean, it's—you know, and I've been saying at big speeches where I have 20,000 and 30,000 people, what do you have to lose? It can't get any worse. And she's been talking about the inner cities for 25 years. Nothing's going to ever happen.

Let me tell you, if she's president of the United States, nothing's going to happen. It's just going to be talk. And all of her friends, the taxes we were talking about, and I would just get it by osmosis. She's not doing any me favors. But by doing all the others' favors, she's doing me favors.

**COOPER:** Mr. Trump, thank you.

**TRUMP:** But I will tell you, she's all talk. It doesn't get done. All you have to do is take a look at her Senate run. Take a look at upstate New York.

**COOPER:** Your two minutes is up. Secretary Clinton, two minutes?

**TRUMP:** It turned out to be a disaster.

**COOPER:** You have two minutes, Secretary Clinton.

**CLINTON:** Well, 67 percent of the people voted to re-elect me when I ran for my second term, and I was very proud and very humbled by that.

Mr. Carter, I have tried my entire life to do what I can to support children and families. You know, right out of law school, I went to work for the Children's Defense Fund. And Donald talks a lot about, you know, the 30 years I've been in public service. I'm proud of that. You know, I started off as a young lawyer working against discrimination against African-American children in schools and in the criminal justice system. I worked to make sure that kids with disabilities could get a public education, something that I care very much about. I have worked with Latinos—one of my first jobs in politics was down in south Texas registering Latino citizens to be able to vote. So I have a deep devotion, to use your absolutely correct word, to making sure that an every American feels like he or she has a place in our country.

And I think when you look at the letters that I get, a lot of people are worried that maybe they wouldn't have a place in Donald Trump's America. They write me, and one woman wrote me about her son, Felix. She adopted him from Ethiopia

You know, children listen to what is being said. To go back to the very, very first question. And there's a lot of fear—in fact, teachers and parents are calling it the Trump effect. Bullying is up. A lot of people are feeling, you know, uneasy. A lot of kids are expressing their concerns.

So, first and foremost, I will do everything I can to reach out to everybody.

**COOPER:** Your time, Secretary Clinton.

**CLINTON:** Democrats, Republicans, independents, people across our country. If you don't vote for me, I still want to be your president.

**COOPER:** Your two minutes is up.

**CLINTON:** I want to be the best president I can be for every American.

**COOPER:** Secretary Clinton, your two minutes is up. I want to follow up on something that Donald Trump actually said to you, a comment you made last month. You said that half of Donald Trump's supporters are, quote, "deplorables, racist, sexist, homophobic, xenophobic, Islamophobic." You later said you regretted saying half. You didn't express regret for using the term "deplorables." To Mr. Carter's question, how can you unite a country if you've written off tens of millions of Americans?

**CLINTON:** Well, within hours I said that I was sorry about the way I talked about that, because my argument is not with his supporters. It's with him and with the hateful and divisive campaign that he has run, and the inciting of violence at his rallies, and the very brutal kinds of comments about not just women, but all Americans, all kinds of Americans.

And what he has said about African-Americans and Latinos, about Muslims, about POWs, about immigrants, about people with disabilities, he's never apologized for. And so I do think that a lot of the tone and tenor that he has said—I'm proud of the campaign that Bernie Sanders and I ran. We ran a campaign based on issues, not insults. And he is supporting me 100 percent.

**COOPER:** Thank you.

**CLINTON:** Because we talked about what we wanted to do. We might have had some differences, and we had a lot of debates...

**COOPER:** Thank you, Secretary.

**TRUMP:** ... but we believed that we could make the country better. And I was proud of that.

**COOPER:** I want to give you a minute to respond.

**TRUMP:** We have a divided nation. We have a very divided nation. You look at Charlotte. You look at Baltimore. You look at the violence that's taking place in the inner cities, Chicago, you take a look at Washington, D.C.

We have an increase in murder within our cities, the biggest in 45 years. We have a divided nation, because people like her—and believe me, she has tremendous hate in her heart. And when she said deplorables, she meant it. And when she said irredeemable, they're irredeemable, you didn't mention that, but when she said they're irredeemable, to me that might have been even worse.

**COOPER:** She said some of them are irredeemable.

**TRUMP:** She's got tremendous—she's got tremendous hatred. And this country cannot take another four years of Barack Obama, and that's what you're getting with her.

**COOPER:** Mr. Trump, let me follow up with you. In 2008, you wrote in one of your books that the most important characteristic of a good leader is discipline. You said, if a leader doesn't have it, quote, "he or she won't be one for very long." In the days after the first debate, you sent out a series of tweets from 3 a.m. to 5 a.m., including one that told people to check out a sex tape. Is that the discipline of a good leader?

**TRUMP:** No, there wasn't check out a sex tape. It was just take a look at the person that she built up to be this wonderful Girl Scout who was no Girl Scout.

**COOPER:** You mentioned sex tape.

**TRUMP:** By the way, just so you understand, when she said 3 o'clock in the morning, take a look at Benghazi. She said who is going to answer the call at 3 o'clock in the morning? Guess what? She didn't answer it, because when Ambassador Stevens...

**COOPER:** The question is, is that the discipline of a good leader?

**TRUMP:** ... 600—wait a minute, Anderson, 600 times. Well, she said she was awake at 3 o'clock in the morning, and she also sent a tweet out at 3 o'clock in the morning, but I won't even mention that. But she said she'll be awake. Who's going—the famous thing, we're going to answer our call at 3 o'clock in the morning. Guess what happened? Ambassador Stevens—Ambassador Stevens sent 600 requests for help. And the only one she talked to was Sidney Blumenthal, who's her friend and not a good guy, by the way. So, you know, she shouldn't be talking about that.

Now, tweeting happens to be a modern day form of communication. I mean, you can like it or not like it. I have, between Facebook and Twitter, I have almost 25 million people. It's a very effective way of communication. So you can put it down, but it is a very effective form of communication. I'm not un-proud of it, to be honest with you.

**COOPER:** Secretary Clinton, does Mr. Trump have the discipline to be a good leader?

**CLINTON:** No.

**TRUMP:** I'm shocked to hear that. *[laughter]*

**CLINTON:** Well, it's not only my opinion. It's the opinion of many others, national security experts, Republicans, former Republican members of Congress. But it's in part because those of us who have had the great privilege of seeing this job up close and know how difficult it is, and it's not just because I watched my husband take a \$300 billion deficit and turn it into a \$200 billion surplus, and 23 million new jobs were created, and incomes went up for everybody. Everybody. African-American incomes went up 33 percent.

And it's not just because I worked with George W. Bush after 9/11, and I was very proud that when I told him what the city needed, what we needed to recover, he said you've got it, and he never wavered. He stuck with me.

And I have worked and I admire President Obama. He inherited the worst financial crisis since the Great Depression. That was a terrible time for our country.

**COOPER:** We have to move along.

**CLINTON:** Nine million people lost their jobs.

**RADDATZ:** Secretary Clinton, we have to...

**CLINTON:** Five million homes were lost.

**RADDATZ:** Secretary Clinton, we're moving.

**CLINTON:** And \$13 trillion in family wealth was wiped out. We are back on the right track. He would send us back into recession with his tax plans that benefit the wealthiest of Americans.

**RADDATZ:** Secretary Clinton, we are moving to an audience question. We're almost out of time. We have another...

**TRUMP:** We have the slowest growth since 1929.

**RADDATZ:** We're moving to an audience question.

**TRUMP:** It is—our country has the slowest growth and jobs are a disaster.

**RADDATZ:** Mr. Trump, Secretary Clinton, we want to get to the audience. Thank you very much both of you. *[laughter]*

We have another audience question. Beth Miller has a question for both candidates.

**QUESTION:** Good evening. Perhaps the most important aspect of this election is the Supreme Court justice. What would you prioritize as the most important aspect of selecting a Supreme Court justice?

**RADDATZ:** We begin with your two minutes, Secretary Clinton.

**CLINTON:** Thank you. Well, you're right. This is one of the most important issues in this election. I want to appoint Supreme Court justices who understand the way the world really works, who have real-life experience, who have not just been in a big law firm and maybe clerked for a judge and then gotten on the bench, but, you know, maybe they tried some more cases, they actually understand what people are up against.

I would like the Supreme Court to understand that voting rights are still a big problem in many parts of our country, that we don't always do everything we can to make it possible for people of color and older people and young people to be able to exercise their franchise. I want a Supreme Court that will stick with *Roe v. Wade* and a woman's right to choose, and I want a Supreme Court that will stick with marriage equality.

Now, Donald has put forth the names of some people that he would consider. And among the ones that he has suggested are people who would reverse *Roe v. Wade* and reverse marriage equality. I think that would be a terrible mistake and would take us backwards.

I want a Supreme Court that doesn't always side with corporate interests. I want a Supreme Court that understands because you're wealthy and you can give more money to something doesn't mean you have any more rights or should have any more rights than anybody else.

So I have very clear views about what I want to see to kind of change the balance on the Supreme Court. And I regret deeply that the Senate has not done its job and they have not permitted a vote on the person that President Obama, a highly qualified person, they've not given him a vote to be able to be have the full complement of nine Supreme Court justices. I think that was a dereliction of duty.

I hope that they will see their way to doing it, but if I am so fortunate enough as to be president, I will immediately move to make sure that we fill that, we have nine justices that get to work on behalf of our people.

**RADDATZ:** Thank you, Secretary Clinton. Thank you. You're out of time. Mr. Trump?

**TRUMP:** Justice Scalia, great judge, died recently. And we have a vacancy. I am looking to appoint judges very much in the mold of Justice Scalia. I'm looking for judges—and I've actually picked 20 of them so that people would see, highly respected, highly thought of, and actually very beautifully reviewed by just about everybody.

But people that will respect the Constitution of the United States. And I think that this is so important. Also, the Second Amendment, which is totally under siege by people like Hillary Clinton. They'll respect the Second Amendment and what it stands for, what it represents. So important to me.

Now, Hillary mentioned something about contributions just so you understand. So I will have in my race more than \$100 million put in—of my money, meaning I'm not taking all of this big money from all of these different corporations like she's doing. What I ask is this.

So I'm putting in more than—by the time it's finished, I'll have more than \$100 million invested. Pretty much self-funding money. We're raising money for the Republican Party, and we're doing tremendously on the small donations, \$61 average or so.

I ask Hillary, why doesn't—she made \$250 million by being in office. She used the power of her office to make a lot of money. Why isn't she funding, not for \$100 million, but why don't you put \$10 million or \$20 million or \$25 million or \$30 million into your own campaign?

It's \$30 million less for special interests that will tell you exactly what to do and it would really, I think, be a nice sign to the American public. Why aren't you putting some money in? You have a lot of it. You've made a lot of it because of the fact that you've been in office. Made a lot of it while you were secretary of state, actually. So why aren't you putting money into your own campaign? I'm just curious.

**CLINTON:** Well...[*crosstalk*]

**RADDATZ:** Thank you very much. We're going to get on to one more question.

**CLINTON:** The question was about the Supreme Court. And I just want to quickly say, I respect the Second Amendment. But I believe there should be comprehensive background checks, and we should close the gun show loophole, and close the online loophole.

**COOPER:** Thank you.

**RADDATZ:** We have—we have one more question, Mrs. Clinton.

**CLINTON:** We have to save as many lives as we possibly can.

**COOPER:** We have one more question from Ken Bone about energy policy. Ken?

**QUESTION:** What steps will your energy policy take to meet our energy needs, while at the same time remaining environmentally friendly and minimizing job loss for fossil power plant workers?

**COOPER:** Mr. Trump, two minutes?

**TRUMP:** Absolutely. I think it's such a great question, because energy is under siege by the Obama administration. Under absolutely siege. The EPA, Environmental Protection Agency, is killing these energy companies. And foreign companies are now coming in buying our—buying so many of our different plants and then re-jiggering the plant so that they can take care of their oil.

We are killing—absolutely killing our energy business in this country. Now, I'm all for alternative forms of energy, including wind, including solar, et cetera. But we need much more than wind and solar.

And you look at our miners. Hillary Clinton wants to put all the miners out of business. There is a thing called clean coal. Coal will last for 1,000 years in this country. Now we have natural gas and so many other things because of technology. We have unbelievable—we have found over the last seven years, we have found tremendous wealth right under our feet. So good. Especially when you have \$20 trillion in debt.

I will bring our energy companies back. They'll be able to compete. They'll make money. They'll pay off our national debt. They'll pay off our tremendous budget deficits, which are tremendous. But we are putting our energy companies out of business. We have to bring back our workers.

You take a look at what's happening to steel and the cost of steel and China dumping vast amounts of steel all over the United States, which essentially is killing our steelworkers and our steel companies. We have to guard our energy companies. We have to make it possible.

The EPA is so restrictive that they are putting our energy companies out of business. And all you have to do is go to a great place like West Virginia or places like Ohio, which is phenomenal, or places like Pennsylvania and you see what they're doing to the people, miners and others in the energy business. It's a disgrace.

**COOPER:** Your time is up. Thank you.

**TRUMP:** It's an absolute disgrace.

**COOPER:** Secretary Clinton, two minutes.

**CLINTON:** And actually—well, that was very interesting. First of all, China is illegally dumping steel in the United States and Donald Trump is buying it to build his buildings, putting steelworkers and American steel plants out of business. That's something that I fought against as a senator and that I would have a trade prosecutor to make sure that we don't get taken advantage of by China on steel or anything else.

You know, because it sounds like you're in the business or you're aware of people in the business—you know that we are now for the first time ever energy-independent. We are not dependent upon the Middle East. But the Middle East still controls a lot of the prices. So the price of oil has been way down. And that has had a damaging effect on a lot of the oil companies, right? We are, however, producing a lot of natural gas, which serves as a bridge to more renewable fuels. And I think that's an important transition.

We've got to remain energy-independent. It gives us much more power and freedom than to be worried about what goes on in the Middle East. We have enough worries over there without having to worry about that.

So I have a comprehensive energy policy, but it really does include fighting climate change, because I think that is a serious problem. And I support moving toward more clean, renewable energy as quickly as we can, because I think we can be the 21st century clean energy superpower and create millions of new jobs and businesses.

But I also want to be sure that we don't leave people behind. That's why I'm the only candidate from the very beginning of this campaign who had a plan to help us revitalize coal country, because those coal miners and their fathers and their grandfathers, they dug that coal out. A lot of them lost their lives. They were injured, but they turned the lights on and they powered their factories. I don't want to walk away from them. So we've got to do something for them.

**COOPER:** Secretary Clinton...

**CLINTON:** But the price of coal is down worldwide. So we have to look at this comprehensively.

**COOPER:** Your time is up.

**CLINTON:** And that's exactly what I have proposed. I hope you will go to [HillaryClinton.com](http://HillaryClinton.com) and look at my entire policy.

**RADDATZ:** We have...

**COOPER:** One more audience question.

**RADDATZ:** We've sneaked in one more question, and it comes from Karl Becker.

**QUESTION:** Good evening. My question to both of you is, regardless of the current rhetoric, would either of you name one positive thing that you respect in one another? [applause]

**RADDATZ:** Mr. Trump, would you like to go first?

**CLINTON:** Well, I certainly will, because I think that's a very fair and important question. Look, I respect his children. His children are incredibly able and devoted, and I think that says a lot about Donald. I don't agree with nearly anything else he says or does, but I do respect that. And I think that is something that as a mother and a grandmother is very important to me.

So I believe that this election has become in part so—so conflict-oriented, so intense because there's a lot at stake. This is not an ordinary time, and this is not an ordinary election. We are going to be choosing a president who will set policy for not just four or eight years, but because of some of the important decisions we have to make here at home and around the world, from the Supreme Court to energy and so much else, and so there is a lot at stake. It's one of the most consequential elections that we've had.

And that's why I've tried to put forth specific policies and plans, trying to get it off of the personal and put it on to what it is I want to do as president. And that's why I hope people will check on that for themselves so that they can see that, yes, I've spent 30 years, actually maybe a little more, working to help kids and families. And I want to take all that experience to the White House and do that every single day.

**RADDATZ:** Mr. Trump?

**TRUMP:** Well, I consider her statement about my children to be a very nice compliment. I don't know if it was meant to be a compliment, but it is a great—I'm very proud of my children. And they've done a wonderful job, and they've been wonderful, wonderful kids. So I consider that a compliment.

I will say this about Hillary. She doesn't quit. She doesn't give up. I respect that. I tell it like it is. She's a fighter. I disagree with much of what she's fighting for. I do disagree with her judgment in many cases. But she does fight hard, and she doesn't quit, and she doesn't give up. And I consider that to be a very good trait.

**RADDATZ:** Thanks to both of you.

**COOPER:** We want to thank both the candidates. We want to thank the university here. This concludes the town hall meeting. Our thanks to the candidates, the commission, Washington University, and to everybody who watched.

**RADDATZ:** Please tune in on October 19th for the final presidential debate that will take place at the University of Nevada, Las Vegas. Good night, everyone.

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**Citation:** Presidential Candidates Debates: "Presidential Debate at Washington University in St. Louis, Missouri," October 9, 2016. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=119038>.

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# **Exhibit J**

The New York Times | <https://nyti.ms/2jLMK0Q>

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POLITICS

# How Trump's Rush to Enact an Immigration Ban Unleashed Global Chaos

By MICHAEL D. SHEAR and RON NIXON JAN. 29, 2017

WASHINGTON — As President Trump signed a sweeping executive order on Friday, shutting the borders to refugees and others from seven largely Muslim countries, the secretary of homeland security was on a White House conference call getting his first full briefing on the global shift in policy.

Gen. John F. Kelly, the secretary of homeland security, had dialed in from a Coast Guard plane as he headed back to Washington from Miami. Along with other top officials, he needed guidance from the White House, which had not asked his department for a legal review of the order.

Halfway into the briefing, someone on the call looked up at a television in his office. “The president is signing the executive order that we’re discussing,” the official said, stunned.

The global confusion that has since erupted is the story of a White House that rushed to enact, with little regard for basic governing, a core campaign promise that Mr. Trump made to his most fervent supporters. In his first week in office, Mr. Trump signed other executive actions with little or no legal review, but his order barring refugees has had the most explosive implications.

Passengers were barred from flights to the United States, customs and border control officials got instructions at 3 a.m. Saturday and some arrived at their posts later that morning still not knowing how to carry out the president's orders.

“The details of it were not thought through,” said Stephen Heifetz, who served in the Justice and Homeland Security Departments, as well as the C.I.A., under the previous three presidents. “It is not surprising there was mass confusion, and I expect the confusion and chaos will continue for some time.”

Stephen K. Bannon, the chief White House strategist, oversaw the writing of the order, which was done by a small White House team, including Stephen Miller, Mr. Trump’s policy chief. But it was first imagined more than a year ago, when Mr. Trump, then a candidate for the Republican nomination, reacted to terrorist attacks in San Bernardino, Calif., by calling for a “total and complete shutdown of Muslims entering the United States.”

In the months that followed, Mr. Trump’s campaign tried to back away from the proposal, which was seen by Democrats as over-the-top campaign rhetoric that would never be reality. Mr. Trump offered few details as the campaign progressed, and as president-elect he promised to protect the country from terrorists with only vague promises of “extreme vetting.”

But Mr. Bannon, who believes in highly restrictive immigration policies and saw barring refugees as vital to shoring up Mr. Trump’s political base, was determined to make it happen. He and a small group made up of the president’s closest advisers began working on the order during the transition so that Mr. Trump could sign it soon after taking office.

A senior administration official said that the order was drafted in cooperation with some immigration experts on Capitol Hill and members of the “beachhead teams” — small groups of political appointees sent by the new White House to be liaisons and begin work at the agencies.

James Jay Carafano, a vice president of the conservative Heritage Foundation and a member of Mr. Trump’s transition team, said that little of that work was shared with career officials at the Homeland Security Department, the State Department or other agencies.

There was “a firewall between the old administration and the incoming one,” Mr. Carafano said.

One reason, he said, is that when the Trump transition team asked pointed questions suggesting new policies to the career officials, those questions were swiftly leaked to the news media, generating negative stories. So the Trump team began to limit the information they discussed with officials from the previous administration.

“Why share it with them?” Mr. Carafano said.

R. Gil Kerlikowske, who served as commissioner of Customs and Border Protection under former President Barack Obama, said that his staff had little communication with Mr. Trump’s transition team, who made no mention of a bar on entry for people from certain countries.

White House officials in the meantime insisted to reporters at a briefing that Mr. Trump’s advisers had been in contact with officials at the State and Homeland Security Departments for “many weeks.”

One official added, “Everyone who needed to know was informed.”

But that apparently did not include members of the president’s own cabinet.

Jim Mattis, the new secretary of defense, did not see a final version of the order until Friday morning, only hours before Mr. Trump arrived to sign it at the Pentagon.

Mr. Mattis, according to administration officials familiar with the deliberations, was not consulted by the White House during the preparation of the order and was not given an opportunity to provide input while the order was being drafted. Last summer, Mr. Mattis sharply criticized Mr. Trump’s proposed ban on Muslim immigration as a move that was “causing us great damage right now, and it’s sending shock waves through the international system.”

Customs and Border Protection officers were also caught unaware.

They contacted several airlines late Friday that were likely to be carrying passengers from the seven countries and “instructed the airlines to offload any passport holders from those countries,” said a state government official who has been briefed on the agency’s actions.

It was not until 3 a.m. on Saturday that customs and border officials received limited written instructions about what to do at airports and border crossings. They also struggled with how to exercise the waiver authority that was included in the executive order, which allowed the homeland security secretary to let some individuals under the ban enter the country case by case.

One customs officer, who declined to be quoted by name, said he was given a limited briefing about what to do as he went to his post on Saturday morning, but even managers seemed unclear. People at the agency were blindsided, he said, and are still trying to figure things out, even as people are being stopped from coming into the United States.

“If the secretary doesn’t know anything, how could we possibly know anything at this level?” the officer said, referring to Mr. Kelly.

At the Citizenship and Immigration Service, staff members were told that the agency should stop work on any application filed by a person from any of the countries listed in the ban. Employees were told that applicants should be interviewed, but that their cases for citizenship, green cards or other immigration documents should be put on pause, pending further guidance.

The timing of the executive order and the lack of advance warning had homeland security officials “flying by the seat of their pants,” to try to put policies in place, one official said.

By Saturday, as the order stranded travelers around the world and its full impact became clear, Reince Priebus, the chief of staff, became increasingly upset about how the program had been rolled out and communicated to the public.

By Sunday morning, Mr. Priebus had to defend the immigration ban on NBC’s “Meet the Press,” where he insisted that the executive order was rolled out smoothly. He also backpedaled on the policy and said that the executive order’s restrictions on entry to the United States would not apply to legal permanent residents “going forward.”

As White House officials also insisted on Sunday that the order had gone through the usual process of scrutiny and approval by the Office of Legal Counsel, the continuing confusion forced Mr. Kelly to clarify the waiver situation. He issued a statement making clear that lawful permanent residents — those who hold valid green cards — would be granted a waiver to enter the United States unless information suggested that they were a security threat.

But senior White House officials insisted on Sunday night that the executive order would remain in force despite the change, and that they were proud of taking actions that they said would help protect Americans against threats from potential terrorists.

That assertion is likely to do little to calm the public furor, which showed no signs of waning at the beginning of Mr. Trump's second full week in the Oval Office.

Mr. Carafano said he believed that the substance of Mr. Trump's executive order was neither radical nor unreasonable. But he said that Mr. Trump's team could have delayed signing the order until they had better prepared the bureaucracy to carry it out.

He also said the president and his team had not done a good job of communicating to the public the purpose of the executive order.

“If there is a criticism of the administration, and I think there is, I think they have done a rotten job of telling their story,” he said. “It is not like they did not know they were going to do this. To not have a cadre of people out there defending the administration — I mean, really guys, they should have done this.”

Reporting was contributed by Eric Lipton, Eric Schmitt and Charlie Savage from Washington, and Joseph Goldstein from New York.

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# **Exhibit K**

# POLITICO

## CONGRESS

### Hill staffers secretly worked on Trump's immigration order

Several House Judiciary Committee aides helped craft the controversial directive without telling Republican leaders.

By **RACHAEL BADE**, **JAKE SHERMAN** and **JOSH DAWSEY** | 01/30/2017 08:26 PM EST | Updated 01/30/2017 11:11 PM EST



Since the staffers did not inform Republican leaders about their work, Hill leaders and the House Homeland Security panels were never given the chance to vet the executive order for potential problems. | John Shinkle/POLITICO

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Senior staffers on the House Judiciary Committee helped Donald Trump's top aides draft the executive order curbing immigration from seven Muslim-majority nations, but the Republican committee chairman and party leadership were not informed, according to multiple sources involved in the process.

The news of their involvement helps unlock the mystery of whether the White House consulted Capitol Hill about the executive order, one of many questions raised in the days after it was unveiled on Friday. It confirms that the small group of staffers were among the only people on Capitol Hill who knew of the looming controversial policy.

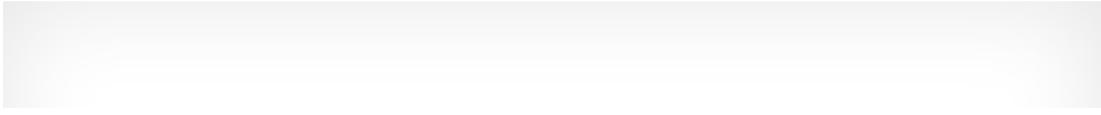
Kathryn Rexrode, the House Judiciary Committee's communications director, declined to comment about the aides' work. A Judiciary Committee aide said Judiciary Committee Chairman Bob Goodlatte (R-Va.) was not "consulted by the administration on the executive order."

"Like other congressional committees, some staff of the House Judiciary Committee were permitted to offer their policy expertise to the Trump transition team about immigration law," a House Judiciary Committee aide said in a statement. "However, the Trump Administration is responsible for the final policy decisions contained in the executive order and its subsequent roll-out and implementation."

The work of the committee aides began during the transition period after the election and before Donald Trump was sworn in. The staffers signed nondisclosure agreements, according to two sources familiar with the matter. Trump's transition operation forced its staff to sign these agreements, but it would be unusual to extend that requirement to congressional employees. Rexrode declined to comment on the nondisclosure pacts.

It's extremely rare for administration officials to circumvent Republican leadership and work directly with congressional committee aides. But the House Judiciary Committee has some of the most experienced staffers when it comes to immigration policy.

ADVERTISING



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**Democrats rally against Trump's immigration order**By **HEATHER CAYGLE** and **ELANA SCHOR**

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GOP leaders received no advance warning or briefings from the White House or Judiciary staff on what the executive order would do or how it would be implemented — briefings they still had not received as of Sunday night. Leaders including Speaker Paul Ryan (R-Wis.) and Majority Leader Mitch McConnell (R-Ky.) only saw the final language when reporters received it Friday night, according to multiple Hill sources.

Rather, Republicans on the Hill spent the entire weekend scrambling to find out what was going on, who was involved and how it was that they were caught so flat-footed.

"Their coordination with the Hill was terrible," said one senior GOP source on the Hill, who seemed flabbergasted that congressional Republicans didn't receive talking points from the White House on the executive order until late Saturday night, about 24 hours after President Donald Trump signed it. "We didn't see the final language until it was actually out."

The fumbled roll-out serves as a cautionary tale to Trump officials who decide to go it alone in enacting controversial policies without help from Congress. Indeed, the lack of consultation has set off a wave of resentment on Capitol Hill. GOP insiders believe that the White House and Goodlatte staffers could have avoided the drama that unfolded over the weekend had they looped in relevant lawmakers on the front end.

The episode also has instilled a wariness among GOP aides about the White House.

"These executive orders were very rushed and drafted by a very tight-knit group of individuals who did not run it by the people who have to execute the policy. And because that's the case, they probably didn't think of or care about how this would be executed in the real world," said another congressional source familiar with the situation. "No one was given a heads-up and no one had a chance to weigh in on it."

Insiders told POLITICO that the botched roll-out of the immigration executive order was coordinated for the most part by White House policy director Stephen Miller, a former Sessions staffer, and Trump senior strategist Stephen Bannon.

It was intentionally kept quiet. Even key administration officials had not seen it until "just before it was going out," according to one White House source.

Since the staffers did not inform Republican leaders about their work, Hill leaders and the House Homeland Security panels were never given the chance to vet the order for potential problems — such as the issue with green card holders that caused authorized U.S. immigrants to be threatened with deportation at airports.

Even supporters of the administration believe the administration erred in its lack of communication. Former Republican House Speaker Newt Gingrich, a Trump ally, speculated that the administration could have given "people a heads up a week or so out and get them on the same page." But he cautioned that the administration is "understaffed and Trump is impatient," and the White House has a natural learning curve.

"They could have waited a couple days, and they would have done better," Gingrich said. "I think some of this stuff is they're learning how to roller skate. They can't understand in advance, they have to do it for the first time."

When the order first came down Friday, and reports of problems started to surface, lawmakers frantically called leadership offices and committees staff to ask how to respond. That's when GOP leadership staffers moved to do damage control — even as the administration ignored their requests for briefings and more information. Frustrated by the administration's lack of communication to reporters on what the executive order did and didn't do, they tried to pick up the slack by emphasizing that the ban was not a prohibition on Muslims.

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## **GOP panel chairman defends his staff working on Trump immigration order**

By RACHAEL BADE

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"We were trying to clean up their damage," a senior Republican source said. "The thing was getting totally mischaracterized. The way it was implemented was screwing over a lot of people."

The White House has now dispatched aides to speak with Capitol Hill staffers before they make policy moves, a person familiar with the matter said. Boris Epshteyn, a senior aide, attended such a meeting Monday.

Homeland Security Director John Kelly is expected to visit Capitol Hill on Tuesday and has told others he was "kept totally out of the loop," one person familiar with his comments

said.

Hill Republicans on Monday were privately simmering that administration officials didn't seek out their expertise. Most Trump officials lack policy chops and Washington know-how, they argued, and Republicans said they could have been helpful.

One senior GOP aide said that they generally understood Trump's goals to limit immigration, "but we're getting tired of all the chaos."

# **Exhibit L**



**Donald J. Trump**   
@realDonaldTrump

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1 9



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4 J.R. 619

# **Exhibit M**

# POLITICO

WHITE HOUSE

## Trump team plans a new executive order

Larger panel of appeals court could rehear case.

By **JOSH GERSTEIN** | 02/10/2017 01:06 PM EST | Updated 02/10/2017 07:26 PM EST



Several prominent legal experts are encouraging President Donald Trump to withdraw his current order and redraft it. | Getty

Licking their wounds after a stinging appeals court defeat, President Donald Trump's aides went into triage mode Friday as they considered options for salvaging his contested travel ban for citizens of seven majority-Muslim countries.

In two different venues Friday afternoon, Trump suggested that the White House is trying to redraft the order to strengthen it against legal challenges, which he expects the administration to continue to fight in court.

"We'll be doing something very rapidly having to do with additional security for our country," Trump said during a White House news conference with Japanese Prime Minister Shinzo Abe. "You'll be seeing that sometime in the next week. In addition, we will continue to go through the court process and, ultimately, I have no doubt that we'll win that particular case."

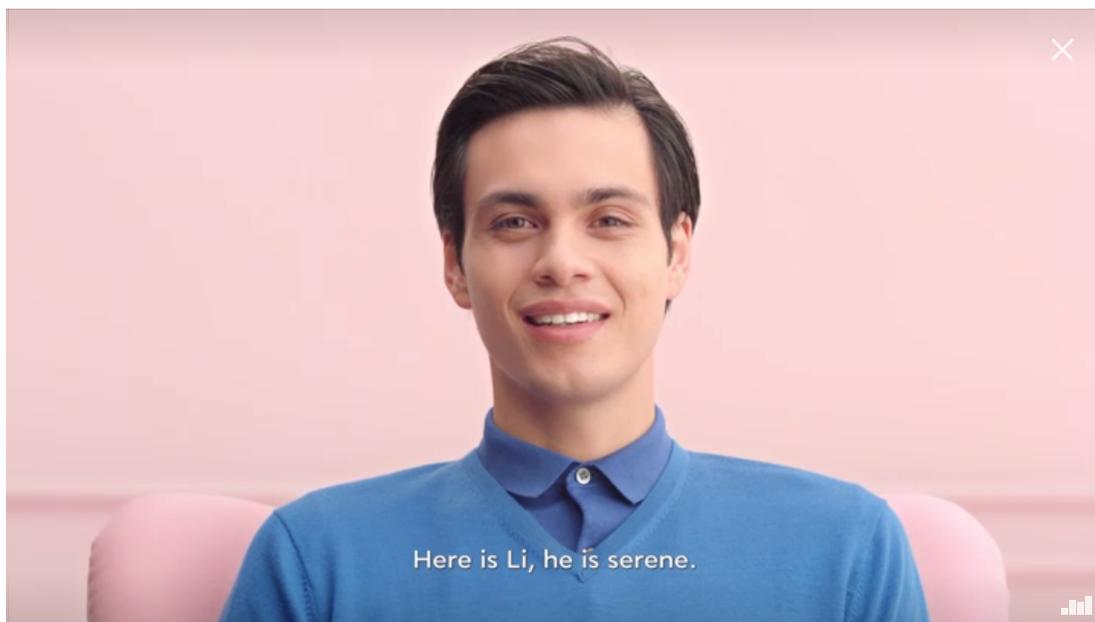
Later in the day, as he flew to Florida for the weekend along with the Japanese leader, Trump spoke again of the legal fight and acknowledged that a new executive order aimed at protecting Americans from terrorism is a live possibility.

"We will win that battle. The unfortunate part is that it takes time statutorily, but we will win that battle. We also have a lot of other options, including just filing a brand new order," Trump said during an exchange with pool reporters on board Air Force One.

Asked whether such an order would be forthcoming, the president said: "It very well could be. We need speed for reasons of security, so it very well could be." The new directive could come Monday or Tuesday, Trump added.

"We will be extreme vetting," Trump vowed during his White House news conference. "We will not allow people into our country who are looking to do harm to our people."

ADVERTISING



## Trump dumped Abrams over his criticisms during the campaign, sources say

By ELIANA JOHNSON

Trump could ask the Supreme Court to step in and do what a three-judge panel of the 9th U.S. Circuit Court of Appeals refused to do Thursday: allow him to reinstate his original executive order. However, the president said nothing publicly Friday about taking the issue to the justices.

The appeals court added its own twist to the legal saga Friday afternoon, announcing that one of its judges requested a vote of the full bench on whether the order issued Thursday turning down Trump's request should be reconsidered by an 11-judge panel.

Chief Judge Sidney Thomas ordered lawyers for the two sides in the case — the Justice Department and the states of Washington and Minnesota — to file briefs by Thursday indicating whether they support such a rehearing.

To win a rehearing, the Trump administration will need a majority of the active judges voting. In that group, Democratic appointees outnumber GOP judicial picks, 18-7.

However, even a denial of further review would allow other 9th Circuit judges the chance to publicly opine on the court's order issued Thursday, potentially bolstering Trump's public arguments that his order is legal.

A White House official who asked not to be named said officials were keeping all their options on the table.

"We are reviewing every single option in the court system, including a Supreme Court appeal on the temporary restraining order, and are confident we will prevail on the merits of the case. Additionally, we are actively pursuing other Executive Orders that will keep our country safe from terrorism. These Executive Orders will be signed very soon," the official said.



WHITE HOUSE

### Trump vexed by challenges, scale of government

By ALEX ISENSTADT, KENNETH P. VOGEL and JOSH DAWSEY

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Another top White House official said the administration would keep pursuing the matter "aggressively" in court, but didn't offer further specifics.

Trump's controversial executive order, signed Jan. 27, banned travel to the U.S. by citizens of seven Muslim-majority countries and suspending the admission of refugees from across the globe. It was put on ice last week by a federal judge in Seattle, a ruling that the 9th Circuit upheld on Thursday.

During a hearing Friday morning in federal court in Virginia on one of more than 20 lawsuits attacking Trump's order, a federal government lawyer said no decision had been made about how to respond to the unanimous ruling from the three-judge appeals court panel.

"We may appeal. We may not. We may take other action," Justice Department attorney Erez Reuveni said. "All options are being considered."

The Virginia hearing was another vivid illustration of the difficulties the Trump administration has encountered in court as it seeks to defend the president's travel ban order, which sought to halt travel from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen, among other steps. The president has repeatedly said the directive was intended to prevent any possibility of terrorist acts from such travelers, as well as refugees, even though such episodes are exceedingly rare.

U.S. District Court Judge Leonie Brinkema pleaded with federal government lawyers to provide some factual evidence to support the order or explain how it addressed a real threat.

"The courts have been begging you to give some information supporting a rational justification [that the targeted countries pose] a unique threat," the judge said. "You haven't given us any evidence whatsoever."

Justice Department attorneys have argued that the national security issues involved in Trump's decision should not be the province of the courts, but Brinkema — who handled the trial of Sept. 11 plotter Zacarias Moussaoui — dismissed that contention.



CONGRESS

### How one GOP congressman tamed pro-Obamacare protesters

By RACHAEL BADE

"We have national security matters presented to us all the time. The courts are cleared" to handle them, the judge said. "I don't have a scintilla of evidence from the government."

At Friday's hearing, Reuveni took a more nuanced position than in other cases, arguing that the courts could entertain constitutional challenges from specific travelers but should not delve into the president's broad national security judgments. Doing that would risk a "constitutional conflict between the branches of the highest order," he warned.

But Brinkema said giving no scrutiny at all to the president's conclusions would preclude the courts from reviewing even the most bizarre edicts. "What would happen if the president decided red-headed people pose a threat to the United States?" she asked.

Virginia Solicitor General Stuart Raphael gave an even more jarring example, suggesting that the federal government's approach would allow the president to order that certain foreigners in the U.S. wear a "yellow Star of David or crescent on their clothes."

Raphael urged Brinkema to implement her own nationwide preliminary injunction against Trump's order. He said it was obvious the measure was intended to follow through on Trump's campaign-trail promises to block Muslims from the U.S.

"The evidence is overwhelming that this is the way the president effected the Muslim ban," the top Virginia state lawyer said.

Brinkema sounded inclined to issue some sort of injunction, although she did not tip her hand about whether it would cover foreigners across the U.S. or be limited to those with Virginia ties. She said she would rule "soon, but not overnight."

Trump rarely backs down from a fight, but even before Thursday's appeals court ruling there were signs that the White House might not proceed as originally expected with an emergency application to the Supreme Court. Legal experts said it was doubtful Trump could muster what he'd need to get immediate relief there: the votes of five justices on the high court, which remains shorthanded with only eight justices. A 4-4 deadlock would leave in place the ruling suspending enforcement of Trump's ban.



#### WASHINGTON AND THE WORLD

### Trump Needs a World Leader Buddy

By JOSHUA W. WALKER

In comments immediately after Thursday's ruling, Trump and his aides refrained from any talk of taking the case to the Supreme Court. Instead, they painted the 9th Circuit ruling as a procedural ruling and said they looked forward to having the case for the executive order heard on "the merits" in lower courts.

Several prominent legal experts are encouraging Trump to withdraw his current order and redraft it. That might alleviate some of the legal pressure, but it would not simply do away with the raft of lawsuits pending in federal courts from Boston to Los Angeles.

“I think there would some confusion in the lower courts about what to do with these cases,” said Steve Vladeck, a law professor at the University of Texas at Austin.

Lawyers pressing the cases have repeatedly said they would not regard a suspension in enforcement of parts of the order as mooted the litigation seeking relief. Long-established court doctrines say someone engaged in wrongful conduct cannot shut down a case just by pledging to refrain from the activity in question.

After the order led to travel disruption, delays and detentions for hundreds of green-card holders, the White House sought to resolve that problem through a series of moves that did not involve Trump modifying his order. The latest move on that front was a memo from White House counsel Don McGahn purporting to offer “authoritative guidance” that Trump’s directive does not appeal to green-card holders.

The White House said that should eliminate all doubt about the order affecting permanent U.S. residents, but the appeals court said in its ruling Thursday that McGahn’s statement was entitled to no legal weight.

“There’s no clean way out of this at this point,” Vladeck said.

*Annie Karni contributed to this report from West Palm Beach, Fla.*

# **Exhibit N**

FIRST 100 DAYS

## Miller: New order will be responsive to the judicial ruling; Rep. Ron DeSantis: Congress has gotten off to a slow start

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Fox News



*This is a rush transcript from "The First 100 Days," February 21, 2017. This copy may not be in its final form and may be updated.*

MARTHA MCCALLUM, FOX NEWS ANCHOR: Breaking tonight, we are live in Jacksonville, Florida for a special immigration town hall, on the same day that President Trump's Department of Homeland Security issued two very important memos designed to crack down on illegal immigrants on our southern border. Welcome to day 33 everybody of "The First 100." I'm Martha MacCallum and this was President Trump just days here in Jacksonville before the election.

(BEGIN VIDEO CLIP)

DONALD TRUMP, U.S. PRESIDENT: The border crisis is the worst it's ever been. It's a national emergency. They get caught again, they go to jail for five years, guess what's going to happen? They're not coming back, folks. Now, our people don't want to do it. Our weak, weak politicians don't want to do it.

A Trump administration will cancel all federal funding to sanctuary cities. We will end illegal immigration. We are going to stop drugs from pouring into your communities and poisoning our youths and everybody else. And we will deport all criminal aliens, quickly from our country.

(END VIDEO CLIP)

MCCALLUM: States like Florida, cities like Jacksonville, part of a movement behind the president's victory, drawn to him by a host of issues, not the least of which was talk like that just days before the November election when, as you remember, nobody thought he was going to win, but those ideas resonated in a big way and we are here tonight to speak to people who helped to elect Mr. Trump and we'll ask them how they think it's going so far in the first 100 days and their expectations that were set on immigration policy, its impact on jobs, on safety, on terrorism, and on the culture of the communities that we all live in across this country.

The November exit polling from Florida helps to tell the story of why we are here tonight. Among 10 percent who said immigration was the most important issue for them on Election Day, 69 percent of those voted for Donald Trump. Among the 23 percent who said that most important issue to them was illegal immigrants working in the U.S. have to be deported to their home country, 92 percent of those individuals voted for Donald Trump. We're going to get to all of that in moments with a town hall meeting that includes lawmakers, law enforcement, and lots of average voters who've gathered here tonight to have their voices heard.

But, first, we go to the White House and Senior Advisor to the President, Stephen Miller, who helped to craft the president's controversial executive order calling for more rigorous vetting of immigrants from seven Middle Eastern countries. Mr. Miller, welcome. Good to have you here tonight.

STEPHEN MILLER, ADVISOR TO THE PRESIDENT: Hey, it's great to be here. Thank you.

MCCALLUM: So, everybody is anticipating the next rollout of the next executive order, which is supposed to clarify some of the issues that were perhaps wrong with the first one and then got too caught up in the courts. So how is it going to be different this time?

MILLER: Well, nothing was wrong with the first executive order. However, there was a flawed judicial ruling that was erroneous. The president recently read to the statute from the Immigration and Nationality Act, which clearly states, he has the power as president to impose any restrictions he deems necessary when it's in the national interest.

However, because of the exigency of the situation and the need to protect our country, and to protect our citizens, the president is going to be issuing a new executive action based off of the judicial ruling, flawed though it may be, to protect our country and to keep our people safe, and that is going to be coming very soon.

MCCALLUM: All right. (Inaudible) is 18-year-old, but he wants to know specifically how the second-order is going to be different.

MILLER: Well, one of the big differences that you're going to see in the executive order is that it's going to be responsive to the judicial ruling, which didn't exist previously. And so these are mostly minor technical differences. Fundamentally, you're still going to have the same basic policy outcome for the country, but you're going to be responsive to a lot of very technical issues that were brought up by the court and those will be addressed. But in terms of protecting the country, those basic policies are still going to be in effect.

I want to try and broaden the conversation here and not get lost in all this technical minutia. Here's the reality. The United States admits more people than any other country on the face of the earth. We've got a serious problem in our country of terrorism, radicalization, and serious problems of people joining ISIS, joining terror groups, joining Al-Qaeda, and committing or attempting to commit acts of crime and terror against our nation. We have seen a huge synapses between this --

MCCALLUM: Let me jump in on you there for a moment.

MILLER: Yeah.

MCCALLUM: Let me note that -- because here's one of the problems. Now, I know that you think the order was fine the way it was issued initially. But courts disagree. In fact, 48 courts took issue with it and that's why it's halted right now as a result of that process that happens in this country.

So, now you're about to issue another order and one of the things that would need to be addressed, it sounds like, is proving that the seven countries that you have targeted are indeed the right ones to target and that you have merit and reason for targeting those specific ones, rather than, let say, Saudi Arabia, right?

MILLER: Well, the reality is these seven countries were designated by President Obama and by Congress in 2015 and 2016. The reality is that the seven countries -- look at Yemen, look at Libya, look Syria, look at the conditions in these countries. This is an assessment based on the threat that these countries pose today and going into the future. We've had dozens and dozens of terrorism cases from these seven countries, case after case after case.

But more fundamentally, it's the position of our intelligence community that these countries today pose a threat to our country moving forward and the president is acting decisively to protect our country from these threats. And the rulings from those courts were flawed, erroneous, and false. The president's actions were clearly legal and constitutional and consistent with the long-standing traditions of presidents in the past to exercise the authority in the Immigration and Nationality Act to suspend immigration when it poses a threat to our security. And that's what the president will do. In the next few days, we will roll out the details of what that action will be.

MCCALLUM: And we understand -- I'm sorry. I think we have a little bit of a delay, so I don't mean to be stepping on you. But I do understand that that's your perspective and that's the White House's argument and we'll see how that next (inaudible).

One more question to you from one of our viewers for tonight if you will. Jack Capra who is a veteran in our audience this evening, says how far is the administration willing to go to secure the southern border? Will the administration deploy the U.S. military to do so?

MILLER: Well, right now we have 20,000 fantastic border patrol agents who are doing a great job. But, Martha, I really want to try and broaden this conversation and get to the core of the issues here.

Whether we're talking about the new executive action and in the next few days we will be able to share the details what that will be and how it's responsive to the court's ruling. Whether we're talking about the southern border, whether we're talking about our guest worker programs, here's the core issue. It is the job of the president and the job of our government to protect the hard-working people of this country, to protect their jobs, to protect their wages, to protect their communities, to keep them safe from terrorism, and crime, and drugs, and wage depression.

Uncontrolled migration over many years has undermined wages, working prospects for people of all backgrounds, and all walks of life and it's made us less safe. Proper controls will raise wages, improve employment, help migrant workers enter the middle-class who are already living here, and keep us safe from threats of terror. And this president, and this administration is fully committed to doing what is necessary, lawful, just, decent, and right, to take care of and to defend hard-working, patriotic citizens and their communities.

MCCALLUM: All right. Well, we look very much forward to that second executive order and we'll watch the path and see if it makes it through the courts and that, you know, the executive branch, the judicial branch, can find their way to put this together. Thank you very much, Stephen Miller, for joining us from the White House tonight.

MILLER: Thank you. I really appreciate it. Thanks.

MCCALLUM: Good to have you with us. Thank you.

So let's bring in Jacksonville native and Florida congressman Ron DeSantis who is one of the first to stand by President Trump's original order. Good to have you here tonight, Congressman.

REP. RON DESANTIS, R-FLORIDA: Thanks for coming down to Florida.

MCCALLUM: It's great to be here. Thank you for having us. So, one of the interesting comments from General Kelly when he spoke about this the other day was that, you know, he wanted the second executive order to take place in a way that we would not find people backed up in our airports. So he was acknowledging that there was some issue in this rollout. What are your thoughts on that?

DESANTIS: Well, I think that's right. I mean, you have examples of, like a grandmother who is a green card holder coming back from one of these countries, that's not where the threat is. The threats are with people who are unvetted. These are countries that are either state sponsors of terrorism, or overrun in large degree by terrorist groups. And if you look-- since 9/11, the biggest change in the terrorist threat has been how much it's expanded in different countries. You have Somalia, other parts of Africa --

MCCALLUM: So you think more than those seven should be on the list?

DESANTIS: Well, I think that -- if you read the executive order, that's a 90-day period. They are also going to be talking with other countries. So people mentioned Saudi Arabia, so maybe Saudi Arabia doesn't have procedures that were -- that are acceptable but -- so maybe there will be changes there. But I think we have to err on the side of caution. And my view is we have immigration system, but that immigration system shouldn't make the American people assume risk for their safety by us bringing in people we don't know.

MCCALLUM: Let's bring in some of our great audience that we have with us tonight. Let me start by going to Jack Capra, who is with us tonight. You know, you listened to this conversation, Jack, and you're a veteran, so we thank you for your service.

JACK CAPRA, WOUNDED VETERAN AND FLORIDA RESIDENT: Thank you. I actually used to work with Congressman. Yeah.

(CROSSTALK)

MCCALLUM: -- so you're paying attention.

CAPRA: Yeah. I used to work with the congressman in Guantanamo few years ago. We both had duty there, so.

MCCALLUM: Well, welcome. It's great to have the two of you here together tonight and good to talk to you about these serious issues. You listen to Stephen Miller from the White House. What did you think about what he had to say?

CAPRA: Well, I think his main argument was right on point and I agree with that. I think this is, you know, securing our borders as a national security issue. It's not just -- of course, it's also about economics, but it is a national security issue and it's the federal government's job to keep our people safe, keep our citizens safe from external and internal threats. And so I think immigration is a big contributor to that.

MCCALLUM: Yeah. You know, obviously, the rollout of it didn't go quite as planned. You know, it brings me sort of a general question that I want to put to all of you as we get going tonight. As you look at so far the first 100 days, we're on day 33 right now. So I'm going to ask you to raise your hand for three different answers, OK.

So the first one would be, so far, are you, A -- no, you don't raise your hand yet because I want you to know all the options.

You can either be, A, thrilled. I'm really happy with how it's going. Or, B, you know, it's OK, but I think there's room for improvement. And, C, I am a little disappointed. OK.

So raise your hand if you would say that you are thrilled with how it's going so far. Wow, that's a lot of folks. Look at that.

OK, what about choice B, which is I'm glad, but, you know, I'd like to see a little bit of improvement around the edges. OK.

So how many of you are disappointed, not happy with how it is going so far? A couple up here, one in the back there, one back there. OK, all right. We're going to get around to you and hear some of your reasons for all of that. You know, what do you think about that?

DESANTIS: Well, look, I think that Congress is --

MCCALLUM: Which category do you fit in, first of all?

DESANTIS: Well, I think Congress has gotten off to a slow start.

MCCALLUM: Yeah.

DESANTIS: I think the president has done much better than we have. He's following through with what he said he would do and we are kind of --

MCCALLUM: Wow.

DESANTIS: We in the Congress were kind of getting to what we said we do, but we haven't quite gotten of it. I think we will, but I think they've done a better start. It's also important to say, they're not confirming his nominees. He doesn't have guy -- he's got like a fraction of a government in place because the Democrats in the Senate are basically trying to stall as many people as possible.

MCCALLUM: So, let me go to somebody over here. Kris Koproski, who is the mother of three and you think that we need to put a pause on emigration. So, are you -- how do you feel about the president so far and do you think Congress -- do you agree with Congressman DeSantis that they're not pulling their weight?

KRIS KOPROSKI, FLORIDA RESIDENT: I am thrilled with what President Trump is doing. Congress, you know, they need to get on board and specifically, the Democrats. He needs his cabinet, his full cabinet. And they're just seemed to be stopping him at every turn. There's got to be a discussion open. They've got to be willing to give a little bit.

MCCALLUM: So you're nodding your head there. Who -- is anybody in particular in Congress that you're, you know, disappointed in so far? And, you know, would you like to give them a message tonight?

CLAIRE FRANK, FLORIDA RESIDENT: How much time do you have?

MCCALLUM: I got about 48 minutes. Go ahead.

FRANK: I would say we finally have someone in office who is doing something probably not even -- the last president I can think has done anything like this was Abraham Lincoln, who is trying to reunite the country. And that's what we voted for him to do. And that's what he is doing.

Congress isn't getting behind us. I say, term limits. That way you can clean house, just like he's doing draining the swamp. There's too many in there right now that, you know, are not doing their job. Stop voting -- McCain is a pain.

DESANTIS: I am the leader of the term limits movement in the House, so we do need to do that.

MCCALLUM: All right. So you're on your third term. So how many terms should he get? How many terms?

DESANTIS: Well, our amendment is three terms in the House and two terms in the Senate.

MCCALLUM: OK.

DESANTIS: The same on Trump endorsed during the campaign. So, let's get a vote and let see what we can do.

MCCALLUM: All right. We're just getting rolling here. Great job opening this conversation up here. So, coming to the next moment, just today, the Trump administration ordered more border agents, 5,000 more, also, 10,000 more ICE agents

(COMMERCIAL BREAK)

MCCALLUM: Breaking tonight, just hours before the doors opened on our town hall meeting here in Jacksonville, Florida, the Department of Homeland Security announced the brand-new priorities when it comes to their plan to deport illegal immigrants.

The two memos from DHS Secretary John Kelly today say impart that his agency is going to use public safety to guide their decisions, while the White House made a point of saying that there will be no longer special exceptions to the rules. Watch.

(BEGIN VIDEO CLIP)

SEAN SPICER, WHITE HOUSE PRESS SECRETARY: For so long, the people at ICE and CBP had their handcuffed behind them when they were going to deal with the mission of their job. The last administration had so many carve outs for who could be and who couldn't be adjudicated that it made it very difficult for the customs and enforcement people to do their job and enforce the laws of this country. But, right now, what we've done is to make sure that they have the ability and the guidance and the resources to do what they -- what their mission is. And that's it, plain and simple.

(END VIDEO CLIP)

MCCALLUM: Joining me now, Sarah Saldana. She was the Immigration and Customs Enforcement, better known as ICE, director under President Obama. And Francisco Hernandez is an Immigration Attorney. Welcome. It's great to have both of you with us tonight.

SARAH SALDANA, FORMER ICE DIRECTOR, 2014-2017: Thank you.

FRANCISCO HERNANDEZ, IMMIGRATION ATTORNEY: Thank you for having me.

MCCALLUM: Sarah, he was calling you out a bit there.

SALDANA: Yes. I guess he was. But let me tell you something that is maybe not clearly known. I have been a law enforcement officer. I was a prosecutor in Dallas. I was the United States Attorney in Dallas. And I think -- significantly, I think that's one of the reasons that I was selected to be the director of ICE, because I believe in law enforcement. I believe in rational law enforcement. So, that is my focus while I was director and I think we went about it in a good way, given the fact that we had resources that were not unlimited.

MCCALLUM: All right. So, he's -- Sean Spicer was saying that under your direction and others, border enforcement officials under the Obama administration that people weren't allowed to do their jobs. That the agents felt that they were handcuffed, that they couldn't deport, that they couldn't detain to the extent that they wanted to. Is that fair?

SALDANA: The law is the law. So, with respect to detention and all of those things, we were guided by the law. We were not guided by people's emotions or feelings or thoughts. We were guided by the law. We had priorities, just like this executive order has priorities. We didn't exempt people. I guess one could look at it that way, but one could say that about the executive order, as well.

We focused on serious criminals. And, in fact, our numbers went substantially up with respect to the portion of people that we were removing or putting in removal proceedings, being convicted criminals or people who are not in the country legally and there's a reason to remove them. Again, I am weighing as a manager, resources versus the threat to public safety.

MCCALLUM: So when you say resources, would you love to have had the 10,000 additional agents that John Kelly is now going to get?

SALDANA: It would have been -- we certainly could have responded to Congressman DeSantis, wherever he is, when he drove me on the hill about why we weren't departing more people. It certainly would have helped in that regard.

The important thing to me is not volume. Ask any law enforcement officer, the important thing to me is substance. Are we protecting the American public by focusing on people who have no business being here, committing additional crimes, and working against the interest of the American people?

MCCALLUM: Francisco, today, you know, just going through the headlines and looking at different web sites, you know, the administration -- Trump administration cracks down. Illegal immigrants are scared. They're nervous about what they're hearing today and yet he also said that DACA would stay in place. That children who came here with their parents at a young age would not be affected by this. So what's your reaction to these two memos today?

HERNANDEZ: Well, first of all, I can't argue with Ms. Saldana on qualifications. I feel like a thorn between two roses, OK. But, quite frankly, President Trump has written a blank check that he can't cash. Just like the congressman said, he's going to have to get the money from somewhere. You can't just say we're going to hire 20,000 agents (inaudible) Ms. Saldana. You got to have the people.

No one is going to argue about whether you should deport people that commit repeated felonies, you're just barking up the wrong tree. But quite frankly, you've got to do something to get that money and we don't have the money. So we do have to focus, as Director Saldana said on the important things.

The deferred actions, yes, dreamers, Gob bless. Let's go and give them a green card, something to work towards, something to earn that were brought into no fault of their own, no one can argue about that. So they're in limbo, but you know what, we have --

MCCALLUM: But he didn't pay them about (ph). He said that's off the table.

HERNANDEZ: That's off the table --

MCCALLUM: Unless they have a criminal record.

HERNANDEZ: And the interesting thing is, you know, if President Trump argued that President Obama did not have the executive or constitutional power to issue that executive order, well then, neither does he have the executive. So what's good for the goose is good for the gander. So, that's our fear. If we're going to go with those executive orders for President Trump, we've got to fund them. It costs money.

MCCALLUM: Let's get some questions from our group here. Hatice Iaconangelo. I'm sure I got that wrong. So what do you think about what you're hearing here tonight?

HATICE IANCONANGELO, FLORIDA RESIDENT: I am horrified. I'm horrified. This is not the country I emigrated to. Sure, when I first emigrated 26 years ago --

MCCALLUM: From?

IANCONANGELO: From Germany. I am a native Berliner. I grew up with a wall. I know what the wall does to families. I witnessed people getting shot crossing over the wall. And I see us as a nation going towards that again. It's horrifying. Little by little, we are getting there. Berlin didn't start out just with a wall coming up instantly, the Russians shooting, everybody. It starts gradually. And it gets worse and worse.

I want us to come together as a nation and have compassion for people. Don't just shut yourself off from that what you don't understand, what you don't know. Why don't each one of you who are against immigration may be get to know a refugee? Get to know an immigrant and see where they have come from and what they have gone through in life.

MCCALLUM: All right. Let me get a response from Bill Korach who is -- you're shaking your head pretty hard there, sir. Why?

BILL KORACH, ST. JOHNS COUNTY COP CHAIRMAN: I was in Berlin when the wall was up. And the wall was meant to keep people in, because the communist system was so horrible. This wall is being designed to protect our borders. We're a sovereign nation. We should have sovereign borders. We are a nation of laws. If we don't have the rule of law, we don't have sovereignty.

IANCONANGELO: I am not against protecting the people here, absolutely not. But you don't realize, America is already so safe. This is the safest place I feel on earth. I travel overseas every year. The law enforcement does a great job. The customs office --

MCCALLUM: Let me get an answer from Elvira and then we're going to go, so quickly

ELVIRA SALAZAR, MEGA T.V. ANCHOR: Good to see you. I think the greatness of a nation is measured not by the size of its guns, but how we treat the most vulnerable members of society, and in this case, illegals or the undocumented.

We should go to the root of the problem. And the root of the problem is very simple. It's called Honduras, El Salvador, and Guatemala. President Trump has an outstanding opportunity. He is a businessman. He knows how to build coalitions. He knows cultural sensitivities from other countries. He can go to those three countries that are exporting the majority of the people that are knocking on our borders and help them put their house in order.

Then, we could avoid or save the money that we're going to be investing on the 20 million -- \$20 billion that will cost to build a wall along the Mexican border. And we could earmark those \$280 million that we're giving to those three countries. Earmarked that for what Nicaragua did. No one really talks about why Nicaraguans are not coming and knocking on our border, because the -- and I'm not a friend of the Nicaraguan government, but they knew how to do it. And they could help us solve the problem. That's another angle.

MCCALLUM: All right, thank you very much. So, officials in Miami-Dade, Florida got national attention when they decided to stand against becoming a so-called sanctuary city. We will speak to the man behind that very controversial decision here in Florida coming up next.

(COMMERCIAL BREAK)

MARTHA MACCALLUM, THE FIRST 100 DAYS HOST: So a point of hot contention in the immigration debate involves so-called sanctuary cities scattered throughout the country. These are cities and towns which offer protections to illegal immigrants by limiting cooperation with federal authorities. I want to start with our audience panel, and I'll ask you all a question first which is a broad question in terms of priorities. It goes to what we're talking about earlier. So I will give you three options and I want you to pick the one that you think should be the GOP priority right now, or the government's priority, or for the whole country priority, regardless of your background. So choice number one will be immigration and the wall, choice number two would be tax reform, and choice number three would be Obamacare repeal and replace. So this goes to what we're talking about over here before in terms of what they're doing first. So if you want them to address immigration and the wall first, raise your hand. Maybe a third, maybe less. Tax reform. Maybe half. All right, Obamacare, repeal and replace. So, I'd say, closer to a third of third but I would say tax reform was the winner. So you want tax reform to be a priority for the folks on Capitol Hill. So maybe they're listening to what you're saying here tonight. So, in terms of immigration, I want to bring our guest, Diane Scheriff, and her daughter, Savannah. You were originally from San Francisco, you live in this area now, right?

DIANE SCHERIFF: Right.

MACCALLUM: But you believe that it's not true that the jobs that are being done by illegal immigrants are jobs that Americans don't want to do.

SCHERIFF: Yes and no. I mean, I think when I lived in California, I had a nanny at first that didn't have a green card. I didn't know that. She was a very hard worker. But, there again, I think there are jobs that are open-- that would be open to Americans, that are taken by illegal immigrants. And I just feel strongly that that is a huge deal in our country, especially Florida, since we have such an influx of illegal immigrants.

MACCALLUM: Savannah, what about the issues of sanctuary cities?

SAVANNAH SCHRIF: Well, you know.

MACCALLUM: Having grown up in San Francisco, you know, I know you lived in a city that is a sanctuary city. Don't be nervous. Particularly understandable, I scared you. Put that mic in front of your face. It's quite all right. I know the feeling.

SCHERIFF: Sanctuary cities, you know, maybe I'll sound like a bad person here, but I'm frustrated that we even have them. Because, I mean, honestly.

(APPLAUSE)

MACCALLUM: That's what Savannah was going to say.

SCHERIFF: It doesn't make sense to me. And the fact that they're growing now, not going away come. And again, I'm a Californian, I live there. But San Francisco, L.A., Oakland, it doesn't make any sense to not work with local law

MACCALLUM: Thank you very much. I'm joined now by the mayor of Miami- Dade, Mayor Gimenez, and Laura Wilkenson. We've spoken before Laura. And Laura has a tough personal story. You lost your son to a person who was here illegally. And I know you have stood next to President Trump many times as he has talked about Angel Moms. So you took a tough stance and said we are not going to be a sanctuary city anymore in Miami. Has there been a backlash against that in your area?

CARLOS GIMENEZ, MAYOR MIAMI-DADE: Yes, there has been. And we have very vocal opposition to what we did. But, you know, what I say to people that tell me that, hey, I really like what you did, I tell them that, you know, I really did a lot less than what you thought I did. And the people that are vocally against it, I say, you know, I did a lot less than what you thought I did. Really, all we did is we labeled a sanctuary city by the Obama administration and the justice department because we were requesting reimbursement from the federal government for detainer requests. And what I did is I said, we know longer need to have that voucher from the federal government saying that they're going to pay us for our costs for detaining these people of interest to immigration. That's all we did. And by doing that, it basically took us off the list of being a sanctuary city. Miami- Dade County has never thought of itself as a sanctuary city. Even when we pass that resolution back in 2014, we didn't think that that would place us as a sanctuary city. So, basically, taking that off, basically now -- and now my.

MACCALLUM: The financial decision.

GIMENEZ: Yes, obviously, because we were being threatened with millions of dollars in federal funding that we need to provide services for the 2.7 million people of Miami-Dade County.

MACCALLUM: Laura, the president said that he is not going -- he is going to respect DACA. How did you feel about that?

LAURA WILKENSON: Well, I believe there is going to be a process no matter how you do it. Somebody is going to be inconvenienced. This law -- I mean, without the immigration laws being enforced, this country has run amok. At any way that he doesn't, there is going to be an inconvenience to people. But, for myself, I think if you're not bearing your child in the ground and turning around and walking away, it is not an inconvenience that you can't deal with.

(APPLAUSE)

MACCALLUM: In terms of your son and your situation, that young man was brought here by his parents.

WILKENSON: Yes. He was a dreamer, brought here when he was ten from Belize. He had been charged with the crime of harassment but not convicted. And then, he murdered Joshua while he was out on bond for that. He should never have gotten a bond at the very least. They're a flight risk. And you don't want to wait until they murder your kid, until you say, OK, time-out, now you are in trouble. It's ridiculous. Nobody gets sanctuary from the law. There is nothing I could do and be given sanctuary from it, and there is no reason for anybody else to have that, as well.

(APPLAUSE)

MACCALLUM: Do you believe that you're getting somewhere with your cause?

WILKENSON: Absolutely, yes. Mr. Trump had said he would put a crime victim in -- a program in place. It's called Voice, I believe. And it's to help victims like myself, the real victims. And this gentleman earlier talked about getting some of the money, you know, if you can defund sanctuary cities, there comes the money. He can also take the money away from the 325 agencies in this country that help illegal aliens -- I mean, help them navigate the system. There is not one place or one program in place to help myself.

(APPLAUSE)

MACCALLUM: Thank you, Laura. Good to have you both here tonight. So we're coming to you tonight from a state where there are many jobs that go to legal and illegal immigrants. And when we come back, we are going to hear from our audience about the president's pledge to put America first. How do they think that's going? We'll ask them right after this.

(APPLAUSE)

MACCALLUM: So when President Trump campaigned on the slogan of America first, a lot of that message was about bringing jobs back to American workers. But are they prepared to take the low wage jobs taken by illegal and legal

immigrants? Joining us now, Javier Palomarez, he's president of the U.S.-Hispanic chamber of commerce, and on President Trump's diversity coalition. Although, he was a Hillary Clinton fan at the beginning, and Cindy Nava, a dreamer and Democratic national committee fellow. Welcome to both of you. Good to have you here today. So, Javier, first of all, you're a Hillary Clinton supporter. What made you change your tune?

JAVIER PALOMAREZ, PRESIDENT OF THE U.S.-HISPANIC CHAMBER OF COMMERCE: Well, you know, the reality of it is that -- back then, when we were convinced that our side was going to win, we asked of Donald Trump that he honored the will of the people and that he respect the results of this election. The reality of it is, he won, he is now the 45th president of the United States of America, and I'm going to do everything I can to live up to the exact same thing we asked of him. I'm going to honor the will of the people. I'm going to honor the results of this election.

(APPLAUSE)

PALOMAREZ: And me and my association, a 4.1 million Hispanic-owned firms in this country that contribute over \$668 billion to the American economy are going to do everything we can to help this administration move our country forward. At a time that I think we need to collaborate to move in the right direction.

MACCALLUM: Cindy, you're a dreamer.

CINDY NAVA, DREAMER: I am.

MACCALLUM: So, what do you think about what happened today, and the exemption for DACA children, like yourself? And do you believe that there is -- you're talking about common ground. Is there common ground? And do you think that this administration wants to find it? And do you think the resisters and the never Trumpers also want to?

NAVA: You know, Martha, I really think that this is a first step towards what really needs to happen, which is to address comprehensive immigration reform. And this is truly surprising I think for many of us that President Trump decided to keep DACA intact. And that's great and that's good. But, right now, there's a lot to fear out in the communities. There's actually some dreamers that have been targeted. And we have families. So what's happening to our families, you know, that's always a concern. So just because we may be feeling a little bit sick here, does not mean that the community is throughout the country are. And DACA comes with many benefits such as a ban on parole, which many people are not familiar with. But advance parole is something that we can request through humanitarian clause, educational, or other -- you know, there's three clauses, and I was able to get that because my grandmother was ill in Mexico, and she was dying. And I was able to spend the five last days of her life with her.

MACCALLUM: I want to get a couple of our friends up here. And, again, Earline Shipper, so she's talking about families and keeping people together, what do you say?

EARLINE SHIPPER, FLORIDA RESIDENT: I think it's a wonderful idea that we keep families together. I'm happy that this particular decision was made. But I still think that immigration is a very serious situation that has to be controlled and we have to take care of illegals coming into the country that are going to cause harm and we should send them back.

MACCALLUM: Eric, what do you think?

(APPLAUSE)

ERIC WEST, FLORIDA RESIDENT: The amount of people that have come into the country that are taking welfare and other government benefits is way too much. We don't need any more welfare recipients in this country. We need people that are going to bring jobs and doctors and things to this country to help our economy. When 91 percent of the Syrian refugees or refugees that comes to this country get welfare, something is wrong. We're committing financial suicide.

(APPLAUSE)

MACCALLUM: Pablo Manriquez.

PABLO MANRIQUEZ, FORMER DNC OFFICIAL: Well, I think the thing to keep in mind here is that Donald Trump did inherit a mess when it comes to immigration. I was one of the people who raised my hand earlier that I am disgusted with how this presidency is going. But I was disgusted with how President Obama's presidency went on this topic, as well. I knocked on thousands of Hispanic doors in particular in 2008, telling people that President Obama was going to offer -- Senator Obama at the time was going to offer them some form of relief. He betrayed us. He betrayed us to the tune of 2.8 million deportations. And the reality is that the communities that Cindy is talking about right now do live in fear. And that

(BOOS)

MANRIQUEZ: It's true. It's true. I think the point here is that immigrants have already been betrayed by one presidency. And what Donald Trump did today by offering DACA kids hope was a good thing, a very good thing. And I applaud him for it.

MACCALLUM: I mean, the people that they're targeting are either criminals or they have final deportation orders, which means that they were notified sometimes ago. And they have been told for quite some time in many cases. They have left and come back against those orders. So those are the people who are being targeted first by the directive that we've got today. So we've got more to come back to after this quick break. So stay with us. But coming up, how do those who have come to America from abroad feel about the moves that have been taken by this administration? We're going to talk to two people from this community touched personally by this issue when we come back. Stay with us live in Jacksonville, Florida.

(COMMERCIAL BREAK)

MACCALLUM: So as we wait, President Trump's revised order calling for more vigorous vetting of immigrants from seven Middle Eastern countries. We wanted to talk to a couple of local residents in the Jacksonville area for whom this is a large issue, very near and dear to their hearts. Joanne Farhire is an immigration attorney and legal immigrants and now a citizen of the United States. And Hajdary Mohammad is a recent immigrant to Jacksonville from Afghanistan. He spent nine years helping our U.S. troops in his home country. And we thank you for that.

(APPLAUSE)

MACCALLUM: That is a special category of people that I know you -- I would assume feel in the initial order really got short thrift. Tell me.

HAJDARY MOHAMMAD, REFUGEE FROM AFGHANISTAN: What was the.

MACCALLUM: In terms of people who helped our troops, like you did. In the initial executive order, they were very concerned about their families that they wouldn't be able to get the men, and feel that you have given a great deal to this country, right?

MOHAMMAD: Yeah. Actually, I worked like nine years with the U.S. army in Afghanistan. So like four years for the U.S. army, and five years with the U.S. Special Forces in Afghanistan. So, I mean, because of my work, and my face, and my name, will become known. I am one of those people that they tried to kill. And so, you know, I applied for immigration to come to the United States. I wanted to restart my life, basically from zero to the United States. And I still got some more friends that are there right now working with the special ops in Afghanistan. And they are hoping to come to the United States for a better life.

MACCALLUM: OK. Joanne, tell us what you think about this new directive and whether or not you're optimistic about them, and whether or not people like Hajdary and the other colleagues who he works with will be protected.

JOANNE FARHIRE, IMMIGRATION ATTORNEY: You know I am optimistic. I am hoping that President Trump does realize that there is an issue with immigration, that the immigration system needs to be worked on. But, you know, the way he implemented the executive order before, it did impact victims, you know, the refugees that were coming in, these are people who have already been victimized. They're fleeing their countries because they've been persecuted where they have a well-founded fear of persecution.

I understand and I totally support the need for strong borders and security of United States. You know, I am a Republican. I supported the Republican president. However, I don't support the weight that this immigration ban was handled. You have to understand that these are people that are fleeing and they are in fear of their life. So to bring them into this country, they land in an airport, and then they're detained again where they spent.

MACCALLUM: And they're going to try to get that right this time. I want to get a quick thought from Ron Stafford, pastor. You're listening to all of this. We're talking about compassion and we're talking about security. What do you think?

RON STAFFORD, PASTOR AND FLORIDA RESIDENT: I think the compassion comes with the security. The president, he's working very hard to secure our borders. But yet, those who have green cards and have already been vetted, I think the compassion comes in when you can allow those people to come in. And if they need anything else that needs to be done, then they can finish the investigation. But you must have some compassion for those who put their lives on the line for our country. Those who are here and working, we must begin to work to help them to become citizens.

MACCALLUM: Thank you, pastor. A quick break, we will be right back live from Jacksonville.

(COMMERCIAL BREAK)

MACCALLUM: That has been a very eye-opening conversation here tonight in Jacksonville, Florida. I want to thank all of our guests and our panelist for taking the time to discuss these hot button issues that are very much in all of our minds right now, dealing with immigration in America. We would love to hear from you at home, too. Go to facebook.com/marthamaccallum, you can leave me a message or send me a tweet @marthamaccallum, #first100. Thanks for watching it, everybody. We'll see you tomorrow night. Thank you.

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US economy picking up the pace

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# **Exhibit O**

# White House effort to justify travel ban causes growing concern for some intelligence officials

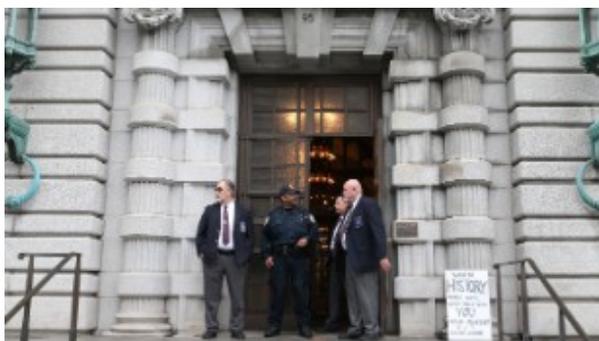
By [Jake Tapper](#) and [Pamela Brown](#), CNN

Updated 5:51 AM ET, Sat February 25, 2017

**Washington (CNN)** — President Donald Trump has assigned the Department of Homeland Security, working with the Justice Department, to help build the legal case for its temporary travel ban on individuals from seven countries, a senior White House official tells CNN.

Other Trump administration sources tell CNN that this is an assignment that has caused concern among some administration intelligence officials, who see the White House charge as the politicization of intelligence -- the notion of a conclusion in search of evidence to support it after being blocked by the courts. Still others in the intelligence community disagree with the conclusion and are finding their work disparaged by their own department.

"DHS and DOJ are working on an intelligence report that will demonstrate that the security threat for these seven countries is substantial and that these seven countries have all been exporters of terrorism into the United States," the senior White House official told CNN. "The situation has gotten more dangerous in recent years, and more broadly, the refugee program has been a major incubator for terrorism."



**Related Article:** Full text: 9th Circuit rules against reinstating travel ban

The report was requested in light of the Ninth Circuit Court of Appeals' conclusion that the Trump administration "has pointed to no evidence that any alien from any of the countries named in the order has perpetrated a terrorist attack in the United States." The seven countries are Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen.

The senior White House official said the desire to bolster the legal and public case that these seven countries pose a threat is a work in progress and as of now, it's not clear if DHS and DOJ will offer separate reports or a joint report.

One of the ways the White House hopes to make its case is by using a more expansive definition of terrorist activity than has been used by other government agencies in the past. The senior White House official said he expects the report about the threat from individuals the seven countries to include not

just those terrorist attacks that have been carried out causing loss of innocent American life, but also those that have resulted in injuries, as well as investigations into and convictions for the crimes of a host of terrorism-related actions, including attempting to join or provide support for a terrorist organization.

The White House did not offer an on-the-record comment for this story despite numerous requests. The Department of Homeland Security, however, issued a statement Friday afternoon saying the seven countries were identified by the Obama administration as being of "great concern for terrorism."

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The White House expectation of what the report will show has some intelligence officials within the administration taking issue with this intelligence review, sources told CNN.

First, some intelligence officials disagree with the conclusion that immigration from these countries should be temporarily banned in the name of making the US safer. CNN has learned that the Department of Homeland Security's in-house intelligence agency, the I&A offered a report that is at odds with the Trump administration's view that blocking immigration from these seven countries strategically makes sense.

It's not clear if this was the conclusion of the I&A report but many DHS officials have said they do not think nationality is the best indicator of potential terrorist inclinations.

A Department of Homeland Security source who asked for anonymity since he was not authorized to speak on the record said the report from the I&A officials did not meet the standards of the agency since it relied upon open source material and did not utilize necessary data from the intelligence community, specifically the FBI.

Others in DHS disagree with that assessment of the I&A report and a senior official in the Department of Homeland Security told CNN that some DHS officials are concerned that the new I&A director -- Acting Undersecretary for Intelligence David Glawe -- may be politicizing intelligence. One source familiar with the department told CNN that Glawe came into I&A "like a bull in a china shop."

A DHS official says the intention was to put together a comprehensive report with multiple sources and other agencies but the individuals in I&A did not do that to the standard that was required by their leadership, so Glawe said the report wasn't sufficient to go forward."

DHS spokeswoman Gillian M. Christensen said the report was "commentary from open source reporting versus an official, robust document with thorough interagency sourcing. The (Office of Intelligence and Analysis) report does not include data from other intelligence community sources. It is clear on its face that it is an incomplete product that fails to find evidence of terrorism by simply refusing to look at all the available evidence."

"Any suggestion by opponents of the President's policies that senior DHS intelligence officials would politicize this process or a report's final conclusions is absurd and not factually accurate. The dispute with this product was over sources and quality, not politics," Christensen added.

The seven countries were originally designated by DHS in the Obama administration for tighter immigration scrutiny -- removing them from the visa waiver program -- but not for a temporary suspension of immigration, as the Trump administration has attempted.

A second issue for many in the intelligence community is the notion of the Trump White House seeking an intelligence report to fit the policy instead of the other way around, sources tell CNN.



**Related Article:** Trump's travel ban wouldn't have stopped these deadly terrorists

A senior government official told CNN that the normal procedure would be for the Office of the Director of National Intelligence to be tasked with creating such an intelligence report, working with all relevant agencies and providing dissenting views. Theoretically, this would be done before the policy was formulated.

The senior White House official told CNN that it's possible that the National Counterterrorism Center, via the Office of the Director of National Intelligence, and perhaps the National Security Council might also provide reports on the same subject.

A senior government official told CNN that the National Counterterrorism Center, via the Office of the Director of

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shop

with such a prompted White House is

Other intelligence officials told CNN that such discussions among agencies about differing interpretations of the existing intelligence are not unusual and do not necessarily reflect an effort to "shop around" for intelligence to support a particular policy.

## White House to make its case

The White House is determined to prove that the Ninth Circuit argument is wrong, as are Democrats and those in the media, that terror attacks do not predominantly originate from the seven countries targeted by Trump's order.

Rep. Jerrold Nadler said on CNN late last month that "the various people who have, in fact, committed terrorist acts in this country, from 9/11 on, none of them came from any of the seven countries that are the subject of the President's executive order."

The senior White House official told CNN that the Ninth Circuit's language that no one from those seven countries has "perpetrated a terrorist attack" or Nadler's comment that none had "committed terrorist acts" is false.



**Related Article:** Ohio State University attack investigation: FBI asks public for help

"It's using the most narrow definition of the term you can use," the official said -- referring only to those who had successfully killed an innocent civilian. That definition does not include those who wounded Americans, or those who plotted but failed in their attacks, or those who tried to join or provide material support to a terrorist group. Information will soon be presented to the public that makes this stronger case using the broader definition.

A case in point: [Somali-born Abdul Razak Ali Artan](#) attempted to run over and stab 13 innocent people at Ohio State University last November. He and his family left Somalia in 2007 and moved to Pakistan, arriving in the US in 2014. He was a legal permanent resident. His attack would not count using the more narrow definition.

"In most cases, the American people don't hear about these cases," the senior White House official said, "but these cases

have required thousands of man-hours by law enforcement in any number of plots to commit terrorism against this country. The threat is very jarring."

The White House official said the Obama administration tried to downplay the threat while the Trump administration believes in a culture of "very robust disclosure."

Asked about the report Thursday on "The Lead," Rep. Dan Donovan, R-New York, emphasized that the intelligence community be nonpartisan.

"They should take data, take information, shouldn't interpret it in a political way and provide the President the information he needs to make decisions to protect our country," he said.

Also commenting on the report was Richard Haass, the president of the Council on Foreign Relations, who acknowledged that he hadn't seen the specifics but "it looks wrong to me."

"We ought to be doing the intel first, then set the policy and in large part based upon the intelligence," Haass said. "If these reports are true, it's yet another example where this administration is having real trouble forging a functional relationship with the intelligence community."

UPDATES: This report has been updated with comments from the Department of Homeland Security.

CNN

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## 14 of Europe's best hilltop towns



Exclusive: Mueller's team met with Russia dossier author



On guns, Trump is very much a normal Republican



Televangelist Pat Robertson links Las Vegas attack to 'disrespect' for...

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# **Exhibit P**



President Donald Trump speaks at a rally on March 15, 2017 in Nashville, Tennessee. Andrea Morales/Getty Images

## WHITE HOUSE

# Read President Trump's Response to the Travel Ban Ruling: It 'Makes Us Look Weak'

Katie Reilly

Mar 16, 2017



President Donald Trump on Wednesday spoke at a rally in Nashville, Tenn., where he **responded** to a new ruling by a federal judge in Hawaii placing a **nationwide restraining order** on his **revised travel ban**.

Trump criticized the ruling as "an unprecedented judicial overreach."

"You don't think this was done by a judge for political reasons, do you? No," he said to applause. "This ruling makes us look weak, which, by the way, we no longer are. Believe me."

Read Trump's full remarks from the rally, where he also spoke about the **Republican health care plan**:

TRUMP: Thank you very much, everybody. Thank you.

J.R. 646

(APPLAUSE)

So, we're just going to let the other folks come in, fill it up. This is some crowd. You have to see what's outside. You wouldn't even believe it.

(APPLAUSE)

Unbelievable.

(APPLAUSE)

So, I'm thrilled to be here in Nashville, Tennessee, the home...

(APPLAUSE)

... of country music, southern hospitality, and the great President Andrew Jackson.

(APPLAUSE)

I just came from a tour of Andrew Jackson's home to mark the 250th anniversary of his birth.

(APPLAUSE)

Jackson's life was devoted to one -- a very crucial principle. He understood that real leadership means putting America first.

(APPLAUSE)

Before becoming president, Andrew Jackson served your state in the House of Representatives and in the United States Senate. And he also served as commander of the Tennessee Militia.

(APPLAUSE)

Tough cookies. Tough cookies.

So, let's begin tonight by thanking all of the incredible men and women of the United States military and all of our wonderful veterans. The veterans.

(APPLAUSE)

AUDIENCE: USA! USA! USA!

TRUMP: Crazy. Amazing.

There's no place I'd rather be than with all of you here tonight, with the wonderful, hardworking citizens of our country.

(APPLAUSE)

I would much rather spend time with you than any of the pundits, consultants or special interests, certainly or reporters from Washington D.C. (APPLAUSE)

It's patriotic Americans like you who make this country run and run well. You pay your taxes, follow our laws, support your communities, raise your children, love your country, and send your bravest to fight in our wars.

(APPLAUSE)

All you want is a government that shows you the same loyalty in return.

(APPLAUSE)

It's time that Washington heard your voice and, believe me, on November 8th they heard your voice.

(APPLAUSE)

The forgotten men and women of our country will never be forgotten again. Believe me.

(APPLAUSE)

I want to thank so many of your state leaders; State Party Chairman Scott Golden, Congressman Scott DesJarlais...

(APPLAUSE)

... Congresswoman Marsha Blackburn...

(APPLAUSE)

... Congresswoman Diane Black...

(APPLAUSE)

... Congressman Jimmy Duncan, right from the beginning...

(APPLAUSE)

... Governor Bill Haslam...

(APPLAUSE)

... a great friend of mine, Senator Bob Corker...

(APPLAUSE)

... an incredible guy, respected by all, Senator Lamar Alexander...

(APPLAUSE)

... and so many more. Thank you all for being here. We're going to be working closely together -- thank you; to deliver for you, the citizens of Tennessee, like you've never been delivered for before.

Thank you. Thank you.

(APPLAUSE)

Thank you.

(APPLAUSE)

We are going to reduce your taxes.

(APPLAUSE)

Big league. Big. Big. And I want to start that process so quickly. Got to get the health care got done. We got to start the tax reductions.

(APPLAUSE)

We are going to enforce our trade rules and bring back our jobs, which are scattered all over the world.

They're coming back to our country.

(APPLAUSE)

We're going to support the amazing, absolutely amazing men and women of law enforcement.

(APPLAUSE)

Protect your freedoms and defend the Second Amendment.

(APPLAUSE)

And we are going to restore respect for our country and for its great and very beautiful flag.

(APPLAUSE)

It's been a little over 50 days since my inauguration and we've been putting our America First agenda very much into action. You see what's happened (ph).

We're keeping our promises. In fact, they have signs, he's kept his promise. They're all over the place. I have. We have done far more, I think maybe more than anybody's done in this office in 50 days. That I can tell you.

(APPLAUSE)

And we have just gotten started. Wait till you see what's coming, folks.

(APPLAUSE)

We've appointed a Supreme Court Justice to replace the late, great Antonin Scalia. His name is Judge Neil Gorsuch.

(APPLAUSE)

He will uphold and defend the Constitution of the United States.

We are proposing a budget that will shrink the bloated federal bureaucracy -- and I mean bloated; while protecting our national security. You see what we're doing with our military; bigger, better, stronger than ever before. You see what's happening.

(APPLAUSE)

And you're already seeing the results.

Our budget calls for one of the single largest increases in defense spending history in this country.

(APPLAUSE)

We believe, especially the people in Tennessee -- I know you people so well...

(APPLAUSE)

... in peace through strength. It's what we're going to have.

(APPLAUSE)

And we are taking steps to make sure that our allies pay their fair share. They have to pay.

(APPLAUSE)

We've begun a dramatic effort to eliminate job-killing federal regulations like nobody has ever seen before.

Slash, slash. We're going to protect the environment. We're going to protect people's safeties, but let me tell you, the regulation business has become a terrible business and we're going to bring it down to where it should be.

(APPLAUSE)

(BOOING)

(APPLAUSE)

OK, let's go.

One person, and they'll be the story tomorrow. Did you hear there was a protester?

(APPLAUSE)

We're going to put our miners back to work. We're going to put our auto industry back to work.

(APPLAUSE)

Already, because of this new business climate, we are creating jobs that are starting to pour back into our country like we haven't seen in many, many decades.

(APPLAUSE)

In the first two job reports since I took the oath of office, we've already added nearly half a million new jobs.

And believe me, it's just beginning.

(APPLAUSE)

I've already authorized the construction of the long-stalled and delayed Keystone and Dakota access pipeline.

(APPLAUSE)

A lot of jobs.

(APPLAUSE)

I've also directed that new pipelines must be constructed with American steel.

(APPLAUSE)

They want to build them here, they use our steel.

We believe in two simple rules. Buy American and hire American.

(APPLAUSE)

On trade, I've kept my promise to the American people and withdrawn from the Trans-Pacific Partnership disaster.

(APPLAUSE)

Tennessee has lost one-third of its manufacturing jobs since the institution of NAFTA, one of the worst trade deals ever in history.

(BOOING)

Our nation has lost over 60,000 factories since China joined the World Trade Organization; 60,000. Think of that. More than that.

We're not going to let it happen anymore. From now on, we are going to defend the American worker and our great American companies.

(APPLAUSE)

And if America does what it says and if your president does what I've been telling you, there is nobody anywhere in the world that can even come close to us, folks. Not even close. (APPLAUSE)

If a company wants to leave America, fire their works, and then ship their new products back into our country, there will be consequences.

(APPLAUSE)

That's what we have borders for. And by the way, aren't our borders getting extremely strong?

(APPLAUSE)

Very strong.

(APPLAUSE)

Don't even think about it. We will build the wall. Don't even think about it.

(APPLAUSE)

In fact, as you've probably read, we went out to bid. We had hundreds of bidders. Everybody wants to build our wall.

(APPLAUSE)

Usually, that means we're going to get a good price. We're going to get a good price; believe me. We're going to build a wall.

Some of the fake news said, I don't think Donald Trump wants to build the wall. Can you imagine if I said we're not going to build a wall? Fake news.

(BOOING)

Fake, fake news.

(BOOING)

Fake news, folks. A lot of fake.

(BOOING)

No, the wall is way ahead of schedule in terms of where we are. It's under design and you're going to see some very good things happening. But the border by itself right now is doing very well. It's becoming very strong.

(APPLAUSE)

General Kelly has done a great job. General Kelly.

(APPLAUSE)

My administration is also following through on our promise to secure, protect, and defend that border within our United States. Our southern border will be protected always. It will have the wall. Drugs will stop pouring in and poisoning our youth.

(APPLAUSE)

And that will happen very, very soon. You're already seeing what's going on. The drugs are pouring in to our country folks. They are poisoning our youth and plenty of others and we're going to stop it. We're not going to be playing games. Not going to be playing games.

(APPLAUSE)

Following my executive action -- and don't forget, we've only been here for like, what, 50 days? We've already experienced an unprecedented 40 percent reduction in illegal immigration on our southern border, 61

(APPLAUSE)

And now people are saying we're not going to go there anymore 'cause we can't get in, so it's going to get better and better. We got to stop those drugs, though. We got to stop those drugs.

During the campaign, as I traveled all across this country, I met with many American families whose loved ones were viciously and violently killed by illegal immigrants because our government refused to enforce our already existing laws.

These American victims were ignored by the media. They were ignored by Washington. But they were not ignored by me and they're not ignored by you and they never will be ignored, certainly any longer. Not going to happen.

(APPLAUSE)

As we speak, we are finding the drug dealers, the robbers, thieves, gang members, killers, and criminals preying on our citizens. One by one -- you're reading about it, right?

(APPLAUSE)

They're being thrown out of our country, they're being thrown into prisons, and we will not let them back in.

(APPLAUSE)

We're also working night and day to keep our nation safe from terrorism.

(APPLAUSE)

We have seen the devastation from 9/11 to Boston to San Bernardino; hundreds upon hundreds of people from outside our country have been convicted of terrorism-related offenses. In the United States courts, right now we have investigations going on all over. Hundreds of refugees are under federal investigation for terrorism and related reasons.

We have entire regions of the world destabilized by terrorism and ISIS. For this reason, I issued an executive order to temporarily suspend immigration from places where it cannot safely occur.

(APPLAUSE)

AUDIENCE: USA! USA! USA!

TRUMP: But let me give you the bad news. We don't like bad news, right? I don't want to hear an alternative to good. But let me give you the bad, the sad news.

Moments ago, I learned that a district judge in Hawaii...

(BOOING)

... part of the much overturned 9th Circuit Court...

(BOOING)

... and I have to be nice. Otherwise I'll get criticized for...

(APPLAUSE)

... for speaking poorly about our courts. I'll be -- I'll be criticized by these people, among the most dishonest people in the world.

(APPLAUSE)

I will be criticized...

(BOOING)

(APPLAUSE)

I'll be criticized by them for speaking harshly about our courts. I would never want to do that.

A judge has just blocked our executive order on travel and refugees coming into our country from certain countries.

(BOOING)

The order he blocked was a watered down version of the first order that was also blocked by another judge and should have never been blocked to start with.

(APPLAUSE)

This new order was tailored to the dictates of the 9th Circuit, in my opinion, flawed ruling.

(APPLAUSE)

This is the opinion of many, an unprecedented judicial overreach.

(APPLAUSE)

The law and the Constitution give the President the power to suspend immigration when he deems -- or she -- or she -- fortunately it will not be Hillary-she.

(APPLAUSE)

When he or she deems it to be in the national interest of our country.

AUDIENCE: Lock her up! Lock her up! Lock her up!

TRUMP: So we have a lot of lawyers here. We also have a lot of smart people here. Let me read to you, directly from the federal statute, 212(f) of the immigration, and you know what I'm talking about, right? Can I read this to you? Listen to this.

Now, we're all smart people, we're all good students, were all everything. Some are bad students, but even if you're a bad student, this is a real easy one, let me tell you. Ready?

So here's the statute, when they don't even want to quote when they overrule it. And it was put here for the security of our country. And this goes beyond me, because there'll be other presidents and we need this. And sometimes we need it very badly for security -- security of our country.

It says -- now listen to easy -- how easy this is. Whenever the president finds that the entry of any aliens or any class of aliens would be detrimental to the interests of the United States, he may, by proclamation and for such period as he -- see, it wasn't politically correct, 'cause they should have said he or she. You know, today they'd say that.

(LAUGHTER)

That's (inaudible)

(LAUGHTER)

Actually, that's the only mistake they made -- as he shall deem necessary, suspend the entry of all aliens or any class of aliens, as immigrants or non-immigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

In other words, if he thinks there's danger out there, he or she, whoever is president can say, I'm sorry, folks, not now, please. We got enough problems.

(APPLAUSE)

We're talking about the safety of our nation, the safety and security of our people.

(APPLAUSE)

Now, I know you people aren't skeptical people, 'cause nobody would be that way in Tennessee. Nope, nobody. Not Tennessee.

You don't think this was done by a judge for political reasons, do you? No.

(APPLAUSE)

This ruling makes us look weak, which, by the way, we no longer are. Believe me.

(APPLAUSE)

Just look at our borders.

(APPLAUSE)

We're going to fight this terrible ruling. We're going to take our case as far as it needs to go, including all the way up to the Supreme Court.

(APPLAUSE)

We're going to win. We're going to keep our citizens safe. And regardless, we're going to keep our citizens safe. Believe me.

(APPLAUSE)

Even liberal democratic lawyer, Alan Dershowitz -- good lawyer; just said that we would win this case before the Supreme Court of the United States.

(APPLAUSE)

Remember this. I wasn't thrilled, but the lawyers all said, oh, let's tailor it. This is a watered down version of the first one. This is a watered down version.

And let me tell you something. I think we ought to go back to the first one and go all the way, which is what I wanted to do in the first place.

(APPLAUSE)

The danger is clear. The law is clear. The need for my executive order is clear. I was elected to change our broken and dangerous system and thinking in government that has weakened and endangered our country and left our people defenseless.

(APPLAUSE)

And I will not stop fighting for the safety of you and your families. Believe me. Not today, not ever. We're going to win it. We're going to win it.

(APPLAUSE)

We're going to apply common sense. We're going to apply intelligence. And we're never quitting and we're never going away and we're never, ever giving up.

The best way to keep foreign terrorists or, as some people would say in certain instances, radical Islamic terrorists from attacking our country is to stop them from entering our country in the first place.

(APPLAUSE)

We'll take it, but these are the problems we have. People are screaming break up the 9th Circuit and I'll tell you what. That 9th Circuit -- you have to see. Take a look at how many times they have been overturned with their terrible decisions. Take a look. And this is what we have to live with.

Finally, I want to get to taxes. I want to cut the hell out of taxes, but...

(APPLAUSE)

... but...

(APPLAUSE)

... before I can do that -- I would have loved to have put it first. I'll be honest. There is one more very important thing that we have to do and we are going to repeal and replace horrible, disastrous Obamacare.

(APPLAUSE)

If we leave Obamacare in place, millions and millions of people will be forced off their plans and your senators just told me that in your state you're down to practically no insurers. You're going to have nobody. You're going to have nobody. And this is true all over. The insurers are fleeing. The insurers are fleeing. It's a catastrophic situation.

And there's nothing to compare anything to because Obamacare won't be around for a year or two. It's -- it's gone. So it's not like, oh gee, they this -- Obamacare is gone.

(APPLAUSE)

Premiums will continue to soar, double digits and even triple digits in many cases. It will drain our budget and destroy our jobs. Remember all of the broken promises? You can keep your doctor. You can keep your plan. Remember the wise guy?

(BOOING) Remember the wise guy that essentially said the American people -- the so-called architect; the American people are stupid because they approved it? We're going to show them. Those in Congress who made these promises have no credibility whatsoever on health care.

And remember this; remember this. If we took -- because there's such divisiveness. And I'm not just talking now, with me. There was Obama, there was with Bush, the level of hatred and divisiveness with the politicians.

I remember years ago, I'd go to Washington. I was always very politically active. And Republicans and Democrats, they'd fight during the day and they'd go to dinner at night. Today, there's a level that nobody's seen before.

Just remember this. If we submitted, the Democrats' plan, drawn everything perfect for the Democrats, we wouldn't get one vote from the Democrats. That's the way it is. That's how much divisiveness and other things there are, so it's a problem. But we're going to get it by.

So I've met with so many victims of Obamacare, the people who've been so horribly hurt by this horrible legislation. At the very core of Obamacare was a fatal flaw. The government forcing people to buy a government-approved product.

(BOOING)

There are very few people. Very few people.

(BOOING)

And by the way, watch what happens. Now you just booed Obamacare. They will say Trump got booed when he mentioned...

(LAUGHTER)

They're bad people, folks. They're bad people.

(BOOING)

(APPLAUSE)

Tonight I'll go home. I'll turn on. I'll say, listen, I'll turn on that television. My wife will say, darling, it's too bad you got booed. I said I didn't be booed. This was (inaudible). I said no, no. They were booing Obamacare. Watch, a couple of them will actually do it, almost guaranteed. But when we call them out it makes it harder for them to do it, so we'll see.

(APPLAUSE)

It's the fake, fake media. We want Americans to be able to purchase the health insurance plans they want, not the plans forced on them by our government.

(APPLAUSE)

The House has put forward a plan to repeal and replace Obamacare, based on the principles I outlined in my joint address, but let me tell you. We're going to arbitrate. We're going to all get together. We're going to get something done.

Remember this. If we didn't do it the way we're doing it, we need 60 votes, so we'd have to get the Democrats involved. They won't vote. No matter what we do they're not going to vote. So we're doing it a different way, a complex way, it's fine.

The end result is when you're at phase one, phase two, phase three; it's going to be great. It's going to be great.

(APPLAUSE)

And then, we get on to tax reductions, which I like.

(APPLAUSE)

The House legislation does so much for you. It gives the states Medicaid flexibility and some of the states will take over their health care. Governor Rick Scott in Florida said, just send me the money. They run a great plan. We have states that are doing great. It gives great flexibility.

Thank you, folks. Thank you.

(APPLAUSE)

Thank you.

(APPLAUSE)

It repeals hundreds of billions of dollars in Obamacare taxes. It provides tax credits to people to purchase the care that is rightfully theirs. The bill that I will ultimately sign, and that will be a bill where everybody's going to get into the room and we're going to get it done. We'll get rid of Obamacare and make health care better for you and for your family.

(APPLAUSE)

And once this is done, and a step further, we are going to try and put it in phase three. I'm going to work on bringing down the cost of medicine by having a fair and competitive bidding process.

(APPLAUSE)

We welcome this health care debate and its negotiation and we're going to carry it out and have been carrying it out in the full light of day, unlike the way Obamacare was passed.

(APPLAUSE) Remember, folks, if we don't do anything, Obamacare is gone. It's not like, oh gee, it's going to be wonderful in three years. It's gone. It's gone. It's gone. Not working. It's gone.

(APPLAUSE)

What we cannot do is to be intimidated by the dishonest attacks from Democratic leaders in Congress who broke the system in the first place and who don't believe you should be able to make your own health care decisions.

(APPLAUSE)

I am very confident that if we empower the American people, we'll accomplish incredible things for our country, not just on health care, but all across our government. We will unlock new frontiers in science and in medicine.

We will give our children the right to attend the school of their choice, one where they will be taught to love this country and its values.

(APPLAUSE)

We will create millions and millions of new jobs by lowering taxes on our businesses and, very importantly, for our workers. We're going to lower taxes.

(APPLAUSE)

Big (ph).

(APPLAUSE)

And we will fight for the right of every American child to grow up in a safe neighborhood, attend a great school, and to graduate with access to a high-paying job that they love doing.

(APPLAUSE)

No matter background (ph), no matter our income, no matter our geography, we all share the same home.

We all salute the same flag. And we all are made by the same God.

(APPLAUSE)

AUDIENCE: USA! USA! USA!

TRUMP: It's time to embrace our glorious American destiny. Anything we can dream for our country, we can achieve for our country. All we have to do is tap into that American pride that is swelling our hearts and stirring our souls and we found that out very recently in our last election. A lot of pride.

(APPLAUSE) We are all Americans and the future truly belongs to us. The future belongs to all of you. This is your moment. This is your time. This is the hour when history is made. All we have to do is put our own citizens first and, together, we will make America strong again.

(APPLAUSE)

We will make America wealthy again.

(APPLAUSE)

We will make America proud again.

(APPLAUSE)

We will make America safe again.

(APPLAUSE)

And we will make America great again.

(APPLAUSE)

Thank you. God bless you. Thank you.

(APPLAUSE)

God bless you, everybody.

# Exhibit Q

# Yates on Trump's travel ban: 'Arguments have to be based on truth'

By [Eli Watkins](#), CNN

Updated 8:10 PM ET, Mon May 8, 2017



Cruz hints that Yates acted on partisanship 02:00

## STORY HIGHLIGHTS

Sally Yates was fired after directing the DOJ not to enforce Trump's executive order

The former acting attorney general said she determined the order was unlawful

**Washington (CNN)** — Former acting Attorney General Sally Yates on Monday defended her decision earlier this year not to enforce President Donald Trump's first ban on travel from several majority-Muslim nations, calling the order "unlawful."

"All arguments have to be based on truth," Yates said during testimony before a Senate panel. "We're not just a law firm. We're the Department of Justice."

In response to questions from two Texas Republicans at a Senate Judiciary subcommittee hearing, Yates painted a picture of a White House that kept the Department of Justice out of the loop ahead of the executive order's release.

Sen. John Cornyn said her actions with regard to the executive order were "enormously disappointing" and accused her of undermining the powers of the President because she disagreed with Trump's order "as a policy matter."

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J.R. 658

JA 785

Yates told Cornyn that her actions were not done "purely as a policy matter" and cited her confirmation hearing, where she was asked about enforcing actions she viewed as against the law.

"I made a determination that I believed that it was unlawful," Yates said. "I also thought that it was inconsistent with the principles of the Department of Justice, and I said 'no.' And that's what I promised you I would do, and that's what I did."

Later on in the hearing, Yates and Sen. Ted Cruz got into a back-and-forth over her disagreement with a decision by the department's **Office of Legal Counsel** that defended the order.

[RELATED: Trump administration defends travel ban in appeals court](#)

Yates said that although the office concluded the order was lawful, the office's focus was "narrow" and ignored contextual factors that she said undermined the legality of the order.

"In this particular instance, particularly where we were talking about a fundamental issue of religious freedom -- not the interpretation of some arcane statute, but religious freedom -- it was appropriate for us to look at the intent behind the President's actions," Yates said.

Cruz asked, "In the over 200 years of the Department of Justice history, are you aware of any instance in which the Department of Justice has formally approved the legality of a policy, and three days later the attorney general has directed the department not to follow that policy and to defy that policy?"

"I'm not," Yates responded. "But I'm also not aware of a situation where the **office of legal** counsel was advised not to tell the attorney general about it until after it was over."

"I would note that might be the case if there's reason to suspect partisanship," Cruz said.

On CNN's "Erin Burnett OutFront," Democratic Sen. Sheldon Whitehouse criticized Cruz for his comments alleging that Yates was motivated by partisanship.

"I think it's not only wrong," Whitehouse said. "I think it's really low. This is a woman who has worked in the Department of Justice under Republican and Democratic administrations without blemish for 27 years."

In an exchange with Democratic Sen. Amy Klobuchar, Yates said she did not know about the travel ban before it was issued.

"I learned about this from media reports," Yates said.

During his campaign, Trump called for "a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on." Although the White House has denied Trump's two attempts to issue travel bans were in fact Muslim bans, many have pointed to his campaign rhetoric to argue the orders were just that.

Shortly after Trump issued his first travel ban, Yates directed the Justice Department not to enforce it. Trump promptly fired her and appointed US Attorney Dana Boente to take her place until the Senate confirmed Jeff Sessions to be attorney general.

Yates was an Obama appointee whom Trump asked to stay on as the temporary head of the Justice Department.

She also emerged as a major figure in the controversy surrounding retired Gen. Michael Flynn's short time as national security adviser, and appeared before the subcommittee on Monday [to testify about alleged Russian attempts to interfere](#) in the 2016 election.

[RELATED: The many paths from Trump to Russia](#)

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# **Exhibit R**



**Donald J. Trump** ✓

@realDonaldTrump

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We need to be smart, vigilant and tough. We need the courts to give us back our rights. We need the Travel Ban as an extra level of safety!

4:17 PM - 3 Jun 2017

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55K 53K 177K



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**Posse Comitatus** @Texas\_Megaphone · Sep 25

Replying to @realDonaldTrump

Smart, Vigilant & Tough..STRIIIIKKKEEE 3 YOUR OUT WAIT.. Now lets see you did win a prize after all, Outback Trip. 6 Weeks in Ballarat Vic.

53K 53K 177K



**Teresa** @femmeengineer · Sep 22

Replying to @realDonaldTrump

#TravelBanNOW

53K 53K 177K



**Tom Rivet** @TomRivet1 · Sep 15

Replying to @realDonaldTrump

OUR rights? YOU have lost NO rights! And you work to remove other people's rights all the time.

53K 53K 177K



**Tom Rivet** @TomRivet1 · Sep 15

Replying to @realDonaldTrump

Travel ban would NOT have made ANY difference! You have no idea how things

# **Exhibit S**

# from:realdonaldtrump since:2017-06-05 until:2017-06-06

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### Blue Angels

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### Jose Altuve

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### #ALDS2017

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Donald J. Trump @realDonaldTrump · Jun 5

People, the lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is, a TRAVEL BAN!

16K 22K 89K



Donald J. Trump @realDonaldTrump · Jun 5

.@foxandfriends Dems are taking forever to approve my people, including Ambassadors. They are nothing but OBSTRUCTIONISTS! Want approvals.

32K 21K 80K



Donald J. Trump @realDonaldTrump · Jun 5

The Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically correct version they submitted to S.C.

11K 15K 71K



Donald J. Trump @realDonaldTrump · Jun 5

The Justice Dept. should ask for an expedited hearing of the watered down Travel Ban before the Supreme Court - & seek much tougher version!

9.0K 15K 66K



Donald J. Trump @realDonaldTrump · Jun 5

Pathetic excuse by London Mayor Sadiq Khan who had to think fast on his "no reason to be alarmed" statement. MSM is working hard to sell it!

70K 29K 95K



Donald J. Trump @realDonaldTrump · Jun 5

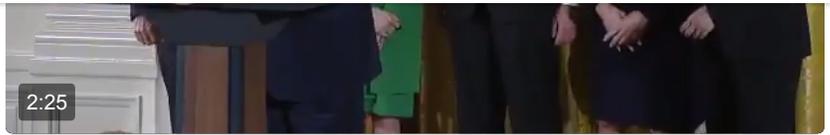
.@SecShulkin's decision is one of the biggest wins for our VETERANS in decades. Our HEROES deserve the best!

[45.wh.gov/tnGqdu](http://45.wh.gov/tnGqdu)



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**Donald J. Trump** @realDonaldTrump · Jun 5

Today, I announced an Air Traffic Control Initiative to take American air travel into the future - finally!

[45.wh.gov/pmRJsy](https://45.wh.gov/pmRJsy)



### Watch President Trump's Announcement of Air Traffic Control Initiative

It's time to join the future. That is why I'm proposing new principles to Congress for air traffic control reform making flights quicker, safer and more reliable!

10K 13K 59K



**Donald J. Trump** @realDonaldTrump · Jun 5

In any event we are EXTREME VETTING people coming into the U.S. in order to help keep our country safe. The courts are slow and political!

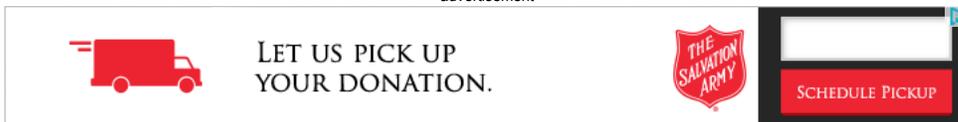
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POLITICS JUN 6 2017, 5:02 PM ET

# Trump's Tweets 'Official Statements,' Spicer Says

by ALI VITALI

SHARE  

WASHINGTON — It's official — the president's tweets, that is.

White House Press Secretary Sean Spicer said Tuesday that Trump's tweets should be taken as official statements, contradicting other White House officials who have tamped down on the official nature of the tweets in recent days.

"The president is president of the United States," Spicer said, "so they are considered official statements by the president of the United States."

As it was during his candidacy, Trump's Twitter usage has been a cornerstone of his presidency — often offering a window into his thinking, sometimes at the expense of his administration's own messaging. Despite bipartisan complaints about his continued 140-character habit, Trump has persisted in making his views known on social media.

The president often respond to major global events on Twitter. In the immediate aftermath of the recent London terror attack, Trump used the platform to pick a fight with London Mayor Sadiq Khan while also posting support for the U.K. after the attack.

The White House even blasts the tweets to other social media platforms, posting graphics of the tweets on Instagram or even celebrating longer tweet storms in videos uploaded to Trump's Facebook page.

But while Spicer flaunted Trump's millions of followers, other White House officials have sought to delineate the difference between the tweets and official forms of presidential correspondence.

White House national security advisor Sebastian Gorka told CNN one day earlier that there's a difference between tweets and policy and @realDonaldTrump's feed is the former, not the latter.

"It's not policy, it's social media," Gorka said in a tense back and forth during which he accused the media of over-obsessing Trump's tweets. "It's not policy, it's not an executive order, it's social media. Please understand the difference."

Spicer's counterpart Sarah Huckabee Sanders also lamented the media obsession with the tweets and celebrated them as a way for Trump to speak directly and unfiltered to his followers, but regretting that the media obsesses "over every period, dot."

"I think it's just the obsession over every detail of the president's tweets," she said.

Trump's Tweets 'Official Statements,' Spicer Says - NBC News  
The obsession with covering everything he says on Twitter and little of what he does as president" irked Kellyanne Conway during an interview NBC's Today Monday. When faced with the platform as Trump's preferred method of communication, Conway said "that's not true."

Tuesday, Spicer called Trump's penchant for tweeting an example of his messaging prowess. "The president is the most effective messenger on his agenda and I think his use of social media ... gives him an opportunity to speak straight to the American people, which has proved to be a very, very effective tool."

That messaging efficiency will soon be tested, on issues like the controversial travel ban executive order as well as the FBI probe of alleged collusion between the Trump campaign and Russia led by special counsel Robert Mueller.

Sanders told reporters she's not aware of the tweets being vetted by a lawyer.



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FIRST PUBLISHED JUN 6 2017, 5:02 PM ET

↓ NEXT STORY Tillerson Summoned to White House Amid Presidential Fury

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EXCLUSIVE POLITICS OCT 5 2017, 7:10 PM ET

## Tillerson Summoned to White House Amid Presidential Fury

by CAROL E. LEE, KRISTEN WELKER, COURTNEY KUBE and ANDREA MITCHELL

SHARE  

WASHINGTON — John Kelly, the White House chief of staff, abruptly scrapped plans to travel with President Donald Trump on Wednesday so he could try to contain his boss's fury and manage the fallout from new revelations about tensions between the president and Secretary of State Rex Tillerson, according to six senior administration officials.

Kelly summoned Tillerson, and their ally Defense Secretary James Mattis, to the White House, where the three of them huddled to discuss a path forward, according to three administration officials. The White House downplayed Kelly's decision to stay in Washington, saying he did so to manage day-to-day operations.

Vice President Mike Pence, meanwhile, was fuming in Phoenix, where he was traveling, seven officials told NBC News. He and Tillerson spoke on the phone before the secretary's public appearance on Wednesday morning.

### Related: Tillerson's Fury at Trump Required an Intervention from Pence

Pence was incensed upon learning from the NBC report that Tillerson's top spokesman had said he once privately questioned the value of Nikki Haley, the U.S. ambassador to the United Nations. Officials said the spokesman, R.C. Hammond, fabricated an anecdote that Pence had asked Tillerson in a meeting whether Haley, who is seen as a possible successor if Tillerson, is helpful or harmful to the administration.

NBC reported Wednesday that Tillerson had threatened to resign in July after a series of clashes with the president, at one point venting his frustrations among his colleagues by calling the president a "moron," according to multiple senior administration officials who were aware of the matter at the time.

Four senior administration officials said Trump first learned on Wednesday that Tillerson had disparaged him after a July 20 national security meeting at the Pentagon. Trump vented to Kelly Wednesday morning, leading Kelly to scrap plans to travel with the president to Las Vegas to meet with victims and first responders in Sunday's mass shooting.

Trump was furious when he saw the NBC News report, which was published shortly before 6 a.m. Wednesday.



Vice President Mike Pence, right, and Secretary of State Rex Tillerson speak during the inaugural meeting of the National Space Council at the National Air and Space Museum on Oct. 5, 2017 in Chantilly, Virginia. © Mark Wilson / Getty Images

For the next two hours the president fumed inside the White House, venting to Kelly, officials said.

He left for Las Vegas shortly after 8 a.m., 20 minutes behind schedule.

Tillerson scrambled to pull together a statement, while his spokesman publicly apologized for his comments about Pence and Haley, saying he "spoke out of line about conversations I wasn't privy to."

Tillerson delivered a statement praising Trump and insisting he never considered resigning, but it's what he didn't say that further enraged Trump, officials said.

The secretary's refusal to deny that he had called the president a "moron" in his opening statement and in his responses to questions from reporters stoked Trump's anger and widened the rift between the two men, officials said.

After watching the secretary's response Wednesday, one White House official said, "When Tillerson didn't deny it, I assumed it was true."

Hammond is seen by the White House, particularly Pence's office, as untrustworthy, officials said. It's unclear if he will remain in his post, according to three administration officials.

Pence was "very annoyed anyone would misrepresent anything he said, particularly in private meetings," one White House official said.

On Wednesday, this source said, White House officials spoke to State Department officials to make it clear that Hammond's comment was "false" and needed to be corrected.

The revelations followed Trump's frustrations over the weekend after Tillerson said the U.S. would talk to North Korea.

State Department officials tried to reach Tillerson on his government aircraft during his flight from Beijing to Japan, but they couldn't reach him, sources said. The secretary and his team didn't want to issue a clarification, further stoking tensions with the White House, an administration official said.

Trump took to Twitter, telling Tillerson not to waste his time trying to negotiate with the North Korean regime.

*Additional reporting from Peter Alexander, Hallie Jackson and Vivian Salama.*



CAROL E. LEE  

 KRISTEN WELKER 

COURTNEY KUBE

 ANDREA MITCHELL 

**TOPICS** POLITICS, DONALD TRUMP, U.S. NEWS, WORLD, WHITE HOUSE

**FIRST PUBLISHED** OCT 5 2017, 7:10 PM ET

 **NEXT STORY** After Las Vegas Shooting, Trump Says America 'A Nation In Mourning'

J.R. 670

JA 797

# **Exhibit U**



**Donald J. Trump** ✓

@realDonaldTrump

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## The White House

Office of the Press Secretary

For Immediate Release

June 14, 2017

# Presidential Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence

MEMORANDUM FOR THE SECRETARY OF STATE  
THE ATTORNEY GENERAL

J.R. 674

THE SECRETARY OF HOMELAND SECURITY

THE DIRECTOR OF NATIONAL INTELLIGENCE

SUBJECT: Effective Date in Executive Order 13780

This memorandum provides guidance for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence in light of two preliminary injunctions that bar enforcement of certain provisions of Executive Order 13780, "Protecting the Nation from Foreign Terrorist Entry into the United States" (Mar. 6, 2017).

The preliminary injunction entered by the United States District Court for the District of Maryland, and affirmed in substantial part by the United States Court of Appeals for the Fourth Circuit, bars enforcement of section 2(c) of the Executive Order. The portions of the preliminary injunction entered by the United States District Court for the District of Hawaii that were affirmed by the recent decision of the United States Court of Appeals for the Ninth Circuit bar enforcement of certain provisions of sections 2 and 6 of the Executive Order.

Various provisions of sections 2 and 6 of the Executive Order (as well as sections 3 and 12(c), which delineate the scope of the suspension contained in section 2(c)), refer to the Order's effective date. Section 14 of the Executive Order provides that the Order was effective at 12:01 a.m., eastern daylight time on March 16, 2017. Sections 2 and 6, however, were enjoined before that effective date, and the courts of appeals have affirmed the injunctions with respect to certain provisions of sections 2 and 6. As a result, under the terms of the Executive Order, the effective date of the enjoined provisions (as well as related provisions of sections 3 and 12(c)) is delayed or tolled until those injunctions are lifted or stayed.

In light of questions in litigation about the effective date of the enjoined provisions and in the interest of clarity, I hereby declare the effective date of each enjoined provision to be the date and time at which the referenced injunctions are lifted or stayed with respect to that provision. To the extent it is necessary, this memorandum should be construed to amend the Executive Order.

Because the injunctions have delayed the effective date of section 12(c), no immigrant or nonimmigrant visa issued before the effective date of section 2(c) shall be revoked pursuant to the Executive Order.

I hereby direct the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence to jointly begin implementation of each relevant provision of sections 2 and 6 of the Executive Order 72 hours after all applicable injunctions are lifted or stayed with respect to that provision, to ensure an orderly and proper implementation of those provisions. Prior to that time, consular officers may issue valid visas to, and the Secretary of Homeland Security may admit, otherwise eligible aliens without regard to sections 2 and 6. If not otherwise revoked, visas and other travel

documents issued during this period remain valid for travel as if they were issued prior to the effective date.

DONALD J. TRUMP



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# **Exhibit W**



**Donald J. Trump** ✓

@realDonaldTrump

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# **Exhibit X**



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AUGUST 14, 2017 12:06PM

## A Dozen Times Trump Equated his Travel Ban with a Muslim Ban

By DAVID BIER

Last week, the Trump administration filed its merits brief in the Supreme Court case over his executive order suspending all travel and immigration from six African and Middle Eastern countries. On Twitter, President Trump has been insistent that the executive order is a “travel *ban*,” not some “politically correct term.” The statement shows that, while he is often difficult to understand, the president is actually very interested in how he brands his proposal. This fact matters because the constitutional case against the ban depends, in part, on Trump’s statements about it—specifically, the fact that he has repeatedly equated his current policy with his original proposal for a “Muslim ban.”

Beyond the lawsuit, however, it matters why the president has chosen to carry out certain proposals. If the president believes his travel ban will improve security by reducing Muslim immigration, then this is an important consideration for voters or anyone interested in influencing his policies in the future.

**Trump’s Statements Equating the Muslim and Travel Bans**

I reviewed the president's comments about the ban—a list of which you can find below with fuller context—and found *at least* 12 statements where Donald Trump equated his plan to suspend immigration from certain countries with his original plan to ban all Muslims from entering the United States. I say *at least* because I have not watched all of his many rallies and have no access to his private correspondence. On another occasion, when asked after the election whether his plans to ban Muslims had changed, he reiterated that his plans on that subject were known. These dozen cases collectively demonstrate that President Trump understood his travel ban as a version of his Muslim ban.

Trump's 12 statements occurred over a period of seven months from May 2016 to December 2016. They include nine separate situations and six direct denials to direct questions about whether the travel ban had changed his plans to ban Muslims. These statements occurred in various contexts, including private phone calls, written speeches, improvised speeches, interviews, and a debate. During this time, he described the travel ban as an “expansion” of the Muslim ban, a “bigger” version of the Muslim ban, and a “morphed” version of the Muslim ban.

Moreover, in these statements, President Trump explained exactly why his method of carrying out the ban changed. He specifically cited two reasons: the negative reaction to the outright Muslim ban and the constitutional concerns that *others* had expressed. However, he stated that for his part, he believed that the “Constitution does not give us the right to commit suicide,” a phrase used to express that although it may violate the Constitution, we should permit the violation to avoid a collapse of the entire society. Nonetheless, he said he was willing to acquiesce to others' concerns.

### **The Evolution of the Ban**

This list reveals the concept's evolution. After defending the outright Muslim ban for six months, Trump called Rudy Giuliani in early May 2016 [1] to, as Trump himself put it, “look at the Muslim ban.” Giuliani explained that Trump told him, “Show me the right way to do it legally.” This indicates that Trump wanted Giuliani to come up with a version of the Muslim ban that would satisfy legal concerns. (Note that at this point, there is no other proposal for the “it” to

Case 8:17-cv-00361-TDC Document 205-1 Filed 10/06/17 Page 263 of 344  
be, Trump confirmed that he used the phrase “Muslim ban,” and grammatically, the antecedent to “it” is “Muslim ban” in Giuliani’s comments.) With these marching orders, Giuliani and House Homeland Security Committee Chairman Michael McCaul—with help from former Attorney General Michael Mukasey and Rep. Peter King—then sent a memo to the Trump team that explained why the outright ban could be unconstitutional and urged the adoption of a territorial-based ban.

No matter what these men thought about banning Muslims, Trump clearly saw this change as a reform to, not a rejection of, his Muslim ban. In June 2016, Trump detailed this new plan for the first time publicly [2]. He claimed that he was right to call for “a ban after San Bernardino” in December 2015—i.e. the Muslim ban—and that immigration laws give him the power to “suspend entry into the country of any class of persons that the President deems detrimental” and that he would use this power to “suspend immigration from areas of the world when there is a proven history of terrorism... until we understand these threats.”

Thus, the very first time he brought up the idea, the president both tied the two bans together and detailed—in a rare prepared, written speech—the exact legal strategy that he has used to implement them. Incredibly, the administration’s brief in the Supreme Court case actually cites this speech as proving that he did not want to ban Muslims. In a speech [3] and an interview [4] afterward, Trump explained that the “Muslim ban” or “temporary ban”—as he said he preferred to call the Muslim ban—would now apply to “in particular the terrorist states.”

It’s worth mentioning that this new territorial version of the Muslim ban actually resolves an important practical consideration that people, including Michael Mukasey, who was part of the Giuliani committee, had raised with Trump about the outright Muslim ban: it’s impossible to enforce a belief-based ban. Trump had previously claimed that the ban would only apply to those who responded “yes” to the question, “Are you a Muslim?” This is obviously a practical absurdity, but a ban on certain nationalities would be easy to enforce.

In a series of interviews on CBS [5][6], NBC [7][8], and Fox [9] that followed, he repeatedly denied that the territorial ban was a rejection of the Muslim ban in response to five direct questions, while insisting that his plans would now focus on “territory, not religion.” But he emphasized that he considered this “not a rollback,” but an “expansion” of the original Muslim ban [8] or a “bigger” version of the Muslim ban [9]. It was during this time that the president’s advisors drafted the executive order itself.

Then in another prepared speech in August, Trump explained that he would implement the new ban as part of “extreme vetting” where he would suspend entries from certain countries until he created a new vetting system for Muslims to screen out those “who believe that Sharia law should supplant American law.” During the presidential debate [10], when the moderator asked whether he had changed his position on the Muslim ban, he denied it *again*, saying that the “Muslim ban is something that in some form has morphed into extreme vetting for certain areas of the world.” She asked him *again* whether the “Muslim ban” still stands, and again, he flatly declared, “*It is called extreme vetting*” [11]. He continues to use this phrase “extreme vetting” to describe his Executive Order.

After the election, he reiterated his plan to suspend immigration from certain countries on “Day 1.” In December 2016 [12] a reporter directly asked him whether he had rethought his plan to “ban Muslim immigration” —*yet again* giving him the opportunity to say “yes, that plan is irrelevant to my current plans”—but instead, he said, “You know my plans all along. I’ve proven right.” His plans “all along” have been a Muslim ban with revisions to how it would be enforced. I could find no statement during this period where he denied that the travel ban was a version of the Muslim ban.

### **The Benefit of the Doubt**

While some people may find ambiguity in one or two of these statements, their collective force matters more than any individual statement. Trump clearly wanted people to understand the travel ban as a version of the Muslim ban. Although Trump often shoots from the hip, he has carefully guarded the

branding of the Muslim ban from the beginning. He's made many other statements telling journalists how to frame this issue as well, as his Twitter comments show.

While Trump has since said that the travel ban is “not about religion—it’s about terror,” Trump repeatedly said the exact same thing about his outright Muslim ban, saying “it’s not about religion. It’s about security.” This means that to Trump, even a ban of an entire religion is not actually a ban *about* that religion. There is no doubt that the president believes that his travel ban would actually improve security. The question is whether he believes it for the same reason that he believed his Muslim ban would improve security—that it would lead to fewer Muslims entering the United States. His earlier statements directly indicate that this is the reason.

If Americans are to ignore the 12 statements, the president’s comments about Muslims *in other contexts* should provide some obvious evidence for the belief that he would not actually have favored a ban on Muslims (even if he said he did). But the evidence is almost entirely the other way. Trump has demonstrated repeatedly that his fears of Muslims lead him to believe even the most outlandish lies about them and suggest policies that specifically target them as a group.

In defense of the ban, Trump stated, “I think Islam hates us.” He repeatedly praised the idea of murdering Muslim prisoners of war with bullets dipped in pigs’ blood purely because it would be scary to other Muslims. He repeatedly and falsely claimed that “thousands and thousands” of Muslims in the United States cheered on 9/11. He said that the U.S. government should “shut down” mosques.

Even after his switch to the “territory ban,” he described Muslim immigration as “suicide” for the United States on at least two occasions. He called for indiscriminate surveillance of U.S. mosques and ethnic profiling of Muslims based on their religion. Without evidence, he described Muslim refugees to the United States as “people who believe that women should be enslaved and gays put to death.” He falsely said that Muslim assimilation is virtually nonexistent. He repeated the false claim about Muslims dancing on 9/11 even after it was

debunked. He incorrectly said “the Muslim community” does not report terrorists. He falsely said that the wife of a speaker at the DNC Convention may have not been “allowed to speak” by her husband simply because they were Muslims.

On numerous occasions, Trump repeated a falsehood about how “many people” in the “Muslim community” refused to turn in the San Bernardino shooters despite seeing “bombs all over their floor.” He has used this point constantly to defend the Muslim ban, travel ban, and extreme vetting, including during a presidential debate. Yet in fact, it was a non-Muslim man working in the area who witnessed the delivery of “numerous packages” and was suspicious but didn’t say anything.

The fact is that there is *every* reason to believe that Trump wanted to morph the Muslim ban into the travel ban to avoid potential legal problems and no reason not to.

\*\*\*\*\*

*The initial quotes about the outright Muslim ban provide context about how Trump discussed that ban. Note that Trump has said he preferred to use the phrase “temporary ban” to refer to the Muslim ban.*

**Statements on the Outright Muslim Ban**

December 7, 2015: In a statement shortly after the San Bernardino terrorist attack:

Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on. According to Pew Research, among others, there is great hatred towards Americans by large segments of the Muslim population... . Mr. Trump stated, "Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension. Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life. If I win the election for President, we are going to Make America Great Again."

December 8, 2015: On MSNBC:

Geist: Donald, a customs agent would then ask a person their religion?

Trump: That would be probably—they would say, "Are you Muslim?"

Geist: And if they said, "Yes," they would not be allowed in the country?

Trump: That's correct.

December 12, 2015: On Fox News:

It's a temporary ban, not on everyone, but on many... . We're not insulting. This is about security. It's not about religion. This is about security. We can't allow people to come into this country that have horrible thoughts in their mind.

March 9, 2016: On CNN:

I think Islam hates us. There is something – there is something there that is a tremendous hatred there. There’s a tremendous hatred. We have to get to the bottom of it. There’s an unbelievable hatred of us... . we can’t allow people coming into this country who have this hatred of the United States and of people who are not Muslim.

May 11, 2016: On Fox News Radio (at 7:30):

We have a serious problem, it’s a temporary ban, it hasn’t been called for yet, nobody’s done it, this is just a suggestion until we find out what’s going on.

### **The Twelve Instances of Trump Equating the Muslim Ban and the Travel Ban**

---

[1] **1. May 11, 2016:** On Fox News:

I’m looking at it very strongly with Rudy Giuliani heading it. I’ve spoken to him a little while ago. We’re going to put together a group of five or six people. Very, very highly thought of people, and I think Rudy will head it up, and we’ll look at the Muslim ban or the ‘temporary ban’ as we call it ... He will head it up and he’s agreed to do so.

January 29, 2017: On Fox News:

Jeanine Pirro: I want to ask you about this ban [the territory ban Executive Order] and the protests. Does the ban [the territory ban] have anything to do with religion? How did the president decide the seven countries? I understand the permanent ban on the refugees. Talk to me.

Rudy Giuliani: I will tell you the whole history of it [the Executive Order]. When he first announced it [the Executive Order], he said, 'Muslim ban.' He called me up. **He said, 'Put a commission together. Show me the right way to do it [the Muslim ban] legally.'** I put a commission together with Judge Mukasey, with Congressman McCaul, [Congressman] Pete King, whole group of other very expert lawyers on this. And what we did was, we focused on, instead of religion, danger—the areas of the world that create danger for us, which is factual basis, not a religious basis. Perfectly legal.

[2] 2. June 13, 2016: In a speech:

**I called for a ban** after San Bernardino, and was met with great scorn and anger but now, many are saying I was right to do so – and although the pause is temporary, we must find out what is going on. The ban will be lifted when we as a nation are in a position to properly and perfectly screen those people coming into our country. The immigration laws of the United States give the President the power to suspend entry into the country of any class of persons that the President deems detrimental to the interests or security of the United States, as he deems appropriate. I will use this power to protect the American people. **When I am elected, I will suspend immigration from areas of the world** when there is a proven history of terrorism against the United States, Europe or our allies, until we understand how to end these threats.

[3] 3. June 15, 2016: In a speech:

We have to stop on a temporary basis at least, but we have to stop people from pouring into this country until we find out what the hell is going on... . We don't want to have these problems, and we've already got 'em. Look at this weekend. We don't want to have these problems. So what I'm saying is **it's a temporary ban, in particular for certain people coming from certain horrible—where you have tremendous terrorism in the world.** You know what those places are. But we have to put a stop to it. We have to put a stop to it until such time as we can figure out what is going on.

[4] **4. June 27, 2016:** In an NBC phone interview:

Trump said **his Muslim ban would apply “in particular [to] the terrorist states.”**

[5] **5, 6. July 17, 2016:** On CBS (at 13:52),

Lesley Stahl: In December, [Mike Pence tweeted], “Calls to ban Muslims from entering the U.S. are offensive and unconstitutional.”

Trump: **So you call it territories. OK?** We're gonna do territories. We're gonna not let people come in from Syria that nobody knows who they are. Hillary Clinton wants 550 percent more people to come in than Obama who doesn't know what he's—

Trump: **No. Call it whatever you want.** We'll call it territories, OK?

Stahl: So not Muslims?

Trump: You know, the Constitution, there's nothing like it. But it doesn't necessarily give us the right to commit suicide, as a country, OK? And I'll tell you this. Call it whatever you want, change territories, but there are territories and terror states and terror nations that we're not gonna allow the people to come into our country. And we're gonna have a thing called "Extreme vetting." And if people wanna come in, there's gonna be extreme vetting. We're gonna have extreme vetting. They're gonna come in and we're gonna know where they came from and who they are.

[7] 7, 8. July 24, 2016: On NBC:

Chuck Todd: The Muslim ban. I think you've pulled back from it, but you tell me. You said, "Lastly and very importantly," this is from your speech on Thursday night, "we must immediately suspend immigration from any nation that has been compromised by terrorism until such time as proven vetting mechanisms have been put in place." This feels like a slight rollback.

Trump: **I don't think it's a rollback**

Todd: **I *don't* think so. I actually *don't* think it's a rollback. In fact, you could say it's an *expansion*.** I'm looking now at territories. People were so upset when I used the word Muslim. Oh, you can't use the word Muslim. Remember this. And I'm okay with that, because I'm talking territory instead of Muslim. But just remember this: Our Constitution is great. But it doesn't necessarily give us the right to commit suicide, okay? Now, we have a religious, you know, everybody wants to be protected. And that's great. And that's the wonderful part of our Constitution. I view it differently. Why are we committing suicide? Why are we doing that? But you know what? I live with our Constitution. I love our Constitution. I cherish our Constitution. We're making it territorial. We have nations and we'll come out, I'm going to be coming out over the next few weeks with a number of the places.

[9] **9.** On July 25, 2016: On Fox News:

Hannity: What is your position? Because you were trying to explain yesterday [on NBC] that your position has not changed that you either vet them or they can't get in.

Trump: **No. I think my position's gotten bigger now.** I'm talking about territories now. People don't want me to say Muslim. I guess I prefer not saying it, frankly, myself. So we're talking about territories.

[10] **10, 11.** August 15, 2016: In a speech:

**I call it extreme, extreme vetting.** ...In addition to screening out all members of the sympathizers of the terrorist groups, we must also screen out any who have hostile attitudes toward our country or its principles or who believe that Sharia law should supplant American law. ...To put these new procedures in place, we will have to temporarily suspend immigration from some of the most dangerous and volatile regions of the world that have a history of exporting terrorism.

On October 9, 2016: In a debate:

Moderator: Your running mate said this week that the Muslim ban is no longer your position, and if it is, was it a mistake to have a religious test?

Trump: ...**The Muslim ban is something that in some form has morphed into extreme vetting for certain areas of the world.**

[11] Moderator: Why did it morph into that? Answer the question. Would you please explain whether **the Muslim ban** still stands?

Trump: **It is called extreme vetting.** We are going to areas like Syria.

[12] 12. December 21, 2016: In an interview:

Reporter: Have you had cause to rethink or reevaluate your plans to create a Muslim register or **ban Muslim immigration to the United States?**

Trump: **You know my plans all along,** and I've proven to be right, 100 percent correct.

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**Topics:** International Economics, Development & Immigration, Law and Civil Liberties

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# **Exhibit Y**



# CATO AT LIBERTY

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AUGUST 31, 2017 10:39AM

## Very Few Immigration Vetting Failures of Terrorists Since 9/11

By [DAVID BIER](#)

President Trump's [executive order](#) attempted to temporarily ban all refugees and all travelers or immigrants from six African and Middle Eastern countries due to a concern over widespread vetting failures. The purpose of the temporary ban was to give the administration time to “improve the screening and vetting protocols and procedures.” The order grounded this concern in one fact:

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.

These statements contain four clear implications: 1) that these “hundreds of persons born abroad” committed acts of terrorism in the United States; 2) that they came to the United States “through our immigration system,” 3) that they entered since 2001, 4) that better “screening and vetting protocols” could have prevented their entry, and 5) these offenders pose a significant threat to Americans. Each one of these implications is false. Here are the facts:

Case 8:17-cv-00361-TDC Document 205-1 Filed 10/06/17 Page 276 of 344

1) **Not “hundreds of persons” committing terrorism in the United States:**

Only 55 percent of people convicted of “terrorism-related” offenses according to the federal government are, in fact, convicted of involvement in terrorism.

2) **Not “hundreds” through our immigration system:** Less than 200 foreigners convicted of or killed during terrorism offenses since 9/11 entered “through our immigration system.”

3) **Not “hundreds” entering since 9/11:** Only 34 foreigners convicted of or killed during terrorism offenses since 9/11 entered “through our immigration system” since 2001.

4) **Not “hundreds” slipping through “screening” since 9/11:** Only 18 likely radicalized prior to entry—just six refugees and only four from six banned countries.

5) **Not a significant threat:** No refugee nor any national of the banned countries has successfully carried out a deadly terrorist attack in over four decades.

In the aftermath of the world’s worst terrorist attack on September 11, 2001, the U.S. government rapidly responded with much stricter vetting for foreign visitors, immigrants, and refugees. It created new terrorist watch lists, required biometric verification of identities, instituted mandatory visa interviews, hired thousands of new consular officers, improved inter-agency intelligence sharing, and much else. America’s pre-9/11 visa vetting system has almost nothing in common with today’s system. For this reason, it is appropriate to begin the analysis of immigration vetting failures with 9/11.

### **The government’s terrorism-“related” definition inflates the number of terrorism convictions**

The executive order does not reveal the source for the claim that “hundreds of persons born abroad have been convicted of terrorism-related crimes,” but the National Security Division (NSD) of the Department of Justice (DOJ) has published a list of 627 unsealed “terrorism-related convictions” from October 2001 to December 2015. Of this list, however, nearly half—45 percent—were not convicted of a *terrorism* offense. NSD includes them because the prosecution

Case 8:17-cv-00361-TDC Document 205-1 Filed 10/06/17 Page 277 of 344  
began with terrorism investigation, even if it did not end with a terrorism conviction. Non-terrorism convictions include mainly false statements to investigators, ID fraud, immigration violations, and drug offenses. Other “terrorism-related” offenses include child pornography, social security fraud, and stealing truckloads of cereal.

Because the NSD list is both overbroad, incomplete, and not fully up-to-date, I also reviewed all terrorism offenders whose convictions were publicized on the DOJ website since 2015 as well as those included in George Washington University’s Program on Extremism (GW) or in New America Foundation’s International Security Program (NAF). NAF includes offenders who lived in the United States for a period before being killed both in the United States and abroad. I created a combined list of NSD, DOJ, GW, and NAF that includes only those convicted of or killed during terrorism offenses. I used court filings and news reports to identify the dates and places of birth and the years of entry for each of them. In two cases, I was unable to nail down exact entry years, but the fact that these individuals naturalized or were in the process of naturalization allows us to know that they had to have been in the country with legal permanent residency for at least five years.

### **Many foreign-born terrorism offenders did not go “through the immigration system”**

Of the *actual* terrorism offenders, nearly 60 percent were either born in the United States or brought into the country by U.S. law enforcement for prosecution or arrest, leaving 195 other foreign-born terrorism offenders who entered “through the immigration system” at some point, not the “hundreds” claimed in the executive order. Of these, however, only 34 entered through the system after 9/11 (another one entered illegally), again far fewer than hundreds.

Finally, these 34 were not all vetting failures, either. To begin with, 14 entered as juveniles, including nine who entered at 15-years-old or younger (Abdul Artan’s exact age is uncertain, so I included him as an adult). Six of the juveniles converted from Christianity to extremist Islam. Focusing solely on the adults, we find that the government determined that radicalization occurred *prior* to entry in just 11 cases. In another nine cases, no determination was made, but in

Case 8:17-cv-00361-DC Document 205-1 Filed 10/06/17 Page 278 of 344

two of these cases, it is apparent from their biographical details and their post-entry behavior that they most likely did not radicalize until after their entry to the United States (both entered as teenagers and lived for eight years before their offense). Thus, if we assume all seven of the other uncertain ones radicalized prior to entry, there were 18 vetting failures since 9/11—not hundreds.

### **Very few terrorism vetting failures were from banned countries**

The 34 terrorism offenders came from 22 different countries. Notably, it includes eight individuals from non-majority Muslim countries. Of the banned countries—Iran, Libya, Syria, Somalia, Sudan, and Yemen—only three are represented on the list. The 18 vetting failures came from 13 countries. Only nine of them actually attempted to carry out an attack, as opposed to aiding a terrorist group abroad. No single country had more than three vetting failures. Four of the six banned countries had no likely vetting failures since 9/11, which means that nine countries for whom there were vetting failures are not on the list—representing 78 percent of all vetting failures.

Terrorism offenders have entered or received status in the United States through several avenues. President Trump’s executive order specifically targets the refugee program, which accounts for 26 percent of post-9/11 terrorism offenders and a third of all vetting failures. Other avenues account for 67 percent of the vetting failures. In absolute terms, this was just six refugees. Six deviants simply cannot justify shutting down a program that has admitted nearly a million new U.S. residents since 9/11.

### **Terrorism vetting failures from banned countries caused zero deaths since 9/11**

Vetting failures from refugees or the six banned countries represent a tiny portion of the terrorism offenders since 9/11—to be precise, less than 2 percent. More importantly, these offenders caused no deaths. Refugees and nationals of these countries simply have not successfully killed anyone in the United States in the last four decades. In fact, 14 of the 34 terrorism offenders were not involved in a plot to kill anyone in the United States—they were mainly either going overseas to join a terrorist organization or sending money to them.

Among the 18 vetting failures, fully half were not attempting to kill anyone in the U.S. Only one did: Tashfeen Malik, a Pakistani woman who immigrated using a family-based nonimmigrant visa (fiancé K visa).

These facts contract the claims of the administration that vetting failures are widespread, and that a total rewrite of the system is necessary. My colleague has previously noted that the risk of foreign-born terrorism is miniscule: just a 1 in 3.6 million chance of dying in a terrorist attack on U.S. soil per year. The risk from a post-9/11 vetting failure is more than a hundred times less.

**Table 1: Foreign Terrorism Offenders Killed or Convicted Who Entered Through the Immigration System After 9/11**

Country of Birth	All Post-9/11 Entries	Likely Vetting Failures		
1 Albania	1	2.9%	1	5.6%
2 Bangladesh	1	2.9%	1	5.6%
3 Cuba	1	2.9%	0	0.0%
4 Ethiopia	1	2.9%	0	0.0%
5 India	1	2.9%	0	0.0%
<b>6 Iran</b>	<b>1</b>	<b>2.9%</b>	<b>0</b>	<b>0.0%</b>
7 Iraq	3	8.8%	2	11.1%
8 Jordan	1	2.9%	1	5.6%
9 Kenya	1	2.9%	0	0.0%
10 Kuwait	1	2.9%	1	5.6%
11 Kyrgyzstan	2	5.9%	0	0.0%
12 Lebanon	1	2.9%	1	5.6%
<b>13 Libya</b>	<b>0</b>	<b>0.0%</b>	<b>0</b>	<b>0.0%</b>
14 Mexico	2	5.9%	0	0.0%
15 Nicaragua	1	2.9%	0	0.0%
16 Nigeria	1	2.9%	1	5.6%
17 Pakistan	3	8.8%	2	11.1%
18 Philippines	1	2.9%	0	0.0%

<b>20 Somalia</b>	<b>4</b>	<b>11.8%</b>	<b>3</b>	<b>16.7%</b>
<b>21 Sudan</b>	<b>2</b>	<b>5.9%</b>	<b>1</b>	<b>5.6%</b>
<b>22 Syria</b>	<b>0</b>	<b>0.0%</b>	<b>0</b>	<b>0.0%</b>
23 United Kingdom	1	2.9%	1	5.6%
24 Uzbekistan	3	8.8%	2	11.1%
<b>25 Yemen</b>	<b>0</b>	<b>0.0%</b>	<b>0</b>	<b>0.0%</b>
Total*	34	100%	18	100%

**Bold italics** = banned country. \*One who entered illegally and is not represented came from Kazakhstan Sources: Department of Justice, National Security Division, George Washington University, New America Foundation

**Table 2: Foreign Terrorism Offenders Killed or Convicted Who Entered Through the Immigration System or Illegally After 9/11**

Status	All Terrorism Offenders Likely Vetting Failures			
Resident	14	40.0%	5	27.8%
Refugee	9	25.7%	6	33.3%
Student	4	11.4%	3	16.7%
Asylum & Other Humanitarian	3	8.6%	0	0.0%
Tourist	2	5.7%	2	11.1%
Family-Based Temporary	1	2.9%	1	5.6%
Visa Waiver	1	2.9%	1	5.6%
Employment Temporary	0	0.0%	0	0.0%
Cultural Exchange	0	0.0%	0	0.0%
Diplomatic	0	0.0%	0	0.0%
Illegal	1	2.9%	0	0.0%

Sources: See Table 1

**Table 3: Foreign Terrorism Offenders Killed or Convicted After 9/11 Who Entered Through the Immigration System As Adults**

Name	Offense	Born in	Charge	Entry	Entry	Years	Status	Deaths	Vet.
Case			Year	Year	Age	In U.S.			Fail
1 Reid, Richard	US Plot	Britain	2001	2001	28	0	VWP	0	<u>YES</u>
2 Mohammed, Gufran	Abroad	India	2013	2003	20	10	Resident	0	<u>NO</u>
3 <i>Mohamud, Ahmed Nasir</i>	<i>Abroad</i>	<i>Somalia</i>	<i>2011</i>	<i>2004</i>	<i>28</i>	<i>7</i>	<i>Resident</i>	<i>0</i>	<i><u>NO</u></i>
4 Ahmad, Jubair	Abroad	Pakistan	2011	2007	19	4	Resident	0	<u>YES</u>
5 Mohamed, Ahmed	Abroad	Kuwait	2007	2007	25	0	Student	0	<u>YES</u>
6 Alwan, Waad	Abroad	Iraq	2011	2007	28	4	Refugee	0	<u>YES</u>
7 Aldawsari, Khalid	US Plot	Saudi Arabia	2011	2008	18	3	Student	0	<u>YES</u>
8 Hassoun, Sami Samir	US Plot	Lebanon	2010	2008	20	2	Resident	0	?
9 Hasbajrami, Agron	Abroad	Albania	2011	2008	24	3	Resident	0	?
10 Ibrahim, Abdinasir	Abroad	Somalia	2014	2008	32	6	Refugee	0	<u>YES</u>
11 Hammadi, Mohanad	Abroad	Iraq	2011	2009	20	2	Refugee	0	<u>YES</u>
12 Kodirov, Ulugbek	US Plot	Uzbekistan	2011	2009	20	2	Student	0	<u>NO</u>
13 Abdulmatallab, Umar	US Plot	Nigeria	2010	2009	23	1	Tourist	0	<u>YES</u>
14 Kurbanov, Fazliddin	US Plot	Uzbekistan	2013	2009	27	4	Refugee	0	?
15 Fazeli, Adnan	Abroad	Iran	2016	2009	31	7	Refugee	0	<u>NO</u>
16 Esse, Amina	Abroad	Somalia	2014	2009	35	5	Refugee	0	?
17 Juraboev, Abdurasul	Abroad	Uzbekistan	2015	2011	21	4	Resident	0	?
18 Nafis, Quazi	US Plot	Bangladesh	2012	2012	21	0	Student	0	<u>YES</u>
19 Elhassan, Mahmoud	Abroad	Sudan	2016	2012	22	4	Resident	0	<u>YES</u>
20 Malik, Tashfeen	US Plot	Pakistan	2015	2014	28	1	Fiancé	14*	<u>YES</u>
21 Artan, Abdul Razak	US Plot	Somalia	2016	2014	~16	2	Refugee	0	?

*Italics = Banned Country or Refugee*

*\*She carried out the attack with her husband, but all of their victims are represented here.*

Sources: See Table 1

**Table 4: Foreign Terrorism Offenders Killed or Convicted After 9/11 Who Entered Through the Immigration System As Juveniles**

Name	Offense	Born in	Charge Year	Entry year	Entry Age	Years in U.S.	Status	Deaths	Vet. Fail
22 Tsarnaev, Dzhokhar	US Plot	Kyrgyzstan	2013	2002	9	11	Asylum	3	<u>NO</u>
23 Suarez, Harlem*	US Plot	Cuba	2015	2002	11	13	Asylum	0	<u>NO</u>
24 Daud, Abdirahman	Abroad	Kenya	2015	2003	9	12	Refugee	0	<u>NO</u>
25 Deleon, Ralph*	Abroad	Philippines	2012	2003	14	9	Resident	0	<u>NO</u>
26 Tsarnaev, Tamerlan	US Plot	Kyrgyzstan	2013	2003	16	10	Asylum	3	<u>NO</u>
27 Martinez, Antonio*	US Plot	Nicaragua	2010	2004	15	6	Resident	0	<u>NO</u>
28 Melaku, Yonathan*	Other	Ethiopia	2011	2005	16	6	Resident	0	<u>NO</u>
29 Santana, Miguel*	Abroad	Mexico	2012	2007	<16	>5	Resident	0	<u>NO</u>
30 Smadi, Hosam	US Plot	Jordan	2009	2007	16	2	Tourist	0	<u>?</u>
31 Badawi, Muhanad	Abroad	Sudan	2015	2007	16	8	Resident	0	<u>Likely NO</u>
32 Khalid, Mohammad	Abroad	Pakistan	2011	2003	~9**	8	Resident	0	<u>NO</u>
33 Al Hardan, Omar	Abroad	Iraq	2016	2008	17	8	Refugee	0	<u>NO</u>
34 Garcia, Sixto Ramiro*	Abroad	Mexico	2015	2010	<15	>5	Resident	0	<u>NO</u>
35 Saidakhmetov, Akhror	Abroad	Kazakhstan	2015	2011	15	4	Illegal Entry	0	<u>NO</u>

\*converted to Islam, \*\*verified through personal correspondence with attorney

Sources: See Table 1

Topics: International Economics, Development & Immigration

Tags: Immigration; Terrorism; Vetting; Refugees



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# **Exhibit Z**



# Trump urges 'larger, tougher' travel ban after London bombing

BY JORDAN FABIAN - 09/15/17 06:57 AM EDT

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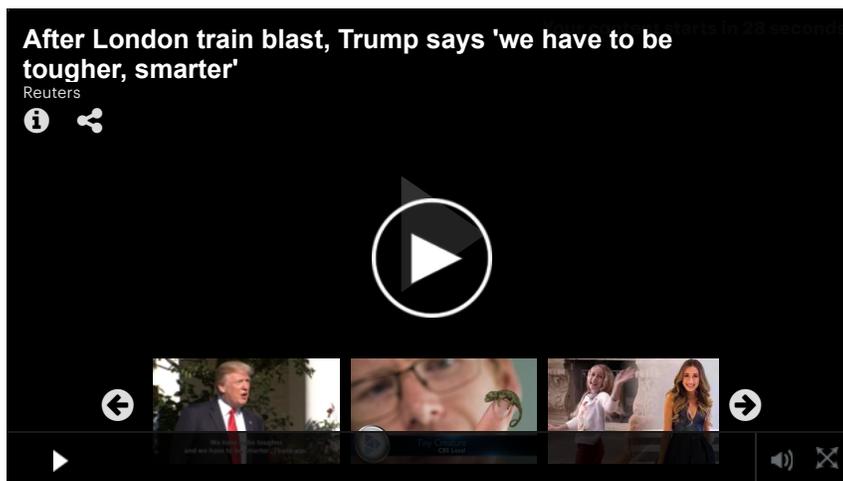
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President Trump on Friday advocated for a "larger, tougher and more specific" travel ban in response to a bomb explosion in London's subway system.

Trump in a string of tweets called the bombing an attack "by a loser terrorist" and suggested British authorities did not do enough to prevent it.

"Another attack in London by a loser terrorist," he tweeted. "These are sick and demented people who were in the sights of Scotland Yard. Must be proactive!"

Trump then sent another message about the ban, writing "the travel ban into the United States should be far larger, tougher and more specific-but stupidly, that would not be politically correct!"

A device exploded on a rush-hour train in southwest London early Friday, injuring at least 23 people. Police are treating the incident as a terrorist attack. They have identified a suspect, but have not released a name.

The explosion at the Parsons Green Underground station is the latest in a series of terror attack that have shaken Great Britain this year.

"It's a terrible thing," Trump told reporters at the White House later Friday. "It keeps going and going, and we have to be very smart and we have to be very, very tough—perhaps we're not nearly tough enough."

Trump urges 'larger, tougher' travel ban after London bombing | TheHill  
Trump's response angered British authorities, since he appeared to reveal certain information about the attack before they did.

"I never think it is helpful for anyone to speculate in what is an ongoing investigation," British Prime Minister Theresa May [told reporters](#) in London when asked about the president's comments.

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In Washington, Trump said he had been briefed on the attack and planned to call May later Friday.

The president's pointed comments could be geared toward his supporters, many of whom are angry with his efforts to strike an immigration deal with Democrats.

The agreement he discussed with Democratic leaders would provide relief for young immigrants living in the U.S. illegally in exchange for tougher border security measures. But that might not include Trump's proposed wall along the U.S.-Mexico border, a key campaign promise, which he said would come "later."

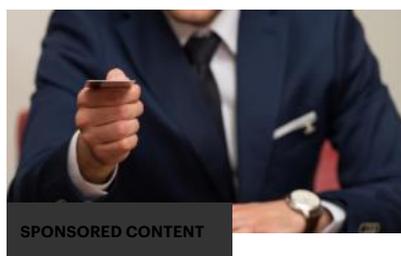
Seeking to reassure supporters, Trump tweeted Friday that, "CHAIN MIGRATION cannot be allowed to be part of any legislation on Immigration!"

Friday isn't the first time Trump has irked British leaders with his administration's response to terror attacks in their country.

The president attacked Sadiq Khan, London's first Muslim mayor, in June after he urged city residents to remain calm after a terror attack on the London Bridge killed seven.

"At least 7 dead and 48 wounded in terror attack and Mayor of London says there is 'no reason to be alarmed!'" Trump tweeted at the time.

The U.K. temporarily stopped intelligence sharing with the U.S. after a May attack in Manchester, when photos showing the grisly aftermath of the strike were published in The New York Times.



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Trump pledged to investigate leaks coming from government agencies after British authorities threatened to cut off intelligence sharing altogether.

On Friday, the president once again chimed in on how he thinks Britain should respond to terror attacks.

"Loser terrorists must be dealt with in a much tougher manner. The internet is their main recruitment tool which we must cut off & use better!" Trump tweeted.

"We have made more progress in the last nine months against ISIS than the Obama Administration has made in 8 years. Must be proactive &

Trump's tweets came a few days after the Supreme Court agreed to lift restrictions on the travel ban until further notice, allowing the administration to continue barring most refugees under the ban.

But the policy still faces legal challenges. Hawaii is suing the Trump administration over the travel ban, which bars citizens from six majority-Muslim countries from entering the U.S. and temporarily halts the country's refugee resettlement program.

Hawaii urged the court to uphold a ruling from the 9th Circuit Court of Appeals and continue to allow refugees into the U.S.

- This story was updated at 11:22 a.m.



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# **Exhibit AA**



# Executive Authority to Exclude Aliens: In Brief

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January 23, 2017

**Congressional Research Service**

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## Summary

The Immigration and Nationality Act (INA) provides that individual aliens outside the United States are “inadmissible”—or barred from admission to the country—on health, criminal, security, and other grounds set forth in the INA. However, the INA also grants the Executive several broader authorities that could be used to exclude certain individual aliens or classes of aliens for reasons that are not specifically prescribed in the INA.

Section 212(f) of the INA is arguably the broadest and best known of these authorities. It provides, in relevant part, that

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

Over the years, Presidents have relied upon Section 212(f) to suspend or otherwise restrict the entry of individual aliens and classes of aliens, often (although not always) in conjunction with the imposition of financial sanctions upon these aliens. Among those so excluded have been aliens whose actions “threaten the peace, security, or stability of Libya”; officials of the North Korean government; and aliens responsible for “serious human rights violations.”

Neither the text of Section 212(f) nor the case law to date suggests any firm legal limits upon the President’s exercise of his authority to exclude aliens under this provision. The central statutory constraint imposed on Section 212(f)’s exclusionary power is that the President must have found that the entry of any alien or class of aliens would be “detrimental to the interests of the United States.” The statute does not address (1) what factors should be considered in determining whether aliens’ entry is “detrimental” to U.S. interests; (2) when and how proclamations suspending or restricting entry should be issued; (3) what factors are to be considered in determining whether particular restrictions are “appropriate”; or (4) how long any restrictions should last. The limited case law addressing exercises of presidential authority under Section 212(f) also supports the view that this provision confers broad authority to bar or impose conditions upon the entry of aliens. Key among these cases is the Supreme Court’s 1993 decision in *Sale v. Haitian Centers Council, Inc.*, which held that the U.S. practice of interdicting persons fleeing Haiti outside U.S. territorial waters and returning them to their home country without allowing them to raise claims for asylum or withholding of removal did not violate the INA or the United Nations Convention Relating to the Status of Refugees. The U.S. practice had been established by Executive Order 12807, which was issued, in part, under the authority of Section 212(f) and “suspend[ed] the entry of aliens coming by sea to the United States without necessary documentation.” However, depending on their scope, future executive actions under Section 212(f) could potentially be seen to raise legal issues that have not been prompted by the Executive’s prior exercises of this authority.

Beyond Section 212(f), other provisions of the INA can also be seen to authorize the Executive to restrict aliens’ entry to the United States. Most notably, Section 214(a)(1) prescribes that the “admission of any alien to the United States as a nonimmigrant shall be for such time and under such conditions as [the Executive] may by regulations prescribe.” Section 215(a)(1) similarly provides that “it shall be unlawful for any alien” to enter or depart the United States “except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.” For example, President Carter cited Section 215(a)—rather than Section 212(f)—when authorizing the revocation of immigrant and nonimmigrant visas issued to Iranian citizens during the Iran Hostage Crisis.

## **Contents**

Section 212(f) of the INA.....	1
Statutory Language and Executive Branch Interpretations.....	2
Judicial Constructions of Section 212(f).....	3
Other Provisions of the INA.....	10

## **Tables**

Table 1. Categories of Aliens Excluded under INA § 212(f).....	6
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## **Contacts**

Author Contact Information .....	12
----------------------------------	----

The Immigration and Nationality Act (INA) provides that individual aliens outside the United States are “inadmissible”—or generally barred from admission to the country<sup>1</sup>—on health, criminal, security, and other grounds set forth in the INA.<sup>2</sup> However, the INA also grants the Executive several broad authorities that could be used to exclude certain individual aliens or classes of aliens for reasons that are not specifically set forth in the INA. Section 212(f) of the INA is arguably the broadest and best known of these provisions,<sup>3</sup> but Sections 214(a)(1) and 215(a)(1) can also be seen to authorize the Executive to restrict aliens’ entry or admission to the United States.<sup>4</sup>

This report provides a brief overview of the Executive’s authority under these provisions of the INA. It begins with and focuses primarily on Section 212(f). It also briefly notes other provisions.

## Section 212(f) of the INA

The provisions currently in Section 212(f)—which have been part of the INA since its enactment in 1952<sup>5</sup>—state, in relevant part, that

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.<sup>6</sup>

Legislative history materials from the time of the INA’s enactment suggest that these provisions were seen to grant the President broad authority to bar or impose conditions upon the entry of aliens,<sup>7</sup> and Presidents over the years have relied upon Section 212(f) to suspend or restrict the entry of various groups of aliens, often (although not always) in conjunction with the imposition of financial sanctions upon them. Among those so excluded have been aliens whose actions

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<sup>1</sup> The INA defines “admission” to mean “the lawful entry of an alien into the United States after inspection and authorization by an immigration officer.” INA § 101(a)(13)(A), 8 U.S.C. § 1101(a)(13)(A). The INA is codified in Title 8 of the United States Code, and references to the INA in this report also include references to the corresponding sections of Title 8.

<sup>2</sup> See INA § 212(a), 8 U.S.C. § 1182(a) (prescribing the inadmissibility of, among others, aliens who have a communicable disease of public health significance; have been convicted of two or more criminal offenses; have engaged in a terrorist activity; are permanently ineligible for citizenship; or have previously voted in violation of any federal, state, or local law). Certain of these grounds of inadmissibility may be waived. See, e.g., INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) (authorizing the Executive to waive the 3- and 10-year bars upon the admission of aliens who have been unlawfully present in the United States for more than 180 days if the refusal of admission to the alien would result in “extreme hardship” to a parent or spouse who is a U.S. citizen or lawful permanent resident (LPR)).

<sup>3</sup> 8 U.S.C. § 1182(f).

<sup>4</sup> 8 U.S.C. §§ 1184(a)(1), 1185(a)(1). As is discussed later in this report, the term “entry” is no longer defined for purposes of the INA. See Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), P.L. 104-208, § 301(a), 110 Stat. 3009-575 (Sept. 30, 1996) (amending INA § 101(a)(13) so that it defines “admission,” instead of “entry”). However, at one time, the INA defined the term “entry” to mean “any coming of an alien into the United States, from any foreign port or place or from an outlying possession, whether voluntarily or otherwise.” INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1994). See *infra* notes 26-27 and accompanying text.

<sup>5</sup> 8 U.S.C. § 1182(f).

<sup>6</sup> See P.L. 82-414, § 212(e), 66 Stat. 188 (June 27, 1952).

<sup>7</sup> See, e.g., H.R. RPT. 1365, 82d Cong., 2d Sess., at 53 (Feb. 14, 1952) (“The bill vests in the President the authority to suspend the entry of all aliens if he finds that their entry would be detrimental to the interests of the United States, for such period as he shall deem necessary.”).

“threaten the peace, security, or stability of Libya”;<sup>8</sup> officials of the North Korean government or the Workers’ Party of North Korea;<sup>9</sup> aliens who have participated in “serious human rights violations”;<sup>10</sup> and others noted in **Table 1** below.

Neither the text of Section 212(f) nor the case law to date suggests any firm legal constraints upon the President’s exercise of his authority under Section 212(f), as is explained below. However, future executive actions under INA § 212(f) could potentially be seen to raise legal issues that have not been prompted by the Executive’s prior exercise of this authority.<sup>11</sup>

## Statutory Language and Executive Branch Interpretations

On its face, Section 212(f) would appear to give the President broad authority to preclude or otherwise restrict the entry into the United States of individual aliens or classes of aliens who are outside the United States and lack recognized ties to the country.<sup>12</sup> The central statutory constraint imposed on Section 212(f)’s exclusionary power is that the President must have found that the entry of any aliens or class of aliens would be “detrimental to the interests of the United States” in order to exclude the alien or class of aliens.<sup>13</sup> The statute does not address (1) what factors should be considered in determining whether aliens’ entry is “detrimental” to U.S. interests; (2) when and how proclamations suspending or restricting entry should be issued; (3) what factors are to be considered in determining whether particular restrictions are “appropriate”; or (4) how long any restrictions should last. There also do not appear to be any regulations addressing the exercise of presidential authority under Section 212(f).

The Department of State’s *Foreign Affairs Manual* (FAM) seemingly provides the only publicly available executive branch guidance on the President’s Section 212(f) authority. In relevant part, the FAM notes that Section 212(f) proclamations “typically” grant the Secretary of State authority to identify individuals covered by the proclamation and to waive its application for foreign policy

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<sup>8</sup> See Executive Order 13726, Blocking Property and Suspending Entry Into the United States of Persons Contributing to the Situation in Libya, 81 Fed. Reg. 23559 (Apr. 21, 2016).

<sup>9</sup> See Executive Order 13687, Imposing Additional Sanctions With Respect To North Korea, 80 Fed. Reg. 819 (Jan. 6, 2015).

<sup>10</sup> See Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses, 76 Fed. Reg. 49277 (Aug. 9, 2011).

<sup>11</sup> Not knowing the form that future restrictions might take, or the grounds upon which such restrictions might be subject to legal challenges, it would be premature to assess whether specific restrictions might be within the Executive’s authority. However, it is important to note that aliens outside the United States who have no ties to the country generally have limited ability to challenge the denial of visas or admission to them. See, e.g., *Shaughnessy v. Mezei*, 345 U.S. 206, 216 (1953) (“Whatever our individual estimate of that policy and the fears on which it rests, respondent’s right to enter the United States depends on the congressional will, and courts cannot substitute their judgment for the legislative mandate.”); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (“[A]n alien who seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is granted to an alien only upon such terms as the United States shall prescribe.”). But see *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972) (recognizing that U.S. persons adversely affected by the denial of a visa waiver to an alien outside the United States may have a right to challenge the denial under certain circumstances).

<sup>12</sup> LPRs who leave the United States for a brief period of time are distinguishable from, for example, refugees seeking to be admitted to the United States. See, e.g., *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (discussing due process concerns raised by the application to an LPR of a statute which provided for the exclusion of any alien who “at any time shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law”).

<sup>13</sup> INA § 212(f), 8 U.S.C. § 1182(f).

or other national interests.<sup>14</sup> The FAM also notes that such proclamations may bar entry based on either affiliation or “objectionable” conduct. In addition, it provides that Section 212(f) may reach persons who are inadmissible under other provisions of law, in which case, the “statutory inadmissibilities are to be considered prior to determining whether a Presidential Proclamation applies.”<sup>15</sup> However, the FAM is generally not seen as having the force of law to bind the executive branch.<sup>16</sup> Thus, the Executive would not need to engage in notice-and-comment rulemaking in order to alter particular practices contained in the FAM that have historically been associated with exercises of Section 212(f) authority (e.g., not relying on a 212(f) proclamation to bar the admission of aliens who are inadmissible on other grounds).<sup>17</sup>

## Judicial Constructions of Section 212(f)

The limited case law addressing exercises of presidential authority under Section 212(f) also supports the view that this provision of the INA confers broad authority to suspend or restrict the entry of aliens. Key among these cases is the Supreme Court’s 1993 decision in *Sale v. Haitian Centers Council, Inc.*, which held that the U.S. practice of interdicting persons fleeing Haiti outside U.S. territorial waters and returning them to their home country without allowing them to raise claims for asylum and withholding of removal did not violate either the INA or the United Nations Convention Relating to the Status of Refugees.<sup>18</sup> The U.S. practice had been established by Executive Order 12807, which was issued, in part, under the authority of Section 212(f) of the INA<sup>19</sup> and “suspend[ed] the entry of aliens coming by sea to the United States without necessary documentation.”<sup>20</sup> Although the *Sale* Court was primarily concerned with whether the INA and UN Convention provisions regarding withholding of removal applied extraterritorially,<sup>21</sup> it is arguably important for understanding the scope of the President’s Section 212(f) authority. In particular, the *Sale* decision arguably helped clarify the relationship between exercises of the authority granted by Section 212(f) and those granted by other provisions of the INA, as well as the meaning of *entry* for purposes of Section 212(f).

<sup>14</sup> 9 FAM § 302.11-3(B)(1), available at <https://fam.state.gov/Fam/FAM.aspx> (last accessed: Jan. 3, 2017).

<sup>15</sup> *Id.*

<sup>16</sup> See, e.g., *Patel v. U.S. Dep’t of State*, No. 11-cv-6-wmc, 2013 U.S. Dist. LEXIS 108592, at \*13 (W.D. Wis. Aug. 2, 2013) (“[T]he Foreign Affairs Manual is an internal guideline that sets forth agency practice and procedures. Because internal guidelines and agency manuals like the Foreign Affairs Manual are not subject to [Administrative Procedure Act] APA rulemaking procedures, they lack the force of law and do not bind agency discretion.”).

<sup>17</sup> For more on the constraints of the rulemaking process, see generally CRS Report R41546, *A Brief Overview of Rulemaking and Judicial Review*, by Todd Garvey and Daniel T. Shedd; CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

<sup>18</sup> 509 U.S. 155, 158-59 (1993). Specifically at issue in *Sale* were the provisions currently in INA § 241(b)(3)(B) and Article 33 of the Convention, which both bar the return of aliens to countries where their life or freedom would be threatened because of their race, religion, nationality, political opinion, or membership in a particular social group. The United States is technically a party to the 1967 UN Protocol Relating to the Status of Refugees, not the 1951 Convention Relating to the Status of Refugees. However, the Protocol incorporated articles 2 to 34 of the Convention, and it is customary for commentators to refer to the Convention, not the Protocol, when discussing these articles.

<sup>19</sup> Executive Order 12,807 also cited INA § 215(a)(1), which provides that “[u]nless otherwise ordered by the President, it shall be unlawful for any alien to depart from or enter ... the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.” 8 U.S.C. § 1185(a)(1). For further discussion of this provision, see *infra* “Other Provisions of the INA”.

<sup>20</sup> See *Interdiction of Illegal Aliens*, 57 Fed. Reg. 23133 (June 1, 1992). President George H.W. Bush initially issued this order, but President Clinton left the order in place without modifications when he took office. It remained in effect at the time of the Court’s decision in *Sale*. See generally 509 U.S. at 165.

<sup>21</sup> *Sale*, 509 U.S. at 173-88.

In particular, the Court rejected the view of the U.S. Court of Appeals for the Second Circuit (“Second Circuit”) that interdiction was prohibited because of the INA’s prohibition upon the then-Attorney General returning an alien to a country where he or she would be persecuted.<sup>22</sup> The Second Circuit had reached this conclusion by noting that the Attorney General was the President’s “agent” in matters of immigration.<sup>23</sup> Therefore, it found that INA’s prohibition on the Attorney General returning aliens to countries where the alien’s life or freedom would be threatened because of the alien’s race, religion, nationality, political opinion, or membership in a particular social group should be imputed to the rest of the executive branch.<sup>24</sup> The Supreme Court disagreed, however, holding that the interdiction program created by the President did not “usurp[] authority that Congress has delegated to, or implicate[] responsibilities that it has imposed on, the Attorney General alone.”<sup>25</sup> The Court reached this conclusion, in part, because it viewed the INA as restricting only the then-Attorney General’s immigration-related responsibilities under the act. It did not view the INA as restricting the President’s actions in geographic areas outside of where Congress had authorized the Attorney General to act in the immigration context (i.e., outside the United States).<sup>26</sup> The upshot of this reasoning was that the Court declined to find that the interdiction program implemented under the authority of Section 212(f) ran afoul of statutory or treaty-based restrictions.

The *Sale* decision also helped define what is meant by the term *entry* as that term is used in Section 212(f). At the time when *Sale* was decided, the INA explicitly defined *entry* to encompass “any coming of an alien into the United States, from any foreign port or place or from an outlying possession, whether voluntarily or otherwise.”<sup>27</sup> Therefore, consistent with this definition, the Court distinguished between (1) aliens who are “on our shores seeking admission” or “on the threshold of initial entry,” and (2) aliens who are within the United States after entry, regardless of the legality of that entry.<sup>28</sup> While the statutory definition of *entry* that the Court relied upon was deleted from the INA as part of the amendments made by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (P.L. 104-208),<sup>29</sup> the *Sale* Court’s construction of *entry* has persisted in discussions of Section 212(f) and in other contexts.<sup>30</sup>

<sup>22</sup> *Id.* at 171-72. For several decades, the authority to interpret, implement, and enforce the provisions of the INA was primarily vested in the Attorney General. The Attorney General, in turn, delegated this authority to the Immigration and Naturalization Service (INS) within the Department of Justice. Following the establishment of the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002 (P.L. 107-296), the INS was abolished and its functions were generally transferred to DHS. *See* 6 U.S.C. § 251. Although the INA still refers to the Attorney General in multiple places, such references are generally (although not universally) taken to mean the Secretary of Homeland Security. *See generally* CRS Legal Sidebar WSLG553, *Does It Matter Whether the INA Says DOJ or DHS?: An Example Involving Revocation of Asylum*, by Kate M. Manuel.

<sup>23</sup> *Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1350, 1360 (2d Cir. 1992).

<sup>24</sup> *Id.* (“[W]e reject the government’s suggestion that since [the relevant provision of the INA] restricts actions of only the attorney general, the President might in any event assign the same “return” function to some other government official. Congress understood that the President’s agent for dealing with immigration matters is the attorney general, and we would find it difficult to believe that the proscription of [the INA]—returning an alien to his persecutors—was forbidden if done by the attorney general but permitted if done by some other arm of the executive branch.”).

<sup>25</sup> *Sale*, 509 U.S. at 172.

<sup>26</sup> *Id.* at 173. *See also* INA § 103(a)(1), 8 U.S.C. § 1103(a)(1) (“The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President....”).

<sup>27</sup> INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1994).

<sup>28</sup> *Sale*, 509 U.S. at 174.

<sup>29</sup> P.L. 104-208, § 301(a), 110 Stat. 3009-575 (amending Section 101(a)(13) of the INA to define *admission*, instead of (continued...))

Lower court decisions provide some further discussion of exercises of 212(f) authority that would seem to be consistent with *Sale*. The most recent of these, an unpublished 2003 decision by the Second Circuit in *Sesay v. Immigration and Naturalization Service [INS]*, granted deference to the Board of Immigration Appeals' (BIA's) determination that the alien petitioner was ineligible for asylum because a grant of asylum necessarily requires entry, and the petitioner's entry was barred by Presidential Proclamation 7062.<sup>31</sup> Previously, in its 1992 decision in *Haitian Refugee Center, Inc. v. Baker*, the U.S. Court of Appeals for the Eleventh Circuit had noted various precedents characterizing the power to exclude aliens from the country as an "inherent executive power" when opining that Section 212(f) "clearly grants the President broad discretionary authority to control the entry of aliens into the United States."<sup>32</sup> A lower court, the U.S. District Court for the Northern District of California, similarly emphasized the breadth of the executive's power over entry in conjunction with its discussion of Section 212(f) in its 1996 decision in *Encuentro del Canto Popular v. Christopher*, stating,

The exclusion of aliens is a fundamental act of sovereignty. The right to do so stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation. When Congress prescribes a procedure concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is implementing an inherent executive power.<sup>33</sup>

Collectively, *Sale* and these other decisions suggest that Section 212(f) gives the Executive significant power to bar or impose conditions upon the entry of aliens "on our shores seeking admission" or "on the threshold of initial entry."<sup>34</sup> None of these decisions note any limitations upon the President's power under Section 212(f). This silence could, however, be seen, in part, to reflect the arguably limited nature of the Executive's use of its Section 212(f) authority to date. As **Table 1** below illustrates, prior exercises of presidential authority under Section 212(f) have

(...continued)

entry). See *supra* note 5.

<sup>30</sup> See, e.g., *Sesay v. INS*, 74 Fed. App'x 84, 86 (2d Cir. 2003) (considering the meaning of "entry" in the course of addressing whether a grant of asylum requires entry into the United States); *Matter of Rosas-Ramirez*, 22 I. & N. Dec. 616, 617 (BIA 1999) (discussing whether adjustment of status while within the United States constitutes an "admission" for purposes of INA § 237(a)(2)(A)(iii), and noting that admission is defined, in part, in terms of "entry").

<sup>31</sup> 74 Fed. App'x at 86. The BIA is the highest administrative tribunal for interpreting and applying immigration law. The Second Circuit noted, but did not address, arguments as to the relationship between Sections 212(d) and 212(f) in its decision. The Secretary of Homeland Security's authority to parole aliens into the United States under Section 212(d), however, could be seen as a counterpart to the President's authority under Section 212(f) in that the President may "parole"—or permit the entry into the United States—almost any alien, regardless of whether the alien is subject to one or more of the grounds of inadmissibility set forth in Section 212(a). See INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) ("The Attorney General [later, Secretary of Homeland Security] may [subject to certain restrictions involving refugees and alien laborers] in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States....").

<sup>32</sup> 953 F.2d 1498, 1506-08 (11<sup>th</sup> Cir. 1992).

<sup>33</sup> 930 F. Supp. 1360, 1365 (N.D. Cal. 1996) (quoting *Knauff v. Shaughnessy*, 338 U.S. 537 (1949) (upholding the executive branch's determination to exclude the alien wife of a former U.S. servicemember, who was eligible for admission under the War Brides Act of 1945, because of concerns that her admission would endanger public safety)). The *Christopher* case arose from a challenge to the denial or revocation of visas to certain Cubans pursuant to Presidential Proclamation 5377, which suspended the entry of individuals whom the Secretary of State (or a designee) considered to be officers or employees of the Cuban government or Cuban Communist Party. As the district court noted, although the plaintiffs at times seem to have suggested that Section 212(f) itself is invalid, their argument was best construed as being that Presidential Proclamation 5377 was invalid because it conflicted with Section 901 of the Foreign Relations Authorization Act for FY1988-1989. *Id.* at 1363.

<sup>34</sup> *Sale*, 509 U.S. at 174.

differed in terms of which and how many aliens are subject to exclusion. In no case to date, though, has the Executive purported to take certain types of action, such as barring all aliens from entering the United States for an extended period of time or explicitly distinguishing between categories of aliens based on their religion. Any such restrictions could potentially be seen to raise legal issues that were not raised by prior exclusions. For example, if the Executive were to seek to bar the entry of all aliens, as immigrants or nonimmigrants, for an extended time, questions could be raised about whether the President’s action was consistent with Congress’s intent in enacting statutes which prescribe criteria for the issuance of family- and employment-based immigrant and nonimmigrant visas and authorize the issuance of certain numbers of such visas each year.<sup>35</sup> Similarly, if the President were to purport to exclude aliens based on their religion, an argument could potentially be made that this action is in tension with U.S. treaty obligations<sup>36</sup> or the First Amendment.<sup>37</sup> (Distinctions between aliens based on nationality, in contrast, have historically been viewed as a routine feature of immigration legislation and subjected to deferential “rational basis” review by the courts.<sup>38</sup>)

**Table I. Categories of Aliens Excluded under INA § 212(f)**

Arranged Chronologically, from the Most to the Least Recent,  
by the Date of Their Publication in the *Federal Register*

Date & President	Nature of the Exclusion
2016, Apr. 21 – Obama <i>Executive Order 13726, 81 Fed. Reg. 23559</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have “contributed to the situation in Libya” in specified ways (e.g., engaging in “actions or policies that threaten the peace, security, or stability” of that country or may lead to or result in the

<sup>35</sup> For example, Section 203(a)(1) provides that “[q]ualified immigrants who are the unmarried sons or daughters of citizens of the United States *shall* be allocated visas in a number not to exceed 23,400” (with some additions possible) each year. *See* 8 U.S.C. § 1153(a)(1). “Shall” has been construed to indicate mandatory agency action when used in other contexts. *See, e.g.,* *Kirtsang v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1983 (2016); *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1977 (2016); *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1931 (2016).

<sup>36</sup> For example, Article 2 of the International Covenant on Civil and Political Rights provides that “[e]ach State Party ... undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind” based on religion, among other things. United Nations, Human Rights, Office of the High Commissioner, International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last accessed: Jan. 14, 2017). The United States ratified this Convention in 1992, with certain reservations, understandings, and declarations. *See, e.g.,* Kristina Ash, *U.S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence*, 3 *NW. J. INT’L HUM. RTS.* 1, 2 (2005). However, “Congress has not made the treaty enforceable in U.S. courts,” and commentators have disagreed as to whether it or other provisions of law (e.g., the First Amendment) could serve as basis for invalidating the exclusion of certain aliens because of their religion. *See, e.g.,* Debra Cassens Weiss, *Would SCOTUS Uphold Trump’s Plan to Bar Muslim Immigrants*, *ABA J.*, Dec. 9, 2015, [http://www.abajournal.com/news/article/would\\_scotus\\_uphold\\_trumps\\_plan\\_to\\_bar\\_muslim\\_immigrants](http://www.abajournal.com/news/article/would_scotus_uphold_trumps_plan_to_bar_muslim_immigrants).

<sup>37</sup> Aliens outside the United States without recognized ties to the country might have difficulty in maintaining such a challenge. *See id.* However, in certain cases, a ban on the entry of persons based on religion could potentially be seen to impinge upon the First Amendment rights of U.S. citizens by, for example, excluding officers and teachers of that religion. *Cf. Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972) (recognizing that U.S. persons whose constitutional rights are adversely affected by the denial of a visa way to an alien outside the United States may have the right to challenge the denial in certain circumstances).

<sup>38</sup> *See, e.g.,* *Rajah v. Mukasey*, 544 F.3d 427, 435-36 (2d Cir. 2008) (quoting an earlier decision to the effect that the “most exacting level of scrutiny that we will impose on immigration legislation is rational basis review”); *Narenji v. Civiletti*, 617 F.2d 745, 748 (D.C. Cir. 1980) (“[C]lassifications among aliens based upon nationality are consistent with due process and equal protection if supported by a rational basis....”).

Date & President	Nature of the Exclusion
2016, Mar. 18 – Obama <i>Executive Order 13722, 81 Fed. Reg. 14943</i>	misappropriation of Libyan state assets)  Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain transactions involving North Korea (e.g., selling or purchasing metal, graphite, coal, or software directly or indirectly to or from North Korea, or to persons acting for or on behalf of the North Korean government or the Workers' Party of Korea)
2015, Nov. 25 – Obama <i>Executive Order 13712, 80 Fed. Reg. 73633</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have “contributed to the situation in Burundi” in specified ways (e.g., engaging in “actions or policies that threaten the peace, security, or stability of Burundi,” or “undermine democratic processes or institutions” in that country)
2015, Apr. 2 – Obama <i>Executive Order 13694, 80 Fed. Reg. 18077 (later amended by Executive Order 13757, 82 Fed. Reg. 1 (Jan. 3, 2017))</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in “significant malicious cyber-enabled activities” (e.g., harming or significantly compromising the provision of services by a computer or computer network that supports an entity in a critical infrastructure sector)
2015, Mar. 11 – Obama <i>Executive Order 13692, 80 Fed. Reg. 12747</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have “contributed to the situation in Venezuela” in specified ways (e.g., engaging in actions or policies that undermine democratic processes or institutions, significant acts of violence or conduct that constitutes a serious abuse or violation of human rights)
2015, Jan. 6 – Obama <i>Executive Order 13687, 80 Fed. Reg. 819</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens with specified connections to North Korea (e.g., officials of the North Korean government or the Workers' Party of Korea)
2014, Dec. 24 – Obama <i>Executive Order 13685, 79 Fed. Reg. 77357</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain transactions involving the Crimea region of Ukraine (e.g., materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of, persons whose property or interests are blocked pursuant to the order)
2014, May 15 – Obama <i>Executive Order 13667, 79 Fed. Reg. 28387</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have contributed to the conflict in the Central African Republic in specified ways (e.g., engaging in actions or policies that threaten the peace, security, or stability of that country, or that threaten transitional agreements or the political transition process)
2014, Apr. 7 – Obama <i>Executive Order 13664, 79 Fed. Reg. 19283</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain conduct as to South Sudan (e.g., actions or policies that “have the purpose or effect of expanding or extending the conflict” in that country, or obstructing reconciliation or peace talks or processes)
2014, Mar. 24 – Obama <i>Executive Order 13662, 79 Fed. Reg. 16169</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have contributed to the situation in Ukraine in specified ways (e.g., operating in the financial services, energy, metals and mining, engineering, or defense and related materiel sectors of the Russian Federation economy)
2014, Mar. 19 – Obama <i>Executive Order 13661, 79 Fed. Reg. 15535</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens determined to have contributed to the situation in Ukraine in specified ways (e.g., officials of the government of the Russian Federation, or persons who operate in the arms or related materiel sector)
2014, Mar. 10 – Obama <i>Executive Order 13660, 79 Fed.</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens determined to have contributed to the situation in Ukraine in specified ways (e.g., engagement in or responsibility for misappropriation of state assets of

Date & President	Nature of the Exclusion
Reg. 13493	Ukraine or of economically significant entities in that country)
2013, June 5 – Obama <i>Executive Order 13645, 78 Fed. Reg. 33945</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who have engaged in certain conduct related to Iran (e.g., materially assisting, sponsoring, or providing support for, or goods or services to or in support of, any Iranian person included on the list of Specially Designated Nationals and Blocked Persons)
2012, Oct. 12 – Obama <i>Executive Order 13628, 77 Fed. Reg. 62139</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain actions involving Iran (e.g., knowingly transferring or facilitating the transfer of goods or technologies to Iran, to entities organized under Iranian law or subject to Iranian jurisdiction, or to Iranian nationals, that are likely to be used by the Iranian government to commit serious human rights abuses against the Iranian people)
2012, July 13 – Obama <i>Executive Order 13619, 77 Fed. Reg. 41243</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to threaten the peace, security, or stability of Burma in specified ways (e.g., participation in the commission of human rights abuses, or importing or exporting arms or related materiel to or from North Korea)
2012, May 3 – Obama <i>Executive Order 13608, 77 Fed. Reg. 26409</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who are determined to have engaged in certain conduct as to Iran and Syria (e.g., facilitating deceptive transactions for or on behalf of any person subject to U.S. sanctions concerning Iran and Syria)
2012, Apr. 24 – Obama <i>Executive Order 13606, 77 Fed. Reg. 24571</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens determined to have engaged in specified conduct involving “grave human rights abuses by the governments of Iran and Syria via information technology” (e.g., operating or directing the operation of communications technology that facilitates computer or network disruption, monitoring, or tracking that could assist or enable serious human rights abuses by or on behalf of these governments)
2011, Aug. 9 – Obama <i>Proclamation 8697, 76 Fed. Reg. 49277</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who participate in serious human rights and humanitarian law violations and other abuses (e.g., planning, ordering, assisting, aiding and abetting, committing, or otherwise participating in “widespread or systemic violence against any civilian population” based, in whole or in part, on race, color, descent, sex, disability, language, religion, ethnicity, birth, political opinion, national origin, membership in a particular social group, membership in an indigenous group, or sexual orientation or gender identity)
2011, July 27 – Obama <i>Proclamation 8693, 76 Fed. Reg. 44751</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens subject to U.N. Security Council travel bans and International Emergency Economic Powers Act sanctions
2009, Jan. 22 – Bush <i>Proclamation 8342, 74 Fed. Reg. 4093</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of foreign government officials responsible for failing to combat trafficking in persons
2007, July 3 – Bush <i>Proclamation 8158, 72 Fed. Reg. 36587</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for policies or actions that threaten Lebanon’s sovereignty and democracy (e.g., current or former Lebanese government officials and private persons who “deliberately undermine or harm Lebanon’s sovereignty”)
2006, May 16 – Bush <i>Proclamation 8015, 71 Fed. Reg. 28541</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for policies or actions that threaten the transition to democracy in Belarus (e.g., Members of the government of Alyaksandr Lukashenka and other persons involved in policies or actions that “undermine or injure democratic institutions or impede the transition to democracy in Belarus”)
2004, Jan. 14 – Bush <i>Proclamation 7750, 69 Fed. Reg.</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who have engaged in or benefitted from corruption in specified ways (e.g., current or former public officials whose solicitation or acceptance of articles of

Date & President	Nature of the Exclusion
2287	monetary value or other benefits has or had “serious adverse effects on the national interests of the United States”)
2002, Feb. 26 – Bush <i>Proclamation 7524, 67 Fed. Reg. 8857</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for actions that threaten Zimbabwe’s democratic institutions and transition to a multi-party democracy (e.g., Senior members of the government of Robert Mugabe, persons who through their business dealings with Zimbabwe government officials derive significant financial benefit from policies that undermine or injure Zimbabwe’s democratic institutions)
2001, June 29 – Bush <i>Proclamation 7452, 66 Fed. Reg. 34775</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons responsible for actions that threaten international stabilization efforts in the Western Balkans, or are responsible for wartime atrocities in that region
2000, Oct. 13 – Clinton <i>Proclamation 7359, 65 Fed. Reg. 60831</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who plan, engage in, or benefit from activities that support the Revolutionary United Front or otherwise impede the peace process in Sierra Leone
1999, Nov. 17 – Clinton <i>Proclamation 7249, 64 Fed. Reg. 62561</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens responsible for repression of the civilian population in Kosovo or policies that obstruct democracy in the Federal Republic of Yugoslavia (FRY) or otherwise lend support to the government of the FRY and the Republic of Serbia
1998, Jan. 16 – Clinton <i>Proclamation 7062, 63 Fed. Reg. 2871</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of members of the military junta in Sierra Leone and their family
1997, Dec. 16 – Clinton <i>Proclamation 7060, 62 Fed. Reg. 65987</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of senior officials of the National Union for the Total Independence of Angola (UNITA) and adult members of their immediate families
1996, Nov. 26 – Clinton <i>Proclamation 6958, 61 Fed. Reg. 60007</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of members of the government of Sudan, officials of that country, and members of the Sudanese armed forces
1996, Oct. 7 – Clinton <i>Proclamation 6925, 61 Fed. Reg. 52233</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who “formulate, implement, or benefit from policies that impede Burma’s transition to democracy” and their immediate family members
1994, Oct. 27 – Clinton <i>Proclamation 6749, 59 Fed. Reg. 54117</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of certain aliens described in U.N. Security Council Resolution 942 (e.g., officers of the Bosnian Serb military and paramilitary forces and those acting on their behalf, or persons found to have provided financial, material, logistical, military, or other tangible support to Bosnian Serb forces in violation of relevant U.S. Security Council resolutions)
1994, Oct. 5 – Clinton <i>Proclamation 6730, 59 Fed. Reg. 50683</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who formulate, implement, or benefit from policies that impede Liberia’s transition to democracy and their immediate family
1994, May 10 – Clinton <i>Proclamation 6685, 59 Fed. Reg. 24337</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens described in U.N. Security Council Resolution 917 (e.g., officers of the Haitian military, including the police, and their immediate families; major participants in the 1991 Haitian coup d’etat)
1993, Dec. 14 – Clinton <i>Proclamation 6636, 58 Fed. Reg. 65525</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of aliens who formulate, implement, or benefit from policies that impede Nigeria’s transition to democracy and their immediate family
1993, June 23 – Clinton <i>Proclamation 6574, 58 Fed. Reg.</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who formulate or benefit from policies that impede Zaire’s transition to democracy and their immediate family

Date & President	Nature of the Exclusion
34209	
1993, June 7 – Clinton <i>Proclamation 6569, 58 Fed. Reg. 31897</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of persons who formulate, implement, or benefit from policies that impede the progress of negotiations to restore a constitutional government to Haiti and their immediate family
1992, June 1 – Bush <i>Executive Order 12807, 57 Fed. Reg. 23133</i>	Making provisions to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any covered vessel carrying such aliens
1988, Oct. 26 – Reagan <i>Proclamation 5887, 53 Fed. Reg. 43184</i>	Suspending the entry of specified Nicaraguan nationals into the United States as nonimmigrants (e.g., officers of the Nicaraguan government or the Sandinista National Liberation Front holding diplomatic or official passports)
1988, June 14 – Reagan <i>Proclamation 5829, 53 Fed. Reg. 22289</i>	Suspending the entry into the United States, as immigrants or nonimmigrants, of certain Panamanian nationals who formulate or implement the policies Manuel Antonio Noriega and Manuel Solis Palma, and their immediate families
1986, Aug. 26 – Reagan <i>Proclamation 5517, 51 Fed. Reg. 30470</i>	Suspending the entry of Cuban nationals as immigrants with certain specified exceptions (e.g., Cuban nationals applying for admission as immediate relatives under INA § 201(b))
1985, Oct. 10 – Reagan <i>Proclamation 5377, 50 Fed. Reg. 41329</i>	Suspending the entry of specified classes of Cuban nationals as nonimmigrants (e.g., officers or employees of the Cuban government or the Communist Party of Cuba holding diplomatic or official passports)
1981, Oct. 1 – Reagan <i>Proclamation 4865, 46 Fed. Reg. 48107</i>	Suspending the entry of undocumented aliens from the high seas, and directing the interdiction of certain vessels carrying such aliens

**Source:** Congressional Research Service, based on various sources cited in **Table I**.

**Note:** In a number of cases, the exclusions listed in **Table I** were expressly said to be waivable, in the Executive's discretion, when the entry of a particular alien otherwise subject to exclusion "would not be contrary to the interests of the United States." See, e.g., 50 Fed. Reg. 41329, at § 2 (Oct. 10, 1985).

## Other Provisions of the INA

Beyond Section 212(f), other provisions of the INA can also be seen to authorize the Executive to restrict aliens' entry to the United States.<sup>39</sup> Most notably, Section 214(a)(1) prescribes that the "admission of any alien to the United States as a nonimmigrant shall be for such time and under such conditions as [the Executive] may by regulations prescribe."<sup>40</sup> (Nonimmigrants are aliens admitted to the United States for a specific period of time and purpose pursuant to one of the

<sup>39</sup> In addition, yet other provisions of the INA could be seen to give the Executive discretion as to whether certain categories of aliens are admitted. For example, Section 207(a)(2) of the INA could be seen to give the Executive broad discretion in determining how many aliens are admitted to the United States as refugees each year. See 8 U.S.C. § 1157(a)(2). Other provisions outside immigration law could also apply. See National Defense Authorization Act for FY2017, P.L. 114-328, §§ 1261-1265, —Stat.—(Dec. 23, 2016) (sanctions for human rights abusers); Consolidated Appropriations Act, P.L. 114-113, § 7031(c), 129 Stat. 2755 (Dec. 18, 2015) (providing that certain foreign officials involved in "significant corruption" and their immediate family are ineligible for entry to the United States); Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, P.L. 112-208, §§ 404-406, 126 Stat. 1505-1509 (Dec. 14, 2012) (excluding certain aliens involved in human rights abuses).

<sup>40</sup> 8 U.S.C. § 1184(a)(1).

“lettered” visas set forth in Section 101(a)(15) of the INA.<sup>41</sup> Section 215(a)(1) similarly provides that “it shall be unlawful for any alien” to enter or depart the United States “except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.”<sup>42</sup> In the past, the Executive has relied upon Section 215(a)(1), in particular, to exclude certain aliens. For example, President Carter cited to Section 215(a) when authorizing the revocation of immigrant and nonimmigrant visas issued to Iranians during the Iran Hostage Crisis.<sup>43</sup>

The current Section 215(a) was enacted as part of the INA in 1952.<sup>44</sup> However, similar language appeared in earlier immigration-related statutes.<sup>45</sup> Both the earlier language and the initial version of Section 215(a) granted the President the power to impose additional restrictions upon aliens’ entry into and departure from the United States during times of war and, in some cases, “national emergency.”<sup>46</sup> The President’s exclusion of certain aliens under this authority<sup>47</sup> was upheld in several court cases, the most notable of which was arguably the Supreme Court’s 1950 decision in *United States ex rel. Knauff v. Shaughnessy*.<sup>48</sup> There, the Court rejected a challenge to the exclusion of a German “war bride” under regulations promulgated pursuant to Presidential Proclamation 2523, which was itself issued under the authority of a predecessor of Section 215(a).<sup>49</sup> In so doing, the Court rejected the excluded bride’s argument that both the regulations and the underlying statute constituted an impermissible delegation of legislative power, reasoning that “[t]he exclusion of aliens is a fundamental act of sovereignty. The right to do so stems not

<sup>41</sup> *Id.* § 1101(a)(15) (defining an “immigrant” to mean “every alien *except* an alien who is within one of the following classes of nonimmigrant aliens....”) (emphasis added).

<sup>42</sup> *Id.* § 1184(a)(1).

<sup>43</sup> See Executive Order 12172, Delegation of Authority With Respect to Entry of Certain Aliens Into the United States, 44 Fed. Reg. 67947, 67947 (Nov. 28, 1979) (authorizing the Secretary of State and the Attorney General to exercise “in respect of Iranians holding *nonimmigrant visas*, the authority conferred upon the President by section 215(a)(1) of the Act of June 27, 1952 (8 USC 1185)...”) (emphasis added); Executive Order 12206, Amendment of Delegation of Authority with Respect to Entry of Certain Aliens Into the United States,” 45 Fed. Reg. 24101, 24201 (Apr. 7, 1980) (amending Executive Order 12172 to cover *immigrant*, as well as nonimmigrant visas). The exclusion addressed in *Sale* was also effectuated, in part, under the authority of Section 215(a). See *supra* note 19.

<sup>44</sup> See P.L. 82-414, § 212(e), 66 Stat. 190 (June 27, 1952).

<sup>45</sup> See P.L. 65-164, 40 Stat. 559 (May 22, 1918) (“[W]hen the United States is at war, if the President shall find that public safety requires that restrictions and prohibitions ... be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful [f]or any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe.”); P.L. 77-113, 55 Stat. 252 (June 20, 1941) (similar).

<sup>46</sup> See 66 Stat. 190 (war and national emergency); 55 Stat. 252 (war); 40 Stat. 559 (war).

<sup>47</sup> See, e.g., Proclamation 3,004, Control of Persons Leaving or Entering the United States, 18 Fed. Reg. 489 (Jan. 17, 1953) (President Truman relying, in part, on a predecessor to Section 215(a) to impose restrictions on the entry of aliens into the Panama Canal Zone and American Samoa); Proclamation 2,850, 14 Fed. Reg. 5173 (Aug. 19, 1949) (President Truman relying, in part, on a predecessor to Section 215(a) in excluding aliens whose entry executive officials deem “would be prejudicial to the interests of the United States”); Proclamation 2,523, Control of Persons Entering and Leaving the United States, 6 Fed. Reg. 2617 (Nov. 18, 1941) (similar, President Roosevelt).

<sup>48</sup> 338 U.S. 537 (1950). See also *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) (noting the President’s power to exclude aliens in the course of finding that an alien who was so excluded, but whom no other country would accept, was not entitled to release into the United States). The *Mezei* Court, in particular, cited a number of precedents for the proposition that “the power to expel or exclude aliens [is] a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.” 345 U.S. at 210 (citing *Harisades v. Shaughnessy*, 342 U.S. 580 (1952); *The Chinese Exclusion Case*, 130 U.S. 581 (1889); and *Fong Yue Ting v. United States*, 149 U.S. 698 (1893)).

<sup>49</sup> *Knauff*, 338 U.S. at 540-42.

from legislative power but is inherent in the executive power to control the foreign affairs of the nation.”<sup>50</sup> Therefore, in the Court’s view, Congress could not have run afoul of the non-delegation doctrine by authorizing the President to exercise this power “for the best interests of the country” during wartime because the President already possessed such authority.<sup>51</sup> The *Knauff* Court similarly rejected the argument that the regulations in question were not “reasonable,” as required by the statutory authority under which they were issued—which in relevant part, made it unlawful for an alien to enter the United States “except under such reasonable rules ... as the President may prescribe.”<sup>52</sup> The Court did so because it viewed the regulations excluding aliens whose entry was “deemed prejudicial to the public interest” as “reasonable in the circumstances of the period for which they were authorized, namely, the national emergency of World War II.”<sup>53</sup>

The statutory language regarding war and national emergency—which arguably factored into the Court’s decision in *Knauff*—was deleted from Section 215(a) in 1978.<sup>54</sup> However, it seems unlikely that this deletion would serve as a basis for overruling the *Knauff* Court’s conclusions about whether the power in question was impermissibly delegated to the Executive,<sup>55</sup> or about what constitutes a “reasonable” regulation for purposes of Section 215(a).<sup>56</sup> *Knauff*’s statements about the inherent power of nations to exclude aliens outside the United States with no recognized ties to the country would also generally seem to remain good law.<sup>57</sup>

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<sup>50</sup> *Id.* at 542.

<sup>51</sup> *Id.* at 542-43 (“[T]here is no question of inappropriate delegation of legislative power involved here.”). The non-delegation doctrine precludes Congress from handing over its legislative powers to other branches of the federal government. However, Congress may “confer[] decisionmaking authority upon agencies, so long as it “lays down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform.” See *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 472 (2001) (internal quotations omitted).

<sup>52</sup> 338 U.S. at 544.

<sup>53</sup> *Id.*

<sup>54</sup> P.L. 95-426, § 707(a), 92 Stat. 992-93 (Oct. 7, 1978).

<sup>55</sup> *Cf.* Cass R. Sunstein, *Nondelegation Canons*, 67 U. CHI. L. REV. 315, 315 (2000) (“Since 1935, the Supreme Court has not struck down an act of Congress on nondelegation grounds....”).

<sup>56</sup> There does not appear to be any court cases establishing what is meant by the term “reasonable regulations” for purposes of Section 215(a) and its predecessors. However, courts may grant considerable deference to the Executive’s determinations in this area, given the “plenary power” that the political branches are generally seen to have over immigration. *See, e.g., Mathews v. Diaz*, 426 U.S. 67, 81 (1976) (“For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.”).

<sup>57</sup> *See, e.g., Jean v. Nelson*, 472 U.S. 847, 875 (1985) (“It is in the area of entry] that the Government’s interest in protecting our sovereignty is at its strongest and that individual claims to constitutional entitlement are the least compelling.”); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (citing cases finding that the power to exclude is a “fundamental sovereign attribute”); *Kleindeinst v. Mandel*, 408 U.S. 753, 765 (similar) (1972). Certain limits to this power have, however, been recognized, particularly as to aliens with recognized ties to the United States or who would need to be detained in the United States to effectuate their exclusion. *See, e.g., CRS Legal Sidebar WSLG1695, Supreme Court to Hear Challenge to Aliens’ Detention Pending Removal Proceedings*, by Kate M. Manuel.

# **Exhibit BB**



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2	<a href="http://geos/in.html">India (../geos/in.html)</a>	1,281,935,911	July 2017 est.
3	<a href="http://geos/us.html">United States (../geos/us.html)</a>	326,625,791	July 2017 est.
4	<a href="http://geos/id.html">Indonesia (../geos/id.html)</a>	260,580,739	July 2017 est.
5	<a href="http://geos/br.html">Brazil (../geos/br.html)</a>	207,353,391	July 2017 est.
6	<a href="http://geos/pk.html">Pakistan (../geos/pk.html)</a>	204,924,861	July 2017 est.
7	<a href="http://geos/ni.html">Nigeria (../geos/ni.html)</a>	190,632,261	July 2017 est.
8	<a href="http://geos/bq.html">Bangladesh (../geos/bq.html)</a>	157,826,578	July 2017 est.
9	<a href="http://geos/rs.html">Russia (../geos/rs.html)</a>	142,257,519	July 2017 est.
10	<a href="http://geos/ja.html">Japan (../geos/ja.html)</a>	126,451,398	July 2017 est.
11	<a href="http://geos/mx.html">Mexico (../geos/mx.html)</a>	124,574,795	July 2017 est.
12	<a href="http://geos/et.html">Ethiopia (../geos/et.html)</a>	105,350,020	July 2017 est.
13	<a href="http://geos/rp.html">Philippines (../geos/rp.html)</a>	104,256,076	July 2017 est.
14	<a href="http://geos/eg.html">Egypt (../geos/eg.html)</a>	97,041,072	July 2017 est.
15	<a href="http://geos/vm.html">Vietnam (../geos/vm.html)</a>	96,160,163	July 2017 est.
16	<a href="http://geos/cg.html">Congo, Democratic Republic of the (../geos/cg.html)</a>	83,301,151	July 2017 est.

17	<a href="#"><u>Iran (../geos/ir.html)</u></a>	82,021,564	July 2017 est.
18	<a href="#"><u>Turkey (../geos/tu.html)</u></a>	80,845,215	July 2017 est.
19	<a href="#"><u>Germany (../geos/gm.html)</u></a>	80,594,017	July 2017 est.
20	<a href="#"><u>Thailand (../geos/th.html)</u></a>	68,414,135	July 2017 est.
21	<a href="#"><u>France (../geos/fr.html)</u></a>	67,106,161	July 2017 est.
22	<a href="#"><u>United Kingdom (../geos/uk.html)</u></a>	64,769,452	July 2017 est.
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32	<a href="#"><u>Ukraine (../geos/up.html)</u></a>	44,033,874	July 2017 est.
33	<a href="#"><u>Algeria (../geos/ag.html)</u></a>	40,969,443	July 2017 est.
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35	<a href="#"><u>Iraq (../geos/iz.html)</u></a>	39,192,111	July 2017 est.
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37	<a href="#"><u>Sudan (../geos/su.html)</u></a>	37,345,935	July 2017 est.
38	<a href="#"><u>Canada (../geos/ca.html)</u></a>	35,623,680	July 2017 est.
39	<a href="#"><u>Afghanistan (../geos/af.html)</u></a>	34,124,811	July 2017 est.
40	<a href="#"><u>Morocco (../geos/mo.html)</u></a>	33,986,655	July 2017 est.
41	<a href="#"><u>Malaysia (../geos/my.html)</u></a>	31,381,992	July 2017 est.
42	<a href="#"><u>Venezuela (../geos/ve.html)</u></a>	31,304,016	July 2017 est.
43	<a href="#"><u>Peru (../geos/pe.html)</u></a>	31,036,656	July 2017 est.
44	<a href="#"><u>Uzbekistan (../geos/uz.html)</u></a>	29,748,859	July 2017 est.
45	<a href="#"><u>Nepal (../geos/np.html)</u></a>	29,384,297	July 2017 est.
46	<a href="#"><u>Angola (../geos/ao.html)</u></a>	29,310,273	July 2017 est.
47	<a href="#"><u>Saudi Arabia (../geos/sa.html)</u></a>	28,571,770	July 2017 est.
48	<a href="#"><u>Yemen (../geos/ym.html)</u></a>	28,036,829	July 2017 est.

49	<u><a href="#">Ghana (../geos/gh.html)</a></u>	27,499,924	July 2017 est.
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51	<u><a href="#">Korea, North (../geos/kn.html)</a></u>	25,248,140	July 2017 est.
52	<u><a href="#">Madagascar (../geos/ma.html)</a></u>	25,054,161	July 2017 est.
53	<u><a href="#">Cameroon (../geos/cm.html)</a></u>	24,994,885	July 2017 est.
54	<u><a href="#">Cote d'Ivoire (../geos/iv.html)</a></u>	24,184,810	July 2017 est.
55	<u><a href="#">Taiwan (../geos/tw.html)</a></u>	23,508,428	July 2017 est.
56	<u><a href="#">Australia (../geos/as.html)</a></u>	23,232,413	July 2017 est.
57	<u><a href="#">Sri Lanka (../geos/ce.html)</a></u>	22,409,381	July 2017 est.
58	<u><a href="#">Romania (../geos/ro.html)</a></u>	21,529,967	July 2017 est.
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60	<u><a href="#">Niger (../geos/ng.html)</a></u>	19,245,344	July 2017 est.
61	<u><a href="#">Malawi (../geos/mi.html)</a></u>	19,196,246	July 2017 est.
62	<u><a href="#">Kazakhstan (../geos/kz.html)</a></u>	18,556,698	July 2017 est.
63	<u><a href="#">Syria (../geos/sy.html)</a></u>	18,028,549	July 2017 est.
64	<u><a href="#">Mali (../geos/ml.html)</a></u>	17,885,245	July 2017 est.
65	<u><a href="#">Chile (../geos/ci.html)</a></u>	17,789,267	July 2017 est.
66	<u><a href="#">Netherlands (../geos/nl.html)</a></u>	17,084,719	July 2017 est.
67	<u><a href="#">Ecuador (../geos/ec.html)</a></u>	16,290,913	July 2017 est.
68	<u><a href="#">Cambodia (../geos/cb.html)</a></u>	16,204,486	July 2017 est.
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70	<u><a href="#">Guatemala (../geos/qt.html)</a></u>	15,460,732	July 2017 est.
71	<u><a href="#">Senegal (../geos/sq.html)</a></u>	14,668,522	July 2017 est.
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74	<u><a href="#">Guinea (../geos/gv.html)</a></u>	12,413,867	July 2017 est.
75	<u><a href="#">Chad (../geos/cd.html)</a></u>	12,075,985	July 2017 est.
76	<u><a href="#">Rwanda (../geos/rw.html)</a></u>	11,901,484	July 2017 est.
77	<u><a href="#">Belgium (../geos/be.html)</a></u>	11,491,346	July 2017 est.
78	<u><a href="#">Burundi (../geos/by.html)</a></u>	11,466,756	July 2017 est.
79	<u><a href="#">Tunisia (../geos/ts.html)</a></u>	11,403,800	July 2017 est.
80	<u><a href="#">Cuba (../geos/cu.html)</a></u>	11,147,407	July 2017 est.

<b>81</b>	<b><u><a href="#">Bolivia (../geos/bl.html)</a></u></b>	11,138,234	July 2017 est.
<b>82</b>	<b><u><a href="#">Benin (../geos/bn.html)</a></u></b>	11,038,805	July 2017 est.
<b>83</b>	<b><u><a href="#">Somalia (../geos/so.html)</a></u></b>	11,031,386	July 2017 est.
<b>84</b>	<b><u><a href="#">Portugal (../geos/po.html)</a></u></b>	10,839,514	July 2017 est.
<b>85</b>	<b><u><a href="#">Greece (../geos/gr.html)</a></u></b>	10,768,477	July 2017 est.
<b>86</b>	<b><u><a href="#">Dominican Republic (../geos/dr.html)</a></u></b>	10,734,247	July 2017 est.
<b>87</b>	<b><u><a href="#">Czechia (../geos/ez.html)</a></u></b>	10,674,723	July 2017 est.
<b>88</b>	<b><u><a href="#">Haiti (../geos/ha.html)</a></u></b>	10,646,714	July 2017 est.
<b>89</b>	<b><u><a href="#">Jordan (../geos/jo.html)</a></u></b>	10,248,069	July 2017 est.
<b>90</b>	<b><u><a href="#">Azerbaijan (../geos/aj.html)</a></u></b>	9,961,396	July 2017 est.
<b>91</b>	<b><u><a href="#">Sweden (../geos/sw.html)</a></u></b>	9,960,487	July 2017 est.
<b>92</b>	<b><u><a href="#">Hungary (../geos/hu.html)</a></u></b>	9,850,845	July 2017 est.
<b>93</b>	<b><u><a href="#">Belarus (../geos/bo.html)</a></u></b>	9,549,747	July 2017 est.
<b>94</b>	<b><u><a href="#">Honduras (../geos/ho.html)</a></u></b>	9,038,741	July 2017 est.
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<b>98</b>	<b><u><a href="#">Switzerland (../geos/sz.html)</a></u></b>	8,236,303	July 2017 est.
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<b>101</b>	<b><u><a href="#">Laos (../geos/la.html)</a></u></b>	7,126,706	July 2017 est.
<b>102</b>	<b><u><a href="#">Serbia (../geos/ri.html)</a></u></b>	7,111,024	July 2017 est.
<b>103</b>	<b><u><a href="#">Bulgaria (../geos/bu.html)</a></u></b>	7,101,510	July 2017 est.
<b>104</b>	<b><u><a href="#">Paraguay (../geos/pa.html)</a></u></b>	6,943,739	July 2017 est.
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<b>106</b>	<b><u><a href="#">Libya (../geos/ly.html)</a></u></b>	6,653,210	July 2017 est.
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<b>109</b>	<b><u><a href="#">Sierra Leone (../geos/sl.html)</a></u></b>	6,163,195	July 2017 est.
<b>110</b>	<b><u><a href="#">United Arab Emirates (../geos/ae.html)</a></u></b>	6,072,475	July 2017 est.
<b>111</b>	<b><u><a href="#">Nicaragua (../geos/nu.html)</a></u></b>	6,025,951	July 2017 est.
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134	<a href="#"><u>Puerto Rico (../geos/rq.html)</u></a>	3,351,827	July 2017 est.
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144	<a href="#"><u>Botswana (../geos/bc.html)</u></a>	2,214,858	July 2017 est.

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150	<u><a href="#">Kosovo (../geos/kv.html)</a></u>	1,895,250	July 2017 est.
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153	<u><a href="#">Gabon (../geos/gb.html)</a></u>	1,772,255	July 2017 est.
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157	<u><a href="#">Timor-Leste (../geos/tt.html)</a></u>	1,291,358	July 2017 est.
158	<u><a href="#">Estonia (../geos/en.html)</a></u>	1,251,581	July 2017 est.
159	<u><a href="#">Cyprus (../geos/cy.html)</a></u>	1,221,549	July 2017 est.
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164	<u><a href="#">Equatorial Guinea (../geos/ek.html)</a></u>	778,358	July 2017 est.
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166	<u><a href="#">Guyana (../geos/gy.html)</a></u>	737,718	July 2017 est.
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168	<u><a href="#">Montenegro (../geos/mj.html)</a></u>	642,550	July 2017 est.
169	<u><a href="#">Western Sahara (../geos/wi.html)</a></u>	603,253	July 2017 est.
170	<u><a href="#">Macau (../geos/mc.html)</a></u>	601,969	July 2017 est.
171	<u><a href="#">Luxembourg (../geos/lu.html)</a></u>	594,130	July 2017 est.
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174	<u><a href="#">Brunei (../geos/bx.html)</a></u>	443,593	July 2017 est.
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176	<u><a href="#">Maldives (../geos/mv.html)</a></u>	392,709	July 2017 est.

177	<u><a href="#">Belize (../geos/bh.html)</a></u>	360,346	July 2017 est.
178	<u><a href="#">Iceland (../geos/ic.html)</a></u>	339,747	July 2017 est.
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180	<u><a href="#">Barbados (../geos/bb.html)</a></u>	292,336	July 2017 est.
181	<u><a href="#">French Polynesia (../geos/fp.html)</a></u>	287,881	July 2017 est.
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183	<u><a href="#">New Caledonia (../geos/nc.html)</a></u>	279,070	July 2017 est.
184	<u><a href="#">Sao Tome and Principe (../geos/tp.html)</a></u>	201,025	July 2017 est.
185	<u><a href="#">Samoa (../geos/ws.html)</a></u>	200,108	July 2017 est.
186	<u><a href="#">Guam (../geos/gg.html)</a></u>	167,358	July 2017 est.
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188	<u><a href="#">Curacao (../geos/cc.html)</a></u>	149,648	July 2017 est.
189	<u><a href="#">Aruba (../geos/aa.html)</a></u>	115,120	July 2017 est.
190	<u><a href="#">Grenada (../geos/gj.html)</a></u>	111,724	July 2017 est.
191	<u><a href="#">Kiribati (../geos/kr.html)</a></u>	108,145	July 2017 est.
192	<u><a href="#">Virgin Islands (../geos/vq.html)</a></u>	107,268	July 2017 est.
193	<u><a href="#">Tonga (../geos/tn.html)</a></u>	106,479	July 2017 est.
194	<u><a href="#">Micronesia, Federated States of (../geos/fm.html)</a></u>	104,196	July 2017 est.
195	<u><a href="#">Saint Vincent and the Grenadines (../geos/vc.html)</a></u>	102,089	July 2017 est.
196	<u><a href="#">Jersey (../geos/je.html)</a></u>	98,840	July 2017 est.
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202	<u><a href="#">Dominica (../geos/do.html)</a></u>	73,897	July 2017 est.
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209	<a href="#"><u>Northern Mariana Islands (../geos/cg.html)</u></a>	52,263	July 2017 est.
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211	<a href="#"><u>Faroe Islands (../geos/fo.html)</u></a>	50,730	July 2017 est.
212	<a href="#"><u>Sint Maarten (../geos/sk.html)</u></a>	42,083	July 2017 est.
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214	<a href="#"><u>British Virgin Islands (../geos/vi.html)</u></a>	35,015	July 2017 est.
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216	<a href="#"><u>Saint Martin (../geos/rn.html)</u></a>	32,125	July 2017 est.
217	<a href="#"><u>Monaco (../geos/mn.html)</u></a>	30,645	July 2017 est.
218	<a href="#"><u>Gibraltar (../geos/gi.html)</u></a>	29,396	July 2017 est.
219	<a href="#"><u>Palau (../geos/ps.html)</u></a>	21,431	July 2017 est.
220	<a href="#"><u>Anguilla (../geos/av.html)</u></a>	17,087	July 2017 est.
221	<a href="#"><u>Wallis and Futuna (../geos/wf.html)</u></a>	15,714	July 2017 est.
222	<a href="#"><u>Tuvalu (../geos/tv.html)</u></a>	11,052	July 2017 est.
223	<a href="#"><u>Nauru (../geos/nr.html)</u></a>	9,642	July 2017 est.
224	<a href="#"><u>Cook Islands (../geos/cw.html)</u></a>	9,290	July 2017 est.
225	<a href="#"><u>Saint Helena, Ascension, and Tristan da Cunha (../geos/sh.html)</u></a>	7,828	July 2017 est.
226	<a href="#"><u>Saint Barthelemy (../geos/tb.html)</u></a>	7,184	July 2017 est.
227	<a href="#"><u>Saint Pierre and Miquelon (../geos/sb.html)</u></a>	5,533	July 2017 est.
228	<a href="#"><u>Montserrat (../geos/mh.html)</u></a>	5,292	July 2017 est.
229	<a href="#"><u>Falkland Islands (Islas Malvinas) (../geos/fk.html)</u></a>	2,931	2014 est.
230	<a href="#"><u>Svalbard (../geos/sv.html)</u></a>	2,667	July 2016 est.
231	<a href="#"><u>Norfolk Island (../geos/nf.html)</u></a>	2,210	July 2014 est.
232	<a href="#"><u>Christmas Island (../geos/kt.html)</u></a>	2,205	July 2016 est.
233	<a href="#"><u>Niue (../geos/ne.html)</u></a>	1,626	June 2015 est.
234	<a href="#"><u>Tokelau (../geos/tl.html)</u></a>	1,285	2016 est.
235	<a href="#"><u>Holy See (Vatican City) (../geos/vt.html)</u></a>	1,000	2015 est.
236	<a href="#"><u>Cocos (Keeling) Islands (../geos/ck.html)</u></a>	596	July 2014 est.
237	<a href="#"><u>Pitcairn Islands (../geos/pc.html)</u></a>	54	July 2016 est.



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# **Exhibit CC**

COMMENTARY

# The Basic Premise of Trump's Travel Ban Is Wrong

By *David Bier*

This article appeared on [Washington Post](#) on September 26, 2017.

President Trump issued a presidential proclamation this weekend instituting a new “travel ban” that restricts entry to the United States for nationals of eight countries. The president cites America's inability to screen out terrorists as the justification for the ban. But such a ban would not have kept out the 9/11 hijackers or any terrorists since then, nor would it have prevented any terrorism deaths in decades.

Not only do the purported threats lack merit; the vetting rationale does, too. The ban singles out nationals of Chad, Iran, Libya, North Korea, Syria, Venezuela, Somalia and Yemen. The purported basis for the proclamation is that most of these governments fail to share sufficient information about the identities of their nationals with U.S. agencies to, as the proclamation states, “adjudicate an application” for a visa by their nationals.

This premise is flawed. Under immigration law, the U.S. government doesn't need to obtain *any* information on visa applicants merely to process an application. That's because applicants bear the burden of proof in the visa process. If they cannot prove their identity and eligibility, visa adjudicators can simply deny them on an individual basis.

This means that the travel ban exists solely to deny visa adjudicators the opportunity to review each application. The president apparently doesn't trust these trained experts to do their jobs. The proclamation provides no reason to doubt the integrity of consular officials reviewing visa applications, nor does it provide any evidence that they are failing to review evidence properly.

In fact, consular officials ~~do~~ ramp up visa denials for nationals of countries involved in civil wars. The denial rate for Syrians more than doubled what it was before war broke out in their country. This increase likely reflects the inability of applicants to obtain certain documents or to prove they will return to their home country when the visa expires.

Supporters of the president's travel ban may ask: If it's true that these foreign governments fail to cooperate fully with information-sharing, why not institute a blanket ban on their nationals and save adjudicators the trouble? The answer is because many applicants from these countries *can* still prove their identity and eligibility. That's what makes the ban *politically* necessary, even if it is *legally* unnecessary.

Tens of thousands of the nationals of these countries have already traveled back and forth peacefully to the United States. The U.S. government knows exactly who they are. Thousands of others have U.S. citizen family sponsors whose identity can be proven with a DNA match.

But there is a second major failure in Trump's proclamation: It equates people's "nationality" with their "government." A person can have the nationality of a country that does not fully cooperate with the United States without ever having lived under the targeted regime.

Syrians and Iranians, for example, can be born abroad and live their entire lives outside of those countries and yet maintain Syrian or Iranian nationality. It's just incorrect to assume any connection between a government and "its people." Most countries in the world lack birthright citizenship, so it's possible that Syrian or Iranian nationality could be their only nationality.

Given these facts, the proclamation amounts to a White House override of the immigration screeners, preventing the entry of nationals of these countries who meet eligibility to enter. So it's worth asking: How poorly have immigration screeners done?

The proclamation presents no evidence that mistakes are at all common for these eight nationalities or even for any others. In fact, only 34 people have legally immigrated to the United States since 9/11 and been either convicted of

terrorism offenses or killed during an attempted attack. Of those people, a large share arrived as children; they and others were radicalized long after their entry. At most, only nine attempted to carry out an attack in the United States after being radicalized prior to entry. That's one potential terrorist per 41 million visa approvals or entries without visas since 2001.

There is only one post-9/11 terrorism offender who radicalized prior to entering the United States and who actually killed people: Tashfeen Malik, the Pakistani woman who participated in the San Bernardino terrorist attack in 2015. But Pakistan has never been subject to Trump's travel ban. And even if it were, one instance is hardly a trend.

There is simply no evidence that visa adjudicators aren't doing their jobs. The president's most recent proclamation is nothing more than a political document, not one with any legal or national security basis.



*David Bier is an immigration policy analyst at the Cato Institute.*

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# **Exhibit DD**

SEP. 28, 2017 AT 6:28 PM

# Trump's Latest Travel Order Still Looks A Lot Like A Muslim Ban

By [Kathryn Casteel](#) and [Andrea Jones-Rooy](#)Filed under [Travel Ban](#)

Supporters of President Trump's [latest travel restrictions](#) argue that they can [no longer be described](#) as a Muslim ban because North Korea and Venezuela have been added to the list of targeted countries. Critics, however, say that the impact of the new order will be [essentially unchanged](#) from the effects of the previous two. Our estimates, based on visas issued for U.S. travel last year, show that majority-Muslim countries would likely still be the most affected by the new travel rules.

We looked at visas granted last year to see how the new rules would have affected travelers from the eight countries named in the latest order — Chad, Iran, Libya, North Korea, Syria, Venezuela, Yemen and Somalia. We found that if these rules had been in place in 2016, they would have stopped more than 65,000 visas from being issued in seven of the eight countries named. About 90 percent of those visas were issued to visitors from Iran, Syria and Yemen — and that total does not include refugees, as it is not yet clear whether they will be affected. If the ban had been applied to North Korea last year, it would have affected just 61 visas.

The eighth country, whose affected visas were not included in our 65,000 total, is Venezuela. Because the directive leaves some room for interpretation in terms of how it will be implemented in that country, it is virtually impossible to know how many visas the Venezuela restrictions would affect. But the way the rules are written suggest that they will apply to a relatively narrow segment of the Venezuelan population, compared to the broader restrictions being applied to the other seven countries.<sup>1</sup>

The newest restrictions, [announced](#) by the White House on Sunday, still target mostly majority-Muslim countries, but they drop Sudan from the list and add Chad, Venezuela and North Korea. The latest directive also made the restrictions indefinite, rather than temporary, and distinguished between categories of visa holders in determining who would be excluded. The [administration](#) said in its announcement Sunday night that the countries included were found to lack adequate processes for ensuring that those entering the U.S. didn't pose a security threat. We wanted to understand who would be

Case 8:17-cv-00361-TDC Document 205-1 Filed 10/06/17 Page 320 of 344  
affected by this version<sup>2</sup> — though the courts blocked the implementation of many aspects of his previous orders, and this one could face legal challenges as well.<sup>3</sup>

We looked at State Department numbers on how many visas were granted during the 2016 fiscal year, before Trump took office and began issuing travel restrictions.<sup>4</sup> The figures used in our analysis count visas, not people, but one person could theoretically be issued multiple visas in the same fiscal year.

Iran, Syria and Yemen, three **majority-Muslim** countries that have **been targeted in all versions** of Trump's travel restrictions, would have been hit hardest by the new restrictions had they been in effect in 2016. Somalia and Libya, also majority-Muslim countries and the other two nations included in both previous versions of the travel restrictions, would have had a few thousand visas blocked. Of the three new countries added to the list in this round, we were only able to confirm that one — Chad, the other Muslim-majority country — would have had more than a few hundred visas affected. While the new rules block nearly all visas from North Korea (diplomatic visas are the exception), the U.S. doesn't receive many visitors from that country, so only 61 would actually have been rejected in 2016.

Venezuela, however, is a special case. Our data doesn't show how many people the restrictions might have affected last year because the new rules don't apply just to certain classes of visas, like they do for other countries, but also to a certain class of people, in this case officials in a handful of government agencies, plus members of their immediate families.<sup>5</sup> Officials and their family members would only be turned down for tourist visas, not for a separate class of visa reserved for government agents traveling on state business. The State Department data breaks down visas issued by type, but it does not keep statistics on things like how many government officials requested tourist visas. A spokesperson for the State Department's Bureau of Consular Affairs said the agency is unable to predict how many affected people would apply for visas.

Asked to estimate how many Venezuelans might fall into the category of people whose travel to the U.S. would be restricted, Dany Bahar, a Venezuelan economist with the Brookings Institution, said, "I haven't seen such numbers, probably given the ban is written in such lousy terms. In theory it applies to all government officials and their family members. It's not clear if it is only high-ranking officials or every government employee. If the latter, it could be tens of thousands, if not more."

In a country of **over 31 million** residents, even tens of thousands of people is a relatively narrow slice of the overall population. In all seven other countries named in the latest

Case 8:17-cv-00361-TDC Document 205-1 Filed 10/06/17 Page 321 of 344  
 round of travel restrictions, any citizen who applied for certain types of visas would be rejected.

## Number of U.S. visas granted by category in 2016

Red indicates groups facing travel restrictions under the new rules

COUNTRY	TOTAL AFFECTED	IMMIGRANT	TOURIST	STUDENT	DIPLOMATIC*	OTHER	SHARE OF VISAS AFFECTED
Iran	32,278	7,727	23,678	4,368	485	873	87%
Yemen	16,931	12,998	3,933	914	222	134	93
Syria	11,584	2,633	7,980	478	145	493	99
Somalia	1,797	1,797	233	66	88	64	80
Libya	1,828	383	1,445	417	320	125	68
Chad	940	40	900	122	323	10	67
North Korea	61	9	52	0	48	0	56
Venezuela	–	2,471	145,331**	4,791	563	5,676	–

\* Diplomatic, NATO, UN, and other government visas are exempted from the nonimmigrant visa restrictions.

\*\* The ban for Venezuela only applies to tourist visas for government officials in certain agencies, plus members of their immediate families. It's unclear how many visas were issued to those groups.

SOURCE: DEPARTMENT OF STATE

The restrictions applied to each nation vary by visa type:

## How the new travel ban affects each country

Restrictions on types of visas to the U.S.

COUNTRY	IMMIGRANT VISAS	NONIMMIGRANT VISAS*
Somalia	All barred	Not affected
Syria	All barred	All barred
N. Korea	All barred	All barred
Iran	All barred	All barred except student visas
Yemen	All barred	Tourist visas barred
Libya	All barred	Tourist visas barred
Chad	All barred	Tourist visas barred

Venezuela	Not affected	No tourist visas for officials from at least five government agencies, plus members of their immediate families
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\*Diplomatic visas are exempt from these restrictions.

SOURCE: DEPARTMENT OF STATE

Visas are broadly divided into “immigrant” and “nonimmigrant” categories, depending on whether a person is planning to move to the U.S. or simply visit. Many immigrant visas are issued based on the applicant’s family connections in the U.S., while others are allocated on the basis of employment. Another prominent subclass of immigrant visa is the diversity visa; those are given out via a lottery system to people from countries with historically low rates of immigration to the U.S.

Trump’s new rules ban immigrant visas from every targeted country except Venezuela. For nonimmigrant visas — which are issued to visitors for temporary travel to the U.S. for tourism, business or study — only North Korea and Syria face a complete ban. In 2016, about 11,500 travel visas from Syria would have been affected, but only 61 from North Korea would have been.

This new set of rules, [like its predecessors](#), is likely to go through court challenges that may prevent the enforcement of some or all of its provisions. But until that happens, and assuming 2016 is a good indicator of travel flow, the ban as it currently stands is likely to affect lots of people — and most of them will still be from predominantly Muslim countries.

## Footnotes

1. We are looking at the 2016 numbers because that is the last set of data that is unaffected by any of Trump’s previous sets of travel restrictions. However, the number of visas issued for each country would likely vary from 2016 to 2017, both for reasons unrelated to the travel restrictions and because the rules would likely discourage people from applying for visas if they expected to be rejected.
2. The new order will be issued in two phases. From now until Oct. 18, nationals of four of the eight affected countries (Iran, Libya, Syria, and Yemen) will be barred from travel to the U.S. unless they have a relationship with “close family” — including parents, spouses, siblings and [grandparents](#) — or a U.S. entity. For Somalia, only immigrant visas and diversity visas are subject to the relationship rule; nonimmigrant visas will be not be affected. Starting on Oct. 18, the ban will go into effect for all countries named in the directive, and relationship exemptions will no longer be available.

3. The Supreme Court on Monday [scrapped a hearing](#) on the old restrictions and asked lawyers to instead submit arguments on whether the whole issue is moot now that there's a new policy.
4. The Department of State's Bureau of Consular Affairs maintains public data on the number and types of visas issued by the U.S. to citizens of other countries. The 2016 fiscal year runs from Oct. 1, 2015, through Sept. 30, 2016.
5. According to the proclamation, the ban applies to "officials of government agencies of Venezuela involved in screening and vetting procedures — including the Ministry of the Popular Power for Interior, Justice and Peace; the Administrative Service of Identification, Migration and Immigration; the Scientific, Penal and Criminal Investigation Service Corps; the Bolivarian National Intelligence Service; and the Ministry of the Popular Power for Foreign Relations — and their immediate family members."

# **Exhibit EE**



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## The White House

Office of the Press Secretary

For Immediate Release

September 24, 2017

# Fact Sheet: Proclamation on Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats

## Background

- Every year, the United States grants lawful permanent resident status to approximately 1.1 million individuals from all across the world.

J.R. 745

- In FY 2016, the United States issued approximately 10.4 million nonimmigrant visas to individuals from all across the world.
- In FY 2016, U.S. Customs and Border Protection officers processed more than 390 million travelers at air, land, and sea ports of entry, including more than 119 million travelers at airports of entry.
- Over the last five years, international travel has grown 15 percent overall and 26 percent at airports. International travel at U.S. airports of entry increased 6 percent from FY2015. Over the next five years, international travel is projected to increase at an annual rate of 4 percent.

## National Security Baseline

- The Administration's top priority is ensuring the safety and security of the American people.
- The Administration remains focused on raising the baseline for national security standards.
- Section 2 of Executive Order 13780 requires the Administration to determine what minimum information is needed from each foreign country to adjudicate an application by a national of that country for an immigration benefit and determine that the individual is not a security or public safety threat.
- The previous screening/vetting status quo for border and immigration security must be improved for individuals from certain countries, if the United States is to adequately counter terrorism and transnational crime threats against its people.
- The new requirements reflect best practices derived from proven and effective security partnerships, such as the Visa Waiver Program, and from internationally-recognized law enforcement and national security initiatives, such as the adoption of ePassports to prevent fraud and counterfeiting.
- These include electronic passports, the sharing of criminal data, reporting lost/stolen passports, and providing data on known and suspected terrorists.
- Sharing of this information is particularly critical for those areas of the world where risk is higher, such as those countries with significant terrorist populations that may seek to conduct attacks in the U.S. and who repeatedly fail to take back their nationals subject to a final order of removal thereby taxing our immigration system.

## Robust Review and Engagement Process

- Section 2 of Executive Order 13780 consisted of multiple steps:
  - We conducted a worldwide review of information-sharing practices.

- We analyzed the information collected in that review to establish a new information-sharing standard that protects U.S. national security.
  
- We communicated the new standard globally. Where practicable, we worked with those countries we determined were not meeting it to enhance their information-sharing or formulate a plan to do so.
  
- Following that robust engagement period, we made recommendations based on the results of that engagement to further national security.
  
- First, Section 2(b) of Executive Order 13780 directed the Secretary of Homeland Security, in consultation with the Secretary of State and Director of National Intelligence, to “conduct a worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudication) in order to determine that the individual is not a security or public-safety threat.”
- After analyzing the information collected in that review, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, submitted a report that established baseline requirements for 1) information sharing about identity management; 2) information sharing about national security and public safety; and 3) national security and public-safety risk factors. The information sharing requirements reflect a combination of long-standing U.S. government goals and standards established by international bodies, such as the United Nations (UN), the International Civil Aviation Organization (ICAO), and INTERPOL.
- As directed under Section 2(d), the Secretary of State then requested that all foreign governments initially assessed as not supplying adequate information to begin to do so, or provide an adequate plan to do so, within 50 days of notification.
- After the 50-day period, Section 2(e) of the Executive Order instructed the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, to submit to the President a list of countries that have not provided the information requested, have not provided an adequate plan to do so, and do not adequately share through other means. Following an assessment of those countries, and in consultation with interagency stakeholders, the DHS Secretary made her final recommendation to the President on foreign nationals who should be subject to travel restrictions or other lawful actions, due to deficiencies in identity management or information sharing, and/or other risk factors in place in those countries.
- The Department of State engaged with foreign governments in order to meet these new standards for information sharing. We have been working, where necessary, with willing foreign governments to design a plan to provide the information requested.

- The Administration will keep the public informed, if and when there is information to share, about changes affecting travelers to the United States who may be affected by these changes.

### Country-Specific Travel Restrictions:

- The United States maintained, modified, or eased restriction on 5 of 6 countries currently designated by Executive Order 13780. Those countries are Iran, Libya, Syria, Yemen, and Somalia.
- The United States lifted restrictions on 1 of 6 countries currently designated by Executive Order 13780: Sudan.
- The United States added restrictions and/or additional vetting on 3 additional countries found to not meet baseline requirements, but that were not included in Executive Order 13780. These countries are: Chad, North Korea, and Venezuela.
- The country specific restrictions are as follows:
  - Chad – Although it is an important partner, especially in the fight against terrorists, the government in Chad does not adequately share public-safety and terrorism-related information, and several terrorist groups are active within Chad or in the surrounding region, including elements of Boko Haram, ISIS-West Africa, and al-Qa'ida in the Islamic Maghreb. Accordingly, the entry into the United States of nationals of Chad, as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is suspended.
  - Iran – The government in Iran regularly fails to cooperate with the United States Government in identifying security risks; is the source of significant terrorist threats; is state sponsor of terrorism; and fails to receive its nationals subject to final orders of removal from the United States. Accordingly, the entry into the United States of nationals of Iran as immigrants and as nonimmigrants is suspended, except that entry by nationals of Iran under valid student (F and M) and exchange visitor (J) visas is not suspended, although such individuals will be subject to enhanced screening and vetting requirements.
  - Libya – Although it is an important partner, especially in the area of counterterrorism, the government in Libya faces significant challenges in sharing several types of information, including public-safety and terrorism-related information; has significant inadequacies in its identity-management protocols; has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States; and has a substantial terrorist presence within its territory. Accordingly, the entry into the United States of nationals of Libya, as immigrants, and as

nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is suspended.

- North Korea – The government in North Korea does not cooperate with the United States Government in any respect and fails to satisfy all information-sharing requirements. Accordingly, the entry into the United States of nationals of North Korea as immigrants and nonimmigrants is suspended.
- Somalia – Although it satisfies minimum U.S. information-sharing requirements, the government in Somalia still has significant identity-management deficiencies; is recognized as a terrorist safe haven; remains a destination for individuals attempting to join terrorist groups that threaten the national security of the United States; and struggles to govern its territory and to limit terrorists' freedom of movement, access to resources, and capacity to operate. Accordingly, the entry into the United States of nationals of Somalia as immigrants is suspended, and nonimmigrants traveling to the United States will be subject to enhanced screening and vetting requirements.
- Syria – The government in Syria regularly fails to cooperate with the U.S. Government in identifying security risks; is the source of significant terrorist threats; has been designated as a state sponsor of terrorism; has significant inadequacies in identity-management protocols; and fails to share public-safety and terrorism information. Accordingly, the entry into the United States of nationals of Syria as immigrants and nonimmigrants is suspended.
- Venezuela – The government in Venezuela is uncooperative in verifying whether its citizens pose national security or public-safety threats; fails to share public-safety and terrorism-related information adequately; and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. Accordingly, the entry into the United States of certain Venezuelan government officials and their immediate family members as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas is suspended.
- Yemen – Although it is an important partner, especially in the fight against terrorism, the government in Yemen faces significant identity-management challenges, which are amplified by the notable terrorist presence within its territory; fails to satisfy critical identity-management requirements; and does not share public-safety and terrorism-related information adequately. Accordingly, the entry into the United States of nationals of Yemen as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is suspended.

- The Secretary of Homeland Security also assesses Iraq as inadequate according to the baseline criteria, but has determined that entry restrictions and limitations under a Presidential proclamation are not warranted because of the close cooperative relationship between the United States and the democratically elected government of Iraq, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combating the Islamic State of Iraq and Syria (ISIS).
  - The Secretary recommends, however, that nationals of Iraq who seek to enter the United States be subject to additional scrutiny to determine if they pose risks to the national security or public safety of the United States.

### **New Baseline for Information Sharing to Support Visa and Immigration Vetting Determinations:**

I. Identity Management: Establishing identity is a critical factor in effective immigration vetting. Under this standard, countries must improve passport integrity by:

1. Issuing secure passports: International Civil Aviation Organization (ICAO)-compliant biometric passports (known as ePassports).
2. Reporting lost and stolen passport information to Interpol in a timely, routine, and consistent basis.
3. Sharing additional information upon request by the U.S. Government to validate an applicant's identity.

II. National Security and Public Safety Information: Effective admissibility decisions cannot be made without knowledge of a traveler's potential criminal or terrorist history. Countries must:

1. Identify serious criminals: Provide data regarding whether nationals applying for a U.S. visa, admissions, or immigration benefit are serious criminals.
2. Provide data on known or suspected terrorists: Proactively share biographic and biometric information about known and suspected terrorists (KST), including foreign fighters.
3. Provide national identity documentation: Share exemplars of their passports and identity cards.
4. Partnership with travel industry: Ensure that the airlines and vessel operators are not impeded from providing the USG with information about people traveling to the United

III. National Security and Public-Safety Risk Assessment: The criteria assessed in this category include:

1. Whether the country is a known or potential terrorist safe haven.
2. Whether the country is a participant in the Visa Waiver Program and whether it meets all of its requirements.
3. Whether the country regularly fails to receive its nationals subject to final orders of removal from the United States.



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**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

*Plaintiffs,*

v.

DONALD J. TRUMP, President of the  
United States, et al.,

*Defendants*

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

Date: October 6, 2017

**JOINT DECLARATION OF  
ANTONY BLINKEN, JAMES CLAPPER, DAVID S. COHEN,  
AVRIL D. HAINES, LISA O. MONACO AND SUSAN RICE**

We, Antony Blinken, David S. Cohen, Avril D. Haines, Lisa O. Monaco, and Susan Rice declare as follows:

1. We are former national security, foreign policy, and intelligence officials in the United States Government:
  - a. Antony Blinken served as Deputy Secretary of State from 2015 to January 20, 2017. He previously served as Deputy National Security Advisor to the President of the United States from 2013 to 2015.
  - b. James Clapper served as U.S. Director of National Intelligence from 2010 to January 20, 2017.
  - c. David S. Cohen served as Under Secretary of the Treasury for Terrorism and Financial Intelligence from 2011 to 2015 and as Deputy Director of the Central Intelligence Agency from 2015 to January 20, 2017.
  - d. Avril Haines served as Deputy National Security Advisor to the President of the United States from 2015 to January 20, 2017. From 2013 to 2015, she served as Deputy Director of the Central Intelligence Agency

- e. Lisa O. Monaco served as Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor from 2013 to January 20, 2017.
- f. Susan Rice served as U.S. Permanent Representative to the United Nations from 2009 to 2013 and as National Security Advisor from 2013 to January 20, 2017.

1. We have collectively devoted decades to combatting the various terrorist threats that the United States faces in a dynamic and dangerous world. We have all held the highest security clearances. We were current on active intelligence regarding all credible terrorist threat streams directed against the United States as recently as one week before the issuance of the Jan. 27, 2017 Executive Order on “Protecting the Nation from Foreign Terrorist Entry into the United States” (“Travel Ban 1.0”). We joined an amicus curiae brief before this court in support of plaintiffs with respect to the March 6, 2017 Executive Order, which this court enjoined (“Travel Ban 2.0”).

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

3. The Ban preserves the basic approach of the original two Orders, without providing any persuasive evidence that these measures are necessary to enhance our national security or foreign policy interests. The Ban includes a few new exceptions to the prior Order, adds a couple of countries to the list (Chad, North Korea, and Venezuela) and removes a country (Sudan). But it still relies on unprecedented and sweeping nationality-based bans, directed at a list of almost exclusively Muslim-majority countries that is substantially similar to the prior lists. (The North Korea and Venezuela additions will affect exceedingly few people, and Chad is a majority-Muslim country.) The Ban blocks well over 150 million people from entering the United States.<sup>1</sup>

4. We agree that the United States faces real threats from terrorist networks and must take all prudent and effective steps to combat them, including the appropriate vetting of travelers to the United States. Yet, we are unaware of any national security threat that would justify Travel Ban 3.0. To the contrary, its enforcement would cause serious harm to the national security and foreign policy of the United States.

#### **I. Travel Ban 3.0 Serves No Genuine National Security Purpose**

5. As a national security measure, this Ban is unnecessary. National security-based immigration restrictions have consistently been tailored to respond to: (1) specific, credible threats based on individualized information, (2) the best available intelligence, and (3) thorough

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<sup>1</sup> This figure reflects the population of the listed countries in the Proclamation, excluding North Korea and Venezuela.

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

6. The Ban is of unprecedented scope. Apart from Travel Bans 1.0 and 2.0, we know of no case where a President has invoked his statutory authority to suspend admission for such a broad class of people. Even after the 9/11 attacks, the U.S. Government did not invoke the provisions of law cited by the Administration to broadly bar entrants based on nationality, national origin, or religious affiliation. Suspensions were limited to particular individuals or subclasses of nationals who posed a specific, articulable threat based on their known actions and affiliations. In adopting Travel Ban 3.0, the Administration alleges no derogatory factual information about any particular recipient of a visa or green card or any credible threat from nationals of the countries banned.

7. Since the 9/11 attacks, the United States has developed a rigorous system of security vetting, leveraging the full capabilities of the law enforcement and intelligence communities. This vetting is applied to travelers not once, but multiple times. As government officials, we sought continually to improve that vetting, as was done in response to particular threats identified by U.S. intelligence in 2011 and 2015. Indeed, successive administrations have continually worked to improve this vetting through robust information-sharing and data integration, without resorting to multiple, sweeping bans on travel. We have seen no evidence from the Government for why the country suddenly needs to shift from this tested system of individualized vetting, developed and implemented by national security professionals across the government, to a national origin-based ban.

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

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

10. In fact, the only concrete evidence to emerge from this administration on this point to date has shown just the opposite, that country-based bans are ineffective. A leaked DHS Office of Intelligence and Analysis memorandum analyzing the ban in the January Order found that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity." The memorandum went on to note that a majority of the U.S.-based individuals who were inspired by a foreign terrorist organization to participate in terrorism-related activity were citizens of the United States; the minority of foreign-born individuals were scattered from among

twenty-six different countries; and most of the top origin countries of those individuals are not the countries listed in the Order.<sup>2</sup>

11. Imposing a ban on all or most of the travelers for a series of countries due to the information sharing practices of their government is a massively overbroad and imprecise response, especially *when the data does not show any particularized threat from those countries*. Defendants have provided no evidence or specific information that nationals of the banned countries pose a credible threat to the safety of Americans if they are allowed to enter the United States after individualized screenings, or of the alleged harm that would occur in the absence of the ban. The Ban targets a list of countries whose nationals have committed no deadly terrorist attacks on U.S. soil in the last forty years.<sup>3</sup> In fact, a recent analysis by the Cato Institute shows that each new version of the travel ban is “even further divorced from threats of terrorism to the United States than the prior order.”<sup>4</sup>

In particular:

- a. The Ban newly adds Chad to the list of countries subject to a ban. No citizen of Chad has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. Chad, a Muslim-majority country, has long been one of the United States’ most effective counterterrorism partners in the region. Chad has been used as a staging ground by the U.S. Air Force in its surveillance of Boko Haram, hosted about 2,000 U.S. troops for an annual military exercise in March 2017, and is the base of the Multinational Joint Task Force, the coordinated effort to fight Boko Haram in the region. The presence of Boko Haram in Chad is dwarfed by their activity in other countries in the region that were not included in the ban. Chad’s inclusion on the Travel Ban 3.0 list reportedly occurred over objections by officials in the State Department, the Pentagon, the U.S. Embassy in Chad, and U.S. Africa Command, a decision that left administration officials “befuddled and frustrated.”<sup>5</sup>
- b. The Ban newly adds North Korea (DPRK) to the list of countries subject to a ban. No citizen of North Korea has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. Because of severe exit restrictions imposed by the North Korean government, very few North Koreans actually travel to the United States at all. North Korean defectors typically first receive South Korean passports in any event.<sup>6</sup> In addition, such defectors would

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<sup>2</sup> *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, <https://assets.documentcloud.org/documents/3474730/DHS-intelligence-document-on-President-Donald.pdf>.

<sup>3</sup> Alex Nowrasteh, *President Trump’s New Travel Executive Order Has Little National Security Justification*, Cato Institute: Cato at Liberty, September 25, 2017.

<sup>4</sup> David Bier, *New Travel Ban Would Not Have Prevented the Entry of Any Terrorists Since 9/11*, Cato Institute: Cato at Liberty, September 25, 2017.

<sup>5</sup> Helene Cooper et al., *Chad’s Inclusion in Travel Ban Could Jeopardize American Interests, Officials Say*, N.Y. Times, Sept. 26, 2017.

<sup>6</sup> Darla Cameron, *Why Trump’s Latest Travel Ban Included These Eight Countries*, Wash. Post (Sept. 26, 2017); Emily Rauhala, *Almost No North Koreans Travel to the U.S., So Why Ban Them?*, Wash. Post (Sept. 25, 2017).

likely have a well-founded fear of political persecution if returned to North Korea, and thus deserve careful consideration for refugee status.

- c. The Ban newly adds Venezuela to the list of countries subject to a ban. No citizen of Venezuela has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. The Ban only applies to officials from government agencies involved in screening and vetting procedures. Such targeted sanctions are more appropriately done by the Treasury Department under the International Emergency Economic Powers Act and other legal authorities rather than through overbroad country bans.

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

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

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

In particular:

- a. The Ban would disrupt critical counterterrorism, foreign policy, and national security partnerships that are critical to our obtaining the necessary information sharing and collaboration in intelligence, law enforcement, military, and diplomatic channels to address the threat posed by terrorist groups such as IS. The Ban would further strain our relationships with partner countries in Europe and the Middle East, on whom we rely for vital counterterrorism cooperation, undermining years of effort to bring them closer. By alienating these partners, we would frustrate access to the intelligence and resources necessary to fight the root causes of terror or disrupt attacks launched from abroad, before an attack occurs within our borders.
- b. The Ban would endanger intelligence sources in the field. For current information, our intelligence officers may rely on human sources in some of the countries listed. The Ban breaches faith with those very sources, who have risked much or all to keep Americans safe—and whom our officers had promised always to protect with the full might of our government and our people.

- c. The Ban would feed the recruitment narrative of IS and other extremists that portray the United States as at war with Islam. As government officials, we took every step we could to counter violent extremism. Because of the Ban's disparate impact on Muslim travelers and immigrants, it would fuel IS's narrative and sends the wrong message to the Muslim community here at home and all over the world: that the U.S. Government is hostile to them and their religion. The Ban also might endanger Christian communities, by handing IS a recruiting tool and propaganda victory that spreads their message that the United States is engaged in a religious war.
- d. The Ban would disrupt ongoing law enforcement efforts. By alienating Muslim-American communities in the United States, it would harm our efforts to enlist their aid in identifying radicalized individuals who might launch attacks of the kind recently seen in San Bernadino and Orlando.
- e. The Ban would have a devastating humanitarian impact. The current bans have already disrupted the movement of countless people, including women and children, who are fleeing danger and have been victimized by actual terrorists. Travelers face deep uncertainty about whether they may travel to or from the United States: for medical treatment, funerals or other pressing family reasons.
- f. The Ban would cause serious economic damage to American citizens and residents. The Ban would affect many foreign travelers who annually inject hundreds of billions into the U.S. economy, supporting well over a million U.S. jobs. Affected companies have noted the adverse impact of the bans to date on many strategic economic sectors, including defense, technology, medicine, culture and others.

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

15. Ours is a nation of immigrants, committed to the faith that we are all equal under the law and abhor discrimination, whether based on race, religion, sex, or national origin. As government officials, we sought diligently to protect our country, even while maintaining an immigration system as free as possible from discrimination, that applies no religious tests, and that measures individuals by their merits, not stereotypes of their countries or groups. Blanket bans of certain countries or classes of people are beneath the dignity of the nation and Constitution that we each took oaths to protect. Rebranding a proposal first advertised as a “Muslim Ban” as “Protecting the Nation from Foreign Terrorist Entry” or “Enhancing Vetting Capabilities and Processes” does not disguise the Ban's discriminatory intent, or make it necessary, effective, or faithful to America's Constitution, laws, or values.

Respectfully submitted,

**s/ANTONY BLINKEN**

**s/JAMES CLAPPER**

**s/DAVID S. COHEN**

**s/AVRIL D. HAINES**

**s/LISA O. MONACO**

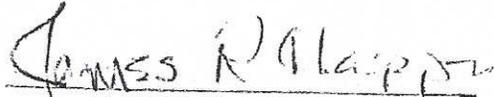
**s/SUSAN RICE**

\*All original signatures are on file with Harold Hongju Koh, Rule of Law Clinic, Yale Law School, New Haven, CT. 06520-8215 203-432-4932

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. [Individual signature pages follow]



EXECUTED this 6th day of October, 2017

  
JAMES CLAPPER

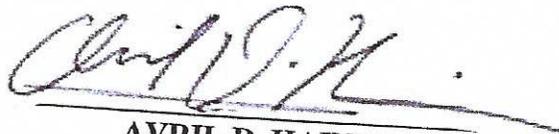
EXECUTED this 6th day of October, 2017



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DAVID S. COHEN

EXECUTED this 6th day of October, 2017

  
AVRIL D. HAINES

EXECUTED this 6th day of October, 2017

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

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LISA O. MONACO



**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

*Plaintiffs,*

v.

DONALD J. TRUMP, President of the  
United States, et al.,

*Defendants*

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

Date: October 11, 2017

**JOINT DECLARATION OF  
FORMER NATIONAL SECURITY OFFICIALS**

We, the below named individuals, declare as follows:

1. We are former national security, foreign policy, and intelligence officials in the United States Government:
  - a. Madeleine K. Albright served as Secretary of State from 1997 to 2001. A refugee and naturalized American citizen, she served as U.S. Permanent Representative to the United Nations from 1993 to 1997. She has also been a member of the Central Intelligence Agency External Advisory Board since 2009 and of the Defense Policy Board since 2011, in which capacities she has received assessments of threats facing the United States.
  - b. Rand Beers served as Deputy Homeland Security Advisor to the President of the United States from 2014 to 2015.
  - c. John B. Bellinger III served as the Legal Adviser for the U.S. Department of State from 2005 to 2009. He previously served as Senior Associate Counsel to the President and Legal Adviser to the National Security Council from 2001 to 2005.
  - d. Daniel Benjamin served as Ambassador-at-Large for Counterterrorism at the U.S. Department of State from 2009 to 2012.

- e. Antony Blinken served as Deputy Secretary of State from 2015 to January 20, 2017. He previously served as Deputy National Security Advisor to the President of the United States from 2013 to 2015.
- f. John O. Brennan served as Director of the Central Intelligence Agency from 2013 to 2017. He previously served as Deputy National Security Advisor for Homeland Security and Counterterrorism and Assistant to the President from 2009 to 2013.
- g. R. Nicholas Burns served as Under Secretary of State for Political Affairs from 2005 to 2008. He previously served as U.S. Ambassador to NATO and as U.S. Ambassador to Greece.
- h. William J. Burns served as Deputy Secretary of State from 2011 to 2014. He previously served as Under Secretary of State for Political Affairs from 2008 to 2011, as U.S. Ambassador to Russia from 2005 to 2008, as Assistant Secretary of State for Near Eastern Affairs from 2001 to 2005, and as U.S. Ambassador to Jordan from 1998 to 2001.
- i. James Clapper served as U.S. Director of National Intelligence from 2010 to January 20, 2017.
- j. David S. Cohen served as Under Secretary of the Treasury for Terrorism and Financial Intelligence from 2011 to 2015 and as Deputy Director of the Central Intelligence Agency from 2015 to January 20, 2017.
- k. Eliot A. Cohen served as Counselor of the U.S. Department of State from 2007 to 2009.
- l. Bathsheba N. Crocker served as Assistant Secretary of State for International Organization Affairs from 2014 to 2017.
- m. Ryan Crocker served as U.S. Ambassador to Afghanistan from 2011 to 2012, as U.S. Ambassador to Iraq from 2007 to 2009, as U.S. Ambassador to Pakistan from 2004 to 2007, as U.S. Ambassador to Syria from 1998 to 2001, as U.S. Ambassador to Kuwait from 1994 to 1997, and U.S. Ambassador to Lebanon from 1990 to 1993.
- n. Thomas Donilon served as U.S. National Security Advisor from 2010 to 2013.
- o. Jen Easterly served as Special Assistant to the President and Senior Director for Counterterrorism from October 2013 to December 2016.
- p. Daniel Feldman served as U.S. Special Representative for Afghanistan and Pakistan from 2014 to 2015, Deputy U.S. Special Representative for

Afghanistan and Pakistan from 2009 to 2014, and previously Director for Multilateral and Humanitarian Affairs at the National Security Council.

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

- bb. Christopher R. Hill served as Assistant Secretary of State for East Asian and Pacific Affairs from 2005 to 2009. He also served as U.S. Ambassador to Macedonia, Poland, the Republic of Korea, and Iraq.
- cc. John F. Kerry served as Secretary of State from 2013 to January 20, 2017.
- dd. Prem Kumar served as Senior Director for the Middle East and North Africa on the National Security Council staff of the White House from 2013 to 2015.
- ee. Richard Lugar served as U.S. Senator for Indiana from 1977 to 2013, and as Chairman of the Senate Committee on Foreign Relations from 1985 to 1987 and 2003 to 2007, and as ranking member of the Senate Committee on Foreign Relations from 2007 to 2013.
- ff. John E. McLaughlin served as Deputy Director of the Central Intelligence Agency from 2000 to 2004 and as Acting Director in 2004. His duties included briefing President-elect Bill Clinton and President George W. Bush.
- gg. Lisa O. Monaco served as Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor from 2013 to January 20, 2017.
- hh. Cameron P. Munter served as U.S. Ambassador to Pakistan from 2009 to 2012 and to Serbia from 2007 to 2009.
- ii. James C. O'Brien served as Special Presidential Envoy for Hostage Affairs from 2015 to January 20, 2017. He served in the U.S. Department of State from 1989 to 2001, including as Principal Deputy Director of Policy Planning and as Special Presidential Envoy for the Balkans.
- jj. Matthew G. Olsen served as Director of the National Counterterrorism Center from 2011 to 2014.
- kk. Leon E. Panetta served as Secretary of Defense from 2011 to 2013. From 2009 to 2011, he served as Director of the Central Intelligence Agency.
- ll. Jeffrey Prescott served as Special Assistant to the President and Senior Director for Iran, Iraq, Syria and the Gulf States from 2015 to 2017.
- mm. Samantha J. Power served as U.S. Permanent Representative to the United Nations from 2013 to January 20, 2017. From 2009 to 2013, she served as Senior Director for Multilateral and Human Rights on the National Security Council.

- nn. Susan E. Rice served as U.S. Permanent Representative to the United Nations from 2009 to 2013 and as National Security Advisor from 2013 to January 20, 2017.
- oo. Anne C. Richard served as Assistant Secretary of State for Population, Refugees and Migration from 2012 to January 20, 2017.
- pp. Kori Schake served as the Deputy Director for Policy Planning at the U.S. Department of State from December 2007 to May 2008. Previously, she was the director for Defense Strategy and Requirements on the National Security Council in President George W. Bush's first term.
- qq. Eric P. Schwartz served as Assistant Secretary of State for Population, Refugees and Migration from 2009 to 2011. From 1993 to 2001, he was responsible for refugee and humanitarian issues on the National Security Council, ultimately serving as Special Assistant to the President for National Security Affairs and Senior Director for Multilateral and Humanitarian Affairs.
- rr. Wendy R. Sherman served as Under Secretary of State for Political Affairs from 2011 to 2015.
- ss. Vikram Singh served as Deputy Special Representative for Afghanistan and Pakistan from 2010 to 2011 and as Deputy Assistant Secretary of Defense for Southeast Asia from 2012 to 2014.
- tt. Jeffrey H. Smith served as General Counsel of the Central Intelligence Agency from 1995 to 1996. Previously, he served as General Counsel of the Senate Armed Services Committee.
- uu. James B. Steinberg served as Deputy National Security Adviser from 1996 to 2000 and as Deputy Secretary of State from 2009 to 2011.
- vv. William Wechsler served as Deputy Assistant Secretary for Special Operations and Combating Terrorism at the U.S. Department of Defense from 2012 to 2015.
- ww. Samuel M. Witten served as Principal Deputy Assistant Secretary of State for Population, Refugees, and Migration from 2007 to 2010. From 2001 to 2007, he served as Deputy Legal Adviser at the State Department.

We have collectively devoted decades to combatting the various terrorist threats that the United States faces in a dynamic and dangerous world. We have held the highest security clearances, and many of us were current on active intelligence regarding all credible terrorist threat streams directed against the United States as recently as one week before the issuance of the Jan. 27, 2017 Executive Order on "Protecting the Nation from Foreign Terrorist Entry into the United States" ("Travel Ban 1.0"). A number of us joined an amicus brief that was filed in

this court in support of plaintiffs' challenge to the March 6, 2017 Executive Order, which this court enjoined ("Travel Ban 2.0"). Each of us also joined an amicus brief that was filed in the Supreme Court in support of plaintiffs' challenge to the subsequent March 6, 2017 Executive Order ("Travel Ban 2.0").

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

3. The Ban preserves the basic approach of the original two Orders, without providing any persuasive evidence that these measures are necessary to enhance our national security or foreign policy interests. The Ban includes a few new exceptions to the prior Order, adds a couple of countries to the list (Chad, North Korea, and Venezuela) and removes a country (Sudan). But it still relies on unprecedented and sweeping nationality-based bans, directed at a list of almost exclusively Muslim-majority countries that is substantially similar to the prior lists. (The North Korea and Venezuela additions will affect exceedingly few people, and Chad is a majority-Muslim country.) The Ban blocks well over 150 million people from entering the United States.<sup>1</sup>

4. We agree that the United States faces real threats from terrorist networks and must take all prudent and effective steps to combat them, including the appropriate vetting of travelers to the United States. Yet, we are unaware of any national security threat that would justify Travel Ban 3.0. To the contrary, its enforcement would cause serious harm to the national security and foreign policy of the United States.

#### **I. Travel Ban 3.0 Serves No Genuine National Security Purpose**

5. As a national security measure, this Ban is unnecessary. National security-based immigration restrictions have consistently been tailored to respond to: (1) specific, credible threats based on individualized information, (2) the best available intelligence, and (3) thorough interagency legal and policy review. Travel Ban 3.0 rests not on such tailored grounds, but rather, on (1) general bans (2) that are not responsive to an actual national security threat informed by intelligence, and (3) that emerged from a January Order that was not vetted through the kind of careful interagency legal and policy review that we would expect from a serious national security process.

6. The Ban is of unprecedented scope. Apart from Travel Bans 1.0 and 2.0, we know of no case where a President has invoked his statutory authority to suspend admission for such a broad class of people. Even after the 9/11 attacks, the U.S. Government did not invoke the provisions of law cited by the Administration to broadly bar entrants based on nationality, national origin, or religious affiliation. Suspensions were limited to particular individuals or subclasses of nationals who posed a specific, articulable threat based on their known actions and

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<sup>1</sup> This figure reflects the population of the listed countries in the Proclamation, excluding North Korea and Venezuela.

affiliations. In adopting Travel Ban 3.0, the Administration alleges no derogatory factual information about any particular recipient of a visa or green card or any credible threat from nationals of the countries banned.

7. Since the 9/11 attacks, the United States has developed a rigorous system of security vetting, leveraging the full capabilities of the law enforcement and intelligence communities. This vetting is applied to travelers not once, but multiple times. As government officials, we sought continually to improve that vetting, as was done in response to particular threats identified by U.S. intelligence in 2011 and 2015. Indeed, successive administrations have continually worked to improve this vetting through robust information-sharing and data integration, without resorting to multiple, sweeping bans on travel. We have seen no evidence from the Government for why the country suddenly needs to shift from this tested system of individualized vetting, developed and implemented by national security professionals across the government, to a national origin-based ban.

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

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

10. In fact, the only concrete evidence to emerge from this administration on this point to date has shown just the opposite, that country-based bans are ineffective. A leaked DHS Office of Intelligence and Analysis memorandum analyzing the ban in the January Order found that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity." The memorandum went on to note that a majority of the U.S.-based individuals who were inspired by a foreign terrorist organization to participate in terrorism-related activity were citizens of the United States; the minority of foreign-born individuals were scattered from among twenty-six different countries; and most of the top origin countries of those individuals are not the countries listed in the Order.<sup>2</sup>

11. Imposing a ban on all or most of the travelers for a series of countries due to the information sharing practices of their government is a massively overbroad and imprecise response, especially *when the data does not show any particularized threat from those countries*. Defendants have provided no evidence or specific information that nationals of the banned countries pose a credible threat to the safety of Americans if they are allowed to enter the United States after individualized screenings, or of the alleged harm that would occur in the

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<sup>2</sup> *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, <https://assets.documentcloud.org/documents/3474730/DHS-intelligence-document-on-President-Donald.pdf>.

absence of the ban. The Ban targets a list of countries whose nationals have committed no deadly terrorist attacks on U.S. soil in the last forty years.<sup>3</sup> In fact, a recent analysis by the Cato Institute shows that each new version of the travel ban is “even further divorced from threats of terrorism to the United States than the prior order.”<sup>4</sup>

In particular:

- a. The Ban newly adds Chad to the list of countries subject to a ban. No citizen of Chad has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. Chad, a Muslim-majority country, has long been one of the United States’ most effective counterterrorism partners in the region. Chad has been used as a staging ground by the U.S. Air Force in its surveillance of Boko Haram, hosted about 2,000 U.S. troops for an annual military exercise in March 2017, and is the base of the Multinational Joint Task Force, the coordinated effort to fight Boko Haram in the region. The presence of Boko Haram in Chad is dwarfed by their activity in other countries in the region that were not included in the ban. Chad’s inclusion on the Travel Ban 3.0 list reportedly occurred over objections by officials in the State Department, the Pentagon, the U.S. Embassy in Chad, and U.S. Africa Command, a decision that left administration officials “befuddled and frustrated.”<sup>5</sup>
- b. The Ban newly adds North Korea (DPRK) to the list of countries subject to a ban. No citizen of North Korea has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. Because of severe exit restrictions imposed by the North Korean government, very few North Koreans actually travel to the United States at all. North Korean defectors typically first receive South Korean passports in any event.<sup>6</sup> In addition, such defectors would likely have a well-founded fear of political persecution if returned to North Korea, and thus deserve careful consideration for refugee status.
- c. The Ban newly adds Venezuela to the list of countries subject to a ban. No citizen of Venezuela has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. The Ban only applies to officials from government agencies involved in screening and vetting procedures. Such targeted sanctions are more appropriately done by the Treasury Department under the International Emergency Economic Powers Act and other legal authorities rather than through overbroad country bans.

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<sup>3</sup> Alex Nowrasteh, *President Trump’s New Travel Executive Order Has Little National Security Justification*, Cato Institute: Cato at Liberty, September 25, 2017.

<sup>4</sup> David Bier, *New Travel Ban Would Not Have Prevented the Entry of Any Terrorists Since 9/11*, Cato Institute: Cato at Liberty, September 25, 2017.

<sup>5</sup> Helene Cooper et al., *Chad’s Inclusion in Travel Ban Could Jeopardize American Interests, Officials Say*, N.Y. Times, Sept. 26, 2017.

<sup>6</sup> Darla Cameron, *Why Trump’s Latest Travel Ban Included These Eight Countries*, Wash. Post (Sept. 26, 2017); Emily Rauhala, *Almost No North Koreans Travel to the U.S., So Why Ban Them?*, Wash. Post (Sept. 25, 2017).

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

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

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

In particular:

- a. The Ban would disrupt critical counterterrorism, foreign policy, and national security partnerships that are critical to our obtaining the necessary information sharing and collaboration in intelligence, law enforcement, military, and diplomatic channels to address the threat posed by terrorist groups such as IS. The Ban would further strain our relationships with partner countries in Europe and the Middle East, on whom we rely for vital counterterrorism cooperation, undermining years of effort to bring them closer. By alienating these partners, we would frustrate access to the intelligence and resources necessary to fight the root causes of terror or disrupt attacks launched from abroad, before an attack occurs within our borders.
- b. The Ban would endanger intelligence sources in the field. For current information, our intelligence officers may rely on human sources in some of the countries listed. The Ban breaches faith with those very sources, who have risked much or all to keep Americans safe—and whom our officers had promised always to protect with the full might of our government and our people.
- c. The Ban would feed the recruitment narrative of IS and other extremists that portray the United States as at war with Islam. As government officials, we took every step we could to counter violent extremism. Because of the Ban’s disparate impact on Muslim travelers and immigrants, it would fuel IS’s narrative and sends the wrong message to the Muslim community here at home and all over the world: that the U.S. Government is hostile to them and their religion. The Ban also might endanger Christian communities, by handing IS a recruiting tool and propaganda victory that spreads their message that the United States is engaged in a religious war.

- d. The Ban would disrupt ongoing law enforcement efforts. By alienating Muslim-American communities in the United States, it would harm our efforts to enlist their aid in identifying radicalized individuals who might launch attacks of the kind recently seen in San Bernadino and Orlando.
- e. The Ban would have a devastating humanitarian impact. The current bans have already disrupted the movement of countless people, including women and children, who are fleeing danger and have been victimized by actual terrorists. Travelers face deep uncertainty about whether they may travel to or from the United States: for medical treatment, funerals or other pressing family reasons.
- f. The Ban would cause serious economic damage to American citizens and residents. The Ban would affect many foreign travelers who annually inject hundreds of billions into the U.S. economy, supporting well over a million U.S. jobs. Affected companies have noted the adverse impact of the bans to date on many strategic economic sectors, including defense, technology, medicine, culture and others.

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

15. Ours is a nation of immigrants, committed to the faith that we are all equal under the law and abhor discrimination, whether based on race, religion, sex, or national origin. As government officials, we sought diligently to protect our country, even while maintaining an immigration system as free as possible from discrimination, that applies no religious tests, and that measures individuals by their merits, not stereotypes of their countries or groups. Blanket bans of certain countries or classes of people are beneath the dignity of the nation and Constitution that we each took oaths to protect. Rebranding a proposal first advertised as a “Muslim Ban” as “Protecting the Nation from Foreign Terrorist Entry” or “Enhancing Vetting Capabilities and Processes” does not disguise the Ban’s discriminatory intent, or make it necessary, effective, or faithful to America’s Constitution, laws, or values.

Respectfully submitted,

**s/MADELINE K. ALBRIGHT**

**s/RAND BEERS**

**s/JOHN D. BELLINGER III**

**s/DANIEL BENJAMIN**

**s/ANTONY BLINKEN**

**s/JOHN O. BRENNAN**

**s/R. NICHOLAS BURNS**

**s/WILLIAM J. BURNS**

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

Executed this 11th day of October, 2017

\*All original signatures are on file with Harold Hongju Koh, Rule of Law Clinic, Yale Law School, New Haven, CT. 06520-8215 203-432-4932

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, et al.,  
Civil No. TDC-17-00361  
TDC-17-2921  
TDC-17-2969

Plaintiffs,

v.

Greenbelt, Maryland

DONALD J. TRUMP, et al.,

October 16, 2017

Defendants.

2:00 p.m.

-----/  
IRANIAN ALLIANCES ACROSS BORDERS,  
et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

-----/  
EBLAL ZAKZOK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

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TRANSCRIPT OF MOTIONS HEARING  
BEFORE THE HONORABLE THEODORE D. CHUANG  
UNITED STATES DISTRICT JUDGE

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United States District Court  
6500 Cherrywood Lane  
Greenbelt, Maryland 20770

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1 P R O C E E D I N G S

2 THE CLERK: The matter now pending before this  
3 Court is Civil Number TDC-17-0361, International Refugee  
4 Assistance Project, et al. versus Trump, et al, Civil  
5 Number TDC-17-2921, Iranian Alliances Across Borders, et  
6 al. versus Trump, et al. and Civil Number TDC-17-2969,  
7 Zakzok, et al. versus Trump, et al. We're here for the  
8 purpose of a preliminary injunction hearing. Counsel,  
9 please identify yourself for the record.

10 MR. JADWAT: Good afternoon, Your Honor. Omar  
11 Jadwat for the plaintiffs, for the IRAP plaintiffs.

12 MR. COX: Good afternoon, Your Honor. Justin  
13 Cox also for the IRAP plaintiffs.

14 MR. MOSIER: Good afternoon, Your Honor. Mark  
15 Mosier on behalf of the plaintiffs and Iranian Alliances  
16 Across Borders.

17 MR. ABBAS: Good afternoon, Your Honor. Gadeir  
18 Abbas appearing for the Zakzok plaintiffs.

19 MS. SHEBAYA: Good afternoon. Sirine Shebaya  
20 for the IAAB plaintiffs.

21 MR. ROTHSCHILD: Good afternoon. Eric  
22 Rothschild for the IAAB plaintiffs.

23 MR. PRICE: Good afternoon. Michael Price from  
24 the Brennan Center for Justice on behalf of the Zakzok  
25 plaintiffs.

1 MS. HIROSE: Good afternoon. Mariko Hirose on  
2 behalf of the IRAP plaintiffs.

3 MR. ATKINS: Robert Atkins on behalf of the  
4 Zakzok plaintiffs.

5 THE COURT: Good afternoon.

6 MR. MOOPAN: Hashim Moopan on behalf of the  
7 federal defendants.

8 MR. SCHWEI: Daniel Schwei on behalf of the  
9 defendants.

10 MS. BENNETT: Michelle Bennett on behalf of the  
11 defendants.

12 MR. GARG: Arjun Garg on behalf of the  
13 defendant.

14 THE COURT: Good afternoon, everyone. So we're  
15 here for a hearing on the three motions for a preliminary  
16 injunction filed by the various plaintiffs. I think we  
17 had already announced in advance or at least informally  
18 told the parties we'd try to frame this as 30 minutes for  
19 each side. I know the plaintiffs had different counsel  
20 who would like to argue. So I'd ask you to divide that up  
21 among yourselves. If in the course of the plaintiffs'  
22 arguments, I feel the need to go beyond that 30 minutes,  
23 the government will get equal time on the other side of  
24 that. And I mean if the plaintiffs want to save some time  
25 for rebuttal, I think we can -- is that something you all

1 would like to do?

2 MR. COX: Yes, Your Honor. The IRAP plaintiffs  
3 would like to reserve four minutes of our time in  
4 rebuttal.

5 THE COURT: Okay. So it's somewhat informal.  
6 We don't have a formal clock, but I think the clerk will  
7 try to alert you if there's -- as we get closer towards  
8 the end of that time and again depending on the questions  
9 I have, we may go a little beyond that.

10 So why don't we first hear from the plaintiffs?  
11 Is it Mr. Cox who will go first or Mr. Jadwat who will go  
12 first?

13 MR. COX: I'll go first, Your Honor. Thank you.

14 THE COURT: Thank you. And if I'm correct,  
15 you're addressing some judiciability issues and the  
16 statutory claims. Correct?

17 MR. COX: Yes, Your Honor. I'll be addressing  
18 the judiciability and merits of the statutory claims  
19 including any relevant standing. Mr. Jadwat will be  
20 addressing the judiciability of the constitutional claims  
21 and the merits of the establishment clause claim.  
22 Mr. Mosier for the IAAB plaintiffs will be addressing the  
23 merits of equal protection claim and the standing and  
24 harms of his clients and Mr. Abbas will be addressing the  
25 standing and harms of the Zakzok plaintiffs.

1 THE COURT: Okay. Well, go ahead then.

2 MR. COX: Thank you, Your Honor. May it please  
3 the Court.

4 In yet again attempting to ban millions of  
5 Muslims from this country, the President has claimed for  
6 himself the authority to rewrite the Immigration and  
7 Nationality Act and has used that power to override a  
8 litany of congressional judgments including the standards  
9 for visa issuance under which individuals have the burden  
10 of proving visa eligibility and negating grounds in  
11 admissibility and under which consular officials already  
12 deny visas to individuals about whom they have  
13 insufficient information to ascertain whether they pose a  
14 risk to the United States.

15 He has overridden Congress' chosen approach to  
16 the information sharing deficiencies upon which this  
17 latest proclamation is allegedly based and the  
18 proclamation violates Congress' mandate that individuals  
19 should not be discriminated against on the basis of their  
20 nationality in visa issuance. The President claims  
21 moreover that his exercise of this authority is completely  
22 immune from judicial review and that the only limit to it  
23 is that he merely recite ten words, "would be detrimental  
24 to the interest of the United States."

25 The President's proclamation does even greater

1 violence to the INA and the constitutional separation of  
2 powers to say nothing of the constitutional guarantees of  
3 religious neutrality and equal protection. The  
4 President's proclamation does even more violence to the  
5 INA and the constitutional separation of powers than did  
6 the first two. So we are here today asking for a  
7 preliminary injunction of the proclamation in its  
8 entirety.

9 THE COURT: So let me ask you. On the issue of  
10 1152, the nationality discrimination claim, what is your  
11 response to the argument that if we accept your  
12 interpretation that the president would not have the power  
13 to bar entry from a certain nation during wartime or  
14 immediately before the onset of hostilities or something  
15 very serious like that? How does that concern get  
16 addressed -- how does your argument address that concern?

17 MR. COX: Yes, Your Honor. First as the Lavas  
18 case out of the DC Circuit recognized, discrimination is a  
19 legal term of art that has a particular meaning and it  
20 doesn't -- it is not an absolute prohibition. It rather  
21 requires some heightened showing of need and some degree  
22 of narrow tailoring.

23 Now that said, of course -- so there would be  
24 no -- there is no absolute prohibition on a nationality  
25 ban. That said, it is, of course, instructive that no

1 president before has ever thought it necessary to impose a  
2 nationality ban like this much less multiple. And as 1965  
3 amendments to the INA were meant to reflect, nationality,  
4 this sort of broad strokes categorization of people based  
5 on where they were born is typically not indicative of  
6 anything that the law should be concerned with. And so  
7 and again, the DHS report that's in the record indicated  
8 that nationality is not a particularly good marker.

9 THE COURT: well, when you say there could be a  
10 compelling state interest or some test that would be  
11 applied, I mean that doesn't come from -- I mean that  
12 comes from a constitutional standard. You are saying that  
13 that would be imported into analyzing this statute?

14 MR. COX: I'm not sure exactly what the standard  
15 would be. The word "discrimination" of course also  
16 appears in a variety of statutory schemes and it's never,  
17 you know, in Title VII, it's never considered to be an  
18 absolute prohibition. It's rather an indication that this  
19 particular characteristic is not particularly probative in  
20 the ordinary course and therefore, in order to use it, the  
21 actor has to have a -- some sort of heightened need and  
22 has to take care so as to not use this generality too  
23 broadly.

24 THE COURT: well, under that theory then, we  
25 need to get into that kind of analysis here, right, which

1 I don't think the parties really briefed. You just said  
2 there is a nationality discrimination bar and so we win on  
3 that point, but I mean they at least made an argument that  
4 there is some heightened risk.

5 MR. COX: Well, Your Honor, I think that, of  
6 course, the burden would be on the government to  
7 demonstrate that they need to discriminate on the basis of  
8 nationality. It's typically how these prohibitions on  
9 discrimination work. And the only thing that the  
10 government has put forward thus far is that they --  
11 individuals from this country that they lack sufficient  
12 information to assess whether they pose a risk to the  
13 United States. But, of course, 8 USC 1361 already gives  
14 consular officials the authority to deny a visa to anyone  
15 who cannot convince them of their admissibility to this  
16 country.

17 And so the proclamation in the government's  
18 briefs for that matter never grapple with the fact that  
19 there is already a statutory provision addressing the very  
20 same issue that they claim this proclamation is intended  
21 to address.

22 THE COURT: So what about your argument that  
23 this goes beyond the scope of 1182 generally? For  
24 example, you say that the waiver criterion basically  
25 rewrite the INA. What would prevent the government then

1 from just dispensing with the waiver criterion and just  
2 saying we're just going to say you're barred period and  
3 avoid this alleged intrusion into the INA? It seems as if  
4 you win, that might be the next step they would take.

5 MR. COX: Well, to be clear, Your Honor, either  
6 way, the President lacks the authority to rewrite the INA  
7 in this manner.

8 THE COURT: Other than the waiver criterion,  
9 what is it that is rewriting the INA?

10 MR. COX: Well, Congress has said that  
11 individuals that meet certain criterion has set out the  
12 criterion for getting a visa. Individuals who meet these  
13 criterion are actually under regulations promulgated by  
14 the Department of State entitled to a visa. The  
15 regulations state that the visa shall be issued and --

16 THE COURT: But then 1182(f) says the President  
17 can -- presumably, the whole purpose of 1182(f) is to  
18 allow some restrictions beyond 1182(a). Otherwise, it  
19 would be no need for it.

20 MR. COX: Right.

21 THE COURT: So clearly, the President can do  
22 more than what the INA says. You're just saying it goes  
23 so far that you're rewriting the INA. I'm trying to  
24 understand what is it about this that pushes it beyond the  
25 line of -- beyond what 1182 says you can do which is

1 impose restrictions and/or bar someone from the country.

2 MR. COX: Your Honor, the INA -- you know, for  
3 decades the Supreme Court has refused to read broad --  
4 seemingly broad delegations of authority in the INA to be  
5 sort of -- to give unbridled discretion to the executive.  
6 And it's simply not plausible that Congress in enacting  
7 1182(f) intended to give the President the authority to  
8 literally cancel any other portion of the INA he wants  
9 even in violation of specific prohibitions contained  
10 therein and then impose or not impose a waiver system that  
11 gives sort of heightened criterion.

12 THE COURT: well, let's assume that you're right  
13 that there is a limit and I think there probably is, but  
14 where is that limit? In order to say that they have gone  
15 over the line, you need to tell me where the line is.

16 MR. COX: Understood, Your Honor. What the case  
17 law seems to indicate is that 1182(f) is intended to give  
18 the President flexibility to address emergent issues that  
19 Congress has not had the occasion to address itself. And  
20 historically, that's certainly the way in which 1182(f)  
21 has been used. It's been targeted at circumstances that  
22 are rapidly developing and to which Congress could not be  
23 expected to address.

24 Here in contrast, the criterion on which the  
25 proclamation is based are country conditions that Congress

1       itself considered as recently as 2015 and Congress made  
2       very specific judgments about what those conditions ought  
3       to mean, the consequences of them. And what it decided --  
4       well, it rejected proposals of outright bans and instead  
5       decided that countries -- yes?

6               THE COURT: Didn't they just reject bans of  
7       refugees, not nationals from certain countries such as the  
8       countries on the lists today?

9               MR. COX: My recollection, Your Honor, is that  
10      their were proposals to ban certainly Iraqis and Syrians.  
11      Perhaps, it was limited to refugees from those places.  
12      But there were a number of different proposals that were  
13      ostensibly based on these same country conditions and what  
14      Congress did instead was to say those countries, we're not  
15      going to ban their nationals, that's not necessary, but  
16      instead we're going to take a targeted approach and in an  
17      abundance of caution and simply make sure that nationals  
18      from those countries go through the normal individualized  
19      vetting procedure.

20              THE COURT: So what's the authority that you  
21      have to say that where Congress does not explicitly say  
22      you can't do this, but they've legislated in a certain  
23      area that that tells me that this particular action goes  
24      beyond not just what they wanted because I think 1182  
25      allows the President to do things that weren't necessarily

1 even contemplated, but it goes into their statutory  
2 authority?

3 I'm just trying to understand what the line is  
4 or what signal is there whether it's a case, a statute or  
5 something that tells me that this has gone over the line  
6 or is it just you know it when you see it?

7 MR. COX: Well, I think, Your Honor, that there  
8 are going to be some gray areas. I think the key here is  
9 that we are so far across the line that the particular  
10 place that's drawn isn't dispositive in this case.

11 I think if you see in Kent, the court was very  
12 clear that it is not going to read these broad delegations  
13 as broadly as they may seem because of the constitutional  
14 concerns. And essentially, the government's argument  
15 here, if accepted, means that the Congress has handed the  
16 President its authority under Article 2 and that's --  
17 excuse me -- under Article 1 in order to draw the  
18 immigration laws as the President sees fit and that's  
19 simply not plausible.

20 THE COURT: But going way over the line other  
21 than the fact that this is arguably more broad than  
22 anything that's been done before, what tells me that it's  
23 gone way over the line legally as a matter of what  
24 Congress has specifically said or some other principle,  
25 some case?

1 MR. COX: Well, Your Honor, I think that, you  
2 know, the DC Circuit case, Abourezk, talks about how  
3 the -- that this power was intended just to be -- to  
4 address issues that Congress has not issued.

5 You know, the truth is that no president before  
6 has attempted to use 1182(f) in this manner and so there's  
7 not a lot of precedent that says this is over the line.  
8 All prior uses have been far more targeted.

9 I see that my -- I believe my time is up. I'm  
10 happy to continue if you'd like, Your Honor. But I do  
11 want to make sure --

12 THE COURT: One last question I have is your  
13 argument that this should not be deemed to have -- the  
14 finding that this would be a detrimental to the United  
15 States was insufficient. You focus quite a bit on the  
16 other argument on the need to look at historical precedent  
17 and show that this is the first time that the President  
18 has gone this far in terms of numbers or countries,  
19 numbers of people barred at the same time. But if you  
20 look at the history of 1182 proclamations, they give very  
21 little justification, very little findings on detriment.  
22 Why should I look at the history from one part but not for  
23 this part?

24 MR. COX: Well, Your Honor, no proclamation  
25 before has sought to ban this many people and no

1 proclamation before has sought to use as its justification  
2 a reason that's already addressed with a particular  
3 statutory provision. Here again it's 1361. And any  
4 proclamation that once used essentially 1361 reasons for  
5 its justification needs to at least grapple with why 1361  
6 is inadequate. And here there's no even acknowledgment  
7 that consular officials already had the authority to deny  
8 visas to individuals who don't convince them of their  
9 admissibility and so I think that fundamental conflict  
10 makes the finding here completely inadequate.

11 THE COURT: Okay. Well, if you want to move on  
12 to your colleague, we can do that.

13 MR. COX: Thank you, Your Honor.

14 MR. JADWAT: Good afternoon, Your Honor.

15 THE COURT: Good afternoon, Mr. Jadwat.

16 MR. JADWAT: What we have before us today is the  
17 same core policy as in EO-2. There are three changes to  
18 the policy: Indefinite, the list of countries has been  
19 tweaked and some non-immigrants are allowed in. The  
20 result is just as the President promised, a bigger,  
21 tougher version of the same ban. It still excludes over a  
22 hundred million people from Muslim majority countries and  
23 the biggest change to the policy actually makes it worse  
24 by extending the ban indefinitely. It adds a tiny number  
25 of potential travelers from North Korea and a few

1 Venezuelans. But that hardly moves the needle on what the  
2 ban actually does.

3 THE COURT: Can I ask you about North Korea and  
4 Venezuela just for a moment?

5 MR. JADWAT: Sure.

6 THE COURT: I believe in the District of Hawaii,  
7 the plaintiffs there are taking the view that they are not  
8 really arguing on behalf of the North Koreans and -- or  
9 against the North Korean and Venezuelan limitations. If  
10 you are able to succeed on this, are you seeking an  
11 injunction that would bar enforcement as to North Korea  
12 Venezuela or any other countries or is it all or nothing?

13 MR. JADWAT: We would certainly rather have  
14 something than nothing, Your Honor.

15 THE COURT: Well, I guess what I'm asking is are  
16 you arguing that if you are able to succeed on getting an  
17 injunction on some of these countries, the ones that you  
18 are more focused on, is it appropriate to also enjoin  
19 enforcement as to North Korea and Venezuela, either  
20 legally or also as a matter of whether anyone has standing  
21 to address those issues?

22 MR. JADWAT: Yeah. So I think that on the  
23 constitutional side, it's true that the arguments are  
24 primarily focused on the six Muslim majority countries in  
25 the ban. But, you know, there's nothing that suggests

1 that the additional portions of the ban would exist but  
2 for this overall scheme. On the statutory side, I think  
3 there's a difference between Venezuela on the one hand  
4 which maybe resembles some of the previous 212(f)  
5 proclamations a little more closely than North Korea and  
6 then the others. But --

7 THE COURT: So if it's a statutory argument,  
8 then you're asking for an injunction for all countries  
9 except Venezuela. And if it's an establishment-clause  
10 based injunction, you would ask for injunction on the  
11 non-Muslim majority countries or only the Muslim majority  
12 countries or am I not getting that right?

13 MR. JADWAT: Well, I mean we think that the most  
14 appropriate course is to enjoin the EO-3 and if the  
15 government in light of that as they did, you know, to some  
16 degree in EO-2 wants to respond to the flaws in the order  
17 in some way, then it would be able to.

18 But yes, I think that the thrust of our  
19 constitutional arguments does focus on the effect, the  
20 condemnation of Islam, the effect of that condemnation as  
21 it plays through the order, which is its focus on Muslim  
22 majority countries and as I said, I think on the statutory  
23 side, the primary message, the main point of the statutory  
24 argument is that this blanket national origin based 212(f)  
25 ban is not within the scope of the President's authority.

1           THE COURT: So one question I have regarding the  
2 establishment clause is even the -- this is I think the  
3 third order that your clients have challenged, I think the  
4 second one that we've had a hearing on here, the  
5 government makes the point that basically from now on  
6 whatever they do in this area of travel restrictions  
7 involving some of these countries, you are going to come  
8 back again and again and say this is an establishment  
9 clause violation. What is the limiting principle on the  
10 type of argument you're making because it can't be that if  
11 the President finds issues involving travel that because  
12 of some prior statements or even a prior history if one  
13 concludes that there was a prior history of violating the  
14 establishment clause, that he can't fix that or address  
15 that by coming out with a new plan because the country  
16 cannot have that kind of limitation on the --

17           MR. JADWAT: Sure.

18           THE COURT: How would one know -- if this does  
19 not cure the issues that you raised last time, what would  
20 the government have to do to demonstrate that they have  
21 been cured?

22           MR. JADWAT: Well, so I think the first thing to  
23 understand in answering that question is that this is  
24 again exactly what the President promised and so the -- it  
25 is difficult when the President has said that he is going

1 to ban Muslims and do it by imposing a national origin  
2 ban, something that no previous president has done, either  
3 side of that, that and then he goes ahead and does  
4 something that answers exactly that description, it does  
5 make it difficult to convince a reasonable observer that  
6 doing that thing again or doing it for the first time  
7 doesn't have a primary religious purpose. But that  
8 doesn't mean that there could never be such a showing.

9 THE COURT: What would they have to do to make  
10 that showing?

11 MR. JADWAT: You know, I don't know for sure,  
12 Your Honor, and I don't think McCreary tells us for sure  
13 exactly what those limits are or any of the other cases.  
14 But I do think that this is not, you know, a line drawing  
15 kind of -- we're not close to the line in this case  
16 because what we have here is the same policy, you know, a  
17 seamless kind of transition or sequence from EO-1 to EO-2  
18 to EO-3. And the fact that the President said even before  
19 he received a report under EO-2, he said we need a tougher  
20 version of the ban and that's what he ended up imposing  
21 and he imposed without, you know, on his own in the sense  
22 that he did not impose or did not take the recommendations  
23 that the Department of Homeland Security provided to him  
24 and put them into policy. Instead he crafted his own ban  
25 after receiving some recommendations from them and that's

1 really not that different than the situation we had in  
2 EO-2 where there was a letter from the Secretary of  
3 Homeland Security and the Attorney General saying in  
4 essence the same thing. There are countries that have  
5 inadequate information. We think you should ban those  
6 countries for 90 days.

7 THE COURT: Well, here there was a study that  
8 was done that led to the recommendations that were made.  
9 I believe the proclamation states that there were  
10 recommendations on these particular countries including  
11 countries like Somalia that the factors didn't lead there,  
12 but that the Secretary also recommended on Somalia. It  
13 wasn't just something the President came up with on his  
14 own. Is that correct?

15 MR. JADWAT: I think the proclamation is  
16 actually a little ambiguous as to Somalia. In my reading,  
17 it's not entirely clear from my reading whether or not the  
18 Secretary recommended a ban on Somalia. Perhaps they can  
19 clarify that. But either way, Your Honor, what is clear  
20 is that the -- you know, we don't know what the Secretary  
21 actually recommended which is a difference from the last  
22 time. The last time we could see that the recommendation  
23 essentially was the ban.

24 THE COURT: I think I read in your papers that  
25 you said the government's refused to provide the

1 underlying report. Does that mean that you asked for it  
2 or how do you know that they've refused to do that or from  
3 the other case?

4 MR. JADWAT: They have said that they will not  
5 provide it publicly in the other case and that's, you  
6 know, that's their decision. And we're not suggesting  
7 that there's a need for this Court to look at the report  
8 because the question is what the reasonable observer would  
9 perceive and understand from the facts that are readily  
10 available to the public. Your Honor, I'm out of time. So  
11 I --

12 THE COURT: well, let me just ask a couple of  
13 additional questions. One thing I wanted to ask and I'm  
14 not sure if you're the right person or someone else, but  
15 what is your view on the effect of the Supreme Court's  
16 vacating the Fourth Circuit's judgment issuing the  
17 injunction on the last executive order, particularly in  
18 the sense of how if at all can this Court use that opinion  
19 in reaching its own resolution? I don't think -- it  
20 certainty means we can't use the Fourth Circuit opinion as  
21 controlling authority. Does it mean that information from  
22 that opinion is still persuasive or does it mean it just  
23 does not exist?

24 MR. JADWAT: I think the Fourth Circuit  
25 authority is clear that even a vacated opinion is still

1 persuasive authority and --

2 THE COURT: Even under these circumstances where  
3 it was a mootness finding?

4 MR. JADWAT: Yes, Your Honor. I think so. You  
5 know, the mootness finding is explicitly and the court was  
6 clear about this -- the Supreme Court was clear about this  
7 when it vacated that it was not reaching the merits and  
8 not expressing a position as to the merits and so I think  
9 it's clear that that remains persuasive authority and  
10 obviously, highly relevant.

11 THE COURT: Okay. And then I think the other  
12 question I had was whether -- the government notes that  
13 there was a speech by the President at least saying  
14 positive things about Islam. They're saying that that may  
15 indicate there's no longer a religious motive. What, if  
16 any, counter examples are there in the record where post  
17 second executive order he's made statements that are  
18 detrimental or derogatory?

19 MR. JADWAT: Right. Well, one other example  
20 which postdates that speech is that he re-invoked his  
21 campaign trail suggestion that suspected terrorists should  
22 be summarily executed with bullets that had been dipped in  
23 pig's blood, which is obviously and which he attributed to  
24 a campaign against Muslim guerillas in the Philippines.  
25 You know, that is an extreme statement of hostility --

1 THE COURT: Is that an anti-Muslim statement or  
2 an anti-terrorist statement?

3 MR. JADWAT: Well, both, Your Honor. I mean  
4 it's a -- you know, it's a statement that says that we  
5 will use specifically religious hostile means --  
6 specifically religiously hostile means or that we should  
7 use specifically religiously hostile means including the  
8 desecration of bodies to combat terrorism and so, you  
9 know --

10 THE COURT: Are there other examples besides  
11 that or is that the only one you have?

12 MR. JADWAT: That's the one that I have that  
13 comes most readily to mind, Your Honor.

14 THE COURT: Okay.

15 MR. JADWAT: There's just one other thing I'd  
16 like to bring to the Court's attention, Your Honor, which  
17 is that one of our plaintiffs, Mr. Mashta, we have gotten  
18 word has just received his visa today or his wife's  
19 visa -- has just received her visa today and so we just  
20 wanted to apprise the Court of that information.

21 THE COURT: Okay.

22 MR. JADWAT: My understanding is that she's  
23 actually already on route to the United States.

24 THE COURT: Okay. Good. Thank you. Good  
25 afternoon.

1           MR. MOSIER: Good afternoon, Your Honor. I know  
2 our time is running short. So I'll try to be brief, but I  
3 do think it's worth taking a couple of minutes to briefly  
4 touch on the equal protection claim.

5           THE COURT: Okay.

6           MR. MOSIER: In the Court's order in March, you,  
7 of course, did not decide the equal protection claim, but  
8 we think there are important reasons why the claim could  
9 play an important role now. I think kind of at the center  
10 of the controversy I think this will become apparent when  
11 we hear from the government is what evidence and what  
12 types of evidence can the Court consider to determine  
13 whether the purpose behind the proclamation is truly  
14 national security or whether it is a continuation of the  
15 Muslim ban that had been promised before.

16           You know, the government takes the position that  
17 for purposes of this preliminary injunction, the world  
18 began on September 24th when the proclamation was issued.  
19 Every statement by the President, everything that the  
20 President did in the first two executive orders must be  
21 ignored by the Court. We think that McCreary doesn't  
22 support that under the establishment cause, but we think  
23 the case law under the equal protection clause is just as  
24 clear if not more clear that the Court can consider all of  
25 the relevant evidence in determining whether a

1 discriminatory intent exists.

2           The Supreme Court's decision in Arlington  
3 Heights expressly addresses this question. It says  
4 "courts can consider both direct and circumstantial  
5 evidence to determine intent." Arlington Heights  
6 identifies a number of different categories of evidence  
7 that courts should look to. One of them is the historical  
8 context of the action being challenged. Another is the  
9 specific sequence of events that led to the challenged  
10 action. And those categories alone show that the Court's  
11 analysis should not begin on September 24th --

12           THE COURT: So does the -- are you arguing that  
13 the equal protection analysis allows for a broader view  
14 than the establishment clause or just an equal view of the  
15 history?

16           MR. MOSIER: It's an equal. The way it's been  
17 briefed here -- and we relied on the briefing -- is that  
18 the claims are the same because when you have an equal  
19 protection claim based on religious discrimination, it is  
20 largely the same as an establishment clause. I think what  
21 we want to use these case law for is to show that -- so  
22 the government accepts the position, right, that the  
23 claims are virtually the same. It makes an argument that  
24 under the establishment clause, you have to have a narrow  
25 focus on what the relevant evidence is. And we respond in

1 our briefs to show why that's not correct in the  
2 establishment clause and I think the point I want to make  
3 is you can also look to the equal protection case law to  
4 see that you don't need to take that narrow focus --

5 THE COURT: So beyond that issue, what  
6 differences are there between the two analyses? One thing  
7 that comes to mind initially is equal protection, you're  
8 talking about an individual person's right. It's not  
9 clear to me whose right you are asserting. Is it the U.S.  
10 person or is it the family member?

11 MR. MOSIER: It would be the U.S. person who has  
12 been -- on the basis of race and perhaps also you could  
13 rely on national origin in an equal protection claim. But  
14 they are forced to take advantage or use a system, an  
15 immigration system that is different for people from a  
16 handful of countries versus for other Americans. So if  
17 I --

18 THE COURT: But doesn't Fiallo naturally put us  
19 into the Mandel standard at that point on equal protection  
20 because wasn't that an equal protection case?

21 MR. MOSIER: It was, Your Honor. But I think,  
22 you know, for the same reason that Fiallo and Mandel  
23 doesn't bar consideration of the establishment clause  
24 claim, it shouldn't also bar consideration of the equal  
25 protection. And mainly, it comes down to it's legitimate

1 on its face and bona fide and as the Fourth Circuit said,  
2 bona fide, you can look behind the face to see if there's  
3 evidence of bad faith.

4 THE COURT: So I understand the logic of equal  
5 protection argument saying that a family member is still  
6 harmed and has more hurdles to get their family members  
7 here than someone from a different background. But are  
8 there any examples in the case law where that type of  
9 argument has actually worked in an equal protection  
10 setting? In the immigration context, the family members  
11 here not just have standing, but actually can prevail on  
12 that type of argument?

13 MR. MOSIER: Well, it's well established in the  
14 equal protection case law that this type of injury that we  
15 are alleging where you are saying for one class of  
16 citizens, the government creates additional barriers for  
17 them to get a benefit than for others. That's a  
18 well-established principle.

19 THE COURT: What about in the immigration  
20 context though, which is sometimes unique?

21 MR. MOSIER: Right. We are not aware of a case  
22 there. But there's no reason it shouldn't apply.  
23 Assuming you get past the standard that we've discussed, I  
24 don't see a reason it shouldn't. And, you know, my time  
25 is getting -- I will point the Court to the Fourth

1 Circuit's recent decision in NAACP versus McCrory where  
2 the court considered an equal protection challenge to  
3 North Carolina election laws. I think that's a good case  
4 to demonstrate just how broadly courts will look at  
5 evidence to find discriminatory intent in the context of  
6 an equal protection claim. There the North Carolina law  
7 put restrictions that were alleged to have made it more  
8 difficult for African-Americans to vote. And when the  
9 court turned to the Arlington Heights factor of historical  
10 context, it said we are going to look at the historical  
11 context of efforts to disenfranchise African-Americans and  
12 it began with slavery, went through the Civil war, Jim  
13 Crow era, Civil Rights Act of 1965. So the historical  
14 context there was 150 years.

15 Here, we're talking about less than two years.  
16 And so if the Fourth Circuit can look at 150 years to  
17 decide an equal protection claim, then surely the court  
18 can look to things that were said six or nine months ago.

19 And briefly if the Court -- I was just going to  
20 address standing and I'll do it briefly just to say our  
21 individual plaintiffs present the same facts as the  
22 plaintiffs that were held to have standing by this court,  
23 the Fourth Circuit, the Ninth Circuit in challenging the  
24 executive order and here, if anything, the injuries are  
25 more severe because this is an indefinite ban. So if a

1 90-day ban was sufficient to give rise to standing, I  
2 think our plaintiffs clearly have standing here --

3 THE COURT: So with respect to IAAB, the  
4 organizational claim, is your argument based on the fact  
5 that they have members who are harmed or that the  
6 organization has interests such as hosting conferences  
7 that present the harm?

8 MR. MOSIER: The argument for IAAB is the direct  
9 harm, the way it will interfere with its conferences and  
10 we think that's very analogous to the State of Hawaii,  
11 which the Ninth Circuit found had standing based on the  
12 interference with its ability of students and faculty to  
13 come to this --

14 THE COURT: What about the argument that some of  
15 your -- some of the people coming under IAAB's auspices  
16 might get student visas or other visas that are allowed  
17 for Iranian nationals --

18 MR. MOSIER: That won't cover all of the people  
19 that came in. Particularly, a student visa. The student  
20 visa, usually the university or the school needs to be  
21 involved. So it wouldn't be a good fit for a conference.

22 THE COURT: So it's mainly people coming to the  
23 conference. That's your immediate harm.

24 MR. MOSIER: Yes. For IAAB. Yes.

25 THE COURT: Okay.

1 MR. MOSIER: It is also, you know, we say as we  
2 say in the brief, they've expended time and resources  
3 responding to constituents' concerns over there which we  
4 think poses an additional cost.

5 THE COURT: Is there anything, anything you can  
6 point me to in the INA or elsewhere that tells me what  
7 kind of visas your conference attendees would be seeking?

8 MR. MOSIER: It's not in the record. We would  
9 be happy to submit an additional --

10 THE COURT: Well, it's sort of a legal question  
11 of what they're eligible for --

12 MR. MOSIER: Right. I mean my --

13 THE COURT: -- to come to a conference. I mean  
14 I think my general understanding is that conference  
15 attendees get B visas, but I don't know that or maybe you  
16 can point me to exactly where that would be found in the  
17 INA or the regs.

18 MR. MOSIER: Well, certainly with a B visa, you  
19 can come as a tourist. It isn't my understanding that a  
20 lot of the participants that come here for the conference  
21 would get a B visa.

22 THE COURT: Okay. Thank you.

23 MR. MOSIER: Thank you, Your Honor.

24 MR. ABBAS: Good afternoon, Your Honor.

25 THE COURT: Good afternoon, Mr. Abbas.

1 MR. ABBAS: May it please the Court.

2 THE COURT: And just pull the microphone a  
3 little closer to you.

4 MR. ABBAS: Oh, sorry about that.

5 THE COURT: That's fine.

6 MR. ABBAS: In many ways, the case before this  
7 Court now is lot easier than the case previously before  
8 the Court. The Fourth Circuit in its IRAP decision  
9 focused a lot on establishing the connective tissue  
10 between the campaign promise of the Muslim ban and EO-1 --  
11 connective tissue between EO-1 and EO-2. And really all  
12 that's left for this Court to conclude as it did  
13 previously is to examine and determine whether there is in  
14 fact connective tissue that links this proclamation to the  
15 ones that have come before it. And there really is no  
16 reasonable counter point that the government can make.  
17 The worldwide review that produces the obviously  
18 pretextual basis --

19 THE COURT: You say obviously pretextual, but  
20 what supports that? I mean we have --

21 MR. ABBAS: Sure.

22 THE COURT: -- a cabinet agency doing a review.  
23 There is no suggestion that there was a religious animus  
24 among the individuals conducting the review or the agency  
25 overseeing it.

1 MR. ABBAS: If we just examine the proclamation  
2 on its own terms and look at the parameters of the review,  
3 it lays out that there is this baseline criteria of  
4 assessing whether there's national security or public  
5 safety risk. Twelve countries don't satisfy that  
6 criteria. Only one of those 12 countries that don't  
7 satisfy that criteria are actually on the list of banned  
8 countries.

9 THE COURT: So where are you getting that  
10 information from? Where in the record?

11 MR. ABBAS: That's in the proclamation itself,  
12 Your Honor.

13 THE COURT: Which part, that 12 countries don't  
14 meet the criteria?

15 MR. ABBAS: I don't have a citation to the  
16 proclamation provision itself --

17 THE COURT: But just numerically because I  
18 thought it said that some of them didn't meet the  
19 criteria, but then once they did the 50-day review or  
20 consultation that some of them did meet the criteria after  
21 that.

22 MR. ABBAS: So there was -- no. This is at the  
23 end of the -- at the end of their process of consultation,  
24 this is how many were left having failed to satisfy the  
25 criteria. Seven of the eight banned countries did in fact

1 satisfy the criteria. There was a focus on determining  
2 which countries had terrorist havens. Ten countries that  
3 were determined by the federal government to contain  
4 terrorist havens were not banned countries. Eighty  
5 countries that don't use electronic passports were not  
6 subject to the ban. Four of the banned countries do use  
7 electronic passports and were still subject to the bans.  
8 And then more than half of the 17 countries that don't  
9 provide the United States with any lost or stolen passport  
10 information are not subject to the ban. So even taking  
11 the terms -- the proclamation on its own terms, it's not  
12 actually applying the criteria that it is setting out.

13           we look at the many factors that the  
14 proclamation generates. It's that you find the same  
15 pretextual indicators. Chad meets five out of five --  
16 meets all the mitigating factors that the proclamation  
17 articulates and is still included on the list of banned  
18 countries. Three of the other banned countries meet four  
19 out of the five mitigating factors just as Iraq does, but  
20 are still banned.

21           THE COURT: well, again, just to clarify when  
22 you're saying you're putting these up against factors, are  
23 you relying on the contents of the proclamation only or --

24           MR. ABBAS: Yes, Your Honor.

25           THE COURT: I noticed some materials were

1 submitted and I don't mind relying on outside fact or  
2 facts within the record that are outside the proclamation  
3 if they are either government sources or sources that are  
4 reliable. But, you know, I have some second hand reports  
5 where someone else has done an analysis, but don't tell us  
6 where the source of the facts come from. I just want to  
7 understand what you are relying on.

8 MR. ABBAS: Sure. This is within the  
9 proclamation itself. So what we see is an inconsistent  
10 application of the proclamation stated criteria to the  
11 countries themselves. And when the stated criteria is not  
12 being applied in any type of consistent or rational way,  
13 what we are left with is an indication that it's pretext.

14 And when we look even further and look at the  
15 broad outlines of the proclamation itself, remember the  
16 proclamation is replicating a problem that it's ostensibly  
17 intending to address. The proclamation says that we can't  
18 have case-by-case adjudication. We need to create these  
19 broad categorical suspensions of immigrants from  
20 particular countries. But then through its waiver scheme  
21 establishes the very case-by-case adjudication that it  
22 says is so dangerous to the United States.

23 THE COURT: So I'll ask you a similar question I  
24 asked your co-counsel. Let's assume that  
25 information-sharing deficiencies is a problem that should

1 be addressed and let's say there's some issues that the  
2 visa waiver program did not address that still need to be  
3 addressed at least in the President's view. What could he  
4 do that wouldn't run afoul of the establishment clause  
5 given where we stand now to at least address that problem?  
6 How would you do this differently? If you were advising  
7 him and he said this is a problem I need to fix, convince  
8 countries to share more information, what would you  
9 suggest he do other than what he has done now that would  
10 not cause you and your clients to come back into court?

11 MR. ABBAS: I would advise the President to stop  
12 discriminating against Muslims and disfavoring Islam and  
13 that's --

14 THE COURT: That's not the question. The  
15 question was whether if there's really an  
16 information-sharing deficiency problem that needs to be  
17 addressed including perhaps by trying to encourage or even  
18 coerce countries to provide this information, how does he  
19 do that without being accused of an establishment clause  
20 violation just based on prior history which perhaps could  
21 be left in the past?

22 MR. ABBAS: I don't have an answer to that  
23 question. But this Court doesn't need to answer that  
24 question either because the proclamation can be assessed  
25 on its own terms. And the establishment clause question

1 does not regard the specific provisions of the  
2 proclamation. It's an intent-based argument. Does this  
3 proclamation -- is this proclamation intended to broadcast  
4 the message of disfavor against Islam? Is it intended to  
5 de-stigmatize Muslim? And the answer to that question is  
6 clear and it's that yes. The only explanation for the  
7 contents of the proclamation, the only conclusion that's  
8 reasonable in light of the proclamation's history is the  
9 inescapable conclusion that it was produced out of a  
10 desire to express animosity towards Muslims and towards  
11 Islam.

12 That's why when you look at Sumaya Hamadmad, who  
13 has never been to Syria ever in her entire life, but as a  
14 result of the peculiarities of how citizenship and  
15 nationality is passed on in Syria and how it's not  
16 established in Jordan. She was born in Jordan. Her  
17 parents were Syrian nationals and though she's lived her  
18 whole life in Jordan and has never ever been to Syria,  
19 she's a Syrian national --

20 THE COURT: So how do I factor that into the  
21 analysis? Why is that relevant?

22 MR. ABBAS: The federal government knows that  
23 there are people that are nationals of countries that have  
24 never been to those countries.

25 And President Trump indicated that, well, I'm

1 actually focused on territory, I'm not focused on Muslim  
2 anymore. Well, if the government is focused on territory,  
3 it matters more -- we would expect the government's  
4 proclamation to focus on where the actual plaintiffs have  
5 been, not their country of origin.

6 THE COURT: So if they modified it to say that,  
7 there would be no problem?

8 MR. ABBAS: I don't know that. But the issue is  
9 intent. It's difficult and, you know, we're all tired,  
10 but the Fourth Circuit said that the establishment clause  
11 is "the untiring sentinel protecting religious liberty"  
12 and but there are many lawyers that are very tired here,  
13 but it's up to this court and the folks in this room to  
14 ensure that religious liberty persists in light of wave  
15 after wave of an attempt to broadcast the message that  
16 disfavors Islam. And that's the conclusion that the  
17 plaintiffs have reached when Fahed Muqbil asks himself why  
18 is it that I can't have my foreign national spouse come  
19 tend to the dire needs of my U.S. citizen daughter getting  
20 treatment in Mississippi, he answers that question because  
21 of my faith. When Jane Doe 3 who has bought a ticket who  
22 is told by the consulate to purchase a ticket for her  
23 spouse on a spousal visa -- that ticket is October 29th,  
24 later this month -- asked why is it that my -- the  
25 relationship with my spouse may never come to fruition

1 inside the United States, she perceives it. That it is a  
2 desire to disfavor Islam and disfavor Muslims. And so  
3 thank you, Your Honor.

4 THE COURT: Thank you. Okay. I'll hear from  
5 the government then. Okay. I'm going to assume that  
6 there is still the four minutes for rebuttal. So if the  
7 government wants it, it looks like we have used up 45  
8 minutes. Time flies when you're -- whatever you want to  
9 call what we're doing. Go ahead -- so you have 49 minutes  
10 if you'd like. We'll see how far we get or how much you  
11 need or how much I need to hear from you. Go ahead.

12 MR. MOOPAN: Thank you, Your Honor. May it  
13 please the Court. The proclamation is fundamentally  
14 different from the entry suspensions that preceded it  
15 because of the multi-agency worldwide review process that  
16 it relied on in part as well as the tailored substantive  
17 restrictions that it imposes. In light of those two  
18 features, the proclamation falls well within the  
19 President's broad statutory and constitutional authority  
20 to restrict it and free it of aliens abroad for national  
21 security and foreign policy purposes. But before I get  
22 into the merits, I would like to address at least a little  
23 bit why we think that these claims aren't judiciable at  
24 all and I'd like to start with the statutory claims.

25 The Supreme Court in *Knauff versus Shaughnessy*

1 made clear that it is beyond the province of courts to  
2 review the political branch's determination to exclude an  
3 alien unless Congress expressly authorizes it.

4 THE COURT: That case involved an individual,  
5 didn't it, and not a challenge to the policy?

6 MR. MOOPAN: It did. But there is no case that  
7 has ever said that without congressional authorization,  
8 courts can review even on policy that governs aliens  
9 abroad. And by the way, these plaintiffs would not have  
10 standing if they were not pointing to individual aliens  
11 abroad whose entry injured them. So this isn't just an  
12 abstract challenge to a policy. They are claiming that  
13 individual aliens should be allowed to enter this country  
14 and in those circumstances, Knauff makes clear and every  
15 other case makes clear that in the absence of  
16 congressional authorization, that is a political  
17 determination that is beyond the province of the courts to  
18 address.

19 Now they have not pointed to any congressional  
20 authorization. The INA doesn't provide it. The INA has  
21 long been held and interpreted and even amended to make  
22 clear that there is not review of the exclusion of aliens  
23 abroad. The DC Circuit in Saavedra Bruno case went  
24 through the history at some length in explaining how  
25 because of deference to the political branches, there is

1 not exclusion of aliens abroad and to be sure that case  
2 did involve --

3 THE COURT: I thought that same case said that  
4 if there's constitutional and statutory claims together  
5 that they can be reviewed or at least indicated that.

6 MR. MOOPAN: No. What that case said was that  
7 an earlier DC Circuit opinion, *Abourezk*, had so held. But  
8 importantly, what *Saavedra Bruno*, a subsequent DC Circuit  
9 case pointed out was that *Abourezk* relied critically on a  
10 provision in the INA, Section 1329, that it interpreted to  
11 provide statutory authorization. And the reason that it's  
12 critical is that provision was subsequently amended by  
13 Congress to remove any authorization, perceived  
14 authorization for aliens abroad to challenge by limiting  
15 that statutory provision to claims by the government. So  
16 *Saavedra Bruno* makes clear that whatever *Abourezk* held on  
17 the facts before it and the law before it at the time, it  
18 doesn't provide authorization now for aliens abroad to  
19 challenge their exclusion.

20 THE COURT: So is this aspect of your argument  
21 the same as your consular non-reviewability argument or is  
22 it different?

23 MR. MOOPAN: I think it is the same. Consular  
24 non-reviewability is a subset of the broad reviewability  
25 principle.

1 THE COURT: I see. Okay.

2 MR. MOOPAN: That under Knauff versus Shaunessy,  
3 you need express authorization of Congress and I would  
4 urge this Court to read that discussion in Knauff where it  
5 says there has to be express authorization from Congress  
6 before a judiciary can review the exclusion of aliens  
7 abroad.

8 The INA doesn't provide it as we've just  
9 discussed. They point to the APA and suggests that the  
10 APA provides the authorization. But the APA makes quite  
11 clear that when a statute precludes review and when there  
12 is general non-reviewable principles, the APA doesn't  
13 supplant that. And here the principles of  
14 non-reviewability show that that means that the APA  
15 doesn't provide a remedy.

16 And again I think the DC Circuit's opinion in  
17 Saavedra Bruno is very instructive in this regard. When  
18 it went through the history, it pointed out that when the  
19 Supreme Court once and only once suggested that there was  
20 APA review of the exclusion of aliens and no aliens in  
21 this country, Congress promptly amended the statute to  
22 make clear there isn't APA review and those aliens were  
23 relegated only to habeas records, which of course is not  
24 available to aliens abroad. And the statute that made  
25 that change in its legislative history called it a

1 fallacious notion that aliens have any right to challenge  
2 their exclusion.

3 THE COURT: well, again the argument here seems  
4 to be that it's not aliens, but the U.S. citizen or legal  
5 permanent resident, relatives of them.

6 MR. MOOPAN: Right. what they are challenging  
7 is the exclusion of the aliens and there is no statute  
8 that provides them with an authorization to do so.

9 One way of thinking about this, Your Honor, is  
10 if the aliens were in this country and they were  
11 challenging a statute that let them be -- that would be  
12 removed or deported, it would be crystal clear that they  
13 could not bring this sort of pre-enforcement injunction  
14 suits that they are asking for. Under current law under  
15 the INA under 1252(g), they would be required to go  
16 through the petition for a review process and before  
17 IIRIRA, they would have been required to use the habeas  
18 process. That's the history that I was referencing in  
19 Saavedra Bruno. It is completely backwards to suggest  
20 that an alien in this country has less statutory right to  
21 challenge his removal than an alien abroad and that is  
22 what their position is. It just simply makes no sense.

23 THE COURT: Okay. I understand the argument.  
24 So then let me ask you a little bit about the arguments  
25 regarding -- well, before we get to that, let me just ask

1 you the same question I asked the plaintiffs. What is  
2 your view of how and if the Fourth Circuit opinion is of  
3 any utility to us at this point?

4 MR. MOOPAN: So it is certainly not binding  
5 precedent, Your Honor. I would acknowledge it is  
6 persuasive insofar as if you find it persuasive. I would  
7 submit that it is not particularly persuasive for the  
8 various errors it has that I will address as I go along  
9 today. So on this issue though --

10 THE COURT: So it's persuasive to the point  
11 where if I find it persuasive, I should cite to it or it's  
12 persuasive to the point that it's interesting, but it  
13 doesn't exist anymore?

14 MR. MOOPAN: No. I don't have any objection to  
15 citing it insofar as you find it persuasive any more than  
16 you find the law review article persuasive. It has about  
17 that much authority which is to say none as a legal  
18 binding matter.

19 THE COURT: I agree with that part at least.  
20 The legal binding part. I'm not going to say it's not  
21 persuasive ever, anything the Fourth Circuit says or has  
22 said.

23 MR. MOOPAN: So on this non-reviewability issue,  
24 the Fourth Circuit, of course, didn't address statutory  
25 non-reviewability because it only went off on the

1 constitutional claims. Let me turn to constitutional and  
2 non-reviewability briefly if I may.

3 On that point, they point to two asserted  
4 injuries. Their first claim is that they are injured  
5 because they have relatives abroad who aren't able to  
6 enter here. And the fundamental point about that, Your  
7 Honor, is that is not a violation of the U.S. Persons  
8 constitutional rights. The U.S. Persons establishment  
9 clause rights are not at stake based on the treatment of  
10 their relatives abroad and one of the easiest ways to  
11 understand that is if every one of their plaintiffs were  
12 Christian rather than Muslim and their relatives were  
13 exactly the same religion that they are, Muslim or if they  
14 were Christian, their injuries and their claims would be  
15 exactly the same, which shows you that it cannot be that  
16 their establishment clause rights are violated.

17 They are complaining about the treatment of  
18 their relatives abroad based on their relatives abroad,  
19 the religion of the countries that the overall share of  
20 the religion of the countries where they are from. It has  
21 nothing to do with their religion and that's why it has  
22 nothing to do with their establishment clause rights.

23 All they are showing is that they at most -- and  
24 we don't even agree with this -- have Article III injury  
25 in fact that stems from the allegedly discriminatory

1 treatment of aliens abroad, but that does not make it a  
2 violation of their establishment clause rights. They are  
3 a whole --

4 THE COURT: well, is it crystal clear to you  
5 that you have to be of a particular -- I mean you do have  
6 to have a personal contact with the establishment clause  
7 violation. But why is it absolutely the case that you  
8 have to be of the exact religion that's harmed to have  
9 standing if there is something else that personally  
10 affects you whether it is a relative who has a religion  
11 and that affects you? If it was a government official  
12 statement on religion, it still could have an impact on  
13 somebody, couldn't it?

14 MR. MOOPAN: Injury in fact is not sufficient to  
15 make it a violation of your establishment clause rights.  
16 And let me give you a hypothetical as an example. So  
17 Sante Fe versus Doe is the school prayer, the school  
18 football prayer. Right? Imagine that if because of the  
19 school football prayer, there was a boycott and the  
20 parking garage across the street lost business. No one  
21 thinks that the parking garage across the street can bring  
22 a lawsuit saying that its establishment clause rights were  
23 violated. Of course, it would have injury in fact that's  
24 traceable to an establishment clause violation. But that  
25 doesn't mean that its establishment clause rights are

1 violated. The fundamental difference between -- and that  
2 is no different than this case. Right?

3 what they are saying is because of the treatment  
4 of third parties, they have suffered an injury in fact.  
5 No case -- they have not cited a single case that  
6 recognizes establishment clause rights violation.

7 what they have tried to point is a case like  
8 McGowan, but the fundamental difference in McGowan is that  
9 McGowan was directly regulated by the law at issue. In  
10 McGowan, it was a Sunday closing and so the people who  
11 were subject to Sunday closing law were prosecuted and  
12 fined. That is essentially no different than if the  
13 government imposes a tax on people because of religion.  
14 It was an indirect tax in the sense that rather than  
15 saying you would have to pay money, it says you can't have  
16 a business and if you do have a business, we'll fine you.  
17 But the fundamental difference there is individual people  
18 were subjected to a law directly because of what was  
19 allegedly imposition of a religious law.

20 THE COURT: Let me ask you a different question.  
21 Now let me move on to a different topic. I think I  
22 understand your argument on that point. I asked the  
23 plaintiffs whether they were interested in any of the  
24 underlying materials. It sounds like they're not. But if  
25 I'm not mistaken, at least in another case, you have at

1 least objected to the Court looking at the September 15,  
2 2017 Homeland Security report. Is that your general  
3 position for all cases or just for that case?

4 MR. MOOPAN: No. In this case as well, Your  
5 Honor.

6 THE COURT: And I wasn't in that case. So maybe  
7 you can explain the reasoning for that.

8 MR. MOOPAN: Yes, Your Honor. So our primary  
9 objection -- we have a couple of objections. First is the  
10 report actually contains a lot of classified information.  
11 But more importantly --

12 THE COURT: well, judges can see classified  
13 information.

14 MR. MOOPAN: So I was going to say more  
15 importantly for purposes of your questioning, the report  
16 is also protected by both deliberative process  
17 presidential communication privilege. That's a report  
18 from the acting DHS Secretary to the President of the  
19 United States. And so it is privilege and shouldn't be  
20 considered.

21 THE COURT: But obviously, it's the underlying  
22 support for this. The proclamation by its own terms says  
23 it doesn't say everything that there is to say partly  
24 because it's classified or otherwise. Are you  
25 representing to me now as an officer of the court that

1 there's nothing in there that's inconsistent with the  
2 proclamation?

3 MR. MOOPAN: I'm representing to you that the  
4 proclamation report as to the aspects of the report that  
5 it relied on and you can judge the proclamation on its own  
6 terms. If you think what's in the proclamation supports  
7 it under the relevant legal standards, then it should be  
8 upheld. If you think that what's in the proclamation  
9 isn't sufficient to support the relevant legal standards,  
10 then it should be invalidated --

11 THE COURT: And you're prepared to rely on that  
12 as the record. Correct?

13 MR. MOOPAN: Yes.

14 THE COURT: But I guess the other question I had  
15 was suppose there was some discrepancy between  
16 recommendations in the report or just important probative  
17 facts in the report and what's in the proclamation and you  
18 feel the government would have an obligation to bring that  
19 to the Court's attention given that you're relying so  
20 heavily on the contents of that report as the basis for  
21 the proclamation?

22 MR. MOOPAN: I don't think so, Your Honor. It's  
23 core deliberative process that, you know, it's potentially  
24 possible that various government advisors disagree among  
25 themselves. At the end of the day, the President is the

1 one who made the decision and the President has adopted  
2 the rules he wants by issuing the proclamation.

3 THE COURT: So how is this different than  
4 Korematsu where they relied on an executive order by the  
5 president and many years after the fact, it was determined  
6 that there was information within the justice department  
7 that contradicted representations made to the court, led  
8 to some action. I believe that the Supreme Court took to  
9 create that error later on, but it didn't fix the problem  
10 at the time. So can you assure me there's nothing in this  
11 proclamation that is inconsistent with what or nothing in  
12 the September 15th report that's inconsistent with what's  
13 in the proclamation because if it were, I would feel like  
14 that would be a material fact that you need to disclose.

15 MR. MOOPAN: Let me assure you of this which  
16 hopefully should give you a fair amount of comfort and I  
17 think you pointed this out early. The proclamation itself  
18 expressly says that the eight countries it has selected  
19 for restrictions are the eight countries that the report  
20 designated or recommended be subject to restrictions.  
21 That includes by the way, Somalia. If you look at section  
22 1(i) of the report, that makes that clear. So there is no  
23 inconsistency in that regard which I can tell you without  
24 breaching the privilege because it's referenced in the  
25 proclamation itself.

1 THE COURT: Are you saying there are no  
2 inconsistencies or just no others that you think you can  
3 talk about without --

4 MR. MOOPAN: Your Honor, I'm not going to speak  
5 to the contents of the report.

6 THE COURT: Have you yourself reviewed the  
7 report?

8 MR. MOOPAN: I have.

9 THE COURT: Okay. And you are saying there are  
10 no other inconsistencies?

11 MR. MOOPAN: I am not going to make  
12 representations about what's in the report, Your Honor. I  
13 understand where you're coming from. I understand why  
14 you're asking me --

15 THE COURT: Do you agree with me that if there  
16 were material inconsistencies, they should be disclosed to  
17 the Court?

18 MR. MOOPAN: This is deliberative process  
19 material, Your Honor.

20 THE COURT: That's an abstract question in  
21 general. Leaving this report aside, but in a similar  
22 situation, would you agree that they should be disclosed  
23 to the Court if there's material inconsistencies?

24 MR. MOOPAN: I would not -- let me just put it  
25 this way. If the facts asserted in the proclamation we

1 believe to not be true, I would think that we would have  
2 an obligation to disclose it. I do not think we either  
3 have the obligation or should be asked about whether there  
4 were disagreements among presidential advisors in the  
5 report and whether -- what one describes as an  
6 inconsistency of what one agency thought or what another  
7 agency thought. But if the ultimate factual  
8 representations of the proclamation are what we  
9 assert that -- if there were disagreements about that, I  
10 can understand what your question is. But we stand behind  
11 the factual representations in the proclamation.

12 THE COURT: Okay. Thank you.

13 MR. MOOPAN: Let me say one last issue on the  
14 constitutional issue. As I said earlier, they have two  
15 injuries. Their other asserted injury is the message and  
16 just on the message injury, what I would point out is if  
17 you take that injury by itself, it would blow a massive  
18 hole in established clause standing because, for example,  
19 in Valley Forge, it would be the plaintiffs there could  
20 have come into court and said when the federal government  
21 transferred the property to that church that sent a  
22 message of endorsement of that religion or it sent a  
23 message of disapproval of atheists and under their theory  
24 and because that was alleged, that would be enough to get  
25 to court and that simply doesn't make any sense. And I

1 think the Fourth Circuit recognized it didn't make any  
2 sense which is why even the Fourth Circuit refused to rely  
3 solely on the message theory. It tied it back into the  
4 combination with the delay in entry, which has the problem  
5 I said earlier.

6           The last thing I will say on this is I think the  
7 equal protection claim underscores why there's no -- why  
8 it shouldn't be judiciable. Under the equal protection  
9 claim, there is just no argument that plaintiffs' equal  
10 protection rights are violated. Plaintiffs' religion is  
11 utterly irrelevant under the proclamation.

12           THE COURT: Okay. I'd really like to move on to  
13 the merits now. So why don't you do that?

14           MR. MOOPAN: Okay. So on the merits --

15           THE COURT: Let me just direct you to what I'd  
16 like to hear about given that you've used up a lot of time  
17 on this other issue. On the INA, I've asked the  
18 plaintiffs where the line is and then give me a line.  
19 It's probably not in your interest necessarily to draw  
20 one, but I think courts are often skeptical of authority  
21 being unlimited in any way. It didn't sound as if you  
22 disagreed in your brief with the proposition that there  
23 are certain things such as perhaps any use of 1182 to ban  
24 any employment based visas from anywhere in the world or  
25 something that might run afoul or directly contradict the

1 statute might be beyond the scope of what the President  
2 can do. Even if you don't want me to tell what the limit  
3 is, how would one identify a boundary that you can say  
4 this is not crossed other than just saying we don't  
5 think -- either saying there is no limit or this is  
6 clearly not at the boundary? Give me an idea of what you  
7 think the boundary should be.

8 MR. MOOPAN: Sure. Well, I think that any -- a  
9 restriction that was targeting foreign policy and national  
10 security concerns goes well beyond whatever line there  
11 might be. If instead as some of the examples you just  
12 suggested, if the restriction was meant to involve  
13 domestic issues or meant to totally upset the lines that  
14 the INA has drawn. But that's not what's happening here.  
15 Let me go right to the INA point because I think that's  
16 critical.

17 They repeatedly suggested that because Congress  
18 did certain things, that means that the President can't go  
19 add to them. Their own case law undermines that argument.  
20 If you look at, for example, *Abourezk*, in Footnote 2 of  
21 *Abourezk*. The issue in *Abourezk* was -- the statutory  
22 issue in the case was whether 1182, the inadmissibility  
23 ground, was limited to people who did certain activities  
24 once they got here and that were deemed detrimental or  
25 whether their mere entry could be deemed detrimental.

1 That was what the statutory fight was about whether it was  
2 activities or entry.

3 And in *Abourezk* in a footnote and in *Allende* in  
4 the First Circuit, what both of those courts held, it was  
5 the right rule under the statute was activities, not  
6 entry. But they then said don't worry, that's not going  
7 to be a problem because if there's an issue with entry,  
8 the President can deal with it through 1182(f). It is  
9 doing exactly what they say cannot be done. Taking an  
10 inadmissibility ground in the INA, looking at one of the  
11 limits on it and saying the President can go beyond that  
12 because exactly as Your Honor said during their argument,  
13 the whole point of 1182(f) is to give the President  
14 additional authority over and above the minimum  
15 restrictions the INA imposes and that makes perfect sense  
16 both because Congress is delegating President with the  
17 power, but also importantly because the President has  
18 inherent executive authority to deal with the exclusion of  
19 aliens.

20 THE COURT: So when you said that one line might  
21 be implicit in 1182 is a foreign policy national security  
22 interest even though it doesn't say that explicitly, it's  
23 not limited directly, you think that might be one limit if  
24 it was just a domestic policy reason? You're saying  
25 that's one potential limitation?

1                   MR. MOOPAN: I'm saying that it would be a much  
2 harder case than what is a core application of 1182(f)  
3 which is to restrict aliens abroad to accomplish foreign  
4 policy and national security.

5                   And again take the two most discussed  
6 proclamations in this case have been the Cuban  
7 proclamation and the Iranian proclamation, both of which  
8 are very similar to this in certain respects. For  
9 example, the Iranian proclamation. The point of the  
10 Iranian -- no one was saying in the Iranian proclamation  
11 that there was any problem with Iranian nationals or they  
12 presented any risk or any danger and ditto with the Cuban  
13 proclamation. The point of those proclamations was to put  
14 pressure on foreign governments who had done other things  
15 abroad, which is exactly what this proclamation is meant  
16 to do.

17                   After a worldwide review, the Department of  
18 Homeland Security and the State Department has recommended  
19 to the President that these eight countries have  
20 deficiencies in information reporting. And as part of the  
21 way to get them to improve, the President has imposed  
22 restrictions on their ability of their aliens to enter in  
23 the hopes of encouraging improvement as successfully  
24 occurred with Iraq at the first stab as has occurred with  
25 many other countries during the 50-day engagement. They

1 just simply ignore that critical aspect of the  
2 proclamation. They emphasize again and again whether  
3 individual aliens coming into this country present risk  
4 and ignore that a crucial part of proclamations that  
5 exclude aliens from entering are to accomplish foreign  
6 policy rules by putting pressure on foreign governments.

7 THE COURT: well, what if the issue here is  
8 maybe another line that they are talking about is the  
9 scope of this in terms of the number of countries, the  
10 number of people, but also just the prescriptive nature of  
11 what particular criteria should be applied. So it's not  
12 simply just saying you're not allowed to enter, which is  
13 what 1182 says you can't do. But they identify additional  
14 criteria that need to be considered that aren't in the  
15 INA. That may be different than what happened in the Iran  
16 hostage case or the Cuba case. Isn't it?

17 MR. MOOPAN: well, but so I don't think that's  
18 the case in this case other than the waiver criteria,  
19 which as Your Honor --

20 THE COURT: well, that's what they are arguing  
21 is the additional criteria.

22 MR. MOOPAN: Right. And the response to that is  
23 exactly what Your Honor suggested. That it can't be that  
24 the waiver criteria caused the problem because we didn't  
25 have the waiver criteria in the first place. There was --

1 I'm not sure if there was a waiver criteria in either Cuba  
2 or Iran. There is no reason that there would have to be  
3 because a big part of the purpose of the proclamation is  
4 to put pressure on the foreign countries to improve their  
5 information. And if given that that's the purpose, it  
6 makes perfect sense to have it be a sweeping proclamation  
7 that picks up all of the nationals. That's what puts more  
8 pressure on them to serve what is an indisputably  
9 legitimate goal of improving information.

10 THE COURT: So let me ask you a different  
11 question about 1182. If we are talking about the finding  
12 of a detrimental interest, again similar to my question  
13 about the statute generally, where is the line there? I  
14 mean one position you could take is that and I think you  
15 sort of have at least -- it appears you may have taken  
16 this position that this is a completely non-reviewable  
17 issue. Another position that might be more reasonable  
18 would be it is reviewable, but it's a low bar. So which  
19 is your position?

20 MR. MOOPAN: So I think that if the President  
21 makes the determination that it's not in the national  
22 interest as national interest is defined along the lines  
23 we just talked about earlier, under Webster versus Doe, et  
24 cetera, it should not be reviewable at all. But at a  
25 minimum that's it's not reviewed for anything more than

1 something approaching a rational basis. It's certainly  
2 not reviewed under the search standards they are talking  
3 about which are searching review of the degree of  
4 tailoring and pointing out that there are potential  
5 examples where it's overinclusive or underinclusive --

6 THE COURT: Well, the Ninth Circuit seemed to --  
7 I don't know if it's the same as what the plaintiffs are  
8 asking for -- but they seem to do more than a very limited  
9 cursory review. Are you just saying they are wrong or is  
10 there something about their review that is at least  
11 reasonable in terms of the standard even if it isn't met  
12 here?

13 MR. MOOPAN: No. So we do think that they are  
14 wrong. There's no basis in the statute for that. The  
15 statute says that if the President finds it's in the  
16 national interest. If the President finds it, by  
17 definition that's satisfied. But even if you were going  
18 to go look behind it, I don't see how you get to say that  
19 it's going to be some searching APA style review of  
20 whether it's arbitrary and capricious as opposed to some  
21 bare minimum rational. But here, we exceed that by far.

22 But let me take a step back and talk a little  
23 bit about exactly what the proclamation -- the process  
24 leading to the proclamation because I think that's quite  
25 important here. So the first point and I think it's a

1 critical point is that there's not a shred of evidence,  
2 not a shred of evidence that the Department of Homeland  
3 Security, the acting Secretary for the Department of  
4 Homeland Security, the Secretary of State or any of their  
5 subordinates has any animus against Muslims. None. They  
6 haven't pointed to anything in any brief or today. But it  
7 was the Department of Homeland Security in consultation  
8 with the Secretary of State that engaged in the initial  
9 determination of what the new baseline should be for  
10 information sharing and other national security risks.  
11 That's not in EO-2. The EO-2 directs them to consider  
12 what it should be, but it doesn't specify what the  
13 criteria are.

14 THE COURT: So the EO-2 does specify -- maybe  
15 you can give me a response on this issue -- it does  
16 specify or it states specifically the Secretary of  
17 Homeland Security shall submit a list of countries for  
18 inclusion in a presidential proclamation that would  
19 prohibit the entry of those nationals. So it doesn't say  
20 do a review and tell me whether I need to ban any  
21 countries. It says give me a list of countries to ban.  
22 Am I reading that incorrectly?

23 MR. MOOPAN: You are reading it a little  
24 overbroad. So the very sentence you're reading said  
25 appropriate nationals. And before that, the whole section

1 is 2(b) and (d) before you get to what you are reading  
2 said -- it tells you what you are looking for. It starts  
3 off by saying I want you to do the review for which  
4 countries have information problems and then I want you to  
5 investigate that and then I want you to make a  
6 recommendation and it's I think quite clear in the context  
7 when you read it through --

8 THE COURT: Well, but it's a recommendation not  
9 I grant you maybe it doesn't say for total ban, but it  
10 says he's looking for a list of countries for inclusion in  
11 a proclamation that would prohibit entry and perhaps with  
12 some nuance or some exceptions, but he's asked for, in  
13 fact ordered them to provide a list of countries where  
14 there's going to be a ban of some kind.

15 MR. MOOPAN: Right.

16 THE COURT: Rather than saying do a study and  
17 tell me what you think should we ban anybody or not. It  
18 seems -- I'm trying to understand whether I'm misreading  
19 that or that even under that standard, there is still --  
20 it still doesn't indicate any problems here?

21 MR. MOOPAN: A ban for countries that have  
22 problems with information sharing. If it was the case  
23 that there were no countries that had a problem with  
24 information sharing, then the appropriate nationals would  
25 have been zero.

1           THE COURT: well, even if there are problems --  
2           so you are saying that assuming that if there's any kind  
3           of problems whatsoever, that people will get banned?  
4           Because I just can't -- it seems to me -- the way I read  
5           it, it seems as if it's a one-way issue here. It doesn't  
6           give the Secretary discretion to come back and say nobody  
7           should be barred from entry. It asks the Secretary to  
8           provide some list of people or categories of people.

9           MR. MOOPAN: I don't think that's a fair reading  
10          of the order, Your Honor. I think what it asks the  
11          Secretary to do is to provide a list of recommendations of  
12          appropriate nationals. That doesn't foreclose the  
13          Secretary from in her judgment saying there aren't any.  
14          Having done my investigation, I don't think there are any  
15          appropriate nationals that should be banned because we  
16          think that there's no country that has sufficient problems  
17          with information sharing that that's the appropriate  
18          measure.

19          THE COURT: I mean historically, I don't think  
20          any countries have ever been -- had all their nationals or  
21          a significant portion barred because of  
22          information-sharing problems. But here the report  
23          presumes that if there's an information-sharing problem,  
24          they should be banned and I'm just trying to understand  
25          how is it then that the Secretary really had the

1 opportunity to say I don't think anybody should be banned  
2 even though there are information problems, they just  
3 don't rise to that level.

4 MR. MOOPAN: I don't think it's a fair reading  
5 of that to say it was dictating to the Secretary that  
6 there has to be at least one country on the list with at  
7 least one person --

8 THE COURT: Just I want to look at that area  
9 again just to make sure I understand your argument here.  
10 Remind me again what number that is even though I quoted  
11 that to you.

12 MR. MOOPAN: So it's Section 2(e) of the report  
13 says "the Secretary of Homeland Security in consultation  
14 with the Secretary of State and the Attorney General shall  
15 submit to the President a list of countries recommending  
16 for inclusion in a presidential proclamation that would  
17 prohibit the entry of appropriate categories of foreign  
18 nationals of countries that have not provided the  
19 information requested."

20 So first of all --

21 THE COURT: So it asks for a list of countries,  
22 not appropriate people or categories of people.

23 MR. MOOPAN: No. So it's a list of countries  
24 that will prevent entry of appropriate categories of  
25 foreign nationals, right, that have not provided

1 information requests. I think that order leaves abundant  
2 discretion to the Secretary of DHS to conclude that having  
3 investigated all the countries, that she didn't think that  
4 there was any country that warranted inclusion on that  
5 list.

6 THE COURT: Okay. I understand.

7 MR. MOOPAN: I still think that's a fair reading  
8 to say that. She would have read that as dictating that  
9 there must be some countries.

10 So with that -- so again what the Secretary did  
11 was in consultation with the Secretary of State and the  
12 DNI investigate -- created a new baseline for information  
13 sharing of multiple factors, then investigated every  
14 country in the world, assess them on those factors, then  
15 had an engagement period with the countries to get them to  
16 improve and then having done all of that, evaluated them  
17 and provided the list that we've been talking about.

18 I think it's important to note on this that on  
19 the baseline, a lot of the argument that were made today  
20 about whether there's a mismatch or whether the baseline  
21 was applied seemed to assume that if you flunk any one  
22 factor, you are not adequate --

23 THE COURT: So maybe you can clarify that for  
24 me.

25 MR. MOOPAN: Yes.

1           THE COURT: Are you disputing that there are  
2 characterizations of countries that didn't have a certain  
3 factor is inaccurate or are you saying that there was no  
4 requirement that every factor be met so there are going to  
5 be some countries for which they either had a factor and  
6 were not banned or lacked a factor and yet were banned?  
7 So is that your argument primarily?

8           MR. MOOPAN: The baseline has ten factors. The  
9 adequacy under the baseline was assessed holistically. It  
10 was not you have to check all ten boxes. It was assessed  
11 holistically and the eight countries that the agencies  
12 recommended to the President to be included on the list  
13 are as the proclamation lays out the eight countries that  
14 the President after consulting with his cabinet and other  
15 advisors decided the list.

16           THE COURT: So you're saying even within the  
17 methodology that was established with the baseline  
18 criteria and otherwise and these various factors, there  
19 was -- it wasn't an objective analysis. It was subjective  
20 based on qualitative factors as we saw in the case of  
21 Somalia that weren't even in the list and that's how the  
22 list was generated. It wasn't just did you meet these  
23 criteria or how many did you meet.

24           MR. MOOPAN: Yeah. I think it's fair to say,  
25 Your Honor, that those factors are both, you know, they

1 are subject to discretion in how you would apply them to  
2 any given country and how you would weigh all ten of them.  
3 But critically, the people who were doing the weighing  
4 were the Department of Homeland Security and the Secretary  
5 of State, who again there's not a shred of evidence that  
6 either of them or any of their subordinates have ever  
7 harbored any anti-Muslim bias or ever said anything saying  
8 they wanted to have a Muslim ban.

9 And so they then make a recommendation to the  
10 President of these eight countries. Now let's stop and  
11 think about these eight countries. Of those eight  
12 countries, the recommendation dropped two Muslim countries  
13 from the earlier iterations. They dropped Sudan. They  
14 dropped Iraq. They added two non-Muslim countries. They  
15 added North Korea. They added Venezuela. They added one  
16 and only one Muslim country, Chad, which is barely a  
17 majority Muslim country. It's basically --

18 THE COURT: So let me ask you this. I think in  
19 your brief, you cite the Felix case from the Tenth Circuit  
20 about the scenario where perhaps there were some issues in  
21 the past and how do we look at those and it refers to a  
22 purposeful public and persuasive curing of any prior  
23 issue. Are you saying that the proclamation does -- first  
24 of all, do you agree with that as being an appropriate way  
25 to look at this, an appropriate standard and you're saying

1 the proclamation does that or do you rely on other facts  
2 outside the proclamation to meet that standard?

3 MR. MOOPAN: The proclamation including the  
4 review that we're seeking. I think what's critical here  
5 is that you had two agencies who have -- the heads of  
6 which and the subordinates of which have never been  
7 accused, never been accused of harboring any anti-Muslim  
8 bias, who engaged in a month's long worldwide review.  
9 They then provided recommendations to the President. The  
10 countries that they recommended don't evince any Muslim  
11 bias because as I just pointed out, they dropped Muslim  
12 countries. They added non-Muslim countries. They added  
13 only one Muslim country.

14 And then when the President acted, having  
15 considered those recommendations and consulted with his  
16 cabinet and others, he covered those eight countries, but  
17 further look at the restrictions that are imposed. They  
18 are tailored restrictions. For example, for Libya and  
19 Chad and Yemen, most non-immigrant visas are allowed.  
20 Even for Iran, student visas and exchange visas are  
21 allowed. None of that makes any sense if this is some  
22 sort of Muslim ban. Who enacts a Muslim ban and exempts  
23 whole swaths of non-immigrant visas and whole countries?  
24 Their story just does not make sense.

25 what does make sense is that having engaged in a

1 worldwide review run by two agencies that have no bias,  
2 that have never been accused of having bias, the President  
3 considered their recommendations, consulted with his  
4 cabinet and made a good faith decision that in order to  
5 both improve the information that is considered when  
6 granting visas and to pressure foreign governments to  
7 improve that information, then these tailored restrictions  
8 would be imposed. And if that is not sufficient for him  
9 to act in this area, then I think, Your Honor, the  
10 question does become as you asked them when will he ever  
11 do that. And at least one counsel said he doesn't have an  
12 answer for you and I understand that answer because it  
13 seems inconceivable they will ever be content.

14 THE COURT: well, Felix as well as I think  
15 McCreary do address the issue of at least some,  
16 particularly in Felix, some persuasive refutation of any  
17 prior motive. Has that happened?

18 MR. MOOPAN: well, so we have pointed to the  
19 speech that the President gave in Saudi Arabia. They've  
20 disagreed as to whether that's probative. In this  
21 circumstance, I think what's far more probative is the  
22 process that happened and the substance of what the  
23 President has done.

24 The notion that the President of the United  
25 States should have to come in and I don't know what sort

1 of apology would satisfy them. But this is a core act of  
2 the President of the United States based on national  
3 security and foreign policy concerns based on  
4 recommendations that have been given to him by both two  
5 cabinet secretaries in consultation with multiple other  
6 cabinet agencies. The notion that that falls outside of  
7 1182(f) and 1185 or as an established clause violation is  
8 astonishing. They don't have any case that has any  
9 resemblance to this.

10 In McCreary, for example, they try to say that  
11 the history matters. In McCreary, you had a facially  
12 religious symbol that they then put on some window  
13 dressing on both sides and said things have changed.

14 Here we have a month's long worldwide review by  
15 multiple cabinet agencies. Those have nothing in common.  
16 What it does actually have more in common with is, for  
17 example, McGowan. In McGowan, it dealing with Sunday  
18 closing laws. What the court pointed out is yes, we know  
19 that Sunday closing laws historically were rooted in  
20 religious motives. But look at Sunday closing laws today.  
21 There are all sorts of exceptions for things that are  
22 totally inconsistent with any religious purpose that  
23 evinced that it's for recreation.

24 I would submit that in this context, the  
25 analogue there is the fact that the proclamation dropped

1 multiple Muslim countries and exempted multiple types of  
2 non-immigrant visas even from the Muslim countries. That  
3 is strong evidence that this is not some sort of Muslim  
4 ban in disguise. It is what it purports to be, which is a  
5 good faith national security determination of the  
6 President to solve a pressing problem that two agencies  
7 determined after a month-long investigation.

8 THE COURT: I don't know where we are in time,  
9 but I think I have covered the main questions I would like  
10 to ask you. Anything else you would like to add?

11 MR. MOOPAN: No. Thank you, Your Honor.

12 THE COURT: Thank you. Mr. Cox?

13 MR. COX: Thank you, Your Honor. Just a couple  
14 of quick points. First with regard to the judiciability  
15 of the statutory claim, I just wanted to point out that in  
16 Sale, the Supreme Court, of course, evaluated that the  
17 merits of a claim that the President had exceeded his  
18 authority under 212(f). And we've cited the government's  
19 briefs. So that we have given the Westlaw cites in our  
20 brief of the government's brief in that case. And if you  
21 take a look, the arguments you've heard today could be  
22 lifted precisely from that and, of course, the court  
23 rejected them.

24 More generally, when it comes to this -- the  
25 alleged principle of non-reviewability, the government has

1 argued that consular non-reviewability is but one part of  
2 a subset of some sort of broader principle, but that  
3 broader principle simply doesn't exist. The government  
4 has yet to point to a single case that either articulates  
5 it, explains it, applies it or acknowledges that it  
6 exists.

7 To the contrary, the Fourth Circuit in the  
8 case -- in the IRAP decision at 857 F.3rd at 587 talked  
9 about how when you have statutory claims with  
10 constitutional claims, you can consider them both. And so  
11 there's no bar here. There's no non-reviewability  
12 principle that bars this Court's evaluation of statutory  
13 claims.

14 And I just wanted to say a word about counsel's  
15 proposed limit on the 212(f) power, which I believe he  
16 proposed limit was that the President would have to be  
17 attempting to achieve some sort of foreign policy or  
18 national security goal. But, of course, that's not a  
19 limit at all. The President could say tomorrow that he  
20 wants to ban guest workers because he thinks that for some  
21 foreign policy reason he wants to, you know, pressure a  
22 government of a particular country and so that perhaps  
23 sends a fair number of guest workers to this country. He  
24 could easily put that in terms of foreign policy or  
25 national security. You know, when it comes to

1 immigration, pretty much anything you could dress up to  
2 look like that. So it's not a limit at all.

3 And if the goal really is to --

4 THE COURT: Shouldn't Congress set the limit  
5 then? I mean if it's unclear now and if this issue is or  
6 if Congress or if the American people decide this goes  
7 beyond what the President should be allowed to do, isn't  
8 that the remedy to have Congress pass a law limiting or an  
9 amendment limiting 1182 in some way that would either  
10 avoid this situation or some other situation?

11 MR. COX: Well, Your Honor, our Constitution in  
12 fact sets a limit. Our Constitution says that Congress is  
13 who gets to set the policies when it comes to immigration  
14 and entry policies and Congress cannot delegate that  
15 authority to the executive branch which is precisely  
16 why --

17 THE COURT: Well, it can and it does. It's just  
18 a matter of whether 1182 does it. Isn't that correct?

19 MR. COX: Right. And our point rather is that  
20 1182 has to be read in terms of that constitutional  
21 prohibition and it can't -- it cannot be that Congress  
22 simply hands the President a pen and says feel free to  
23 cancel any part of the INA you want, impose your own  
24 restrictions if you'd like, you know, we leave it up to  
25 you and, you know, so long as you say it's about national

1 security, no court can even review it. I mean that's no  
2 limit -- that's no limit at all. And there's no reason to  
3 think that Congress thought that that's what it was doing  
4 when it enacted 212(f) particularly in light of the long  
5 history of indications of it that are far, far narrower.

6 And, Your Honor, if the goal, of course, is to  
7 simply pressure governments to share information, the  
8 government has never explained why it couldn't enact  
9 similar bans with regard to the other countries as it did  
10 to Venezuela. There's no explanation here as to why it  
11 works for Venezuela, but not for Chad, for example. So  
12 there are far more targeted measures of achieving the  
13 government's stated goals here that don't involve banning  
14 tens and hundreds of millions of Muslims.

15 The last issue I just wanted to touch on  
16 briefly, Your Honor, is that of organizational standing.  
17 As Your Honor may be aware as we went up to the Supreme  
18 Court last time, you know, in light of the injunction,  
19 several of our individual plaintiffs, their relatives  
20 received their visas, which the government argued mooted  
21 them out. The government also argued repeatedly that Your  
22 Honor's -- you know, when Your Honor didn't reach the  
23 standing of our organizational plaintiffs the last time,  
24 that that somehow indicated that this Court didn't believe  
25 we had standing. And so we do think that there would be

1 some value of an avoiding mootness concerns and ensuring  
2 that we get resolution of this case on the merits were  
3 this Court to consider the standing of organizational  
4 plaintiffs which I can address and I think we've addressed  
5 extensively in our papers. But --

6 THE COURT: I think you've covered it, but I  
7 think that's a legitimate point to raise about the future  
8 of the case.

9 MR. COX: All right. I think that's all we  
10 have, Your Honor.

11 THE COURT: Great. well, thank you very much.  
12 Thank you to both sides for a well-argued motion. And I  
13 will take the matter under advisement. As I had stated  
14 earlier in I think some informal scheduling issues, I  
15 can't give you a forecast on exactly when I'll issue a  
16 decision on this, but I'll do it as soon as I can. Thank  
17 you very much.

18 (Proceedings concluded.)  
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CERTIFICATE OF REPORTER

I, Lisa K. Bankins, an Official Court Reporter for the United States District Court for the District of Maryland, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the motions hearing in the case of the International Refugee Assistance Project, et al. v. Trump, et al, Iranian Alliance Across Borders, et al. v. Trump, et al, Zakzok et al. v. Trump, et al., Civil Action Number TDC-17-00361, TDC-17-2921, TDC-17-2969, in said court on the 16th day of October, 2017.

I further certify that the foregoing 74 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 18th day of October, 2017.

Lisa K. Bankins  
Lisa K. Bankins  
Official Court Reporter

**MR. ABBAS:** [16] 4/16 31/23  
31/25 32/3 32/5 32/20 32/25  
33/10 33/14 33/21 34/23 35/7  
36/10 36/21 37/21 38/7  
**MR. ATKINS:** [1] 5/2  
**MR. COX:** [22] 4/11 6/1 6/12  
6/16 7/1 8/16 9/13 10/4 11/4  
11/9 11/19 12/1 12/15 13/8 14/6  
14/25 15/23 16/12 70/12 72/10  
72/18 74/8  
**MR. GARG:** [1] 5/11  
**MR. JADWAT:** [19] 4/9 16/13  
16/15 17/4 17/12 17/21 18/12  
19/16 19/21 20/10 21/14 22/3  
22/23 23/3 23/18 24/2 24/11  
24/14 24/21  
**MR. MOOPAN:** [45] 5/5 39/11  
40/5 41/5 41/22 42/1 43/5 44/3  
44/13 44/22 46/13 48/3 48/7  
48/13 49/2 49/12 49/21 50/14  
51/3 51/7 51/10 51/17 51/23  
52/12 53/13 54/7 55/25 57/16  
57/21 58/19 59/12 60/22 61/14  
61/20 62/8 63/3 63/11 63/22  
64/6 64/24 65/7 65/23 67/2  
68/17 70/10  
**MR. MOSIER:** [16] 4/13 24/25  
25/5 26/15 27/10 27/20 28/12  
28/20 30/7 30/17 30/23 30/25  
31/7 31/11 31/17 31/22  
**MR. PRICE:** [1] 4/22  
**MR. ROTHSCHILD:** [1] 4/20  
**MR. SCHWEI:** [1] 5/7  
**MS. HIROSE:** [1] 4/25  
**MS. SHEBAYA:** [1] 4/18  
**THE CLERK:** [1] 4/1  
**THE COURT:** [113]

## 0

**00361** [2] 1/3 75/11  
**0361** [1] 4/3

## 1

**10004** [1] 2/5  
**10011** [1] 3/4  
**10271** [1] 2/24  
**10th** [1] 2/10  
**1152** [1] 8/10  
**1182** [23] 10/23 11/16 11/17  
11/18 11/25 12/7 12/17 12/20  
13/24 15/6 15/20 53/23 54/22  
55/8 55/13 55/21 56/2 57/13  
58/11 69/7 72/9 72/18 72/20  
**1185** [1] 69/7

**12** [2] 33/6 33/13

**120** [1] 2/23  
**125** [1] 2/4  
**1252** [1] 43/15  
**1285** [1] 3/3  
**1310** [1] 2/19  
**1329** [1] 41/10  
**1361** [4] 10/13 16/3 16/4 16/5  
**15** [1] 48/1  
**150** [2] 29/14 29/16  
**15th** [1] 50/12  
**16** [1] 1/6  
**16th** [1] 75/12  
**17** [1] 34/8  
**170208** [1] 2/7  
**1750** [1] 2/24  
**18th** [2] 2/4 75/18  
**1965** [2] 9/2 29/13

## 2

**20** [1] 3/9  
**20001** [1] 2/10  
**20003** [1] 2/13  
**20005** [1] 2/20  
**2015** [1] 13/1  
**2017** [4] 1/6 48/2 75/12 75/18  
**20530** [1] 3/10  
**20770** [1] 3/13  
**210** [1] 2/20  
**212** [5] 18/4 18/24 70/18 71/15  
73/4  
**24th** [2] 25/18 26/11  
**2921** [3] 1/3 4/5 75/11  
**2969** [3] 1/4 4/6 75/11  
**29th** [1] 38/23  
**2:00** [1] 1/7

## 3

**30** [2] 5/18 5/22  
**30317** [1] 2/7

## 4

**45** [1] 39/7  
**453** [1] 2/13  
**49** [1] 39/9

## 5

**50-day** [2] 33/19 56/25  
**587** [1] 71/8

## 6

**6500** [1] 3/13

## 7

**71080** [1] 2/16  
**74** [1] 75/13

## 8

**850** [1] 2/10  
**857** [1] 71/8

## 9

**90** [1] 21/6  
**90-day** [1] 30/1  
**94612** [1] 2/16

## A

**ABBAS** [4] 2/12 4/18 6/24  
31/25  
**ability** [3] 30/12 56/22 75/16  
**Abourezk** [8] 15/2 41/7 41/9  
41/16 54/20 54/21 54/21 55/3  
**above** [1] 55/14  
**abroad** [17] 39/20 40/9 40/11  
40/23 41/1 41/14 41/18 42/7  
42/24 43/21 45/5 45/10 45/18  
45/18 46/1 56/3 56/15  
**absence** [1] 40/15  
**absolute** [3] 8/20 8/24 9/18  
**absolutely** [1] 46/7  
**abstract** [2] 40/12 51/20  
**abundance** [1] 13/17  
**abundant** [1] 64/1  
**accept** [1] 8/11  
**accepted** [1] 14/15  
**accepts** [1] 26/22  
**accomplish** [2] 56/3 57/5  
**accused** [4] 36/19 67/7 67/7  
68/2  
**achieve** [1] 71/17  
**achieving** [1] 73/12  
**acknowledge** [1] 44/5  
**acknowledges** [1] 71/5  
**acknowledgment** [1] 16/6  
**across** [7] 1/9 4/5 4/16 14/9  
46/20 46/21 75/9  
**act** [4] 7/7 29/13 68/9 69/1  
**acted** [1] 67/14  
**acting** [2] 48/18 60/3  
**action** [5] 13/23 26/8 26/10  
50/8 75/10  
**activities** [3] 54/23 55/2 55/5  
**actor** [1] 9/21  
**add** [2] 54/19 70/10  
**added** [6] 66/14 66/15 66/15  
66/15 67/12 67/12  
**address** [18] 8/16 10/21 12/18  
12/19 12/23 15/4 17/21 19/14  
29/20 35/17 36/2 36/5 39/22  
40/18 44/8 44/24 68/15 74/4  
**addresses** [1] 26/3  
**adds** [1] 16/24

**A**

**adduced [1]** 75/7  
**adequacy [1]** 65/9  
**adequate [1]** 64/22  
**adjudication [2]** 35/18 35/21  
**admissibility [3]** 7/11 10/15 16/9  
**adopted [1]** 50/1  
**advance [1]** 5/17  
**advantage [1]** 27/14  
**advisement [1]** 74/13  
**advisors [3]** 49/24 52/4 65/15  
**Advocates [1]** 2/15  
**afoul [2]** 36/4 53/25  
**African [2]** 29/8 29/11  
**African-Americans [2]** 29/8 29/11  
**afternoon [16]** 4/10 4/12 4/14 4/17 4/19 4/21 4/23 5/1 5/5 5/14 16/14 16/15 24/25 25/1 31/24 31/25  
**agencies [6]** 65/11 67/5 68/1 69/6 69/15 70/6  
**agency [5]** 32/22 32/24 39/15 52/6 52/7  
**al [18]** 1/3 1/6 1/9 1/12 1/15 1/18 4/4 4/4 4/6 4/6 4/7 4/7 75/8 75/9 75/9 75/10 75/10 75/10  
**alert [1]** 6/7  
**alien [3]** 40/3 43/20 43/21  
**aliens [23]** 39/20 40/8 40/10 40/13 40/22 41/1 41/14 41/18 42/6 42/20 42/20 42/22 42/24 43/1 43/4 43/7 43/10 46/1 55/19 56/3 56/22 57/3 57/5  
**alleged [4]** 11/3 29/7 52/24 70/25  
**allegedly [3]** 7/17 45/25 47/19  
**alleging [1]** 28/15  
**Allende [1]** 55/3  
**Alliance [1]** 75/9  
**ALLIANCES [3]** 1/9 4/5 4/15  
**allow [1]** 11/18  
**allowed [7]** 16/19 30/16 40/13 57/12 67/19 67/21 72/7  
**allows [2]** 13/25 26/13  
**alone [1]** 26/10  
**ambiguous [1]** 21/16  
**amended [3]** 40/21 41/12 42/21  
**amendment [1]** 72/9  
**amendments [1]** 9/3  
**American [2]** 2/3 72/6  
**Americans [4]** 2/18 27/16 29/8 29/11

**Americas [1]** 3/3  
**amount [1]** 50/16  
**analogous [1]** 30/10  
**analogue [1]** 69/25  
**analyses [1]** 27/6  
**analysis [6]** 9/25 26/11 26/13 35/5 37/21 65/19  
**analyzing [1]** 9/13  
**and/or [1]** 12/1  
**animosity [1]** 37/10  
**animus [2]** 32/23 60/5  
**announced [1]** 5/17  
**answer [5]** 36/22 36/23 37/5 68/12 68/12  
**answers [2]** 20/4 38/20  
**anti [4]** 24/1 24/2 66/7 67/7  
**anti-Muslim [3]** 24/1 66/7 67/7  
**anti-terrorist [1]** 24/2  
**anymore [2]** 38/2 44/13  
**APA [8]** 42/9 42/10 42/10 42/12 42/14 42/20 42/22 59/19  
**apology [1]** 69/1  
**apparent [1]** 25/10  
**APPEARANCES [1]** 2/2  
**application [2]** 35/10 56/2  
**applied [4]** 9/11 35/12 57/11 64/21  
**applies [1]** 71/5  
**apply [2]** 28/22 66/1  
**applying [1]** 34/12  
**apprise [1]** 24/20  
**approach [2]** 7/15 13/16  
**approaching [1]** 59/1  
**Arabia [1]** 68/19  
**arbitrary [1]** 59/20  
**area [4]** 13/23 19/6 63/8 68/9  
**areas [1]** 14/8  
**aren't [4]** 39/23 45/5 57/14 62/13  
**arguably [1]** 14/21  
**argue [1]** 5/20  
**argued [4]** 71/1 73/20 73/21 74/12  
**arguing [4]** 17/8 17/16 26/12 57/20  
**argument [29]** 8/11 8/16 10/3 10/22 14/14 15/13 15/16 18/7 18/24 19/10 26/23 28/5 28/9 28/12 30/4 30/8 30/14 37/2 41/20 41/21 43/3 43/23 47/22 53/9 54/19 55/12 63/9 64/19 65/7  
**arguments [5]** 5/22 17/23 18/19 43/24 70/21  
**ARJUN [2]** 3/9 5/12

**Arlington [3]** 26/2 26/5 29/9  
**art [1]** 8/19  
**article [4]** 14/16 14/17 44/16 45/24  
**articulates [2]** 34/17 71/4  
**ascertain [1]** 7/13  
**aspect [2]** 41/20 57/1  
**aspects [1]** 49/4  
**assert [1]** 52/9  
**assert that [1]** 52/9  
**asserted [3]** 45/3 51/25 52/15  
**asserting [1]** 27/9  
**assess [2]** 10/12 64/14  
**assessed [3]** 36/24 65/9 65/10  
**assessing [1]** 33/4  
**ASSISTANCE [3]** 1/3 4/4 75/8  
**assume [4]** 12/12 35/24 39/5 64/21  
**assuming [2]** 28/23 62/2  
**assure [2]** 50/10 50/15  
**astonishing [1]** 69/8  
**atheists [1]** 52/23  
**ATKINS [2]** 3/3 5/3  
**Atlanta [1]** 2/7  
**attempt [1]** 38/15  
**attempted [1]** 15/6  
**attempting [2]** 7/4 71/17  
**attendees [2]** 31/7 31/15  
**Attorney [2]** 21/3 63/14  
**attributed [1]** 23/23  
**auspices [1]** 30/15  
**authority [22]** 7/6 7/21 10/14 11/6 12/4 12/7 13/20 14/2 14/16 16/7 18/25 22/21 22/25 23/1 23/9 39/19 44/17 53/20 55/14 55/18 70/18 72/15  
**authorization [11]** 40/7 40/16 40/20 41/11 41/13 41/14 41/18 42/3 42/5 42/10 43/8  
**authorizes [1]** 40/3  
**Avenue [3]** 2/13 3/3 3/9  
**avoid [2]** 11/3 72/10  
**avoiding [1]** 74/1

**B**

**background [1]** 28/7  
**backup [1]** 75/16  
**backwards [1]** 43/19  
**ban [37]** 7/4 8/25 9/2 13/10 13/15 15/25 16/21 16/24 17/2 17/25 18/1 18/25 20/1 20/2 20/20 20/24 21/5 21/18 21/23 25/15 29/25 30/1 32/10 34/6 34/10 53/23 60/20 60/21 61/9 61/14 61/17 61/21 66/8 67/22

**B**

ban... [3] 67/22 70/4 71/20  
**Banks** [4] 3/12 75/3 75/21 75/22  
**banned** [13] 33/7 33/25 34/4 34/6 34/17 34/18 34/20 62/3 62/15 62/24 63/1 65/6 65/6  
**banning** [1] 73/13  
**bans** [4] 13/4 13/6 34/7 73/9  
**bar** [8] 8/13 10/2 12/1 17/11 27/23 27/24 58/18 71/11  
**bare** [1] 59/21  
**barely** [1] 66/16  
**barred** [4] 11/2 15/19 62/7 62/21  
**barriers** [1] 28/16  
**bars** [1] 71/12  
**baseline** [8] 33/3 60/9 64/12 64/19 64/20 65/8 65/9 65/17  
**basis** [7] 7/19 10/7 27/12 32/18 49/20 59/1 59/14  
**behind** [4] 25/13 28/2 52/10 59/18  
**benefit** [1] 28/17  
**BENNETT** [3] 3/8 5/10 5/10  
**besides** [1] 24/10  
**beyond** [14] 5/22 6/9 10/23 11/18 11/24 11/25 13/24 27/5 40/1 40/17 54/1 54/10 55/11 72/7  
**bias** [5] 66/7 67/8 67/11 68/1 68/2  
**bigger** [1] 16/20  
**biggest** [1] 16/23  
**binding** [3] 44/4 44/18 44/20  
**blanket** [1] 18/24  
**blood** [1] 23/23  
**blow** [1] 52/17  
**bodies** [1] 24/8  
**bona** [2] 28/1 28/2  
**BORDERS** [4] 1/9 4/5 4/16 75/9  
**born** [2] 9/5 37/16  
**boundary** [3] 54/3 54/6 54/7  
**Box** [2] 2/7 2/16  
**boxes** [1] 65/10  
**boycott** [1] 46/19  
**branch** [1] 72/15  
**branch's** [1] 40/2  
**branches** [1] 40/25  
**breaching** [1] 50/24  
**Brennan** [2] 2/22 4/24  
**brief** [7] 25/2 31/2 53/22 60/6 66/19 70/20 70/20  
**briefed** [2] 10/1 26/17

**briefing** [1] 26/17  
**briefs** [3] 10/18 27/1 70/19  
**broad** [10] 2/4 9/4 12/3 12/4 14/12 14/21 35/15 35/19 39/19 41/24  
**broadcast** [2] 37/3 38/15  
**broader** [3] 26/13 71/2 71/3  
**broadly** [3] 9/23 14/13 29/4  
**Broadway** [1] 2/23  
**Bruno** [5] 40/23 41/8 41/16 42/17 43/19  
**bullets** [1] 23/22  
**burden** [2] 7/9 10/6  
**Burling** [1] 2/9  
**business** [3] 46/20 47/16 47/16

**C**

**cabinet** [7] 32/22 65/14 67/16 68/4 69/5 69/6 69/15  
**CAIR** [1] 2/12  
**California** [1] 2/16  
**campaign** [3] 23/21 23/24 32/10  
**cancel** [2] 12/8 72/23  
**capacity** [1] 75/6  
**capricious** [1] 59/20  
**Carolina** [2] 29/3 29/6  
**case-by-case** [2] 35/18 35/21  
**categorical** [1] 35/19  
**categories** [6] 26/6 26/10 62/8 63/17 63/22 63/24  
**categorization** [1] 9/4  
**caution** [1] 13/17  
**center** [4] 2/6 2/22 4/24 25/9  
**certainty** [1] 22/20  
**CERTIFICATE** [1] 75/1  
**certify** [2] 75/5 75/13  
**cetera** [1] 58/24  
**Chad** [4] 34/15 66/16 67/19 73/11  
**challenge** [7] 29/2 40/5 40/12 41/14 41/19 43/1 43/21  
**challenged** [3] 19/3 26/8 26/9  
**challenging** [3] 29/23 43/6 43/11  
**characteristic** [1] 9/19  
**characterizations** [1] 65/2  
**Cherrywood** [1] 3/13  
**chosen** [1] 7/15  
**Christian** [2] 45/12 45/14  
**CHUANG** [1] 1/22  
**church** [2] 2/18 52/21  
**Circuit** [23] 8/18 15/2 22/20 22/24 28/1 29/16 29/23 29/23 30/11 32/8 38/10 40/23 41/7

41/8 44/2 44/21 44/24 53/1 53/2 55/4 59/6 66/19 71/7  
**Circuit's** [3] 22/16 29/1 42/16  
**circumstance** [1] 68/21  
**circumstances** [3] 12/21 23/2 40/14  
**circumstantial** [1] 26/4  
**citation** [1] 33/15  
**cite** [2] 44/11 66/19  
**cited** [2] 47/5 70/18  
**cites** [1] 70/19  
**citing** [1] 44/15  
**citizen** [2] 38/19 43/4  
**citizens** [1] 28/16  
**citizenship** [1] 37/14  
**Civil** [8] 1/3 2/3 4/3 4/4 4/6 29/12 29/13 75/10  
**claim** [18] 6/21 6/23 8/10 10/20 25/4 25/7 25/8 26/19 27/13 27/24 29/6 29/17 30/4 45/4 53/7 53/9 70/15 70/17  
**claimed** [1] 7/5  
**claiming** [1] 40/12  
**claims** [15] 6/16 6/18 6/20 7/20 26/18 26/23 39/23 39/24 41/4 41/15 45/1 45/14 71/9 71/10 71/13  
**clarify** [3] 21/19 34/21 64/23  
**class** [1] 28/15  
**classified** [3] 48/10 48/12 48/24  
**clause** [27] 6/21 18/9 19/2 19/9 19/14 25/23 26/14 26/20 26/24 27/2 27/23 36/4 36/19 36/25 38/10 45/9 45/16 45/22 46/2 46/6 46/15 46/22 46/24 46/25 47/6 52/18 69/7  
**clear** [23] 11/5 14/12 21/17 21/19 22/25 23/6 23/6 23/9 25/24 25/24 27/9 37/6 40/1 40/14 40/15 40/22 41/16 42/11 42/22 43/12 46/4 50/22 61/6  
**clerk** [1] 6/6  
**clients** [3] 6/24 19/3 36/10  
**clock** [1] 6/6  
**close** [1] 20/15  
**closely** [1] 18/5  
**closer** [2] 6/7 32/3  
**closing** [5] 47/10 47/11 69/18 69/19 69/20  
**co** [1] 35/24  
**co-counsel** [1] 35/24  
**coerce** [1] 36/18  
**colleague** [1] 16/12  
**combat** [1] 24/8  
**combination** [1] 53/4

**C**

**come to [1]** 30/13  
**comfort [1]** 50/16  
**common [2]** 69/15 69/16  
**communication [1]** 48/17  
**compelling [1]** 9/10  
**concern [2]** 8/15 8/16  
**concerns [5]** 14/14 31/3 54/10  
 69/3 74/1  
**conclude [2]** 32/12 64/2  
**concluded [1]** 74/18  
**concludes [1]** 19/13  
**conclusion [3]** 37/7 37/9 38/16  
**condemnation [2]** 18/20 18/20  
**conditions [3]** 12/25 13/2 13/13  
**conducting [1]** 32/24  
**conference [6]** 30/21 30/23  
 31/7 31/13 31/14 31/20  
**conferences [2]** 30/6 30/9  
**conflict [1]** 16/9  
**Congress [25]** 11/10 12/6  
 12/19 12/22 12/25 13/1 13/14  
 13/21 14/15 14/24 15/4 40/3  
 41/13 42/3 42/5 42/21 54/17  
 55/16 72/4 72/6 72/8 72/12  
 72/14 72/21 73/3  
**Congress' [2]** 7/15 7/18  
**congressional [4]** 7/8 40/7  
 40/16 40/19  
**connective [3]** 32/9 32/11  
 32/14  
**consequences [1]** 13/3  
**consideration [2]** 27/23 27/24  
**consistent [1]** 35/12  
**constituents' [1]** 31/3  
**constitute [1]** 75/14  
**Constitution [2]** 72/11 72/12  
**constitutional [16]** 6/20 8/1 8/2  
 8/5 9/12 14/13 17/23 18/19  
 39/19 41/4 45/1 45/1 45/8 52/14  
 71/10 72/20  
**consular [6]** 7/11 10/14 16/7  
 41/21 41/23 71/1  
**consulate [1]** 38/22  
**consultation [6]** 33/20 33/23  
 60/7 63/13 64/11 69/5  
**consulted [2]** 67/15 68/3  
**consulting [1]** 65/14  
**contain [1]** 34/3  
**contained [1]** 12/9  
**contains [1]** 48/10  
**contemplated [1]** 14/1  
**content [1]** 68/13  
**contents [4]** 34/23 37/7 49/20

51/5  
**context [9]** 26/8 28/10 28/20  
 29/5 29/10 29/11 29/14 61/6  
 69/24  
**continuation [1]** 25/14  
**contradict [1]** 53/25  
**contradicted [1]** 50/7  
**contrary [1]** 71/7  
**contrast [1]** 12/24  
**controlling [1]** 22/21  
**controversy [1]** 25/10  
**convince [4]** 10/15 16/8 20/5  
 36/7  
**core [4]** 16/17 49/23 56/2 69/1  
**counsel's [1]** 71/14  
**counter [2]** 23/16 32/16  
**countries [81]**  
**country [23]** 7/5 10/11 10/16  
 12/1 12/25 13/13 19/15 38/5  
 40/13 42/21 43/10 43/20 57/3  
 62/16 63/6 64/4 64/14 66/2  
 66/16 66/17 67/13 71/22 71/23  
**court [51]** 1/1 3/12 3/12 4/3 7/3  
 12/3 14/11 22/7 22/18 23/5 23/6  
 24/20 25/12 25/21 25/24 28/25  
 29/2 29/9 29/17 29/19 29/22  
 32/1 32/7 32/8 32/12 36/10  
 36/23 38/13 39/13 39/25 42/4  
 42/19 48/1 48/25 50/7 50/8  
 51/17 51/23 52/20 52/25 69/18  
 70/16 70/22 73/1 73/18 73/24  
 74/3 75/3 75/4 75/12 75/22  
**Court's [7]** 22/15 24/16 25/6  
 26/2 26/10 49/19 71/12  
**courts [8]** 26/4 26/7 29/4 40/1  
 40/8 40/17 53/20 55/4  
**cover [1]** 30/18  
**covered [3]** 67/16 70/9 74/6  
**Covington [1]** 2/9  
**COX [4]** 2/6 4/13 6/11 70/12  
**crafted [1]** 20/24  
**create [2]** 35/18 50/9  
**created [1]** 64/12  
**creates [1]** 28/16  
**criteria [21]** 33/3 33/6 33/7  
 33/14 33/19 33/20 33/25 34/1  
 34/12 35/10 35/11 57/11 57/14  
 57/18 57/21 57/24 57/25 58/1  
 60/13 65/18 65/23  
**criterion [8]** 10/24 11/1 11/8  
 11/11 11/12 11/13 12/11 12/24  
**critical [5]** 41/12 54/16 57/1  
 60/1 67/4  
**critically [2]** 41/9 66/3  
**crossed [1]** 54/4

**Crow [1]** 29/13  
**crucial [1]** 57/4  
**crystal [2]** 43/12 46/4  
**Cuba [2]** 57/16 58/1  
**Cuban [2]** 56/6 56/12  
**cure [1]** 19/19  
**cured [1]** 19/21  
**curing [1]** 66/22  
**cursor [1]** 59/9

**D**

**D.C [4]** 2/10 2/13 2/20 3/10  
**danger [1]** 56/12  
**dangerous [1]** 35/22  
**DANIEL [2]** 3/8 5/8  
**daughter [1]** 38/19  
**DC [6]** 8/18 15/2 40/23 41/7  
 41/8 42/16  
**de [1]** 37/5  
**de-stigmatize [1]** 37/5  
**decades [1]** 12/3  
**decide [3]** 25/7 29/17 72/6  
**decided [3]** 13/3 13/5 65/15  
**decision [8]** 22/6 26/2 29/1  
 32/8 50/1 68/4 71/8 74/16  
**deemed [3]** 15/13 54/24 54/25  
**defendant [1]** 5/13  
**defendants [7]** 1/7 1/13 1/19  
 3/7 5/7 5/9 5/11  
**deference [1]** 40/25  
**deficiencies [3]** 7/16 35/25  
 56/20  
**deficiency [1]** 36/16  
**defined [1]** 58/22  
**definition [1]** 59/17  
**delay [1]** 53/4  
**delegate [1]** 72/14  
**delegating [1]** 55/16  
**delegations [2]** 12/4 14/12  
**deliberative [3]** 48/16 49/23  
 51/18  
**demonstrate [3]** 10/7 19/20  
 29/4  
**deny [3]** 7/12 10/14 16/7  
**department [10]** 3/7 11/14  
 20/23 50/6 56/17 56/18 60/2  
 60/3 60/7 66/4  
**depending [1]** 6/8  
**deported [1]** 43/12  
**derogatory [1]** 23/18  
**description [1]** 20/4  
**deseccration [1]** 24/8  
**designated [1]** 50/20  
**desire [2]** 37/10 39/2  
**determination [5]** 40/2 40/17

**D**

**determination...** [3] 58/21 60/9 70/5  
**determined** [3] 34/3 50/5 70/7  
**detriment** [1] 15/21  
**detrimental** [6] 7/23 15/14 23/18 54/24 54/25 58/12  
**developing** [1] 12/22  
**DHS** [3] 9/7 48/18 64/2  
**dictating** [2] 63/5 64/8  
**difference** [5] 18/3 21/21 47/1 47/8 47/17  
**differences** [1] 27/6  
**difficult** [4] 19/25 20/5 29/8 38/9  
**dipped** [1] 23/22  
**dire** [1] 38/19  
**direct** [3] 26/4 30/8 53/15  
**disagree** [1] 49/24  
**disagreed** [2] 53/22 68/20  
**disagreements** [2] 52/4 52/9  
**disapproval** [1] 52/23  
**disclose** [2] 50/14 52/2  
**disclosed** [2] 51/16 51/22  
**discrepancy** [1] 49/15  
**discretion** [4] 12/5 62/6 64/2 66/1  
**discriminate** [1] 10/7  
**discriminated** [1] 7/19  
**discriminating** [1] 36/12  
**discrimination** [6] 8/10 8/18 9/15 10/2 10/9 26/19  
**discriminatory** [3] 26/1 29/5 45/25  
**discussion** [1] 42/4  
**disenfranchise** [1] 29/11  
**disfavor** [3] 37/4 39/2 39/2  
**disfavoring** [1] 36/12  
**disfavors** [1] 38/16  
**disguise** [1] 70/4  
**dispensing** [1] 11/1  
**dispositive** [1] 14/10  
**disputing** [1] 65/1  
**DISTRICT** [7] 1/1 1/1 1/23 3/12 17/6 75/4 75/4  
**ditto** [1] 56/12  
**divide** [1] 5/20  
**DIVISION** [1] 1/2  
**DNI** [1] 64/12  
**Doe** [3] 38/21 46/17 58/23  
**domestic** [2] 54/13 55/24  
**DONALD** [3] 1/6 1/12 1/18  
**draw** [2] 14/17 53/19  
**drawing** [1] 20/14

**drawn** [2] 14/10 54/14  
**dress** [1] 72/1  
**dressing** [1] 69/13  
**dropped** [5] 66/12 66/13 66/14 67/11 69/25

**E**

**early** [1] 50/17  
**easier** [1] 32/7  
**easiest** [1] 45/10  
**easily** [1] 71/24  
**EBLAL** [1] 1/15  
**effect** [3] 18/19 18/20 22/15  
**efforts** [1] 29/11  
**eight** [10] 33/25 50/18 50/19 56/19 65/11 65/13 66/10 66/11 66/11 67/16  
**Eighty** [1] 34/4  
**election** [1] 29/3  
**electronic** [2] 34/5 34/7  
**eligibility** [1] 7/10  
**eligible** [1] 31/11  
**elsewhere** [1] 31/6  
**emergent** [1] 12/18  
**emphasize** [1] 57/2  
**employment** [1] 53/24  
**enact** [1] 73/8  
**enacted** [1] 73/4  
**enacting** [1] 12/6  
**enacts** [1] 67/22  
**encourage** [1] 36/17  
**encouraging** [1] 56/23  
**endorsement** [1] 52/22  
**enforcement** [3] 17/11 17/19 43/13  
**engaged** [3] 60/8 67/8 67/25  
**engagement** [2] 56/25 64/15  
**enjoin** [2] 17/18 18/14  
**ensure** [1] 38/14  
**ensuring** [1] 74/1  
**enter** [4] 40/13 45/6 56/22 57/12  
**entirely** [1] 21/17  
**entirety** [1] 8/8  
**entitled** [1] 11/14  
**entry** [14] 8/13 39/14 40/11 53/4 54/25 55/2 55/6 55/7 60/19 61/11 62/7 63/17 63/24 72/14  
**EO** [14] 16/17 18/14 18/16 20/17 20/17 20/18 20/19 21/2 32/10 32/11 32/11 60/11 60/11 60/14  
**EO-1** [3] 20/17 32/10 32/11  
**EO-2** [9] 16/17 18/16 20/17 20/19 21/2 32/11 60/11 60/11

60/14  
**EO-3** [2] 18/14 20/18  
**equal** [25] 5/23 6/23 8/3 25/4 25/7 25/23 26/13 26/14 26/16 26/18 27/3 27/7 27/13 27/19 27/20 27/24 28/4 28/9 28/14 29/2 29/6 29/17 53/7 53/8 53/9  
**era** [1] 29/13  
**ERIC** [2] 2/19 4/21  
**error** [1] 50/9  
**errors** [1] 44/8  
**ESQUIRE** [13] 2/3 2/6 2/9 2/12 2/15 2/19 2/23 3/3 3/5 3/7 3/8 3/8 3/9  
**essence** [1] 21/4  
**essentially** [4] 14/14 16/4 21/23 47/12  
**established** [6] 28/13 28/18 37/16 52/18 65/17 69/7  
**establishes** [1] 35/21  
**establishing** [1] 32/9  
**establishment** [25] 6/21 18/9 19/2 19/8 19/14 25/22 26/14 26/20 26/24 27/2 27/23 36/4 36/19 36/25 38/10 45/8 45/16 45/22 46/2 46/6 46/15 46/22 46/24 46/25 47/6  
**establishment-clause** [1] 18/9  
**et** [19] 1/3 1/6 1/9 1/12 1/15 1/18 4/4 4/4 4/5 4/6 4/7 4/7 58/23 75/8 75/9 75/9 75/10 75/10 75/10  
**evaluated** [2] 64/16 70/16  
**evaluation** [1] 71/12  
**events** [1] 26/9  
**everyone** [1] 5/14  
**evidence** [12] 25/11 25/12 25/25 26/5 26/6 26/25 28/3 29/5 60/1 60/2 66/5 70/3  
**evince** [1] 67/10  
**evinced** [1] 69/23  
**examine** [2] 32/13 33/1  
**examples** [5] 23/16 24/10 28/8 54/11 59/5  
**exceed** [1] 59/21  
**exceeded** [1] 70/17  
**exceptions** [2] 61/12 69/21  
**exchange** [1] 67/20  
**exclude** [2] 40/2 57/5  
**excludes** [1] 16/21  
**exclusion** [8] 40/22 41/1 41/19 42/6 42/20 43/2 43/7 55/18  
**excuse** [1] 14/17  
**executed** [1] 23/22  
**executive** [8] 12/5 22/17 23/17

**E**

**executive...** [5] 25/20 29/24  
50/4 55/18 72/15  
**exempted** [1] 70/1  
**exempts** [1] 67/22  
**exercise** [1] 7/21  
**exist** [4] 18/1 22/23 44/13 71/3  
**exists** [2] 26/1 71/6  
**expended** [1] 31/2  
**explanation** [2] 37/6 73/10  
**explicitly** [3] 13/21 23/5 55/22  
**express** [3] 37/10 42/3 42/5  
**expressing** [1] 23/8  
**expressly** [3] 26/3 40/3 50/18  
**extensively** [1] 74/5  
**extreme** [1] 23/25

**F**

**F.3rd** [1] 71/8  
**face** [2] 28/1 28/2  
**facially** [1] 69/11  
**fact** [16] 10/18 14/21 20/18 30/4  
32/14 33/25 35/1 45/25 46/14  
46/23 47/4 50/5 50/14 61/13  
69/25 72/12  
**factor** [7] 29/9 37/20 64/22 65/3  
65/4 65/5 65/6  
**factors** [11] 21/11 34/13 34/16  
34/19 34/22 64/13 64/14 65/8  
65/18 65/20 65/25  
**facts** [8] 22/9 29/21 35/2 35/6  
41/17 49/17 51/25 67/1  
**factual** [2] 52/7 52/11  
**faculty** [1] 30/12  
**Fahed** [1] 38/17  
**failed** [1] 33/24  
**faith** [4] 28/3 38/21 68/4 70/5  
**fallacious** [1] 43/1  
**falls** [2] 39/18 69/6  
**family** [4] 27/10 28/5 28/6 28/10  
**FCRR** [1] 3/12  
**Fe** [1] 46/17  
**features** [1] 39/18  
**federal** [4] 5/7 34/3 37/22 52/20  
**Felix** [3] 66/19 68/14 68/16  
**Fiallo** [2] 27/18 27/22  
**fide** [2] 28/1 28/2  
**fight** [1] 55/1  
**findings** [1] 15/21  
**fit** [2] 14/18 30/21  
**fix** [3] 19/14 36/7 50/9  
**flaws** [1] 18/16  
**flexibility** [1] 12/18  
**flies** [1] 39/8

**Floor** [1] 2/4  
**flunk** [1] 64/21  
**focus** [7] 15/15 18/19 18/21  
26/25 27/4 34/1 38/4  
**focused** [6] 17/18 17/24 32/9  
38/1 38/1 38/2  
**folks** [1] 38/13  
**football** [2] 46/18 46/19  
**footnote** [2] 54/20 55/3  
**forced** [1] 27/14  
**forecast** [1] 74/15  
**foreclose** [1] 62/12  
**foregoing** [1] 75/13  
**foreign** [16] 38/18 39/21 54/9  
55/21 56/3 56/14 57/5 57/6 58/4  
63/17 63/25 68/6 69/3 71/17  
71/21 71/24

**Forge** [1] 52/19  
**formal** [1] 6/6  
**Fourth** [15] 22/16 22/20 22/24  
28/1 28/25 29/16 29/23 32/8  
38/10 44/2 44/21 44/24 53/1  
53/2 71/7  
**frame** [1] 5/18  
**free** [2] 39/20 72/22  
**fruition** [1] 38/25  
**fundamental** [5] 16/9 45/6 47/1  
47/8 47/17  
**fundamentally** [1] 39/13

**G**

**GADEIR** [2] 2/12 4/17  
**garage** [2] 46/20 46/21  
**GARG** [2] 3/9 5/12  
**Garrison** [1] 3/2  
**general** [6] 21/3 31/14 42/12  
48/2 51/21 63/14  
**generality** [1] 9/22  
**generated** [1] 65/22  
**generates** [1] 34/14  
**Georgia** [1] 2/7  
**gets** [1] 72/13  
**gives** [2] 10/13 12/11  
**goal** [4] 58/9 71/18 72/3 73/6  
**goals** [1] 73/13  
**gotten** [1] 24/17  
**government** [31] 5/23 10/6  
10/10 10/25 18/15 19/5 19/20  
23/12 25/11 25/16 26/22 28/16  
32/16 34/3 35/3 37/22 38/2 39/5  
39/7 41/15 46/11 47/13 49/18  
49/24 52/20 70/25 71/3 71/22  
73/8 73/20 73/21  
**government's** [7] 10/17 14/14  
21/25 38/3 70/18 70/20 73/13

**governments** [4] 56/14 57/6  
68/6 73/7  
**governs** [1] 40/8  
**grant** [1] 61/9  
**granting** [1] 68/6  
**grapple** [2] 10/18 16/5  
**gray** [1] 14/8  
**Great** [1] 74/11  
**greater** [1] 7/25  
**Greenbelt** [2] 1/5 3/13  
**ground** [2] 54/23 55/10  
**grounds** [1] 7/10  
**guarantees** [1] 8/2  
**guerillas** [1] 23/24  
**guest** [2] 71/20 71/23

**H**

**habeas** [2] 42/23 43/17  
**Hamadmad** [1] 37/12  
**handful** [1] 27/16  
**happy** [2] 15/10 31/9  
**harbored** [1] 66/7  
**harboring** [1] 67/7  
**harder** [1] 56/2  
**hardly** [1] 17/1  
**harm** [3] 30/7 30/9 30/23  
**harmed** [3] 28/6 30/5 46/8  
**harms** [2] 6/24 6/25  
**HASHIM** [2] 3/7 5/6  
**havens** [2] 34/2 34/4  
**Hawaii** [2] 17/6 30/10  
**hearing** [5] 1/22 4/8 5/15 19/4  
75/7  
**heavily** [1] 49/20  
**heightened** [4] 8/21 9/21 10/4  
12/11  
**Heights** [3] 26/3 26/5 29/9  
**hereby** [1] 75/5  
**hereto** [1] 75/17  
**highly** [1] 23/10  
**HIROSE** [2] 3/5 5/1  
**historical** [5] 15/16 26/7 29/9  
29/10 29/13  
**historically** [3] 12/20 62/19  
69/19  
**history** [13] 15/20 15/22 19/12  
19/13 26/15 36/20 37/8 40/24  
42/18 42/25 43/18 69/11 73/5  
**holistically** [2] 65/9 65/11  
**Homeland** [10] 20/23 21/3 48/2  
56/18 60/2 60/4 60/7 60/17  
63/13 66/4  
**Honor** [59] 4/10 4/12 4/14 4/17  
6/2 6/13 6/17 7/2 8/17 10/5 11/5  
12/2 12/16 13/9 14/7 15/1 15/10

**H**  
**Honor...** [42] 15/24 16/13 16/14  
 17/14 20/12 21/19 22/10 23/4  
 24/3 24/13 24/16 25/1 27/21  
 31/23 31/24 33/12 34/24 39/3  
 39/12 43/9 44/5 45/7 48/5 48/8  
 49/22 51/4 51/12 51/19 55/12  
 57/19 57/23 62/10 65/25 68/9  
 70/11 70/13 72/11 73/6 73/16  
 73/17 73/22 74/10  
**Honor's** [1] 73/22  
**HONORABLE** [1] 1/22  
**hopefully** [1] 50/16  
**hopes** [1] 56/23  
**hostage** [1] 57/16  
**hostile** [3] 24/5 24/6 24/7  
**hostilities** [1] 8/14  
**hostility** [1] 23/25  
**hosting** [1] 30/6  
**hundred** [1] 16/22  
**hundreds** [1] 73/14  
**hurdles** [1] 28/6  
**hypothetical** [1] 46/16

**I**  
**I'd** [5] 5/20 24/15 39/24 53/12  
 53/15  
**I'll** [8] 6/13 6/17 25/2 29/20  
 35/23 39/4 74/15 74/16  
**I'm** [20] 6/14 9/14 11/23 14/3  
 15/9 17/15 22/10 22/13 37/25  
 38/1 39/5 44/20 47/25 49/3 51/4  
 56/1 58/1 61/18 61/18 62/24  
**I've** [1] 53/17  
**IAAB** [6] 4/20 4/22 6/22 30/3  
 30/8 30/24  
**IAAB's** [1] 30/15  
**ignore** [2] 57/1 57/4  
**ignored** [1] 25/21  
**Ill** [1] 45/24  
**IIRIRA** [1] 43/17  
**Imagine** [1] 46/18  
**immediate** [1] 30/23  
**immediately** [1] 8/14  
**immigrant** [3] 67/19 67/23 70/2  
**immigrants** [2] 16/19 35/19  
**immigration** [8] 2/6 7/6 14/18  
 27/15 28/10 28/19 72/1 72/13  
**immune** [1] 7/22  
**impact** [1] 46/12  
**implicit** [1] 55/21  
**imported** [1] 9/13  
**impose** [6] 9/1 12/1 12/10  
 12/10 20/22 72/23

**imposed** [4] 20/21 56/21 67/17  
 68/8  
**imposes** [3] 39/17 47/13 55/15  
**imposing** [2] 20/1 20/20  
**imposition** [1] 47/19  
**improve** [5] 56/21 58/4 64/16  
 68/5 68/7  
**improvement** [1] 56/23  
**improving** [1] 58/9  
**INA** [26] 8/1 8/5 9/3 10/25 11/3  
 11/6 11/9 11/22 11/23 12/2 12/4  
 12/8 31/6 31/17 40/20 40/20  
 41/10 42/8 43/15 53/17 54/14  
 54/15 55/10 55/15 57/15 72/23  
**inaccurate** [1] 65/3  
**inadequate** [3] 16/6 16/10 21/5  
**inadmissibility** [2] 54/22 55/10  
**inclusion** [4] 60/18 61/10 63/16  
 64/4  
**inconceivable** [1] 68/13  
**inconsistencies** [4] 51/2 51/10  
 51/16 51/23  
**inconsistency** [2] 50/23 52/6  
**inconsistent** [5] 35/9 49/1  
 50/11 50/12 69/22  
**incorrectly** [1] 60/22  
**indefinite** [2] 16/18 29/25  
**indefinitely** [1] 16/24  
**indication** [2] 9/18 35/13  
**indications** [1] 73/5  
**indicative** [1] 9/5  
**indicators** [1] 34/15  
**indirect** [1] 47/14  
**indisputably** [1] 58/8  
**individual** [8] 27/8 29/21 40/4  
 40/10 40/13 47/17 57/3 73/19  
**individualized** [1] 13/18  
**individuals** [8] 7/9 7/12 7/18  
 10/11 11/11 11/12 16/8 32/24  
**inescapable** [1] 37/9  
**informal** [2] 6/5 74/14  
**informally** [1] 5/17  
**information** [32] 7/13 7/16  
 10/12 21/5 22/21 24/20 33/10  
 34/10 35/25 36/8 36/16 36/18  
 48/10 48/13 50/6 56/20 58/5  
 58/9 60/10 61/4 61/22 61/24  
 62/17 62/22 62/23 63/2 63/19  
 64/1 64/12 68/5 68/7 73/7  
**information-sharing** [4] 35/25  
 36/16 62/22 62/23  
**inherent** [1] 55/18  
**initial** [1] 60/8  
**initially** [1] 27/7  
**injunction** [12] 4/8 5/16 8/7

17/11 17/17 18/8 18/10 18/10  
 22/17 25/17 43/13 73/18  
**injured** [2] 40/11 45/4  
**injuries** [4] 29/24 45/4 45/14  
 52/15  
**injury** [8] 28/14 45/24 46/14  
 46/23 47/4 52/15 52/16 52/17  
**insofar** [2] 44/6 44/15  
**instead** [5] 13/4 13/14 13/16  
 20/24 54/11  
**instructive** [2] 8/25 42/17  
**insufficient** [2] 7/13 15/15  
**intended** [6] 10/20 12/7 12/17  
 15/3 37/3 37/4  
**intending** [1] 35/17  
**intent** [5] 26/1 26/5 29/5 37/2  
 38/9  
**intent-based** [1] 37/2  
**interest** [8] 7/24 9/10 53/19  
 55/22 58/12 58/22 58/22 59/16  
**interested** [1] 47/23  
**interests** [1] 30/6  
**interfere** [1] 30/9  
**interference** [1] 30/12  
**INTERNATIONAL** [3] 1/3 4/3  
 75/8  
**interpretation** [1] 8/12  
**intrusion** [1] 11/3  
**invalidated** [1] 49/10  
**investigated** [2] 64/3 64/13  
**investigation** [2] 62/14 70/7  
**invoked** [1] 23/20  
**Iran** [3] 57/15 58/2 67/20  
**IRANIAN** [10] 1/9 4/5 4/15  
 30/17 56/7 56/9 56/10 56/10  
 56/11 75/9  
**IRAP** [6] 4/11 4/13 5/2 6/2 32/8  
 71/8  
**Iraq** [3] 34/19 56/24 66/14  
**Iraqis** [1] 13/10  
**irrelevant** [1] 53/11  
**Islam** [7] 18/20 23/14 36/12  
 37/4 37/11 38/16 39/2  
**issuance** [2] 7/9 7/20  
**issue** [22] 8/9 10/20 27/5 38/8  
 44/9 44/23 47/9 52/13 52/14  
 53/17 54/21 54/22 55/7 57/7  
 58/17 60/15 62/5 66/23 68/15  
 72/5 73/15 74/15  
**issued** [3] 11/15 15/4 25/18  
**issues** [10] 6/15 12/18 15/4  
 17/21 19/11 19/19 36/1 54/13  
 66/20 74/14  
**issuing** [2] 22/16 50/2  
**iterations** [1] 66/13

**J**

**JADWAT** [5] 2/3 4/11 6/11 6/19 16/15  
**Jane** [1] 38/21  
**Jersey** [1] 2/13  
**Jim** [1] 29/12  
**Jordan** [3] 37/16 37/16 37/18  
**judge** [2] 1/23 49/5  
**judges** [1] 48/12  
**judgment** [2] 22/16 62/13  
**judgments** [2] 7/8 13/2  
**judiciability** [4] 6/15 6/18 6/20 70/14  
**judicial** [2] 39/23 53/8  
**judicial** [1] 7/22  
**judiciary** [1] 42/6  
**justice** [4] 2/22 3/7 4/24 50/6  
**justification** [3] 15/21 16/1 16/5  
**JUSTIN** [2] 2/6 4/12

**K**

**Kent** [1] 14/11  
**key** [1] 14/8  
**Knauff** [4] 39/25 40/14 42/2 42/4  
**knows** [1] 37/22  
**Korea** [6] 16/25 17/3 17/11 17/19 18/5 66/15  
**Korean** [1] 17/9  
**Koreans** [1] 17/8  
**Korematsu** [1] 50/4

**L**

**lack** [1] 10/11  
**lacked** [1] 65/6  
**lacks** [1] 11/6  
**Lane** [1] 3/13  
**largely** [1] 26/20  
**latest** [1] 7/17  
**Lavas** [1] 8/17  
**law** [19] 2/6 2/22 9/6 12/17 25/23 26/21 27/3 28/8 28/14 29/6 41/17 43/14 44/16 47/9 47/11 47/18 47/19 54/19 72/8  
**laws** [5] 14/18 29/3 69/18 69/19 69/20  
**lawsuit** [1] 46/22  
**lays** [2] 33/3 65/13  
**lead** [1] 21/11  
**leading** [1] 59/24  
**led** [3] 21/8 26/9 50/7  
**legal** [7] 8/19 31/10 43/4 44/17 44/20 49/7 49/9  
**legally** [2] 14/23 17/20  
**legislated** [1] 13/22

**legislative** [1] 42/25  
**legitimate** [3] 27/25 58/9 74/7  
**length** [1] 40/24  
**letter** [1] 21/2  
**Liberties** [1] 2/3  
**liberty** [2] 38/11 38/14  
**Libya** [1] 67/18  
**life** [2] 37/13 37/18  
**lifted** [1] 70/22  
**light** [6] 18/15 37/8 38/14 39/17 73/4 73/18  
**limit** [14] 7/22 12/13 12/14 54/2 54/5 55/23 71/15 71/16 71/19 72/2 72/4 72/12 73/2 73/2  
**limitation** [2] 19/16 55/25  
**limitations** [1] 17/9  
**limited** [4] 13/11 54/23 55/23 59/8  
**limiting** [4] 19/9 41/14 72/8 72/9  
**limits** [2] 20/13 55/11  
**lines** [2] 54/13 58/22  
**links** [1] 32/14  
**Lisa** [4] 3/12 75/3 75/21 75/22  
**list** [19] 16/18 33/7 34/17 60/17 60/21 61/10 61/13 62/8 62/11 63/6 63/15 63/21 63/23 64/5 64/17 65/12 65/15 65/21 65/22  
**lists** [1] 13/8  
**litany** [1] 7/8  
**literally** [1] 12/8  
**LLP** [2] 2/9 3/2  
**logic** [1] 28/4

**M**

**machine** [2] 75/5 75/15  
**main** [2] 18/23 70/9  
**mainly** [2] 27/25 30/22  
**majority** [6] 16/22 17/24 18/11 18/11 18/22 66/17  
**mandate** [1] 7/18  
**Mandel** [2] 27/19 27/22  
**manner** [2] 11/7 15/6  
**March** [1] 25/6  
**MARIKO** [2] 3/5 5/1  
**marker** [1] 9/8  
**MARYLAND** [4] 1/1 1/5 3/13 75/5  
**Mashta** [1] 24/17  
**Massachusetts** [1] 3/9  
**massive** [1] 52/17  
**material** [4] 50/14 51/16 51/19 51/23  
**materials** [2] 34/25 47/24  
**matter** [7] 4/2 10/18 14/23

17/20 44/18 72/18 74/13  
**matters** [2] 38/3 69/11  
**McCreary** [5] 20/12 25/21 68/15 69/10 69/11  
**McCroy** [1] 29/1  
**McGowan** [6] 47/8 47/8 47/9 47/10 69/17 69/17  
**measure** [1] 62/18  
**measures** [1] 73/12  
**mechanical** [1] 3/15  
**member** [2] 27/10 28/5  
**members** [3] 28/6 28/10 30/5  
**mere** [1] 54/25  
**merely** [1] 7/23  
**merits** [10] 6/18 6/21 6/23 23/7 23/8 39/22 53/13 53/14 70/17 74/2  
**message** [8] 18/23 37/4 38/15 52/15 52/16 52/22 52/23 53/3  
**methodology** [1] 65/17  
**MICHAEL** [2] 2/23 4/23  
**MICHELLE** [2] 3/8 5/10  
**microphone** [1] 32/2  
**million** [1] 16/22  
**millions** [2] 7/4 73/14  
**minimum** [3] 55/14 58/25 59/21  
**mismatch** [1] 64/20  
**misreading** [1] 61/18  
**Mississippi** [1] 38/20  
**mistaken** [1] 47/25  
**mitigating** [2] 34/16 34/19  
**modified** [1] 38/6  
**moment** [1] 17/4  
**month** [2] 38/24 70/7  
**month's** [2] 67/8 69/14  
**month-long** [1] 70/7  
**months** [1] 29/18  
**MOOPAN** [2] 3/7 5/6  
**mooted** [1] 73/20  
**mootness** [3] 23/3 23/5 74/1  
**MOSIER** [3] 2/9 4/15 6/22  
**motion** [1] 74/12  
**motions** [3] 1/22 5/15 75/7  
**motive** [2] 23/15 68/17  
**motives** [1] 69/20  
**Mr** [2] 6/24 31/25  
**Mr.** [7] 6/11 6/11 6/19 6/22 16/15 24/17 70/12  
**Mr. Cox** [2] 6/11 70/12  
**Mr. Jadwat** [3] 6/11 6/19 16/15  
**Mr. Mashta** [1] 24/17  
**Mr. Mosier** [1] 6/22  
**MS** [1] 5/10  
**multi** [1] 39/15  
**multi-agency** [1] 39/15

**M**  
**multiple [6]** 9/2 64/13 69/5  
69/15 70/1 70/1  
**Muqbil [1]** 38/17  
**Muslim [30]** 2/15 16/22 17/24  
18/11 18/11 18/21 23/24 24/1  
25/15 32/10 37/5 38/1 45/12  
45/13 66/7 66/8 66/12 66/14  
66/16 66/17 67/7 67/10 67/11  
67/12 67/13 67/22 67/22 70/1  
70/2 70/3  
**Muslims [7]** 7/5 20/1 36/12  
37/10 39/2 60/5 73/14

**N**  
**NAACP [1]** 29/1  
**narrow [3]** 8/22 26/24 27/4  
**narrower [1]** 73/5  
**nation [1]** 8/13  
**national [21]** 2/6 18/24 20/1  
25/14 27/13 33/4 37/19 38/18  
39/20 54/9 55/21 56/4 58/21  
58/22 59/16 60/10 69/2 70/5  
71/18 71/25 72/25  
**nationality [10]** 7/7 7/20 8/10  
8/24 9/2 9/3 9/8 10/2 10/8 37/15  
**nationals [16]** 13/7 13/15 13/17  
30/17 37/17 37/23 56/11 58/7  
60/19 60/25 61/24 62/12 62/15  
62/20 63/18 63/25  
**nature [1]** 57/10  
**necessary [2]** 9/1 13/15  
**needle [1]** 17/1  
**negating [1]** 7/10  
**neutrality [1]** 8/3  
**nine [1]** 29/18  
**Ninth [3]** 29/23 30/11 59/6  
**nobody [1]** 62/6  
**non [18]** 16/19 18/11 41/21  
41/24 42/12 42/14 44/23 44/25  
45/2 58/16 66/14 67/12 67/19  
67/23 70/2 70/25 71/1 71/11  
**non-immigrant [3]** 67/19 67/23  
70/2  
**non-immigrants [1]** 16/19  
**non-Muslim [3]** 18/11 66/14  
67/12  
**non-reviewability [9]** 41/21  
41/24 42/14 44/23 44/25 45/2  
70/25 71/1 71/11  
**non-reviewable [2]** 42/12 58/16  
**none [3]** 44/17 60/5 67/21  
**North [10]** 16/25 17/3 17/8 17/9  
17/11 17/19 18/5 29/3 29/6

66/15  
**notereading [1]** 3/15  
**noticed [1]** 34/25  
**notion [3]** 43/1 68/24 69/6  
**nuance [1]** 61/12  
**number [11]** 4/3 4/5 4/6 13/12  
16/24 26/6 57/9 57/10 63/10  
71/23 75/11  
**numbers [2]** 15/18 15/19  
**numerically [1]** 33/17  
**NW [3]** 2/10 2/19 3/9  
**NYU [1]** 2/22

**O**  
**Oakland [1]** 2/16  
**objected [1]** 48/1  
**objection [2]** 44/14 48/9  
**objections [1]** 48/9  
**objective [1]** 65/19  
**obligation [3]** 49/18 52/2 52/3  
**observer [2]** 20/5 22/8  
**occasion [1]** 12/19  
**October [4]** 1/6 38/23 75/12  
75/18  
**October 29th [1]** 38/23  
**officer [1]** 48/25  
**official [5]** 46/11 75/3 75/6  
75/14 75/22  
**officials [3]** 7/11 10/14 16/7  
**Oh [1]** 32/4  
**OMAR [2]** 2/3 4/10  
**one-way [1]** 62/5  
**onset [1]** 8/14  
**opinion [7]** 22/18 22/20 22/22  
22/25 41/7 42/16 44/2  
**opportunity [1]** 63/1  
**opposed [1]** 59/20  
**order [14]** 9/20 12/14 14/17  
18/16 18/21 19/3 22/17 23/17  
25/6 29/24 50/4 62/10 64/1 68/4  
**orders [1]** 25/20  
**ordinary [1]** 9/20  
**organization [1]** 30/6  
**organizational [4]** 30/4 73/16  
73/23 74/3  
**origin [4]** 18/24 20/1 27/13 38/5  
**ostensibly [2]** 13/13 35/16  
**ought [1]** 13/2  
**outlines [1]** 35/15  
**outright [1]** 13/4  
**overall [2]** 18/2 45/19  
**overbroad [1]** 60/24  
**overinclusive [1]** 59/5  
**overridden [1]** 7/15  
**override [1]** 7/7

**overseeing [1]** 32/25  
**P**  
**p.m [1]** 1/7  
**P.O [2]** 2/7 2/16  
**pages [1]** 75/13  
**papers [2]** 21/24 74/5  
**parameters [1]** 33/2  
**parents [1]** 37/17  
**parking [2]** 46/20 46/21  
**part [11]** 15/22 15/23 33/13  
39/16 44/19 44/20 56/20 57/4  
58/3 71/1 72/23  
**participants [1]** 31/20  
**parties [3]** 5/18 10/1 47/4  
**partly [1]** 48/23  
**pass [1]** 72/8  
**passed [1]** 37/15  
**passport [1]** 34/9  
**passports [2]** 34/5 34/7  
**Paul [1]** 3/2  
**pay [1]** 47/15  
**peculiarities [1]** 37/14  
**pen [1]** 72/22  
**pending [1]** 4/2  
**people [21]** 9/4 15/19 15/25  
16/22 27/15 30/15 30/18 30/22  
37/23 47/10 47/13 47/17 54/23  
57/10 62/3 62/8 62/8 63/22  
63/22 66/3 72/6  
**perceive [1]** 22/9  
**perceived [1]** 41/13  
**perceives [1]** 39/1  
**perfect [2]** 55/15 58/6  
**perhaps [9]** 13/11 21/18 27/12  
36/17 36/20 53/23 61/11 66/20  
71/22  
**period [2]** 11/2 64/15  
**permanent [1]** 43/5  
**persists [1]** 38/14  
**person [4]** 22/14 27/10 27/11  
63/7  
**person's [1]** 27/8  
**personal [1]** 46/6  
**Persons [2]** 45/7 45/8  
**persuasive [14]** 22/22 23/1  
23/9 44/6 44/6 44/7 44/10 44/11  
44/12 44/15 44/16 44/21 66/22  
68/16  
**petition [1]** 43/16  
**Philippines [1]** 23/24  
**picks [1]** 58/7  
**pig's [1]** 23/23  
**place [2]** 14/10 57/25  
**plaintiffs [38]** 1/4 1/10 1/16 2/3

**P**

**plaintiffs...** [34] 4/11 4/11 4/13  
4/15 4/18 4/20 4/22 4/25 5/2 5/4  
5/16 5/19 5/24 6/2 6/10 6/22  
6/25 17/7 24/17 29/21 29/22  
30/2 38/4 38/17 40/9 44/1 45/11  
47/23 52/19 53/18 59/7 73/19  
73/23 74/4  
**plaintiffs'** [3] 5/21 53/9 53/10  
**plan** [1] 19/15  
**plausible** [2] 12/6 14/19  
**play** [1] 25/9  
**plays** [1] 18/21  
**point** [29] 10/3 18/23 19/5 27/2  
27/19 28/25 31/6 31/16 32/16  
42/9 44/3 44/10 44/12 45/3 45/3  
45/6 47/7 47/22 52/16 54/15  
55/13 56/9 56/13 59/25 60/1  
70/15 71/4 72/19 74/7  
**points** [1] 70/14  
**policies** [2] 72/13 72/14  
**policy** [18] 16/17 16/18 16/23  
20/16 20/24 39/21 40/5 40/8  
40/12 54/9 55/21 55/24 56/4  
57/6 69/3 71/17 71/21 71/24  
**political** [3] 40/2 40/16 40/25  
**pose** [2] 7/13 10/12  
**poses** [1] 31/4  
**position** [9] 23/8 25/16 26/22  
43/22 48/3 58/14 58/16 58/17  
58/19  
**positive** [1] 23/14  
**post** [1] 23/16  
**postdates** [1] 23/20  
**potential** [3] 16/25 55/25 59/4  
**potentially** [1] 49/23  
**power** [5] 7/7 8/12 15/3 55/17  
71/15  
**powers** [2] 8/2 8/5  
**prayer** [3] 46/17 46/18 46/19  
**pre** [1] 43/13  
**pre-enforcement** [1] 43/13  
**preceded** [1] 39/14  
**precedent** [3] 15/7 15/16 44/5  
**precisely** [2] 70/22 72/15  
**precludes** [1] 42/11  
**preliminary** [4] 4/8 5/15 8/7  
25/17  
**prepared** [1] 49/11  
**prescriptive** [1] 57/10  
**present** [3] 29/21 30/7 57/3  
**president** [59] 7/5 7/20 8/12 9/1  
11/6 11/16 11/21 12/7 12/18  
13/25 14/16 14/18 15/5 15/17

16/20 19/11 19/24 19/25 20/2  
20/18 21/13 23/13 25/19 25/20  
36/11 37/25 48/18 49/25 50/1  
50/5 54/1 54/18 55/8 55/11  
55/13 55/16 55/17 56/19 56/21  
58/20 59/15 59/16 63/15 65/12  
65/14 66/10 67/9 67/14 68/2  
68/19 68/23 68/24 69/2 70/6  
70/17 71/16 71/19 72/7 72/22  
**President's** [5] 7/25 8/4 18/25  
36/3 39/19  
**presidential** [4] 48/17 52/4  
60/18 63/16  
**pressing** [1] 70/6  
**pressure** [7] 56/14 57/6 58/4  
58/8 68/6 71/21 73/7  
**presumes** [1] 62/23  
**pretext** [1] 35/13  
**pretextual** [3] 32/18 32/19  
34/15  
**prevail** [1] 28/11  
**prevent** [2] 10/25 63/24  
**PRICE** [2] 2/23 4/23  
**primarily** [2] 17/24 65/7  
**primary** [3] 18/23 20/7 48/8  
**principle** [8] 14/24 19/9 28/18  
41/25 70/25 71/2 71/3 71/12  
**principles** [2] 42/12 42/13  
**privilege** [3] 48/17 48/19 50/24  
**probative** [4] 9/19 49/16 68/20  
68/21  
**problem** [14] 35/16 35/25 36/5  
36/7 36/16 38/7 50/9 53/4 55/7  
56/11 57/24 61/23 62/23 70/6  
**problems** [8] 61/4 61/20 61/22  
62/1 62/3 62/16 62/22 63/2  
**procedure** [1] 13/19  
**proceedings** [5] 3/15 74/18  
75/6 75/14 75/16  
**process** [9] 33/23 39/15 43/16  
43/18 48/16 49/23 51/18 59/23  
68/22  
**proclamation** [74] 7/17 7/18  
7/25 8/4 8/7 10/17 10/20 12/25  
15/24 16/1 16/4 21/9 21/15  
25/13 25/18 32/14 33/1 33/11  
33/16 34/11 34/14 34/16 34/23  
35/2 35/9 35/10 35/15 35/16  
35/17 36/24 37/2 37/3 37/3 37/7  
38/4 39/13 39/18 48/22 49/2  
49/4 49/5 49/6 49/8 49/17 49/21  
50/2 50/11 50/13 50/17 50/25  
51/25 52/8 52/11 53/11 56/7  
56/7 56/9 56/10 56/13 56/15  
57/2 58/3 58/6 59/23 59/24

60/18 61/11 63/16 65/13 66/23  
67/1 67/2 67/3 69/25  
**proclamation's** [1] 37/8  
**proclamations** [5] 15/20 18/5  
56/6 56/13 57/4  
**produces** [1] 32/17  
**program** [1] 36/2  
**prohibit** [3] 60/19 61/11 63/17  
**prohibition** [4] 8/20 8/24 9/18  
72/21  
**prohibitions** [2] 10/8 12/9  
**PROJECT** [3] 1/3 4/4 75/8  
**promise** [1] 32/10  
**promised** [3] 16/20 19/24 25/15  
**promptly** [1] 42/21  
**promulgated** [1] 11/13  
**property** [1] 52/21  
**proposals** [3] 13/4 13/10 13/12  
**proposed** [2] 71/15 71/16  
**proposition** [1] 53/22  
**prosecuted** [1] 47/11  
**protected** [1] 48/16  
**protecting** [1] 38/11  
**protection** [22] 6/23 8/3 25/4  
25/7 25/23 26/13 26/19 27/3  
27/7 27/13 27/19 27/20 27/25  
28/5 28/9 28/14 29/2 29/6 29/17  
53/7 53/8 53/10  
**province** [2] 40/1 40/17  
**proving** [1] 7/10  
**provision** [6] 10/19 16/3 33/16  
41/10 41/12 41/15  
**provisions** [1] 37/1  
**public** [3] 22/10 33/4 66/22  
**publicly** [1] 22/5  
**pull** [1] 32/2  
**purchase** [1] 38/22  
**purports** [1] 70/4  
**purposeful** [1] 66/22  
**purposes** [3] 25/17 39/21 48/15  
**pushes** [1] 11/24  
**puts** [1] 58/7

**Q**

**qualitative** [1] 65/20  
**question** [23] 15/12 19/1 19/23  
22/8 23/12 26/3 31/10 35/23  
36/14 36/15 36/23 36/24 36/25  
37/5 38/20 44/1 47/20 49/14  
51/20 52/10 58/11 58/12 68/10  
**questioning** [1] 48/15  
**questions** [3] 6/8 22/13 70/9  
**quick** [1] 70/14  
**quoted** [1] 63/10

**R**

**raise [1]** 74/7  
**raised [1]** 19/19  
**rapidly [1]** 12/22  
**rational [3]** 35/12 59/1 59/21  
**re [1]** 23/20  
**re-invoked [1]** 23/20  
**reach [1]** 73/22  
**reached [1]** 38/17  
**reaching [2]** 22/19 23/7  
**readily [2]** 22/9 24/13  
**rebuttal [3]** 5/25 6/4 39/6  
**recent [1]** 29/1  
**recently [1]** 13/1  
**recite [1]** 7/23  
**recognized [2]** 8/18 53/1  
**recognizes [1]** 47/6  
**recollection [1]** 13/9  
**recommendation [5]** 21/22  
 61/6 61/8 66/9 66/12  
**recommendations [10]** 20/22  
 20/25 21/8 21/10 49/16 62/11  
 67/9 67/15 68/3 69/4  
**recommended [7]** 21/12 21/18  
 21/21 50/20 56/18 65/12 67/10  
**recommending [1]** 63/15  
**record [7]** 4/9 9/7 23/16 31/8  
 33/10 35/2 49/12  
**recorded [1]** 3/15  
**records [1]** 42/23  
**recreation [1]** 69/23  
**referenced [1]** 50/24  
**referencing [1]** 43/18  
**reflect [1]** 9/3  
**REFUGEE [3]** 1/3 4/3 75/8  
**refugees [2]** 13/7 13/11  
**refused [4]** 12/3 21/25 22/2  
 53/2  
**refutation [1]** 68/16  
**regs [1]** 31/17  
**regulated [1]** 47/9  
**regulations [2]** 11/13 11/15  
**reject [1]** 13/6  
**rejected [2]** 13/4 70/23  
**relationship [1]** 38/25  
**relative [1]** 46/10  
**relatives [7]** 43/5 45/5 45/10  
 45/12 45/18 45/18 73/19  
**relegated [1]** 42/23  
**reliable [1]** 35/4  
**relied [5]** 26/17 39/16 41/9 49/5  
 50/4  
**religion [10]** 45/13 45/19 45/20  
 45/21 46/8 46/10 46/12 47/13

52/22 53/10  
**religious [12]** 8/3 20/7 23/15  
 24/5 26/19 32/23 38/11 38/14  
 47/19 69/12 69/20 69/22  
**religiously [2]** 24/6 24/7  
**rely [4]** 27/13 49/11 53/2 67/1  
**relying [4]** 34/23 35/1 35/7  
 49/19  
**remains [1]** 23/9  
**remedy [2]** 42/15 72/8  
**Remind [1]** 63/10  
**removal [1]** 43/21  
**remove [1]** 41/13  
**removed [1]** 43/12  
**replicating [1]** 35/16  
**report [23]** 9/7 20/19 22/1 22/7  
 48/2 48/10 48/15 48/17 49/4  
 49/4 49/16 49/17 49/20 50/12  
 50/19 50/22 51/5 51/7 51/12  
 51/21 52/5 62/22 63/12  
**Reporter [4]** 3/12 75/1 75/3  
 75/22  
**reporting [1]** 56/20  
**reports [1]** 35/4  
**representations [4]** 50/7 51/12  
 52/8 52/11  
**requested [1]** 63/19  
**requests [1]** 64/1  
**required [2]** 43/15 43/17  
**requirement [1]** 65/4  
**resemblance [1]** 69/9  
**resembles [1]** 18/4  
**reserve [1]** 6/3  
**resident [1]** 43/5  
**resolution [2]** 22/19 74/2  
**resources [1]** 31/2  
**response [3]** 8/11 57/22 60/15  
**restrict [2]** 39/20 56/3  
**restriction [2]** 54/9 54/12  
**restrictions [13]** 11/18 12/1  
 19/6 29/7 39/17 50/19 50/20  
 55/15 56/22 67/17 67/18 68/7  
 72/24  
**result [2]** 16/20 37/14  
**review [28]** 7/22 32/17 32/22  
 32/24 33/2 33/19 39/15 40/2  
 40/8 40/22 42/6 42/11 42/20  
 42/22 43/16 44/16 56/17 59/3  
 59/9 59/10 59/19 60/20 61/3  
 67/4 67/8 68/1 69/14 73/1  
**reviewability [10]** 41/21 41/24  
 41/24 42/14 44/23 44/25 45/2  
 70/25 71/1 71/11  
**reviewable [4]** 42/12 58/16  
 58/18 58/24

**rewrite [3]** 7/6 10/25 11/6  
**rewriting [2]** 11/9 11/23  
**Rifkind [1]** 3/2  
**rights [11]** 29/13 45/8 45/9  
 45/16 45/22 46/2 46/15 46/22  
 46/25 47/6 53/10  
**rise [2]** 30/1 63/3  
**risk [6]** 7/14 10/4 10/12 33/5  
 56/12 57/3  
**risks [1]** 60/10  
**RMR [1]** 3/12  
**ROBERT [2]** 3/3 5/3  
**role [1]** 25/9  
**room [1]** 38/13  
**rooted [1]** 69/19  
**ROTHSCHILD [2]** 2/19 4/22  
**route [1]** 24/23  
**rule [1]** 55/5  
**rules [2]** 50/2 57/6

**S**

**Saavedra [5]** 40/23 41/8 41/16  
 42/17 43/19  
**safety [1]** 33/5  
**Sale [1]** 70/16  
**Sante [1]** 46/17  
**satisfied [1]** 59/17  
**satisfy [5]** 33/5 33/7 33/24 34/1  
 69/1  
**Saudi [1]** 68/19  
**save [1]** 5/24  
**scenario [1]** 66/20  
**scheduling [1]** 74/14  
**scheme [2]** 18/2 35/20  
**schemes [1]** 9/16  
**school [5]** 2/22 30/20 46/17  
 46/17 46/19  
**SCHWEI [2]** 3/8 5/8  
**scope [4]** 10/23 18/25 54/1 57/9  
**SE [1]** 2/13  
**seamless [1]** 20/17  
**search [1]** 59/2  
**searching [2]** 59/3 59/19  
**second [3]** 19/4 23/17 35/4  
**secretaries [1]** 69/5  
**Secretary [21]** 21/2 21/12 21/18  
 21/20 48/18 60/3 60/4 60/8  
 60/16 62/6 62/7 62/11 62/13  
 62/25 63/5 63/13 63/14 64/2  
 64/10 64/11 66/4  
**section [4]** 41/10 50/21 60/25  
 63/12  
**security [22]** 20/23 21/3 25/14  
 33/4 39/21 48/2 54/10 55/21  
 56/4 56/18 60/3 60/4 60/7 60/10

**S**

**security...** [8] 60/17 63/13 66/4  
69/3 70/5 71/18 71/25 73/1  
**seeking** [3] 17/10 31/7 67/4  
**sees** [1] 14/18  
**selected** [1] 50/18  
**sense** [11] 20/21 22/18 43/22  
47/14 52/25 53/2 55/15 58/6  
67/21 67/24 67/25  
**sentence** [1] 60/24  
**sentinel** [1] 38/11  
**separation** [3] 2/18 8/1 8/5  
**September** [4] 25/18 26/11  
48/1 50/12  
**September 15** [1] 48/1  
**September 15th** [1] 50/12  
**September 24th** [2] 25/18  
26/11  
**sequence** [2] 20/17 26/9  
**serious** [1] 8/15  
**serve** [1] 58/8  
**setting** [2] 28/10 34/12  
**Seven** [1] 33/25  
**severe** [1] 29/25  
**shall** [3] 11/15 60/17 63/14  
**share** [3] 36/8 45/19 73/7  
**sharing** [10] 7/16 35/25 36/16  
60/10 61/22 61/24 62/17 62/22  
62/23 64/13  
**Shaughnessy** [1] 39/25  
**Shaunessy** [1] 42/2  
**SHEBAYA** [2] 2/15 4/19  
**short** [1] 25/2  
**shorthand** [2] 75/6 75/15  
**shred** [3] 60/1 60/2 66/5  
**side** [6] 5/19 5/23 17/23 18/2  
18/23 20/3  
**sides** [2] 69/13 74/12  
**signal** [1] 14/4  
**single** [2] 47/5 71/4  
**SIRINE** [2] 2/15 4/19  
**situation** [4] 21/1 51/22 72/10  
72/10  
**skeptical** [1] 53/20  
**slavery** [1] 29/12  
**solely** [1] 53/3  
**solve** [1] 70/6  
**Somalia** [6] 21/11 21/12 21/16  
21/18 50/21 65/21  
**soon** [1] 74/16  
**sorts** [1] 69/21  
**sought** [2] 15/25 16/1  
**sound** [1] 53/21  
**sounds** [1] 47/24

**source** [1] 35/6  
**sources** [2] 35/3 35/3  
**SOUTHERN** [1] 1/2  
**specific** [4] 12/9 13/2 26/9 37/1  
**specify** [3] 60/12 60/14 60/16  
**speech** [3] 23/13 23/20 68/19  
**spousal** [1] 38/23  
**spouse** [3] 38/18 38/23 38/25  
**stab** [1] 56/24  
**stake** [1] 45/9  
**stand** [2] 36/5 52/10  
**standard** [8] 9/12 9/14 27/19  
28/23 59/11 61/19 66/25 67/2  
**standards** [4] 7/8 49/7 49/9  
59/2  
**standing** [17] 6/19 6/23 6/25  
17/20 28/11 29/20 29/22 30/1  
30/2 30/11 40/10 46/9 52/18  
73/16 73/23 73/25 74/3  
**starts** [1] 61/2  
**state** [11] 2/18 9/10 11/14 11/15  
30/10 56/18 60/4 60/8 63/14  
64/11 66/5  
**stated** [4] 35/10 35/11 73/13  
74/13  
**statement** [6] 23/25 24/1 24/2  
24/4 25/19 46/12  
**statements** [2] 19/12 23/17  
**states** [17] 1/1 1/23 3/12 7/14  
7/24 10/13 15/15 21/9 24/23  
34/9 35/22 39/1 48/19 60/16  
68/25 69/2 75/4  
**statute** [12] 9/13 14/4 42/11  
42/21 42/24 43/7 43/11 54/1  
55/5 58/13 59/14 59/15  
**statutory** [22] 6/16 6/18 9/16  
10/19 14/1 16/3 18/2 18/7 18/22  
18/23 39/19 39/24 41/4 41/11  
41/15 43/20 44/24 54/21 55/1  
70/15 71/9 71/12  
**stems** [1] 45/25  
**stenography** [1] 3/15  
**step** [2] 11/4 59/22  
**stigmatize** [1] 37/5  
**stolen** [1] 34/9  
**story** [1] 67/24  
**street** [5] 2/4 2/10 2/19 46/20  
46/21  
**strokes** [1] 9/4  
**strong** [1] 70/3  
**student** [4] 30/16 30/19 30/19  
67/20  
**students** [1] 30/12  
**study** [2] 21/7 61/16  
**style** [1] 59/19

**subjective** [1] 65/19  
**submit** [5] 31/9 44/7 60/17  
63/15 69/24  
**submitted** [1] 35/1  
**subordinates** [3] 60/5 66/6  
67/6  
**subscribed** [1] 75/17  
**subsequent** [1] 41/8  
**subset** [2] 41/24 71/2  
**substance** [1] 68/22  
**substantive** [1] 39/16  
**succeed** [2] 17/10 17/16  
**successfully** [1] 56/23  
**Sudan** [1] 66/13  
**sufficient** [6] 10/11 30/1 46/14  
49/9 62/16 68/8  
**suggest** [2] 36/9 43/19  
**suggested** [4] 42/19 54/12  
54/17 57/23  
**suggesting** [1] 22/6  
**suggestion** [2] 23/21 32/23  
**suggests** [2] 17/25 42/9  
**Suite** [2] 2/20 2/24  
**suits** [1] 43/14  
**Sumaya** [1] 37/12  
**summarily** [1] 23/22  
**Sunday** [5] 47/10 47/11 69/17  
69/19 69/20  
**supplant** [1] 42/13  
**support** [3] 25/22 48/22 49/9  
**supports** [2] 32/20 49/6  
**Supreme** [9] 12/3 22/15 23/6  
26/2 39/25 42/19 50/8 70/16  
73/17  
**surely** [1] 29/17  
**suspected** [1] 23/21  
**suspensions** [2] 35/19 39/14  
**swarths** [1] 67/23  
**sweeping** [1] 58/6  
**symbol** [1] 69/12  
**Syria** [3] 37/13 37/15 37/18  
**Syrian** [2] 37/17 37/19  
**Syrians** [1] 13/10  
**system** [3] 12/10 27/14 27/15

**T**

**tailored** [3] 39/16 67/18 68/7  
**tailoring** [2] 8/22 59/4  
**tape** [1] 75/16  
**targeted** [4] 12/21 13/16 15/8  
73/12  
**targeting** [1] 54/9  
**tax** [2] 47/13 47/14  
**TDC** [9] 1/3 1/3 1/4 4/3 4/5 4/6  
75/11 75/11 75/11

**T**

**TDC-17-00361 [2]** 1/3 75/11  
**TDC-17-0361 [1]** 4/3  
**TDC-17-2921 [3]** 1/3 4/5 75/11  
**TDC-17-2969 [3]** 1/4 4/6 75/11  
**tend [1]** 38/19  
**tens [1]** 73/14  
**Tenth [1]** 66/19  
**term [1]** 8/19  
**terms [11]** 15/18 33/2 34/11  
 34/11 36/25 48/22 49/6 57/9  
 59/11 71/24 72/20  
**territory [2]** 38/1 38/2  
**terrorism [1]** 24/8  
**terrorist [3]** 24/2 34/2 34/4  
**terrorists [1]** 23/21  
**test [1]** 9/10  
**testimony [1]** 75/7  
**thank [17]** 6/13 6/14 7/2 16/13  
 24/24 31/22 31/23 39/3 39/4  
 39/12 52/12 70/11 70/12 70/13  
 74/11 74/12 74/16  
**THEODORE [1]** 1/22  
**theory [3]** 9/24 52/23 53/3  
**therein [1]** 12/10  
**thinking [1]** 43/9  
**thought [6]** 9/1 33/18 41/3 52/6  
 52/7 73/3  
**thrust [1]** 18/18  
**thus [1]** 10/10  
**ticket [3]** 38/21 38/22 38/23  
**tied [1]** 53/3  
**time [22]** 5/23 5/24 6/3 6/8 15/9  
 15/17 15/19 19/19 20/6 21/22  
 21/22 22/10 25/2 28/24 31/2  
 39/8 41/17 50/10 53/16 70/8  
 73/18 73/23  
**tiny [1]** 16/24  
**tired [2]** 38/9 38/12  
**tissue [3]** 32/9 32/11 32/14  
**Title [1]** 9/17  
**topic [1]** 47/21  
**total [1]** 61/9  
**totally [2]** 54/13 69/22  
**touch [2]** 25/4 73/15  
**tougher [2]** 16/21 20/19  
**tourist [1]** 31/19  
**towards [3]** 6/7 37/10 37/10  
**traceable [1]** 46/24  
**trail [1]** 23/21  
**transcript [3]** 1/22 3/15 75/14  
**transferred [1]** 52/21  
**transition [1]** 20/17  
**travel [2]** 19/6 19/11

**travelers [1]** 16/25  
**treatment [5]** 38/20 45/9 45/17  
 46/1 47/3  
**TRUMP [10]** 1/6 1/12 1/18 4/4  
 4/6 4/7 37/25 75/9 75/10 75/10  
**truth [1]** 15/5  
**tweaked [1]** 16/19  
**Twelve [1]** 33/5  
**typically [2]** 9/5 10/8

**U**

**U.S [6]** 27/9 27/11 38/19 43/4  
 45/7 45/8  
**ultimate [1]** 52/7  
**unbridled [1]** 12/5  
**unclear [1]** 72/5  
**under which [1]** 7/9  
**underinclusive [1]** 59/5  
**underlying [3]** 22/1 47/24 48/21  
**undermines [1]** 54/19  
**underscores [1]** 53/7  
**understanding [3]** 24/22 31/14  
 31/19  
**Union [1]** 2/3  
**unique [1]** 28/20  
**UNITED [16]** 1/1 1/23 2/18 3/12  
 7/14 7/24 10/13 15/14 24/23  
 34/9 35/22 39/1 48/19 68/24  
 69/2 75/4  
**university [1]** 30/20  
**unless [1]** 40/3  
**unlimited [1]** 53/21  
**untiring [1]** 38/11  
**upheld [1]** 49/8  
**upset [1]** 54/13  
**urge [1]** 42/4  
**us [6]** 3/7 16/16 20/12 27/18  
 35/5 44/3  
**USC [1]** 10/13  
**utility [1]** 44/3  
**utterly [1]** 53/11

**V**

**vacated [2]** 22/25 23/7  
**vacating [1]** 22/16  
**Valley [1]** 52/19  
**value [1]** 74/1  
**variety [1]** 9/16  
**Venezuela [8]** 17/4 17/12 17/19  
 18/3 18/9 66/15 73/10 73/11  
**Venezuelan [1]** 17/9  
**Venezuelans [1]** 17/1  
**version [2]** 16/21 20/20  
**versus [9]** 4/4 4/6 4/7 27/16  
 29/1 39/25 42/2 46/17 58/23

**vetting [1]** 13/19  
**VII [1]** 9/17  
**violated [4]** 45/16 46/23 47/1  
 53/10  
**violates [1]** 7/18  
**violating [1]** 19/13  
**violation [10]** 12/9 19/9 36/20  
 45/7 46/2 46/7 46/15 46/24 47/6  
 69/7  
**violence [2]** 8/1 8/4  
**virtually [1]** 26/23  
**visa [16]** 7/9 7/10 7/20 10/14  
 11/12 11/14 11/15 24/18 24/19  
 24/19 30/19 30/20 31/18 31/21  
 36/2 38/23  
**visas [14]** 7/12 16/8 30/16  
 30/16 31/7 31/15 53/24 67/19  
 67/20 67/20 67/23 68/6 70/2  
 73/20  
**vote [1]** 29/8

**W**

**waiver [10]** 10/24 11/1 11/8  
 12/10 35/20 36/2 57/18 57/24  
 57/25 58/1  
**War [1]** 29/12  
**warranted [1]** 64/4  
**wartime [1]** 8/13  
**Washington [4]** 2/10 2/13 2/20  
 3/10  
**wave [2]** 38/14 38/15  
**we'd [1]** 5/18  
**Webster [1]** 58/23  
**weigh [1]** 66/2  
**weighing [1]** 66/3  
**Weiss [1]** 3/2  
**well-argued [1]** 74/12  
**well-established [1]** 28/18  
**Westlaw [1]** 70/19  
**Wharton [1]** 3/2  
**whatsoever [1]** 62/3  
**when you're [1]** 39/8  
**whereof [1]** 75/17  
**wife's [1]** 24/18  
**win [2]** 10/2 11/4  
**window [1]** 69/12  
**workers [2]** 71/20 71/23  
**world [3]** 25/17 53/24 64/14  
**worldwide [6]** 32/17 39/15  
 56/17 67/8 68/1 69/14  
**worry [1]** 55/6  
**worse [1]** 16/23  
**worth [1]** 25/3

**Y**

**York [6]** 2/5 2/5 2/24 2/24 3/4  
3/4

**you'd [3]** 15/10 39/10 72/24

**Z**

**ZAKZOK [7]** 1/15 4/7 4/18 4/24  
5/4 6/25 75/10

**zero [1]** 61/25

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official capacity  
as President of the United States, et al.*,

Defendants.

Civil Action No. TDC-17-0361

IRANIAN ALLIANCES ACROSS  
BORDERS, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official capacity  
as President of the United States, et al.*,

Defendants.

Civil Action No. TDC-17-2921

EBLAL ZAKZOK, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official capacity  
as President of the United States, et al.*,

Defendants.

Civil Action No. TDC-17-2969

**MEMORANDUM OPINION**

For the third time this year, President Donald J. Trump has issued an order banning the entry into the United States, with some exceptions, of nationals of multiple predominantly

Muslim nations. At issue is whether this latest travel ban should be enjoined by this Court because it is the latest incarnation of the “Muslim ban” originally promised by President Trump as a candidate for the presidency, and thus violates the Establishment Clause of the First Amendment to the United States Constitution, or because the issuance of the travel ban exceeds the President’s delegated authority under the Immigration and Nationality Act to suspend the entry into the United States of classes of immigrants and nonimmigrants. For the reasons set forth below, the Court concludes that a preliminary injunction is warranted.

### INTRODUCTION

On January 27, 2017, President Trump issued Executive Order 13,769, “Protecting the Nation from Foreign Terrorist Entry into the United States” (“EO-1”), 82 Fed. Reg. 8977 (Jan. 27, 2017), which barred the entry into the United States of nationals of seven predominantly Muslim countries for a 90-day period. On February 7, 2017, Plaintiffs International Refugee Assistance Project (“IRAP”), HIAS, Inc., and seven individuals (collectively, “the IRAP Plaintiffs”), filed a Complaint in this Court alleging that EO-1 violated the Establishment Clause of the First Amendment, U.S. Const. amend. I; the equal protection component of the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101-1537 (2012); the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb-4 (2012); the Refugee Act, 8 U.S.C. §§ 1521-1524 (2012); and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706 (2012).

On March 6, 2017, after EO-1 was enjoined by other federal courts, President Trump issued Executive Order 13,780 (“EO-2”), which bears the same title as EO-1 and was scheduled to go into effect and supplant EO-1 on March 16, 2017. 82 Fed. Reg. 13209 (Mar. 9, 2017). Section 2(c) of EO-2 suspended for 90 days the entry into the United States of nationals of Iran,

Libya, Somalia, Sudan, Syria, and Yemen. On March 10, 2017, the IRAP Plaintiffs amended their Complaint to seek the invalidation of EO-2, alleging the same causes of action pleaded in their original Complaint. The IRAP Plaintiffs also filed a motion for a preliminary injunction against the enforcement of EO-2, on Establishment Clause and INA grounds. On March 15, 2017, this Court enjoined enforcement of Section 2(c) after finding that the IRAP Plaintiffs were likely to succeed on their claim that EO-2 violated the Establishment Clause. *Int'l Refugee Assistance Project v. Trump* (“IRAP”), 241 F. Supp. 3d 539 (D. Md. 2017). This Court’s Order was then appealed to and in substantial part affirmed by the United States Court of Appeals for the Fourth Circuit, sitting *en banc*. *Int'l Refugee Assistance Project v. Trump* (“IRAP”), 857 F.3d 554 (4th Cir. 2017). In light of the expiration of EO-2, the Fourth Circuit’s judgment has since been vacated as moot by the United States Supreme Court. *Trump v. Int'l Refugee Assistance Project*, No. 16-1436, 2017 WL 4518553 (Oct. 10, 2017).

On September 24, 2017, President Trump issued Presidential Proclamation 9645, entitled “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats” (“Proclamation”), which will bar indefinitely the entry into the United States of some or all nationals of Iran, Libya, Somalia, Syria, Yemen, Chad, North Korea, and Venezuela. 82 Fed. Reg. 45161 (Sept. 27, 2017).

On October 3, 2017, Iranian Alliances Across Borders (“IAAB”) and Doe Plaintiffs 1-6 (collectively, the “IAAB Plaintiffs”) filed a Complaint in this Court asserting that the Proclamation violates the INA, the Establishment Clause, the Free Speech Clause of the First Amendment, and the equal protection and procedural due process components of the Due Process Clause of the Fifth Amendment. On October 5, 2017, the IRAP Plaintiffs, now consisting of IRAP, HIAS, Middle East Studies Association (“MESA”), Arab-American

Association of New York (“AAANY”), Yemeni-American Merchants Association (“YAMA”), John Does No. 1 and 3-5, Jane Doe No. 2, Muhammed Meteab, Mohamad Mashta, Grannaz Amirjamshidi, Fakhri Ziaolhagh, Shapour Shirani, and Afsaneh Khazaeli, filed a Second Amended Complaint in which they repeated their prior causes of action and extended them to the Proclamation, added a second claim under the INA alleging that the Proclamation exceeded the President’s statutory authority, and added a claim that the Proclamation violated the procedural due process protections of the Fifth Amendment. On October 6, 2017, in a separate case, Eblal Zakzok, Sumaya Hamadmad, Fahed Muqbil, John Doe No. 1, and Jane Does No. 2-3 (collectively, “the Zakzok Plaintiffs”) filed a Complaint stating causes of action under the Establishment Clause, the INA, and the APA. On October 12, 2017, the IAAB Plaintiffs amended their Complaint to add the Iranian Students’ Foundation (“ISF”), an affiliate of IAAB at the University of Maryland College Park, as a Plaintiff. The IAAB Plaintiffs subsequently filed a Motion for Leave, which the Court has since granted, seeking to file declarations from representatives of ISF in support of the Motion for a Preliminary Injunction.

Each of these three separate cases name some or all of the following as Defendants: President Trump; the U.S. Department of Homeland Security; the U.S. Department of State; Elaine C. Duke, Acting Secretary of Homeland Security; Rex W. Tillerson, Secretary of State; Dan Coats, Director of National Intelligence; Jefferson Beauregard Sessions, III, Attorney General; Kevin K. McAleenan, Acting Commissioner of U.S. Customs and Border Protection; James McCament, Acting Director of U.S. Citizenship and Immigration Services. All of the Plaintiffs seek injunctive and declaratory relief.

On October 6, 2017, the IRAP Plaintiffs filed a Motion for a Preliminary Injunction in which they ask this Court to enjoin the Proclamation in its entirety before it takes effect. The

IAAB and Zakzok Plaintiffs have also each filed a Motion for a Preliminary Injunction and have joined in the arguments of the IRAP Plaintiffs. Defendants filed a consolidated brief in opposition to the Motions on October 12, 2017, and Plaintiffs filed separate reply briefs on October 14, 2017. The Court held a hearing on the Motion on October 16, 2017. With the matter fully briefed and argued, the Court now issues its findings of fact and conclusions of law.

## **FINDINGS OF FACT**

### **I. Public Statements**

On December 7, 2015, then-presidential candidate Donald J. Trump posted a “Statement on Preventing Muslim Immigration” on his campaign website in which he “call[ed] for a total and complete shutdown of Muslims entering the United States until our representatives can figure out what is going on.” Joint Record (“J.R.”) 85. Trump promoted the Statement on Twitter that same day, stating that he had “[j]ust put out a very important policy statement on the extraordinary influx of hatred & danger coming into our country. We must be vigilant!” J.R. 209. In a March 9, 2016 interview with CNN, Trump stated his belief that “Islam hates us,” and that the United States had “allowed this propaganda to spread all through the country that [Islam] is a religion of peace.” J.R. 255-57. Then, in a March 22, 2016 Fox Business interview, Trump reiterated his call for a ban on Muslim immigration, asserting that his call for the ban had gotten “tremendous support” and that “we’re having problems with the Muslims, and we’re having problems with Muslims coming into the country.” J.R. 261.

In a May 11, 2016 appearance on *On the Record*, Trump stated that he would ask former New York City Mayor Rudolph W. Giuliani to lead a group to “look at the Muslim ban or temporary ban,” that there “has to be something,” and that he had “[g]reat Muslim friends who are telling me you are so right. ... [T]here is something going on that we have to get to the

bottom of.” J.R. 513. In a June 13, 2016 speech, Trump stated that “[w]e have to control the amount of future immigration into this country to prevent large pockets of radicalization from forming inside America,” noting that “[e]ach year, the United States permanently admits more than 100,000 immigrants from the Middle East, and many more from Muslim countries outside the Middle East.” J.R. 528.

In a July 24, 2016 interview on *Meet the Press* soon after he accepted the Republican nomination, Trump was asked about the “Muslim ban.” J.R. 219. Trump responded that immigration should be “immediately suspended” “from any nation that has been compromised by terrorism until such time as proven vetting mechanisms have been put in place.” J.R. 219. When questioned whether this formulation was a “rollback” of his December 2015 call for a “Muslim ban,” Trump disagreed, stating “I don’t think it’s a rollback. In fact, you could say it’s an expansion. I’m looking now at territories.” J.R. 220. He explained that “[p]eople were so upset when I used the word Muslim,” so he was instead “talking territory instead of Muslim.” *Id.* During the October 9, 2016 Presidential Debate, when asked by the moderator about his proposed “Muslim ban,” he explained that the “Muslim ban” had “morphed into an extreme vetting from certain areas of the world.” J.R. 591.

On December 21, 2016, when asked whether a recent attack in Germany affected his proposed Muslim ban, President-Elect Trump replied, “You know my plans. All along, I’ve proven to be right. 100% correct.” J.R. 245. In a written statement about the events, he lamented the attack on people “prepared to celebrate the Christmas holiday” by “ISIS and other Islamic terrorists [who] continually slaughter Christians in their communities and places of worship as part of their global jihad.” J.R. 245.

## **II. Executive Order 13,769**

On January 27, 2017, a week after his inauguration, President Trump issued EO-1 in which, pursuant to 8 U.S.C. § 1182(f), the President suspended for 90 days the entry into the United States of immigrant and nonimmigrants who were nationals of Iraq, Iran, Libya, Sudan, Somalia, Syria, and Yemen, based on his finding that such entry was “detrimental to the interests of the United States.” EO-1 § 3(c). Each of these countries has a predominantly Muslim population, including Iraq, Iran, and Yemen, which are more than 99 percent Muslim. The provision allowed for exceptions on a “case-by-case basis” when such an exception was “in the national interest.” EO-1 § 3(g). EO-1 also required changes to the refugee screening process “to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual’s country of nationality.” EO-1 § 5(b). It further provided that during this 90-day period, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence (“DNI”), was to initiate a review process beginning with “a review to determine the information needed from any country” to assess whether an individual from that country applying for a “visa, admission, or other benefit . . . is not a security or public-safety threat,” the generation of a list of countries that do not provide adequate information of this nature, and a consultation process to request such information from those countries. EO-1 § 3(a)-(d). At the end of this review process, the Secretary of Homeland Security was required to “submit to the President a list of countries recommended for inclusion on a Presidential proclamation that would prohibit entry of foreign nationals . . . from countries that do not provide the information requested.” EO-1 § 3(e).

When preparing to sign EO-1, President Trump remarked, “This is the ‘Protection of the Nation from Foreign Terrorist Entry into the United States.’ We all know what that means.” J.R. 142. That same day, President Trump stated in an interview on the Christian Broadcasting Network that EO-1 would give preference in refugee applications to Christians. Referring to Syria, President Trump stated that “[i]f you were a Muslim you could come in, but if you were a Christian, it was almost impossible,” a situation that he thought was “very, very unfair.” J.R. 201. The day after EO-1 was issued, President Trump assured reporters that implementation of EO-1 was “working out very nicely and we’re going to have a very, very strict ban.” J.R. 123. That same day, Mayor Giuliani appeared on Fox News and asserted that President Trump told him he wanted a Muslim ban and asked Giuliani to “[s]how me the right way to do it legally.” J.R. 247. Giuliani, in consultation with others, proposed that the action be “focused on, instead of religion . . . the areas of the world that create danger for us,” specifically “places where there are [*sic*] substantial evidence that people are sending terrorists into our country.” J.R. 247-248.

EO-1 prompted several legal challenges, including an action filed in the United States District Court for the Western District of Washington based on the Due Process, Establishment, and Equal Protection Clauses of the Constitution that resulted in a nationwide temporary restraining order (“TRO”) issued on February 3, 2017 against several sections of EO-1. *See, e.g., Washington v. Trump*, C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017). On February 9, 2017, the United States Court of Appeals for the Ninth Circuit, construing the order as a preliminary injunction, upheld the entry of the injunction. *Washington v. Trump*, 847 F.3d 1151, 1165-66 (9th Cir. 2017). Although it did not reach the Establishment Clause claim, the Ninth Circuit noted that the asserted claim raised “serious allegations” and presented “significant constitutional questions.” *Id.* at 1168. On February 13, 2017, the United States District Court

for the Eastern District of Virginia found a likelihood of success on the merits of an Establishment Clause claim and issued an injunction against enforcement of Section 3(c) of EO-1 as to Virginia residents or students enrolled a Virginia state educational institution. *Aziz v. Trump*, 234 F. Supp. 3d 724, 739 (E.D. Va. 2017).

In response to the injunctions against EO-1, President Trump maintained at a February 16, 2017 news conference that EO-1 was lawful but that a new Order would be issued. J.R. 91. Stephen Miller, Senior Policy Advisor to the President, described the changes being made to the Order as “mostly minor technical differences,” emphasizing that the “basic policies are still going to be in effect.” J.R. 319. White House Press Secretary Sean Spicer stated that “[t]he principles of the [second] executive order remain the same” and described EO-1 as a legal exercise of the President’s power “to suspend immigration.” J.R. 78, 118. As of February 12, 2017, Trump’s Statement on Preventing Muslim Immigration remained on his campaign website. J.R. 207.

### **III. Executive Order 13,780**

On March 6, 2017, President Trump issued EO-2, which was scheduled to go into effect and supplant EO-1 on March 16, 2017. Section 2(c) of EO-2 reiterated the 90-day ban on entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen, but removed Iraq from the list. EO-2 applied only to individuals outside the United States who did not have a valid visa as of the issuance of EO-1 and who had not obtained one prior to the effective date of EO-2. In addition, the travel ban expressly exempted lawful permanent residents (“LPRs”), dual citizens traveling under a passport issued by a country not on the banned list, asylees, and refugees already admitted to the United States, and it provided a list of specific scenarios under which a case-by-case waiver could be granted.

To justify its restrictions on entry by nationals of the listed countries, EO-2 stated that “the conditions in these countries present heightened threats” because each country is “a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones.” EO-2 § 1(d) (citing information from the State Department’s *Country Reports on Terrorism 2015*). EO-2 stated that, as a result, the governments of the listed countries were less willing or able to provide necessary information for the visa or refugee vetting process, such that there was a heightened chance that individuals from these countries would be “terrorist operatives or sympathizers.” EO-2 § 1(d). EO-2 therefore concluded that the risk of admitting individuals from these countries was “unacceptably high” because the United States was unable “to rely on normal decision-making procedures” about their travel. EO-2 § 1(b)(ii), (f). EO-2 disavowed that EO-1 was motivated by religious animus.

EO-2 also stated that “Since 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States” and referenced two Iraqi refugees who were convicted of terrorism-related offenses and a naturalized U.S. citizen who came to the United States from Somalia as a child refugee and had been convicted of a plot to detonate a bomb at a Christmas tree lighting ceremony. EO-2 § 1(h). It did not identify any instances of individuals who came from Iran, Libya, Sudan, Syria, or Yemen engaging in terrorist activity in the United States.

Like EO-1, EO-2 instructed the Secretary of Homeland Security, in consultation with the Secretary of State and the DNI, to conduct a worldwide review to determine whether additional information from foreign governments was needed to enable the United States to determine whether a foreign national applying for a visa or for admission was a security or public safety threat. The Secretary of Homeland Security was then required to submit a report within 20 days

providing the results of the review, including listing countries that do not provide adequate information and identifying the needed information. The Secretary of State was then required to request that the listed countries begin providing the needed information within 50 days. At the end of the 50-day period, the Secretary of Homeland Security was to “submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit 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.” EO-2 § 2(f). The Secretary of Homeland Security could also identify other countries for other restrictions or limitations that would be appropriate.

The same day that EO-2 was issued, Attorney General Jefferson B. Sessions, III and Secretary of Homeland Security John F. Kelly submitted a letter to the President recommending a temporary suspension on the entry to the United States of nationals of certain countries so as to facilitate a review of security risks in the immigration system. Upon the issuance of EO-2, Secretary of State Rex Tillerson described it as “a vital measure for strengthening our national security.” J.R. 115. In a March 7, 2017 interview, Secretary of Homeland Security Kelly stated that the Order was not a Muslim ban but instead was focused on countries with “questionable vetting procedures,” but noted that there were 13 or 14 countries with questionable vetting procedures, “not all of them Muslim countries and not all of them in the Middle East.” J.R. 150. Other White House officials, noting that EO-2’s provisions were temporary, stated that the ban might be extended past 90 days and to additional countries. J.R. 116.

#### **IV. Litigation on EO-2**

On March 10, 2017, the IRAP Plaintiffs amended their Complaint to seek the invalidation of EO-2, alleging the same causes of action pleaded in their original Complaint. The IRAP Plaintiffs also filed a motion for a preliminary injunction against the enforcement of EO-2, on Establishment Clause and INA grounds. On March 15, 2017, this Court enjoined enforcement of Section 2(c) after finding that the IRAP Plaintiffs were likely to succeed on their claim that EO-2 violated the Establishment Clause. *IRAP*, 241 F. Supp.3d at 566. The same day, the United States District Court for the District of Hawaii issued a TRO, later converted to a preliminary injunction, barring enforcement of Sections 2 and 6 of EO-2. *Hawaii v. Trump*, 241 F. Supp. 3d 1119, 1140 (D. Haw. 2017).

This Court's Order was appealed to and in substantial part affirmed by the Fourth Circuit on May 25, 2017. *IRAP*, 857 F.3d 554, 606 (4th Cir. 2017) (en banc). In so ruling, the Fourth Circuit described EO-2 as one that "drips with religious intolerance, animus, and discrimination." *Id.* at 572. After finding that an individual plaintiff had standing to challenge the ban and concluding that upon a showing of bad faith it could "look behind" a proffered "facially legitimate" reason for the action, the court applied standard Establishment Clause analysis to conclude that because EO-2 "cannot be divorced from the cohesive narrative linking it to the animus that inspired it . . . the reasonable observer would likely conclude that [EO-2's] primary purpose is to exclude persons from the United States on the basis of their religious beliefs." *IRAP*, 857 F.3d at 586, 590-92, 601.

Meanwhile, the Ninth Circuit affirmed in substantial part the preliminary injunction ordered by the District of Hawaii on the grounds that EO-2 exceeded the President's authority under the INA, primarily in that it did not contain a sufficient finding of detrimental interest as

required by the statute and that it violated the INA's prohibition on nationality-based discrimination in the issuance of immigrant visas. *Hawaii v. Trump*, 859 F.3d 741, 774, 779 (9th Cir. 2017). The Government sought review of both the Fourth Circuit and Ninth Circuit decisions by the United States Supreme Court, which consolidated the cases for argument. *Trump v. Int'l Refugee Assistance Project* and *Trump v. Hawaii*, 137 S. Ct. 2080, 2086 (2017) (granting writ of certiorari). Pending resolution of those appeals, the Supreme Court declined the Government's request to stay the injunctions of EO-2 in their entirety, but ordered a partial stay of the injunctions to permit their enforcement against only foreign nationals who lack a credible claim of a bona fide relationship with a person or organization within the United States. *Id.* at 2087.

In light of the expiration of EO-2, the Supreme Court requested supplemental briefing on whether the case relating to EO-2 is now moot. *Trump v. IRAP*, No. 16-1436, 2017 WL 2405595 (Sept. 25, 2017). On October 10, 2017, after that supplemental briefing, the Supreme Court vacated the judgment of the Fourth Circuit with instructions to dismiss as moot the challenge to EO-2. The Supreme Court expressed no opinion on the merits.<sup>1</sup> *Trump v. IRAP*, No. 16-1436, 2017 WL 4518553 (Oct. 10, 2017).

## **V. Public Statements Since EO-2**

At a March 16, 2017 rally, President Trump reported to the audience that EO-2 had been enjoined and described it as a “watered down version of the first one” that had been “tailor[ed]” by lawyers in response to prior legal challenges. J.R. 652-53. He emphasized that “we ought to

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<sup>1</sup> Because the judgment of the Fourth Circuit has been vacated as moot, it has been “strip[ped] of its binding effect.” *Deakins v. Monaghan*, 484 U.S. 193, 200 (1988). Accordingly, this Court does not rely on the Fourth Circuit's opinion as controlling authority and will review all legal questions decided by the Fourth Circuit anew, without reliance on that Court's prior decision. However, as confirmed at the hearing on the Motions, the parties agree that the Court may cite the Fourth Circuit opinion as persuasive authority, so this Court does so on a limited basis.

go back to the first one and go all the way, which is what I wanted to do in the first place.” J.R. 653.

On May 21, 2017, President Trump delivered a speech in Riyadh, Saudi Arabia to Arab and Muslim leaders as part of the Arab Islamic American Summit. Speaking as “a representative of the American people” delivering “a message of friendship and hope,” he decried terrorism, but cautioned that “the nations of the Middle East cannot wait for American power to crush this enemy for them,” but instead “have to decide what kind of future they want for themselves.” *President Trump’s full speech from Saudi Arabia on global terrorism*, Wash. Post (May 21, 2017), <https://goo.gl/viJRg2>. They had to “honestly confront” the “crisis of Islamic extremism and the Islamists and Islamic terror of all kinds.” *Id.*

In a June 3, 2017 tweet, President Trump emphasized the “need to be smart vigilant and tough,” and asserted, “We need the Travel Ban as an extra level of safety!” J.R. 662. In a series of tweets on June 5, 2017 referencing the court decisions relating to EO-1 and EO-2, President Trump stated, “[t]he lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is, a TRAVEL BAN!” J.R. 664. He reiterated that “[t]he Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically correct version they submitted to [the Supreme Court],” and advised the Justice Department to “ask for an expedited hearing of the watered down Travel Ban before the Supreme Court - & seek much tougher version!” *Id.* The following day, White House Press Secretary Sean Spicer stated that President Trump’s tweets should be “considered official statements by the president of the United States.” J.R. 667.

In an August 17, 2017 tweet, Trump endorsed what appears to be an apocryphal story involving General John J. Pershing and a purported massacre of Muslims with bullets dipped in a

pig's blood, advising people to “[s]tudy what General Pershing ... did to terrorists when caught. There was no more Radical Islamic Terror for 35 years!” J.R. 679. In a September 15, 2017 tweet, President Trump again insisted that “the travel ban into the United States should be far larger, tougher and more specific-but stupidly, that would not be politically correct!” J.R. 705.

## **VI. Presidential Proclamation 9645**

On September 24, 2017, President Trump issued Presidential Proclamation 9645, which immediately supplanted EO-2 as to foreign nationals who lack a credible claim of a bona fide relationship with a person or organization within the United States, and which is slated to go into effect on October 18, 2017 for all other individuals covered by its terms. The Proclamation stated that in a July 9, 2017 report issued pursuant to the requirements of EO-2, the Secretary of Homeland Security, in consultation with the Secretary of State and the DNI, had selected baseline criteria for assessing the sufficiency of the information provided by foreign governments to permit the United States to confirm the identities of individuals seeking to enter the country and make a security assessment about them.

Three categories of information were identified. The first is “identity-management information,” consisting of information necessary to confirm that individuals are who they claim to be. Criteria for assessing the sufficiency of information provided include whether a foreign government employs electronic passports embedded with data on the holder’s identity, reports lost or stolen passports, and provides other identity-related information not contained in passports. The second category is “national security and public-safety information,” relating to whether individuals seeking to enter the United States pose a national security or public safety risk, the criteria for which include whether a foreign government provides information on known or suspected terrorists and individuals’ criminal histories, shares exemplars of its passports and

national identity documents, or impedes the transfer of information about passengers and crew traveling to the United States. The third category is “national security and public-safety risk assessment,” relating to risk indicators about the country itself, the criteria for which include whether the country is a known or potential terrorist safe haven, whether it is a participant in the Visa Waiver Program, and whether it regularly refuses to accept its nationals subject to final orders of removal from the United States.

According to the Proclamation, pursuant to the process set forth in EO-2, nearly 200 countries were evaluated based on these criteria. Of those, 16 nations were found to be “inadequate” and 31 were found to be at risk of becoming so. In accordance with Section 2(d) of EO-2, those nations were given 50 days to bring their information-sharing practices into compliance with United States expectations. At the end of that 50-day period, eight countries were determined to have continued inadequate information-sharing practices: Chad, Iran, Iraq, Libya, North Korea, Syria, Venezuela, and Yemen. In a September 15, 2017 report to the President (“the DHS Report”), the Acting Secretary of Homeland Security recommended that entry restrictions be imposed on all of those countries with the exception of Iraq. Although Somalia’s information-sharing practices were found to be adequate, the Acting Secretary of Homeland Security recommended that Somalia also be subjected to entry restrictions.

As a result, the Proclamation states that “absent the measures set forth in this proclamation, the immigrant and nonimmigrant entry into the United States” of nationals from Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen (the “Designated Countries”) “would be detrimental to the interests of the United States.” Procl. pmbl. Specifically, the Proclamation suspends the entry of all immigrants from seven of the eight Designated Countries, excepting only Venezuela. The ban on entry by nonimmigrants is “more

tailored,” with a narrower ban imposed on countries with mitigating circumstances such as a willingness to play a substantial role in combatting terrorism. Procl. § 1(h)(iii).

As to specific countries previously subject to EO-2’s travel ban, the Proclamation suspends entirely the entry of Iranian nationals on both immigrant and nonimmigrant visas, with an exception for individuals traveling on nonimmigrant, student (“F” and “M”) and exchange visitor (“J”) visas. However, Iranians traveling on F, M, and J visas are to be subjected to enhanced screening and vetting. As justification, the Proclamation asserts that Iran is a source of significant terrorist threats and a designated state sponsor of terrorism, and that it fails adequately to cooperate with the United States to identify security risks, has at least one unspecified national security risk factor, and refuses to accept its nationals slated for deportation.

The Proclamation suspends entry of all Libyan nationals as immigrants, as well as entry of nonimmigrants using business (“B-1”), tourist (“B-2”), or business/tourist (“B-1/B-2”) visas. These restrictions are based on the conclusions that Libya does not provide adequate public safety or terrorism-related information, has deficiencies in its identity-management protocols, has at least one unspecified national security risk factor, and does not reliably accept its nationals slated for deportation.

The entry of nationals from Somalia traveling on immigrant visas is suspended entirely, and adjudications for all nonimmigrant visas are to be subjected to additional scrutiny. According to the Proclamation, these restrictions are justified by the facts that the United States does not recognize the Somali electronic passport, Somalia has been designated a terrorist safe haven, and large parts of Somalia are outside the control of the central government such that its ability to share information about criminal and terrorist risks is compromised.

Regarding Syria, the Proclamation suspends entirely the entry of all Syrian nationals, both immigrants and nonimmigrants, on the basis that Syria does not cooperate with the United States in identifying security risks, is a source of significant terrorist threats and has been designated a state sponsor of terrorism, does not provide adequate public safety or terrorism-related information, has deficiencies in its identity-management protocols, and has at least one unspecified national security risk factor.

The Proclamation suspends entirely the entry of Yemeni nationals as immigrants, as well as entry of Yemeni nonimmigrants traveling under B-1, B-2, and B-1/B-2 nonimmigrant visas. As justification, the Proclamation notes that Yemen does not provide adequate public safety or terrorism-related information, has deficiencies in its identity-management protocols, has at least one national security risk factor, and has a terrorist presence.

As for countries identified for the first time in the Proclamation, entry of Chad nationals as immigrants is suspended entirely, as is entry of nonimmigrants using B-1, B-2, or B-1/B-2 visas. In support of this determination, the Proclamation asserts that Chad fails to provide adequate public safety and terrorism-related information, and that the nation has at least one unspecified national security risk factor.

All entry of North Korean visa holders, immigrant or nonimmigrant, is entirely suspended, because North Korea has reportedly failed in any way to cooperate or engage in information sharing with the United States.

Venezuela is the only designated country for which entry of immigrants is not suspended. Limitations on the entry of Venezuelan nationals are confined to barring entry of specific government officials and their immediate family members, who are suspended from traveling to the United States on B-1, B-2, and B-1/B-2 visas. All other Venezuelan nationals are to be

subjected to enhanced screening and vetting procedures but are not otherwise banned from entry. The Proclamation reasons that although Venezuela fails to provide adequate terrorism-related or public safety information, has at least one unspecified national security risk factor, and does not reliably receive its nationals slated for deportation, there are other, unspecified sources available for verifying the identities of Venezuelan nationals.

These suspensions apply to foreign nationals of the Designated Countries who (1) are outside the United States on the applicable effective date of the Proclamation; (2) do not have a valid visa as of the applicable effective date of the Proclamation; and (3) are not among those entitled to receive a new visa or other travel document because their visas were revoked or canceled pursuant to EO-1. Excepted from the suspensions are a number of other individuals, including LPRs; dual nationals if traveling on a passport issued by a non-designated country; and foreign nationals who have been granted asylum status or who have been already admitted to the United States as refugees.

In addition to these delineated exceptions, the Proclamation provides for waivers, to be granted on a case-by-case basis by either a State Department consular officer or an official of United States Customs and Border Protection (“CBP”), based on criteria to be developed by the Secretary of State and the Secretary of Homeland Security. Any waiver granted by a consular officer would allow both the issuance of a visa and subsequent entry to the United States on that visa. The Proclamation expressly provides that waivers may be granted only upon a showing that (1) denying entry would cause the foreign national undue hardship, (2) allowing entry would not pose a national security or public safety threat, and (3) entry would be in the national interest.

The Proclamation charges the Secretary of Homeland Security, in consultation with the Secretary of State, to devise a process for determining whether the suspensions should be

continued, terminated, modified, or supplemented. At 180-day intervals, the Secretary of Homeland Security, after consultation with the Secretary of State, the Attorney General, the DNI, and any other appropriate agency heads, is to submit a report and recommendations to the President on whether any such changes should be made, including whether similar suspensions should be imposed on additional countries. In addition, the Secretary of Homeland Security, after consulting with these same officials, may recommend modifications to the list of suspended countries at any time.

As noted, the Proclamation is already in effect as to foreign nationals currently barred by EO-2. For all other covered foreign nationals, it becomes effective on October 18, 2017.

In a joint declaration, 49 former national security, foreign policy, and intelligence officials who served in the White House, Department of State, Department of Homeland Security, Department of Defense, the Central Intelligence Agency, the United States Senate, and as ambassadors in Republican and Democratic Administrations, some of whom were aware of the available intelligence relating to potential terrorist threats to the United States as of January 19, 2017, state that “[a]s a national security measure,” the Proclamation is “unnecessary” and is of “unprecedented scope.” J.R. 770. Excluding North Korea and Venezuela, the Proclamation blocks over 150 million people from entering the United States on the basis of their nationality, despite the fact that “concrete evidence” has shown that “country-based bans are ineffective.” J.R. 771. The officials note that the Proclamation has internal inconsistencies, such as its uneven application to nonimmigrant visas, which are the most frequently used visas from the banned nations, and its failure to block individuals from non-Muslim majority countries with “widely-documented” problems with information sharing, such as Belgium. J.R. 773. On this score, the officials note that no terrorist acts have been committed on U.S. soil by nationals of the

Designated Countries in the last 40 years, and that no intelligence as of January 19, 2017 suggested any such potential threat. Nor, the former officials assert, is there any rationale for the abrupt shift from individualized vetting to group bans, particularly in light of the fact that the present system of individualized vetting places the burden of proving identity and eligibility for travel on the person seeking a visa.

## **VII. The Plaintiffs**

Plaintiffs, a combination of 23 individuals (“the Individual Plaintiffs”) and seven organizations (“the Organizational Plaintiffs”), assert that they will suffer harm from the implementation of the Proclamation in the form of prolonged separation of family members located in the Designated Countries and stigmatizing injuries arising from the anti-Muslim animus of the travel ban. Of the Individual Plaintiffs, nine are U.S. citizens or LPRs who have an approved visa petition on behalf of an Iranian-national parent, child, or sibling, consisting of IRAP Plaintiffs John Doe No. 4, Shapour Shirani, Fakhri Ziaolhagh, and Afsaneh Khazaeli; and IAAB Doe Plaintiffs Nos. 1-5. Two Plaintiffs, IAAB Doe Plaintiff No. 6 and Grannaz Amirjamshidi seek nonimmigrant visas for their Iranian-national mother or mother-in-law to visit the United States. Four Plaintiffs are U.S. citizens or LPRs with an approved visa petition for their Syrian-national family members, consisting of Mohamad Mashta,<sup>2</sup> IRAP Plaintiff Jane Doe No. 2, and Zakzok Plaintiffs Jane Does No. 1-2. Zakzok Plaintiff Eblal Zakzok, an LPR, has submitted an immigrant visa petition for his Syrian-national daughter but it has not been approved, and Zakzok Plaintiff Sumaya Hamadmad has a sister, a Syrian national, who has applied for a nonimmigrant visa to visit the United States for an academic project. IRAP

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<sup>2</sup> At the time the IRAP Amended Complaint was filed, Plaintiff Mohamad Mashta had an approved I-130 visa petition for his Syrian-national wife and was awaiting a visa for her. At the hearing, counsel informed the Court that Mashta’s wife had been granted a visa and that she is on her way to the United States, which appears to render his claim moot.

Plaintiffs John Doe No. 5 and Fahed Muqbil are U.S. citizens who have approved immigrant visa petitions for their Yemeni-national wife and mother, respectively. Zakzok Plaintiff Jane Doe No. 3 is a U.S. citizen who has a pending immigrant visa petition for her Somali fiancée. Three of the Individual Plaintiffs, specifically Mohammed Meteab, and IRAP John Does Nos. 1 and 3, are LPRs of Iranian or Iraqi descent who do not have immediate family members from one of the Designated Countries seeking an immigrant or nonimmigrant visa.

Of the Organizational Plaintiffs, three primarily provide services to clients. IRAP provides legal services to its clients, displaced persons around the world seeking to come to the United States, to help them navigate the refugee or immigrant application process. HIAS provides a variety of services to refugees, including assisting their clients with refugee resettlement in the United States. AAANY primarily serves the Arab-American and Arab immigrant community in New York City by providing legal and other services to its clients.

The remaining Organizational Plaintiffs convene events on issues relating to the Middle East or advocate on behalf of their members. MESA consists of over 2,400 graduate students and faculty around the world focused on the field of Middle Eastern studies. YAMA, a membership organization of Yemeni American merchants, seeks to protect its members from harassment and to assist them with immigration issues. IAAB organizes youth camps, educational events, and international conferences for the Iranian diaspora, including inviting prominent scholars from outside the country to speak at events. ISF is an affiliate of IAAB and organizes events and fundraisers for its members, approximately 30 Iranian American students at the University of Maryland. Additional facts relating to certain Organizational Plaintiffs are contained in the Court's discussion of standing. *See infra* part I.A.

## CONCLUSIONS OF LAW

In this Motion, Plaintiffs seek a preliminary injunction based on their claims that the Proclamation violates (1) the Immigration and Nationality Act, (2) the Establishment Clause, and (3) the Equal Protection Clause.

### I. Justiciability

Defendants raise several arguments that Plaintiffs' claims are not justiciable. Specifically, they assert that Plaintiffs lack standing, the claims are not ripe, the claims are barred by the doctrine of consular nonreviewability, and the statutory claims are not reviewable under the APA.

#### A. Standing

Article III of the Constitution limits the judicial power of the federal courts to actual "Cases" or "Controversies." U.S. Const. art. III, § 2, cl. 1. To invoke this power, a litigant must have standing. *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). A plaintiff establishes standing by demonstrating (1) a "concrete and particularized" injury that is "actual or imminent," (2) "fairly traceable to the challenged conduct," (3) and "likely to be redressed by a favorable judicial decision." *Id.*; *Covenant Media of S.C., LLC v. City of N. Charleston*, 493 F.3d 421, 428 (4th Cir. 2007). For claims involving a statutory cause of action, a plaintiff must also have interests that fall within the "zone of interests protected by the law invoked." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388 (2014). Standing must be established for each claim. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). The presence of one plaintiff with standing renders a claim justiciable. *Bostic v. Schaefer*, 760 F.3d 352, 370-71 (4th Cir. 2014).

## 1. Immigration and Nationality Act

The various Individual Plaintiffs assert standing based on the allegation that they are harmed by the prolonged separation from close family members who are unable to travel to the United States under the terms of the Proclamation. The Supreme Court has reviewed the merits of cases brought by U.S. residents with a specific interest in the entry of a foreigner challenging the application of the immigration laws to that foreign individual. *See Kerry v. Din*, 135 S. Ct. 2128, 2131, 2138-42 (2015) (considering an action brought by a U.S. citizen challenging the denial of her husband's visa); *Kleindienst v. Mandel*, 408 U.S. 753, 756, 762-65 (1972) (considering the merits of a claim brought by American plaintiffs challenging the denial of a visa to a Belgian journalist whom they had invited to speak in various academic forums in the United States); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88-89 (1998) (stating that because standing relates to a court's power to hear and adjudicate a case, it is normally "considered a threshold question that must be resolved in [the litigant's] favor before proceeding to the merits"); *Abourezk v. Reagan*, 785 F.2d 1043, 1050 (D.C. Cir. 1986) ("Presumably, had the Court harbored doubts concerning federal court subject matter jurisdiction in *Mandel*, it would have raised the issue on its own motion."). Other courts have done the same. *See Bustamante v. Mukasey*, 531 F.3d 1059, 1062 (9th Cir. 2008) (considering an action by a United States citizen challenging the denial of her husband's visa and holding that the citizen had a procedural due process right to a "limited judicial inquiry regarding the reason for the decision"); *Allende v. Shultz*, 845 F.2d 1111, 1114 & n.4 (1st Cir. 1988) (evaluating the merits of a claim brought by scholars and leaders who extended invitations to a foreign national challenging the denial of her visa).

The United States Court of Appeals for the District of Columbia Circuit has found that U.S. citizens and residents have standing to challenge the denial of visas to individuals in whose entry to the United States they have an interest. *See Abourezk*, 785 F.2d at 1050 (finding that U.S. citizens and residents had standing to challenge the denial of visas to foreigners whom they had invited to “attend meetings or address audiences” in the United States); *Legal Assistance for Vietnamese Asylum Seekers v. Dep’t of State, Bureau of Consular Affairs*, 45 F.3d 469, 471 (D.C. Cir. 1995), *vacated on other grounds*, 519 U.S. 1 (1996) (“LAVAS”). In LAVAS, the court held that U.S. resident sponsors had standing to assert that the State Department’s failure to process visa applications of Vietnamese citizens in Hong Kong violated one of the same provisions at issue here, 8 U.S.C. § 1152, based on the cognizable injury of prolonged “separation of immediate family members” resulting from the State Department’s inaction. *Id.* at 471. And in a related case, the Ninth Circuit held that an individual plaintiff had standing to challenge EO-2 where the plaintiff’s mother-in-law was a Syrian national with a pending immigration visa application, because the “prolonged separation” from her constituted a sufficient injury-in-fact. *Hawaii*, 859 F.3d at 763.

Here, several Individual Plaintiffs, specifically IRAP Plaintiffs John Doe No. 4, John Doe No. 5, Jane Doe No. 2, Shapour Shirani, and Fakhri Ziaolhagh; IAAB Plaintiffs Doe Plaintiff No. 1, Doe Plaintiff No. 3, Doe Plaintiff No. 4, and Doe Plaintiff No. 5; and Zakzok Plaintiffs Eblal Zakzok, John Doe No. 1, and Jane Doe No. 2 have standing to assert their claims that the Proclamation violates the INA. Each of these Plaintiffs are U.S. citizens or lawful permanent residents who have immediate family members who are nationals of the Designated Countries and currently in the process of securing a visa to come to the United States as immigrants. As one illustrative example, John Doe No. 4 is a U.S. citizen whose wife is an Iranian national

seeking an immigrant visa to join him in the United States. Other Plaintiffs, including IRAP Plaintiff Grannaz Amirjamshidi, IAAB Plaintiff Doe Plaintiff No. 6, and Zakzok Plaintiff Sumaya Hamadmad have standing as U.S. citizens who are separated from close family members who are nationals of Designated Countries seeking nonimmigrant visas to travel to the United States. The Proclamation's indefinite ban on the issuance of immigrant and nonimmigrant visas for nationals of the Designated Countries has imposed an actual, imminent injury on these Plaintiffs by prolonging their separation from their family members. *See LAVAS*, 45 F.3d at 471; *Hawaii*, 859 F.3d at 763. Because a "threat" of an injury that is "real and immediate" can support standing, *Friends of the Earth, Inc. v Gaston Copper Recycling Corp.*, 204 F.3d 149, 160 (4th Cir. 2000), it is not necessary that the family member's visa application already be denied. Where the Proclamation halts issuance of visas to nationals of the Designated Countries indefinitely, the threat is quite real.

This injury is "fairly traceable" to the challenged practice in that the implementation of the travel ban imposed by the Proclamation would cause the prolonged separation, and an injunction against the Proclamation would likely redress that injury. *See Hollingsworth*, 133 S. Ct. at 2661. The Court therefore finds that these Individual Plaintiffs have standing to assert the claim that the Proclamation violates the INA.

The Organizational Plaintiffs assert standing for the INA claim in their own right and on behalf of their members. For an organization's claim of standing, the Court conducts the same inquiry as in the case of an individual. *Lane v. Holder*, 703 F.3d 668, 674 (4th Cir. 2012). An organization suffers an injury-in-fact when "a defendant's actions impede its efforts to carry out its mission." *Lane*, 703 F.3d at 674; *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) ("Such concrete and demonstrable injury to the organization's activities—with the

consequent drain on the organization's resources—constitutes far more than simply a setback to the organization's abstract social interests.”). However, an injury to an organization generally does not arise from a decision to expend resources on member education or litigation in response to legislation. *See Lane*, 703 F.3d at 675.

Here, several organizations have asserted sufficient injury to their proprietary and organizational interests to constitute an injury-in-fact for standing purposes. Both MESA and IAAB argue that the Proclamation will disrupt upcoming conferences and events in the United States by preventing individuals from the Designated Countries from attending. Specifically, the Proclamation would bar scholars from some of the Designated Countries from MESA's annual meeting in November, including one prospective attendee from Iran, which would harm MESA financially because approximately half of MESA's budget is derived from the annual meeting. The inability of scholars to travel to the annual meeting would also hinder the exchange of ideas among scholars and thus adversely impact MESA's mission of “fostering study and public understanding of the Middle East.” J.R. 430-31. Likewise, the Proclamation will prevent Iranian nationals from attending IAAB's International Conference on the Iranian Diaspora, scheduled for April 2018 in New York, at which scholars, students, journalists, artists, and community leaders gather to exchange ideas on issues affecting the worldwide Iranian community. Where approximately half of the invited speakers for this event typically come from Iran, the inability of Iranian nationals to travel to the United States would hinder IAAB's mission of “address[ing] issues affecting the Iranian Diaspora community.” *Kharazzi Aff.* ¶ 17, IAAB Mot. Prelim. Inj. Ex. 1, ECF No. 26-3. Although the Proclamation excepts Iranian nationals traveling on a student (F and M) or exchange visitor (J) visa, such visas typically are for individuals enrolling in an academic or vocational program or in a specific exchange visitor

program such as an au pair, summer camp, or summer work travel program. *See* 22 C.F.R. §§ 41.61–41.62 (2017); U.S. Dep’t of State, 9 Foreign Affairs Manual §§ 402.5-5–402.5-6. Attendees at educational, professional, or business conferences would generally use a B-1 visa, which is now unavailable to Iranian nationals. *See* 9 Foreign Affairs Manual § 402.2-5(B)(5) (stating that one of the permitted activities on a B-1 visa is to “participate in scientific, educational, professional, or business conventions, conferences, or seminars”). The Proclamation also impacts IRAP’s ability to bring one of its Syrian-national employees back to the United States to participate in its annual, week-long strategic planning and training retreat at its headquarters in New York, which would adversely impact IRAP’s operations and mission.

These injuries are not “merely speculative.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). MESA has described at least one specific individual from Iran who would attend the MESA annual meeting and whose fees would have to be refunded if he cannot attend, and IRAP has referenced a specific employee who cannot receive the in-person training and participate in strategic planning at its annual retreat. Even without identifying specific individuals who will definitely be barred from entry into the United States to attend its events, IAAB has alleged that the Proclamation presently constrains their efforts to recruit attendees for their upcoming meetings and conferences and to secure their arrival in time for the events. *Cf. Hawaii* 859 F.3d at 766 (finding that Hawaii had standing based on its interest in students attending the University of Hawaii). Thus, the Proclamation would injure MESA, IAAB, and IRAP by impeding their efforts to accomplish their missions and by disrupting their ability to raise money, train staff, and convene programs designed to foster the free flow of ideas on topics of significance to their organization’s purpose. *See Lane*, 703 F.3d at 674.

MESA, IAAB, and IRAP also fall within the zone of interests protected by the INA. Where MESA's purpose is to foster "study and public understanding of the Middle East," J.R. 431-32, and IAAB is focused on "address[ing] issues affecting the Iranian Diaspora Community, Kharazzi Aff. ¶ 17, these organizations necessarily engage in collaboration and exchange with foreign nationals who visit the United States. Accordingly, they necessarily have a substantial interest in the effective operation of the INA, particularly its provisions for admitting foreign scholars and other foreign nationals to the United States as nonimmigrants to attend educational conferences. *See, e.g.*, 9 Foreign Affairs Manual § 402.2-5(B)(5). Likewise, as an organization focused on refugee resettlement, IRAP has a need to engage foreign-national employees familiar with parts of the world with refugee populations and periodically to have those employees travel to and from the United States for planning, direction, and training. It, too, has an ongoing interest in operation of the INA's nonimmigrant visa provisions. *See* 9 Foreign Affairs Manual § 402.2-5(B)(3) (stating that one of the permitted activities on a B-1 visa is to "consult with business associates"). Thus, as organizations that depend on the entry of foreign nationals into the United States under the INA, MESA, IAAB, and IRAP are within the zone of interest of the law. *See Abourezk*, 785 F.2d at 1050-51 (finding that organizations that invited foreign nationals to the United States to speak at a rally had a cognizable stake in the Government's interpretation of a provision of the INA).

The Court also finds that these organizational injuries are fairly traceable to Defendants' actions and likely to be redressed by a favorable decision because the Proclamation imposes an entry ban on nationals from the Designated Countries who would otherwise be able to apply for visas to enter the United States and participate in the organizational events. *See Hollingsworth*,

133 S. Ct. at 2661. Therefore, the Court finds that MESA, IAAB, and IRAP each have standing to challenge the Proclamation as a violation of the INA.

Finally, several organizations can assert standing as representatives of their members. To establish associational standing, an organization must establish that (1) its members would have standing to sue in their own right; (2) “the interests it seeks to protect are germane to the organization’s purpose”; and (3) “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977); *Lujan*, 504 U.S. at 563 (stating that a single member with standing in his or her own right is sufficient to establish that an organization has standing). An organization must “make specific allegations establishing that at least one *identified member* had suffered or would suffer harm.” *Southern Walk at Broadlands Homeowner’s Ass’n v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009)).

MESA and YAMA both identify at least one individual member who is a U.S. citizen or LPR seeking to secure an immigrant visa for a close relative from one of the Designated Countries. MESA alleges that one of its members of Syrian descent is imminently filing a petition seeking an immigrant visa for his mother-in-law, a Syrian national. YAMA asserts that one of its members, “Ahmed,” is a U.S. citizen whose wife has petitioned for his Yemeni national wife and their five Yemeni national children to immigrate to the United States.

The interests raised by Plaintiffs’ claims are germane to the organizations’ purposes. MESA seeks to foster greater understanding and dialogue with Middle East nations, including one or more of the Designated Countries. YAMA, in part, seeks to help Yemeni American business owners navigate immigration issues they face. Plaintiffs’ interest in obtaining an

injunction to preserve the ability of foreign nationals from the Designated Countries to travel to the United States squarely relates to both of these missions. Finally, where the claims in these cases consist of constitutional and statutory challenges to the Proclamation, there is no discernible reason why the participation of individual members, as opposed to their representatives in the form of the organization, is required for the effective advancement of this lawsuit. With all the requirements met, the Court concludes that MESA and YAMA have standing to assert their INA claims on behalf of their members. *See Hunt*, 432 U.S. at 343.

## 2. Establishment Clause

To have standing to assert an Establishment Clause claim, a plaintiff must meet the same elements as for any other claim: (1) a cognizable injury, (2) fairly traceable to the defendant's actions; and (3) a likelihood that the injury will be redressed by a favorable decision. *Suhre v. Haywood Cty.*, 131 F.3d 1082, 1085 (4th Cir. 1997). To show an injury in the context of the Establishment Clause, the plaintiff must have "personal contact with the alleged establishment of religion" resulting in a personal injury. *Id.* at 1086. The injury can take the form of noneconomic, intangible harm to spiritual beliefs, such as "[f]eelings of marginalization and exclusion" because "one of the core objectives of modern Establishment Clause jurisprudence has been to prevent the State from sending a message to non-adherents of a particular religion that they are outsiders, not full members of the political community." *Moss v. Spartanburg Cty. Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. 2012); *see Suhre*, 131 F.3d at 1086; *Awad v. Ziriach*, 670 F.3d 1111, 1122-23 (10th Cir. 2012) (holding that a Muslim plaintiff residing in Oklahoma suffered a cognizable injury in the form of condemnation of his religion and exposure to "disfavored treatment" based on a voter-approved state constitutional amendment prohibiting Oklahoma state courts from considering Sharia law); *Catholic League v. City & Cty. of San*

*Francisco*, 624 F.3d 1043, 1048 (9th Cir. 2010) (stating that a “psychological consequence” constitutes a concrete injury where it is “produced by government condemnation of one’s own religion or endorsement of another’s in one’s own community”). The injury, however, needs to be a “personal injury suffered” by the plaintiff “*as a consequence* of the alleged constitutional error.” *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 485 (1982).

Here, multiple Individual Plaintiffs have asserted “personal contact” with the Proclamation’s alleged Establishment Clause violation to demonstrate standing. As discussed above, multiple Plaintiffs have asserted that they have been personally injured by the Proclamation through the harm of prolonged separation from close relatives who would be barred from entry to the United States under the Proclamation. *See supra* Part I.A.1. Thus, contrary to Defendants’ claim, they are asserting a personal injury sustained as a consequence of the alleged constitutional error, not an injury to others. *See Suhre*, 131 F.3d at 1086 (finding that “unwelcome direct contact with a religious display that appears to be endorsed by the state” is a personal injury). It is this personal impact that separates the claims of Plaintiffs here from those in *Valley Forge*, in which the plaintiffs had merely read about a conveyance of property to a religious institution that they believed to be unfairly advantageous, *Valley Forge*, 454 U.S. at 468-69, 485, or in *In re Navy Chaplaincy*, 543 F.3d 756, 764 (D.C. Cir. 2008), in which Protestant Navy chaplains alleging that Catholic chaplains received a preference in the chaplain retirement system had observed the impact of the alleged Establishment Clause violation on others but had not suffered any personal consequences from it, *id.* at 764-65.

Several of these Plaintiffs have also asserted specific, intangible injuries resulting from this personal contact with the alleged Establishment Clause violation. Among the IRAP

Plaintiffs, John Doe No. 4 states that he “felt insulted” by EO-1 and received “more suspicious looks from people,” which caused him to feel that “I am being labeled as a Muslim more often,” and that the Proclamation “has made me feel this more strongly” such that “I continue to feel demeaned by the ban.” J.R. 461-62. Jane Doe No. 2 states that she understands the Proclamation to fulfill campaign promises to condemn her religion, which has made her feel depressed and has caused her to question whether to remain in the United States because she does not want her children to face discrimination. Afsaneh Khazaeli states that the Proclamation and the predecessor travel bans have made him feel like a “second-class citizen” and has made his family the target of abuse and discrimination. J.R. 465-66. Shapour Shirani states that the anti-Muslim nature of the travel ban has made the separation from his wife “more painful,” and the Proclamation has made him “feel even worse” and worry that discrimination against Muslims will persist and interfere with his rights. J.R. 476-77.

Of the IAAB Plaintiffs, Doe Plaintiff No. 2, Doe Plaintiff No. 3, Doe Plaintiff No. 5, and Doe Plaintiff No. 6 have all expressed similar intangible harms arising from the Proclamation’s alleged Establishment Clause violation. For example, Doe Plaintiff No. 2 states that because the Proclamation “targets” her based on her religion, “I feel insecure and I fear for my safety and the safety of my loved ones,” and “I feel that I am being treated as an outsider in my own country.” Jane Doe No. 2 Aff. ¶ 9, IAAB Mot. Prelim. Inj. Ex. 3, ECF No. 26-5. Doe Plaintiff No. 3 has stated that she fears the Proclamation will result in “more hatred and attacks against my community” such that “I fear for my safety and the safety of my loved ones.” Jane Doe No. 3 Aff. ¶ 9, IAAB Mot. Prelim. Inj. Ex. 4, ECF No. 26-6. Both Doe Plaintiff No. 5 and Doe Plaintiff No. 6 express that they feel attacked, targeted, and disparaged by the Proclamation’s hostility to Muslims and that they fear for their safety as a result.

Zakzok Plaintiffs Fahed Muqbil, Eblal Zakzok, Sumaya Hamadmad, John Doe No. 1, Jane Doe No. 2, and Jane Doe No. 3 all express that they feel condemned, stigmatized, attacked, or discriminated against as a result of the Proclamation. For example, Fahed Muqbil feels “as if I and my fellow American Muslims are unwanted, different, and somehow dangerous” as a result of the Proclamation. Fahed Muqbil Decl. ¶ 15, Zakzok Mot. Prelim. Inj. Ex. 1, ECF No. 6-1.

These feelings of marginalization constitute an injury in fact in an Establishment Clause case. *See Moss*, 683 F.3d at 607 (holding that a Jewish father and daughter suffered an injury when they felt like “outsiders” upon receiving a school letter stating that academic credit was available for taking a class at a Christian bible school). Furthermore, these injuries are traceable in whole or in part to the Proclamation, and an injunction is likely to redress these injuries by removing the stigma associated with the Proclamation. Multiple Individual Plaintiffs can establish both a personal contact with the alleged establishment of religion through the prolonged separation from their family members and a direct injury from the Proclamation through their feelings of marginalization and exclusion. These Plaintiffs include IRAP Plaintiffs John Doe No. 4, Jane Doe No. 2, and Shapour Shirani; IAAB Plaintiffs Doe Plaintiff No. 3, Doe Plaintiff No. 5, and Doe Plaintiff No. 6; and Zakzok Plaintiffs Eblal Zakzok, Jane Doe No. 2, and Sumaya Hamadmad.

Finally, MESA and YAMA, which have standing to assert an INA claim based on their representation of members injured by the Proclamation, likewise have standing to assert an Establishment Clause claim on behalf of their members. As discussed above, both have asserted that at least one specific member faces prolonged separation from a close relative as a result of the Proclamation. *See supra* Part I.A.1. Both also assert that the same member has experienced feelings of marginalization or emotional distress as a result of the Proclamation’s alleged anti-

Muslim message. According to MESA, the various versions of the travel ban have caused its member “extreme stress” and “ma[d]e him feel unwelcome, even more so now that he is a citizen.” J.R. 429. According to YAMA, Ahmed, one of its members facing a prolonged separation from family, states that the ban has made him “scared here in the United States because the message is coming from the highest people in government that Muslims are terrorists.” J.R. 486.

Where both of these organizations have at least one member with both a personal contact with the alleged establishment of religion and a direct injury as a result of it, the injury-in-fact requirement has been satisfied. Since MESA serves to foster understanding of the Middle East, in which there are many predominantly Muslim nations, and YAMA was founded in part to oppose what its members perceived to be a Muslim ban arising from EO-1, the interests they seek to protect through an Establishment Clause claim are germane to their organizations’ purposes. *Hunt*, 432 U.S. at 343. Lastly, as discussed above, there is no discernible reason why the individual members themselves must participate in this suit, rather than their membership organization. *Id.* Accordingly, MESA and YAMA have standing to assert an Establishment Clause claim on behalf of their members.

Having found that multiple Individual and Organizational Plaintiffs have standing to assert both INA and Establishment Clause claims, the Court need not address whether the remaining Plaintiffs have standing. By not addressing those arguments, the Court does not convey any view on whether those Plaintiffs have standing to assert one or more claims.

#### **B. Ripeness**

The Government also argues that Plaintiffs’ claims are not ripe because their relatives have not yet been denied both a visa and a waiver. For the Individual Plaintiffs discussed above

whose family members are already in the process of seeking visas, denial of visas is generally mandated because they are ineligible based on the plain language of the Proclamation. Although a claim is generally not ripe if it is based on contingent future events, *Texas v. United States*, 523 U.S. 296, 300 (1998), the potential to receive a waiver does not render the claims unripe because the waiver process itself presents an additional hurdle not faced by other visa applicants which would delay reunification, thus creating a harm not contingent on future events. *See Jackson v. Okaloosa Cty.*, 21 F.3d 1531, 1541 (11th Cir. 1994) (finding in a Fair Housing Act action that plaintiffs' claim was ripe where, "assuming that [plaintiffs] successfully prove at trial that this [challenged] additional hurdle was interposed with discriminatory purpose and/or with disparate impact, then the additional hurdle itself is illegal whether or not it might have been surmounted").

In assessing ripeness, courts are to consider the fitness of the issues for decision and the hardship to the parties of withholding judicial consideration. *See Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003). Where this case centers on legal issues arising from the Proclamation, which has been issued in its final form, and is not dependent on facts that may derive from application of the waiver process, it is now fit for decision. *See Miller v. Brown*, 462 F.3d 312, 319 (4th Cir. 2006). In light of the individual Plaintiffs' circumstances, withholding judicial consideration of their claims until waivers are adjudicated would cause undue hardship in the form of additional prolonged separation. The Court therefore finds that the claims are now ripe.

### **C. Consular Nonreviewability**

Defendants argue that Plaintiffs' claims are not justiciable pursuant to the doctrine of consular nonreviewability, citing *Saavedra Bruno v. Albright*, 197 F.3d 1153 (D.C. Cir. 1994).

Defendants also cite *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950), in which the Supreme Court held that a foreign national could not challenge the Attorney General's decision to exclude her from the country and deny her a hearing to which she would ordinarily be entitled. *Id.* at 547. Defendants assert that, taken together, these cases establish that any judicial review of the President's decision to exclude an alien for any reason is unreviewable.

Plaintiffs, however, challenge not individual visa decisions by consular officers, but the overarching travel ban policy imposed by the Proclamation. *See Hawaii*, 859 F.3d at 768 (rejecting the argument that consular nonreviewability barred judicial review of statutory claims challenging EO-2 and noting that “[c]ourts can and do review both constitutional and statutory challenges to the substance and implementation of immigration policy”) (citation omitted); *Washington*, 847 F.3d at 1162; *Int’l Union of Bricklayers & Allied Craftsmen v. Meese*, 761 F.2d 798, 801 (D.C. Cir. 1985) (distinguishing challenges to consular decisions on individual visa applications from a challenge to general operational instructions promulgated by the Immigration and Naturalization Service); *cf. Immigration and Naturalization Serv. v. Chadha*, 462 U.S. 919, 940-41 (1983) (noting that although Congress has plenary authority over immigration, the Court could still review an immigration statute to ensure that it implemented that authority by “constitutionally permissible means”). The Defendants’ reliance on *Knauff* and *Saavedra Bruno* is thus misplaced. These decisions relate only to aliens appealing individual denials of entry into the United States. *Knauff*, 338 U.S. at 539; *Saavedra Bruno*, 197 F.3d at 1155, 1163-64. Where Plaintiffs include U.S. citizens asserting statutory and constitutional claims challenging a broader policy as opposed to individual consular determinations, the doctrine of consular nonreviewability is not applicable. *See Hawaii*, 859 F.3d at 768-69; *see also IRAP*, 857 F.3d at 587.

**D. APA**

Defendants assert that the APA has foreclosed the Plaintiffs' statutory claims on multiple grounds. The APA provides standing for any party that is "adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702; *see LAVAS*, 45 F.3d at 471. This general grant of standing is subject to several limitations. Judicial review is available only for "final agency action," 5 U.S.C. § 704, and is not available if "agency action is committed to agency discretion by law," 5 U.S.C. § 701(a)(2).

First, Defendants argue that Plaintiffs cannot bring a claim under the APA because they are not "adversely affected or aggrieved" within the meaning of the APA. As discussed above, the Individual Plaintiffs and several Organizational Plaintiffs are within the zone of interests of the INA and are injured by the denial of immigrant or nonimmigrant visas for family members or expected conference attendees. *See supra* Part I.A.1. They are thus "adversely affected or aggrieved" by Defendants' use of their authority under the INA. 5 U.S.C. § 702; *see LAVAS*, 45 F.3d 471-72 (finding that U.S. family members of Vietnamese nationals desiring to be processed for visas in Hong Kong but ordered to return to Vietnam were "aggrieved" under the APA and within the "zone of interests" of the INA); *Abourezk*, 785 F.2d at 1051 (finding that U.S. citizens who invited foreign nationals to speak were "aggrieved" by the State Department's interpretation of an INA definition that led to the exclusion of the intended speakers).

Second, Defendants assert that judicial review is not available because the Proclamation was issued by the President, not the head of a federal department or agency, and thus is not a "final agency action" within the meaning of the APA. In *Franklin v. Massachusetts*, 505 U.S. 788 (1992), the Supreme Court held that the President is not subject to the APA such that his actions cannot be reviewed under that law. *Id.* at 800-01. To the extent that the Plaintiffs seek

an injunction against the President himself, this argument has merit. *See id.* at 802 (stating that “a grant of injunctive relief against the President himself is extraordinary and should . . . raise[] judicial eyebrows”); *see also IRAP*, 857 F.3d at 605. However, Plaintiffs have named as defendants federal agency officials who will implement the Proclamation. “[I]t is now well established” that “[r]eview of the legality of a Presidential action can ordinarily be obtained in a suit seeking to enjoin the officers who attempt to enforce the President’s directive.” *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327-28 (D.C. Cir. 1996) (permitting judicial review of an Executive Order through a suit against the Secretary of Labor). Such review is warranted because there is a “strong presumption in favor of judicial review of administrative action.” *Immigration and Naturalization Serv. v. St. Cyr*, 533 U.S. 289, 298 (2001). As for Defendants’ claim that the agency action to date is not “final,” the Proclamation is already in effect as to certain individuals and is being enforced by federal agencies, and, as discussed above in relation to ripeness, a formal denial of a visa or waiver is not necessary for the case to be subject to review. *See supra* Part I.B.

Third, Defendants claim that review of the Proclamation is foreclosed by 5 U.S.C. § 701(a)(2) as “committed to agency discretion by law.” Under their view, Congress committed the use of § 1182(f) to the sole discretion of the President, such that a reviewing court has no manageable standard by which to evaluate it. Despite the Government’s asserted claim of a lack of intelligible standard, courts have had no difficulty reaching the merits of challenges to the President’s use of § 1182(f). *See Sale v. Haitian Ctrs. Council*, 509 U.S. 155, 187 (1993); *Hawaii*, 859 F.3d at 770-74; *cf. Abourezk*, 785 F.2d at 1051 (finding that the INA “does not commit to unguided agency discretion the decision to exclude an alien”).

More generally, courts have regularly reviewed Presidential action, including action taken in the context of foreign policy and immigration, to ensure that it fits within the bounds of federal statutes. *See, e.g., Sale*, 509 U.S. at 187 (reviewing on the merits an INA challenge to President’s use of § 1182(f)); *Dames & Moore v. Regan*, 453 U.S. 654, 669-88 (1981) (reviewing on the merits an Executive Order regarding the attachment of Iranian assets pursuant to the International Emergency Economic Powers Act); *see also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring) (establishing the framework for judicial review of Presidential action). Defendants’ contention that the Plaintiffs cannot contest the Proclamation in court cannot square with this body of precedent. The Court therefore finds that this case is justiciable and proceeds to the merits of the Plaintiffs’ claims.

## **II. Legal Standard**

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

### **III. Likelihood of Success on the Merits**

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

#### **A. Immigration and Nationality Act**

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

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

8 U.S.C. § 1182(f).

Congress has also authorized the President to take action relating to entry into the United States in what is now Section 215(a) of the INA, codified at 8 U.S.C. § 1185(a) (“§ 1185(a)”):

Unless otherwise ordered by the President, it shall be unlawful—

(1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.

8 U.S.C. § 1185(a)(1). The Proclamation relies on these two provisions as the statutory authority for the President’s action.

Plaintiffs assert that the Proclamation violates the INA in three ways. First, they argue, as they did in challenging EO-2, that the Proclamation violates Section 202(a) of the INA,

codified at 8 U.S.C. § 1152(a) (“§ 1152(a)”), which bars discrimination on the basis of nationality in the issuance of immigrant visas. Second, they assert that the Proclamation fails to comply with the requirement in § 1182(f) that the President find that the suspension of entry by nationals from the Designated Countries would “be detrimental to the interests of the United States.” Third, they contend that the Proclamation exceeds the authority granted by § 1182(f) because it effectively re-writes portions of the INA or otherwise intrudes on Congress’s legislative power.

### **1. Nationality Discrimination**

Plaintiffs argue that the Proclamation’s suspension of entry into the United States by immigrants from the Designated Countries violates the INA’s bar on discrimination based on nationality in the issuance of immigrant visas. In opposition, the Government asserts that the Proclamation was lawful because it was issued pursuant to § 1182(f), which grants the President broad authority to bar the entry of immigrants, and that the non-discrimination provisions of § 1152(a) do not limit the President’s § 1182(f) authority.

Section 1152(a) provides that, with certain exceptions:

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

8 U.S.C. § 1152(a)(1)(A).

Section 1152(a) was enacted as part of the Immigration and Nationality Act of 1965, which was adopted expressly to abolish the “national origins system” imposed by the Immigration Act of 1924, which keyed yearly immigration quotas for particular nations to the percentage of foreign-born individuals of that nationality who were living in the continental United States, based on the 1920 census, in order to “maintain, to some degree, the ethnic

composition of the American people.” H. Rep. No. 89-745, at 9 (1965). President Lyndon B. Johnson sought this reform because the national origins system was at odds with “our basic American tradition” that we “ask not where a person comes from but what are his personal qualities.” *Id.* at 11.

In reviewing the motion for a preliminary injunction of EO-2, this Court considered the interplay between § 1182(f) and § 1152(a) and concluded, based on canons of statutory construction, that the President’s authority under § 1182(f) is limited by the § 1152(a) bar on discrimination based on nationality in the issuance of immigrant visas. *See IRAP*, 241 F. Supp.3d at 553-56. The Court reaches the same conclusion here as to both § 1182(f) and § 1185(a). Under the canon that a later-adopted provision controls over an earlier one, § 1152(a), enacted in 1965, controls over § 1182(f) and the relevant text of § 1185(a)(1), enacted in 1952.<sup>3</sup> *See Watt v. Alaska*, 451 U.S. 259, 266 (1981). Section 1152(a) is also the more specific provision, in that it requires a particular result, namely non-discrimination in the issuance of immigrant visas on specific, enumerated bases, while § 1182(f) and § 1185(a) mandate no particular action, but instead set out general parameters for the President’s power to bar entry and impose rules and regulations on entry and departure. Thus, to the extent that § 1152(a) may conflict with § 1182(f) and § 1185(a) on whether the President can bar the issuance of immigrant visas based on nationality, § 1152(a), as the more specific provision, controls. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) (“The general/specific canon is perhaps the most frequently applied . . . To eliminate the contradiction, the specific provision is construed as the exception to the general one.”); *Edmond v. United States*, 520 U.S.

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<sup>3</sup> Section 1185 was amended in 1978, to broaden its applicability beyond times of war or national emergency, but the operative language of § 1185(a)(1) remained unchanged. *See Foreign Relations Authorization Act, Fiscal Year 1979*, Pub. L. No. 95-426, § 707(a), 92 Stat. 992-993 (1978).

651, 657 (1997) (“Ordinarily, where a specific provision conflicts with a general one, the specific governs.”); *United States v. Smith*, 812 F.2d 161, 166 (4th Cir. 1987).

Finally, it is highly significant that § 1152(a) explicitly excludes certain sections of the INA from its scope, specifically §§ 1101(a)(27), 1151(b)(2)(A)(i), and 1153, but does not exclude § 1182(f) or § 1185(a) from its reach. 8 U.S.C. § 1152(a)(1)(A). The absence of any reference to § 1182(f) or § 1185(a) among these exceptions provides strong evidence that Congress did not intend for those provisions to be exempt from the anti-discrimination provision of § 1152(a). *United Dominion Indus., Inc. v. United States*, 532 U.S. 822, 836 (2001) (“[T]he mention of some implies the exclusion of others not mentioned.”); *Reyes-Gaona v. N.C. Growers Ass’n*, 250 F.3d 861, 865 (4th Cir. 2001) (noting that Congress “knows how to expand the jurisdictional reach of a statute”). Thus, pursuant to § 1152(a), a proclamation under § 1182(f) or § 1185(a) may not discriminate in the issuance of immigrant visas.

This conclusion is consistent with that of the Ninth Circuit, which found a likelihood of success on the merits of the claim that EO-2’s ban on entry by immigrants based on nationality exceeded the President’s § 1182(f) authority, concluding that “§ 1152(a)(1)(A)’s non-discrimination mandate cabins the President’s authority under § 1182(f).” *Hawaii*, 859 F.3d at 778. To reach this determination, the Ninth Circuit similarly applied the canons of statutory construction and relied on the facts that § 1152(a) was more recently enacted, § 1152(a) was the more specific statute, and § 1182(f) was not listed among sections of the INA exempt from the non-discrimination requirements of § 1152(a)(1)(A). *See id.* at 778.

The Government argues that the Proclamation does not conflict with § 1152(a) because it suspended the entry of immigrants, not the issuance of visas. There is a textual difference. Section 1182(f) authorizes the President to bar “entry” to certain classes of aliens. 8 U.S.C. §

1182(f). Section 1152(a) bars discrimination based on nationality in the “issuance of an immigrant visa.” *Id.* § 1152(a)(1)(A). These activities, however, usually go hand-in-hand. An immigrant cannot seek entry without first obtaining an immigrant visa. But receiving an immigrant visa is meaningless without later receiving permission to enter. Thus, the denial of entry to immigrants would generally have the effect of causing the denial of immigrant visas. *See Hawaii*, 859 F.3d at 776 (holding that the EO-2’s suspension on entry “in substance operates as a ban on visa issuance on the basis of nationality”); *see also IRAP*, 857 F.3d at 637 (Thacker, J., concurring) (“Here, the ultimate effect of what EO-2 actually *does* is require executive agencies to deny visas based on nationality.”). If § 1182(f) can be used to deny entry based on nationality, “the President could circumvent the limitations set by § 1152(a)(1)(A) by permitting the issuance of visas to nationals of . . . designated countries, but then deny them entry. Congress could not have intended to permit the President to flout § 1152(a) so easily.” *Hawaii*, 859 F.3d at 777.

There may be scenarios under which denial of entry based on nationality under § 1182(f) or § 1185(a) could be deemed to have such a limited impact that it would not also effect a denial of an immigrant visa. For example, a nationality-based denial of entry of limited duration, such as during a specific urgent national crisis or public health emergency, that was not designed to halt visa issuances but instead simply to impose a delay or limitations on migration, arguably would not result in discrimination in the issuance of immigrant visas in violation of § 1152(a). President Reagan’s 1986 decision to bar entry to Cuban nationals in retaliation for Cuba’s suspension of an immigration agreement and facilitation of illegal migration into the United States, the only historical example of the use of § 1182(f) authority to bar entry based on nationality, falls into this category. That bar of entry, by its own terms, was to continue only

until “the restoration of normal migration procedures between the two countries.” Proclamation 5,517, 51 Fed. Reg. 30,470 (Aug. 22, 1986). Likewise, President Carter’s invocation of 8 U.S.C. § 1185(a)(1) in response to the Iran Hostage Crisis authorized “limitations and exceptions on the rules and regulations governing the entry” of Iranians into the United States without any reference to visa issuance. Exec. Order 12,172, 44 Fed. Reg. 67947 (Nov. 26, 1979); Exec. Order 12,206, 45 Fed. Reg. 24,101 (Apr. 7, 1980). Accordingly, when considering EO-2, which imposed only a 90-day “temporary pause” during which some entry could have been denied without impacting the issuance of visas, this Court drew a distinction between entry and visa issuance. *See IRAP*, 241 F. Supp.3d at 556.

Here, however, the Proclamation has no specified end date and no requirement of renewal. Where the Proclamation has effectively imposed a permanent, rather than temporary, ban on immigrants from the Designated Countries, and has effectively stopped the issuance of immigrant visas indefinitely, the bar on entry is the equivalent of a ban on issuing immigrant visas based on nationality. This conclusion is supported by the Proclamation itself, which, even more than EO-2, makes clear that its intended effect is to deny the issuance of immigrant visas, in violation of § 1152(a). First, unlike EO-2, which generally barred entry by nationals of the Designated Countries, the Proclamation explicitly and specifically targets nationals seeking to immigrate to the United States. The Proclamation states, “For all but one of those 7 countries . . . I am restricting the entry of all immigrants.” Procl. § 1(h)(ii). Second, the text of the Proclamation reveals that its primary effect is not that nationals of the Designated Countries holding immigrant visas will be denied entry at the border by CBP, but that the State Department and consular officers will stop issuing immigrant visas to such nationals. Indeed, the Proclamation actually permits entry by any nationals holding approved visas. *Id.* § 3(a)(iii).

Thus, as a result of the Proclamation, Defendants will effect the travel ban by no longer issuing immigrant visas to nationals of the Designated Countries. Moreover, the fact that the Proclamation provides that the Secretary of State and consular officers may grant waivers to the entry ban, Procl. § 3(c), further reveals that the Proclamation generally imposes a ban on visa issuance, because those officials' statutory role is to issue visas, not to oversee actual entry into the United States. *See* 8 U.S.C. § 1101(a)(16) (stating that an "immigrant visa" is "issued by a consular officer"). Indeed, the Proclamation erases the line between the issuance of a visa and entry into the United States when it specifically provides that a waiver issued by a consular officer "will be effective both for the issuance of a visa and for any subsequent entry on that visa." Procl. § 3(c)(iii). Finally, any claim that the Proclamation relates only to the question of entry to the United States is belied by its multiple references to visa issuance, including the provision stating that "visa adjudications for nationals of Somalia and decisions regarding their entry as nonimmigrants should be subject to additional scrutiny." Procl. § 2(h)(ii). Notably, the State Department publicly describes the Proclamation not as limiting entry, but as a "Presidential Proclamation on Visas." *New Presidential Proclamation on Visas September 24, 2017*, U.S. Department of State, Bureau of Consular Affairs (Sept. 24, 2017), <https://travel.state.gov/content/travel/en/news/important-announcement.html>. Because § 1152(a) does not permit such discriminatory denials of immigrant visas, the Proclamation exceeds the President's statutory authority under § 1182(f) and § 1185(a). *See Abourezk*, 785 F.2d at 1061 (noting that the President's authority in the immigration context derives from "the statutory authority conferred by Congress").

Defendants' remaining arguments do not alter this conclusion. Defendants unpersuasively claim that § 1182(f) and § 1185(a) do not conflict with § 1152(a) because they

“limit the universe of individuals eligible to receive visas” to which the non-discrimination provision of § 1152(a) would apply. This argument fails because there is nothing in the text of either statute that remotely suggests that they serve any function relating to visa eligibility. Moreover, acceptance of the Government’s construction, under which discrimination would be permitted before the application of the non-discrimination provision, would render § 1152(a) meaningless. *See Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 633 (1973) (stating that “all parts of a statute, if at all possible, are to be given effect”).

Likewise, the Court finds unpersuasive Defendants’ assertion that nationality discrimination is permissible under 8 U.S.C. § 1152(a)(1)(B), which states that “[n]othing in [§ 1152(a)] shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed.” This provision applies only to the Secretary of State and thus does not provide a basis to uphold discriminatory action in a Presidential Proclamation. More importantly, where the Proclamation now imposes an indefinite travel ban based on nationality, rather than a 90-day “pause,” such an action cannot fairly be construed as a change in “procedures” or the “location” of visa processing. § 1152(a)(1)(B).

The Court therefore finds that Plaintiffs are likely to succeed on the merits of their claim that the Proclamation violates the non-discrimination provision of § 1152(a) to the extent that it bars entry by immigrants on the basis of nationality. Because this argument does not apply to nonimmigrants seeking entry to the United States, the Court must consider Plaintiffs’ remaining statutory arguments.

## 2. Section 1182(f) Finding

Plaintiffs further contend that the President has failed to make an adequate finding to support his invocation of authority under § 1182(f). Section 1182(f) requires that the President *find* that the entry of a class of aliens *would be detrimental* to the *interests of the United States*. 8 U.S.C. § 1182(f) (emphasis added); *see also Hawaii*, 859 F.3d at 770, 774 (concluding that EO-2 did not contain adequate findings that the entry of nationals from the countries subject to that travel ban would be detrimental to the interests of the United States). The INA does not define key elements of this requirement, such as “find” or “detrimental to the interests of the United States.” *See* 8 U.S.C. § 1101 (defining terms used in the INA). “Classes of aliens” is also not defined, but examples are given in 8 U.S.C. § 1182(a). These examples include aliens who have “engaged in a terrorist activity,” § 1182(a)(3)(B)(i)(I), and “illegal entrants and immigration violators,” § 1182(a)(6). None of these examples are based on nationality. *See* §§ 1182(a)(1)-(10).

The President explicitly made the finding that “absent the security measures set forth in this proclamation, the immigrant and nonimmigrant entry into the United States of persons” barred from entry by the proclamation “would be detrimental to the interests of the United States.” Procl. pmb1. In support of that finding, the Proclamation describes two purposes. First, the Proclamation helps to prevent the “entry of those foreign nationals about whom the United States Government lacks sufficient information to assess the risks they pose to the United States.” Procl. § 1(h)(i). Second, the Proclamation will help “elicit improved identity-management and information-sharing protocols and practices from foreign governments” and thus “advance foreign policy, national security, and counterterrorism objectives.” *Id.* The Proclamation contains additional information in support of its conclusion that a ban on entry of

Designated Country nationals will further these two goals. With regard to addressing information deficiencies, the Proclamation states that “information-sharing and identity-management protocols and practices of foreign governments are important for the effectiveness of the screening and vetting protocols of the United States,” and, citing the September 15, 2017 DHS Report, concludes that seven of the Designated Countries “continue to have ‘inadequate identity-management protocols, information-sharing practices, and risk factors.’” Procl. § 1(b), (g). It further states that Somalia, although not identified as inadequate in the DHS Report, “lacks command and control of its territory” such that its ability to share information about nationals who pose terrorist risks is compromised. *Id.* § 2(h)(i). Without this information from the Designated Countries, the President finds, nationality-based restrictions are needed to prevent the entry of individuals about whom there is insufficient risk information. *Id.* § 1(h)(i). According to the Proclamation, a nationality-based policy also fits with the diplomatic purpose of the Proclamation to encourage foreign governments to improve their information-sharing practices. *See Hawaii*, 859 F.3d at 772 n.13 (noting that the two past nationality-based entry bans as to Cuba and Iran were for “retaliatory diplomatic measures responsive to government conduct”).

Plaintiffs assert compelling arguments that the Proclamation’s nationality-based restrictions are not actually necessary. Under current policy, applicants for immigrant or nonimmigrant visas, not their governments, are required to produce the information necessary to demonstrate that they are eligible to enter the United States. *See* 8 U.S.C. § 1361. Dozens of former national security officials have stated that this travel ban is unnecessary, that it serves no national security purpose, and that there is no evidence that the United States needs to shift away from this individualized vetting system to nationality-based bans. *See* Joint Decl. of Former

Nat'l Sec. Officials, J.R. 770. Notably, the Proclamation does not provide examples of vetting failures involving nationals from the Designated Countries that resulted in the entry of terrorists or others who should not have been admitted.

Plaintiffs also question the choices made in the Proclamation given that Somalia met the Proclamation's baseline criteria and was included in the entry ban, while Iraq did not meet the baseline criteria but was not included. Procl. § 1(g), 2(h). Further, the Proclamation appears to be overbroad with regard to its purported goals. It prohibits almost all Designated Country nationals from entering the United States, regardless of age, health, or even connection to the Designated Country itself. At least one of the Plaintiffs, Dr. Sumaya Hamadmad, seeks to reunite with her sister, a Syrian national who has spent her entire life in Jordan, about whom the Syrian government would have no relevant information.

Under a more robust standard of review, these criticisms might carry the day. But there is no requirement that a § 1182(f) entry restriction meet more stringent standards found elsewhere in the law, such as that it be "narrowly tailored" or the "least restrictive means" to obtain its stated aims. *See, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993); 42 U.S.C. § 2000bb-1(b)(2) (2012). The text of § 1182(f) does not even require the President to find that suspending the entry of a class of aliens would be detrimental to national security, only that it is detrimental to the *interests* of the United States. 8 U.S.C. § 1182(f). Under this broad standard, previous § 1182(f) proclamations have provided far less detail regarding their findings. *See, e.g.,* Proclamation 8,015, 71 Fed. Reg. 28,541 (May 12, 2006) (barring entry of members of the Government of Belarus based on "the importance to the United States of fostering democratic institutions in Belarus"); Exec. Order. No. 12,807, 57 Fed. Reg. 21,133 (May 24, 1992) (barring entry of "any defined vessel carrying [illegal] aliens" based

on a finding that “there continues to be a serious problem of persons attempting to come to the United States by sea without necessary documentation and otherwise illegally”). Against this background, the Court cannot conclude that Plaintiffs are likely to succeed on their claim that the Proclamation fails to make a finding of detrimental interest sufficient to invoke § 1182(f).

### **3. Section 1182(f) Authority**

Lastly, Plaintiffs argue that the Proclamation’s ban on entry of nationals from the Designated Countries exceeds the authority granted to the President in § 1182(f). Specifically, Plaintiffs assert that the Proclamation effectively revises the INA by imposing alternative visa issuance criteria that conflict with statutory criteria and thereby overrides Congress’s policy judgments, particularly those made in establishing the Visa Waiver Program (“VWP”). Defendants counter that (1) the issue of whether the Proclamation exceeds the authority granted in § 1182(f) is not judicially reviewable; and (2) even if subject to review, the Proclamation is an appropriate use of the President’s broad authority under § 1182(f). Although the Proclamation also relies on § 1185(a)(1), the parties do not argue that this section provides broader authority than § 1182(f). Therefore, the Court need only consider whether the Proclamation exceeds the President’s delegated authority under § 1182(f).

The Court first addresses Defendants’ claim that the President’s exercise of authority pursuant to § 1182(f) is not subject to judicial review. In Defendants’ view, review of § 1182(f) would be inappropriate because it would amount to a second-guessing of a decision that is appropriately committed to the President. Yet the Supreme Court had no difficulty reaching the merits of a challenge asserting that the President’s use of § 1182(f) to blockade illegal migrants from Haiti violated another provision of the INA. *See Sale*, 509 U.S. at 170-74, 187. Moreover, in evaluating Plaintiffs’ argument, the Court is not second-guessing the President’s discretion,

but examining whether the Proclamation fits within the President's grant of authority. Such review of whether executive action exceeds statutory authority is plainly within the purview of the courts. *See, e.g., Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2090 (2015) (reviewing whether the President's decision to not list "Jerusalem, Israel" as a birthplace on a passport conflicted with a provision of the 2003 Foreign Relations Authorization Act); *Dames & Moore*, 453 U.S. at 668 (stating, in reviewing a claim that President Carter's actions in freezing Iranian assets during the Iran Hostage Crisis exceeded his statutory and constitutional authorities, that "the validity of the President's action, at least so far as separation-of-powers principles are concerned, hinges on a consideration of all the circumstances which might shed light on the views of the Legislative Branch toward such action"). Thus, the Court rejects the argument that it may not review Plaintiffs' claim that the Proclamation exceeds the authority granted in § 1182(f).

Plaintiffs' claim centers on two alleged transgressions. First, Plaintiffs argue that the Proclamation imposes new criteria on the issuance of visas that conflict with Congress's statutorily established criteria. Indeed, although the text of § 1182(f) authorizes the President only to "suspend the entry" of classes of immigrants and nonimmigrants, the Proclamation goes further. The Proclamation does not stop nationals of the Designated Countries from entering the United States if they already have a valid visa or if they are able to obtain one through the processes described in the Proclamation. Rather, as with EO-2, the Proclamation effectuates the travel ban by using the visa issuance process. *See Hawaii*, 859 F.3d at 777 (noting the Government's acknowledgment that "the entry ban" under EO-2 "would be implemented through visa denials"). Thus, Plaintiffs correctly observe that the Proclamation goes beyond mere suspension of entry and delves into the criteria for issuing visas to nationals of the

Designated Countries. Specifically, the Proclamation allows a consular officer to issue waivers to such nationals that would be “effective both for the issuance of a visa and for any subsequent entry on that visa.” Procl. § 3(c)(iii). These waivers may be granted only if a foreign national demonstrates that denial of entry would cause “undue hardship,” that entry would not pose a threat to the United States, and that entry will be in the “national interest.” Procl. §§ 3(c)(i)(A), (C). The Proclamation then directs the Secretary of State and the Secretary of Homeland Security to establish guidance for consular officials to use when making waiver determinations and establishes factors that the guidance must consider along with specific factual scenarios that would generally justify a waiver.

Arguably, these criteria conflict with Congress’s detailed system governing the issuance of immigrant and nonimmigrant visas. As part of this system, Congress places on applicants for visas the burden to establish eligibility, including to show that they do not fall into any categories of individuals ineligible for visas. *See* 8 U.S.C. § 1361; *id.* § 1182(a). These categories include those with possible links to terrorism or criminal activity. *See* 8 U.S.C. §§ 1182(a)(2)-(3)(B). Plaintiffs thus assert, with some force, that the Proclamation adds additional criteria that nationals of the Designated Countries must satisfy before they can obtain an immigrant or nonimmigrant visa to gain entry to the United States. This addition of such criteria, Plaintiffs argue, impermissibly replaces Congress’s list of criteria with the President’s own. The Court agrees that, as constructed, the Proclamation effectively adds new criteria for the issuance of visas and entry by nationals of certain countries beyond those formally imposed by Congress.

Second, Plaintiffs argue that the Proclamation exceeds the bounds of § 1182(f) because it conflicts with Congress’s policy judgments in addressing the same problem purportedly addressed by the Proclamation: poor information sharing by foreign governments. As evidence,

Plaintiffs reference the VWP, established by Congress, which allows nationals of certain foreign countries to enter the United States for periods of less than 90 days without a visa. 8 U.S.C. § 1187(a)(1). To be eligible for this program, a country must meet certain standards relating to cooperation and the sharing of information with the United States. § 1187(c)(2). Notably, many of the standards applied to determine if a country qualifies for the VWP are strikingly similar to those considered in the Proclamation. For example, among the criteria for VWP eligibility are whether a country provides its nationals with an electronic machine-readable passport containing biographic and biometric data, § 1187(a)(3), and whether the country reports lost and stolen passports to the United States, § 1187(c)(2)(D). The Proclamation lists these same criteria as “identity management information” considered in the assessment whether a country should be added to the travel ban list. Procl. § 1(c)(i). Other VWP criteria include whether a foreign government shares information on whether its nationals traveling to the United States pose a security threat, 8 U.S.C. § 1182(c)(2)(F), the same type of information considered by the Proclamation under the category of “National security and public-safety information,” Procl. § 1(c)(ii). Likewise, the VWP considers whether a country is a safe haven for terrorists, 8 U.S.C. § 1187(a)(12)(D)(ii)(III), and whether the country generally accepts the repatriation of its own nationals subject to orders of removal from the United States, § 1187(c)(2)(E). These factors, along with whether a country is a participant in the VWP program itself, are the “National security and public-safety risk assessment” factors considered by the Proclamation in assessing whether a country should be subject to the travel ban. Thus, in determining which countries to subject to a travel ban, the Proclamation duplicates many of the same criteria, and revisits many of the same issues, that Congress considered in crafting the VWP.

Further, the Proclamation imposes a travel ban on some of the same nations, based on the same of the same criteria, on which Congress imposed lesser restrictions in its recent amendments to the VWP. In 2015, Congress amended the VWP to exclude individuals from participating countries who were dual citizens of, or had traveled to, Iraq, Syria, a country designated by the State Department as a state sponsor of terrorism (Iran, Syria, and Sudan), or other countries designated by the Department of Homeland Security (Libya, Somalia, and Yemen). *See* Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, Pub. L. No. 114-113, Div. O, Title II, § 203, 129 Stat. 2242 (codified at 8 U.S.C. § 1187(a)(12)). For example, a French national who had traveled to Syria or was also a Syrian national would not be eligible for visa-free travel to the United States, even though France is a VWP country. Instead, Congress required such an individual to apply for a nonimmigrant visa and submit to a consular interview and adjudication by a consular officer. *See* 8 U.S.C. § 1187(a)(12). In light of this statutory scheme, Plaintiffs argue that the Proclamation exceeds the bounds of § 1182(f) because it conflicts with Congress's policy judgments relating to the same issues and same nations. The Court agrees with Plaintiffs that the Proclamation addresses some of the same issues considered by Congress, specifically, information sharing by foreign nations relating to travel of foreign nationals to the United States and the consequences for failing to engage in it, and that the Proclamation imposes significantly more restrictive limitations that go beyond what Congress has previously imposed.

Contrary to the Defendants' characterization, Plaintiffs' claim is not one of implied repeal. *See Branch v. Smith*, 538 U.S. 254, 273 (2003) (establishing the standard for claims that a later provision has effectively revealed a prior provision). No one is arguing that § 1182(f) has effectively been repealed. Rather, Plaintiffs' argument appears to be that Congress's legislative

action, in enacting the VWP and criteria for issuance of visas, has implicitly limited the President's § 1182(f) authority to bar intrusions into these areas. In a different context, the Supreme Court recognized a similar theory when it held that "the meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand." *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (holding that the Food and Drug Administration's statutory authority to regulate medical "devices" did not extend to regulation of tobacco, in part because Congress's frequent legislation relating to tobacco signaled that Congress did not intend that result). Indeed, not only has Congress amended the VWP as recently as 2015, but it has regularly revised various aspects of the immigration system affecting visa issuance over the past 15 years. *See, e.g.*, Consolidated Appropriations Act, Pub. L. No. 110-161, Div. J, § 691(d), 121 Stat. 1844 (2008) (designating the Taliban as a terrorist organization representatives of which are inadmissible under the INA); Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 7203, 118 Stat. 3638 (requiring that all visa applications be reviewed and adjudicated by a consular officer). Thus, Plaintiffs have offered a legitimate theory that the Proclamation has gone beyond suspending entry into legislating changes to Congress's statutory scheme.

However, this theory is undermined in two ways. First, with respect to the new visa issuance criteria arising from the waiver provisions, § 1182(f) explicitly grants the President the authority not just to suspend entry, but to "impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. § 1182(f). Thus, even if the waiver requirements are deemed to be additional criteria that must be met by an alien seeking admission, a fair reading of §

1182(f) is that it allows the President to impose such additional restrictions outside of previously listed requirements.

Second, it is not clear that the Proclamation directly conflicts with the judgments reflected in Congress's construction of the VWP. The VWP covers certain participating countries that have agreed to abide by certain conditions set by the United States, including information-sharing conditions, in exchange for visa-less travel to the United States for their nationals. *See* 8 U.S.C. § 1187(c)(2). It does not directly address whether nationals of certain non-VWP countries should be subject to even greater scrutiny than the standard visa issuance process. Likewise, the 2015 amendments related to the treatment of nationals of VWP countries who were either dual nationals of or had traveled to certain countries, including five of the countries covered by the Proclamation. *See* Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 § 203. Those individuals are not affected by the Proclamation. *See* Procl. § 3(b)(iv) (excepting dual nationals of Designated Countries traveling on a passport of a different country). Thus, although the Proclamation and the VWP address similar problems and consider similar factors, the two are not in such conflict that the VWP could fairly be deemed to foreclose the restrictions imposed through the Proclamation pursuant to § 1182(f). The Court therefore does not conclude that there is a likelihood of success on the claim that the Proclamation has effectively legislated changes to the INA in contravention of Congressional intent.

Finally, Plaintiffs point to the sheer scope of the Proclamation and argue that it must be beyond the limit of any authority delegated by Congress. Indeed, the Proclamation is unique among past invocations of § 1182(f). Of the 42 proclamations issued pursuant to § 1182(f) or § 1185(a)(1) prior to EO-1, none have sought to ban entry by nationals of more than one country at

once, let alone eight countries with approximately 150 million nationals. *See* Kate M. Manuel, Cong. Research Serv., R44743, Executive Authority to Exclude Aliens: In Brief 6-10 (2017). The only uses of § 1182(f) or § 1185(a)(1) to bar entry by nationals of a specific country were triggered by a specific foreign policy dispute: the Iran Hostage Crisis and a decision by the Cuban government to cancel a migration agreement with the United States. Exec. Order No. 12,172, 44 Fed. Reg. 67947; Exec. Order No. 12,206, 45 Fed. Reg. 24,101; Proclamation No. 5,517, 51 Fed. Reg. 30,470. None explicitly affected the issuance of visas to the same extent as the Proclamation. Indeed, most § 1182(f) proclamations were issued in response to a discrete event and were limited to a specific group of individuals associated with that event. Manuel, *supra*, at 6-10. As a typical example, President Clinton invoked § 1182(f) to suspend entry of Sudanese government and military officials for their failure to comply with a United Nations Security Council Resolution. *See, e.g.*, Proclamation No. 6,958, 61 Fed. Reg. 60,007 (Nov. 22, 1996); *see also* Exec. Order No. 13,606, 77 Fed. Reg. 24,571 (Apr. 22, 2012) (suspending entry of certain persons associated with human rights abuses by the Iranian and Syrian governments through the use of information technology). Thus, the Proclamation is unprecedented in its combination of a broad sweep impacting millions of people based on their nationality, its imposition of additional criteria for visa issuance, and its arguable conflict with Congressional immigration policy. If there is an example of a § 1182(f) order, past or present, that exceeds the authority of that statute, it would be this one.

But other than the specific nationality restriction of § 1152(a), Plaintiffs have not identified, nor has the Court found, any clear limit on the President's authority under § 1182(f) that this proclamation has crossed. Nor have Plaintiffs cited any case where a court has struck down a § 1182(f) order as beyond the scope of that provision. In the only Supreme Court

decision considering such an argument, the Court held that the statute gave “the President ample power to establish a naval blockade” to prevent Haitian migrants from entering the United States. *Sale*, 509 U.S. at 187. Rather, courts have generally recognized that § 1182(f) provides the President with a “sweeping proclamation power.” *Abourezk*, 785 F.2d at 1049 n. 2; *see Haitian Refugee Ctr., Inc. v. Baker*, 953 F.2d 1498, 1507 (11th Cir. 1992) (stating that § 1182(f) provides the President with “broad discretionary authority”); *Allende*, 845 F.2d at 1117-1118 (stating that § 1182(f) grants the President “vast power to exclude any individual alien or class of aliens whose entry might harm the national interest”); *Mow Sun Wong v. Campbell*, 626 F.2d 739, 744 n.9 (9th Cir. 1980) (referring to § 1182(f) as an “extreme power”).

The text of the statute itself is similarly unhelpful for discerning its limit. As discussed above, § 1182(f) does not impose a time limit on the President, stating that any restriction is “for such period as he shall deem necessary.” 8 U.S.C. § 1182(f). The President can impose restrictions on “any aliens or [] any class of aliens.” *Id.* The President is not required to find that entry would be detrimental to the nation’s security, only to its “interests,” a term that encompasses any number of reasons. *Id.*

Nevertheless, Plaintiffs are correct that there must be some limit on § 1182(f) authority. *See, e.g., Kent v. Dulles*, 357 U.S. 116, 129-30 (1985) (holding that a broad statute authorizing the Secretary of State to issue passports under rules established by the President did not allow the Secretary to deny passports to Communists due to constitutional considerations); *Zemel v. Rusk*, 381 U.S. 1, 7 (1965) (noting that statutes affecting foreign relations often “leave the exercise of power to [the President’s] unrestricted judgment,” but that does not mean that the President has “totally unrestricted freedom of choice”). For example, Plaintiffs persuasively argue that the use of § 1182(f) to rewrite immigration law, such as to ban all family-based immigrant visas, would

likely go too far. But that line has yet to be drawn. Where the Proclamation does not clearly run afoul of any identified limit on § 1182(f) authority with regard to nonimmigrant visas, the Court cannot find that Plaintiffs have shown a likelihood of success on the merits of this claim. Because Plaintiffs' statutory arguments do not support their requested relief in its entirety, the Court must consider their constitutional claims.

## **B. Establishment Clause**

Plaintiffs assert that the Proclamation's ban on citizens from the Designated Countries is the next step in a "clear and direct chain" that began with President Trump's campaign promise to ban Muslims from entering the United States and continued through EO-1 and EO-2. IRAP Mot. Prelim. Inj. at 24. They argue that the Proclamation therefore violates the Establishment Clause.

### **1. Legal Standard**

Defendants first argue that Plaintiffs' Establishment Clause claim summarily fails upon application of the standard set forth in *Kleindienst v. Mandel*, 408 U.S. 753 (1972). Under *Mandel*, pursuant to Congress's plenary power over immigration, courts review a claim that a consular officer denied a visa in contravention of constitutional rights only to determine whether there was a "facially legitimate and bona fide reason" for the denial, in which case the court will not "look behind the exercise of that discretion." *Id.* at 770 (rejecting a claim that the denial of a visa to Mandel, a Marxist, violated the First Amendment rights of professors who invited him to speak because the Government offered the facially legitimate reason that on a prior visit, Mandel had engaged in activities outside the scope of his visa). Although *Mandel* involved the denial of an individual visa, the Supreme Court extended the use of the "facially legitimate and bona fide" standard to a categorical immigration determination in *Fiallo v. Bell*, 430 U.S. 787 (1977), where

a father alleged that the INA's grant of an immigration preference to illegitimate children based on their relationship with their mothers, but not their fathers, violated the Equal Protection Clause. *Id.* at 788-89, 795.

There are persuasive reasons to conclude that the *Mandel* standard does not apply to Plaintiffs' Establishment Clause claim. First, there is a more recent line of cases recognizing that courts must not simply defer to the political branches when constitutional rights are at stake. *See Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) (emphasizing that in immigration matters, the judicial branch is not required wholly to defer to the political branches because their plenary "power is subject to important constitutional limitations"); *Chadha*, 462 U.S. at 940-41 (underscoring that even when another branch of government has "plenary authority," courts may still review whether that branch chose "a constitutionally permissible means of implementing that power"). Here, where the right at issue arises from the Establishment Clause, the *Mandel* standard is a poor fit because the core harm of a violation of the Establishment Clause, as opposed to the Free Speech Clause or the Equal Protection Clause, is not a limitation on an individual's right—whether to speak, listen, or be treated equally to another—but the dissemination of a public message that the Government has adopted an official policy of favoring one religion. A "facially legitimate and bona fide" standard designed to evaluate an individual visa determination is therefore not compatible with a fair evaluation of that public message, which necessarily requires some evaluation of the purpose behind the message. *See Church of the Lukumi Babalu Aye*, 508 U.S. at 532 (stating that an Establishment Clause violation consists of "an official purpose" to disapprove of a religion). Notably, the Supreme Court has not applied the *Mandel* standard to an Establishment Clause claim.

Nevertheless, in light of the Fourth Circuit’s application of *Mandel* to its review of EO-2, *see IRAP*, 857 F. 3d at 588-91, Plaintiffs do not seriously contest, and this Court accepts, the applicability of *Mandel*. The Court then looks to the concurring opinion of Justice Kennedy in *Kerry v. Din*, 135 S. Ct. 2128 (2015), to understand the distinction between “facially legitimate” and “bona fide.” *See Marks v. United States*, 430 U.S. 188, 193 (1977) (“When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.”) (citation omitted). An action is “facially legitimate” if there is a valid reason for it on the face of the action. *Din*, 135 S. Ct. at 2140-41 (Kennedy, J. concurring). An action is “bona fide” if there has been no “affirmative showing of bad faith” by the decisionmaker. *Id.* at 2141. Based on *Din*, this Court concludes that if there is a particularized showing of bad faith, a court should then “look behind” the action to evaluate its justification. *Id.* at 2040-41; *see also IRAP*, 857 F.3d at 590-91.

Here, the Proclamation states that the President, pursuant to § 1182(f) and § 1185(a), is suspending entry into the United States of nationals from the Designated Countries “to protect the security and interests of the United States and its people.” Procl. pmbl. This national security interest is a facially legitimate reason for the actions set forth in the Proclamation, to the extent authorized by those statutes. *See Din*, 135 S. Ct. at 2140 (Kennedy, J. concurring).

Plaintiffs, however, assert that the Proclamation’s proffered national security rationale is not the true motivation behind the restrictions, but is instead a pretext for an anti-Muslim bias. In support of their assertion of bad faith, Plaintiffs, as part of their challenge to EO-2, previously offered President Trump’s statements during his presidential campaign calling for a “Muslim ban”; his statements that he would fulfill his campaign promise of a Muslim ban by focusing on

territories rather than religion; EO-1, adopted without agency consultation, which targeted only majority-Muslim countries and contained preferences for religious minorities within those countries; and statements of President Trump and his advisors that EO-2 had the same policy goals as EO-1. Plaintiffs also pointed to the continued focus in EO-2 on countries with majority-Muslim populations, and what they asserted was a lack of correlation between the stated national security aims of EO-2 and the mechanisms outlined to achieve it. Based on these facts, this Court concluded that the primary purpose for EO-2 was to effect the equivalent of a Muslim ban. *IRAP*, 241 F. Supp. 3d at 560, 562-63. The Court now reaffirms that finding for purposes of the present analysis.

In their challenge to the Proclamation, Plaintiffs link it to this history of bad faith by noting that the Proclamation is the specific result of the President's directive in EO-2 that agencies develop a list of countries to be subject to a travel ban. They have supplemented the previous factual record with statements by President Trump since the injunctions against EO-2 were entered urging a return to and a toughening of the travel ban. They again note what they see as the misalignment between the stated national security goals of the ban and the means implemented to achieve them. They also assert that the Proclamation continues disproportionately to affect Muslims, despite the inclusion of two non-Muslim majority nations on the list of Designated Countries. This combined record provides facts that plausibly allege with sufficient particularity an affirmative showing of bad faith in the stated rationale for the Proclamation. *Din*, 135 S. Ct. at 2141 (Kennedy, J., concurring).

Having found that Plaintiffs have plausibly alleged that the Government's stated, facially legitimate, reason for the Proclamation is not bona fide, this Court "look[s] behind" that stated reason. *See id.* at 2040-41. The Court thus turns to a traditional constitutional analysis, in this

case by applying the traditional tests for evaluating an Establishment Clause claim. *See Zadvydas*, 533 U.S. at 695; *Chadha*, 462 U.S. at 940-41; *see also IRAP*, 857 F. 3d at 590-91.

The First Amendment prohibits any “law respecting an establishment of religion,” U.S. Const. amend. I, and “mandates governmental neutrality between religion and religion, and between religion and nonreligion,” *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). When a government action does not differentiate among religions on its face, courts apply the test articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), to evaluate an Establishment Clause challenge. *See Hernandez v. C.I.R.*, 490 U.S. 680, 695 (1989). Under *Lemon*, to withstand an Establishment Clause challenge (1) an act must have a secular purpose, (2) “its principal or primary effect must be one that neither advances nor inhibits religion,” and (3) it must not “foster ‘an excessive government entanglement with religion.’” *Id.* at 612-613 (quoting *Walz v. Tax Comm’n*, 397 U.S. 664, 674 (1970)). All three prongs of the test must be satisfied. *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).

As the first prong of the *Lemon* test makes clear, in Establishment Clause cases, “purpose matters.” *McCreary Cty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 866 n.14 (2005). Thus the purpose test is not satisfied by the identification of any secular purpose. *McCreary*, 545 U.S. at 865 n.13. Such a rule “would leave the purpose test with no real bite, given the ease of finding some secular purpose for almost any government action.” *Id.* (“[A]n approach that credits *any* valid purpose . . . has not been the way the Court has approached government action that implicates establishment.” (emphasis added)). Although governmental statements of purpose generally receive deference, an identified secular purpose must be “genuine, not a sham, and not merely secondary to a religious objective.” *Id.* at 864. Further, if a religious purpose for the government action is the predominant or primary purpose, and the secular purpose is

“secondary,” the purpose test has not been satisfied. *Id.* at 860, 862-65; *see also Edwards*, 482 U.S. at 594 (finding a violation of the Establishment Clause where the “primary purpose” of the challenged act was “to endorse a particular religious doctrine”).

An assessment of the purpose of an action is a “common” task for courts. *McCreary*, 545 U.S. at 861. An “understanding of official objective” can emerge from “readily discoverable fact” without “any judicial psychoanalysis” of the decisionmaker. *Id.* at 862. In determining purpose, a court acts as an “objective observer” who considers “the traditional external signs that show up in the text, legislative history, and implementation of the statute, or comparable official act.” *McCreary*, 545 U.S. at 862 (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000)). Because “the world is not made brand new every morning,” *McCreary*, 545 U.S. at 866 (quoting *Santa Fe*, 530 U.S. at 315), the Court must also consider the “historical context” of a challenged action and the “specific sequence of events” leading up to it. *Edwards*, 482 U.S. at 594-95. Such evidence is “perfectly probative” and considering it is a matter of “common sense,” because when determining purpose, courts are “forbid[den] . . . ‘to turn a blind eye to the context in which [the] policy arose.’” *McCreary*, 545 U.S. at 866 (quoting *Santa Fe*, 530 U.S. at 315).

## 2. Historical Context

This Court previously applied the *Lemon* test to EO-2 and found that it likely failed the purpose prong because there was substantial direct evidence that the travel ban was motivated by a desire to ban Muslims as a group from entering the United States. *IRAP*, 241 F. Supp. 3d at 560, 562-63. In making this factual determination, the Court relied largely on a record of public statements made by President Trump and his advisors before his election, before the issuance of EO-1, and after the decision to issue EO-2. *Id.* at 558-59, 562, 564. *See Green v. Haskell Cty.*

*Bd. of Comm'rs*, 568 F.3d 784, 801 (10th Cir. 2009) (considering quotations from county commissioners that appeared in news reports in finding that a Ten Commandments display violated the Establishment Clause); *Glassroth v. Moore*, 335 F.3d 1282, 1282, 1284-85, 1297 (11th Cir. 2003) (finding an Establishment Clause violation based on a record that included the state chief justice's campaign materials, including billboards and television commercials, proclaiming him to be the "Ten Commandments Judge").

That record revealed that on December 7, 2015, while still a Republican primary candidate, Trump posted a "Statement on Preventing Muslim Immigration" on his campaign website "calling for a total and complete shutdown of Muslims entering the United States until our representatives can figure out what is going on." J.R. 85. Then in a March 22, 2016 Fox Business interview, Trump reiterated his call for a ban on Muslim immigration, explaining that his call for the ban had gotten "tremendous support" and that "we're having problems with the Muslims, and we're having problems with Muslims coming into the country." J.R. 261. On December 21, 2016, when asked whether a recent attack in Germany affected his proposed Muslim ban, President-Elect Trump replied, "You know my plans. All along, I've proven to be right. 100% correct." J.R. 245. After becoming the Republican presidential nominee, Trump clarified his plans for a Muslim ban. In a July 24, 2016 interview on *Meet the Press*, Trump asserted that immigration should be immediately suspended "from any nation that has been compromised by terrorism." J.R. 219. When questioned whether his new formulation was a "rollback" of his call for a "Muslim ban," he described it as an "expansion" and explained that "[p]eople were so upset when I used the word Muslim," so he was instead "talking territory instead of Muslim." J.R. 220.

Within a week of taking office, President Trump issued EO-1. Upon signing it, President Trump remarked, “This is the ‘Protection of the Nation from Foreign Terrorist Entry into the United States.’ We all know what that means.” J.R. 142. The next day, Mayor Giuliani asserted on Fox News that President Trump told him he wanted a Muslim ban and asked Giuliani to “[s]how me the right way to do it legally.” J.R. 247. Giuliani explained that, after consulting with others, he proposed that the action be “focused on, instead of religion . . . the areas of the world that create danger for us,” specifically “places where there are [*sic*] substantial evidence that people are sending terrorists into our country.” J.R. 247-48.

EO-1 mirrored this rhetoric. It suspended for 90 days the immigrant and nonimmigrant entry into the United States of aliens from Iraq, Iran, Libya, Sudan, Somalia, Syria, and Yemen, all countries where the vast majority of the population is Muslim. The stated purpose of this suspension was to “protect the American people from terrorist attacks by foreign nationals admitted to the United States.” EO-1 pmb1. EO-1 cautioned that this threat required the United States to be “vigilant during the visa-issuance process,” a process that “plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States.” EO-1 § 1. However, EO-1 contained no facts tying the seven banned countries to any particular terror threats or to any visa-issuance failures. EO-1 also expressly drew distinctions based on religion, requiring that refugee claims on the basis of religious persecution be prioritized for individuals who were members of a minority religion in their country of nationality.

EO-1 was issued without traditional interagency consultation. Considering this abbreviated process, the similarity between the provisions of EO-1 and the public statements about the form the promised Muslim ban would take, the express references to religion within its text, and the lack of any articulated connection between the scope of the ban and particular

national security threats, this Court concluded, in resolving the motion for a preliminary injunction against EO-2, that there was a “convincing case” that the purpose of EO-1 was “to accomplish, as nearly as possible, President Trump’s promised Muslim ban” through a policy of restricting entry of nationals of predominantly Muslim countries deemed to be dangerous territory. *IRAP*, 241 F. Supp. 3d at 558-59. This Court reaffirms this finding for purposes of the present analysis.

That conclusion echoed the determination of the United States District Court for the Eastern District of Virginia, which had enjoined EO-1 on Establishment Clause grounds. *Aziz*, 234 F. Supp.3d at 730, 737-38 (quoting from a July 17, 2016 interview during which then-candidate Trump, upon hearing a tweet stating “Calls to ban Muslims from entering the U.S. are offensive and unconstitutional,” responded “So you call it territories. OK? We’re gonna do territories.”). Similarly, in reviewing a TRO halting EO-1, the Ninth Circuit opined that an Establishment Clause claim as to EO-1 raised “serious allegations” and presented “significant constitutional questions.” *Washington*, 847 F.3d at 1168.

EO-2 followed only six weeks after EO-1. EO-2 again instituted a 90-day suspension of entry from Designated Countries. However, EO-2 removed Iraq from the list of Designated Countries, which was otherwise the same, exempted certain categories of individuals from the ban, and delineated other categories of individuals who might be eligible for a case-by-case waiver. It also removed the preference for refugees from religious minorities and contained no express mention of religion. EO-2 contained a more fulsome factual predicate for its stated national security purpose, asserting that there is a heightened risk that individuals from the Designated Countries will be “terrorist operatives or sympathizers” because each Designated Country is “a state sponsor of terrorism, has been significantly compromised by terrorist

organizations, or contains active conflict zones,” such that their governments will therefore be less willing or able to “share or validate important information about individuals seeking to travel to the United States.” EO-2 § 1(d).

EO-2 required that the Secretary of Homeland Security, in consultation with the Secretary of State and the DNI, conduct a “worldwide review to identify whether, and if so what, additional information” would be needed from each foreign country to adjudicate a visa application and determine that the applicant is not a security threat. EO-2 § 2(a). A report on that review was to be submitted 20 days after the effective date of EO-2. Then, the Secretary of State was to begin a 50-day process of requesting that foreign governments bring their practices into compliance with any of the report’s recommendations. After that period, the Secretary of Homeland Security, after consultation with the Secretary of State and the DNI, was to “submit to the President of list of countries recommended for inclusion in a Presidential proclamation that would prohibit entry of appropriate categories of foreign nationals of countries that have not provided the information requested.” EO-2 § 2(e). This review and recommendation plan (collectively, the “DHS Review”) was largely unchanged from a comparable review process contained in EO-1.

In public statements, the Trump Administration repeatedly emphasized that EO-2 was, in substance, the same as EO-1. On February 16, 2017, before EO-2 was issued, Stephen Miller, Senior Policy Advisor to the President, characterized the changes made as “mostly minor technical differences” and asserted that the “basic policies are still going to be in effect.” J.R. 319. When EO-2 was signed on March 6, 2017, White House Press Secretary Sean Spicer emphasized that “[t]he principles of the [second] executive order remain the same” as those of

EO-1. J.R. 118. EO-2 itself explicitly stated that changes from EO-1, particularly the addition of exemption and waiver categories, were made to address “judicial concerns.” EO-2 § 1(i).

Considering EO-2 in this context, this Court concluded that despite the modifications from EO-1 and the removal of any reference to religion, the history of public statements “continued to provide a convincing case that the purpose of EO-2 remains the realization of the long-envisioned Muslim ban.” *IRAP*, 241 F. Supp. 3d at 559. In so finding, the Court determined that the core policy outcome of a ban on entry of nationals from the Designated Countries remained intact, that EO-2 continued to have the same practical mechanics of a Muslim ban by another name that President Trump had so publicly described, and that the national security rationale, under the circumstances, represented at most a secondary purpose for the travel ban. *Id.* at 559-60, 562-63. This Court accordingly found that the Plaintiffs were likely to succeed on their claim that EO-2 violated the Establishment Clause. *Id.* at 560, 564; *see also IRAP*, 857 F.3d at 601. The Court reaffirms this finding for purposes of the present analysis.

It is against this backdrop that the Court must now assess the likelihood of success of Plaintiffs’ claim that the Proclamation violates the Establishment Clause. Because “reasonable observers have reasonable memories,” past Establishment Clause violations are relevant to the assessment of present government actions. *McCreary*, 545 U.S. at 866, 874. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 315 (2000) (rejecting the argument, in a case involving successive school-prayer policies, that adoption of a new, facially neutral school-prayer policy “insulates the continuation of such prayers from constitutional scrutiny,” because any such inquiry “must include an examination of the circumstances surrounding its enactment”). When faced with allegations of a successive Establishment Clause violation, a court must thus not lapse

into the role of “an absentminded objective observer,” but must instead remain “familiar with the history of the government’s action and competent to learn what history has to show.” *McCreary*, 545 U.S. at 866. Here, where EO-1 and EO-2 were each likely to violate the Establishment Clause, and the third iteration, the Proclamation, was issued close on their heels—within nine and six months, respectively—it is “common sense” that the Proclamation stands in their shadow. *McCreary*, 545 U.S. at 855, 869-72, 874 (evaluating the purpose of a third proposed display of the Ten Commandments in light of two prior proposals made within the course of a year).

However, past actions do not “forever taint” present ones. *McCreary*, 545 U.S. at 874. While courts should reject an “implausible claim that governmental purpose has changed,” they should also “take account of genuine changes in constitutionally significant conditions.” *Id.* The Supreme Court has not articulated what kind of changes are necessary to obviate the taint of a prior Establishment Clause violation. On this point, *Felix v. City of Bloomfield*, 841 F.3d 848 (10th Cir. 2016), cited by Defendants, is instructive. In *Felix*, the United States Court of Appeals for the Tenth Circuit stated that “it is possible that a government may begin with an impermissible purpose, or create an unconstitutional effect, but later take affirmative actions to neutralize” the Establishment Clause violation. *Id.* at 863. In assessing “whether curative effects are sufficient to overcome an objective observer’s impression” of an impermissible Establishment Clause violation, governmental curative actions would have “not only to persuasively present a primary nonreligious effect, but also to disassociate the [government action] from its previous religious effect.” *Id.* Specifically, the governmental cure should be (1) “purposeful,” (2) “public,” and (3) “at least as persuasive” as the initial Establishment Clause violation. *Id.*

### 3. The Proclamation

The Government argues that the Proclamation does not violate the Establishment Clause because unlike EO-2, it is based on a worldwide review by the Acting Secretary of Homeland Security of information-sharing practices and other factors relevant to the visa issuance process. A comparison of the two orders reveals certain changes that support this argument. First, the Proclamation describes the review process conducted in advance of the Proclamation's issuance, which included consideration of baseline criteria for assessing available information relevant to the visa issuance process, an assessment of each country against those factors, the consultation with foreign governments to increase compliance, and recommendations on restrictions for countries whose compliance remains inadequate. Procl. §§ 1(e), (f). Second, the Proclamation also alters the list of Designated Countries. In EO-1 and EO-2, all the banned countries were majority-Muslim; the Proclamation's Designated Countries include two non-majority Muslim countries: North Korea and Venezuela. Like EO-2, the Proclamation includes certain exceptions and authorizes case-by-case waivers, but its restrictions are more finely tuned, with distinctions made for most of the Designated Countries as to particular kinds of visas subject to suspension.

Defendants also emphasize that the Proclamation makes no express distinctions based on religion. As with EO-2, the fact that, within the four corners of the document, there is no explicit distinction among countries based on religion does not end the inquiry. Establishment Clause violations can arise from facially neutral government action. *See Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 699-702 (1994); *cf. Church of the Lukumi Babalu Aye*, 508 U.S. at 534, 542 (holding that a facially neutral city ordinance prohibiting animal sacrifice and intended to target the Santeria faith violated the Free Exercise Clause because "the Free

Exercise Clause, like the Establishment Clause, extends beyond facial discrimination” and action targeting religion “cannot be shielded by mere compliance with the requirement of facial neutrality”). As in *Kiryas Joel*, where a facially neutral delegation of civic power to “qualified voters” of a village predominantly comprised of followers of Satmas Hasidism was deemed to be a “purposeful and forbidden” violation of the Establishment Clause, a simple check on the demographics of the geographic area affected by the Proclamation, with a combined population that is predominantly Muslim, reveals that its impact closely aligns with religious affiliation. *Kiryas Joel*, 512 U.S. at 699-702.

Likewise, the inclusion of two non-majority Muslim nations, North Korea and Venezuela, does not persuasively show a lack of religious purpose behind the Proclamation. The Venezuela ban is qualitatively different from the others because it extends only to government officials, and the ban on North Korea will, according to Department of State statistics, affect fewer than 100 people, only a fraction of one percent of all those affected by the Proclamation. In short, the inclusion of Venezuela and North Korea in the Proclamation has little practical consequence. The Court must therefore still assess whether, as has occurred in other Establishment Clause cases, the insertion of these countries was “a litigating position” rather than an earnest effort to “cast off” the prior “unmistakable” objective. *McCreary*, 545 U.S. at 871-72 (finding that the addition of secular texts to a Ten Commandments display did not remedy a prior Establishment Clause violation).

As with EO-2, the Court must consider not whether the Proclamation has stated a non-religious purpose for the travel ban, but whether that purpose is, in fact, the primary purpose for the travel ban, rather than a purpose secondary to the religious animus that the Court has found, and continues to find, to be the primary purpose for the EO-2. *McCreary*, 545 U.S. at 860, 862-

65. The Court also considers whether the governmental curative action since EO-2 was purposeful, public, and “at least as persuasive as the initial endorsement of religion.” *Felix*, 841 F.3d at 863. At the outset of this analysis, the Court notes that, on its face, the Proclamation is not entirely independent of the President’s history of public advocacy for a Muslim ban. In a July 24, 2016 interview on Meet the Press, then-candidate Trump, when asked about his proposed “Muslim ban,” responded by stating that “[w]e must immediately suspend immigration from any nation that has been compromised by terrorism until such time as proven vetting mechanisms have been put in place.” J.R. 219-20. When asked if this formulation represented a “rollback” of the Muslim ban, President Trump answered that it was an “expansion,” noting that he was now “looking at territories” because “[p]eople were so upset when I used the word Muslim.” J.R. 220. President Trump’s characterization of the Muslim ban on that occasion, as a suspension of immigration until vetting mechanisms have been implemented, appears to mirror the contours of the Proclamation. Likewise, the permanent travel ban imposed by the Proclamation was forecast at the time of EO-1 and EO-2. On January 30, 2017, three days after issuing the 90-day ban under EO-1, ostensibly for the purpose of conducting an internal review of vetting procedures, President Trump seemed to predict the results of that review, stating, “we’re going to have a very, very strict ban.” J.R. 123. Shortly after the issuance of EO-2, White House officials, noting that EO-2’s provisions were temporary, stated that the ban might be extended past 90 days and to additional countries. J.R. 116.

Upon consideration of the text of EO-1, EO-2, and the Proclamation, there are substantial reasons to question whether the asserted national security purpose has now indeed become the primary purpose. First, the underlying architecture of the prior Executive Orders and the Proclamation is fundamentally the same. Each of these executive actions bans the issuance of

immigrant and nonimmigrant visas on the basis of nationality to multiple majority-Muslim countries on the basis of concerns about terrorism. The Proclamation does not abandon this fundamental approach, but rather doubles down on it, because rather than imposing a temporary, 90-day travel ban, the Proclamation establishes an indefinite travel ban, which is subject to periodic review, but which would become permanent in the absence of additional action.

Although the Government frames the Proclamation review process as an independent action that has cured any taint from EO-2, a close read of EO-1 and EO-2 reveals that the outcome of the DHS Review was at least partially pre-ordained. It is undisputed that the DHS Review was conducted pursuant to the President's directive, contained in both EO-1 and EO-2, mandating a review of information-sharing practices, but that directive also telegraphed the expected recommendations. Specifically, EO-2 instructed that the Secretary of Homeland Security "shall submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of foreign nationals." EO-2 § 2(e), *see* EO-1 § 2(e) (omitting the phrase "appropriate categories of"). This language does not permit the Secretary to recommend that no nationality-based travel ban is necessary. The language of EO-2 thus indicates that the President had decided, even before the study had been conducted, that regardless of the results, some nationals would be subject to a travel ban. Where EO-2 contemplated and planned for the very type of travel ban imposed by the Proclamation, the Proclamation cannot be framed as an independent product of bureaucratic operation.

Moreover, a comparison of EO-2 with the Proclamation reveals that many of the criteria considered in the DHS Review, and used to justify the ban on specific countries in the Proclamation, were substantially similar to those used to select the list of countries banned by

EO-2. EO-2 explained its choice of countries by noting that some or all were “a state sponsor of terrorism,” had “been significantly compromised by terrorist organizations,” and made it difficult for the United States to deport their nationals because they “typically delay issuing, or refuse to issue, travel documents.” EO-2 § 1(d). These factors largely track the “National security and public-safety risk assessment” factors considered in the DHS Review, which include whether a country is a “known or potential terrorist safe haven” and “fails to receive its nationals subject to final orders of removal from the United States.” Proclamation § 1(c)(iii). Likewise, EO-2 ostensibly selected banned countries in part because country circumstances diminished “the foreign government’s willingness or ability to share or validate important information about individuals seeking to travel to the United States,” a consideration that encompasses many of the “Identity-management information” and “National security and public-safety information” criteria used as the baseline for the DHS Report. *Id.* § 1(c)(i)-(ii).

Many of EO-2’s specific findings about banned countries are also substantially the same as those described in the Proclamation. For example, EO-2 noted as one factor in banning Iran that it “regularly fails to cooperate with the United States Government in identifying security risks,” EO-2 § 2(e)(i), while the Proclamation concluded that “Iran does not cooperate with the United States in counterterrorism efforts,” Procl. § 2(b) (i). EO-2 justified the ban on Somalia in part because “most countries do not recognize Somali identity documents,” EO-2 § 2(e)(iii), one of the same factors used to justified the Somali ban in the Proclamation, *see* Procl. § 2(h)(i). In both orders, the ban on Syria is justified in part by the fact that Syria is a state sponsor of terrorism and does not cooperate with the United States in addressing security or terrorism risks. This substantial overlap between EO-2 and the Proclamation in terms of the criteria considered and applied in identifying countries to ban undermines the characterization of the Proclamation’s

determination to impose a travel ban as the product of an independent evaluation unconnected to the earlier, tainted travel bans, and further suggests that many of the results may have been pre-ordained. Where the President ordered the submission of a list of countries to be banned, and the criteria used to arrive at that list substantially aligned with those he applied to generate the list of banned countries in the tainted EO-2, it is not surprising that agency officials acting in good faith could and did propose a similar list of countries to be banned in the Proclamation.

Some of the specific determinations made in the Proclamation, by deviating from the general findings of the DHS Review, also undermine the argument that the Designated Countries were selected by an independent process completely untethered to the President's earlier statements advocating for a Muslim ban. For example, although the Proclamation's travel ban is purportedly designed to combat deficient information-sharing practices, Somalia, which was found to have adequate information-sharing practices, is nevertheless on the list of Designated Countries and is subject to a ban on all immigrants from that nation. Somalia is a majority-Muslim country that was included in the list of Designated Countries in both EO-1 and EO-2. Venezuela, meanwhile, a non-majority Muslim nation, was determined to have inadequate information-sharing practices, to have at least one national security risk factor, and to not reliably receive its nationals slated for deportation. Despite these deficiencies, only officials of the Venezuelan government are barred from entry. Thus, by its own terms, the Proclamation did not simply rely on the results of an objective information-sharing review but instead made certain subjective determinations that resulted in a disproportionate impact on majority-Muslim nations, and a greater alignment with the travel ban of EO-2, than would otherwise flow from the objective factors considered in the review. Moreover, the exception given to Venezuela serves to

reveal that information-sharing deficiencies do not necessarily warrant a broad, nationality-based ban.

That fact brings into relief a continued lack in the Proclamation, as in EO-1 and EO-2, of facts establishing that a broad nationality-based travel ban is justified by possible failures in the visa-issuance process and the terrorist and public safety threats that the Proclamation's ban is meant to thwart. While the President's findings may meet the low bar of "detrimental interest," 8 U.S.C. § 1182(f); *see supra* part II.A.2, they do not explain why the broad travel ban is necessary in a way that convincingly demonstrates that its primary purpose is now unrelated to religious animus. As discussed above, a nationality-based travel ban against eight nations consisting of over 150 million people is unprecedented. Since the enactment of § 1182(f), only two of the 42 invocations of that authority have sought to bar entry based on nationality, and in those cases only against a single nation and in response to a specific diplomatic dispute with that nation. *See* Exec. Order No. 12,172, 44 Fed. Reg. 67947; Exec. Order No. 12,206, 45 Fed. Reg. 24,101; Proclamation No. 5,517, 51 Fed. Reg. 30,470. Such a ban was not even imposed after the September 11, 2001 attacks. Furthermore, while EO-1 and EO-2 sought to justify the travel ban based on prior acts of terrorism involving nationals of the Designated Countries, Defendants offer no evidence, even in the form of classified information submitted to the Court, showing an intelligence-based terrorism threat justifying a ban on entire nationalities; rather, the Proclamation relies primarily on the lack of information sharing from the Designated Countries. Numerous distinguished former national security officials have attested to the unique nature of this travel ban and the lack of a discernible national security rationale for it, including any rationale that would flow from information-sharing deficiencies. Notably, in the context of the VWP, Congress as recently as 2015 examined this same issue and responded with legislation that

falls well short of any kind of nationality-based travel ban. *See supra* part III.A.3. Thus, the Proclamation fails adequately to explain not the need to respond to information-sharing deficiencies, but the need for the specific response of an unprecedented, sweeping nationality-based travel ban against majority-Muslim nations.

The Court does not reference the record evidence showing the apparent disconnect between the identified problem and the broad, nationality-based travel ban to evaluate the merits of the travel ban as a national security matter. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010) (stating that generally, courts should afford deference to national security and foreign policy judgments of the Executive Branch). Nor does it question that information-sharing deficiencies can have a national security impact and should be addressed. Rather, it considers this context only to assess whether the Proclamation persuasively establishes that the primary purpose of the travel ban is no longer religious animus. Based on the facts that the Proclamation's ban generally resembles President Trump's earlier description of the Muslim ban, EO-2 dictated the Proclamation's outcome of a recommended list of nations to be subjected to a travel ban, the criteria used to select countries were highly correlated with those used to select the countries for EO-2, the terms of the Proclamation's travel ban skew against Muslim nations as compared to the objective measures applied in the DHS Review, and the proposed response has not been adequately explained as a necessary one to the identified problem, the Court cannot conclude that the Proclamation sufficiently offers a "purposeful" curative action that establishes that the taint of EO-2 no longer underlies the travel ban. *See Felix*, 841 F. 3d at 863.

To the extent that the Government might have provided additional evidence to establish that national security is now the primary purpose for the travel ban, it has not done so. It has not offered classified information such as the September 15, 2017 DHS Report which, even though

not “public,” could have been submitted to the Court to explain the shift in purpose. Of course, even if such evidence was forthcoming, its value in obviating the taint of the earlier Executive Orders would be limited. As noted, in Establishment Clause cases, it is the opinion of the reasonable observer that controls. *McCreary*, 545 U.S. at 866 (quoting *Santa Fe*, 530 U.S. at 315). Purposes that can be discerned only if one “burrow[s] into a difficult-to-access” record do little to “assure [the public] that the government is not endorsing a religious view.” *Felix*, 841 F. 3d at 863.

Beyond the Proclamation itself, Defendants have offered only one additional “public” statement to bolster the case that the Proclamation is now cured of religious animus: a speech by the President delivered in Saudi Arabia in May 2017 in which he made various positive statements about Islam. *See Felix*, 841 F. 3d at 863. Such a statement, however, did not in any way repudiate the President’s prior intention to impose a Muslim ban. Particularly where, in August 2017, President Trump tweeted a statement that a method hostile to Islam—shooting Muslims with bullets dipped in pig’s blood—should be used to deter future terrorism, there is no record of public statements showing any change in the President’s intentions relating to a Muslim ban.

Rather, the only other available public statements not only fail to advance, but instead undermine, the position that the primary purpose of the travel ban now derives from the need to address information-sharing deficiencies. Even while interagency consultation regarding the travel ban took place behind closed doors, another conversation continued in the public eye. The day after EO-2 was enjoined, President Trump proclaimed at a rally that it had been a “watered down version of the first one” that had been “tailor[ed]” by lawyers to respond to legal challenges. J.R. 652-53. He suggested instead that “we ought to go back to the first one and go

all the way, which is what I wanted to do in the first place.” J.R. 653. In a June 3, 2017 tweet, days after the Fourth Circuit’s opinion upholding this Court’s injunction against EO-2, President Trump declared in a tweet that “We need the Travel Ban as an extra level of safety!” J.R. 662. On June 5, 2017, President Trump tweeted that “[t]he Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically correct version they submitted to [the Supreme Court],” and that “the Justice Dept. should ask for an expedited hearing of the watered down Travel Ban before the Supreme Court - & seek much tougher version!” J.R. 664. Then, on September 15, 2017, the same day that the Acting Secretary of Homeland Security submitted her report, President Trump again called for an expansion of the travel ban, tweeting that “the travel ban into the United States should be far larger, tougher and more specific-but stupidly, that would not be politically correct!” J.R. 705.

Thus, while Defendants assert that the Proclamation’s travel ban was arrived at through the routine operations of the government bureaucracy, the public was witness to a different genealogy, one in which the President—speaking “straight to the American people,” J.R. 667—announced his intention to go back to and get even tougher than in EO-1 and EO-2. Notably, the June 5 tweet calling for a “much tougher version” reveals that even before President Trump had received any reports on the DHS Review that ostensibly identified the need for a travel ban, the first of which he received over a month later on July 9, 2017, the President had already decided that the travel ban would continue. His September 15, 2017 tweet calling for a “far larger, tougher” travel ban, issued the same day that that the final report was received, reinforced this position. Against the backdrop of two prior Executive Orders that this Court and others have deemed likely violated the Establishment Clause, *see, e.g., Aziz*, 234 F. Supp.3d at 739 and *Hawaii*, 241 F. Supp. 3d at 1137-38, this Court is obligated to pay attention to such statements.

*See McCreary*, 545 U.S. at 866 (cautioning courts that they cannot become “an absentminded objective observer,” but must instead remain “familiar with the history of the government’s action and competent to learn what history has to show”). The reasonable observer using a “head with common sense” would rely on the statements of the President to discern the purpose of a Presidential Proclamation. *McCreary*, 545 U.S. at 874. Here, those statements do not offer “persuasive” rejection of the President’s prior calls for a Muslim ban, or his stated intention to use a ban on certain “dangerous territory” to effectuate a Muslim ban, *Felix*, 841 F.3d at 863, nor do they show that the stated intention to impose a Muslim ban has been “repealed or otherwise repudiated,” *McCreary*, 545 U.S. at 871-72. Rather, they cast the Proclamation as the inextricable re-animation of the twice-enjoined Muslim ban, and, in echoes of *McCreary*, convey the message that the third iteration of the ban—no longer temporary—will be the “enhanced expression” of the earlier ones. *Id.* at 872.

The “initial” announcement of the Muslim ban, offered repeatedly and explicitly through President Trump’s own statements, forcefully and persuasively expressed his purpose in unequivocal terms. Under *Felix*, the Government’s cure must be made “as persuasively as the initial” violation. *Felix*, 841 F.3d at 863. Here, the Court concludes that where the Proclamation itself is not sufficiently independent of EO-2 to signal a purposeful, persuasive change in the primary purpose of the travel ban, and there were no other public signs that “as persuasively” as the original violation established a different primary purpose for the travel ban, it cannot find that a “reasonable observer” would understand that the primary purpose of the Proclamation’s travel ban is no longer the desire to impose a Muslim ban. *See McCreary*, 545 U.S. at 872 (finding that a third version of a Ten Commandments display continued to have a primarily religious purpose); *Felix*, 841 F. 3d at 863. The Court therefore finds that Plaintiffs have demonstrated

that they are likely to succeed on the merits of their Establishment Clause claim. Having reached this conclusion, the Court need not address Plaintiffs' likelihood of success on their Equal Protection Clause claim.

#### **IV. Irreparable Harm**

Having concluded that Plaintiffs have established a likelihood of success on the merits on their § 1152(a) and Establishment Clause claims, the Court turns to whether they have shown a likelihood of irreparable harm. The Supreme Court has held that "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (finding irreparable harm upon a violation of the freedom of association). The Fourth Circuit has applied this holding to cases involving the freedom of speech and expression. *E.g.*, *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 190, 191-92 (4th Cir. 2013); *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011). Although the Fourth Circuit has not held that a violation of the Establishment Clause likewise necessarily results in irreparable harm, other circuits have. *See, e.g.*, *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 303 (D.C. Cir. 2006); *Ingebretsen ex rel. Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996); *Parents' Ass'n of P.S. 16 v. Quinones*, 803 F.2d 1235, 1242 (2d Cir. 1986); *Am. Civil Liberties Union of Ill. v. City of St. Charles*, 794 F.2d 265, 275 (7th Cir. 1986) (finding irreparable harm in an Establishment Clause case and stating that the "harm is irreparable as well as substantial because an erosion of religious liberties cannot be deterred by awarding damages to the victims of such erosion").

Here, as in *Elrod*, "First Amendment interests were either threatened or in fact being impaired at the time relief was sought." 427 U.S. at 373. "[W]hen an Establishment Clause violation is alleged, infringement occurs the moment the government action takes place."

*Chaplaincy of Full Gospel Churches*, 454 F.3d at 303. The Court accordingly finds that Plaintiffs have established a likelihood of irreparable harm arising from their Establishment Clause claim at the time the Proclamation takes effect.

The Court also finds that Plaintiffs with a family member seeking an immigrant visa have established a likelihood of irreparable harm as a result of the Proclamation's violation of the INA. Irreparable harm occurs when the threatened injury impairs a court's ability to grant an effective remedy, such as a harm that cannot be compensated by money damages at a later trial. *See Hawaii*, 859 F.3d at 782; *see also* 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948.1 (3d ed. 1998). The injury must be likely, not merely speculative, in order to be considered irreparable. Wright & Miller, *supra*, § 2948.1. Without an injunction, Plaintiffs will be subjected to imminent and irreparable harm as a result of the prolonged separation from their family members caused by the Proclamation. *Hawaii*, 859 F.3d at 782 (considering separation from family members in finding a likelihood of irreparable harm); *see also IRAP*, 857 F.3d at 611-12 (Keenan, J., concurring). The absence of a family member cannot be cured through a later payment of money damages, and is therefore irreparable. For the same reason that Plaintiffs' claims are ripe, the injury is not speculative, despite the Proclamation's waiver provisions. *See supra* part I.B. Thus, Plaintiffs have shown irreparable harm as a result of the Proclamation.

**V. Balance of the Equities**

In balancing the equities, the Court considers the significant, irreparable harm Plaintiffs would face both from the prolonged separation from family members and the Establishment Clause violation. While Plaintiffs would likely face irreparable harm in the absence of an injunction and would plainly benefit from an injunction, Defendants are not directly harmed by a

preliminary injunction preventing them from enforcing a Proclamation likely to be found unconstitutional. *See Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003); *Aziz*, 234 F. Supp.3d at 738.

At the same time, the Supreme Court has stated that “no governmental interest is more compelling than the security of the Nation.” *Haig v. Agee*, 453 U.S. 280, 307 (1981). Although the Proclamation seeks to further information-sharing and diplomatic purposes, Defendants have not shown that national security cannot be maintained without an unprecedented eight-country travel ban. An injunction would not grant entry to any individual foreign national, but would only preclude the use of a blanket ban. Even with an injunction, visa applicants from the Designated Countries would be screened through the standard, individualized vetting process under which the burden is on individual applicants to prove that they are not inadmissible to the United States. 8 U.S.C. § 1361. An injunction would not shift or lessen that burden or prevent the denial of any particular visa application. Thus, as a general matter, the balance of the equities favors the issuance of an injunction.

However, in partially staying the injunction of EO-2, the Supreme Court noted that the balance of equities varies depending on a foreign national’s strength of connection to the United States. *See Trump*, 137 S. Ct. at 2088. For those individuals who lack “a credible claim of a bona fide relationship with a person or entity in the United States,” the equities shift such that Defendants’ interest in national security prevails over any harms resulting from the Proclamation’s likely Establishment Clause or INA violations. *See id.* Accordingly, this factor supports an injunction extending only to individuals with a bona fide relationship with an individual or entity in the United States, as discussed below.

## **VI. Public Interest**

Preventing an Establishment Clause violation provides a significant public benefit. The Supreme Court has recognized the “fundamental place held by the Establishment Clause in our constitutional scheme.” *Wallace v. Jaffree*, 472 U.S. 38, 60 (1985). The Founders “brought into being our Nation, our Constitution, and our Bill of Rights with its prohibition against any governmental establishment of religion” because they understood that “governmentally established religions and religious persecution go hand in hand.” *Engel v. Vitale*, 370 U.S. 421, 432-33 (1962). When the government chooses sides among religions, the “inevitable result” is “hatred, disrespect, and even contempt” from those who adhere to different beliefs. *See id.* at 431. Thus, to avoid sowing seeds of division in our nation, upholding this fundamental constitutional principle at the core of our Nation’s identity serves a significant public interest.

The Court also finds that granting an injunction on the Proclamation’s violation of the INA advances the public interest. Section 1152(a) represents a judgment by Congress that our immigration policy should not discriminate on the basis of nationality. To the extent that this judgment is undermined by the Proclamation, the public interest is furthered by an injunction on those grounds.

Although the Government’s interest in national security is a significant public interest, for the reasons discussed above, *see supra* part V, those interests are not paramount in this instance. Accordingly, the Court finds that the public interest favors an injunction.

## **VII. Scope of Relief**

The Plaintiffs’ Establishment Clause and § 1152(a) arguments focused primarily on the travel ban for citizens of the eight Designated Countries in Section 2 of the Proclamation. The Court will therefore enjoin Section 2 only, subject to the following exceptions.

As discussed above, because the balance of equities favor Defendants as to visa applicants with no ties to the United States, the injunction is limited to barring enforcement of Section 2 against those individuals “who have a credible claim of a bona fide relationship with a person or entity in the United States.” *Trump*, 137 S. Ct. at 2088. For individuals, the injunction covers visa applications by individuals with immediate family members, such as parents, children, or siblings, as well as “grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States.” *Id.*; *Hawaii v. Trump*, 871 F.3d 646, 658 (9th Cir. 2017) (clarifying the scope of the injunction against EO-2). For organizations, the connection must be “formal, documented, and formed in the ordinary course” rather than for the purposes of evading the Proclamation. *Trump*, 137 S. Ct. at 2088. For example, IRAP’s employee or an invited speaker for MESA’s annual meeting or IAAB’s conference would qualify. *See id.* (including a “lecturer invited to address an American audience” and a “worker who accepted an offer of employment” within the scope of the injunction). A member of MESA or another membership organization who formally joined the organization before the date of the injunction and seeks to enter the United States for organized activities or meetings of the association would also fall within its scope. *See id.* Pursuant to the Supreme Court’s stay of the Ninth Circuit’s determination that a refugee with a formal sponsorship assurance from a U.S. resettlement agency has a bona fide connection to the United States, the Court concludes that clients of IRAP and HIAS, and those similarly situated, are not covered by the injunction absent a separate bona fide relationship as defined above. *See id.* at 2088; *Hawaii*, 871 F.3d at 661-64 (finding that a refugee with a formal sponsorship assurance from a U.S. resettlement agency has a bona fide connection to the United States); *Trump v.*

*Hawaii*, No. 17A275, 2017 WL 3975174 (Sept. 11, 2017) (staying the Ninth Circuit mandate “with respect to refugees covered by a formal assurance”).

The injunction also will not apply to travelers from Venezuela or North Korea because the balance of equities favors Defendants with respect to those two countries. Section 1152(a) provides no basis to support an injunction relating to Venezuela because the Proclamation does not bar immigrants from Venezuela. Given the extremely limited number of visas typically issued to individuals from North Korea, Plaintiffs have neither argued nor shown how any individuals from that nation with a bona fide relationship to a person or entity in the United States will be harmed by the § 1152(a) violation. Likewise, they have not shown how travelers from Venezuela or North Korea would be harmed by the likely Establishment Clause violation. Accordingly, the injunction will not apply to nationals of Venezuela or North Korea.

Finally, in light of the constitutional concerns associated with enjoining the President of the United States, this injunction does not apply to the President and instead applies only to the other Defendants and the federal officials who will actually enforce the Proclamation. *See Franklin*, 505 U.S. at 800-01.

The injunction will apply nationwide. It is “well established” that a federal district court has “wide discretion to fashion appropriate injunctive relief in a particular case.” *Richmond Tenants Org., Inc. v. Kemp*, 956 F.2d 1300, 1308 (4th Cir. 1992); *see also Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) (holding that the “Constitution vests the District Court with ‘the judicial Power of the United States,’” which “extends across the country” (quoting U.S. Const. art. III § 1)), *aff’d by an equally divided court*, 136 S. Ct. 2271 (2016). Injunctive relief “should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). However, nationwide injunctions

are appropriate if necessary to afford relief to the prevailing party. *See id.*; *Richmond Tenants Org., Inc.*, 956 F.3d at 1308-39; *Texas*, 809 F.3d at 188.

The Court has found that Plaintiffs are likely to succeed on their claims that Section 2 of the Proclamation violates the Establishment Clause and § 1152(a). The Individual and Organizational Plaintiffs are located in different parts of the United States, indicating that nationwide relief may be appropriate. *Richmond Tenants Org., Inc.*, 956 F.3d at 1309 (holding that a nationwide injunction was “appropriately tailored” because the plaintiffs lived in different parts of the country). Moreover, although the Government has argued that relief should be strictly limited to the specific interests of Plaintiffs, an Establishment Clause violation has impacts beyond the personal interests of individual parties. *Joyner v. Forsyth Cty.*, 653 F.3d 341, 355 (4th Cir. 2011) (“[T]hese plaintiffs are not so different from other citizens who may feel in some way marginalized on account of their religious beliefs and who decline to risk the further ostracism that may ensue from bringing their case to court or who simply lack the resources to do so.”); *City of St. Charles*, 794 F.2d at 275 (stating that a violation of the Establishment Clause causes “harm to society”). Here, nationwide relief is appropriate because this case involves an alleged violation of the Establishment Clause by the federal government manifested in immigration policy with nationwide effect. *See Decker v. O’Donnell*, 661 F.2d 598, 618 (7th Cir. 1980) (affirming a nationwide injunction in a facial challenge to a federal statute and regulations on Establishment Clause grounds).

Nationwide relief is also warranted on the § 1152(a) claim, with respect to applicants for immigrant visas, because under these facts, a “fragmented” approach “would run afoul of the constitutional and statutory requirement for uniform immigration law and policy.” *Washington*, 847 F.3d at 1166-67. “Congress has instructed that the immigration laws of the United States

should be enforced vigorously and *uniformly*, and the Supreme Court has described immigration policy as a comprehensive and *unified* system.” *Texas*, 80 F.3d at 187-88 (footnotes omitted). Accordingly, Section 2 of the Proclamation, with the exceptions and to the extent described above, will be enjoined on a nationwide basis.

### CONCLUSION

For the foregoing reasons, Plaintiffs’ Motions for a Preliminary Injunction are GRANTED IN PART and DENIED IN PART. The Court will issue a preliminary injunction barring enforcement of Section 2 of the Proclamation, subject to the terms stated in the separate Order.

Date: October 17, 2017



THEODORE D. CHUANG  
United States District Judge

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. TDC-17-0361

IRANIAN ALLIANCES ACROSS  
BORDERS, UNIVERSITY OF MARYLAND  
COLLEGE PARK CHAPTER, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. TDC-17-2921

EBLAL ZAKZOK, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. TDC-17-2969

**ORDER**

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

to succeed on the merits, that they are likely to suffer irreparable harm in the absence of injunctive relief, and that the balance of the equities and the public interest favor an injunction.

Accordingly, it is hereby ORDERED that:

1. Plaintiffs' Motions for a Preliminary Injunction, TDC-17-0361 ECF No. 205, TDC-17-2921 ECF No. 26, TDC-17-2969 ECF No. 2, are GRANTED IN PART and DENIED IN PART.
2. The Motions are GRANTED as to Section 2 of Presidential Proclamation 9645 ("Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats"). **All Defendants with the exception of the President of the United States; all officers, agents, and employees of the Executive Branch of the United States government; and anyone acting under their authorization or direction, are ENJOINED from enforcing Section 2 of Presidential Proclamation 9645 except with regard to:**
  - a. **Sections 2(d) and 2(f) of the Proclamation;**
  - b. **Individuals lacking a credible claim of a bona fide relationship with a person or entity in the United States, as defined in the accompanying Memorandum Opinion.**
3. This Preliminary Injunction is granted on a nationwide basis and prohibits the enforcement of Section 2 of Presidential Proclamation 9645 in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas, with the above exceptions, pending further orders from this Court.

4. The Motion is DENIED as to the President of the United States and as to all other provisions of Presidential Proclamation 9645.
5. Plaintiffs are not required to pay a security deposit.
6. The Court declines to stay this ruling or hold it in abeyance should an emergency appeal of this Order be filed.

Date: October 17, 2017

  
THEODORE D. CHUANG  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

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INTERNATIONAL REFUGEE	)
ASSISTANCE PROJECT, <i>et al.</i> ,	)
	)
Plaintiffs,	)
	)
v.	)
	)
DONALD TRUMP, in his official capacity	)
as President of the United States, <i>et al.</i> ,	)
	)
Defendants.	)

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No. 8:17-cv-00361-TDC

**NOTICE OF APPEAL**

PLEASE TAKE NOTICE that all defendants hereby appeal to the United States Court of Appeals for the Fourth Circuit from the Memorandum Opinion and Order at ECF Nos. 219 and 220, both dated October 17, 2017.

Dated: October 20, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2017, I electronically filed the foregoing Notice of Appeal using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

/s/ Daniel Schwei

DANIEL SCHWEI

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

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SHAPOUR SHIRANI; and

AFSANEH KHAZAELI,

*Plaintiffs,*

Civil Action No.: 8:17-cv-361-TDC

**NOTICE OF CROSS-APPEAL**

v.

DONALD TRUMP, in his official capacity as  
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Serve on: Rex W. Tillerson,  
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OFFICE OF THE DIRECTOR OF  
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Serve on: Dan Coats,  
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ELAINE DUKE, in her official capacity as Acting  
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REX W. TILLERSON, in his official capacity as  
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DAN COATS, in his official capacity as Acting  
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*Defendants.*

PLEASE TAKE NOTICE that all plaintiffs hereby cross-appeal to the United States Court of Appeals for the Fourth Circuit from the Memorandum Opinion and Order at ECF Nos. 219 and 220, both dated October 17, 2017.

Dated: October 23, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of October, 2017, I caused a PDF version of the foregoing document and any accompanying exhibits to be electronically transmitted to the Clerk of the Court, using the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

Dated: October 23, 2017

Respectfully submitted,

/s/ Omar C. Jadwat

## **CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2017, I electronically filed the foregoing Joint Appendix with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Sharon Swingle  
\_\_\_\_\_  
Sharon Swingle